



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

PREUVE ET PROCÉDURE

SUPPLEMENTAL EXAMINATION

May 20, 2003

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- (1) The 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
 - L'éthique, la déontologie 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 **9** pages.

N.B.: You may assume that the provisions of *An Act to reform the Code of Civil Procedure* do not apply to this examination. However, all answers given under the new *Code of Civil Procedure* will be accepted.

FILE 1 (45 MARKS)

Your articling supervisor, M^c Paul Toupin of the firm *Toupin et Sylvestre*, provides you with the notes he took during a meeting held on May 20, 2003 with Roger Dubreuil, his client.

NOTES FROM THE MEETING OF MAY 20, 2003 WITH ROGER DUBREUIL

- Roger Dubreuil (“R.D.”) operates, on his own, a firm specializing in the retail sale of pre-varnished wood floors and moldings, under the name *Planchers et Moulures Dubreuil* (“PMD”);
- 16 May 03: in the afternoon, R.D. is served with an action for an amount of \$84,622.67 claiming payment for the balance owing on merchandise sold and delivered (Superior Court of the District of Trois-Rivières record no. 400-17-001234-034);
- Action instituted by *Produits forestiers St-Tite inc.* (“PFST”), manufacturer of pre-varnished hardwood floors, a duly constituted legal person having its head office at 612 Sainte-Catherine Road, Saint-Tite, district of Saint-Maurice, province of Quebec, G0X 3H0;
- The action is instituted against Roger Dubreuil, doing business under the name of *Planchers et Moulures Dubreuil* at 574 Industriel Blvd., Trois-Rivières, district of Trois-Rivières, province of Quebec, G9A 4P8;
- The action (**not reproduced**) is sent together with a writ of seizure before judgment (**not reproduced**), a copy of the requisition for the issuance of a writ of seizure before judgment under article 733 of the *Code of Civil Procedure*, duly authorized by Judge Léon Leblanc on May 15, 2003 (**not reproduced**), as well as an affidavit (**reproduced on page 4**);
- 16 May 03: Jean Choquette, bailiff, carries out seizure before judgment at 574 Industriel Blvd., Trois-Rivières, and removal of the inventory of *PMD*; Guy Falardeau appointed guardian;
- R.D. has copy of minutes of seizure before judgment drawn up by bailiff (**not reproduced**);
- R.D. very angry because of content of affidavit which he considers to be a pack of lies;
- R.D. acknowledges not having paid invoice, but for good reasons:
 - pre-varnished wood floors bought specially for condominium project, *Brises du St-Maurice*;
 - floors of unacceptable quality, refused by project architect because varnish improperly applied to wood;

- 14 March 03: R.D. verbally notified Roméo Bisson, *PFST* salesman, of the problems regarding the floors, but no follow-up on complaint;
- 28 Apr. 03: R.D. receives demand letter from attorneys for *PFST* and immediately contacts Bisson at *PFST* to reiterate to him his complaint regarding the problems with respect to the floors; Bisson tells him not to worry about the demand letter because he will settle the matter promptly with his boss;
- R.D. does not hear from Bisson or *PFST* after 28 Apr. 03;
- R.D. confirms sale of his house, but denies an intent to move to Calgary; only his wife, originally from that city, returned there with their children after their divorce pronounced on 18 March 03;
- 10 May 03: R.D. signs offer to purchase for his new home, a condominium located at 1000 du Moulin Street, in Trois-Rivières, apt. 104. Sale and taking of possession scheduled for 25 June 03;
- R.D. will invest entire profit from sale of family residence on des Colibris Street in the condo;
- R.D. denies liquidating his entire inventory: he only sold his inventory of moldings at a sale price in order to empty firm's warehouse which is to undergo major renovations;
- 2 May 03: signing by R.D. of a contract for renovation work on the warehouse with *Rénovations TR inc.*;
- R.D. denies having received calls from Henri Ménard;
- R.D. states he is solvent, net worth of his assets = \$354,000 including net worth of business of \$225,000;
- R.D. has sufficient cash to meet all his obligations;
- R.D. wants to retake possession of seized inventory, but categorically refuses to provide any security whatsoever;
- Seizure obliged R.D. to shut down business, therefore lost sales of approximately \$10,000/day.

