

FINAL EVALUATION (DAY 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 (8 MARKS)

Problem 1

Brigitte Lepailleur, a shareholder of *Électrovote inc.*, a corporation governed by the *Canada Business Corporations Act* (hereinafter referred to as "CBCA"), consults you today regarding decisions which *Électrovote inc.* intends to make. Brigitte Lepailleur does not agree. She wants to assert the right of dissent conferred upon her by section 190 *CBCA*.

QUESTION 1

From among the following elements, WHICH ONES ARE essential in order to give rise to her right of dissent? Blacken the corresponding BOXES on your answer sheet.

- (a) The registered office of *Électrovote inc.* is located at 3050 Industriel Boulevard, Beauceville, province of Québec.
- (b) *Électrovote inc.* operates a business that designs and manages electronic voting systems.
- (c) Its share capital is comprised of two classes of shares:
 - an unlimited number of common shares conferring the rights set out in subsection 24 (3) *CBCA* ;
 - 1,000 class "A" preferred shares conferring upon the holders thereof voting rights under all circumstances;
- (d) 3,000 common shares are issued and outstanding and are held by brothers Paul, Benoit and Charles Boutin.
- (e) 1,000 class "A" preferred shares are issued and are all held by Brigitte Lepailleur.
- (f) The directors of *Électrovote inc.* are Paul, Benoit and Charles Boutin and Brigitte Lepailleur.
- (g) *Électrovote inc.* intends to acquire all the assets of *Infotech inc.*, a competing business located in Montreal and incorporated under Part IA of the *Companies Act*.
- (h) To finance this acquisition, *Électrovote inc.* will issue new class "A" preferred shares. To this end, it will amend its articles to henceforth provide for an unlimited number of class "A" preferred shares.
- (i) At the same time, *Électrovote inc.* intends to change its name to *Infotech Électrovote inc.*
- (j) *Électrovote inc.* also intends to move its registered office to 195 Place Jacques-Cartier, Montreal, province of Québec.
- (k) *Électrovote inc.* is a highly profitable and highly solvent corporation.

Problem 2

Placements Robespierre inc. is a company governed by Part IA of the *Companies Act* (hereinafter referred to as "QCA"). Its share capital is comprised of an unlimited number of class "A", class "B" and class "C" shares with the following rights, privileges, conditions and restrictions:

Class "A" shares: these shares confer the rights set forth in section 123.40 *QCA*.

Class "B" shares: these shares are non-voting. They confer the right to receive a non-cumulative, preferred dividend of 8% per annum calculated on the amount paid into the issued and paid-up share capital account for the said class "B" shares, said dividend to be paid in preference to dividends on the class "A" and class "C" shares, and upon the dissolution or winding-up of the company they also confer the right, in preference to the class "A" and class "C" shares, to receive the amount paid into the issued and paid-up share capital account for the said class "B" shares together with any unpaid dividends. These shares are non-participating. They may be redeemed by the company for an amount equal to the amount paid into the issued and paid-up share capital account for the said shares plus any unpaid dividends.

Class "C" shares: these shares are non-voting. They confer the right to receive a cumulative, preferred dividend of 10% per annum calculated on the amount paid into the issued and paid-up share capital account for the said class "C" shares, said dividend to be paid in preference to dividends on the class "A" shares, and upon the dissolution or winding-up of the company they also confer the right, in preference to the class "A" shares, to receive the amount paid into the issued and paid-up share capital account for the said class "C" shares together with any accrued and unpaid dividends. These shares are non-participating. They may be redeemed at the holder's option for an amount equal to the amount paid into the issued and paid-up share capital account for the said shares plus any accrued and unpaid dividends.

