



# FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

## EXAMINATION BOOKLET

### DROIT PUBLIC ET ADMINISTRATIF

January 30, 2003

- 1) The examination in the DROIT PUBLIC ET ADMINISTRATIF section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled “Préambule de Droit public et administratif”.
- 2) You have a maximum of four hours to complete the examination. You are entirely responsible for managing your time.
- 3) The examination contains questions relating to the following section:
  - Droit public et administratif
- 4) The questions total 100 marks. You must obtain a mark of 60% or more in order to pass this examination.
- 5) You may use any written documentation which you deem to be useful.
- 6) For photocopying purposes, kindly use a **pen with black ink** to write your answers in your answer booklet.
- 7) **You must write legibly, otherwise your answers will not be graded.**
- 8) Please ensure that your examination booklet contains **14** pages (including this page) and that your answer booklet contains **7** pages.

**N.B.:** For purposes of this examination, you must apply:

- the *Code of Civil Procedure* as amended by the *Act to reform the Code of Civil Procedure*, S.Q. 2002, c. 7;
- the *Labour Code* as amended by the *Act to amend the Labour Code, to establish the Commission des relations du travail and to amend other legislative provisions*, S.Q. 2001, c. 26.

<b>FILE 1 (30 MARKS)</b>
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**The situation described in File 1 is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.**

On March 8, 2001, Roger Durocher files a complaint with the Police Ethics Commissioner. In it, he alleges that officer Émile Dupiras, a member of the City of Québec police force, communicated confidential information regarding him to a third party, without a valid reason for doing so. In so doing, Émile Dupiras would have committed a transgression as set forth in section 6 of the *Code of ethics of Québec police officers*.

On June 11, 2001, after having followed the procedure set forth in the *Police Act* (**the relevant extracts of the *Police Act* are reproduced in a schedule hereto on pages 6 and 7**), including the holding of an investigation, the Police Ethics Commissioner dismisses the complaint on the ground that there is insufficient evidence.

On July 2, 2001, Roger Durocher's lawyer files a motion for judicial review before the Superior Court in order to contest the decision of the Police Ethics Commissioner dismissing his client's complaint. In it, he alleges that the Commissioner erred in his interpretation of the relevant facts.

**QUESTION 1 (5 marks)**

**Assuming that the Police Ethics Commissioner is a court within the meaning of article 846 of the *Code of Civil Procedure*, is there a ground of law that his lawyer could assert in order to obtain the preliminary dismissal of the motion for judicial review? If so, specify which one and explain your answer. If not, explain your answer.**

<b>SUPPLEMENTARY FACTS</b>
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In his motion for judicial review before the Superior Court, Roger Durocher's lawyer also alleges that before rendering his decision dated June 11, 2001, the Police Ethics Commissioner should have held a hearing under section 10 of the *Act respecting administrative justice*.

**QUESTION 2 (5 marks)**

**Is this argument well founded? Explain your answer.**

<b>SUPPLEMENTARY FACTS</b>
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On September 19, 2001, after various steps taken by Roger Durocher's lawyer, police officer Dupiras is cited to appear before the Comité de déontologie policière.

The chairman of the Comité de déontologie policière appoints M<sup>e</sup> Christophe Allaire, a full-time member of the Comité and an advocate admitted to the Bar in 1987, to hear and dispose of the citation relating to police officer Dupiras. M<sup>e</sup> Allaire calls the Police Ethics Commissioner and police officer Dupiras to a hearing scheduled for October 29, 2001.

On November 23, 2001, M<sup>e</sup> Allaire renders his decision and dismisses the complaint on the ground that the Commissioner did not establish beyond a reasonable doubt that police officer Dupiras had committed a transgression. The matter is the subject of many newspaper commentaries and several open-line radio programs. Dissatisfied with the decision of the Comité and believing that the issue is a matter of public interest, the Minister of Public Security asks the Attorney General of Québec to contest the decision.

On December 3, 2001, the Attorney General of Québec appeals the decision of the Comité.

On December 6, 2001, the Police Ethics Commissioner also appeals the decision.

**QUESTION 3 (4 marks)**

**Is there a ground of law that police officer Dupiras' lawyer could invoke to obtain the preliminary dismissal of the appeal of the Attorney General of Québec? If so, specify which one. If not, explain your answer.**

**Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

<b>SUPPLEMENTARY FACTS</b>
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The hearing before the Court of Québec is scheduled on two occasions, but postponed each time. During the second postponement, the judge of the Court of Québec schedules a third hearing date on May 2, 2002 and advises the parties that there will be no more postponements. On the morning of May 2, 2002, police officer Dupiras' lawyer is the victim of a car accident while travelling to the Québec City Courthouse. From the hospital he contacts the stagiaire in his office, Johanne Prieur-Marquis, and asks her to go to court to request a postponement of the hearing. She goes to court and explains to the judge of the Court of Québec that the lawyer in charge of the case has had an accident, that he is hospitalized and that she is not in a position to proceed. The judge refuses the request for a postponement on the ground that the hearing was scheduled definitively and he decides to proceed. Johanne Prieur-Marquis remains in the room, but is unable to participate in the proceedings because she does not know anything about the case.

