



# FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

## EXAMINATION BOOKLET

### DROIT PUBLIC ET ADMINISTRATIF

January 29, 2004

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- (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 **8** pages.

<b>FILE 1 (20 MARKS)</b>
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<b>Situation 1</b>
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The City of Saint-Omer made a call for tenders in order to award a contract for the performance of work on the water supply system estimated at \$225,000 by its public works manager, Paul Gingras. The municipal council did not choose to use a system of bid weighting and evaluating.

The City received two bids, one from *Première Qualité Construction inc.* and one from *Bons Aqueducs inc.*

The bid from *Première Qualité Construction inc.*, at a price of \$210,000, did not comply with an essential element of the call for tenders.

The municipal council was hesitant to award the contract to *Bons Aqueducs inc.* because the price of \$300,000 contained in the firm's bid was too high in relation to Paul Gingras' estimate.

Paul Gingras informed the municipal council that after having held discussions with the president of *Bons Aqueducs inc.*, the firm was willing to carry out the work for \$225,000 while abiding by the conditions of the call for tenders.

**QUESTION 1 (4 marks)**

**Can the City of Saint-Omer enter into the contract at a price of \$225,000 with *Bons Aqueducs inc.*?**

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

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<b>Situation 2</b>
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The Congregation of the Sisters of Mary owns an immovable located in the City of Saint-Omer, on the shores of Lac d'Argent. Since 1985, it has allowed the Congregation of the Brothers of Saint Joseph to use the immovable at no cost.

The Congregation of the Brothers of Saint Joseph organizes a summer camp at this location where it welcomes underprivileged children free of charge, as required by the founding objects of this religious institution.

While preparing the budget for the year 2004, the new members of the municipal council noted that the City of Saint-Omer had never claimed property taxes with respect to this immovable. They considered this to be unfair towards the taxpayers as a whole, particularly since they noted that the immovable was entered on the property assessment roll. Furthermore, the immovable benefited, at no cost, from all the municipal services, including the sewer and wastewater purification service as well as waste removal and treatment; these two services were very costly for the municipality's other taxpayers.

**QUESTION 2 (4 marks)**

**Was the City of Saint-Omer well founded in not claiming property taxes?**

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

**QUESTION 3 (4 marks)**

**Does the City of Saint-Omer have the power to require compensation from the Congregation of the Brothers of Saint Joseph for the municipal services?**

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

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<b>Situation 3</b>
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**Situation 3 described in File 1 is an evolving situation: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.**

There was major residential growth in the City of Saint-Omer. In order to promote the development of recreational activities, the City amended its by-laws in order to provide for the creation of a special fund which would eventually make it possible to establish parks and playgrounds.

The subdivision by-law provides that the contribution to this fund must be made before the approval of a plan relating to a cadastral operation. The by-law came into force on December 3, 2003.

**QUESTION 4 (4 marks)**

**Should the by-law have been submitted to approval by way of referendum before coming into force?**

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

<b>SUPPLEMENTARY FACTS</b>
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Although the by-law sets forth rules for calculating the amount of the contribution to the special fund, a minimum contribution of \$5,000 is required prior to any application for approval of a plan relating to a cadastral operation.

**QUESTION 5 (4 marks)**

**Was the City of Saint-Omer entitled to provide for the minimum contribution of \$5,000 in its by-law? Explain your answer.**

<b>FILE 2 (22 MARKS)</b>
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Alain Hurtubise and Brittany Griffin are the parents of David, a 5-year-old who attends public school. The family had a difficult time dealing with the beginning of the 2003 school year.

David, who has diabetes, must undergo monitoring of his insulin level several times a day and, when necessary, receive injections. He absolutely requires the assistance of an adult to do so.

At the end of August 2003, when David started school in his neighbourhood, the two teachers assigned to the kindergarten class categorically refused to “play nurse”, alleging that this did not fall within their “task description” under the terms of the collective agreement and that they were not qualified to perform such acts.

The School Board, whose annual budget is \$200 million, had already decided to no longer ensure the periodic presence of nurses in its 72 schools because of budgetary reductions imposed by the government. Therefore, the School Board notified the parents that it did not have the necessary resources to meet the child’s needs.

Given the school’s refusal, Alain and Brittany had no choice but to keep their son at home during the first two weeks of classes.

Thereafter, Alain, a manager in the federal department of *Human Resources Development Canada*, obtained his employer’s permission to leave work twice a day, in the mid-morning and mid-afternoon, in order to go to the school to treat David. The employer reduced Alain’s pay by an amount equal to the duration of his absence.

On November 7, 2003, Alain’s employer informed him that it could no longer agree to let him leave work twice a day to treat his son. According to the employer, the absences, totalling 60 minutes each day, had created an unhealthy feeling of jealousy in the other managers and had led to reduced productivity.