The class "B" shares also include the following right of veto provision:

<p>No conversion of the class "B" shares shall take place and no new class of shares having a rank equal to, or superior to the class "B" shares shall be created and the provisions set out hereinabove relating to the class "B" shares shall not be modified, unless such conversion, creation or modification has been approved by a vote of at least three quarters ($\frac{3}{4}$) of the class "B" shares as well as by a separate vote of at least three quarters ($\frac{3}{4}$) of each class of shares whose rights may be adversely affected by such conversion, creation or modification, which shares are represented by the holders thereof at a meeting of shareholders duly called for such purpose, and unless all other formalities required by the <i>Companies Act</i> have been fulfilled.</p>
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The class "C" shares include a veto provision to the same effect.

The company's balance sheet as at today's date is as follows:

PLACEMENTS ROBESPIERRE INC. BALANCE SHEET AS AT DECEMBER 21, 2005			
ASSETS		LIABILITIES	
			\$350,000
		SHAREHOLDERS' EQUITY	
		Issued and paid up share capital:	
		1,000 class "A" shares	\$10,000
		1,000 class "B" shares	\$10,000
		2,000 class "C" shares	<u>\$10,000</u>
			\$30,000
		Retained earnings:	\$100,000
		TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	
TOTAL ASSETS	\$480,000		\$480,000

Dividends of \$4,000 are accrued and unpaid on the class "C" shares for the years 2001, 2002, 2003 and 2004.

QUESTION 2

Assuming that, today, *Placements Robespierre inc.* were to declare and pay a lawful dividend of \$20,000, what amount would holders of class "A" shares be entitled to receive? Blacken the corresponding box on your answer sheet.

- (a) \$0
- (b) \$5,000
- (c) \$14,200
- (d) \$15,000
- (e) \$15,200
- (f) \$16,000
- (g) \$19,200
- (h) \$20,000

QUESTION 3

The board of directors of *Placements Robespierre inc.* adopted a by-law to increase the rate of the dividend associated with the class "C" shares to 12%. What class or classes of shares is (are) entitled to vote on this change? Blacken the corresponding box on your answer sheet.

- (a) only the class "A" shares.
- (b) the class "A" and class "B" shares together.
- (c) the class "A" and class "B" shares separately.
- (d) the class "A" and class "C" shares together.
- (e) the class "A" and class "C" shares separately.
- (f) the class "A", class "B" and class "C" shares together.
- (g) the class "A", class "B" and class "C" shares separately.

Problem 3

On December 15, 2004, *Importations Brado inc.* was incorporated under the *Canada Business Corporations Act*. Its registered office is located at 69 Stuart Street, Ottawa, Ontario.

Since its incorporation and until February 12, 2005, Julie Tanguay and Maxime Roy were the shareholders and directors of *Importations Brado inc.*; furthermore, Julie was also the president and Maxime the secretary.

On February 12, 2005, Maxime assigned his shares in the share capital of *Importations Brado inc.* to Julie and, the same day, he resigned as director and secretary of the corporation.

On June 1, 2005, *Importations Brado inc.* opened an establishment at 4035 du Casino Avenue, Gatineau, Québec, and began its operations in Québec at that time.

QUESTION 4

In light of these facts, indicate, from among the answers hereinbelow, which one sets out the documents *Importations Brado inc.* was required to file? Blacken the corresponding box on your answer sheet.

- (a) a declaration of registration with the enterprise registrar within 60 days following its incorporation and an amending declaration with the enterprise registrar within 15 days following Maxime Roy's departure.
- (b) an amending declaration with the enterprise registrar and a notice of change of directors with the Director, both documents required to be filed within 15 days following Maxime Roy's departure.
- (c) a notice of change of directors with the Director filed within 15 days following Maxime Roy's departure and a declaration of registration with the enterprise registrar filed within 60 days following the opening of the Gatineau establishment.
- (d) articles of amendment with the Director in order to authorize the opening of the Gatineau establishment, a notice of change of directors with the Director filed within 15 days following Maxime Roy's departure and a declaration of registration with the enterprise registrar filed within 60 days following the opening of the Gatineau establishment.

FILE 2 (8 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.

Éric Lemieux has been employed for four years as a machine mechanic by *Excavation Charland inc.*, a non-unionized firm. On January 10, 2005, he injures his back when jumping off a truck he has just repaired.

