

# SAMPLE QUESTIONS GRADED EVALUATION

Caution : Please note that the fact patterns of the files in this document have been updated on June 2015 after the coming into force of the *Code of Professional Conduct of Lawyers*. The answers provided in the answer key are based on the legislation and regulation in force at the time of this update.

Also, please note that the marks allocated to the files in this document have not been updated and may vary from a graded evaluation to another.

FILE 1 (8 MARKS)
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On June 8, 2015, Thérèse Lapensée phones Me Olivier Lamoureux's office to make an appointment. A meeting is scheduled for June 12, 2015. For purposes of the meeting, Sandra Pellerin, Me Lamoureux's secretary, takes out an old file of Thérèse Lapensée relating to proceedings involving the Régie du logement. Sandra checks Thérèse Lapensée's personal information and contact information. Given that they have not changed, Sandra gives the file to Me Lamoureux.

On June 12, 2015, Thérèse goes to the meeting with two decisions rendered by the Ministère de l'Emploi et de la Solidarité sociale (social assistance). The first decision, rendered on May 28, 2015, terminates Thérèse's income security benefits as of May 29, 2015, on the ground that she has been living in a de facto union with Éric Foucault for two years and has failed to declare this fact to the Ministère. The second decision, rendered on June 5, 2015, allows a claim by the Ministère for an amount of \$7,000 which Thérèse received without being entitled thereto, also based on the ground of the de facto union with Éric Foucault.

During the interview, Thérèse admits to Me Lamoureux that she lived with Éric, but she states that when she received the first decision, she asked Éric to leave her dwelling, and he did so. Thérèse does not understand why the Ministère is terminating her benefits, because she has no other source of income. She submits to Me Lamoureux that she should not be required to repay these sums, because she has the right to live with whomever she wants. Me Lamoureux suggests to her that she testify that Éric Foucault was a boarder, because this is the only defence available in this case.

At the end of the meeting, which lasts approximately half an hour, Me Lamoureux asks his client for a \$500 deposit. She only has \$200 in cash which she gives to Me Lamoureux. Thérèse asks about the costs this matter may entail. Me Lamoureux reassures her by telling her that he will reduce his usual hourly rate from \$200 to \$140, without any further explanation.

After Thérèse's departure, Me Lamoureux sends the applications for review of the two decisions in which he formally requests a date for a conference call during which he will present his observations orally. Me Lamoureux files the documents in the file folder his secretary had given him. He fills out the client card and, on his deposit slip, adds the amount of \$200 remitted by Thérèse to the fees received from his other clients; later that same day, he makes the deposit into his general account.

On June 18, 2015, the revising officer in charge of the case contacts Me Lamoureux and a conference call is scheduled for July 6, 2015, because Me Lamoureux will not be available before this date. Me Lamoureux notifies his client about the date of the conference call and asks Sandra to record this date in his agenda.

On June 29, 2015 Sandra takes out Thérèse Lapensée's file so that Me Lamoureux can prepare for the conference call on July 6, 2015. However, he is very busy that day and does not review his client's file until July 3, 2015.

On July 3, 2015, without contacting Thérèse, Me Lamoureux phones the revising officer and tells him that his client is not feeling well and that the conference call will have to be postponed. A new conference call is scheduled for July 27, 2015, because Me Lamoureux will be on vacation from July 13 to July 17, 2015. On July 3, 2015, he contacts his client to inform her that the revising officer cannot proceed before July 27, 2015. Thérèse is disappointed because she still has no income.

On July 6 and 7, 2015, Me Lamoureux checks the law and carries out doctrinal and jurisprudential research in Thérèse's file. He then prepares an invoice which he sends to his client on July 7, 2015. He sets aside the file until July 20, 2015.

On July 9, 2015, Thérèse receives a detailed invoice for professional services rendered by Me Lamoureux to date and is surprised to see a balance owing of \$600. She immediately calls Me Lamoureux's office, but he refuses to take the call and asks Sandra to say that he is in court and will call her back later. On July 10, 2015, Me Lamoureux is at his office, but because he has to leave on vacation, he does not have the time to call Thérèse regarding the invoice.

On July 23, 2015, Thérèse once again calls Me Lamoureux to complain about the invoice. As sole answer, he tells Thérèse that he did the work. Then Thérèse informs him that she cannot afford his services and that she will represent herself during the conference call on July 27, 2015.

#### QUESTION 1

State **TEN** the breaches of the rules of ethics and professional practice committed by Me Olivier Lamoureux. For each breach, justify your answer by referring:

- (a) to the specific and relevant facts contained in the fact pattern;
- (b) to one or more specific and relevant legislative or regulatory provisions.

Please note that 1 mark out of 8 marks will be awarded to students who have not added any irrelevant or incorrect breach.

FILE 2 (4 MARKS)
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In June 2010, Me Nicholas Walter acted as family mediator for Mona Bond and Philippe Robinson. On July 9, 2010, Me Walter drafted a summary of the agreements entered into as a result of the mediation. That same day, Me Walter had Mona and Philippe sign the affidavits annexed to the joint application for divorce which sought, among other things, to give Mona custody of her two children, Daphnée and Raphaël, who were then 1 and 3 years old, and to establish the support payments for Daphnée and Raphaël. The motion was presentable on August 24, 2010 in the Superior Court case number 500-12-001001-101. On August 24, 2010, Me Suzanne Touché, in her capacity as special clerk, rendered a judgment and confirmed the consent signed by the parties.

On July 22, 2015, Me Walter, acting on behalf of Philippe Robinson in the Superior Court case number 500-12-001001-101, prepares a demand to modify accessory measures for custody of the children, cancellation of the support payments and an interim order. The demand is presentable on August 10, 2015.

