



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT PUBLIC ET ADMINISTRATIF

SUPPLEMENTAL EXAMINATION

May 26, 2003

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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 **15** pages (including this page) and that your answer booklet contains **6** pages.

<p>N.B.: For purposes of this examination, you must apply:</p> <ul style="list-style-type: none">• the <i>Code of Civil Procedure</i> as amended by the <i>Act to reform the Code of Civil Procedure</i>, S.Q. 2002, c. 7;• the <i>Labour Code</i> as amended by the <i>Act to amend the Labour Code, to establish the Commission des relations du travail and to amend other legislative provisions</i>, S.Q. 2001, c. 26.

FILE 1 (22 MARKS)

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 May 3, 2003, the newspaper *L'Éclair du Sud inc.*, a regional weekly newspaper, publishes in its classified ads section a pictogram illustrating a red circle with a diagonal line of the same colour through it, behind which is the profile of two men walking hand in hand.

The following excerpts from the books of the Bible are found under the pictogram:

Leviticus

20:13 If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them.

Corinthians

6:9 and 10 [...] Be not deceived: neither fornicators nor idolators, nor adulterers, nor effeminate, nor homosexuals, nor thieves, nor covetous, nor drunkards [...] shall inherit the kingdom of God.

The ad is published two weeks before the first gay pride parade is to be held in Estrie on May 17, 2003.

Gilles Brossard has been teaching mathematics at the *École polyvalente des Cantons* since September of 1992. He is also president of the *Front de défense des gais et lesbiennes de l'Estrie inc.* The members of the *Front de défense des gais et lesbiennes de l'Estrie inc.* are deeply offended by the publication of the ad in *L'Éclair du Sud inc.*

On May 4, 2003, during an interview with Gilles on a local radio station, he does not hesitate to equate the ad to “an incitement to violence against homosexual people”. He adds that the *Front de défense des gais et lesbiennes de l'Estrie inc.* intends to file a complaint, in the name of the victims, with the *Commission des droits de la personne et des droits de la jeunesse*.

QUESTION 1 (4 marks)

What preliminary formality must the *Front de défense des gais et lesbiennes de l'Estrie inc.* fulfill before filing a complaint with the *Commission des droits de la personne et des droits de la jeunesse* against *L'Éclair du Sud inc.*?

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

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

SUPPLEMENTARY FACTS

On May 6, 2003, the lawyer for the *Front de défense des gais et lesbiennes de l'Estrie inc.* formally demands, by letter, that *L'Éclair du Sud inc.* immediately cease publishing the pictogram and the Bible verses.

On May 8, 2003, *L'Éclair du Sud inc.* replies to the demand letter, stating that no one may dictate the contents of the newspaper and that the pictogram and the Bible verses will continue to be published.

On May 9, 2003, the *Front de défense des gais et lesbiennes de l'Estrie inc.*, acting in its capacity as applicant, files a motion for an interlocutory injunction against *L'Éclair du Sud inc.* in order to obtain a prohibition against the future publication of the pictogram and the Bible verses.

QUESTION 2 (4 marks)

Can the *Front de défense des gais et lesbiennes de l'Estrie inc.* invoke the *Canadian Charter of Rights and Freedoms* as the basis for its motion?

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

QUESTION 3 (4 marks)

What argument of law, based upon the *Charter of Human Rights and Freedoms*, can *L'Éclair du Sud inc.* assert as a ground of defence against the motion for an interlocutory injunction?

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

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

SUPPLEMENTARY FACTS

On May 17, 2003, Gilles takes part in the gay pride parade through the city's streets.

On May 20, 2003, Solange Miller, the principal of the *École polyvalente des Cantons*, calls Gilles to her office in the presence of Luc Lavallée, the steward of the *Syndicat des professeurs de l'Estrie*. She gives Gilles a letter of which the following are excerpts:

[...]

On May 17, 2003, during a public parade through the streets of the city, you were seen drunk and bare-chested, on a float, wearing only underwear.