AFFIDAVIT

I, the undersigned, Henri Ménard, credit officer, domiciled and residing at 203, 2nd Range West, Saint-Tite, district of Saint-Maurice, province of Quebec, G0X 3H0, solemnly affirm as follows:

1. I am a duly authorized representative of the Plaintiff;
2. The Defendant owes the Plaintiff an amount of \$84,622.67 for merchandise sold and delivered on February 3, 2003;
3. The Defendant had agreed to pay this amount no later than March 5, 2003;
4. To date, the Defendant has failed to pay the amount claimed, despite the fact that he was required to do so by means of a demand letter from the Plaintiff's attorneys dated April 25, 2003;
5. On May 12, 2003, during a telephone conversation with Rita Bérubé, the Defendant's secretary, I learned that the Defendant had sold his house and was moving with his family to Calgary;
6. On May 13, 2003, I saw a real estate broker's sign stating "Sold" in front of the Defendant's residence located at 1878 des Colibris Street, in Trois-Rivières;
7. That same day, I went to the Defendant's place of business at 574 Industriel Blvd., in Trois-Rivières, and I noticed that the Defendant was liquidating his entire inventory, outside the ordinary course of business of the firm, at a price below cost;
8. Since March 5, 2003, I have tried on several occasions to contact the Defendant, but without success because he has not returned any of my calls;
9. It is clear that the Defendant is insolvent and is liquidating his only known assets contrary to the Plaintiff's interests;
10. Given the foregoing, there is reason to fear that without the issuance of a writ of seizure before judgment the recovery of the Plaintiff's debt may be put in jeopardy and all other recourses may become illusory;
11. All the facts alleged in this affidavit are true.

AND I HAVE SIGNED

Henri Ménard

Henri Ménard

Solemnly affirmed before me
in Trois-Rivières, this 15th day of May 2003

Gisèle Cormier

Gisèle Cormier No.: 85749
Commissioner of Oaths
for the judicial district of Trois-Rivières

Mandate from client: institute the appropriate legal proceedings to have the seizure before judgment quashed.

Addresses:

- Roger Dubreuil: 1878 des Colibris Street, Trois-Rivières, district of Trois-Rivières, province of Quebec, G9L 6S5 (domicile and residence);
- Jean Choquette, bailiff: 9100 des Forges Street, Trois-Rivières, district of Trois-Rivières, province of Quebec, G2B 9L1 (office);
- Guy Falardeau (guardian): 761 Annabelle Blvd., Trois-Rivières, district of Trois-Rivières, province of Quebec, G5B 1A2 (domicile and principal place of business);
- Rita Bérubé (secretary): 986 de la Papetière Street, apartment 28, Trois-Rivières, district of Trois-Rivières, province of Quebec, G6C 2A0 (domicile and residence).

Documents provided by the client:

- Written proceedings for the seizure before judgment and attached exhibits;
- Jean Choquette's minutes of seizure before judgment dated May 16, 2003;
- True copy of the divorce judgment of Roger Dubreuil rendered on March 18, 2003 in court record number 400-12-254326-015 of the Superior Court of the District of Trois-Rivières;
- Offer to purchase the condominium located at 1000 du Moulin Street, apt. 104, dated May 10, 2003;
- Contract for the performance of renovation work entered into with *Rénovations TR inc.*, dated May 2, 2003;
- Financial statements of Roger Dubreuil and *Planchers et Moulures Dubreuil* as at March 31, 2003.

After having filed an appearance on behalf of his client, your articling supervisor, M^e Paul Toupin, instructs you to draft the appropriate written proceeding in order to have the seizure before judgment carried out on May 16, 2003 quashed.

QUESTION 1 (45 marks)

Legal content: 30 marks

Drafting 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 (43 MARKS)

The situation described in File 2 is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Your client, Robert P russe, meets with you for the first time on December 14, 2001. He relates the following facts to you.

From January 7, 1980 to May 11, 2001, he was employed as a sales representative by *Les  quipements Pression Vapeur inc.*

On April 9, 2001, Marc Lavigne, a former co-worker who now works for *Les Entreprises Domesco inc.*, informs him that *Les Entreprises Domesco inc.* is looking for a district manager for the Montreal region.

On April 16, 2001, Robert sends Marie Corriveau, the sales manager of *Les Entreprises Domesco inc.*, a letter in which he applies for the position.

On April 23, 2001, Robert meets with Marie. They discuss the conditions of employment, notably the remuneration, namely \$72,000 per year, the territory, the sales figures and the number of representatives to be supervised.

On May 2, 2001, Robert is called to the head office of *Les Entreprises Domesco inc.* in Montreal. At that time he meets with Jean Martel, the president, as well as with Louis Francoeur, the general manager of the firm, and they discuss the conditions of the employment offered to him.

Robert is interested in the offer of employment and he asks Jean Martel to confirm to him that he has been hired before resigning from his current employment.

On May 7, 2001, Robert receives the following letter.

By messenger
Montreal, May 7, 2001

Mr. Robert P russe
24 Loisselle Street
Longueuil, Quebec, J4K 1B7

Dear Robert,

Further to our meetings over the last few months, we would be pleased to have you among our team of managers. Your services would be required as of July 16, 2001.

As we discussed with you, if we hold training sessions before this date, it would be very useful if you could attend. Furthermore, before you assume your duties, I would like you to spend a few days with Louis Francoeur and me in order to facilitate your integration.

Please do not hesitate to contact us if you have any questions.

Once again, congratulations!

I look forward to having you on our team and remain,

Yours truly

Les Entreprises Domesco inc.

