

**GRADED EVALUATION 1**  
**EXAMPLES OF QUESTIONS**

Caution : please note that the fact patterns in this document have not been updated. Consequently, the answers provided in the answer key are based on the legislation and regulation in force at the time the questions were written.

FILE 1 (6 MARKS)
------------------

Example taken from Graded Evaluation 1 (autumn 2007).

On June 8, 2007, Thérèse Lapensée phones M<sup>e</sup> Olivier Lamoureux's office to make an appointment. A meeting is scheduled for June 12, 2007. For purposes of the meeting, Sandra Pellerin, M<sup>e</sup> 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 M<sup>e</sup> Lamoureux.

On June 12, 2007, Thérèse goes to the meeting with two decisions rendered by the Ministère de l'Emploi et de la Solidarité sociale (aide sociale). The first decision, rendered on May 29, 2007, terminates Thérèse's income-security benefits as of May 30, 2007, 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 6, 2007, 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 M<sup>e</sup> 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 M<sup>e</sup> Lamoureux that she should not be required to repay these sums, because she has the right to live with whomever she wants. M<sup>e</sup> 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, M<sup>e</sup> Lamoureux asks his client for a \$500 deposit. She only has \$200 in cash which she gives to M<sup>e</sup> Lamoureux. Thérèse asks about the costs this matter may entail. M<sup>e</sup> 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, M<sup>e</sup> 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. M<sup>e</sup> 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, 2007, the revising officer in charge of the case contacts M<sup>e</sup> Lamoureux and a conference call is scheduled for July 4, 2007, because M<sup>e</sup> Lamoureux will not be available before this date. M<sup>e</sup> Lamoureux notifies his client about the date of the conference call and asks Sandra to record this date only in Thérèse Lapensée's file, without writing it in his agenda.

On June 29, 2007 Sandra takes out Thérèse Lapensée's file so that M<sup>e</sup> Lamoureux can prepare for the conference call on July 4, 2007. However, he is very busy that day and does not review his client's file until July 3, 2007.

On July 3, 2007, without contacting Thérèse, M<sup>e</sup> 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 25, 2007, because M<sup>e</sup> Lamoureux will be on vacation from July 11 to July 19, 2007. On July 3, 2007, he contacts his client to inform her that the revising officer cannot proceed before July 25, 2007. Thérèse is disappointed because she still has no income.

On July 4 and 5, 2007, M<sup>e</sup> 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 5, 2007. He sets aside the file until July 20, 2007.

On July 9, 2007, Thérèse receives a detailed invoice for professional services rendered by M<sup>e</sup> Lamoureux to date and is surprised to see a balance owing of \$600. She immediately calls M<sup>e</sup> 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, 2007, M<sup>e</sup> Lamoureux is at his office, but he is dealing with his urgent cases, because he has to leave on vacation the next day, and does not have the time to call Thérèse regarding the invoice.

On July 23, 2007, Thérèse once again calls M<sup>e</sup> Lamoureux to complain about the invoice. He tells Thérèse that he did the work and that if she does not pay him by July 24, 2007, she will have to find another lawyer or handle the conference call scheduled for July 25, 2007 on her own. Given that Thérèse is unable to borrow the necessary amount to pay M<sup>e</sup> Lamoureux's invoice and does not find another lawyer, she represents herself during the conference call on July 25, 2007.

#### QUESTION 1

State **NINE** breaches of the rules of ethics and professional practice committed by M<sup>e</sup> Olivier Lamoureux. For each breach, justify your answer by referring:

- (a) to the specific 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 6 marks will be awarded to students who have not added any irrelevant or incorrect breach.

FILE 2 (3 MARKS)
------------------

Example taken from Graded Evaluation 1 (winter 2010).

In June 2000, M<sup>e</sup> Nicholas Walter acted as family mediator for Mona Bond and Philippe Robinson. On July 10, 2000, M<sup>e</sup> Walter drafted a summary of the agreements entered into as a result of the mediation. That same day, M<sup>e</sup> 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, 2000 in the Superior Court case number 500-12-001001-001. On August 24, 2000, M<sup>e</sup> Suzanne Touché, in her capacity as special clerk, rendered a judgment and confirmed the consent signed by the parties.