You will understand that this type of behaviour is unacceptable for a teacher. While you should serve as a role model for the 12 to 14 year-old youngsters whom you teach, you behaved in a manner likely to undermine their trust and the authority which you should exercise over them.

Consequently, in accordance with Article 13.08 of the collective agreement, you are immediately suspended without pay from your duties until the council of commissioners of the *Commission scolaire des Cantons de l'Est* rules on your case at its meeting on May 22, 2003.

[...]

On May 22, 2003, by a resolution adopted by a majority of only one vote, the council of commissioners dismisses Gilles.

QUESTION 4 (6 marks)

Except for the right not to be discriminated against as set forth in section 10 of the *Charter of Human Rights and Freedoms*, indicate three rights or freedoms set out in different sections of the said Charter which Gilles Brossard could invoke to challenge his dismissal.

For each right or freedom indicated, justify your answer by referring to one or more specific and relevant provisions of the *Charter of Human Rights and Freedoms*.

ONLY THE FIRST THREE RIGHTS OR FREEDOMS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

QUESTION 5 (4 marks)

Assuming that Gilles Brossard were to institute proceedings before the Superior Court for damages for wrongful dismissal against the *Commission scolaire des Cantons de l'Est*, what argument of law could the defendant assert to obtain the preliminary dismissal of the recourse?

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

FILE 2 (32 MARKS)

The insurance company *Excel inc.* (hereinafter referred to as “*Excel*”) operates throughout Canada in the field of insurance of persons. *Excel*'s operations are split between two divisions: individual insurance, representing 60% of the firm's activities, and group insurance, representing the balance. The firm's head office is located in Montreal.

The *Syndicat du personnel de bureau d'Excel* (hereinafter referred to as “*SPBE*”) has been certified since February 11, 2000 to represent all the office employees, excluding the representatives and executive secretaries of *Excel* at its Montreal head office. The certification covers 80 employees in the individual insurance division and 40 employees in the group insurance division. The collective agreement which was duly filed in accordance with the *Labour Code* provides as follows, among other things:

[...]

Article 4.01 REGULAR WORK WEEK

The regular work week shall be forty (40) hours from Monday to Friday of each week.

The employer may stagger the working hours over a period of four (4) consecutive weeks, provided the average of the hours worked during this period is not greater than forty (40) hours per week.

[...]

Article 8.01 GRIEVANCE PROCEDURE

Any disagreement regarding the interpretation or application of this collective agreement may be the subject of a grievance, which grievance shall be filed within ten (10) working days following knowledge of the facts. Failure to abide by this deadline shall result in the inadmissibility of the grievance.

[...]

Article 24.01 TERM OF THE AGREEMENT

This collective agreement shall come into effect on June 1, 2000 and shall remain in effect until May 31, 2003.

[...]

On February 3, 2003, the *SPBE* receives a letter of which the following is an excerpt:

Montreal, January 31, 2003

[...]

Take notice that the insurance company *Excel inc.* intends to transfer its group insurance division to *Assurances Plus ltée* as of May 1, 2003. In order to allow for a transition period, the employees affected by this transfer will remain temporarily in Montreal and will actually be transferred on September 1, 2003 to the head office of *Assurances Plus ltée* in Laval.

[...]

The employees in the group insurance division are concerned because *Assurances Plus ltée* (hereinafter referred to as “*Plus*”) is a non-unionized firm with working conditions that are inferior to those existing at *Excel*.

The *SPBE* enters into negotiations with *Excel* in order to convince the employer to cancel its decision to transfer the group insurance division to *Plus*.

On April 22, 2003, due to the failure of these negotiations, the *SPBE* orders a work stoppage which is largely respected by the employees of *Excel*. That same day, the employer applies to the Commission des relations du travail (hereinafter referred to as “C.R.T.”) to obtain a return to work order against the employees.

On April 23, 2003, in accordance with the C.R.T. order issued on April 22, 2003, all the employees return to work.