From November 10, 2003 to November 28, 2003, Alain was on an unpaid leave, taking the time to find a solution. During this period, he lost at least \$2,000 of salary.

On November 27, 2003, after having placed an ad in a local newspaper, Alain found a retired nurse who was willing to go to the school each day to treat David, in consideration for a weekly remuneration of \$100. The School Board categorically refused to pay this amount because it considered this responsibility to be solely that of David’s parents.

**QUESTION 6 (4 marks)**

**Can Alain Hurtubise file a complaint against his employer with the *Commission des droits de la personne et des droits de la jeunesse*? If so, indicate the ground of discrimination he could allege in support of his complaint. If not, explain your answer.**

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

<b>SUPPLEMENTARY FACTS</b>
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On December 15, 2003, Alain, acting on behalf of his son David, filed a complaint against the School Board with the *Commission des droits de la personne et des droits de la jeunesse*.

**QUESTION 7 (10 marks)**

**Indicate five rights set out in different sections of the *Charter of Human Rights and Freedoms* which Alain Hurtubise could allege in support of the 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 FIVE RIGHTS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.**

**QUESTION 8 (4 marks)**

**Does the School Board have a ground of defence against Alain Hurtubise's complaint?**

**Select the correct answer from among the answers written hereinbelow and circle the corresponding letter in the answer booklet.**

- (a) Yes, because a distinction, exclusion or preference based on the educational nature of an educational institution is deemed not to be discriminatory.**
- (b) No, because the School Board did not attempt to find a reasonable accommodation.**
- (c) Yes, because the victim cannot invoke a ground of discrimination listed in the *Charter of Human Rights and Freedoms*.**
- (d) Yes, because the School Board cannot compel its teachers to perform medical acts.**

<b>SUPPLEMENTARY FACTS</b>
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On January 5, 2004, Alain, acting on behalf of his son, filed a motion to institute proceedings before the Court of Québec. In the motion, it was alleged that the School Board had interfered with David's fundamental rights. The amounts claimed were \$5,000 for moral damages and \$10,000 as punitive damages.

On January 23, 2004, the *Commission des droits de la personne et des droits de la jeunesse* informed Alain Hurtubise of its decision to cease to act in David's case because a motion to institute proceedings relating to the same facts had been filed with the Court of Québec.

**QUESTION 9 (4 marks)**

**Is the decision of the *Commission des droits de la personne et des droits de la jeunesse* well founded?**

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

<b>FILE 3 (28 MARKS)</b>
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**The situation described in File 3 is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.**

*Équipements Sportex inc.* (hereinafter referred to as “*Sportex*”) is the exclusive supplier of the *Ligue de ringuette du Québec* (hereinafter referred to as the “*Ligue*”). As such, *Sportex* produces all the equipment necessary for the *Ligue*’s players.

The production activities of *Sportex* operate 5 days a week, 52 weeks a year.

*Sportex* has a printing department where all inscriptions requested by the *Ligue* (logos, names of teams and players, etc.) are made. This department has twelve production employees who were hired by *Sportex* between 1995 and 1997. Since then, these twelve employees have worked there without interruption.

On January 6, 2003, a labour relations officer certified the *Association des employés d’Équipements Sportex inc.* (hereinafter referred to as the “*Association*”), notwithstanding the employer’s disagreement as regards a part of the bargaining unit. The labour relations officer considered that the *Association* had a representative character and that it would retain this character regardless of the decision to be rendered by the Commission des relations du travail (hereinafter referred to as the “CRT”) on the description of the bargaining unit.

On March 14, 2003, *Sportex* received a fax from the *Association* inviting it to begin negotiations on March 28, 2003, at 10:00 a.m., at the *Auberge de la Coupe*.

On March 28, 2003, *Sportex* met with the *Association*, but categorically refused to enter into negotiations.

On April 4, 2003, the CRT rendered a decision describing the bargaining unit of the *Association* as being “all production employees, excluding the office employees and foremen employed by *Sportex*”.

On May 15, 2003, the *Association* received a notice of meeting by fax from *Sportex* asking for a meeting in order to begin negotiations on May 28, 2003, at 10:00 a.m., at the *Auberge de la Coupe*.

On August 4, 2003, after a few unsuccessful negotiating sessions, the *Association* initiated a strike without even proceeding with a secret ballot, although the strike was short-lived.

On August 8, 2003, the employees returned to work, encouraged by the *Association* which boasted about progress made the previous day at the negotiating table.

**QUESTION 10 (4 marks)**

**Does the notice of meeting received by *Sportex* on March 14, 2003 comply with the legal requirements?**

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

**QUESTION 11 (4 marks)**

From among the following five statements, which one is true?

