



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

PREUVE ET PROCÉDURE SUPPLEMENTAL

May 15, 2000

- 1) The supplemental examination in the PREUVE ET PROCÉDURE section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled «Préambule Preuve et Procédure».
- 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 sections:
 - Preuve et procédure
 - Rédaction
 - Le Barreau et la pratique professionnelle
- 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 **16** pages (including this page) and that your answer booklet contains **8** pages.

N. B. : You may assume that the Civil Code of Québec and Titles II and III of *An Act respecting the implementation of the reform of the Civil Code, S.Q. 1992, c. 57* apply. Do not take the transitional provisions into account, except those relating to the publication of rights.

FILE 1 (45 marks)

M^e Josée Vaillant, a lawyer in the firm in which you are articling, gives you the notes she took during a meeting which took place on May 12, 2000 with her client, Line Tessier.

**NOTES TAKEN AT THE MEETING HELD MAY 12, 2000
WITH LINE TESSIER**

- Line Tessier, owner of land, lot 1,024,200, Cadastre of Québec, registration division Laval.
- Contract entered into in Laval between Line Tessier and *Entreprises DBCL inc.* (hereinafter «DBCL»), dated 18/06/99 stipulates :
 - DBCL must provide materials and labour to build a warehouse on land, in accordance with plans provided by Line Tessier;
 - price \$600,000, payable in 3 installments, namely :
 - \$125,000 after the foundations;
 - \$400,000 after the exterior finish;
 - \$75,000, 35 days after completion of the work;
 - construction to be finished on 30/11/99, deadline stipulated in contract as de rigueur, otherwise \$500 penalty per full day late;
 - DBCL renounces all legal hypothecs for the construction;
 - DBCL's obligation to provide a contract of suretyship of performance to guarantee payment of all amounts paid by Line to third parties in order to complete construction work.
- 23/06/99: contract of suretyship of performance signed by *Cautionnement Yalta inc.* (hereinafter «Yalta»):
 - in which Yalta binds itself solidarily with DBCL, if the latter defaults, to «perform all the work provided for in the construction contract dated June 18, 1999 or, failing same, to pay to Line Tessier the total of the amounts paid by her to a third party in order to have the said work performed in accordance with this contract»;
 - for max. of \$300,000.
- Problems throughout the construction:
 - DBCL's employees often drunk or late;

- president of DBCL, Charles Roger, says that «plans are incorrect and incomplete»;
 - employees of DBCL leave work site without explanation for 2 weeks in October 1999, then come back and leave definitively on 19/11/99; work not completed;
 - reason for departure: Line's refusal to comply with DBCL's demand to pay last installment owed pursuant to contract before completion of work;
 - constant disagreements between DBCL and its subcontractors;
 - several inspection visits and reports from an inspector from the Régie du bâtiment du Québec : work does not comply with regulations in effect. After dickering, DBCL makes corrections;
 - inspector from the Commission de la santé et de la sécurité au travail (CSST) threatens to close down work site if safety measures not taken; situation finally remedied by DBCL.
- Before the start of the work, Line Tessier received several written notices of declaration of contract from subcontractors.
 - Line paid first two installments provided for in the contract after the foundations and exterior finish.
 - 23/11/99, Line serves letter of notice of default on DBCL and Yalta demanding completion of work, failing which she will have work completed by a third party, at their expense.
 - 23/11/99, Charles Roger gives verbal answer to Line: «No way», «never», «don't even think about it».
 - 25/11/99, letter from Yalta to Line informing Line that Yalta will not complete work and will not pay the amounts which Line might pay to third party to complete work, because DBCL was entitled to leave the work site.
 - Line finds someone to complete the work on 29/11/99: *Aménagement Laurin inc.* Contract entered into 30/11/99, price: \$104,200.
 - *Aménagement Laurin inc.* completes work diligently and competently on 17/12/99, despite total lack of cooperation from DBCL and its refusal to provide the plans in its possession (Line finally obtains plans from municipality) - *Aménagement Laurin inc.* is paid in full.
 - 28/01/2000, letter of notice of default from Line to DBCL and Yalta, claiming amounts owed to her. No answer.

- Documents provided :
 - construction contract 18/06/99;
 - construction contract 30/11/99;
 - contract of suretyship of performance 23/06/99;
 - certificate of completion of work signed by Josette Bérard, architect, 17/12/99;
 - letters of notice of default dated 23/11/99 and 28/01/2000;
 - construction plans for the immovable;
 - letter from Yalta 25/11/99;
 - four notices of declaration of contract from subcontractors (electricity, plumbing, insulation, structural steel);
 - two inspection reports from Régie du bâtiment dated 27/09/99 and 29/10/99;
 - notice from CSST dated 21/10/99 regarding closing of work site.

