

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT
(CIVIL DIVISION)**

N° :

**ASSOCIATION OF MCGILL
PROFESSORS OF LAW (AMPL)
ASSOCIATION MCGILLIENNE DES
PROFESSEURS EN DROIT (AMPD),**
domiciled at 130 Saint-Joseph West,
Montréal, Québec H2T 2P6

Applicant

v.

**JEAN BOULET, AS MINISTRE DU
TRAVAIL, 200, chemin Sainte-Foy, 6e
étage, Ville de Québec, Québec, G1R
5S1**

Respondent

And

**MCGILL UNIVERSITY, legal person
with its office at 845 Sherbrooke Street
West, Montréal, Québec, H3A 0G4**

Impleaded Party

**APPLICATION FOR JUDICIAL REVIEW AND
APPLICATION FOR A STAY ORDER**
(ss. 34, 529 and 530 C.C.P.)

**IN SUPPORT OF ITS PROCEEDINGS, THE APPLICANT RESPECTFULLY
STATES AS FOLLOWS:**

1. This is a case about the fundamental rights of the Association for McGill Professors in Law (hereafter "AMPL"), a certified association under the *Quebec Labour Code* (chapter C-27, hereafter "the *Labour Code*) and its members to bargain collectively and strike;

2. More specifically, this application for judicial review and application for a stay order concerns the decision of the Respondent, Ministre du Travail (hereafter “the Ministre”), to refer a dispute between AMPL and McGill University to arbitration under section 93.1 of the *Labour Code*, pursuant to a request from McGill University;
3. Under section 93.1, the Ministre can only refer the matter to arbitration if the conciliator’s intervention in collective bargaining has not been fruitful;
4. It is clear from the evidence related to collective bargaining, that the conciliator’s intervention was being fruitful and that McGill University’s request was aimed at preventing AMPL’s right to bargain collectively and strike during the conciliation process;
5. It is also clear that the Ministre’s decision lacks reasons, including, any consideration or weighing of AMPL’s s. 2(d) interest in collective bargaining under the *Canadian Charter of Rights and Freedoms* and section 3 of the *Quebec Charter of Humans Rights and Freedoms*;
6. Consequently, the applicant in this judicial review respectfully seeks that the Ministre’s decision to refer the dispute be quashed and set aside;
7. AMPL further seeks a stay of the execution of the decision, considering it will cause AMPL irreparable harm in the immediate future, while staying the execution causes no harm to McGill University;

I. THE PARTIES

8. The applicant AMPL is a certified association under the *Labour Code* to represent tenured and tenure-track professors from McGill University’s Faculty of Law such as it appears from the certification decision filed as **Exhibit P-1**;
9. As appears from **Exhibit P-1**, AMPL was certified on November 7th 2022;
10. The respondent, McGill University, is a post-secondary academic institution whose principal activities involve research and teaching;

II. FACTUAL CONTEXT

11. Following the certification of AMPL, McGill University filed a judicial review application of the decision in front of this Court, file number 500-17-123248-224;
12. The parties also began collective bargaining under the framework of the *Labour Code*;
13. They have had approximately 23 bargaining sessions, with some being full days and others half days;
14. In several of these sessions, McGill University arrived unprepared to respond to AMPL's demands;
15. That being said, throughout the sessions, the parties managed to settle a number of important issues such as:
 - a) Article 1: Parties, recognition and definition of the bargaining unit;
 - b) Article 2: Application of the agreement;
 - c) Article 3: Membership fees;
 - d) Article 4: Relations between the Association and the University;
 - e) Article 5: Access to Information;
 - f) Article 6: Resolution of disagreements and grievances;
 - g) Article 7: Academic Freedom;
 - h) Article 10: Retirement;
 - i) Article 11: Disciplinary measures;
 - j) Article 17: Confidentiality and personal files;
 - k) Article 18: Intellectual Property;
 - l) Article 21: Electronic copy of the agreement;
 - m) Article 22: Correspondence and notices;
 - n) Article 23: Term of Agreement;*
 - o) Article 24: Non-discrimination;

- p) Article 25: Inclusion of Faculty Members with a disability;
- q) Article 26: Employment Equity;
- r) Article 27: Contributions of Black and Indigenous Faculty Members
- s) Article 28: Governance;
- t) Article 32: Merit Pay*

