



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

PREUVE ET PROCÉDURE

SUPPLEMENTAL EXAMINATION

May 10, 2004

- (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
- (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 **6** pages.

N.B.: You may assume that the *Regulation of the Court of Québec, O.C. 673-2003 (2003) 135 G.O. II., 2003*, which came into force on July 17, 2003 and the *Rules to amend the Rules of Practice in Civil Matters (Règlement de procédure civile), 135 G.O. II., 2752*, and the *Rules to amend the Rules of Practice in Family Matters (Règlement de procédure en matière familiale), 135 G.O. II., 2757*, which came into force on September 13, 2003 do not apply to this examination.

FILE 1 (40 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 September 3, 2003, M^e Louise Trudeau, acting on behalf of her client, *Meubles Lamirande ltée*, whose head office is at 75 Leduc Street, Gatineau, District of Hull, institutes an action on a detailed account before the Court of Québec of the District of Hull against *335004 Canada Ltd.* claiming the selling price of movable property delivered.

The defendant, *335004 Canada Ltd.*, has its head office at 225 Rideau Street, Ottawa, Province of Ontario, and it also has an establishment at 99 Promenade du Portage, Gatineau, District of Hull.

On September 3, 2003, the following written proceedings and documents (**not reproduced**) are served by bailiff Maurice Vachon at the defendant's establishment located in Gatineau:

- a motion to institute proceedings with only the following conclusions:

<p>ORDER the Defendant to pay the Plaintiff the amount of \$15,000, with interest at a rate of 12% per year since May 15, 2003;</p>

<p>DECLARE that the seizure before judgment carried out in this action is valid;</p>
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<p>The whole with costs.</p>

- a notice to the defendant indicating, among other things, that the motion will be presented in the Practice Division of the Court of Québec (Civil Division) of the District of Hull on October 9, 2003 at 9:00 a.m. The notice also contains a disclosure of Exhibits P-1 (invoice and statement of account) and P-2 (demand letter);
- a copy of Exhibits P-1 and P-2;
- a requisition seeking the issuance of a writ of seizure before judgment of all the defendant's movable property located in its establishment at 99 Promenade du Portage, Gatineau, District of Hull, which writ contains the signature of Judge Paul Lafleur dated September 3, 2003 authorizing the issuance of the writ;
- a detailed affidavit signed by Sylvio Lamirande, president and duly authorized representative of the plaintiff, which affirms the existence of the debt and the facts giving rise to the seizure of the said movable property;
- a writ of seizure before judgment requiring the bailiff to seize all the defendant's movable property located in its establishment at 99 Promenade du Portage, Gatineau, District of Hull.

Upon serving these documents, bailiff Vachon seizes all the movable property contemplated in the writ. He gives the custody and possession thereof to Roch Larocque who then has it brought to a safe location.

On September 4, 2003, M^e Martine Bourassa files an appearance in the court record on behalf of the defendant.

The negotiations between the lawyers on the conduct of the proceeding do not lead to an agreement. However, during these negotiations which are held on September 5, 2003, M^e Bourassa informs M^e Trudeau that she intends to contest the merits of the motion to institute proceedings. She adds that she will also ask the court to quash the seizure before judgment of the defendant's property on the ground that the allegations in the affidavit signed by Sylvio Lamirande, on the basis of which the writ was issued, are false.

QUESTION 1 (5 marks)

What form should the demand to quash the seizure before judgment take?

SUPPLEMENTARY FACTS

On October 9, 2003, an agreement between the parties having failed, the motion to institute proceedings is presented in the Practice Division of the Court of Québec of the District of Hull. The court is also seized of a demand by the defendant to have the seizure before judgment quashed. However, it postpones the hearing of this particular demand to October 24, 2003. It then hears the representations of the lawyers as regards the various stages in the timetable for the proceeding. Among other things, M^e Bourassa asks the court to include in the timetable an examination, in accordance with article 397 of the *Code of Civil Procedure*, of Sylvio Lamirande, the president and duly authorized representative of the plaintiff.

QUESTION 2 (5 marks)

Is this request well founded?

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

SUPPLEMENTARY FACTS

On October 9, 2003, when the motion to institute proceedings is presented, M^e Bourassa also asks the court to authorize her to file a written defence which will include a cross-demand for damages in the amount of \$8,000. The court gives this authorization.