He suffers a lower back sprain. On January 24, 2005, the Commission de la santé et de la sécurité du travail (hereinafter referred to as the *CSST*) accepts his claim and pays him the income replacement indemnity to which he is entitled.

The employer asks its physician, Dr. Brunet, to examine Éric. On February 14, 2005, during the interview, Éric tells the doctor that he has significant pain in his lower back and cannot do any work at all requiring effort or bending. These statements are mentioned in the doctor's report which is sent to the *CSST* that same day.

On February 17, 2005, the employer notifies the *CSST* that it had a security agency keep Éric under surveillance and that it has a video cassette, filmed the previous day, showing Éric removing snow from the front of his house and his garage with the help of a snow blower. This video was filmed from an unmarked van parked on the street across from Éric's home.

Immediately and in accordance with the directives of the *CSST* in such cases, the indemnification agent decides to suspend the payment of the income replacement indemnity payable to Éric pursuant to section 142 of *An Act respecting industrial accidents and occupational diseases* (hereinafter referred to as the *ARIAOD*) and to claim from him the repayment of the indemnity amounts received since the accident. On February 21, 2005, Éric receives a written decision to that effect.

QUESTION 5

Did the indemnification agent for the Commission de la santé et de la sécurité du travail comply with the obligations imposed on him by *An Act respecting administrative justice*? Blacken the corresponding box on your answer sheet.

- (a) No, pursuant to subparagraph (2) of section 4 and section 6 of *An Act respecting administrative justice*, he was required to give Éric the opportunity to provide any information useful for the making of the decision.
- (b) Yes, pursuant to subparagraph (4) of section 4 of *An Act respecting administrative justice*, he acted in compliance with the directives of his organization.
- (c) No, pursuant to subparagraph (2) of the first paragraph of section 5 of *An Act respecting administrative justice*, he was required to inform Éric of the substance of the complaint received before making his decision.
- (d) Yes, pursuant to the second paragraph of section 5 of *An Act respecting administrative justice*, there was an urgency.
- (e) No, pursuant to section 10 of *An Act respecting administrative justice*, he was required to hold a hearing to give the parties the opportunity to be heard if they so wished.

SUPPLEMENTARY FACTS

Éric applies for a review of this decision and on March 15, 2005, his application is dismissed. He immediately contests the administrative review decision before the Commission des lésions professionnelles (hereinafter referred to as the *CLP*). The hearing of this recourse is scheduled for April 15, 2005, in accordance with the provisions of section 429.30 *ARIAOD*.

On April 18, 2005, Éric's contestation is allowed by the *CLP* because Éric proved that his snow blower was fully automatic and its use required no effort. The *CLP* therefore concludes that Éric did not produce inaccurate information within the meaning of section 142 *ARIAOD*.

On May 2, 2005, Éric resumes working for his employer following the report of his doctor who finds a consolidation of the injury without functional limitations.

On May 24, 2005, Éric is informed by his employer that due to a work reorganization, he will henceforth work from 4:00 p.m. until midnight rather than during the day as he has always done. On June 6, 2005, Éric files a complaint with the *CSST* to contest the change in his work schedule.

QUESTION 6

From among the following facts, WHICH ONES ARE ESSENTIAL in order to prove the conditions of admissibility of Éric Lemieux's recourse and in order to benefit from the presumption associated therewith? Blacken the corresponding BOXES on your answer sheet.

- (a) Éric Lemieux is an employee of *Excavation Charland inc.*
- (b) He has worked for this employer since 2001 as a mechanic.
- (c) René Charland owns *Excavation Charland inc.*
- (d) On January 10, 2005, Éric Lemieux suffered an industrial accident.
- (e) The employer put Éric Lemieux under surveillance in order to prove that he was a defrauder.
- (f) The *CSST* suspended Éric Lemieux's indemnity payments and, on April 17, 2005, the *CLP* quashed this decision.
- (g) On May 23, 2005, the employer modified Éric Lemieux's work schedule to make him work evenings rather than during the day.
- (h) Several employees heard René Charland say that he wished Éric Lemieux would leave his job and that he would take the necessary measures to obtain his resignation.
- (i) Éric Lemieux believes his employer modified his work schedule because he claimed indemnity payments from the *CSST* and, consequently, on June 6, 2005, Éric filed a complaint with the *CSST* and sent a copy to his employer.