- Addresses :
 - Line: 29 de la Canardière Street, Laval, Québec, H7B 1Y4 (domicile and residence);
 - DBCL: 122 de la Concorde Blvd., Laval, Québec, H7C 3Y5 (principal establishment);
 - *Aménagement Laurin inc.*: 48 Lafayette Blvd., Laval, Québec, H7G 2C3 (head office);
 - Yalta: 3500 Daniel-Johnson Blvd., Suite 600, Laval, H7L 3B4 (principal establishment).

- Line wants to claim all amounts owing from all persons bound to pay.

QUESTION 1 (45 marks)

Legal content (30 marks) Techniques (15 marks)

Draft, in full, the appropriate written proceeding (heading, title, address, allegations and conclusions). Do not draft the affidavit or the notice of presentation, if any. In order to protect your anonymity, do not sign the written proceeding.

FILE 2 (55 marks)

The situation described is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Jean-René Bélanger consults you on September 15, 1998 and relates the following facts to you.

He owns a commercial immovable situated on Saint-Rémi Street, in Old Montreal.

In September of 1996, he met his cousin, Anne Ostiguy, a fine-arts painter beginning her career, who was looking for a place where she could work comfortably.

Anne Ostiguy was a promising young artist and Jean-René Bélanger knew it, given that he owned Galerie Nouvel Âge, a thriving art gallery located in downtown Montreal. He decided to help his cousin and make his business profitable at the same time.

Jean-René Bélanger offered to lease to her premises located on the 4th floor of his immovable in Old Montreal. It was a large, well-lit room, ideal for setting up a studio.

The lease signed on September 28, 1996 was for a term of two years, namely, from October 1, 1996 to September 30, 1998. The monthly rent was \$300.

At the time of signing the lease, Jean-René Bélanger and Anne Ostiguy agreed that in exchange for such a low rent, during the term of the lease she would exhibit her work and sell it exclusively through Galerie Nouvel Âge. Galerie Nouvel Âge would be entitled to its usual commission of 20% of sales. An exhibition would be held in September of each year at the Galerie Nouvel Âge. The exhibition would include a minimum of 10 works of art and a maximum of 20. Given their family ties, the parties did not record this agreement in the lease signed on September 28, 1996.

On the day the lease was signed, Anne Ostiguy provided Jean-René Bélanger with a series of 24 postdated cheques of \$300, representing all the rent stipulated under the lease.

In September of 1997, Anne Ostiguy exhibited ten paintings at the Galerie Nouvel Âge; they were an instant hit. The sale of the paintings brought in \$50,000. Therefore, Jean-René Bélanger remitted to Anne Ostiguy an amount of \$40,000.

On May 4, 1998, Jean-René Bélanger visited Anne Ostiguy's studio in order to discuss the exhibition scheduled for September of 1998. Anne Ostiguy then showed him 15 paintings intended for the exhibition and promised him another five for September of 1998.

They then decided that the exhibition would take place from September 5, 1998 to September 15, 1998 and that there would be a vernissage on September 5, 1998, to which several well-known personalities in the art world would be invited as well as several potential purchasers.

In August of 1998, Jean-René Bélanger unsuccessfully attempted to contact Anne Ostiguy, both at her house and at her studio. He learned from a friend, Mélanie Laplante, that Anne Ostiguy was spending the summer in the Charlevoix region where she was selling the paintings intended for the exhibition of September of 1998 as well as new paintings that she was creating. Moreover, Mélanie Laplante told him that in July of 1998, Anne Ostiguy had told her that she preferred to keep all of her profits rather than share them in accordance with the agreement entered into with her cousin.

Consequently, Jean-René Bélanger had to cancel the exhibition of Anne Ostiguy's paintings as well as the vernissage. The Galerie Nouvel Âge did not hold any exhibition in September of 1998, because it was too late to find another artist.

Moreover, on September 2, 1998, Louis Morissette, a long-standing client of Galerie Nouvel Âge, brought back to the gallery a painting signed by Anne Ostiguy which he had purchased the previous year. He was furious because he had just discovered that the painting was an imitation of a work by Louise Dufour, a young rising artist in the Quebec City region.

Louis Morissette asked Jean-René Bélanger to take back the painting and immediately reimburse him the amount of \$4,000 which he had paid. Fifteen days later, Jean-René Bélanger reimbursed him.