On April 25, 2003, the employer gives a disciplinary notice to each employee having participated in the work stoppage.

On April 30, 2003, without the knowledge of the employees, the *SPBE* files a group complaint with the C.R.T. in accordance with section 16 of the *Labour Code* in order to contest the disciplinary notices.

On May 5, 2003, the *SPBE* files a request with the C.R.T. to obtain a declaration regarding the application of section 45 of the *Labour Code*.

On May 7, 2003, *Plus* replies by informing the C.R.T. that the *SPBE*’s request is inadmissible because it was filed after the time limit prescribed in the *Labour Code*.

That same day, *Excel* files a grievance in which it claims from the *SPBE* the losses incurred as a result of the work stoppage on April 22, 2003.

On May 9, 2003, *Excel* sends the *SPBE* its offers, which it states as being final, with a view to renewing the collective agreement. The employer requires an answer from the *SPBE* no later than May 16, 2003.

On May 16, 2003, without the employees having been consulted, the *SPBE* notifies *Excel* in writing that management’s offers are rejected and that the grievance dated May 7, 2003 is prescribed.

On May 23, 2003, *Excel* asks the C.R.T. to order that a vote by secret ballot be held on its most recent offers to the *SPBE* with respect to the renewal of the collective agreement. The C.R.T. schedules the hearing for this application on May 27, 2003.

On May 26, 2003, the president of the *SPBE* consults you.

FEBRUARY 2003

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

MARCH 2003

S	M	T	W	T	F	S
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
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30	31					

APRIL 2003

S	M	T	W	T	F	S
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6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

MAY 2003

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

QUESTION 6 (4 marks)

Is *Assurances Plus ltée's* claim that the *SPBE's* request to obtain a declaration regarding the application of section 45 of the *Labour Code* was presented after the prescribed time limit well founded?

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

QUESTION 7 (4 marks)

Within what time limit must the C.R.T. render a decision on the request presented by the *SPBE* regarding the application of section 45 of the *Labour Code*?

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

QUESTION 8 (4 marks)

State the recourse that the *SPBE* could exercise in order to prevent the renewal of the collective agreement until the decision of the C.R.T. has been rendered with respect to the request regarding the application of section 45 of the *Labour Code*.

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

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

QUESTION 9 (4 marks)

State one ground of law that *Excel inc.* could raise in order to obtain the preliminary dismissal of the complaint filed by the *SPBE* under section 16 of the *Labour Code*.

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

QUESTION 10 (4 marks)

Is the *SPBE*'s claim that *Excel inc.*'s grievance dated May 7, 2003 is prescribed well founded?

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

QUESTION 11 (4 marks)

Other than the return to work order issued by the C.R.T. on April 22, 2003 or a procedure for redress ("procédure de réparation"), state a recourse which *Excel inc.* could exercise as a result of the work stoppage on April 22, 2003.

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

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

QUESTION 12 (4 marks)

State one ground of law that the *SPBE* could raise in order to obtain the preliminary dismissal of *Excel inc.*'s application for a vote by secret ballot on its most recent offers for the renewal of the collective agreement. Explain your answer.

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

QUESTION 13 (4 marks)

Does the procedure for staggering working hours provided for in Article 4.01 of the collective agreement require the prior approval of the Commission des normes du travail?

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

FILE 3 (26 MARKS)

Situation 1

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

Simone Ferreira uses a taxi permit in Baie Saint-Paul.

Yesterday, namely May 25, 2003, the Commission des transports du Québec revoked her taxi permit in virtue of section 18 of the *Act respecting transportation services by taxi* (**not reproduced**). Simone wishes to contest this decision rapidly because this is her only means of earning a living. Simone's lawyer contests the decision of the Commission before the Administrative Tribunal of Québec in accordance with section 85 of the *Act respecting transportation services by taxi*.

QUESTION 14 (4 marks)

Can Simone Ferreira continue to use her taxi permit while the proceedings before the Administrative Tribunal of Québec are ongoing?