QUESTION 3 (5 marks)

Could M^e Louise Trudeau subsequently serve and present a demand for security for costs resulting from the cross-demand, on the ground that the head office of 335004 Canada Ltd. is located in Ottawa? Explain your answer.

SUPPLEMENTARY FACTS

On October 9, 2003, the court establishes a timetable for the proceeding. On October 24, 2003, the court hears the defendant's demand to have the seizure before judgment quashed on the ground that the allegations in the affidavit are false, and the court dismisses the demand with costs.

QUESTION 4 (5 marks)

Is the judgment rendered on October 24, 2003 subject to an appeal as of right (*de plein droit*)?

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

QUESTION 5 (5 marks)

Within what time period must the written proceeding necessary to appeal the judgment rendered on October 24, 2003 be served and filed?

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

SUPPLEMENTARY FACTS

In the timetable for the proceeding established on October 9, 2003, the court authorized the defendant to file a written defence together with a cross-demand no later than December 1, 2003. Furthermore, the court set January 7, 2004 as the limit for filing the answer and defence to the cross-demand.

On December 2, 2003, the defendant has not yet filed its defence and cross-demand. M^e Trudeau then takes the necessary steps to obtain a judgment by default, for failure to plead, in favour of the plaintiff.

QUESTION 6 (5 marks)

In light of the conclusions in the motion to institute proceedings, which includes a demand to have the court declare that the seizure before judgment carried out in the action in question is valid, does the clerk have jurisdiction to render such judgment?

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

SUPPLEMENTARY FACTS

On December 9, 2003, the judicial authority of competent jurisdiction renders a judgment by default, for failure to plead, which grants all the conclusions set forth in the plaintiff's motion to institute proceedings.

That same day, M^e Trudeau learns that the defendant has just recently acquired an automobile located on the premises of its establishment in Gatineau. M^e Trudeau believes it would be advantageous to have it seized in execution of the judgment.

DECEMBER 2003

Su	M	Tu	W	Th	F	Sa
	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			

JANUARY 2004

Su	M	Tu	We	Th	F	Sa
				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 7 (5 marks)

As of what date could this seizure be carried out?

SUPPLEMENTARY FACTS

On March 15, 2004, M^e Trudeau wants to have the movable property which was seized before judgment on September 3, 2003 sold in a judicial sale.

QUESTION 8 (5 marks)

In order to do so, how should M^e Louise Trudeau proceed?

FILE 2 (15 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.

On March 15, 2004, the *Association de chasse et pêche du Lac Vert* (hereinafter referred to as the “*Association*”) consults M^e Claude Bolduc. The organization, which is not incorporated, owns a large parcel of land on the shores of lac Vert, in the municipality of Saint-Donat. The *Association* wants to participate in a trial between the municipality of Saint-Donat and the company *Sanitair inc.*

Sanitair inc. operates a waste burial site on the municipality’s territory and regularly exceeds the quota of 60,000 tons of waste authorized by the Ministère de l’Environnement du Québec on June 15, 1998. The consequences on the quality of the water in lac Vert are disastrous. Consequently, on March 10, 2004, the municipality had to file an application for a permanent injunction in the judicial district of Joliette against *Sanitair inc.*

On March 30, 2004, M^e Bolduc, acting on behalf of the *Association*, notifies a declaration for a conservatory intervention to all the parties in question so that his client, which has the necessary legal standing, can join the proceeding in order to assist the municipality, aid its action and support its pretensions. The declaration is filed at the office of the court that same day.

On April 5, 2004, *Sanitair inc.* gives notice to M^e Bolduc as well as to the plaintiff of an opposition to the participation of the *Association* in the trial. The opposition is filed at the office of the court that same day.

On April 7, 2004, M^e Bolduc asks you to prepare the appropriate legal proceeding.

QUESTION 9 (9 marks)

Draft the TITLE, ADDRESS and PRINCIPAL CONCLUSION of the appropriate written proceeding. In order to protect your anonymity, do not sign the written proceeding.

SUPPLEMENTARY FACTS

The judgment rendered allows the *Association* to participate in the trial. The case is scheduled for September 13, 2004 and is to be heard by Judge Gaston Rodrigue.