Marie Corriveau

Per: Marie Corriveau
Sales Manager

N.B.: *During the month of June, you should receive a document setting out a description of your duties and a hiring agreement. Louis Francoeur will send you everything.*

On May 10, 2001, Robert sends his letter of resignation to *Les Équipements Pression Vapeur inc.*

On May 25, 2001, Marie calls Robert to a meeting of representatives and agents to be held in Montreal on June 2, 2001. On June 1, 2001, Robert cancels his attendance when his wife informs him that their children have organized a party for their 40th wedding anniversary.

Robert is also invited to a training session to be held on June 15, 2001. On June 14, 2001, Louis Francoeur calls him to inform him that this training session has been cancelled.

On June 28, 2001, Marie calls Robert to inform him that his services are no longer required because management of *Les Entreprises Domesco inc.* has changed its vision of the firm and henceforth would prefer to develop franchises rather than work with district managers.

On July 3, 2001, Robert sends a letter to *Les Entreprises Domesco inc.* in which he states that he is still ready to start work on July 16, 2001 and, if the company refuses, he will institute the appropriate legal proceedings.

On July 16, 2001, at 9:00 a.m., Robert goes to the head office of *Les Entreprises Domesco inc.* and Marie tells him that the decision not to hire him has been maintained.

Robert tries to find other employment, but despite his many attempts, he only manages to do so in November of 2001. He finds employment as a representative with *Novatek inc.*, in Quebec City, beginning on November 12, 2001, at an annual salary of \$55,000.

On December 1, 2001, Robert moves to Quebec City. The cost of the move carried out by *Transport Rapide inc.* is \$3,000.

During the meeting on December 14, 2001, Robert gives you the mandate to institute legal proceedings on his behalf against *Les Entreprises Domesco inc.* and you prepare the following declaration.

CANADA

Simplified Procedure
SUPERIOR COURTPROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-17-014821-014

ROBERT PÉRUSSE, domiciled and residing at 24 de
L'Église Street in Quebec City, District of Quebec,
G1N 2T4

Plaintiff

v.

LES ENTREPRISES DOMESCO INC. a duly
constituted legal person having its head office at 1480
René-Lévesque Blvd. East, Suite 500, in Montreal,
District of Montreal, H1B 2B1

Defendant

DECLARATION

IN SUPPORT OF HIS ACTION, THE PLAINTIFF STATES AS FOLLOWS:

1. From January 7, 1980 to May 11, 2001, the Plaintiff was employed as a sales representative by Les Équipements Pression Vapeur inc. at an annual salary of \$60,000;
2. In April of 2001, the Defendant was looking for a district manager for the Montreal region;
3. On April 16, 2001, the Plaintiff applied for the position;
4. On April 23, 2001, the Plaintiff met with Marie Corriveau, the Defendant's sales manager, in order to discuss the conditions of employment for the position sought;
5. On May 2, 2001, the Plaintiff met with Jean Martel, the Defendant's president, and Louis Francoeur, its director general, and they offered him the position sought and confirmed the conditions of employment, including the annual salary of \$72,000;
6. On May 7, 2001, the Defendant confirmed hiring the Plaintiff, as appears from the letter, Exhibit P-1;
7. On May 10, 2001, the Plaintiff resigned from his position at Les Équipements Pression Vapeur inc.;
8. On June 28, 2001, Marie Corriveau, the Defendant's sales manager, informed the Plaintiff that his services were no longer required because management of the Defendant had changed its vision of the firm and preferred to develop franchises rather than work with district managers;
9. On July 3, 2001, the Plaintiff sent a demand letter to the Defendant in which he confirmed that he was still ready to start work on July 16, 2001 and, if the company refused, he would institute the appropriate legal proceedings, as appears from the letter, Exhibit P-2;

10. On July 16, 2001, at 9:00 a.m., the Plaintiff went to the Defendant's head office, but Marie Corriveau, the sales manager, told him that the decision not to hire him had been maintained;
11. As a result of the Defendant's decision, the Plaintiff suffered a period of depression requiring psychotherapy;
12. After numerous attempts, the Plaintiff found new employment as a representative with Novatek inc. in Quebec City, beginning on November 12, 2001, at an annual salary of \$55,000;
13. Because of the unilateral and unjustified resiliation of the employment contract, the Plaintiff is entitled to claim from the Defendant the damage suffered by him, which damage amounts to \$139,700 detailed as follows:
- | | |
|--|-----------|
| (a) loss of income for 6 months: | \$30,000 |
| (b) \$17,000 difference in the annual salary for the next three years: | \$51,000 |
| (c) moving expenses: | \$3,000 |
| (d) moral damages: | \$40,000 |
| (e) extrajudicial fees of the undersigned attorneys in this case: | \$15,700; |
14. Despite the fact that the Defendant recognized that it changed its mind after having hired the Plaintiff, it has refused or neglected to indemnify him.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

ORDER the Defendant to pay to the Plaintiff the amount of \$139,700 with interest at the legal rate since July 16, 2001 as well as the additional indemnity provided for by law;

THE WHOLE with costs.