On December 20, 2002, the Court of Québec renders its decision of which the following are excerpts:

[...]

[36] The Comité de déontologie policière erred by requiring the Commissioner to establish the act reproached against the police officer by proof beyond a reasonable doubt;

[...]

[39] The Court allowed the Commissioner to call a witness who had not testified before the Comité. His testimony convinced the Court of the existence of the facts alleged against police officer Dupiras.

[...]

[46] For these reasons, the Court:

[47] ALLOWS the appeal of the Police Ethics Commissioner;

[48] DECLARES that by communicating information from the Quebec Police Information Centre regarding Mr. Roger Durocher, police officer Émile Dupiras' conduct constituted a transgression as set forth in section 6 of the Code of ethics of Québec police officers;

[49] SENDS the case back to the Comité de déontologie policière so that the parties can make representations on the sanction;

[...]

#### QUESTION 4 (7 marks)

a) State one ground that police officer Dupiras' lawyer could raise in order to contest the legality of the decision rendered by the Court of Québec.

ONLY THE FIRST GROUND WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

b) State the rule of judicial review (norme de contrôle judiciaire) which applies to this ground. Explain your answer.

#### QUESTION 5 (5 marks)

a) State one ground of law that the Police Ethics Commissioner's lawyer could raise in order to contest the legality of the conclusion contained in paragraph 49 of the decision rendered by the Court of Québec.

Justify your answer by referring to one or more specific and relevant provisions of any legislation.

ONLY THE FIRST GROUND WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

b) State the rule of judicial review (norme de contrôle judiciaire) which applies to this ground.

<b>SUPPLEMENTARY FACTS</b>
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On January 15, 2003, police officer Dupiras's lawyer files a motion for judicial review to contest the decision of the Court of Québec dated December 20, 2002.

**QUESTION 6 (4 marks)**

**Can this motion for judicial review be contested by means of a written defence?**

**Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

## EXCERPTS OF THE POLICE ACT

[...]

### **DIVISION II POLICE ETHICS COMMISSIONER**

Functions.

**128.** The Police Ethics Commissioner shall receive and examine any complaint lodged against a police officer by any person pursuant to section 143.

[...]

Appointment.

**129.** The Government shall appoint a Police Ethics Commissioner from among advocates who have been members of the Barreau for not less than 10 years and fix his remuneration, social benefits and other conditions of employment.

[...]

Staff.

**137.** The members of the staff of the Commissioner shall be appointed in accordance with the Public Service Act (chapter F-3.1.1).

[...]

Lodging of complaint.

**143.** Any person may lodge a complaint with the Commissioner or with any police force against a police officer for conduct, in the performance of his duties, constituting a transgression of the Code of ethics. The complaint shall be in writing.

[...]

Decision.

**178.** Upon completion of the investigation, the Commissioner shall examine the investigation report. He may

- (1) dismiss the complaint, if he is of the opinion that it has no foundation in law or is frivolous or vexatious, or that the evidence is insufficient;
- (2) cite the police officer to appear before the Comité de déontologie policière if he is of the opinion that the evidence warrants such action;
- (3) refer the case to the Attorney General.

[...]

Review of decision.

**181.** The complainant may, within 30 days after notification of the decision rendered by the Commissioner pursuant to subparagraph 1 of the first paragraph of section 178, submit the decision to review by the Comité de déontologie policière.

[...]

Power of committee.

**185.** The ethics committee may confirm or quash the decision submitted to it.

Order.

Where the ethics committee quashes a decision, it may order the Commissioner to hold a new investigation, to resume the investigation within the time it indicates or to cite the police officer to appear before it within 15 days of its decision.

[...]

### **DIVISION III COMITÉ DE DÉONTOLOGIE POLICIÈRE**

#### *§ 1. — Establishment, jurisdiction and organization*

Establishment.

**194.** An ethics committee is established under the name of “Comité de déontologie policière”.

Jurisdiction.

The ethics committee has exclusive jurisdiction

- (1) to hear and dispose of any citation in matters of police ethics;
- (2) to review any decision of the Commissioner referred to in section 181.

## Citation.

**195.** A citation is a proceeding subsequent to a complaint concerning the conduct of a police officer, the purpose of which is to decide whether the conduct is a transgression of the Code of ethics which may entail the imposition of a penalty.