Jean-René Bélanger explains to you that he has suffered significant losses as a result of these events. He gives you the mandate to institute the appropriate judicial proceedings in order to assert his rights.

On September 17, 1998, you have a letter of notice of default served upon Anne Ostiguy. On September 20, 1998, she sends the following letter to Jean-René Bélanger:

September 20, 1998

Dear Cousin:

I received a letter from your lawyer and I must say that I don't understand your complaint. You know perfectly well that I never gave you the exclusive right to sell my paintings and that I don't owe you anything.

I have been a member of the Young Fine-Arts Painters' Association since the start of my career. If you exhibited and sold some of my paintings in your art gallery, it's because you dealt with this association.

Therefore, I suggest that you leave me alone and that you contact the Young Fine-Arts Painters' Association.

Anne Ostiguy

ANNE OSTIGUY

On October 15, 1998, you draft an action (declaration reproduced hereinbelow) in accordance with Jean-René Bélanger's instructions. This action, duly instituted in accordance with the rules of the ordinary procedure, is served on Anne Ostiguy on the same day.

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-05-001234-983

JEAN-RENÉ BÉLANGER, domiciled and
residing at 75 de la Paix Street, in Montreal,
District of Montreal, H2L 2L2

Plaintiff

v.

ANNE OSTIGUY, residing at 9550 Monseigneur
Street, in Ville Lachine, District of Montreal, H3T
3T3

Defendant

DECLARATION**IN SUPPORT OF HIS ACTION, THE PLAINTIFF STATES THE FOLLOWING:**

1. The Plaintiff owns an art gallery called Galerie Nouvel Âge, and the Defendant is a fine-arts painter;
2. On September 28, 1996, the parties signed a lease for premises situated at 32 Saint-Rémi Street, in Montreal, for a term of two years beginning on October 1, 1996, and at a monthly rent of \$300, as appears from the lease, Exhibit P-1;
3. When the lease was signed, the market rate for the premises was \$1,200 per month;
4. In exchange for the very low rent, the parties agreed that, during the entire term of the lease, the Defendant would exhibit and sell her paintings exclusively through the Plaintiff;
5. An exhibition of ten of the Defendant's paintings was held at the Galerie Nouvel Âge in September of 1997 and brought in \$50,000, thereby resulting in a commission of \$10,000 for the Plaintiff;
6. On May 4, 1998, the parties set a date for the new exhibition of the Defendant's paintings at the Galerie Nouvel Âge, namely, from September, 5, 1998 to September 15, 1998;
7. During the meeting of May 4, 1998, the Defendant showed the Plaintiff 15 paintings which had already been completed and promised him another 5 paintings for the exhibition;
8. In August of 1998, the Plaintiff learned that the Defendant, herself, was selling the paintings intended for the September 1998 exhibition, the whole in breach of the agreement entered into between the parties;
9. In July of 1998, the Defendant admitted that she preferred to keep all of her profits rather than share them in accordance with the agreement entered into with the Plaintiff;

10. As a result of the Defendant's actions, the Plaintiff was unable to hold an exhibition in September, thereby causing him lost profits in the amount of \$60,000;
11. In addition, the cancellation of the exhibition caused a loss of \$5,000, namely, the cost of the advertising which had already been incurred;
12. On September 2, 1998, one of the Plaintiff's long-standing clients brought back to the Plaintiff a painting signed by the Defendant, which painting the client had purchased the previous year from the Galerie Nouvel Âge; the client claimed that the painting was an imitation;
13. The Plaintiff had to reimburse the price of the painting to the client, namely, \$4,000;
14. As a result of the ensuing bad publicity, sales from the Plaintiff's business decreased significantly, thereby causing him lost profits in the amount of \$30,000;
15. The Defendant has refused to pay to the Plaintiff the amount of \$99,000, although she has been duly put in default pursuant to a letter from the undersigned attorney dated September 17, 1998, Exhibit P-2;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

ORDER the Defendant to pay to the Plaintiff the amount of \$99,000 together with interest at the legal rate and the additional indemnity provided for by law as of September 17, 1998;

The whole with costs.

Montreal, October 15, 1998

Attorney for the Plaintiff

On October 20, 1998, M^c Bernard Rainville appears on behalf of the Defendant. On October 29, 1998, you are served with a motion for particulars which is presentable on November 6, 1998 before the special clerk.

The motion includes the following allegation, among others:

[...]

12. In paragraph 12 of the Declaration, the Plaintiff alleges that a client brought back to him a painting signed by the Defendant on the basis that the painting was an imitation, without specifying :

- (a) the name of the client;
- (b) how the painting is an imitation.