SUPPLEMENTARY FACTS

On July 4, 2005, the *CSSST* allows Éric's complaint and orders the employer to re-establish Éric's day-time work schedule. The employer contests this decision before the *CLP*. On December 5, 2005, after a hearing, the *CLP* renders a decision which dismisses the employer's contestation. The following are excerpts of the decision:

"[19] During his testimony, the employee stated that a co-worker, Ghislain Méthot, had told him that the owner of the company, René Charland, had confided in him that he wanted "Éric Lemieux to leave and would find a way to get rid of him". The employee indicated that Ghislain Méthot could not be at the hearing because he was in the hospital.

[20] During his testimony, René Charland denied having made these statements to Ghislain Méthot.

[21] Following the hearing, the Commission received a letter from Ghislain Méthot confirming the employee's version. Pursuant to the provisions of section 11 of *An Act respecting administrative justice*, the Commission is not required to follow the rules of evidence applicable in civil matters; consequently, it will take this declaration into account in assessing the evidence of the parties in the present dispute.

[...]

[43] Given that the employer's bad faith was demonstrated to a considerable extent, its contestation should be dismissed. Furthermore, given that the employee did not suffer a loss of salary, but nevertheless suffered inconvenience which disrupted his quality of life for approximately a month and a half and given that he had to urgently find a new baby sitter for his children at a greater cost to him, the employer is ordered to pay damages in the amount of \$2,000."

QUESTION 7

Assuming that the employer were to apply for the judicial review of this decision rendered by the Commission des lésions professionnelles, what standard of review (norme de contrôle) would the Superior Court have to apply with respect to paragraph 21 of the decision? Blacken the corresponding box on your answer sheet.

- (a) The patent unreasonableness standard (norme de la décision manifestement déraisonnable), because the *CLP* is a specialized body, protected by a privative clause and acting within its field of expertise.
- (b) The patent unreasonableness standard (norme de la décision manifestement déraisonnable), because the *CLP* interpreted a provision of a general law other than its constituting act, namely section 11 of *An Act respecting administrative justice*.
- (c) The correctness standard (simple error) (norme de la décision correcte (erreur simple)) because the *CLP* did not respect the procedural guarantees.
- (d) The correctness standard (simple error) (norme de la décision correcte (erreur simple)) because the Superior Court is less specialized than the *CLP* in interpreting and applying *An Act respecting industrial accidents and occupational diseases* and *An Act respecting administrative justice*.
- (e) The reasonableness standard (reasonableness *simpliciter*) (norme de la décision raisonnable (déraisonnable *simpliciter*)) because the *CLP* was required to apply the rules of evidence, a matter of law related to its field of expertise.

QUESTION 8

Did the Commission des lésions professionnelles commit an error by ordering the employer to pay Éric Lemieux damages? Blacken the corresponding box on your answer sheet.

- (a) No, because given that the employer acted in bad faith, the tribunal could issue an order pursuant to article 6 *C.C.Q.*
- (b) Yes, because the tribunal has no powers other than those set forth in the second paragraph of section 377 *ARIAOD*.
- (c) No, because pursuant to the first paragraph of section 377 *ARIAOD*, the tribunal has jurisdiction to decide any question of fact or law.
- (d) Yes, because the tribunal had no evidence of the employer's bad faith.
- (e) No, because pursuant to section 378 *ARIAOD*, the tribunal may make any order to safeguard the rights of the parties.

FILE 3 (8 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.