Select the correct answer from among the answers written hereinbelow and circle the corresponding letter in the answer booklet.

- (a) The strike is legal because it was initiated within the time period prescribed in the *Labour Code*.
- (b) The strike is illegal because it was not initiated within the time period prescribed in the *Labour Code*.
- (c) The strike is illegal because it was not preceded by a notice sent to the Minister of Labour.
- (d) The strike is illegal because it was not preceded by a request for intervention by a conciliator.
- (e) The strike is illegal because the *Association* did not hold a secret ballot before it was initiated.

<b>SUPPLEMENTARY FACTS</b>
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At the end August 2003, the *Ligue* informed *Sportex* that it would not be renewing its contract for the supply of equipment for the year 2004 unless there was a significant price decrease. Management of *Sportex* decided to close down its printing department and entrust the printing work to a subcontractor.

On September 26, 2003, *Sportex* sent the *Association* and the employees of the printing department a written notice stating that it was ceasing its printing operations and that it was laying off the twelve employees of that department. The decision took effect that same day. *Sportex* paid each of the twelve laid-off employees of the printing department an indemnity equal to four weeks of pay.

On September 29, 2003, *Sportex* continued the downsizing of its operations and laid off Jacques Lebut, the 53-year-old foreman of the printing department. Jacques was not considered to be a member of senior management. At the time of the lay-off, *Sportex* paid to Jacques, in accordance with clause 13 of his contract of employment signed in 1983, an indemnity of four weeks of pay. Clause 13 of the contract of employment reads as follows:

<p>[...]</p> <p>13. <i>The employer may resiliate the employee's contract of employment at any time and for any reason whatsoever, without prior notice, by paying the employee an indemnity equal to four weeks of salary. However, no indemnity shall be paid to the employee if the employee has committed a serious fault.</i></p> <p>[...]</p>
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On October 14, 2003, in order to push the negotiation process forward, the *Association* initiated a 24-hour work stoppage.

**QUESTION 12 (6 marks)**

**Specify two arguments of law that Jacques Lebut could raise to challenge the application of clause 13 of his contract of employment.**

**For each argument, justify your answer by referring to one or more specific and relevant provisions of any legislation.**

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

**QUESTION 13 (4 marks)**

**Does the indemnity paid to each of the twelve laid-off employees of the printing department satisfy the legal requirements?**

**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 November 3, 2003, the twelve laid-off employees of the printing department filed a disagreement relating to the safeguarding of their conditions of employment. They considered their lay-off to be an illegal change of their conditions of employment.

**QUESTION 14 (6 marks)**

**Specify two arguments of law that *Sportex* could assert to obtain the preliminary dismissal of the disagreement filed by the twelve laid-off employees.**

**For each argument, justify your answer by referring to one or more specific and relevant provisions of the *Labour Code*.**

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



<b>SUPPLEMENTARY FACTS</b>
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In December of 2003, given that negotiations between the *Association* and *Sportex* had remained at a standstill and no collective agreement had been entered into, a group of employees who were very dissatisfied with the *Association* established the *Syndicat des travailleurs et travailleuses de Équipements Sportex inc.* (hereinafter referred to as the “*Syndicat*”). The *Syndicat* wishes to file a petition for certification as soon as possible in order to represent all the production employees employed by *Sportex*.

**QUESTION 15 (4 marks)**

**As of what date will the *Syndicat* be able to file a petition for certification in order to represent all the production employees employed by *Sportex*?**

**Select the correct answer from among the answers written hereinbelow and circle the corresponding letter in the answer booklet.**

- (a) At any time.
- (b) On October 6, 2003.
- (c) On January 4, 2004.
- (d) On January 6, 2004.
- (e) On April 4, 2004.

<b>FILE 4 (30 MARKS)</b>
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**The situation described in File 4 is an evolving one : all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.**

**The relevant provisions of the *Consumer Protection Act* (hereinafter referred to as the “*C.P.A.*”) are reproduced hereinbelow on pages 13 and 14.**

On October 25, 2003, the CBC newscast reported that a police investigation had concluded that a group of criminal bikers, *Les Ailes des Anges*, controlled a health spa in Montreal. The health spa was owned by André Ladouceur who had held a permit under the *C.P.A.* since May 15, 2003. He had pleaded guilty to one charge of fraud exceeding \$5,000, an offence punishable only by way of indictment. On June 30, 2003, he had been sentenced to serve 30 days in prison for this offence. There are no other convictions in his judicial record.

André was apparently seen on numerous occasions in the company of members of this group of bikers who regularly patronized his studio. When questioned by reporters, the Minister of Justice stated that he would ask the *Office de la protection du consommateur* (hereinafter referred to as the “*OPC*”) to investigate the health spa.