[...]

OCTOBER 1998

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

NOVEMBER 1998

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					

QUESTION 2 (12 marks)

- (a) What was the latest date on which Me Rainville could have the motion for particulars served?
- (b) Is the request for particulars well founded as regards the client's name?
- Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice.
- (c) Is the request for particulars well founded as regards the nature of the imitation?
- Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice.
- (d) Is there a means for contesting the judgment to be rendered by the special clerk who will rule upon the motion for particulars? If yes, what is it? If not, explain your answer.
- Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice.

SUPPLEMENTARY FACTS

On November 17, 1998, M^c Bernard Rainville examines Jean-René Bélanger on discovery before the filing of the defence and asks him the following question:

- Q.** Mr. Bélanger, why didn't you have an exhibition in September of 1998?
- A.** Because Anne Ostiguy let me down.
- Q.** Isn't it in fact the truth that the Young Fine-Arts Painters' Association was the one that let you down?

QUESTION 3 (4 marks)

Can you raise an objection to the last question? If yes, set forth the objection. If not, explain your answer.

SUPPLEMENTARY FACTS

The examination of Jean-René Bélanger continues and M^e Rainville asks him the following question :

- Q.** Mr. Bélanger, as you allege in paragraphs 12 and 13 of your declaration, and with all the experience that you have, can you explain to me why you reimbursed an amount of \$4,000 to your client?
- A.** I didn't pay right away. I obtained a written opinion from my expert, Eugène Poirier, before paying.
- Q.** Mr. Bélanger, can you give this report to your attorney so that he can communicate it to me?

QUESTION 4 (4 marks)

Can you raise an objection to the last question? If yes, set forth the objection. If not, explain your answer.

SUPPLEMENTARY FACTS

The examination of Jean-René Bélanger continues and M^e Rainville asks him the following question :

- Q.** Mr. Bélanger, in paragraph 9 of your declaration, you allege that my client admitted that she did not want to share her profits with you. To whom did she make this admission?
- A.** To one of my friends.
- Q.** Can you tell me this person's name?

QUESTION 5 (4 marks)

Can you raise an objection to the last question? If yes, set forth the objection. If not, explain your answer.

SUPPLEMENTARY FACTS

On December 7, 1998, M^e Bernard Rainville serves and files the defence (reproduced hereinbelow), to which is annexed Exhibit D-1 (reproduced hereinbelow).

CANADA

SUPERIOR COURT

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO: 500-05-001234-983**

JEAN-RENÉ BÉLANGER

Plaintiff

v.

ANNE OSTIGUY

Defendant

DEFENCE

THE DEFENDANT STATES THE FOLLOWING:

1. She admits the allegations set forth in paragraph 1 of the Declaration;
2. As regards paragraph 2 of the Declaration, she refers to the lease, Exhibit P-1, and denies everything that does not comply therewith;
3. She denies the allegations set forth in paragraphs 3 and 4 of the Declaration;
4. She admits the allegations set forth in paragraph 5 of the Declaration, but adds that her paintings were exhibited at the Galerie Nouvel Âge by the Young Fine-Arts Painters' Association and not by her;
5. She denies the allegations set forth in paragraphs 6 to 14 of the Declaration;
6. As regards paragraph 15 of the Declaration, she admits having received the letter of notice of default, Exhibit P-2, but denies owing any amount whatsoever to the Plaintiff;

AND IN ORDER TO RE-ESTABLISH THE FACTS, THE DEFENDANT ADDS THE FOLLOWING:

7. She is a young artist starting out her career and a member of the Young Fine-Arts Painters' Association, as it appears from the agreement, Exhibit D-1;
8. This association organizes exhibitions in art galleries in order to help young fine-arts painters to acquaint the public with their work;
9. It is the Young Fine-Arts Painters' Association which organized an exhibition in September of 1997 at the Galerie Nouvel Âge, which exhibition included some of the Defendant's paintings;

10. It is also the Young Fine-Arts Painters' Association which organized the summer apprenticeship in the Charlevoix region in which the Defendant participated in order to paint there and sell her paintings there.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

DISMISS the Plaintiff's action;

The whole with costs.

Montreal, December 7, 1998

M^c Bernard Rainville

Attorney for the Defendant

EXHIBIT D-1

June 1, 1996

**AGREEMENT TO BECOME A MEMBER OF THE
YOUNG FINE-ARTS PAINTERS' ASSOCIATION**

Ms. Anne Ostiguy hereby joins the Young Fine-Arts Painters' Association as a full member and agrees to abide by the Association's by-laws as set forth on the back of this document (not reproduced).