Quebec City, December 20, 2001



 ATTORNEYS FOR THE PLAINTIFF

The declaration and the following documents are duly served on the Defendant on December 28, 2001:

- Notice to the Defendant **not reproduced**
- Letter dated May 7, 2001 Exhibit P-1 **reproduced on pages 6 and 7**
- Letter dated July 3, 2001 Exhibit P-2 **not reproduced**

On January 3, 2002, you receive a copy of the appearance filed in the court record by M^c Pierre Labadie of the firm of *Labadie et Rochette*.

M^c Labadie decides to proceed with an examination on discovery of your client before the filing of the defence. By consent, the date of the examination is scheduled for February 28, 2002. M^c Labadie sends you a letter confirming the date and place of the examination.

On February 28, 2002, you attend with your client for the examination on discovery before the filing of the defence. On that day, no one discusses taxation of your client's travelling expenses or compensation for his loss of time as a witness.

QUESTION 2 (4 marks)

Will the defendant be required to pay your client's expenses as a witness as taxed under the *Regulation respecting indemnities and allowances payable to witnesses summoned before courts of justice*?

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

- (a) No, because Robert Pérusse is a party to the proceedings and not merely a witness.
- (b) No, because Robert Pérusse voluntarily submitted to the examination on discovery.
- (c) Yes, because every witness is entitled to the amounts established in the *Regulation respecting indemnities and allowances payable to witnesses summoned before courts of justice*.
- (d) Yes, but only after the final judgment and on condition that the action is allowed.

SUPPLEMENTARY FACTS

During this examination on discovery before the filing of the defence, M^c Labadie asks the following questions, among others.

Question no. 12

Mr. Pérusse, isn't it true that since 1980, while you were employed by *Les Équipements Pression Vapeur inc.*, you have had serious problems of absenteeism at work?

[...]

Question no. 25:

Mr. Pérusse, isn't it true that it was you who were looking for a new position and not my client who was looking for a district manager?

[...]

QUESTION 3 (6 marks)

- (a) Can you object to question no. 12? If so, formulate the objection. If not, explain your answer.
- (b) Can you object to question no. 25? If so, formulate the objection. If not, explain your answer.

SUPPLEMENTARY FACTS

Robert's examination on discovery before the filing of the defence continues and M^c Labadie asks him the following questions.

[...]

Question no. 42:

Q.: Mr. Pérusse, isn't it true that both *Les Équipements Pression Vapeur inc.* and *Les Entreprises Domesco inc.* operate in the field of high-pressure cleaning equipment?

A.: Yes.

Question no. 43:

Q.: Did you try to find employment in the same industry?

A.: Yes, I tried with a few companies, but this is a highly specialized industry with few competitors.

Question no. 44:

Q.: Do you have a list of all the businesses operating in this industry in Quebec?

A.: No, I never compiled a list of those businesses.

Question no. 45:

Could you prepare a list of all the businesses operating in this industry in Quebec and send it to me through your lawyer?

[...]

Question no. 52:

As regards your claim of \$15,700 for extrajudicial fees, could you send me a copy of your lawyers' statements of account?

[...]

QUESTION 4 (6 marks)

(a) Can you object to the request for an undertaking contained in question no. 45? If so, formulate the objection. If not, explain your answer.

(b) Can you object to the request for an undertaking contained in question no. 52 on the ground that these are documents protected by professional secrecy? If so, formulate the objection. If not, explain your answer.

SUPPLEMENTARY FACTS

Robert's examination on discovery before the filing of the defence continues and M^c Labadie asks him the following question:

Question no. 73:

Q.: Mr. Pérusse, how did your meetings with the defendant's representatives go?

A.: Marie Corriveau and Jean Martel assured me that my contract of employment with *Les Entreprises Domesco inc.* was a done deal. As a matter of fact, right after the meeting on May 2, 2001, Jean Martel introduced me to a few directors of the company, telling them that I was the new district manager for the Montreal region. They clearly told me that my salary would be \$72,000 per year and that I would be there for at least three years.

M^c Labadie: I have no further questions for you. Thank you.

At this examination on discovery before the filing of the defence, your client is accompanied by his wife, Marthe Pérusse, who is waiting for him in the hall.

After the examination, M^c Labadie declares that he wants to proceed immediately with the examination on discovery before the filing of the defence of Marthe given that she is already on the premises.

QUESTION 5 (5 marks)

Can you oppose the holding of this examination? Explain your answer.

SUPPLEMENTARY FACTS

The defendant serves and files its defence on April 30, 2002. In its defence, *Les Entreprises Domesco inc.* denies or states it has no knowledge of any of the paragraphs of the declaration and adds the following paragraphs, among others.

[...]