**QUESTION 16 (5 marks)**

**Does *An Act respecting administrative justice* apply to the *Office de la protection du consommateur*?**

**If so, justify your answer by referring to the specific and relevant provisions of *An Act respecting administrative justice* and the *Consumer Protection Act*. If not, explain your answer.**

<b>SUPPLEMENTARY FACTS</b>
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The president of the *OPC* considered the situation to be urgent and was of the opinion that, as a result, he could suspend André’s permit without giving the prior notice provided for in section 333 of the *C.P.A.*

**QUESTION 17 (5 marks)**

**Was the opinion of the president of the *Office de la protection du consommateur* well founded? Explain your answer.**

<b>SUPPLEMENTARY FACTS</b>
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The president of the *OPC* suspended André Ladouceur's permit for a period of six months. This substantiated decision was founded on paragraphs 328 (b) and 329 (c) of the *C.P.A.*

André immediately contested the decision before the Administrative Tribunal of Québec. The suspension of his permit for a period of six months would inevitably lead to the bankruptcy and closing of his health spa. André presented the Administrative Tribunal of Québec with a motion to suspend the execution of the decision of the *OPC*'s president.

**QUESTION 18 (5 marks)**

**Assuming that André Ladouceur's motion complies with the criteria of colour of right and serious and irreparable harm, what argument could the *Office de la protection du consommateur* assert against the motion to suspend the execution of this decision?**

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

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

<b>SUPPLEMENTARY FACTS</b>
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On January 26, 2004, the Administrative Tribunal of Québec rendered a decision of which certain excerpts are reproduced hereinbelow.

[...]

**ANDRÉ LADOUCEUR,**  
Applicant

v.

**THE PRESIDENT OF THE OFFICE DE LA  
PROTECTION DU CONSOMMATEUR,**  
Respondent

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**DECISION**

[1] Following a decision rendered on December 10, 2003 by the president of the Administrative Tribunal of Québec to increase the number of members who should hear the applicant's recourse, this panel is comprised, in accordance with the law, of M<sup>c</sup> Madeleine Lanctôt, M<sup>c</sup> Roger Bélanger and M<sup>c</sup> Marcel Longpré.

[...]

- [3] The respondent raised two grounds in support of his decision:
- (a) On June 30, 2003 the applicant was found guilty of fraud exceeding \$5,000.
  - (b) Access by the public to an establishment patronized by a group of criminal bikers is not in the public interest. Because of this, the holder of the permit is not ensuring the honest and competent performance of his business activities.
- [...]
- [5] At the beginning of the hearing, the applicant requested that the witnesses summoned by the respondent be excluded. The Tribunal has the power to make such an order and it did so.
- [...]
- [33] The applicant sought to call as a witness Marc Legros, the president of the biker group *Les Ailes des Anges*, in order to establish that the members of this group are not criminals. After having heard the representations of the parties on this subject, the Tribunal decided, on the bench, to refuse to hear this witness because his testimony would manifestly have brought the administration of justice into disrepute.
- [...]
- [72] The Tribunal is of the opinion that the fact that a group of criminal bikers patronizes the health spa does not lead to the conclusion that the permit holder is not ensuring, in the public interest, that his business activities are being performed with honesty and competence.
- [73] The applicant argued that even if the Tribunal were of the opinion that there had been a breach of the law, the penalty imposed by the President was clearly exaggerated.
- [74] On the contrary, the Tribunal considers that the conviction for fraud exceeding \$5,000 justifies a more severe penalty and the Tribunal orders the suspension of the applicant's health spa permit for a period of nine months, in accordance with paragraph 328 (b) of the *Consumer Protection Act*.
- [...]

### QUESTION 19 (15 marks)

**For each of the following paragraphs of the decision rendered by the Administrative Tribunal of Québec, indicate whether or not the Tribunal committed an error or irregularity. If so, state the error or irregularity. If not, explain your answer.**

**For each paragraph, justify your answer by referring to one or more specific and relevant provisions of any legislation.**

- (a) Paragraph 1
- (b) Paragraph 5
- (c) Paragraph 33
- (d) Paragraph 72
- (e) Paragraph 74

## EXCERPTS OF THE CONSUMER PROTECTION ACT

R.S.Q., chapter P-40.1 A

[...]

### TITLE V ADMINISTRATION

#### CHAPTER I OFFICE DE LA PROTECTION DU CONSOMMATEUR

##### DIVISION I ESTABLISHMENT AND ADMINISTRATION OF THE OFFICE

Office established.

**291.** A body is established under the name of “Office de la protection du consommateur”.

[...]

Composition.

**294.** The Office is composed of not more than ten members, including a president and a vice-president, appointed by the Government.

Members.

The members of the Office shall be persons who, by reason of their activities, are likely to contribute in a particular manner to the solution of consumer problems.