[...]

## Composition.

**198.** The ethics committee shall be composed of advocates who have been members of the Barreau for not less than 10 years in the case of full-time members, and for not less than five years in the case of part-time members.

[...]

## Sittings.

**207.** The sittings of the ethics committee are held by one member.

[...]

## Transgression of Code.

**233.** The committee shall decide whether the conduct of the police officer constitutes a transgression of the Code of ethics and, if so, shall impose a penalty.

## Hearing of parties.

Before imposing a penalty, the committee shall allow the parties to be heard in respect of the penalty.

[...]

## Appeal.

**241.** Any person who is a party to proceedings before the ethics committee may bring an appeal from any final decision of the committee before a judge of the Court of Québec.

[...]

## Decision.

**249.** Subject to any new relevant and useful evidence the judge may admit, he shall render his decision on the basis of the record transmitted to the Court, after allowing the parties to be heard.

## Powers of judge.

**250.** The judge has all the necessary powers for the exercise of his jurisdiction. He may, in particular, render any order he deems expedient for the protection of the rights of the parties.

## Provisions applicable.

**251.** Sections 151 and 229, the second paragraph of section 233 and sections 235 and 236, apply, with the necessary modifications, to appeals heard pursuant to this chapter.

## Decision on appeal.

**252.** The judge may confirm the decision submitted to him; conversely, he may quash the decision and render the decision which, in his judgment, should have been rendered in the first instance.

[...]

<b>FILE 2 (50 MARKS)</b>
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<b>Situation 1</b>
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**Situation 1 described in File 2 is an evolving situation: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.**

*Boulangerie Lavigueur inc.* operates a bread-making plant in Sherbrooke. The firm also handles the distribution of its products to its various customers.

The *Syndicat des salariés de Boulangerie Lavigueur inc.* (hereinafter the “*Syndicat*”) has been certified since March 17, 1999 to represent all production and distribution employees, with the exception of the office employees and the foremen, of *Boulangerie Lavigueur inc.* at its Sherbrooke establishment. The production department has 25 employees and the distribution department has 10 employees. After difficult negotiations, a first collective agreement is finally entered into on December 1, 1999, which collective agreement includes the following, among other things:

[...]

Article 3.01            UNION SECURITY

Each week, the employer shall deduct from the salary of the employees included in the bargaining unit the amount of the union dues set by the *Syndicat*. This amount shall be remitted to the secretary-treasurer of the *Syndicat* at the end of each month.

[...]

Article 4.01            REGULAR WORK WEEK

The regular work week shall be 40 hours spread out from Monday to Friday.

[...]

Article 5.01            ANNUAL LEAVE

The reference year shall be comprised of a period of twelve months from July 1<sup>st</sup> to June 30<sup>th</sup> of each year preceding the vacation period.

An employee with less than six years of service at the expiry of the reference year shall be entitled to a continuous annual leave equal to one working day per month of work, without exceeding ten working days. This leave shall be remunerated at a rate of 4% of the gross wages of the employee during the reference year.

An employee with six or more years of service at the expiry of the reference year shall be entitled to a continuous annual leave of fifteen working days. This leave shall be remunerated at a rate of 6% of the gross wages of the employee during the reference year.

As regards the other terms and conditions of the annual leave, the provisions of the *Act respecting labour standards* relating to the annual leave shall apply.

[...]



Article 14.01      GRIEVANCE PROCEDURE AND ARBITRATION

Any disagreement regarding the interpretation or application of this Collective Agreement may be the subject of a grievance and be submitted to an arbitrator in accordance with the provisions of the *Labour Code*.

[...]

Article 21.01      TERM OF THE AGREEMENT

This Collective Agreement shall apply from December 1, 1999 to January 31, 2003.

[...]

On October 15, 2002, *Boulangerie Lavigueur inc.* receives a notice of meeting from the *Syndicat* with respect to the renewal of the collective agreement. The notice sets the meeting for October 30, 2002 at 9:30 a.m. at the office of the *Syndicat*.

On October 30, 2002, the employer does not attend the meeting. The following day, the president of the *Syndicat*, Phil McNeil, contacts Hector Lavigueur, the sole shareholder and director of *Boulangerie Lavigueur inc.*, in order to find out why management did not show up at the negotiation table. Phil McNeil learns that the employer is not ready to negotiate for the time being. No new meeting date is set.

On November 8, 2002, at a union meeting, the employees are informed that the employer refuses to begin negotiations. It is then unanimously resolved to authorize the *Syndicat* to initiate a strike when deemed appropriate.

On December 1, 2002, the *Syndicat* sends management a strike notice for January 15, 2003.