On December 3, 2009, M<sup>e</sup> Walter, acting on behalf of Philippe Robinson in the Superior Court case number 500-12-001001-001, prepares an application for custody of the children, cancellation of the support payments and an interim order. The motion is presentable on January 19, 2010. On December 16, 2009, M<sup>e</sup> Jeanne Mazza, Mona Bond's new lawyer, contacts M<sup>e</sup> 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 2000 proceedings.

M<sup>e</sup> Walter informs M<sup>e</sup> Mazza that the December 3, 2009 motion 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 M<sup>e</sup> 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 2000 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 M<sup>e</sup> Nicholas Walter right in stating that he can continue to represent Philippe Robinson with respect to the December 3, 2009 motion? 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 provisions.

<b>FILE 3 (6 MARKS)</b>
-------------------------

Example taken from Graded Evaluation 1 (autumn 2006).

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.

Ryan Leclerc, the principal shareholder and director of the hardware store ABC inc., received a motion to institute proceedings instituted by one of its suppliers, Matériaux Toutépreuve inc., which is asking for the cancellation of a contract and the payment of damages due to illegal and abusive clauses.

Ryan gives M<sup>e</sup> Julie Bonsecours the mandate to represent the company. In the course of preparing the defence, M<sup>e</sup> Bonsecours analyzes the various elements of the motion and schedules a meeting at Ryan's office in order to obtain relevant information. During the meeting, M<sup>e</sup> Bonsecours asks questions regarding the company's financial and accounting matters. Although Ryan is able to provide some answers to these questions, it is necessary for Simone Dupuis, an employee in the accounting department of the hardware store ABC inc., to attend the meeting in order to explain the various procedures that exist and answer the lawyer's questions.

During this meeting to prepare for the trial, M<sup>e</sup> Bonsecours decides to have Sophie Allard, a good customer of the hardware store ABC inc., testify. However, M<sup>e</sup> Bonsecours learns that Sophie will be on vacation at the time of the trial. She therefore decides to offer Sophie an amount of \$100, in addition to the amounts that will be paid to her by law, in order to compensate her for the loss of one day of vacation.

### QUESTION 3

Does M<sup>e</sup> Julie Bonsecours's offer constitute a breach of her ethical obligations? 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 provisions.

### SUPPLEMENTARY FACTS

The day of the trial arrives. At the beginning of the hearing, M<sup>e</sup> Louis Savaria, the lawyer for Matériaux Toutépreuve inc., announces that he will call three witnesses, namely two representatives of his client as well as Daniel Héту, a former employee of the hardware store ABC inc. Ryan is very surprised to learn that Daniel Héту will testify at the trial.

The first day of the hearing ends and the case is adjourned to the following day. It will begin with the testimony of Mr. Héту. M<sup>e</sup> Bonsecours drives her client to his home and uses the occasion to review the first day of the hearing and prepare a strategy for the rest of the trial. Ryan, who is visibly angry, states that he is certain that it is Daniel Héту who is causing him all these legal problems. He raises his voice and declares that Daniel is an ungrateful person. Ryan, who is getting angrier and angrier, bangs his fist, yells louder and states that he will teach him to keep his mouth shut and will make sure that he regrets his actions. He says that he knows just the person to take care of this. M<sup>e</sup> Bonsecours, who has been working with Ryan for more than three years, has never seen her client in such a state. She tries to calm him down, but is unable to do so. She drops off Ryan at his home and goes to the office to prepare for the second day of the hearing. She is shaken by her client's statements and fears for the safety of Daniel Héту.

### QUESTION 4

Must M<sup>e</sup> Julie Bonsecours disclose to the appropriate authorities what Ryan Leclerc confided to her? 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 provisions.

### SUPPLEMENTARY FACTS

During the second day of the hearing, under cross-examination, M<sup>e</sup> Savaria asks Simone Dupuis, the employee in the accounting department of the hardware store ABC inc., to repeat what she stated during the meeting organized by M<sup>e</sup> Bonsecours to prepare the defence.

### QUESTION 5

Is there an objection that M<sup>e</sup> Julie Bonsecours can raise? 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 provisions.