Aciermobile inc. (hereinafter referred to as *AM*) operates a dealership selling new cars, a store which sells parts, and a mechanical workshop and body shop, all in Longueuil. The *Association des salariés de Aciermobile inc.* (hereinafter referred to as the *Association*) has been certified since April 15, 1999 to represent the employees in *AM*'s mechanical workshop and body shop at its Longueuil establishment. The collective agreement provides that it will come into effect as of its signing, namely September 23, 1999, and will expire on February 28, 2007. At the beginning of September 2005, an employee discovers that the collective agreement was never filed in accordance with the *Labour Code* and, moreover, that several elements indicate that the *Association* may be dominated by *AM*. On September 15, 2005, the majority of the employees meet with a representative of the *Syndicat des mécaniciens d'Amérique* (hereinafter referred to as the *Syndicat*). On September 19, 2005, the *Syndicat* files an application for certification with the *Commission des relations du travail* (hereinafter referred to as the *CRT*) to represent all of the employees in *AM*'s mechanical workshop and body shop at its Longueuil establishment.

QUESTION 9

Within what time period could the *Syndicat*'s application for certification be legally filed with the *Commission des relations du travail*? Blacken the corresponding box on your answer sheet.

- (a) Within a reasonable period following the meeting of September 15, 2005.
- (b) Between the 180th and the 150th day preceding the expiry date of the collective agreement.
- (c) Within thirty (30) days preceding the sixth anniversary of the signing of the collective agreement
- (d) At any time since November 22, 1999.
- (e) At any time, given that several elements indicate that the *Association* may be dominated by the employer.

SUPPLEMENTARY FACTS

On November 1, 2005, the *Association* files with the *CRT* the collective agreement it had signed with *AM* in 1999.

On November 2, 2005, the *CRT* certifies the *Syndicat* for the unit requested. On November 14, 2005, in order to undermine the continued integrity of the *Syndicat*, *AM* suddenly closes its body shop and subcontracts this part of its operations to *Caronovo inc.* (hereinafter referred to as *CARO*), a huge body shop which has been established in Montreal for many years. *CARO*, a unionized firm, already has the manpower, equipment and expertise to carry out the work required under its agreement with *AM*. The three employees of *AM* affected by the closure of the body shop are dismissed and receive the indemnity provided for in the collective agreement. On November 22, 2005, the *Syndicat* applies to the *CRT* for a declaration that *CARO* is bound by the certification of November 2, 2005.

QUESTION 10

Is the *Syndicat's* application well founded? Blacken the corresponding box on your answer sheet.

- (a) Yes, because there was a transfer of part of the operation of an undertaking.
- (b) No, because the transfer did not entail the transfer to *CARO* of most of the elements that characterize the part of the undertaking involved.
- (c) No, because *CARO* is already unionized.
- (d) Yes, because the transfer of part of the operation of an undertaking was made in order to undermine the continued integrity of the *Syndicat*.
- (e) No, because the employees of *AM* affected by the closure of the body shop received the indemnity provided for in the collective agreement.

SUPPLEMENTARY FACTS

The collective agreement provides for a total of ten legal holidays. The *Syndicat* notes that December 25th is not included among the legal holidays provided for in the collective agreement. The *Syndicat* considers that the collective agreement does not comply with the legal holidays prescribed by law and it wishes to remedy this situation.

QUESTION 11

What is your advice to the *Syndicat*? Blacken the corresponding box on your answer sheet.

- (a) Send a notice to bargain to the employer in order to amend the collective agreement.
- (b) File a grievance on the basis that the arbitrator has jurisdiction to apply a provision of public order.
- (c) File a complaint with the Commission des normes du travail in order for civil proceedings to be instituted.
- (d) Ask the Minister of Labour to appoint a dispute arbitrator.
- (e) Notify the *Syndicat* that the provision of the law is inapplicable to the matter at hand.

SUPPLEMENTARY FACTS

On December 5, 2005, *AM* hires three mechanics at its mechanical workshop. In accordance with the wishes expressed by these new employees, the employer refuses to deduct the dues provided for by the collective agreement from the pay of these employees. The *Syndicat* intends to contest the employer's conduct.

QUESTION 12

Indicate THE RECOURSES which can be exercised by the *Syndicat* following the employer's refusal to deduct the dues. Blacken the corresponding BOXES on your answer sheet.