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

15. After having received the Plaintiff's application, the Defendant's representatives met with the Plaintiff to explore the possibilities of employment;
16. After these meetings, no confirmation of employment was given to the Plaintiff;
17. The letter, Exhibit P-1, far from constituting such confirmation, instead reflects the Defendant's interest in the Plaintiff's application;

18. In fact, the letter, Exhibit P-1, was followed by a memo dated May 8, 2001 signed by the Defendant's president in which he asked Marie Corriveau, the sales manager, to inform the Plaintiff that a final answer with respect to his application would be sent to him before June 1, 2001, as it appears from that memo, Exhibit D-1;
19. Notwithstanding the notification mentioned in Exhibit D-1, the Plaintiff assumed that he would be hired by the Defendant and he resigned prematurely, such that he alone must bear the consequences of his carelessness;
20. Without prejudice to the foregoing, the letter, Exhibit P-1, contained conditions with which the Plaintiff had to comply, including the obligation to attend various meetings with employees of the Defendant in order to familiarize himself with the Defendant's corporate policies;
21. The Plaintiff failed to abide by these conditions, even going so far as to cancel, at the last minute and without a valid reason, his attendance at a meeting of representatives which he was to attend on June 2, 2001;
22. Furthermore, the Plaintiff has no sense of responsibility, a judgment having been rendered against him on September 3, 2001 by the Court of Quebec of the District of Terrebonne, in court record no. 700-22-001114-026, ordering him to pay Banque Provinciale an amount of \$18,000, as it appears from the judgment, Exhibit D-2;
23. The order made against the Plaintiff in that case shows his lack of seriousness and his irresponsibility;
24. The Defendant was justified in not following up on the steps previously undertaken by it and informing the Plaintiff, in July of 2001, that it would not be accepting his application.

[...]

Exhibits D-1 (**reproduced hereinbelow**) and D-2 (**not reproduced**) are duly communicated when the defence is served.

EXHIBIT D-1 :

<p>MEMO</p> <p>May 8, 2001</p> <p>To: Marie Corriveau From: Jean Martel</p> <p>Further to our meeting on May 2, 2001, please notify Robert Pérusse that a final answer with respect to his application will be sent to him by June 1, 2001.</p> <p><i>Jean Martel</i> _____ Jean Martel</p>
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QUESTION 6 (4 marks)

As at May 1, 2002, can you have paragraph 22 of the defence struck out? Explain your answer.

SUPPLEMENTARY FACTS

On June 1, 2002, M^e Labadie communicates to you a notice under article 398.1 of the *Code of Civil Procedure* indicating that, at trial, he will file the entire transcript of the examination on discovery of your client before the filing of the defence.

The case is inscribed for proof and hearing on the merits.

The trial begins today, May 20, 2003.

At the beginning of the trial, M^e Labadie files the entire transcript of the examination on discovery of your client before the filing of the defence.

As your first witness, you examine your client, the plaintiff, and you ask him the following question.

<p>Q. Mr. Pérusse, during the meeting on May 2, 2001 held at the defendant's premises, what statements did Jean Martel make to you as regards the job at <i>Les Entreprises Domesco inc.</i>?</p>
--

<p>A. He assured me that I was the ideal candidate, that I had the job. As a matter of fact, immediately after that meeting, he introduced me to several directors, telling them that I was the new district manager for the Montreal region.</p>
--

M^e Labadie objects on the ground that the plaintiff cannot, by his testimony, prove the existence of an employment contract with the defendant.

You reply that the testimony is admissible for the following reasons: firstly, even if the value in dispute exceeds \$1,500, this is a juridical act carried out by an enterprise in the ordinary course of business; secondly, Exhibit P-1 (**reproduced on pages 6 and 7**) constitutes a commencement of proof.

QUESTION 7 (4 marks)

State another ground in support of your reply.

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

SUPPLEMENTARY FACTS

Robert's examination continues and you ask him the following question.

<p>Q.: What were you told when you went to the defendant's premises on July 16, 2001?</p>
--

<p>A.: The sales manager, Marie Corriveau, told me that her boss had changed his mind and that she had nothing to do with this decision.</p>

<p>M^e Labadie: I object to the witness's answer on the grounds that there is no allegation on this matter in the declaration and that I was taken by surprise.</p>
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QUESTION 8 (5 marks)

Is this objection well founded? If yes, explain your answer. If not, formulate your reply.

SUPPLEMENTARY FACTS

You then call your last witness, Marc Lavigne, whom you have duly summoned. At that moment, you notice that he is absent.

In order to avoid an adjournment, the defendant, acting through its lawyer, M^e Labadie, admits before the court that if he were present, Marc Lavigne would testify as follows: “On May 2, 2001, I attended the meeting between Robert Pérusse, Jean Martel and Louis Francoeur. At that time, Jean Martel told Robert that the contract of employment with *Les Entreprises Domesco inc.* was a done deal.”

You then declare that you have finished presenting your evidence.

As a defence, M^e Labadie examines Jean Martel, the defendant’s president, and he asks him the following questions, among others.