M^e Claude Bolduc learns that when Judge Rodrigue was a lawyer, he held a large number of shares in a waste management company. M^e Bolduc informs the *Association* which gives him the mandate to take the necessary steps so that Mr. Justice Rodrigue does not hear this case.

M^e Bolduc notifies a declaration to the judge and to the parties in which he states his concern that the judge may not be impartial, and he files the declaration in the court record. Nonetheless, the judge refuses to remove himself from the case.

QUESTION 10 (6 marks)

Draft the ADDRESS and CONCLUSION of the appropriate written proceeding. In order to protect your anonymity, do not sign the written proceeding.

FILE 3 (45 MARKS)

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

You were the partner of M^c Joan DeSousa who was appointed as a judge to the Court of Québec on June 16, 2003. As a result of her appointment, she transferred all her files to you, including that of Pierre St-Pierre and Julie St-Jules.

In May of 2003, these clients had given M^c DeSousa the mandate to institute legal proceedings against their former landlords, Mélanie Marchand and François Lafrance, in order to obtain compensation for harm suffered by them due to violations of their privacy.

Upon reading the file, you notice that a draft motion to institute proceedings had already been prepared by your former partner.

On July 10, 2003, Pierre and Julie meet with you in order to review the draft motion. They confirm to you that the facts alleged are in keeping with what they had told your former partner.

On August 8, 2003, you have the following motion to institute proceedings served upon the defendants.

CANADA PROVINCE OF QUÉBEC DISTRICT OF QUÉBEC No.: 200-22-001284-034	SUPERIOR COURT PIERRE ST-PIERRE, domiciled and residing at 564B 1 st Avenue, Québec City, District of Québec, G4X 8X4 and JULIE ST-JULES, domiciled and residing at 564B 1 st Avenue, Québec City, District of Québec, G4X 8X4 Plaintiffs v. MÉLANIE MARCHAND, domiciled and residing at 1440 Chemin des Braves, apartment B, Québec City, District of Québec, G4X 2B9 and FRANCOIS LAFRANCE, domiciled and residing at 1440 Chemin des Braves, apartment B, Québec City, District of Québec, G4X 2B9 Defendants
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MOTION TO INSTITUTE PROCEEDINGS

IN SUPPORT OF THEIR ACTION, THE PLAINTIFFS STATE THE FOLLOWING:

1. The Plaintiffs are *de facto* spouses and have been living together since 2002;

2. On July 1, 2002, they moved to Québec City to attend university there, Plaintiff Pierre St-Pierre in psychology and Plaintiff Julie St-Jules in civil engineering;
3. To this end, the Plaintiffs leased from the Defendants an apartment located at 1440 Chemin des Braves in Québec City, apartment A, the whole as of July 1, 2002, as appears from a copy of the lease signed on June 15, 2002, Exhibit P-1
4. The Plaintiffs' apartment is a loft comprised of a large room as well as a small adjacent bathroom;
5. Given the configuration of their apartment, the Plaintiffs therefore lived primarily in this large room where all their daily activities took place;
6. The Defendants own the immovable located at 1440 Chemin des Braves, as appears from the certified statement of the rights entered in the land register of that immovable dated August 6, 2003, Exhibit P-2;
7. The Defendants occupy a dwelling of five and a half rooms, namely apartment B, next to that of the Plaintiffs;
8. On March 5, 2003, the Plaintiffs did some maintenance work in their apartment and, when removing the air vent grille located above the front door of their apartment, they noticed a hidden camera in the air vent;
9. The camera was concealed and the lens pointed directly to the back of their apartment where their bed is located;
10. The Plaintiffs immediately contacted the Québec City police department to report the presence of a camera in their apartment;
11. The two police officers who carried out an investigation on the premises, Sergeant Chantale Trudel and Constable Éric Lauzière, discovered that the camera was connected to video recording equipment and a television located in the Defendants' apartment;
12. Consequently, unbeknown to the Plaintiffs, the Defendants were able to film all of their daily activities in their apartment, including the most intimate situations;
13. When searching the Defendants' apartment, the police officers seized over twenty video cassettes containing recordings of the Plaintiffs' daily activities, which recordings were carried out with the hidden camera;
14. These cassettes had labels with dates written on them ranging from July 2, 2002 to February 27, 2003;
15. Moreover, the same search also revealed that the Defendants had prepared a video cassette of excerpts of the Plaintiffs' daily activities which they had sold to third parties through ads in certain specialized magazines;