Charles Vézina

Anne Ostiguy

President

Member

Charles Vézina

Anne Ostiguy

After having read Exhibit D-1, your client, Jean-René Bélanger, informs you that he does not recognize the signature of Charles Vézina, a person with whom he has worked a great deal in the past.

On January 15, 1999, you receive a report from your expert, Professor Marc-Aurèle Lemieux, which expert report confirms that the painting brought back by Louis Morissette is, in fact, an imitation of a painting by Louise Dufour. On January 18, 1999, this report is duly communicated to the defendant pursuant to article 402.1 C.C.P.

You do not file an answer, and you inscribe the matter for proof and hearing on February 1, 1999.

No other notices or written proceedings are filed, except for the declarations of inscription on the roll for hearing.

The trial takes place today, May 15, 2000.

You call your first witness, your client Jean-René Bélanger, and you ask him the following question :

- Q.** Mr. Bélanger, what was the status of your relationship with Anne Ostiguy?
- A.** Excellent, she was my favourite younger cousin. I always encouraged her to pursue her career.
- Q.** What kind of help did you give her?
- A.** When she needed a studio, I leased premises to her for \$300 per month rather than \$1,200, which was the amount of rent paid by the previous lessee, in exchange for her undertaking to exhibit her paintings exclusively in my art gallery and ...
- M^e Rainville:** Objection ! The Plaintiff is attempting to use testimony to contradict the lease, Exhibit P-1, by adding an exclusivity clause to the lease, and this is contrary to the provisions of article 2863 C.C.Q.

You reply that the question is permitted on the following grounds :

«Article 2863 C.C.Q. allows us to provide testimonial evidence of this clause if there is a commencement of proof. According to article 2865 C.C.Q., commencement of proof may arise when there is an admission, and in paragraph 4 of her defence, the defendant admits that she exhibited her paintings at the plaintiff's gallery.»

QUESTION 6 (3 marks)

Is your reply to the objection well founded? Explain your answer.

SUPPLEMENTARY FACTS

You call, as your second witness, Charles Vézina, to whom you ask the following question :

- Q.** I'm showing you Exhibit D-1; do you recognize your signature on it?
- A.** No.
- M^e Rainville:** Objection! The preliminary formalities to contest Mr. Vézina's signature were not followed and, therefore, the plaintiff is foreclosed from contesting the authenticity of this signature.

QUESTION 7 (4 marks)

State your reply to M^e Rainville's objection.

SUPPLEMENTARY FACTS

The trial continues and you call as a witness, your expert, Marc-Aurèle Lemieux, to whom you ask the following question :

Q. Mr. Lemieux, what is the basis for your conclusion that the painting signed by Anne Ostiguy and sold to Louis Morissette is an imitation of a work by Louise Dufour?

A. There are several reasons. Firstly, the painting in question represents an Inuit village. Someone told me that Louise Dufour had visited the Great North on several occasions, unlike Anne Ostiguy, who has never been there.

M^e Rainville: Objection! This is hearsay.

QUESTION 8 (4 marks)

Is this objection well founded? Explain your answer.

SUPPLEMENTARY FACTS

You declare that you have finished presenting your evidence. M^e Rainville calls Anne Ostiguy as his first witness, to whom he asks the following question :

Q. Ms. Ostiguy, you heard Jean-René Bélanger tell the court that the previous lessee had paid rent of \$1,200 per month for the premises which he leased to you. According to you, what is the market price for the lease of these premises ?

A. Between \$250 and \$350 per month. If the previous lessee had been paying \$1,200, that was too much.

QUESTION 9 (4 marks)

What objection can you raise to this answer?

SUPPLEMENTARY FACTS

Anne Ostiguy's examination continues and M^e Rainville asks her the following question :

Q. Ms. Ostiguy, do you know Louise Dufour?

A. Yes, we studied together and our professors at l'École des Beaux-Arts often told us that our styles were similar.

QUESTION 10 (4 marks)

Can you raise an objection to this answer? If yes, state the objection. If not, explain your answer.

SUPPLEMENTARY FACTS

The court adjourns for lunch from 12:30 p.m. to 2:30 p.m. At approximately 1:30 p.m., your client, Jean-René Bélanger, informs you that he had a discussion with Anne Ostiguy in the cafeteria of the Courthouse and that she wants to meet with you in order to settle the litigation.

You cannot find M^c Rainville in the Courthouse, but you think it would be more reasonable to settle out of court in order to avoid further deteriorating the relationship between the parties.