- | |
|--|
| <p>Q. During your meeting with Robert Pérusse on May 2, 2001, who else was present?</p> <p>A. Louis Francoeur, the general manager.</p> <p>Q. Was anyone else there?</p> <p>A. No, absolutely not.</p> |
|--|

QUESTION 9 (4 marks)

Can you object to this second answer on the ground that, by means of its declaration before the court, the defendant admitted that Marc Lavigne was present at the meeting on May 2, 2001? If so, formulate the objection. If not, explain your answer.

SUPPLEMENTARY FACTS

Jean Martel’s examination continues and M^e Labadie asks him the following questions:

- | |
|--|
| <p>Q. What did you do after the meeting on May 2, 2001?</p> <p>A. I sent a memo to Marie Corriveau asking her to notify Robert Pérusse that a final answer with respect to his application would be sent to him before June 1, 2001; as a matter of fact, I have this memo with me.</p> <p>Q. Would you please file this memo as Exhibit D-1?</p> |
|--|

QUESTION 10 (5 marks)

Can you object to the filing of the memo, Exhibit D-1? If so, formulate the objection. If not, explain your answer.

FILE 3 (12 MARKS)

M^e Catherine Alain represents Éric Malo in an action for unlawful dismissal which he instituted against *Tougas Automobiles inc.*, his employer. The amount claimed is \$50,000.

A few days before the trial, the defendant's attorney submits an offer of settlement in the amount of \$15,000 to M^e Alain. M^e Alain, who is outraged that such a ridiculous offer would be made to her, does not submit it to Éric Malo and contacts Didier Tougas, the president and sole shareholder of *Tougas Automobiles inc.*, in order to inform him of her dissatisfaction.

After the proof and hearing, a judgment is rendered ordering the defendant to pay to the plaintiff an amount of \$7,500.

The defendant's attorney then sends M^e Alain a \$7,500 cheque payable to the order of Éric Malo. M^e Alain endorses this cheque by signing her own name and deposits it in her trust account.

M^e Alain notes that, in accordance with the fee agreement which provides for remuneration on an hourly basis, she can invoice Éric Malo more than the amount of \$7,500 which she holds in her trust account. Therefore, M^e Alain immediately withdraws this amount from the trust account.

You may assume that the amount of \$7,500 as fees is reasonable in the circumstances.

QUESTION 11 (12 marks)

State four breaches of ethical obligations committed by M^e Catherine Alain.

Justify your answer by referring to one or more specific and relevant provisions of the *Code of ethics of advocates* or the *By-law respecting accounting and trust accounts of advocates*.

ONLY THE FIRST FOUR BREACHES WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

CORRIGÉ
PREUVE ET PROCÉDURE - EXAMEN DE REPRISE
 20 mai 2003

DOSSIER 1 (45 POINTS)

QUESTION 1 (45 points)

Contenu juridique : 30 points

Techniques de rédaction : 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

PROVINCE DE QUÉBEC
 DISTRICT DE TROIS-RIVIÈRES

C O U R S U P É R I E U R E 1.

NO 400-17-001234-034

PRODUITS FORESTIERS ST-TITE INC.

demanderesse

c. 2.

ROGER DUBREUIL (faisant affaires sous le nom
 de Planchers et Moulures Dubreuil)

défendeur

Absence de description complète des parties 3.

Aucune autre partie ajoutée 4.

REQUÊTE DU DÉFENDEUR POUR ANNULER
LA SAISIE AVANT JUGEMENT 5.

(art. 738 C.p.c.)

À L'UN DES JUGES DE LA COUR SUPÉRIEURE SIÉGEANT EN CHAMBRE DE PRATIQUE DANS LE DISTRICT DE TROIS-RIVIÈRES, LE DÉFENDEUR EXPOSE : 6.

1. Le 15 mai 2003, la délivrance d'un bref de saisie avant jugement a été autorisée par le juge Léon Leblanc pour satisfaire à une créance de 84 622,67 \$, tel qu'il appert du dossier de la cour ; 7.

2. Le 16 mai 2003, l'inventaire se trouvant à l'établissement du défendeur a été saisi avant jugement, tel qu'il appert du procès-verbal de saisie du huissier, pièce D-1 ; 8.

3. Les paragraphes 2 et 4 de l'affidavit au soutien de la saisie avant jugement sont faux en ce que le défendeur ne doit pas la somme réclamée pour les motifs suivants : 9.

(a) les planchers de bois préverni pour lesquels la somme de 84 622,67 \$ est réclamée ont été spécialement achetés de la demanderesse pour un projet de copropriété divise ;

b) ces planchers sont de qualité inacceptable et ont été refusés par l'architecte du projet parce que le vernis avait été mal appliqué ; 10.

c) le défendeur a avisé Roméo Bisson, le vendeur de la demanderesse, le 14 mars 2003 et le 28 avril 2003 des problèmes relatifs aux planchers, mais sans aucun résultat ; 11.

d) de plus, lors de la conversation du 28 avril 2003, Roméo Bisson a dit au défendeur de ne pas tenir compte de la lettre de mise en demeure datée du 25 avril 2003 parce qu'il allait régler sans délai la situation avec son patron ; 12.