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

QUESTION 15 (4 marks)

What will be the composition of the Administrative Tribunal of Québec panel which will hear Simone Ferreira's recourse?

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

SUPPLEMENTARY FACTS

On the morning of the hearing, Simone notices that Michèle Prud'homme, a member of the Administrative Tribunal of Québec, is sitting on her case. Michèle happens to be the co-owner, with her husband, of a competing taxi company in Baie Saint-Paul. At the outset, Michèle declares that she intends to hear this case.

QUESTION 16 (6 marks)

- (a) Other than an application for an adjournment, what application can Simone Ferreira make in order not to be heard by Michèle Prud'homme?**

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

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

- (b) What means can Simone Ferreira use so that Michèle Prud'homme will be sanctioned for having placed herself in a situation of conflict of interests?**

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

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

Situation 2

On January 24, 2003, *Laboratoires Virulex ltée* files an application for a patent under the *Patent Act*, R.S.C. 1985, c. P-4, for a new drug to treat certain types of lung infections.

On April 29, 2003, the company receives, by registered mail, a decision with reasons from the Commissioner of Patents refusing the application.

On May 15, 2003, the lawyer for *Laboratoires Virulex ltée* files an application for judicial review.

The following are excerpts from the *Patent Act*:

[...]
Commissioner of Patents

- 4.** (1) The Governor in Council may appoint a Commissioner of Patents who shall, under the direction of the Minister, exercise the powers and perform the duties conferred and imposed on that officer by or pursuant to this Act.

Duties of Commissioner

- (2) The Commissioner shall receive all applications, fees, papers, documents and models for patents, shall perform and do all acts and things requisite for the granting and issuing of patents of invention, shall have the charge and custody of the books, records, papers, models, machines and other things belonging to the Patent Office and shall have, for the purposes of this Act, all the powers that are or may be given by the *Inquiries Act* to a commissioner appointed under Part II of that Act.

[...]

APPLICATION FOR PATENTS

Commissioner may grant patents

27. (1) The Commissioner shall grant a patent for an invention to the inventor or the inventor's legal representative if an application for the patent in Canada is filed in accordance with this Act and all other requirements for the issuance of a patent under this Act are met.

Application requirements

(2) The prescribed application fee must be paid and the application must be filed in accordance with the regulations by the inventor or the inventor's legal representative and the application must contain a petition and a specification of the invention.

[...]

REFUSAL OF PATENTS

Refusal by Commissioner

40. Whenever the Commissioner is satisfied that an applicant is not by law entitled to be granted a patent, he shall refuse the application and, by registered letter addressed to the applicant or his registered agent, notify the applicant of the refusal and of the ground or reason therefor.

Appeal to Federal Court

41. Every person who has failed to obtain a patent by reason of a refusal of the Commissioner to grant it may, at any time within six months after notice as provided for in section 40 has been mailed, appeal from the decision of the Commissioner to the Federal Court and that Court has exclusive jurisdiction to hear and determine the appeal.

[...]

QUESTION 17 (4 marks)

What argument of law will the lawyer for the Commissioner of Patents assert in order to obtain the preliminary dismissal of the application for judicial review?

Justify your answer by referring to TWO (2) specific and relevant provisions of different statutes.

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

Situation 3

The *Syndicat des employés de transport* files an application for certification with the Canada Industrial Relations Board to represent the employees working for *Wiseman & Klein Transport ltée*.

On February 27, 2003, at the beginning of the hearing before the Canada Industrial Relations Board, the lawyer for *Wiseman & Klein Transport ltée* submits that the Board does not have jurisdiction over this matter on the ground that the employer is an intra-provincial transportation firm.

After having heard the parties and the evidence on this issue, the matter is taken under advisement.

On March 3, 2003, the Board renders a written decision with reasons in which it accepts the ground raised by the employer and concludes that it does not have jurisdiction over the union's application because the *Canada Labour Code* does not apply to the firm.