16. Criminal charges for breaking and entering as well as mischief were brought against the Defendants, as appears from a copy of the indictment dated March 22, 2003, Exhibit P-3;
17. The Defendants deliberately and unlawfully interfered with the Plaintiffs' fundamental rights;
18. More specifically, the Defendants violated the Plaintiffs' right to dignity as well as their right to privacy, particularly, but without limitation, in that:
 - (a) they leased an apartment to the Plaintiffs in which they had installed a video camera without the Plaintiffs' knowledge;
 - (b) they intentionally intercepted the private communications between the Plaintiffs, also without the Plaintiffs' knowledge;
 - (c) they recorded the Plaintiffs' image without their knowledge while the Plaintiffs were in private premises;
 - (d) using the video camera, they monitored the Plaintiffs' private lives at any and all times, without their knowledge;
 - (e) they allowed third parties to view scenes of the Plaintiffs' daily activities;
19. In order to escape the violation of privacy of which they were the victims, the Plaintiffs had to find a new apartment and move in a mad panic, in the middle of their academic session;
20. The Defendants agreed to resiliate the lease, as appears from the resiliation agreement, Exhibit P-4;
21. As a result of these events, the Plaintiffs' lives and studies were greatly disrupted;
22. The Plaintiffs had to miss several weeks of work at their respective part-time jobs because they were physically and mentally unable to cope with the events which had taken place in their lives;
23. As a result of the Defendants' actions, Plaintiff Pierre St-Pierre is entitled to claim the amount of \$76,245, broken down as follows:
 - (a) loss of employment income: \$1,245
 - (b) moral damages: \$50,000
 - (c) exemplary damages: \$25,000

24. As a result of the Defendants' actions, Plaintiff Julie St-Jules is entitled to claim the amount of \$77,200, broken down as follows:

- (a) loss of employment income: \$2,200
- (b) moral damages: \$50,000
- (c) exemplary damages: \$25,000

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

ORDER the Defendants solidarily to pay to Plaintiff Pierre St-Pierre the amount of \$76,245 with interest at the legal rate and the additional indemnity provided for by law as of the date of service;

ORDER the Defendants solidarily to pay to Plaintiff Julie St-Jules the amount of \$77,200 with interest at the legal rate and the additional indemnity provided for by law as of the date of service;

The whole with costs.

On August 8, 2003, the motion to institute proceedings, which is presentable on September 15, 2003, is served upon the defendants with the notice to defendant (not reproduced) as well as a copy of the following exhibits:

- Exhibit P-1: copy of the lease signed on June 15, 2002 **not reproduced;**
- Exhibit P-2: certified statement of the rights entered in the land register of the immovable located at 1440 Chemin des Braves, dated August 6, 2003 **not reproduced;**
- Exhibit P-3: copy of the indictment dated March 22, 2003 **not reproduced;**
- Exhibit P-4: lease resiliation agreement **reproduced hereinbelow:**

Lease Resiliation Agreement

Québec City, this 15th day of March 2003

We, the undersigned, agree to resiliate the lease entered into on July 1, 2002 between us, as of April 1, 2003, without any indemnity being payable by any party by reason of such resiliation. Mélanie Marchand and François Lafrance acknowledge that the discovery of the camera in the apartment of Pierre St-Pierre and Julie St-Jules justifies such resiliation. In consideration whereof, Pierre St-Pierre and Julie St-Jules hereby fully and completely release Mélanie Marchand and François Lafrance as regards the costs of moving and relocating to their new apartment.

Pierre St-Pierre

Pierre St-Pierre, lessee

Mélanie Marchand

Mélanie Marchand, lessor

Julie St-Jules

Julie St-Jules, lessee

François Lafrance

François Lafrance, lessor

When served, the motion is also accompanied by a notice in accordance with article 294.1 of the *Code of Civil Procedure* with respect to the expert assessment carried out by Ginette Lemay, a psychologist who treated the plaintiffs for their psychological problems.