On January 3, 2003, the *Syndicat* receives the following letter from the employer:

[...]

*We are prepared to meet with the union representatives on February 28, 2003 at our offices at 9:00 a.m. in order to negotiate the renewal of the collective agreement for the group of employees in the production department.*

*As regards the group of employees in the distribution department, please be advised that we intend to modify our distribution network soon by thereafter entrusting distribution to independent contractors. The employees in the distribution department will be given an opportunity, in priority to others, to become independent contractors in accordance with the terms and conditions described in the document annexed hereto\*. We will be forced to terminate the employment of employees who refuse our offer.*

*Finally, please note that the strike notice for January 15, 2003 is illegal and consequently any work stoppage will result in the dismissal of those who take part.*

[...]

**\* Not reproduced**

On January 7, 2003, *Boulangerie Lavigneur inc.* implements the modifications to its distribution network by signing contracts, that same day, with five of the ten employees in the distribution department as a result of which they are now independent contractors. The following day, Phil McNeil is informed of the existence of the said contracts as well as the employer's failure to remit the union dues for all of the employees since August 31, 2002.

**QUESTION 7 (4 marks)**

**Was the *Syndicat's* notice of meeting of October 15, 2002 given within the time limit prescribed by the *Labour Code*? Explain your answer.**

**QUESTION 8 (6 marks)**

**Assuming that the *Syndicat's* notice of meeting of October 15, 2002 is valid:**

- a) **State two recourses that the *Syndicat* could exercise as a result of the refusal of *Boulangerie Lavigneur inc.* to attend the meeting on October 30, 2002.**

**Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

**ONLY THE FIRST TWO RECOURSES WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.**

- b) **For each of these recourses, specify the tribunal having jurisdiction to dispose of the matter.**

**QUESTION 9 (6 marks)**

**State two grounds of law that you could raise to contest the validity of article 5.01 of the collective agreement.**

**ONLY THE FIRST TWO GROUNDS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.**

**QUESTION 10 (4 marks)**

**Indicate the recourse that the *Syndicat* may exercise in order to obtain payment of the union dues which have not been paid by the employer.**

**Select the correct answer from among the answers written hereinbelow and write it in the answer booklet.**

- a) **Motion to institute proceedings before an ordinary court of law in order to claim the union dues**
- b) **Application for an interlocutory injunction before an ordinary court of law**
- c) **Criminal complaint**
- d) **Grievance**

**QUESTION 11 (4 marks)**

On January 7, 2003, could *Boulangerie Lavigueur inc.* implement the modification to its distribution network by signing contracts with five of the ten employees in the distribution department so that they would become independent contractors?

Justify your answer by referring to one or more specific and relevant provisions of any legislation.

**QUESTION 12 (4 marks)**

Assuming that the *Syndicat* initiates a legal strike, at the end of the strike will the striking employees be entitled to recover their employment by priority over any other person?

Justify your answer by referring to one or more specific and relevant provisions of any legislation.

<b>SUPPLEMENTARY FACTS</b>
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On January 12, 2003, *Boulangerie Lavigueur inc.* dismisses a foreman it had hired on December 15, 2000. The foreman was dismissed on the ground that a seizure by garnishment of his salary was effected by one of his creditors. The employer did not appreciate the bureaucratic red tape resulting from the seizure.

**QUESTION 13 (4 marks)**

State two legislative provisions from two different statutes prohibiting such conduct on the part of the employer.

**ONLY THE FIRST TWO PROVISIONS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.**

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<b>Situation 2</b>
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**Situation 2 described in File 2 is an evolving situation: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.**

Yannick Desjardins is 18 years old and attends the *Collège du Vieux-Montréal*. To pay for his studies, he works part time at *Cinéma Oscar inc.* He is a ticket clerk.

On September 20, 2002, he refuses to admit Steve McCain, who is 15 years old, and Kevin Jourdain, who is 14 years old, to the showing of the French movie *Presse la gachette (Pull the trigger)*, on the ground that it is a movie classified “16 and over”.

Section 86 of the *Cinema Act* (R.S.Q., c. C-18.1) states:

86. No person may admit to the public exhibition of a film,
- (1) a person under 13 years of age who is not accompanied by a person of full age, if the film is classified “13 and over”;
  - (2) a person under 16 years of age, if the film is classified “16 and over”;
  - (3) a person under 18 years of age, if the film is classified “18 and over”.

**QUESTION 14 (4 marks)**

**Is the refusal to admit Steve McCain and Kevin Jourdain contrary to the *Charter of Human Rights and Freedoms*? Explain your answer.**

**SUPPLEMENTARY FACTS**

The evening of October 11, 2002 is the premiere of the Québec movie *Les girls*. Anémone Côté, who weighs 150 kg due to a hereditary illness, purchases her ticket, but once in the room where the movie will be shown, she cannot sit down because of her weight and the narrowness of the only seat which is still available.