QUESTION 18 (4 marks)

To which tribunal must the union address itself in order to have the decision rendered by the Canada Industrial Relations Board quashed?

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

- (a) The Federal Court, Trial division, only
- (b) The Federal Court of Appeal only
- (c) The Superior Court or the Federal Court, Trial division
- (d) The Superior Court or the Federal Court of Appeal

QUESTION 19 (4 marks)

What standard of review (“norme de contrôle”) must the tribunal of competent jurisdiction apply to the decision rendered by the Canada Industrial Relations Board?

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

- (a) Patently unreasonable error, because the Canada Industrial Relations Board had jurisdiction to rule on the employer's allegation.
- (b) Patently unreasonable error, because the Canada Industrial Relations Board had jurisdiction to dispose of the application for certification.
- (c) Simple error, because this is a matter of interpreting and applying a legislative text of general application.
- (d) Unreasonable error “*simpliciter*” because the Canada Industrial Relations Board had jurisdiction to rule on the employer's allegation, but was not entitled to commit an error of law.

FILE 4 (20 MARKS)

Problem 1

The municipal council of the city of Sherfleurie wishes to revise the planning program and completely replace the municipality's zoning and subdivision by-laws which it believes have become obsolete. Indeed, the by-laws came into force in 1993 and the municipality has developed very rapidly since then.

Certain members of the municipal council want all qualified voters in the municipality to be able to participate in the procedure to approve the new zoning and subdivision by-laws.

The mayor questions the merits of such a scenario given that certain provisions of the draft by-laws under review amend the uses permitted in certain zones and the standards regarding the size of lots which are applicable in the various parts of the municipality's territory.

QUESTION 20 (4 marks)

Must the draft by-laws replacing the zoning and subdivision by-laws be approved by all qualified voters in the municipality?

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

Problem 2

At a regularly constituted meeting of the municipal council of the city of Sherfleurie, councillor Yvon Bernier has an item entitled *Mandate legal advisor - Canadian Enterprise file* added to the agenda. No one was informed that this matter would be discussed. Three of the seven members of the council are absent from the meeting. The following resolution is adopted on a divided vote, three members of the council voting in favour of the resolution and councillor Jacques Latreille voting against it:

<p><i>Upon a duly seconded motion made by Yvon Bernier, be it resolved to mandate M^e Ginette Cohen in connection with the proceedings instituted by the company Canadian Enterprise before the Administrative Tribunal of Québec with respect to the contestation of the valuation of its industrial facilities, with the fees of M^e Cohen not to exceed the estimate annexed to the resolution.</i></p>
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The estimate of the fees prepared by M^e Cohen sets out a minimum of \$125,000 and a maximum of \$175,000.

Jacques considers M^e Cohen's fees to be prohibitive and does not understand why the council did not request tenders.

QUESTION 21 (4 marks)

Was the resolution of the municipal council validly adopted given that only three of the members of the council voted in favour thereof?

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

QUESTION 22 (4 marks)

Could the municipal council legally give the mandate to M^e Ginette Cohen without requiring tenders?

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

Problem 3

Myriam Mathieu is about to purchase an immovable in the city of Lac-aux-Roches. Her notary consults the city's registers and informs her that the municipal taxes for the immovable for the years 2001 and 2002 have not yet been paid. The tax accounts were sent on January 3rd of each year. Furthermore, the tax account for the year 2003, which was sent on January 6, 2003, has not yet been paid.

Myriam is willing to pay the entire tax account for 2003 because she will be the owner of the immovable during that year, but she sees no reason she should pay the municipal taxes for the previous two years.

QUESTION 23 (4 marks)

Once Myriam Mathieu has become the owner of the immovable, will the City of Lac-aux-Roches be able to claim from her the payment of the municipal taxes owing for the years 2001 and 2002?

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

Problem 4

A few months after having acquired the immovable and having moved into it with her family, Myriam Mathieu registers her two children in the hockey program offered by the recreational department of the neighbouring municipality, namely the city of Boisjoli, given that the city of Lac-aux-Roches does not have an arena.