In her report, Ginette Lemay describes the events, the fear and the anguish related to her by the plaintiffs, and she expresses her opinion to the effect that the trauma suffered by the plaintiffs, as a result of the acts reproached against the defendants, is serious and will require months of treatment.

On August 15, 2003, you receive the appearance of M^e Nathaniel Sanche on behalf of the defendants.

You agree with M^e Sanche that he will file a written defence; you also agree on a timetable for the proceeding, which timetable is approved by the court on September 15, 2003.

The agreement as to the conduct of the proceeding provides, in particular, for an examination of the plaintiffs under article 397 of the *Code of Civil Procedure*. Each examination will last four hours and will be held no later than October 1, 2003. The agreement also provides for the psychiatric examination of the plaintiffs, by an expert chosen by the defendants, no later than October 15, 2003.

On October 1, 2003, M^e Sanche carries out the examination on discovery before the filing of the defence of the plaintiffs. During plaintiff Pierre St-Pierre's examination, he asks him the following questions, among others:

Q. Mr. St-Pierre, you stated that the resiliation agreement, Exhibit P-4, was signed by my clients because the camera was discovered in your dwelling?

A. That's correct and that is what the document states.

Q. Isn't it true, instead, that it's because you had mentioned to my clients that you had to move to be closer to the university that my clients agreed to sign in order to accommodate you?

You object on the ground that the last question asked by M^e Sanche is intended to contradict the agreement, Exhibit P-4, by means of testimony.

QUESTION 11 (5 marks)

Is your objection well founded? Explain your answer.

SUPPLEMENTARY FACTS

M^e Sanche's examination of your client ends. You prepare to ask your client a few questions. M^e Sanche objects on the ground that this is his examination and he has the right not to allow you to ask his witness any questions.

QUESTION 12 (5 marks)

Is M^e Nathaniel Sanche's objection well founded? Explain your answer.

SUPPLEMENTARY FACTS

Thereafter, M^e Sanche examines plaintiff Julie St-Jules. On three occasions, he asks her the same series of questions to have her describe the location of the camera, the direction in which the camera lens was pointing and the layout of the loft. Each time, the plaintiff gives the same answers.

He then asks her to explain the details of her claim. The plaintiff answers all his questions. He asks her once again to explain her claim “without exaggerating”. The plaintiff gives him the same answers. Again, he asks her for a third time to explain her claim, reminding her that she is under oath and that she must tell the truth.

You object to the manner in which M^e Sanche is proceeding, deeming it to be abusive and vexatious. He answers that the examination of the plaintiff has only been going on for two and half hours, while the duration provided for in the timetable for the proceeding is four hours, and that he fully intends to use all the time still available to him to continue examining the plaintiff regarding her claim. You object to the continuation of the examination on this subject. You then ask M^e Sanche whether he has any questions to ask your client on other subjects. M^e Sanche confirms that he does not want to ask any questions on another subject and that he insists on continuing his examination of the plaintiff on her claim.

You then decide to immediately leave the premises with your clients.

QUESTION 13 (5 marks)

In the circumstances, do you have a recourse to terminate the examination?

Justify your answer by referring to one or more specific and relevant provisions of the *Code of Civil Procedure*, OTHER THAN ARTICLES 4.1, 4.2, 46 AND 395 C.C.P.

SUPPLEMENTARY FACTS

As provided for in the timetable, M^e Sanche tells you that he intends to have your clients submit to an assessment by Doctor Lallemand, a psychiatrist at the Hôtel-Dieu in Québec City.

You tell M^e Sanche that your clients will be accompanied by Ginette Lemay, a psychologist. M^e Sanche refuses.

QUESTION 14 (5 marks)

Is M^e Nathaniel Sanche’s refusal well founded?

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

SUPPLEMENTARY FACTS

The defendants serve and file their defence on October 29, 2003.

In their defence, they admit that they are the owners of the immovable and that they leased apartment A to the plaintiffs, but they deny or have no knowledge of any of the other paragraphs of the declaration and they add the following paragraphs, among others:

[...]

