



Federation of Law Societies of Canada

National Committee on Accreditation

SAMPLE

**Examination for
Administrative Law**

Candidate No.: _____

(To ensure your anonymity, please do not print or sign your name)

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Examination for Administrative Law

SAMPLE

General conditions of the exam:

This is a **three (3) hour, open book** exam.

Answers should be **double-spaced** and written in **blue or black ink** (no pencils).

All answers **must** be completed on the pads provided unless space is expressly provided within the examination booklet.

The examination will be graded on a pass/fail basis (50% is a pass).

WRITE LEGIBLY. Writing considered illegible by the examiner may result in your exam not being fully graded **or your exam being disqualified.**

You must **return the exam questions in the envelope provided** along with your answers. Failure to return the questions will result in the **automatic disqualification** of your exam.

The contents of the examination, including the exam questions, **must not be disclosed** or discussed with others.

Instructions specific to this exam:

1. There are _____ **pages** to this exam, which includes the covering and instructions pages. Please notify the proctor immediately of any defect in this examination.
2. This examination contains **a single question worth 100%.**
3. You will be assessed primarily on your knowledge of the relevant cases, statute law, and other material in the assigned Casebook and Text (as supplemented in the Syllabus), and, as part of that, your capacity to recognize the legal issues raised by the fact situations that form the bases for the questions, and, thereafter, your analysis and assessment of the competing arguments relevant to each of those issues.
4. **NO** marks are assigned for simply reproducing the facts from the question. You are evaluated for your ability to: identify legal issues, summarize legal rules and then apply law to the facts in the question. Simply reciting facts does not meet any of these expectations. Nor are marks assigned for essay-like discussions of administrative law, decontextualized from the fact pattern.
5. The question asks you to assess both procedural and substantive grounds for review. It is not possible to pass the exam by addressing one but not the other. Nor is it acceptable to respond to the question without addressing standards of review
6. If quoting from any source, use quotation marks and identify the source. Failure to do so will result in grade reduction and, in egregious instances, automatic failure.
7. Though the questions require you to prepare a memorandum of law, do not waste time by constructing a standard set of headings to a formal memorandum e.g. To: Senior Partner; From: Articling Student; Re:; Date: August 13, 2015.



A word of warning: in respect of the standard of review, you need to consider the applicable approach, as formulated in *Vavilov* and *Bell Canada*. Prior approaches to standard of review are no longer good law and will not serve as the basis of an acceptable response. On the exam, **no marks** will be awarded for an answer relying on now-superseded caselaw and the tests prior judgments created.

FACTS

Mr Arnest is a foreign national currently in prison in Canada. He was extradited to Canada from Belgium on charges of computer hacking under the *Criminal Code*. After his trial, he was convicted and sentenced to 5-years imprisonment. At the same time, the Canadian immigration authorities prepared an inadmissibility report under the *Immigration and Refugee Protection Act*. This report deemed Arnest inadmissible to Canada for serious criminality and he was ordered deported, with deportation delayed until the end of his prison sentence.

Mr Arnest is Buddhist – his father (whose surname he uses) was a Belgian. Arnest’s mother is from Tibet, and Arnest follows his mother’s religion. The Correctional Service of Canada (CSC) has a chaplaincy service available for inmates, but it does not include religious figures of all faiths. There are no Buddhist chaplains employed by the CSC.

Mr Arnest brought a complaint to the Canadian Human Rights Commission (the Commission), under the *Canadian Human Rights Act* (the *Act*), arguing that the CSC has discriminated against him on religious grounds by failing to provide a Buddhist chaplain. Section 5 of the *Act* reads:

5. It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public
 - a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or
 - b) to differentiate adversely in relation to any individual,on a prohibited ground of discrimination.

“Prohibited grounds of discrimination” include “religion”. Upon receipt of Arnest’s complaint, the Commission appointed an investigator, as authorized under the *Act*. An investigator under the *Act* is responsible for investigating a complaint and reporting on the material facts to the Commission. The Commission then decides whether to refer the matter to a full Human Rights Tribunal proceeding.

In her correspondence with Arnest, the investigator indicated “I will conduct an interview with you before submitting my report. Based on the textual records I have consulted, I believe this is a case that deserves a full Tribunal hearing.” The investigator did not, however, contact Arnest again. Instead, two weeks later, she issued her report to the Commission. The material parts of that report read:

I was very skeptical of this complaint, even before I started this investigation. And indeed, I was unable to establish that Arnest is, in fact, Buddhist. Since Arnest is a convicted criminal and must be presumed to be dishonest, I am not prepared to



believe him when he claims to be a Buddhist. Moreover, I conducted substantial genealogical research into the surname “Arnest”. This included consultation with a genealogical expert. I determined the name “Arnest” is ethnically Flemish in origin. It seems very unlikely a person of Flemish ethnicity from Belgium is Buddhist. At any rate, given the backlog of human rights complaints, I do not believe the Commission should be prioritizing complaints by prisoners. These should be given much lower priority in favour of complaints by non-criminals.

Upon receipt of the investigator’s report, the Commission convened a meeting of five members at which the investigator presided as chair. All five members, the investigator included, then deliberated on the matter. The Commission then decided to reject Arnest’s complaint, and issued the following reasons:

On full review of this complaint, we conclude that the Commission has no jurisdiction to hear a complaint in relation to the alleged discriminatory practice. Under s.40(5)(a) of the Act, we may not hear a complaint unless the act or omission constituting the alleged discrimination “occurred in Canada and the victim of the practice was at the time of the act or omission...lawfully present in Canada”. Mr Arnest has been deemed inadmissible to Canada under immigration law – he is under a deportation order. He is not a temporary resident, permanent resident or citizen of Canada. He is not, therefore, “lawfully present in Canada” for the purposes of s.40(5)(a), even though he is physically in Canada for the duration of his prison sentence. We will not, therefore, proceed with this complaint.

Further, even if we had proceeded with this complaint, we would refuse to recommend the matter be referred to a full Human Rights Tribunal process for the reasons outlined by the investigator in her report. We adopt those reasons in full.

Case dismissed.

Section 40(5)(a) of the *Act* reads: “No complaint in relation to a discriminatory practice may be dealt with by the Commission under this Part unless the act or omission that constitutes the practice (a) occurred in Canada and the victim of the practice was at the time of the act or omission either lawfully present in Canada or, if temporarily absent from Canada, entitled to return to Canada”.

Question:

Arnest is upset by this series of events, and remains without a Buddhist chaplain while in prison. He wishes you to advise on the administrative law issues raised by this full sequence of events. The senior partner at Best & Hope wants a brief (but comprehensive) memorandum on the procedural and substantive administrative legal issues at stake in relation to these events. He also wants to know how this decision can be challenged. Another student in the office is addressing *Charter* issues – you are instructed **not to deal with Charter matters**. Write the requested memo.