- (a) File a complaint with the Commission des relations du travail.
- (b) File a grievance.
- (c) Institute civil proceedings before the courts of law to claim the dues which have not been deducted.
- (d) File a statement of offence with the Labour Court.

FILE 4 (10 MARKS)

The situation described in File 4 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 August 24, 2005, Marc Pigeon, Philippe Dumas and Jean Mercier were arrested for having conspired to kill Luc Rioux and having attempted to kill him by discharging a firearm with the intent to endanger his life.

According to the police investigation carried out by detective sergeant Harnois, a few weeks before their arrest, the three accused persons, Marc, Philippe and Jean, met in a tavern to establish a plan in order to set a trap for Luc Rioux, a drug trafficker whom they suspected of being a police informant. In accordance with the agreement between the three individuals, Philippe and Jean went to the Port of Montreal to hide there and wait for Luc to come out at the end of his shift as a dock worker. While Marc was waiting at the wheel of a black Chevrolet Impala to ensure their getaway, Philippe lured Luc towards him and Jean fired in his direction, hitting him in the abdomen with a .12 calibre shotgun.

Thirty minutes after having fled the scene on board the vehicle driven by Marc, the three cohorts were intercepted by the police who had obtained a description of the fleeing automobile following a telephone call made by Olivier Calvino, a dock worker, who had heard the shots and had seen a black Chevrolet Impala leaving the area of the Port of Montreal at great speed. Despite a detailed search of the vehicle and surroundings, the firearm was never found. Luc was brought to the hospital. Luc survived his injuries after having undergone surgery, but is unable to recall the events of which he was the victim.

The three accused persons, Marc, Jean and Philippe, who have been held in custody, appear before a judge of the Court of Québec (Criminal and Penal Division) for the district of Montreal, to answer to a joint information charging them with conspiracy to commit the murder of Luc Rioux (paragraph 465 (1) (a) *Cr.C.*), the attempted murder of Luc Rioux (paragraph 239 (a) *Cr.C.*) and discharging a firearm with the intent to endanger the life of Luc Rioux (paragraph 244 (b) *Cr.C.*).

QUESTION 13

From among the following legal statements, indicate which one correctly describes the powers conferred upon the judge of the Court of Québec by the *Criminal Code* following the appearance of Marc Pigeon, Jean Mercier and Philippe Dumas on the joint information as brought against them. Blacken the corresponding box on your answer sheet.

- a) The judge of the Court of Québec will ask all the accused persons to enter a plea of not guilty on the three counts and will fix the date of their *pro forma* preliminary inquiry.
- b) The judge of the Court of Québec will ask all the accused persons to elect the type of trial they want on the three counts and will fix the date of their preliminary inquiry if they request it.
- c) The judge of the Court of Québec will ask all the accused persons to reserve their election regarding the type of trial they want and will postpone their hearing on judicial interim release for not more than three days if the Crown opposes their release from custody.
- d) The judge of the Court of Québec will not ask all the accused persons to elect the type of trial they want and the preliminary inquiry will be held if the three accused persons subsequently make a joint request therefor.
- e) After the three accused persons have appeared, the judge of the Court of Québec will order that they be held in custody until a judge of the Québec Superior Court rules on their judicial interim release.

SUPPLEMENTARY FACTS

Unlike his co-accuseds who have remained in custody, Marc was released from custody subject to certain conditions a few weeks after his appearance. Having been hospitalized for a few days, the day before his preliminary inquiry, Marc gives his lawyer, M^e Claude Chassé, a mandate to represent him before the court. The following morning, at the joint preliminary inquiry of the three accused persons, Marc is absent from court. After having filed in the court record a designation of counsel in accordance with the law, his lawyer, M^e Claude Chassé, asks the judge if he can represent his client when the witnesses testify at the preliminary inquiry. The Crown prosecutor objects. The judge disallows the defence's request and asks the prosecution to call its witnesses.