[...]

Appointment of personnel.

**299.** The other officers and employees of the Office are appointed in accordance with the Public Service Act ( chapter F-3.1.1).

Powers of president.

The president shall exercise in that regard the powers vested by the said Act in the chief executive officer of an agency.

[...]

#### CHAPTER II PERMITS

Permit holders.

**321.** Subject to the exceptions prescribed by regulation, the following persons must hold a permit:

[...]

(c) every merchant who operates a physical fitness studio;

[...]

Suspension or cancellation of permit.

**328.** The president may suspend or cancel the permit of any holder who, during the term of the permit, has been found guilty of

(a) an offence against any Act or regulation the application of which is under the supervision of the Office,  
or

(b) an indictable offence in connection with the occupation of merchant.

Suspension or cancellation.

**329.** The president may suspend or cancel the permit of any holder who, during the term of his permit

(a) no longer meets the requirements prescribed by this Act or the regulations for the issuance of a permit;

(b) is unable, owing to his financial position, to assume the obligations arising from his business;

(c) is unable to ensure, in the interest of the public, that his business activities will be performed with honesty and competence;

(d) does not comply with an obligation prescribed in sections 260.7 to 260.13.

[...]

Misrepresentation.

**332.** The president may refuse to issue and may suspend or cancel a permit by reason of the fact that an applicant or holder made misrepresentations or distorted an important fact when he applied for a permit.

Notification.

**333.** The president, before refusing to issue a permit to a person or before suspending or cancelling the permit he has issued to him, must notify the person in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow the person at least 10 days to present observations.

Written notice of decision.

**334.** Any decision refusing to issue, suspending or cancelling a permit must give the reason therefor. The president must give written notice of his decision to the person concerned.

Validity of a permit.

**335.** A permit is valid for two years. It is renewed on the conditions prescribed by this act and the regulations.

Validity of a permit.

The president may, however, issue a permit for a shorter period if he deems that the public interest is at stake or for administrative reasons.

[...]

### CHAPTER III

#### PROCEEDING BEFORE THE ADMINISTRATIVE TRIBUNAL OF QUÉBEC

Contestation.

**339.** Every person whose application for a permit has been dismissed by the president or whose permit has been suspended or cancelled by the president and a merchant for whom a provisional administrator has been appointed may contest the decision of the president before the Administrative Tribunal of Québec within 30 days of notification of the decision.

Suspension of execution.

**340.** The Tribunal shall, in exercising its power to suspend the execution of the contested decision, give particular consideration to the interests of consumers.

Assessment.

**341.** When assessing the facts or the law, the Tribunal shall not substitute its assessment of the public interest or of the interest of the public for the assessment made by the president, pursuant to section 325, 329 or 335, before he made his decision.

[...]

**CORRIGÉ**  
**DROIT PUBLIC ET ADMINISTRATIF - EXAMEN RÉGULIER**  
29 janvier 2004

**DOSSIER 1 (20 POINTS)**

**QUESTION 1 (4 points)**

**La Ville de Saint-Omer peut-elle conclure avec *Bons Aqueducs inc.* le contrat à un prix de 225 000 \$?**

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

Oui, art. 573.3.3 *L.c.v.*

1.

**QUESTION 2 (4 points)**

**La Ville de Saint-Omer était-elle bien fondée de ne pas réclamer de taxes foncières ?**

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

Oui, art. 204 12° *L.f.m.*

**OU**

Oui, art. 204.1 al. 1 *L.f.m.*

2.

(Il s'agit d'un immeuble appartenant à une institution religieuse, utilisé gratuitement par une autre institution religieuse, non en vue d'un revenu, mais dans la poursuite immédiate de ses objets constitutifs de nature religieuse ou charitable.)

**QUESTION 3 (4 points)**

**La Ville de Saint-Omer a-t-elle le pouvoir d'imposer à la Congrégation des Frères de Saint-Joseph une compensation pour les services municipaux?**

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

Non, art. 205, al. 3 *L.f.m.*

3.

(La compensation pour services municipaux peut être imposée uniquement au propriétaire des terrains situés sur son territoire et visés à l'art. 204 12° de *L.f.m.*)

**QUESTION 4 (4 points)**

**Ce règlement devait-il être soumis à l'approbation référendaire avant d'entrer en vigueur?**

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

Non, art. 123 al. 3 1° *L.a.u.*

4.

**QUESTION 5 (4 points)**

**La Ville de Saint-Omer pouvait-elle prévoir, dans son règlement, cette contribution minimale de 5 000 \$? Dites pourquoi.**

Non, la Ville ne peut exiger une contribution minimale fixe puisque la contribution doit représenter un pourcentage de la valeur du terrain (art. 117.4 *L.a.u.*).