In accordance with by-law number 20-05 of the city of Boisjoli, non-residents must pay \$100 more annually than residents in order to register their children in the minor hockey activities. Myriam is outraged by such discrimination.

The municipal council justifies its policy on the basis of its desire to limit the number of registrations for minor hockey activities coming from neighbouring municipalities, given the high demand for this service by the citizens of Boisjoli.

QUESTION 24 (4 marks)

Can the City of Boisjoli require an additional \$100 from non-residents of the City for registration in the minor hockey activities?

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

CORRIGÉ

DROIT PUBLIC ET ADMINISTRATIF - EXAMEN DE REPRISE

26 mai 2003

DOSSIER 1 (22 POINTS)

QUESTION 1 (4 points)

Quelle formalité préalable le *Front de défense des gais et lesbiennes de l'Estrie inc.* doit-il respecter avant de porter plainte à la *Commission des droits de la personne et des droits de la jeunesse* contre *L'Éclair du Sud inc.*?

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

SEULE LA PREMIÈRE FORMALITÉ INSCRITE AU CAHIER DE RÉPONSES SERA CORRIGÉE.

Obtenir un consentement écrit de chaque victime, art. 74 al. 3 *CDLP*.

1. 4

QUESTION 2 (4 points)

Le *Front de défense des gais et lesbiennes de l'Estrie inc.* peut-il invoquer la *Charte canadienne des droits et libertés* comme fondement de sa requête?

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

Non, art. 32 *CCDL*.

(La *Charte canadienne des droits et libertés* ne s'applique pas aux litiges privés.)

2. 4

QUESTION 3 (4 points)

Quel argument de droit, fondé sur la *Charte des droits et libertés de la personne*, *L'Éclair du Sud inc.* peut-elle faire valoir comme moyen de défense à la requête en injonction interlocutoire?

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

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

La liberté d'expression OU d'opinion OU de religion, art. 3 *CDLP*.

OU

Le *Front de défense des gais et lesbiennes de l'Estrie inc.* n'est pas une « victime » au sens de l'article 49 *CDLP*.

OU

La liberté d'information, art. 44 *CDLP*

3. 4

QUESTION 4 (6 points)

À l'exception du droit à la non-discrimination tel que défini par l'article 10 de la *Charte des droits et libertés de la personne*, indiquez trois droits ou libertés visés par des articles différents de cette charte qui pourraient être invoqués par Gilles Brossard pour contester son congédiement.

Pour chacun des droits ou libertés énoncés, 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 TROIS PREMIERS DROITS OU LIBERTÉS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

3 / 5

2 pts / bulle

1. Droit à la liberté d'expression OU d'opinion OU d'association OU de réunion pacifique, art. 3 *CDLP*

1.

2. Droit au respect de sa dignité OU de son honneur OU de sa réputation, art. 4 *CDLP*

2.

3. Droit à la sauvegarde de sa vie privée, art. 5 *CDLP*

3.

4. 6

4. Droit à la liberté, art. 1 *CDLP*

4.

5. Droit à des conditions de travail justes et raisonnables, art. 46 *CDLP*

5.

QUESTION 5 (4 points)

Dans l'hypothèse où Gilles Brossard tenterait, devant la Cour supérieure, un recours en dommages et intérêts pour congédiement injustifié contre la *Commission scolaire des Cantons de l'Est*, quel argument de droit la défenderesse pourrait-elle faire valoir pour faire rejeter préliminairement le recours?

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

1. L'arbitre de grief a compétence (exclusive) pour statuer sur le congédiement.

1. 4 pts

5. 4

OU

2. Absence de compétence de la Cour supérieure

2. 2 pts

DOSSIER 2 (32 POINTS)

QUESTION 6 (4 points)

La prétention d'Assurances Plus ltée, selon laquelle la demande du SPBE qui vise à obtenir une déclaration d'application de l'article 45 du Code du travail a été présentée hors délai, est-elle bien fondée?