Therefore, you and your client meet with Anne Ostiguy, and you attempt to come to an agreement. Despite your participation, there is no settlement, but the parties are grateful for your efforts.

QUESTION 11 (3 marks)

- **By acting in this manner, did you breach the Code of Ethics of Advocates?**
- **Justify your answer by referring to one or more specific and relevant provisions of the Code of Ethics of Advocates.**

SUPPLEMENTARY FACTS

Given the failure of the negotiations, the trial continues and a judgment is rendered ordering Anne Ostiguy to pay your client an amount of \$50,000 with interest, but without costs, for the reasons set forth by the judge.

Neither party appeals the judgment. You receive a cheque from Anne Ostiguy's attorney, payable to you, in the amount of \$55,000, namely, an amount of \$50,000 in capital and \$5,000 in interest, the whole in accordance with your calculations. You deposit the cheque in your trust account.

You had entered into a written fee agreement with your client. The only provision in this agreement which deals with fees reads as follows :

«The client shall pay, as extrajudicial fees, 15% of the amount collected.»

QUESTION 12 (9 marks)

(a) What is the exact amount that you will be entitled to claim from your client as fees for professional services? Do not take the applicable taxes into account. Select the correct answer and write it in your answer booklet.

- \$8,250, namely, 15% of \$55,000;
- \$7,500, namely, 15% of \$50,000;
- \$750, namely 15% of \$5,000;
- none of these answers, because the agreement violates Regulation XIV of the Barreau du Québec, namely, the Tariff of certain extrajudicial fees of advocates;
- none of these answers.

(b) Can you withdraw the amount of your professional fees from your trust account, without any further formalities?

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

(c) Can you claim from your client the judicial fees provided for in the Tariff of judicial fees of advocates? Explain your answer.

CORRIGE

**Examen de reprise - Preuve et procédure
Le 15 mai 2000**

DOSSIER 1

**QUESTION 1 (45 points)
contenu juridique (30 points) techniques (15 points)**

Rédigez en entier l'acte de procédure approprié (en-tête, titre, adresse, allégations et conclusions).
Ne rédigez ni l'affidavit ni l'avis de présentation, le cas échéant. Ne signez pas l'acte de procédure
pour assurer votre anonymat .

CANADA	PROCÉDURE ALLÉGÉE	1 (1)
PROVINCE DE QUÉBEC DISTRICT DE LAVAL	<u>C O U R S U P É R I E U R E</u>	
NO :	LINE TESSIER, domiciliée et résidant au 29, rue de la Canardière, Laval, (Québec, district de Laval), H7B 1Y4 ;	2 (1)
	Demanderesse	
	c.	
	ENTREPRISES DBCL INC., personne morale légalement constituée ayant son principal établissement au 122, boulevard de la Concorde, Laval, (Québec, district de Laval), H7C 3Y5	3 (1)
	et	
	CAUTIONNEMENT YALTA INC., personne morale légalement constituée ayant son principal établissement au 3500, boul. Daniel-Johnson, bureau 600, Laval, (Québec, district de Laval), H7L 3B4	4 (1)
	Défenderesses	
	<u>D É C L A R A T I O N</u>	5 (1)
	AU SOUTIEN DE SON ACTION, LA DEMANDERESSE EXPOSE :	6 (1)
1. En vertu d'un contrat de construction conclu à Laval le 18 juin 1999, la défenderesse Entreprises DBCL inc. s'engage à ériger un entrepôt sur le terrain de la demanderesse pour un prix de 600 000 \$, tel qu'il appert du contrat, pièce P-1 ;		7 (1)
2. Aux termes du contrat, pièce P-1, la construction de l'entrepôt doit être complétée au plus tard le 30 novembre 1999, ce délai étant stipulé de rigueur,		8 (1)
à défaut de quoi la défenderesse Entreprises DBCL inc., doit payer à la demanderesse une pénalité de 500 \$ par jour complet de retard ;		9 (1)
3. Par contrat de cautionnement d'exécution signé le 23 juin 1999, la défenderesse Cautionnement Yalta inc. s'engage, solidairement avec la défenderesse Entreprises DBCL inc., à exécuter tous les travaux prévus au contrat de construction daté du 18 juin 1999		10 (1)
ou, à défaut, à payer à la demanderesse la totalité des sommes versées par elle à un tiers pour exécuter ces travaux conformément à ce contrat, tel qu'il appert du contrat de cautionnement d'exécution, pièce P-2 ;		11 (1)
4. Le 19 novembre 1999, la défenderesse Entreprises DBCL inc. quitte définitivement le chantier de construction, sans que les travaux prévus au contrat soient complétés ;		12 (1)