Therefore, she requests a chair so she can sit in the aisle, but the usher refuses for two reasons. First, he is worried that the presence of a heavy-set person in the aisle where the spectators move about will create a safety risk. Secondly, the slope of the aisle does not make it possible to place a chair there for Anémone in a manner that is safe for her.

The usher tells her to go back to the ticket counter to obtain a refund of the cost of her ticket; he adds in a voice loud enough for the other patrons to hear that if she wants to go to the movies, she should just go on a diet. She leaves the theatre after having bluntly expressed her dissatisfaction.

On October 14, 2002, Anémone files a complaint at the office of the *Commission des droits de la personne et des droits de la jeunesse* against *Cinéma Oscar inc.*

**QUESTION 15 (14 marks)**

**a) State two rights contemplated in separate sections of the *Charter of Human Rights and Freedoms* which Anémone Côté can invoke in support of her complaint.**

**Justify your answer by referring to one or more specific and relevant provisions of the *Charter of Human Rights and Freedoms*.**

**ONLY THE FIRST TWO RIGHTS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.**

**b) For each right stated, specify the argument of law that *Cinéma Oscar inc.* could raise as a defence, if any.**

<b>FILE 3 (20 MARKS)</b>
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Jacques Smith is a businessman and municipal councillor in the City of Fleurimont. He consults you regarding various matters of concern to him.

<b>Problem 1</b>
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He informs you that the agenda for the most recent meeting of the municipal council which he attended provided for the adoption of by-law 03-76 amending the city's Zoning by-law 90-02. The purpose of the by-law was to add commercial uses to the residential uses already permitted in zone RC-18 in the zoning plan forming an integral part of the Zoning by-law. Jacques informs you that he voted in favour of adopting the by-law, as did all his colleagues on the council, because of the increased revenues the city would obtain from the substantial increase in the value of the immovables in that zone as a result of the coming into force of the by-law.

Jacques received a phone call from a journalist who asked whether he didn't consider himself to be in a situation of conflict of interest by voting on the by-law, given the interest held by him in the company *Sherfleurie inc.*

Jacques explains to you that *Sherfleurie inc.* owns three vacant parcels of land in zone RC-18 which were evaluated at \$15,000 each. He concedes that the three parcels of land are now worth at least \$110,000 each as a result of the by-law amendment. However, he specifies that he is neither an officer nor director of this company whose affairs he does not handle at all. Nonetheless, he holds 800 of the 10,000 issued common shares of the share capital of the company. Jacques is particularly outraged by the journalist's question given that he clearly mentioned his interest in this company in his most recent declaration of his pecuniary interests.

**QUESTION 16 (5 marks)**

**Did Jacques Smith have the right to vote on the adoption of by-law 03-76?**

**Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

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<b>Problem 2</b>
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Jacques established *Biblos inc.*, a firm specializing in the operation of small convenience stores in institutional settings. *Biblos inc.* leased premises in the Fleurimont CEGEP and set up a convenience store there.

The Fleurimont CEGEP is a new general and vocational college built in the year 2000 thanks to a grant from the Government of Québec in the amount of twelve million dollars. The premises leased by *Biblos inc.* are quite small and have a value of \$25,000.

To his great surprise, Jacques received a bill from the city, in the name of *Biblos inc.*, for property taxes and business taxes for the premises. The college is registered on the property assessment roll, while the leased premises are registered on the roll of rental values. Jacques reminds you that CEGEPs are exempt from the payment of these taxes.

**QUESTION 17 (10 marks)**

**a) Can the premises of *Biblos inc.* be subject to the levying of property taxes?**

**Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

**b) Can the premises of *Biblos inc.* be subject to the levying of the business tax?**

**Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

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**Problem 3**

Under Fleurimont's zoning by-law, the uses permitted in zone Rb-44 are limited to single-family dwellings. In accordance with the municipality's By-law concerning comprehensive development programs, modifications to the uses permitted in zone Rb-44 are subject to the production of a comprehensive development program.

A promoter wishes to develop a multifamily residential sector and build a shopping centre in zone Rb-44. So as to be able to proceed with this project, the promoter submitted a comprehensive development program.

On December 16, 2002, the council submits the draft comprehensive development program to the municipality's advisory planning committee which gives its unqualified approval.

On January 15, 2003, the municipal council adopts a resolution approving the comprehensive development program.

On January 17, 2003, a copy of this resolution is sent to the promoter. On January 20, 2003, the promoter files an application for a permit to carry out the construction of the shopping centre contemplated in the comprehensive development program. The promoter's application complies in every respect with the comprehensive development program approved by resolution of the council and is accompanied by all the required plans and documents as well as the relevant fees.