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

Non, art. 45.1 C.t. (151.1, 151. 2 et 151.3 C.t.)

(La demande du SPBE a été présentée dans les 90 jours de la date de la réception de l'avis. Le délai qui expire le dimanche 4 mai 2003 est prolongé au jour juridique suivant, soit le 5 mai 2003)

6.

QUESTION 7 (4 points)

Dans quel délai la C.R.T doit-elle rendre une décision sur la demande d'application de l'article 45 du Code du travail présentée par le SPBE?

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

90 jours de la date du dépôt de la demande, art. 133 al. 2 C.t.

7.

QUESTION 8 (4 points)

Énoncez le recours que pourrait présenter le SPBE pour empêcher le renouvellement de la convention collective jusqu'à ce que la décision de la C.R.T. soit rendue relativement à la demande d'application de l'article 45 du Code du travail.

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

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

1. Une requête en suspension des négociations, art. 42 C.t.

OU

2. Un requête en vertu de l'art. 118 al. 3 C.t.

1. 4 pts

OU

2. 2 pts

8.

QUESTION 9 (4 points)

Énoncez un motif de droit qu'Excel inc. pourrait soulever pour faire rejeter préliminairement la plainte déposée par le SPBE en vertu de l'article 16 du Code du travail.

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

La plainte doit provenir des salariés personnellement.

OU

Pour déposer une telle plainte, le syndicat doit avoir reçu un mandat personnel de chaque salarié.

9.

(Nightingale Saro inc. c. Paquet [1985] T.T. 252)

QUESTION 10 (4 points)

La prétention du *SPBE*, selon laquelle le grief d'*Excel inc.* daté du 7 mai 2003 est prescrit, est-elle bien fondée?

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

Non, art. 100.0.1 *C.t.*

(Le grief a été déposé dans le délai de 15 jours de la date où la cause d'action a pris naissance.)

10.

QUESTION 11 (4 points)

Outre l'ordonnance de retour au travail rendue le 22 avril 2003 par la C.R.T. ou une procédure de réparation, énoncez un recours qui pourrait être exercé par *Excel inc.* à la suite de l'arrêt de travail du 22 avril 2003.

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

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

Une plainte pénale, art. 142 *C.t.*

11.

QUESTION 12 (4 points)

Énoncez un motif de droit que le *SPBE* pourrait soulever pour faire rejeter préliminairement la demande d'*Excel inc.* qui vise à obtenir la tenue d'un scrutin secret sur ses dernières offres en vue du renouvellement de la convention collective. Dites pourquoi.

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

La demande est prématurée parce que la phase de négociation n'a pas encore débuté. (art. 52.2 et 53 *C.t.*)

12.

QUESTION 13 (4 points)

La procédure d'étalement des heures de travail prévue à l'article 4.01 de la convention collective requiert-elle l'approbation préalable de la Commission des normes du travail?

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

Non, art. 53 al. 2 *L.n.t.*

13.

DOSSIER 3 (26 POINTS)

QUESTION 14 (4 points)

Simone Ferreira peut-elle continuer à exploiter son permis de taxi pendant l'instance devant le Tribunal administratif du Québec?

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

Non, art. 107 *L.j.a.*

OU

Oui, si le TAQ l'autorise, art. 107 *L.j.a.*

OU

Oui, si la loi le permet, art. 107 *L.j.a.*

14.

QUESTION 15 (4 points)

De qui sera composée la formation du Tribunal administratif du Québec qui entendra le recours de Simone Ferreira?

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

Deux membres dont un seul est avocat ou notaire, art. 37 *L.j.a.*

15.

QUESTION 16 (6 points)

a) Outre une demande de remise, quelle demande Simone Ferreira peut-elle formuler pour ne pas être entendue par Michèle Prud'homme?

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

SEUL LA PREMIÈRE DEMANDE INSCRITE AU CAHIER DE RÉPONSES SERA CORRIGÉE.