**OU**

Non, la somme ne peut pas excéder 10 %

**OU**

Non, art. 117.4 *L.a.u.*

5.

**OU**

Non, la municipalité ne peut prévoir une condition que la loi ne prévoit pas

DOSSIER 2 (22 POINTS)

QUESTION 6 (4 points)

Alain Hurtubise peut-il déposer une plainte à la *Commission des droits de la personne et des droits de la jeunesse* contre son employeur? Si oui, indiquez le motif de discrimination qu'il pourrait alléguer au soutien de sa plainte. Si non, dites pourquoi.

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

Non, la *CDPDJ* n'a pas compétence à l'égard des relations employeur-employés dans un ministère fédéral, art. 55 *CDLP*.

6. 4

QUESTION 7 (10 points)

Indiquez cinq droits visés par des articles différents de la *Charte des droits et libertés de la personne* qu'Alain Hurtubise pourrait alléguer au soutien de la 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 CINQ PREMIERS DROITS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

7. 10

5 / 7

DROITS	DISPOSITIONS	2 pts	OU	1 pt
1. Le droit à la non-discrimination fondée sur le handicap (diabète) ou l'âge dans la reconnaissance du droit à la sûreté ou à l'intégrité.	art. 10 et 1 <i>CDLP</i>	1. <input type="radio"/>	OU	1. <input type="radio"/>
2. Le droit à la non-discrimination fondée sur le handicap (diabète) ou l'âge dans la reconnaissance du droit à la dignité.	art. 10 et 4 <i>CDLP</i>	2. <input type="radio"/>	OU	2. <input type="radio"/>
3. Le droit à la non-discrimination fondée sur le handicap (diabète) ou l'âge dans la conclusion d'un acte juridique (ayant pour objet des services ordinairement offerts au public).	art. 10 et 12 <i>CDLP</i>	3. <input type="radio"/>	OU	3. <input type="radio"/>
4. Le droit à la non-discrimination fondée sur le handicap (diabète) ou l'âge dans l'accès à un lieu public (école) (pour y obtenir des services qui y sont disponibles).	art. 10 et 15 <i>CDLP</i>	4. <input type="radio"/>	OU	4. <input type="radio"/>
5. Le droit à la non-discrimination fondée sur le handicap (diabète) ou l'âge dans la reconnaissance du droit à la protection ou à la sécurité de l'enfant.	art. 10 et 39 <i>CDLP</i>	5. <input type="radio"/>	OU	5. <input type="radio"/>
6. Le droit à la non-discrimination fondée sur le handicap (diabète) ou l'âge dans la reconnaissance du droit à l'instruction publique gratuite.	art. 10 et 40 <i>CDLP</i>	6. <input type="radio"/>	OU	6. <input type="radio"/>
7. Le droit à la non-discrimination fondée sur le handicap (diabète) ou l'âge dans la reconnaissance du droit à la protection ou à la sécurité de la personne handicapée.	art. 10 et 48 al. 2 <i>CDLP</i>	7. <input type="radio"/>	OU	7. <input type="radio"/>

(Puisque dans les faits du dossier, Alain Hurtubise dépose une plainte au nom de son fils à la Commission des droits de la personne et des droits de la jeunesse, il est essentiel qu'il s'agisse de discrimination pour que la Commission des droits de la personne et des droits de la jeunesse ait compétence d'enquête. Ainsi, pour chaque droit, une réponse complète doit renvoyer à la fois à l'article 10 de la Charte et à l'autre droit reconnu, de même qu'au motif de discrimination pertinent.)



**QUESTION 8 (4 points)**

**La Commission scolaire dispose-t-elle d'un moyen de défense à l'encontre de la plainte d'Alain Hurtubise?**

**Choisissez la bonne réponse parmi celles inscrites ci-dessous et encerclez la lettre correspondante dans votre cahier de réponses.**

- a) **Oui, parce qu'une distinction, exclusion ou préférence fondée sur le caractère éducatif d'une institution d'enseignement est réputée non discriminatoire.**
- b) **Non, parce que la Commission scolaire n'a pas tenté de trouver un accommodement raisonnable.**
- c) **Oui, parce que la victime ne peut invoquer un motif de discrimination énuméré à la *Charte des droits et libertés de la personne*.**
- d) **Oui, parce que la Commission scolaire ne peut contraindre ses enseignants à prodiguer des actes médicaux.**

**Réponse : b) Non, parce que la Commission scolaire n'a pas tenté de trouver un accommodement raisonnable.**

8.

**QUESTION 9 (4 points)**

**La décision de la *Commission des droits de la personne et des droits de la jeunesse* est-elle bien fondée?**

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

Oui, art. 77 al. 1 2° *CDLP*.

9.