QUESTION 14

Indicate which of these statements correctly describes the powers of the justice of the peace presiding over the preliminary inquiry following M^e Claude Chassé's request to represent his client. Blacken the corresponding box on your answer sheet.

- a) The judge could not authorize M^e Claude Chassé to represent Marc Pigeon during the preliminary inquiry, because the presence of the accused person is compulsory during all of the proceedings if the information charges him with indictable offences.
- b) The judge presiding over the preliminary inquiry could not authorize M^e Claude Chassé to represent Marc Pigeon during the presentation of the testimony because the Crown did not consent.
- c) The judge was required to authorize M^e Claude Chassé to represent Marc during the testimony of the witnesses at the preliminary inquiry, because Marc Pigeon's lawyer had filed in the court record a designation of counsel in accordance with the law, pursuant to which Marc appointed his lawyer, M^e Claude Chassé, to represent him.
- d) The justice of the peace could allow M^e Claude Chassé to represent Marc during the testimony of the witnesses, without taking into account the prosecution's opinion in this regard.

SUPPLEMENTARY FACTS

During the joint preliminary inquiry of the three accused persons on the information as brought against them during their appearance, the prosecution calls as a witness a police officer who recounts the events which preceded the arrest of Marc, Jean and Philippe. Officer Dion relates that he pursued the black Chevrolet driven by Marc and saw it hit a parked vehicle before fleeing and being subsequently caught and intercepted a few blocks later thanks to a roadblock established by other police officers. When cross-examined by M^e Chassé, Marc's lawyer, officer Dion admits, however, that it was pitch dark and that he did not see the impact before noting the damage to the vehicle driven by Marc.

The Crown prosecutor would like Marc to eventually be convicted of leaving the scene of the accident without providing his name and address and, while behind the wheel of a vehicle, evading the police officers who were pursuing him. He therefore asks the justice of the peace to order Marc to stand trial on these two additional counts which are not set out in the initial information.

QUESTION 15

Can the justice of the peace grant the Crown prosecutor's request? Indicate which of the following statements is applicable. Blacken the corresponding box on your answer sheet.

- a) Yes, the justice of the peace presiding over the preliminary inquiry can order Marc Pigeon to stand trial on the additional counts of hit-and-run and fleeing while at the wheel of a vehicle if he is of the opinion that these offences were disclosed by the evidence and are in respect of the same criminal transaction.
- b) No, the justice of the peace presiding over the preliminary inquiry does not have the power to order an accused person to stand trial on a count which is not contained in the information filed before him.
- c) No, the justice of the peace presiding over the preliminary inquiry will not be able to order Marc Pigeon to stand trial on the additional charge of hit-and-run if he is not convinced beyond a reasonable doubt that the black Chevrolet driven by Marc struck the parked vehicle as described by officer Dion.
- d) No, the justice of the peace presiding over the preliminary inquiry will not be able to order Marc Pigeon to stand trial on the additional counts because this would result in irreparable harm to the accused person.

SUPPLEMENTARY FACTS

Marc is arrested following the execution of the arrest warrant issued by the justice of the peace who presided over the preliminary inquiry, and he attends the rest of the preliminary inquiry while being held in custody. At the end of the preliminary inquiry, the justice of the peace orders the three accused persons, Marc, Jean and Philippe, to stand trial on the joint information as brought against them. At the joint trial, held before a judge and jury a few months later, the Crown prosecutor calls as a witness Jean-Yves Dugas, one of Marc's co-workers, who tells the jury about a telephone conversation he had with Marc a few days before the attempted murder of Luc Rioux. Jean-Yves Dugas states that Marc told him the following: *"I need a small favour from you. We have to get rid of Luc Rioux, because he's talking to the police too much. I need a stolen car to go to the port with Philippe Dumas and Jean Mercier. They're going to set a trap for big Luc and shoot him like a dog, and then I'll help them get away from there with the car."*

QUESTION 16

Are Marc Pigeon's words, as related by Jean-Yves Dugas, admissible as evidence at the joint trial of the three accused persons in order to prove the participation of Marc Pigeon, Jean Mercier and Philippe Dumas in the offence with which they are jointly charged? Indicate which of these statements correctly answers this question. Blacken the corresponding box on your answer sheet.