4. Le paragraphe 5 de l'affidavit au soutien de la saisie avant jugement est faux en ce que le défendeur n'a jamais eu l'intention de déménager à Calgary ; 13. 2
- (5. Seuls son ex-épouse, originaire de Calgary, et leurs enfants y sont déménagés ;)
- (6. En effet, le 18 mars 2003, un jugement a prononcé le divorce du défendeur et de son ex-épouse, tel qu'il appert d'une copie conforme du jugement, pièce D-2 ;)
7. De plus, le défendeur a, en date du 10 mai 2003, signé une offre d'achat pour un condominium situé à Trois-Rivières, tel qu'il appert de l'offre d'achat, pièce D-3; 14. 1
8. Le défendeur deviendra propriétaire de cet immeuble le 25 juin 2003 et il y établira son domicile; 15. 1
9. Le paragraphe 7 de l'affidavit au soutien de la saisie avant jugement est faux en ce que le défendeur n'a soldé que l'inventaire de moulures afin de vider l'entrepôt de l'entreprise qui doit faire l'objet d'importantes rénovations tel qu'il appert du contrat pour l'exécution de travaux de rénovations avec Rénovations TR inc., daté du 2 mai 2003, pièce D-4; 16. 2
10. Le paragraphe 8 de l'affidavit au soutien de la saisie avant jugement est faux en ce que le défendeur n'a jamais reçu d'appel d'Henri Ménard ; 17. 2
11. Le paragraphe 9 de l'affidavit au soutien de la saisie avant jugement est faux en ce que le défendeur est solvable, détient des liquidités suffisantes pour faire face à toutes ses obligations et possède un actif d'une valeur nette de 354 000 \$; 18. 2
- (12. Le défendeur est en droit de demander l'annulation de la saisie avant jugement pratiquée en l'instance ;)

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

ANNULER la saisie avant jugement pratiquée en l'instance par la demanderesse, le 16 mai 2003. 19. 3

LE TOUT avec dépens.

Respect de l'art. 12 des Règles de pratique de la Cour supérieure 20. 1

TECHNIQUES DE RÉDACTION (15 points)

Allégation non pertinente ou erronée :	Aucune allégation	<input type="radio"/>	4 points	21. <input type="text" value="4"/>
	Une allégation	<input type="radio"/>	3 points	
	Deux allégations	<input type="radio"/>	2 point	
	Trois allégations	<input type="radio"/>	1 point	
	Quatre allégations	<input type="radio"/>	0 point	

Conclusion non pertinente OU non fondée	Aucune conclusion	<input type="radio"/>	3 points	22. <input type="text" value="3"/>
	Une conclusion	<input type="radio"/>	2 points	
	Deux conclusions	<input type="radio"/>	1 point	
	Trois conclusions	<input type="radio"/>	0 point	

Référence aux pièces pertinentes	2 / 2		
• Procès-verbal de saisie du huissier	<input type="radio"/>		
(• Copie conforme du jugement de divorce de Roger Dubreuil)			23. <input type="text" value="1"/>
• Offre d'achat du condominium	<input type="radio"/>		
(• Contrat d'exécution des travaux de rénovations)			

Aucune référence à une pièce non pertinente 24.

Cote des pièces : D 25.

Qualité de l'expression écrite :
 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	<input type="radio"/>	5 points	26. <input type="text" value="1"/>
Un manquement	<input type="radio"/>	4 points	
Deux manquements	<input type="radio"/>	3 points	
Trois manquements	<input type="radio"/>	2 points	
Quatre manquements	<input type="radio"/>	1 point	
Cinq manquements	<input type="radio"/>	0 point	

DOSSIER 2 (43 POINTS)

QUESTION 2 (4 points)

La défenderesse sera-t-elle tenue de payer à votre client la taxe de ses frais de témoin prévue au *Règlement sur les indemnités et les allocations payables aux témoins assignés devant les cours de justice*?

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

- a) Non, parce que Robert Pérusse est une partie au litige et non un simple témoin.
- b) Non, parce que Robert Pérusse s'est soumis volontairement à l'interrogatoire au préalable.
- c) Oui, parce que tout témoin a droit aux montants établis dans le *Règlement sur les indemnités et les allocations payables aux témoins assignés devant les cours de justice*.
- d) Oui, mais seulement après le jugement final et à la condition que l'action soit accueillie.

Réponse : b) Non, parce que Robert Pérusse s'est soumis volontairement à l'interrogatoire au préalable.

27. 4

QUESTION 3 (6 points)

a) Pouvez-vous formuler une objection à l'encontre de la question n° 12? Si oui, formulez l'objection. Si non, dites pourquoi.