AND IN ORDER TO RE-ESTABLISH THE FACTS, THE DEFENDANTS ADD THE FOLLOWING:

15. The Defendants did not live alone in apartment B at 1440 Chemin des Braves, because they had leased a room to Georges DuBuisson pursuant to a lease signed on July 1, 2001;
16. The Defendants gave the lease dated July 1, 2001 to their accountant for purposes of preparing their income tax returns for the year 2001 and, since then, the lease cannot be found;
17. All the equipment seized by the police officers was located in the room leased by Georges DuBuisson;
18. The camera was installed in the air vent in apartment A without the knowledge of the Defendants;
19. It was only on March 5, 2003, when the police officers visited, that the Defendants learned this fact, and they were stunned by it;
20. The Defendants were even more astounded when they learned, on March 22, 2003, that they were being charged with breaking and entering and mischief;
21. The Defendants last saw Georges DuBuisson on the evening of March 4, 2003;
22. On 6 March 2003, Georges DuBuisson telephoned Defendant Mélanie Marchand, and when she told him about the seizure carried out by the police officers in his room, he told her that, from then on, no one would be able to find him;
23. All the equipment seized by the police officers belongs to Georges DuBuisson, not the Defendants;
24. While the situation endured by the Plaintiffs is deplorable, it is not at all attributable to the Defendants.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

DISMISS the Plaintiffs' action.

The whole with costs.

Within the time limits stipulated in the timetable, the plaintiffs communicate, in virtue of article 294.1 of the *Code of Civil Procedure*, a written statement from each of their employers regarding the status of their remuneration for the period relevant to the dispute. The statements are duly signed by Paul Gendron, the owner of the restaurant *Les vieux canons*, where Pierre works part-time as a waiter, and by Louise Dufault, director of security at the *Colisée de Québec*, where Julie works part-time as a security guard.

Paul Gendron's written statement also states that Marc Labrie, one of Pierre's work colleagues, indicated to Paul certain changes in Pierre's conduct since his return to work. For example, he forgets certain customers' orders, he makes errors on the bills and he is cold and distant towards the customers.

M^e Sanche notifies you that he will not require the presence of Paul or Louise at the trial.

M^e Sanche does not communicate any exhibits.

Within the time limits stipulated in the timetable, the case is inscribed for proof and hearing, the plaintiffs serve and file their declaration in accordance with article 274.1 of the *Code of Civil Procedure* and the defendants serve and file their declaration in accordance with article 274.2 of the *Code of Civil Procedure*.

On April 8, 2004, in accordance with the provisions of the *Code of Civil Procedure*, you have summoned all your witnesses, including Marc, Pierre's work colleague, in preparation for the trial scheduled for May 10, 2004. You have also filed all your exhibits in the court record within the statutory deadlines.

On May 7, 2004, Marc informs you that he will not be able to be in court on May 10, 2004, because this is his only day off for the week and he has already scheduled a day of golf. He adds that, in any event, all he would state in court is already contained in the written statement of Paul, his employer.

QUESTION 15 (5 marks)

Does the written statement of Paul Gendron serve in lieu of the testimony of Marc Labrie? Explain your answer.

SUPPLEMENTARY FACTS

The trial begins today, May 10, 2004. You call Sergeant Chantale Trudel as your first witness. During her examination, she expresses her need to use the notes she prepared on March 5, 2003. M^e Sanche objects on the ground that the witness must testify from memory.

QUESTION 16 (5 marks)

What is your reply to this objection?

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

- (a) The prior written statement of a witness may be admitted as testimony to establish a fact in dispute if its reliability is sufficiently guaranteed.**
- (b) The court may accept a written statement as testimony.**
- (c) The use of notes by a witness is permitted to refresh the witness' recollection if the notes were prepared by the witness.**
- (d) A document prepared by a police officer in the ordinary course of his activities as an investigator is admissible as evidence by reason of the presumption of reliability associated with such a document.**

SUPPLEMENTARY FACTS

Your second witness is the plaintiff Pierre St-Pierre. You ask him the following questions, among others:

Q. Mr. St-Pierre, please explain to the court how your life was disrupted following the discovery of the hidden camera on March 5, 2003.

A. I suffered many inconveniences. First, I suffered intense stress. Everywhere I went, I felt that people were looking at me and seemed to recognize me, it was very embarrassing. Because of this, I gradually isolated myself from my friends and

M^e Sanche:

Objection, this is not alleged in the written proceedings and I have been taken by surprise.