Me Jeanne Mazza, Mona Bond's new lawyer, contacts Me Walter and informs him that she is of the opinion that he is in a situation of conflict of interests; according to her, he cannot represent Philippe, because he previously acted as mediator between Philippe and her client Mona and, moreover, he prepared the joint application for divorce at the time of the July 2010 proceedings.

Me Walter informs Me Mazza that the July 2015 demand deals with entirely new facts and a very different situation: he explains that, since the judgment granting Mona custody, the children have never in fact lived with her. He tells Me Mazza that he believes that the fact that he acted as mediator and prepared the written proceedings in accordance with the agreements entered into during the mediation does not automatically create a situation of conflict of interests. Furthermore, given that he has a thriving practice and given that since the year 2010 he has handled hundreds of family law cases, he does not remember this case in particular. According to him, he can most certainly represent Philippe.

## QUESTION 2

Is Me Nicholas Walter right in stating that he can continue to represent Philippe Robinson with respect to the July 22, 2015 demand? Give reasons for your answer and refer to the specific facts contained in the fact pattern as well as to one or more specific and relevant legislative or regulatory provisions.

FILE 3 (4 MARKS)
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Me Éric Benoît has been a sole practitioner for ten years, practising almost exclusively in the field of family law. In 2009, Me Benoît represented a couple who undertook procedures to adopt a little girl born to a single mother who was a minor and a drug addict. The adoption process was long and difficult, but, finally, in January 2015, Claire Sarrazin and Andrew Sendel became the parents of Sara-Maude Sendel who is now 7 years old.

On July 29, 2015, while he is in a restaurant, Me Benoît is approached by a young man who asks him if he is indeed Me Éric Benoît, before informing him that he absolutely has to speak to him in private. Me Benoît asks him to identify himself. The young man introduces himself as John Smith and adds that a little girl whose first name is Sara-Maude is in serious danger. Me Benoît, who does not want to create a scene at the restaurant and is intrigued by John Smith's remarks, invites John to his office.

At the office, John asks Me Benoît if he previously represented a person by the name of Andrew Sendel in an adoption matter. Me Benoît tells him that he cannot divulge the identity of his clients. John, who is visibly flustered and nervous, then tells Me Benoît that at the age of 15, he met Marie-Jeanne Lafleur. At that time, he and Marie-Jeanne were homeless and consumed alcohol and drugs. Three weeks ago, after several years without any contact with Marie-Jeanne, John bumped into her in a park. She told him that he was the father of a little girl. Marie-Jeanne also told him that his daughter was now called Sara-Maude Sendel because she had been adopted. She claimed to know where her daughter was living and stated that she would soon go get her. She added that she would go to the residence of the Sarrazin-Sendel family at night, ensuring that she was armed, and she would do whatever is necessary to take back her daughter voluntarily or by force. Marie-Jeanne stated that she had no concerns, that she had a plan, that a number of injustices would be remedied and that she and her daughter would finally be reunited. John believes Marie-Jeanne is serious about her plan; she showed him what seemed to be a court document on which she had scribbled some information, including Me Benoît's name, the address of the Sarrazin-Sendel family and some telephone numbers.

John asks Me Benoît to warn the parents of Sara-Maude because he fears that the little girl's life is in danger.

### QUESTION 3

Does professional secrecy prevent Me Éric Benoît from disclosing to Claire Sarrazin and Andrew Sendel the statements made by John Smith during the visit to his office? Give reasons for your answer and refer to the specific facts contained in the fact pattern as well as to one or more specific and relevant legislative or regulatory provisions.

FILE 4 (4 MARKS)
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On August 10, 2015, Lucie Brodeur goes to the office of Me Denise Dubuc.

Lucie explains to Me Dubuc that her husband, Fernand Talbot, died on June 30, 2015. He had prepared a will naming her the universal legatee. Lucie is distraught; she has no job and she is worried about her financial future and that of her two children, Ludovic, who is 15 years old, and Xavier, who is 9 years old.

Fernand worked at the restaurant Le Coq D'or. His annual income was \$25,000 and he had no other benefits. Fernand had a \$10,000 life insurance policy. This amount was used to pay the funeral expenses and Lucie only has \$4,000 left. She informs Me Dubuc that she made an appointment with the income-security department (social assistance) in order to obtain last resort financial assistance benefits.

Lucie has no personal assets.

Fernand's succession is composed of the following property:

- a house evaluated at \$58,000 by the municipality of Saint-Lin. The house, which serves as the principal residence for Lucie and her children, is charged with a \$22,000 hypothec;
- an automobile having a value of \$2,500;
- furniture having a value of \$6,000;
- a balance of \$300 in a bank account.

Lucie wants to know whether she can get legal aid for the transfer of ownership of the Saint-Lin property in her name. Me Dubuc tells her that she cannot, because she now has money in the bank. Furthermore, legal aid does not have a permanent notary on staff and, according to Me Dubuc, legal aid does not cover the services required in connection with settling a succession.

#### QUESTION 4

Is Me Denise Dubuc right in claiming that the Legal Aid Act does not cover the services required in connection with settling a succession? Give reasons for your answer and refer to the specific facts contained in the fact pattern as well as to one or more specific and relevant legislative or regulatory provisions.

#### QUESTION 5

Is Me Denise Dubuc right in claiming that Lucie Brodeur is not eligible for legal aid because she has a sum of money in the bank? Give reasons for your answer and refer to the specific facts contained in the fact pattern as well as to one or more specific and relevant legislative or regulatory provisions.