On January 24, 2003, the building inspector refuses to issue the building permit requested.

**QUESTION 18 (5 marks)**

**Is the inspector's decision to refuse the issuance of the permit well founded? Explain your answer.**

**CORRIGÉ**  
**DROIT PUBLIC ET ADMINISTRATIF - EXAMEN RÉGULIER**  
 30 janvier 2003

**DOSSIER 1 (30 POINTS)**

**QUESTION 1 (5 points)**

En tenant pour acquis que le Commissaire à la déontologie policière est un tribunal au sens de l'article 846 du *Code de procédure civile*, existe-t-il un motif de droit que pourrait faire valoir le procureur de ce dernier pour faire rejeter préliminairement la requête en révision judiciaire? Si oui, précisez lequel et dites pourquoi. Si non, dites pourquoi.

Oui, il n'a pas épuisé ses recours.

OU

1. 5

Oui, car il existe un recours en révision (devant le Comité de déontologie policière, art. 181 *Loi sur la police*).

**QUESTION 2 (5 points)**

Cet argument est-il bien fondé? Dites pourquoi.

Non, (l'article 10 *L.j.a.* est inapplicable) parce que le Commissaire à la déontologie policière n'exerce pas une fonction juridictionnelle.

2. 5

**QUESTION 3 (4 points)**

Existe-t-il un motif de droit que le procureur de l'agent Dupiras pourrait invoquer pour faire rejeter préliminairement l'appel du Procureur général du Québec? Si oui, précisez lequel. Si non, dites pourquoi.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Oui, le Procureur général ne peut interjeter appel parce qu'il n'était pas partie à l'instance devant le comité, art. 241 *Loi sur la police*.

3. 4

**QUESTION 4 (7 points)**

a) Énoncez un motif que le procureur de l'agent Dupiras pourrait invoquer pour contester la légalité de la décision rendue par la Cour du Québec.

SEUL LE PREMIER MOTIF INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

b) Énoncez la norme de contrôle judiciaire qui s'applique à ce motif. Dites pourquoi.

MOTIF	NORME DE CONTRÔLE JUDICIAIRE	POURQUOI
La Cour du Québec a erré en refusant la demande de remise du procureur de l'agent Dupiras (compte tenu des circonstances). 4. <span style="border: 1px solid black; padding: 2px;">5</span>	La norme de l'erreur simple. 5. <span style="border: 1px solid black; padding: 2px;">1</span>	Une erreur sur une question de justice naturelle OU de garantie procédurale OU de manquement au droit d'être entendu ( <i>audi alteram partem</i> ) OU au droit à l'avocat. 6. <span style="border: 1px solid black; padding: 2px;">1</span> OU Excès de compétence.

NOTA :

L'étudiant qui n'a pas le bon motif ne peut obtenir les cases qui correspondent à la norme et au pourquoi.

L'étudiant qui n'a pas la bonne norme de contrôle ne peut obtenir la case qui correspond au pourquoi.

**QUESTION 5 (5 points)**

a) Énoncez un motif de droit que le procureur du Commissaire à la déontologie policière pourrait invoquer pour contester la légalité de la conclusion contenue au paragraphe 49 de la décision rendue par la Cour du Québec.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

SEUL LE PREMIER MOTIF INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

b) Énoncez la norme de contrôle judiciaire qui s'applique à ce motif.

MOTIF	DISPOSITION	NORME DE CONTRÔLE JUDICIAIRE
La Cour du Québec devait imposer elle-même la sanction.  OU  La Cour du Québec ne pouvait pas retourner le dossier devant le Comité de déontologie policière pour détermination de la sanction.	art. 251 (et 233 al. 2) <i>Loi sur la police</i> .  OU  art. 252 <i>Loi sur la police</i> .	La norme de l'erreur simple.
7. <input type="text" value="3"/>	OU	8. <input type="text" value="1"/> 9. <input type="text" value="1"/>

NOTA :

L'étudiant qui n'a pas le bon motif ne peut obtenir les cases qui correspondent à la disposition et à la norme.

**QUESTION 6 (4 points)**

Cette requête en révision judiciaire peut-elle être contestée par une défense écrite?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 175.2 (7) c) *C.p.c.*

OU

Oui, art. 175.3 al. 2 *C.p.c.* OU art. 151.1 al. 3 *C.p.c.*

10.



DOSSIER 2 (50 POINTS)

QUESTION 7 (4 points)

L'avis de rencontre du *Syndicat* en date du 15 octobre 2002 a-t-il été donné dans le délai prévu par le *Code du Travail*? Dites pourquoi.