5. Le 23 novembre 1999, la demanderesse fait signifier aux défenderesses une lettre de mise en demeure de terminer les travaux, 13 (1)
- à défaut de quoi la demanderesse les fera compléter par un tiers, à leurs frais, tel qu'il appert de cette lettre de mise en demeure, pièce P-3 ; 14 (1)
6. Le même jour, monsieur Charles Roger, président de la défenderesse Entreprises DBCL inc., mentionne verbalement à la demanderesse que sa société ne donnera pas suite à cette lettre de mise en demeure ; 15 (1)
7. Par une lettre du 25 novembre 1999, la défenderesse Cautionnement Yalta inc. avise la demanderesse qu'elle ne complétera pas les travaux et ne remboursera pas les sommes versées par cette dernière à un tiers, tel qu'il appert de cette lettre, pièce P-4 ; 16 (1)
8. Le 30 novembre 1999, la demanderesse conclut avec Aménagement Laurin inc. un contrat visant le parachèvement des travaux en question, tel qu'il appert de ce contrat, pièce P-5 ; 17 (1)
9. Les travaux ont été complétés avec diligence le 17 décembre 1999, pour la somme de 104 200 \$; 18 (1)
10. La demanderesse est donc bien fondée de réclamer :
- a) des défenderesses, solidairement, la somme de 29 200 \$, soit la différence entre le solde payable aux termes du contrat, pièce P-1, 75 000 \$ et la somme payée à Aménagement Laurin inc., 104 200 \$; 19 (1)
- b) de la défenderesse Entreprises DBCL inc., une pénalité de 500 \$ par jour complet de retard, soit 8 000 \$ ou 8 500 \$; 20 (1)
11. Bien que requises de le faire par la lettre de mise en demeure du 28 janvier 2000, pièce P-6, les défenderesses négligent de payer à la demanderesse les sommes dues ; 21 (1)

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

CONDAMNER les défenderesses à payer à la demanderesse 22 (2)

solidairement, 23 (2)

la somme de 29 200 \$, 24 (1)

avec intérêts au taux légal de même que l'indemnité additionnelle prévue par la loi depuis le 28 janvier 2000 ou l'assignation ; 25 (1)

CONDAMNER la défenderesse Entreprises DBCL inc. à payer à la demanderesse 26 (1)

la somme de 8 000 \$ ou 8 500 \$, 27 (2)

avec intérêts au taux légal de même que l'indemnité additionnelle prévue par la loi depuis le 28 janvier 2000 ou l'assignation ;

Le tout avec dépens.

MONTRÉAL, ce 15 mai 2000

Procureur(e) de la demanderesse

TECHNIQUES DE RÉDACTION

Allégation de plus d'un fait par paragraphe : Aucune allégation 1 point 28
 Une allégation 0 point

Allégation non pertinente ou erronée : Aucune allégation 4 points 29
 Une allégation 3 points
 Deux allégations 2 points
 Trois allégations 1 point
 Quatre allégations 0 point

Conclusion non pertinente OU non fondée Aucune allégation 2 points 30
 Une allégation 1 point
 Deux allégations 0 point

Référence aux pièces pertinentes 31
 • contrat de construction
 • contrat de cautionnement d'exécution
 • lettre de mise en demeure datée du 23 novembre 1999
 • lettre du 25 novembre 1999
 • contrat daté du 30 novembre 1999
 • lettre de mise en demeure datée du 28 janvier 2000

Aucune référence à une pièce non pertinente 32

Cote des pièces : P 33

Qualité de l'expression écrite : 34

utilisation du langage juridique approprié; la concision et la précision des allégations; l'absence de confusion ou de contradiction dans les allégations; des phrases complètes; un style non télégraphique;

Aucun manquement 5 points
 Un manquement 4 points
 Deux manquements 3 points
 Trois manquements 2 points
 Quatre manquements 1 point
 Cinq manquements 0 point

DOSSIER 2

QUESTION 2 (12 points)

a) **Quelle était la dernière date à laquelle M^e Rainville pouvait faire signifier la requête pour précisions ?**

Le 2 novembre 1998

35 (3)

b) **La demande de précisions est-elle bien fondée quant au nom du client ?**

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

Non, art 76 C.p.c. OU art. 77 C.p.c.

36 (3)

c) **La demande de précisions est-elle bien fondée quant à la nature du plagiat ?**

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

Oui, art. 76 C.p.c. OU art. 77 C.p.c. OU 168 (7) C.p.c.

