



Federation of
Law Societies
of Canada

NCA National Committee
on Accreditation

SAMPLE

Examination for Administrative Law

Candidate No.: _____

(To ensure your anonymity, please DO NOT include/type your name) in any part of your exam)

TO PROTECT THE INTEGRITY OF THE EXAMINATION
PROCESS, REPRODUCTION OF THIS EXAM IN WHOLE OR IN
PART BY ANY MEANS IS STRICTLY FORBIDDEN.

© 2022 Federation of Law Societies of Canada. All rights reserved.



SAMPLE

Examination for Administrative Law

General conditions of NCA online exams

To help NCA applicants transition to online long form examinations, the NCA now allows an extra hour, or **three (3) hours in total**, for completion of each exam.

NCA exams are open-book. **Only hard copy study materials** will be permitted; you will **NOT** have access to electronic copies of your notes or textbooks.

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

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

If you finish early, you must stay in place, with your computer still locked down, for the full 3 hours. **Failure to follow the proctor's instructions regarding sequestering is a violation of the Candidate Agreement and will result in your exam being disqualified.**

NCA online exams are available through a secure, browser-based platform that locks down your computer. This means the computer cannot be used for any other purpose or to access any other material during the exam.

As you write your exam, a person designated as proctor will check your identification and monitor you **using two cameras**; a web camera on your computer and a camera on a tablet or phone.

For more information concerning the NCA's online exams, including, exam rules, technical requirements and the candidate agreement please see the links below:

<https://nca.legal/exams/online-exam-rules/>
<https://nca.legal/exams/technical-requirements-and-testing-for-online-exams/>
<https://nca.legal/exams/nca-candidate-agreement/>



**Each exam may have its own special instructions,
therefore, it is important for you to read these carefully before starting.**

Instructions specific to this exam:

1. This examination contains **XYZ question(s)** worth a total of 100 marks.
2. 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.
3. **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.
4. Respond to the specific questions that the examiner has posed. Do not waste time raising and dealing with other possible issues. In particular, do not go through a standardized, general checklist of prerequisites or impediments to judicial review unless these are matters clearly relevant to the specific questions asked by the examiner.
5. 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. However, you need not provide full citations of cases and statutes contained in the assigned Casebook and Text.
6. 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.
7. 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 this question without addressing standards of review.
8. **A word of warning:** in respect of the standard of review, you do 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 they created.
9. Please complete your answers in legible English.

This sample exam provides an indication of the style/type of questions that may be asked in each exam. It does not reflect the content or actual format/structure of questions nor their value. Actual exams for a specific subject vary from exam session to exam session.



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.