Oui, puisqu'il a été donné dans les 90 jours qui précèdent la date d'expiration de la convention collective (art. 52 al. 2 *C.t.*)

OU

Oui, parce que la convention collective expire le 30 novembre 2002.

11.

(Il s'agit d'une première convention collective, sa durée ne peut excéder trois ans, art. 65 al. 2 *C.t.* En conséquence, la convention collective expire le 30 novembre 2002.)

QUESTION 8 (6 points)

Dans l'hypothèse où l'avis de rencontre du *Syndicat* en date du 15 octobre 2002 serait valide :

a) Énoncez deux recours qui pourraient être exercés par le *Syndicat* à la suite du refus de *Boulangerie Lavigueur inc.* de se présenter à la rencontre du 30 octobre 2002.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

SEULS LES DEUX PREMIERS RECOURS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

b) Pour chacun de ces recours, précisez le tribunal compétent pour en disposer.

RECOURS ET DISPOSITIONS	TRIBUNAL
1. Demande ou plainte ou recours ou poursuite ou requête, art. 114 al. 2 <i>C.t.</i> 12. <input type="text" value="2"/>	Commission des relations du travail. 13. <input type="text" value="1"/>
2. Plainte ou poursuite ou recours pénal, art. 141 <i>C.t.</i> 14. <input type="text" value="2"/>	Cour du Québec (Chambre pénale). 15. <input type="text" value="1"/>

NOTA :

L'étudiant qui n'a pas les bons recours et dispositions ne peut obtenir la case qui correspond au tribunal.

QUESTION 9 (6 points)

Énoncez deux motifs de droit que vous pourriez invoquer pour contester la validité de l'article 5.01 de la convention collective.

SEULS LES DEUX PREMIERS MOTIFS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

2 / 3  
3 points / bulle

1. Le salarié qui justifie de cinq ans de service a droit à un congé annuel de trois semaines continues. (art. 69 et art. 93 *L.n.t.*) 1.

2. Le salarié qui justifie de cinq ans de service a droit à une indemnité afférente au congé annuel égale à 6 % du salaire brut. (art. 74 al.1 et art. 93 *L.n.t.*) 2.

16.

3. Le salarié qui justifie d'un an de service a droit à un congé supplémentaire sans salaire égal au nombre de jours requis pour porter son congé annuel à trois semaines. (art. 68.1 et art. 93 *L.n.t.*) 3.

**QUESTION 10 (4 points)**

Indiquez le recours que le *Syndicat* peut exercer pour obtenir le paiement des cotisations syndicales qui n'ont pas été versées par l'employeur.

Choisissez la bonne réponse parmi celles inscrites ci-dessous et écrivez-la dans votre cahier de réponses.

- a) Requête introductive d'instance devant le tribunal de droit commun en réclamation des cotisations syndicales
- b) Demande en injonction interlocutoire devant le tribunal de droit commun
- c) Plainte pénale
- d) Grief

Réponse : d) Grief

17.

**QUESTION 11 (4 points)**

Le 7 janvier 2003, *Boulangerie Lavigneur inc.* pouvait-elle mettre en application la modification de son réseau de distribution en signant des contrats avec cinq des dix salariés du service de la distribution pour qu'ils deviennent des entrepreneurs indépendants?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 20.0.1 al. 3 OU 59 al. 2 *C.t.*

18.

**QUESTION 12 (4 points)**

Dans l'hypothèse où le *Syndicat* déclencherait une grève légale, les salariés grévistes ont-ils le droit de recouvrer leur emploi de préférence à toute autre personne à la fin de la grève?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Oui, art. 110.1 al. 1 *C.t.*

19.

**QUESTION 13 (4 points)**

Énoncez deux dispositions législatives tirées de lois distinctes prohibant un tel comportement de la part de l'employeur.

SEULES LES DEUX PREMIÈRES DISPOSITIONS INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

1. art. 122 (3) *L.n.t.*

20.

2. art. 650 *C.p.c.*

21.

**QUESTION 14 (4 points)**

Le refus d'admettre Steve McCain et Kevin Jourdain est-il contraire à la *Charte des droits et libertés de la personne*? Dites pourquoi.

Non, la discrimination fondée sur l'âge est permise dans la mesure prévue par la loi (art. 10 *CDLP* et art. 86 *Loi sur le cinéma*).

22.

**QUESTION 15 (14 points)**

a) Énoncez deux droits visés par des articles différents de la *Charte des droits et libertés de la personne* qu'Anémone Côté peut invoquer au soutien de sa plainte.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Charte des droits et libertés de la personne*.