- 1. Oui, il ne s'agit pas d'une question en rapport avec une allégation de la demande (art. 397 *C.p.c.*) 3 pts
- OU 3
- 2. Oui, parce que ce n'est pas pertinent 2 pts

28. 3

b) Pouvez-vous formuler une objection à l'encontre de la question n° 25? Si oui, formulez l'objection. Si non, dites pourquoi.

Non, parce qu'il s'agit d'une question en rapport avec une allégation de la demande à savoir le paragraphe 2 de la déclaration (art. 397 *C.p.c.*).

29. 3

QUESTION 4 (6 points)

a) Pouvez-vous formuler une objection à l'encontre de la demande d'engagement contenue à la question n° 45? Si oui, formulez l'objection. Si non, dites pourquoi.

Oui, la demande de document doit viser des documents disponibles, mais non la confection d'un document.

30. 3

b) Pouvez-vous formuler une objection à l'encontre de la demande d'engagement contenue à la question n° 52 pour le motif qu'il s'agit de documents protégés par le secret professionnel? Si oui, formulez l'objection. Si non, dites pourquoi.

Non, puisque le demandeur réclame le paiement des honoraires extra-judiciaires de son procureur bien que ce dernier puisse masquer, le cas échéant, les informations protégées par le secret professionnel.

31. 3

QUESTION 5 (5 points)

Pouvez-vous vous opposer à la tenue de cet interrogatoire? Dites pourquoi.

Oui, puisque l'interrogatoire préalable avant défense d'un tiers nécessite la permission du tribunal (art. 397 dernier alinéa *C.p.c.*) 32.

QUESTION 6 (4 points)

En date du 1^{er} mai 2002, pouvez-vous obtenir la radiation du paragraphe 22 de la défense? Dites pourquoi.

Oui, parce que cette allégation est non pertinente, superflue ou calomnieuse (art. 168 *in fine C.p.c.* et art. 184 *C.p.c.*) 33.

QUESTION 7 (4 points)

Énoncez un autre motif au soutien de votre réplique.

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

La défenderesse a elle-même introduit la preuve du contrat d'emploi en produisant l'ensemble de la transcription de l'interrogatoire préalable avant défense de Robert Pérusse, dans lequel il témoigne de la conclusion du contrat et de son contenu. 34.

(*Iarrera c. Iarrera 1987 RDJ 223 (CA)*)

QUESTION 8 (5 points)

Cette objection est-elle bien fondée? Si oui, dites pourquoi. Si non, formulez votre réplique.

Non, l'objection n'est pas fondée compte tenu de l'allégation contenue au paragraphe 14 de la déclaration (art. 76 et 77 *C.p.c.*) 35.

QUESTION 9 (4 points)

Pouvez-vous formuler une objection à l'encontre de cette dernière réponse au motif que, par sa déclaration devant le tribunal, la défenderesse a admis que Marc Lavigne était présent à la rencontre du 2 mai 2001? Si oui, formulez l'objection. Si non, dites pourquoi.

Non, parce que la défenderesse, par l'entremise de son procureur, a simplement admis que le témoignage de Marc Lavigne serait en ce sens et non la véracité de son témoignage (art. 286 *C.p.c.*) 36.

QUESTION 10 (5 points)

Pouvez-vous formuler une objection à l'encontre de la production du mémo, pièce D-1 ? Si oui, formulez l'objection. Si non, dites pourquoi.

Oui, parce qu'il s'agit d'un simple écrit qui n'est recevable que pour faire preuve contre son auteur (art. 2832 *C.c.Q.*) 37.

DOSSIER 3 (12 POINTS)

QUESTION 11 (12 points)

Énoncez quatre manquements commis par M^e Catherine Alain à ses obligations déontologiques.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code de déontologie des avocats* ou du *Règlement sur la comptabilité et les comptes en fidéicommiss des avocats*.

SEULS LES QUATRE PREMIERS MANQUEMENTS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

MANQUEMENTS	DISPOSITIONS
1. M ^e Alain ne soumet pas l'offre de règlement à 38. <input type="text" value="2"/> Éric Malo.	art. 3.02.10 <i>C.d.a.</i> 42. <input type="text" value="1"/>
2. M ^e Alain communique directement avec Didier Tougas plutôt qu'avec son procureur pour lui 39. <input type="text" value="2"/> faire part de son mécontentement.	art. 3.02.01 h) <i>C.d.a.</i> 43. <input type="text" value="1"/>
3. M ^e Alain endosse le chèque fait à l'ordre de Éric Malo, sans l'autorisation de ce dernier. 40. <input type="text" value="2"/>	art. 3.02.07 <i>C.d.a.</i> 44. <input type="text" value="1"/>
4. M ^e Alain retire la somme de 7 500 \$ du compte de fidéicommiss sans facturation ni accord du 41. <input type="text" value="2"/> client.	art. 3.06 c) <i>Règlement sur la comptabilité et les comptes en fidéicommiss des avocats.</i> 45. <input type="text" value="1"/>