37 (3)

d) **Existe-t-il un moyen de contester le jugement du greffier spécial qui disposera de la requête pour précisions ? Si oui, lequel ? Si non, dites pourquoi.**

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

Oui, requête en révision, art. 44.1 C.p.c.

38 (3)

QUESTION 3 (4 points)

Pouvez-vous soulever une objection à la dernière question ? Si oui, formulez cette objection. Si non, dites pourquoi.

Oui, cette question ne porte pas sur un fait se rapportant à la demande.

OU

Oui, cette question est non pertinente à cette étape de la procédure

39 (4)

QUESTION 4 (4 points)

Pouvez-vous soulever une objection à la dernière question ? Si oui, formulez l'objection. Si non, dites pourquoi.

Non, un document susceptible d'être considéré privilégié ne l'est plus lorsque le témoin y renvoie pendant son témoignage.

40 (4)

QUESTION 5 (4 points)

Pouvez-vous soulever une objection à la dernière question ? Si oui, formulez l'objection. Si non, dites pourquoi.

Non, on peut obtenir le nom du témoin parce que l'aveu extrajudiciaire qui lui a été fait a été allégué dans la déclaration. 41 (4)

QUESTION 6 (3 points)

Votre réplique à cette objection est-elle bien fondée ? Dites pourquoi.

Non, le paragraphe 4 ne rend pas vraisemblable l'existence d'une clause d'exclusivité dans le bail.

OU
Non, elle n'a jamais admis avoir exposé elle-même, le paragraphe 4 prouve seulement qu'une exposition a eu lieu. 42 (3)

OU
Non, il s'agit d'un aveu indivisible. Donc, il ne peut servir de commencement de preuve

QUESTION 7 (4 points)

Formulez votre réplique à l'encontre de l'objection de M^e Rainville .

Cette objection n'est pas fondée parce que la loi ne prévoit aucune formalité préalable à la contestation de la signature apparaissant sur le contrat D-1 auquel le demandeur n'est pas partie .

OU
Cette objection n'est pas fondée parce que la loi ne prévoit aucune formalité préalable à la contestation de la signature d'un tiers au litige. 43 (4)

QUESTION 8 (4 points)

Cette objection est-elle bien fondée ? Dites pourquoi.

Non, parce que l'expert peut fonder son opinion sur des faits qui lui ont été rapportés par des tiers. Toutefois, ces faits doivent être ultérieurement prouvés afin que ne soit pas affectée la valeur probante. 44 (4)

QUESTION 9 (4 points)

Quelle objection pouvez-vous formuler à l'encontre de cette réponse ?

Un témoin ordinaire ne peut donner un témoignage d'opinion. 45 (4)

Réf. : Collection de droit pp. 210, 211

QUESTION 10 (4 points)

Pouvez-vous soulever une objection à cette réponse ? Si oui, formulez l'objection. Si non, dites pourquoi.

Monsieur le juge, je formule une objection à la réponse parce que le témoin ne peut rapporter les paroles de ses anciens professeurs, c'est du oui-dire. 46 (4)

QUESTION 11 (3 points)

- En agissant ainsi, avez-vous contrevenu au Code de déontologie des avocats ?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code de déontologie des avocats.

Oui, art. 3.02.01 h) du Code de déontologie des avocats

47 (3)

QUESTION 12 (9 points)

- a) Quel est le montant exact que vous pourrez réclamer de votre client à titre d'honoraires pour services professionnels ? Ne tenez pas compte des taxes applicables. Choisissez la bonne réponse et inscrivez-la dans votre cahier de réponses.
- 8 250 \$, soit 15 % de 55 000 \$;
 - 7 500 \$, soit 15 % de 50 000 \$;
 - 750 \$, soit 15 % de 5 000 \$;
 - aucune de ces réponses car la convention contrevient au Règlement XIV du Barreau du Québec, soit le *Tarif de certains honoraires extrajudiciaires des avocats* ;
 - aucune de ces réponses.

8, 250 \$, soit 15% de 55 000 \$

48 (3)

- b) Pouvez-vous, sans autre formalité, retirer de votre compte en fidéicomis le montant de vos honoraires professionnels ?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi ou de règlements.

Non, article 3.06 c) du *Règlement sur la comptabilité et les comptes en fidéicomis des avocats*.

49 (3)

- c) Pouvez-vous réclamer de votre client les honoraires judiciaires prévus au *Tarif des honoraires judiciaires des avocats* ? Dites pourquoi.

Non, la convention d'honoraires ne le prévoit pas.

50 (3)