DOSSIER 3 (28 POINTS)

QUESTION 10 (4 points)

L'avis de rencontre reçu par *Sportex* le 14 mars 2003 respecte-t-il les exigences de la loi?

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

Non, art. 28 d.1 *in fine C.t.*

10.

(L'avis de négociation ne peut être donné avant la décision de la CRT sur la description de l'unité de négociation.)

QUESTION 11 (4 points)

Parmi les cinq énoncés suivants, lequel est vrai ?

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

- a) La grève est légale parce qu'elle a été déclenchée dans le délai prévu au *Code du travail*.
- b) La grève est illégale parce qu'elle n'a pas été déclenchée dans le délai prévu au *Code du travail*.
- c) La grève est illégale parce qu'elle n'a pas été précédée de l'expédition d'un avis au ministre du Travail.
- d) La grève est illégale parce qu'elle n'a pas été précédée d'une demande d'intervention d'un conciliateur.
- e) La grève est illégale parce que l'*Association* n'a pas procédé à un scrutin secret avant son déclenchement.

Réponse : b) La grève est illégale parce qu'elle n'a pas été déclenchée dans le délai prévu au *Code du travail*.

11.

QUESTION 12 (6 points)

Précisez deux arguments de droit que Jacques Lebut pourrait soulever pour contester l'applicabilité de la clause 13 de son contrat de travail.

Pour chacun des arguments, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

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

- |   | 2 / 8<br>3 pts / bulle   |
|---|--------------------------|
| 1. Un salarié ne peut renoncer au droit d'obtenir la réparation du préjudice lorsque le délai de congé prévu au contrat de travail est insuffisant, art. 2092 <i>C.c.Q.</i>   | 1. <input type="radio"/> |
| 2. Jacques Lebut a droit à un préavis de 8 semaines, art. 82 <i>L.n.t.</i> (l'art. 82 <i>L.n.t.</i> est d'ordre public et toute disposition du contrat de travail qui y déroge est illégale, art. 93 <i>L.n.t.</i> )    | 2. <input type="radio"/> |
| 3. Jacques Lebut a droit à une indemnité de 8 semaines, art. 83 <i>L.n.t.</i> (l'art. 83 <i>L.n.t.</i> est d'ordre public et toute disposition du contrat de travail qui y déroge est illégale, art. 93 <i>L.n.t.</i> ) | 3. <input type="radio"/> |
| 4. Les dispositions de la <i>L.n.t.</i> (art. 82, 83, 84.0.4 et 84.0.13 <i>L.n.t.</i> ) sont d'ordre public, art. 93 <i>L.n.t.</i>  | 4. <input type="radio"/> |
| 5. Jacques Lebut a droit à un préavis de 8 semaines, parce qu'il s'agit d'un licenciement collectif, art. 84.0.4 <i>L.n.t.</i>  | 5. <input type="radio"/> |
| 6. Jacques Lebut a droit à une indemnité de 8 semaines, parce qu'il s'agit d'un licenciement collectif, art. 84.0.13 <i>L.n.t.</i>  | 6. <input type="radio"/> |
| 7. Jacques Lebut a droit à un délai congé raisonnable, art. 2091 <i>C.c.Q.</i>  | 7. <input type="radio"/> |
| 8. L'employeur ne peut résilier le contrat de Jacques Lebut sans préavis parce qu'il n'a pas de motif sérieux, art. 2094 <i>C.c.Q.</i>  | 8. <input type="radio"/> |

12.

**QUESTION 13 (4 points)**

L'indemnité versée à chacun des douze salariés licenciés du service de gravure respecte-t-elle les exigences de la loi?

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

Non, art. 84.0.13 al. 1 *L.n.t.*

OU

Non, art. 84.0.4 al. 1 *L.n.t.*

13. 4

(Puisqu'il s'agit d'un licenciement collectif et que *Sportex* n'a pas donné d'avis préalable au ministre de l'Emploi et de la Solidarité Sociale, elle était tenue de payer une indemnité de huit semaines. De ce fait, les salariés ont droit à une indemnité additionnelle de quatre semaines de salaire.)

**QUESTION 14 (6 points)**

Précisez deux arguments de droit que *Sportex* pourrait faire valoir pour faire rejeter préliminairement la mécontente déposée par les douze salariés licenciés.

Pour chacun des arguments, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code du travail*.

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

2 / 3  
3 pts / bulle

1. (Les douze salariés n'ont pas l'intérêt requis,) seule l'*Association* peut intenter ce recours, art. 100.10 *C.t.* 1.
2. L'*Association* a déjà exercé son droit de grève, art. 59 al. 1 *C.t.* 2.
3. Un licenciement ne constitue pas une modification aux conditions de travail, art.59 al. 1 *C.t.* 3.

