

CONSTITUTIONAL LAW – SAMPLE QUESTION & ANSWER

Session: Charter

Topic: Language Rights

Recommended time: 1 hour plus 15 minutes reading time

Score: 100 Marks

Author: Manuel Akinshola

Question

In May 2021, Andrew Sloane, a member of New Brunswick’s Legislative Assembly and the Chair of the Labour Relations Committee presented two Bills before the provincial legislature.

The first law, **An Act to Provide for Enhanced Working Conditions for Pregnant Women (Pregnant Women Act)** stipulated working conditions for pregnant women in all factories within the province. The law sought to reduce the working hours for women whose pregnancies are from 3 months and above while at the same time providing for enhanced wages. Accompanying the Act was a detailed report prepared in English language by Professor Anne Schwartz, a renowned expert on women and gender affairs. The report contained a comprehensive guideline of the graduating scale of working hours and the commensurate wages, depending on the pregnancy stage. The effect of this report is that women in early stages of their pregnancies can work for some hours at the wage prescribed in the report while those at advanced pregnancy stages will work for lesser hours with enhanced remunerations.

The second law, **An Act to Make Provisions for the Registration of Mexican Farm Workers (Mexican Workers Act)** required that seasonal farm workers from Mexico must be registered as members of a trade union before they are engaged by employers. The law was also accompanied by a resolution of the Mexican national Parliament in French language advising that all Mexicans seeking to work in Canada should only be employed if they present a labour union membership card endorsed by the Embassy of Mexico.

The two laws were passed in both English and French and all members of the legislature commended the value that the laws would add to labour relations in the province.

Ethan is the sole proprietor of Eth Shoe Manufacturing Company. He was charged and convicted last week under the Mexican Workers Act for engaging some Mexican workers who were not registered in accordance with the requirements of the Act. He was also convicted for not paying his pregnant employees according to the remunerations prescribed by the Pregnant Women Act.

He complained bitterly that the charges were contained in a summons that was in English language only, which he didn't understand. He believed he was entitled to a summons in French. During the trial also, his evidence was recorded in French language because no interpreter was available on that day. He admitted though that in fairness to the trial judge, the case was adjourned to the following day when the interpreter attended and translated his evidence into English from the recorded transcript.

He has retained you to file an appeal against his conviction, commenting that he knows that this is a constitutional law matter because, according to him, "the two laws are not just right".

You are about to prepare your appellant's brief.

- a) How would you address the constitutionality of the two laws? (60 Marks)
- b) How would you address Ethan's complaints about the trial process? (40 Marks) (*You may not need to address any fair hearing component of the trial*)

Notes:

- *This is a fact-based question. To answer this type of question, you should employ the IRAC methodology. You must be able to distil the issue(s), identify which rule or law applies, apply the rule or law and then reach a conclusion.*
- *Please note that there could be more than one issue in a fact based question so it's your responsibility to identify all necessary issues.*
- *Finally, your answer must be based on currently applicable laws. Don't espouse your own opinion or that of a dissent judgement unless absolutely required or requested by the examiner or needed only for reference purposes. If you do so for reference purposes, remember to indicate clearly that this is a dissent judgement or your own opinion.*

HIGHLIGHTS OF ANSWER TO QUESTION (a)

Four issues are involved in respect of this first question, as follows:

- a. Are there constitutional language requirements in respect of the two laws?
- b. If yes, have these constitutional requirements been complied with?
- c. Are the two laws valid?

Issue (a)

1. This is a matter that deals with language rights.