QUESTION 17 (5 marks)

Is M^e Nathaniel Sanche's objection well founded? Explain your answer.

SUPPLEMENTARY FACTS

You declare that you have finished presenting your evidence and M^e Sanche begins to present the evidence for the defence. He calls the defendant Mélanie Marchand as his first witness and asks her the following questions, among others:

Q. Ms. Marchand, your spouse and you had leased a room in your apartment at Chemin des Braves to Mr. Georges DuBuisson?

A. That's correct.

Q. On what date did you sign this lease?

A. On July 1, 2001.

Q. Can you produce this lease?

A. No, the lease was given to our accountant in the spring of 2002 for our income tax returns and, since then, it cannot be found.

You object on the ground that the defendant cannot, through her testimony, provide proof of the lease, which lease is evidenced in writing. The defendants must therefore produce the written instrument under the best evidence rule.

QUESTION 18 (5 marks)

Is your objection well founded? Explain your answer.

SUPPLEMENTARY FACTS

In the course of the evidence presented by the defence, evidence is provided that the defendants were acquitted of the charges set out in Exhibit P-3. A certified true copy of the judgment acquitting the defendants was filed as Exhibit D-1 (**not reproduced**).

All the witnesses have been heard and both parties declare that they have finished presenting their evidence. After the closing arguments, the judge takes the case under advisement.

The following day, your clients, Pierre and Julie, meet with you and inform you of their concern. Given that the judge read the judgment acquitting the defendants of the criminal charges brought against them, they believe that the judge will necessarily dismiss their action.

QUESTION 19 (5 marks)

Considering the judgment of acquittal on the criminal charges, are your clients right in fearing that the judge will necessarily dismiss their action? Explain your answer.

CORRIGÉ
PREUVE ET PROCÉDURE - EXAMEN DE REPRISE
10 mai 2004

DOSSIER 1 (40 POINTS)

QUESTION 1 (5 points)

Quelle forme devra prendre la demande d'annulation de la saisie avant jugement?

Une requête écrite (en cours d'instance, art. 88 *C.p.c.*).

1.

QUESTION 2 (5 points)

Cette demande 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. 396.1 *C.p.c.*

2.

QUESTION 3 (5 points)

M^e Louise Trudeau pourrait-elle par la suite faire signifier et présenter une demande de cautionnement pour frais qui résulteraient de la demande reconventionnelle, au motif que le siège de 335004 Canada Ltd. est situé à Ottawa? Dites pourquoi.

Non, en l'instance, seul le demandeur principal (donc celui qui a initié l'instance) est tenu de fournir caution. (art. 65 *C.p.c.*)

3.

QUESTION 4 (5 points)

Le jugement du 24 octobre 2003 est-il susceptible d'appel de plein droit?

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

Non, art. 26 al. 2 par. 2 *C.p.c.*

4.

QUESTION 5 (5 points)

Dans quel délai l'acte de procédure nécessaire pour en appeler du jugement rendu le 24 octobre 2003 devait-il être signifié et produit?

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

Dans les dix jours, art. 494 al. 3 *C.p.c.*

5.

QUESTION 6 (5 points)

Compte tenu des conclusions de la requête introductive d'instance, qui comporte une demande pour faire déclarer valable la saisie avant jugement pratiquée en l'instance, le greffier a-t-il compétence pour rendre ce jugement?

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

Oui, art. 194 al. 3 *C.p.c.*

6.

QUESTION 7 (5 points)

À compter de quelle date cette saisie pourrait-elle être pratiquée?

À compter du samedi, 20 décembre 2003.

7.

QUESTION 8 (5 points)

Comment M^e Louise Trudeau doit-elle alors procéder?

Elle doit obtenir la délivrance d'un bref de *venditioni exponas* afin de faire vendre les biens meubles saisis avant jugement.

(art. 556 al. 2 *C.p.c.*)

8.

DOSSIER 2 (15 POINTS)

QUESTION 9 (9 points)

Rédigez le **TITRE** , l'**ADRESSE** et la **CONCLUSION PRINCIPALE** de l'acte de procédure approprié. Ne signez pas l'acte de procédure pour assurer votre anonymat.