SEULS LES DEUX PREMIERS DROITS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

b) Pour chaque droit énoncé, précisez l'argument de droit que *Cinéma Oscar inc.* pourrait faire valoir en défense, le cas échéant.

DROIT 23. <span style="border: 1px solid black; padding: 2px;">6</span>	DISPOSITION 24. <span style="border: 1px solid black; padding: 2px;">4</span>	ARGUMENT 25. <span style="border: 1px solid black; padding: 2px;">4</span>
<p>1. Le droit à la non-discrimination fondée sur le handicap dans l'accès à un lieu public (cinéma) pour y obtenir les services qui y sont disponibles. 1. <input type="radio"/></p>	<p>art. 10 ET 15 CDLP. 4. <input type="radio"/></p>	<p><i>Cinéma Oscar inc.</i> pourrait faire valoir qu'il ne pouvait accommoder Anémone Côté sans subir une contrainte excessive.  <b>OU</b>  <i>Cinéma Oscar inc.</i> pourrait faire valoir que le droit d'Anémone Côté ne peut être interprété de façon à supprimer le droit à la sécurité des autres usagers.  <b>OU</b>  <i>Cinéma Oscar inc.</i> n'a pas porté atteinte à la dignité en ne pouvant pas lui offrir un siège adapté à sa condition. 7. <input type="radio"/></p>
<p>2. Le droit à la non-discrimination fondée sur le handicap relativement au refus de conclure un acte juridique ayant pour objet un service ordinairement offert au public. 2. <input type="radio"/></p>	<p>art. 10 ET 12 CDLP. 5. <input type="radio"/></p>	<p><i>Cinéma Oscar inc.</i> pourrait faire valoir qu'il ne pouvait accommoder Anémone Côté sans subir une contrainte excessive.  <b>OU</b>  <i>Cinéma Oscar inc.</i> pourrait faire valoir que le droit d'Anémone Côté ne peut être interprété de façon à supprimer le droit à la sécurité des autres usagers.  <b>OU</b>  <i>Cinéma Oscar inc.</i> n'a pas porté atteinte à la dignité en ne pouvant pas lui offrir un siège adapté à sa condition. 8. <input type="radio"/></p>
<p>3. Le droit à la reconnaissance de sa dignité ou de son honneur sans discrimination fondée sur le handicap. 3. <input type="radio"/></p>	<p>art. 10 ET 4 CDLP. 6. <input type="radio"/></p>	<p>Aucun argument. 9. <input type="radio"/></p>

**NOTA :**

L'étudiant qui n'a pas le bon droit ne peut obtenir les cases qui correspondent à la disposition et à l'argument.

## DOSSIER 3 (20 POINTS)

## QUESTION 16 (5 points)

**Jacques Smith avait-il le droit de voter lors de l'adoption du règlement 03-76?**

**Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.**

Non, art. 361 *Loi sur les élections et les référendums dans les municipalités*.

26.

(Jacques Smith avait un intérêt pécuniaire particulier dans la question de l'adoption du règlement 03-76 en tant qu'actionnaire de *Sherfleurie inc.*, il devait donc s'abstenir de voter.)

## QUESTION 17 (10 points)

**a) Le local de *Biblos inc.* peut-il être assujéti à l'imposition de taxes foncières?**

**Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.**

Non, art. 208 al. 4 *Loi sur la fiscalité municipale*.

27.

(Un immeuble appartenant à un collège d'enseignement général et professionnel est exempt du paiement de toute taxe foncière en vertu de l'art. 204 13° *L.f.m.* Lorsqu'un immeuble visé par l'art. 204 13° *L.f.m.* est occupé par une autre qu'une personne mentionnée à cet article, comme c'est le cas ici, il devient, en principe, imposable et les taxes foncières sont imposées au locataire en vertu de l'art. 208 al. 2 et de l'art. 2 *L.f.m.* Toutefois, compte tenu des valeurs en cause, *Biblos inc.* ne peut être assujéti au paiement des taxes foncières selon l'art. 208 al. 4 *L.f.m.*)

**b) Le local de *Biblos inc.* peut-il être assujéti à l'imposition de la taxe d'affaires?**

**Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.**

Oui, art. 232 al. 1 *Loi sur la fiscalité municipale*.

28.

## QUESTION 18 (5 points)

**La décision de l'inspecteur de refuser la délivrance du permis est-elle bien fondée? Dites pourquoi.**

Oui, parce que la demande de permis n'est pas conforme au règlement de zonage en vigueur (art. 120 al. 1 *L.a.u. a contrario*).

**OU**

Oui, pour que la modification prévue au plan d'aménagement d'ensemble puisse avoir des effets, le règlement de zonage doit être modifié pour y inclure le plan d'aménagement d'ensemble (art. 145.14 *L.a.u.*).

29.