- (a) Marc Pigeon's words are admissible as evidence because they constitute overt acts which can establish the participation of the co-conspirators in the commission of the offences with which they are charged, provided the prosecution has first established that Marc was a member of the conspiracy.
- (b) Marc Pigeon's words are inadmissible as evidence because they constitute an extrajudicial statement by an accused which must be subjected to a voir-dire to determine whether it was free and voluntary before being admitted into evidence.
- (c) Marc Pigeon's words cannot be used against the other co-accused persons, Jean Mercier and Philippe Dumas, because they were not present when Jean-Yves Dugas heard Marc say them.
- (d) Marc Pigeon's words are inadmissible as evidence because there is a risk they will cause irreparable harm to Marc.
- (e) Marc Pigeon's words are admissible only against Marc and constitute inadmissible hearsay as regards the other two co-accused persons.

SUPPLEMENTARY FACTS

Marc testifies at his joint trial and denies any participation in the offences with which he is charged. The defence finishes presenting its evidence and the lawyers make their respective closing arguments. Three hours after having received the appropriate instructions from the judge presiding over the trial, the jury finds the three accused persons guilty of conspiracy and the attempted murder of Luc Rioux. The judge orders a stay of proceedings on the third count.

On December 3, 2005, at the presentencing hearing, the Crown prosecutor provides evidence that Marc was convicted on July 2, 2005, in the district of Bedford, of having committed an assault causing bodily harm against his ex-wife on January 5, 2004 and that he is to be sentenced on January 10, 2006. Although the Crown prosecutor acknowledges Marc's lesser degree of participation in the offence of attempted murder, he asks for a long prison term against Marc because he committed a serious premeditated offence when awaiting sentencing, while not in custody, for another offence involving violence.

After having heard the representations of Marc's lawyer, the judge refuses his suggestion that the sentence be limited to the minimum of four years of imprisonment provided for in the *Criminal Code* and he hands down the following sentence on the counts of conspiracy and attempted murder:

COUNT 1	Marc Pigeon, the Court sentences you to serve eight years in prison for your participation in the attempted murder of Luc Rioux;
COUNT 2	<p>The Court sentences you to serve four years for your participation in the conspiracy to kill Luc Rioux, which sentence shall run concurrently with the sentence imposed for attempted murder under the first count;</p> <p>This sentence of eight years in prison shall be served consecutively with the sentence you will receive, in the district of Bedford, for the offence of assault causing bodily harm.</p> <p>The Court also orders you not to be in possession of any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, the whole in perpetuity.</p> <p>The Court also makes an order against you authorizing the taking of your bodily substances (DNA) in accordance with section 487.051 <i>Cr.C.</i></p> <p>Finally, the Court orders you to pay a victim surcharge for each count within a period of six months after your release.</p>

QUESTION 17

From among the following legal statements, indicate which one correctly describes an error of law committed by the judge when pronouncing the sentence imposed on Marc Pigeon. Blacken the corresponding box on your answer sheet.

- a) The judge erred at law by imposing on Marc Pigeon a sentence of imprisonment of eight years consecutive to the sentence he would soon be receiving in the district of Bedford.
- b) The judge erred at law by imposing on Marc Pigeon a sentence of imprisonment of eight years, because the *Criminal Code* provides for a minimum sentence of four years and this is Marc's first conviction for an offence punishable by imprisonment for life.
- c) The judge erred at law by ordering Marc Pigeon to pay a victim surcharge for each count when he had not verified the offender's ability to pay.
- d) The judge erred at law by ordering Marc Pigeon not to be in possession of any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, the whole in perpetuity.
- e) The judge erred at law by authorizing the taking of bodily substances from Marc Pigeon for the purpose of forensic DNA analysis (section 487.051 *Cr.C.*), because he had not concluded that doing so was justified in the public interest.