Titre :

REQUÊTE DE L'INTERVENANTE POUR AUTORISER
SON INTERVENTION CONSERVATOIRE
(art. 210 al. 2 C.p.c.)

9.

Adresse :

À L'UN DES JUGES DE LA COUR SUPÉRIEURE, SIÉGEANT EN CHAMBRE DE PRATIQUE DANS
LE DISTRICT DE JOLIETTE, L'INTERVENANTE EXPOSE :

10.

Conclusion principale :

AUTORISER l'intervenante à intervenir dans la présente instance.

11.

QUESTION 10 (6 points)

Rédigez l'**ADRESSE** et la **CONCLUSION** de l'acte de procédure approprié. Ne signez pas l'acte de procédure pour assurer votre anonymat.

Adresse :

AU JUGE GASTON RODRIGUE, SIÉGEANT EN CHAMBRE DE PRATIQUE DE LA COUR
SUPÉRIEURE DANS LE DISTRICT DE JOLIETTE, L'INTERVENANTE EXPOSE :

12.

Conclusion :

VOUS RÉCUSER dans le présent dossier.

OU

RÉCUSER le juge Gaston Rodrigue dans le présent dossier.

13.

DOSSIER 3 (45 POINTS)

QUESTION 11 (5 points)

Votre objection est-elle bien fondée? Dites pourquoi.

Non, parce que M^e Sanche peut tenter d'obtenir de la partie adverse un aveu ou un commencement de preuve afin de contredire l'écrit. 14.

(art. 2863 et 2865 C.c.Q.)

QUESTION 12 (5 points)

L'objection de M^e Nathaniel Sanche est-elle bien fondée? Dites pourquoi.

Non, le procureur de la partie interrogée peut poser des questions pour compléter, expliquer ou préciser des réponses déjà fournies. 15.

QUESTION 13 (5 points)

Dans les circonstances, disposez-vous d'un recours pour mettre fin à cet interrogatoire?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code de procédure civile* AUTRES QUE LES ARTICLES 4.1, 4.2, 46 ET 395 C.P.C.

Oui, art. 396.4 C.p.c. 16.

QUESTION 14 (5 points)

Le refus de M^e Nathaniel Sanche est-il bien fondé?

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

Non, art. 399 al. 2 C.p.c. 17.

QUESTION 15 (5 points)

La déclaration écrite de Paul Gendron tient-elle lieu du témoignage de Marc Labrie? Dites pourquoi.

Non, c'est du oui-dire.

OU 18.

Non, la déclaration écrite de Paul Gendron ne peut établir la véracité des faits rapportés par Marc Labrie.

QUESTION 16 (5 points)

Que répliquez-vous à cette objection?

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

- a) La déclaration antérieure écrite d'un témoin peut être admise à titre de témoignage pour établir un fait en litige si elle présente des garanties suffisamment sérieuses de fiabilité.
- b) Le tribunal peut accepter à titre de témoignage une déclaration écrite.
- c) L'utilisation de notes par un témoin est permise pour lui rafraîchir la mémoire quand elles ont été rédigées par ce dernier.
- d) Un document préparé par un policier dans le cours normal de son activité d'enquêteur est admis en preuve en raison de la présomption de fiabilité attachée à un tel document.

Réponse : c)

19.

QUESTION 17 (5 points)

L'objection de M^e Nathaniel Sanche est-elle bien fondée ? Dites pourquoi.

Non, vu l'allégation générale du paragraphe 21 de la requête introductive d'instance.

20.

QUESTION 18 (5 points)

Votre objection est-elle bien fondée ? Dites pourquoi.

Non, lorsqu'une partie ne peut, malgré sa bonne foi et sa diligence, produire l'original de l'écrit, la preuve peut être faite par tout moyen y compris par témoignage.

21.

(art. 2860 al. 2 C.c.Q.).

QUESTION 19 (5 points)

Vu le jugement d'acquiescement au criminel, vos clients ont-ils raison de craindre que le juge rejette nécessairement leur demande? Dites pourquoi.

Non, le fardeau de preuve en droit civil n'est pas le même qu'en droit criminel, et le juge pourrait conclure à la lumière des faits prouvés devant lui à la responsabilité des défendeurs.

22.