14. 6

**QUESTION 15 (4 points)**

À compter de quelle date le *Syndicat* pourra-t-il déposer une requête en accréditation pour représenter les salariés de production à l'emploi de *Sportex* ?

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

- a) En tout temps.
- b) Le 6 octobre 2003.
- c) Le 4 janvier 2004.
- d) Le 6 janvier 2004.
- e) Le 4 avril 2004.

Réponse : e) Le 4 avril 2004.

15. 4

DOSSIER 4 (30 POINTS)

QUESTION 16 (5 points)

**La Loi sur la justice administrative s'applique-t-elle à l'Office de la protection du consommateur?**

**Si oui, appuyez votre réponse en faisant référence aux dispositions précises et pertinentes de la Loi sur la justice administrative et de la Loi sur la protection du consommateur. Si non, dites pourquoi.**

Oui, art. 3 *L.j.a.* ET art. 294 ET 299 *L.p.c.*

**OU**

Oui, art. 3 *L.j.a.* ET art. 294 *L.p.c.*

**OU**

Oui, art. 3 *L.j.a.* ET art. 299 *L.p.c.*

**OU**

Oui, art. 3 *L.j.a.* ET art. 333 *L.p.c.*

**OU**

Oui, art. 3 *L.j.a.* ET art. 339 *L.p.c.*

16.

QUESTION 17 (5 points)

**L'avis du président de l'Office de la protection du consommateur est-il bien fondé? Dites pourquoi.**

Non, parce que la *Loi sur la protection du consommateur* ne prévoit pas un processus de réexamen ou de révision de la décision du président (donc l'exception prévue à l'art. 5 al. 2 *L.j.a.* ne peut s'appliquer et le préavis doit être donné en vertu de l'art. 5 al. 1 *L.j.a.*).

17.

QUESTION 18 (5 points)

**En tenant pour acquis que la requête d'André Ladouceur respecte les critères d'apparence de droit et de préjudice sérieux et irréparable, quel argument l'Office de la protection du consommateur peut-il faire valoir à l'encontre de la requête en suspension de l'exécution de cette décision?**

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

**SEUL LE PREMIER ARGUMENT INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.**

En disposant de la requête, le Tribunal administratif du Québec doit tenir compte principalement de l'intérêt des consommateurs (dans l'examen du critère du poids des inconvénients), art. 340 *L.p.c.*

18.

**QUESTION 19 (15 points)**

Pour chacun des paragraphes suivants de la décision du Tribunal administratif du Québec, indiquez si le tribunal a commis une erreur. Si oui, énoncez l'erreur ou l'irrégularité. Si non, dites pourquoi.

Pour chacun des paragraphes, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

a) Paragraphe 1	<p>Oui, (même si le président peut augmenter le nombre de personnes qui composent la formation en vertu de l'art. 82(2) <i>L.j.a.</i>), la formation n'est pas conforme à la loi puisqu'il doit y avoir au moins un membre qui n'est pas avocat, art. 37 <i>L.j.a.</i></p> <p><b>OU</b></p> <p>Oui, (même si le président peut augmenter le nombre de personnes qui composent la formation en vertu de l'art. 82(2) <i>L.j.a.</i>), la formation n'est pas conforme à la loi puisqu'il ne peut y avoir 3 avocats, art. 37 <i>L.j.a.</i></p>	19. <input type="text" value="3"/>
b) Paragraphe 5	<p>Non, le tribunal a le pouvoir d'ordonner l'exclusion des témoins, art. 108 OU art. 11 OU art. 74 al. 1 OU art. 74 al. 2 <i>L.j.a.</i></p> <p><b>OU</b></p> <p>Non, le tribunal a le pouvoir d'ordonner l'exclusion des témoins, art. 294 <i>C.p.c.</i> ET 108 <i>L.j.a.</i></p>	20. <input type="text" value="3"/>
c) Paragraphe 33	<p>Oui, le tribunal ne pouvait refuser à une partie de faire entendre un témoin (pour établir une preuve pertinente), art. 132 OU 137 OU 139 (<i>a contrario</i>) OU 10 OU 12 (2) OU 100 <i>L.j.a.</i> OU 23 <i>CDLP</i>.</p>	21. <input type="text" value="3"/>
d) Paragraphe 72	<p>Oui, le Tribunal ne peut substituer son appréciation de l'intérêt public à celle qu'avait fait le président de l'<i>OPC</i>, art. 341 <i>L.p.c.</i></p>	22. <input type="text" value="3"/>
e) Paragraphe 74	<p>Non, le Tribunal peut modifier la décision initiale et rendre la décision qui, à son avis, aurait dû être prise en premier lieu, art. 15 al. 2 <i>L.j.a.</i></p>	23. <input type="text" value="3"/>