Une demande de récusation, art. 144 *L.j.a.*

16.

b) Quel moyen Simone Ferreira peut-elle utiliser pour que Michèle Prud'homme soit sanctionnée pour s'être placée en situation de conflit d'intérêts?

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

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

Une plainte au Conseil de la justice administrative, art. 182 *L.j.a.*

17.

QUESTION 17 (4 points)

Quel argument de droit fera valoir le procureur du commissaire aux brevets pour faire rejeter préliminairement la demande de contrôle judiciaire?

Appuyez votre réponse en faisant référence à DEUX (2) dispositions précises et pertinentes de textes de loi distincts.

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

Il n'y a pas de demande de contrôle judiciaire, en raison de la possibilité d'un d'appel à la Cour fédérale

18.

art. 41 *Loi sur les brevets*

19.

art. 18.5 *Loi sur la Cour fédérale*

20.

QUESTION 18 (4 points)

À quel tribunal le syndicat doit-il s'adresser pour faire annuler la décision rendue par le Conseil canadien des relations industrielles?

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

- a) La Cour fédérale, Section de première instance, seulement
- b) La Cour d'appel fédérale seulement
- c) La Cour supérieure ou la Cour fédérale, Section de première instance
- d) La Cour supérieure ou la Cour d'appel fédérale

Réponse : d) La Cour supérieure ou la Cour d'appel fédérale

21.

4

QUESTION 19 (4 points)

Quelle norme de contrôle doit appliquer le tribunal compétent à l'égard de la décision rendue par le Conseil canadien des relations industrielles?

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

- a) Erreur manifestement déraisonnable, parce que le Conseil canadien des relations industrielles avait compétence pour se prononcer sur la prétention de l'employeur.
- b) Erreur manifestement déraisonnable, parce que le Conseil canadien des relations industrielles avait compétence pour disposer de la demande d'accréditation.
- c) Erreur simple parce qu'il s'agit de l'interprétation et de l'application d'un texte de loi à portée générale.
- d) Erreur déraisonnable « *simpliciter* » parce que le Conseil canadien des relations industrielles avait compétence pour se prononcer sur la prétention de l'employeur, mais ne pouvait commettre d'erreur de droit.

Réponse : c) Erreur simple parce qu'il s'agit de l'interprétation et de l'application d'un texte de loi à portée générale.

22.

4

DOSSIER 4 (20 POINTS)

QUESTION 20 (4 points)

Les projets de règlements remplaçant les règlements de zonage et de lotissement doivent-ils être approuvés par toutes les personnes habiles à voter de la municipalité?

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

Oui, art. 136.0.1 *L.a.u.*

23.

QUESTION 21 (4 points)

La résolution du conseil municipal a-t-elle validement été adoptée compte tenu du fait que seulement trois des membres du conseil ont voté en faveur?

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

Oui, art. 329 *L.c.v.*

24.

QUESTION 22 (4 points)

Le conseil municipal pouvait-il légalement accorder le mandat à M^e Ginette Cohen sans requérir de soumissions?

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

Oui, art. 573.3.0.2 *L.c.v.* **OU** art. 573 par. 1 4^o *L.c.v.*

25.

QUESTION 23 (4 points)

La ville de Lac-aux-Roches pourra-t-elle réclamer de Myriam Mathieu le paiement des taxes municipales dues pour les années 2001 et 2002, une fois qu'elle sera propriétaire de l'immeuble?

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

Oui, art. 498 al. 1 *L.c.v.*

OU

Oui, art. 2654.1 *C.c.Q.*

26.

(Les taxes municipales imposées sur un immeuble peuvent être réclamées de tout acquéreur subséquent.)

QUESTION 24 (4 points)

La ville de Boisjoli peut-elle exiger des non-résidents de la ville un montant supplémentaire de 100 \$ pour l'inscription aux activités du hockey mineur?

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

Oui, art. 244.4 *L.f.m.* **OU** art. 244.1 ET 244.5 *L.f.m.* **OU** art. 244.5 *L.f.m.*

27.