** AMPL has accepted McGill's proposals for these articles tel quel, though McGill insists that AMPL must accept all its monetary proposals for AMPL's acceptance to be valid. Article 32 concerns merely the distribution of a fixed sum, and not the quality of the sum, and so is not in substance a monetary proposal.*

16. In addition, there are many issues that remain to be addressed or have been addressed and are in the process of being resolved:
- a) Article 8: Appointments – parties have made progress on this issue;
 - b) Article 9: Tenure – parties have made progress on this issue;
 - c) Article 12: Conditions of employment – the parties have not had a chance to discuss this condition but the positions do not appear to be very divergent;
 - d) Article 13: Duties and Responsibilities of Faculty Members – discussions on this point are progressing and AMPL had a counter proposal that could address the concerns of management;
 - e) Article 14: Support for research – the parties have not had the opportunity to discuss this point;
 - f) Article 15: Work environment – the parties have only begun discussing this point and have not even broached management's counter-proposal;
 - g) Article 16: Leaves – the parties have made progress on this issue;
 - h) Article 19: Minimal cohort of Faculty Members – the parties have only had a few exchanges on this point and have not yet

discussed the issue in the context of McGill University's monetary counter-proposal;

- i) Article 20: Rights and Privileges of the Association – AMPL received a counter-proposal and has started evaluating it, but the parties have not had a chance to discuss it;
- j) Article 29: Appointment of the Dean: parties have progressed on this issue;
- k) Article 30: Salary – AMPL received McGill University's counter-proposal toward the end of the sessions and is in the process of evaluating it, however it does not include a concrete offer for salary increases;
- l) Article 31 - Employee benefits – AMPL received McGill University's counter-proposal toward the end of the sessions and is in the process of evaluating it;

b) The lead-up to the present legal proceedings

- 17. As stated previously, during the proceedings, AMPL had some difficulty getting McGill University to come to the table, to the point where it had to write to the conciliator to try and get him to exercise his power to convoke, such as it appears from the letter sent on May 22nd 2024, filed as **Exhibit P-2**;
- 18. The conciliator did not intervene since he felt the parties were progressing adequately;
- 19. With the help of the conciliator, the parties had set four days of conciliation :
 - August 19th 2024
 - August 21st 2024
 - August 29th 2024
 - September 4th 2024;
- 20. On June 7th 2024, the only day McGill University was available to bargain before the end of the summer, the Employer presented counter-proposals on 11 monetary and 2 non-monetary articles, and the parties only had time to briefly discuss three of the monetary articles and the two non-monetary articles;

21. AMPL was supposed to come back to McGill University on the counter-proposals in August 2024;
22. On June 13th 2024 McGill University applied for a referral to arbitration under section 93.1 of the Labour Code;
23. AMPL vigorously contested the referral, such as it appears from the letter it sent to the conciliator on June 13th 2024, filed as **Exhibit P-3**,
24. In that letter, AMPL reminded that McGill University filed an application for judicial review of the certification decision, which will be heard on 18th and 19th of December 2024;
25. As part of its challenge before the Tribunal administratif du travail, McGill University had argued that it would be difficult to negotiate with a faculty unit;
26. AMPL submitted that it appears that McGill University is using arbitration as a means of putting an end to productive negotiations and avoid having an agreement in the near future, given its application for judicial review;
27. AMPL also underlined that McGill wishes to block any possibility for AMPL to strike in the fall which could help bring about the conclusion of a collective agreement faster;
28. AMPL said that McGill's position was an affront to the interest arbitration process which should be used to resolve sclerotic disputes for which a negotiated outcome is impossible;
29. AMPL added that the right to collective bargaining, including the right to strike, derive from its fundamental right to freedom of association and should not be set aside unless absolutely necessary;
30. The conciliator set an emergency afternoon meeting (with one day's notice) with the parties to bargain on June 18th 2024 despite the fact that four dates were already set later in the summer as per his instructions;
31. Following this meeting, the parties' representatives met with the conciliator by phone on June 19th 2024;
32. AMPL sent a letter right after that meeting summarizing the facts leading up to that moment, such as it appears from the letter filed as **Exhibit P-4**;

33. AMPL underlined that given the context, a single meeting by videoconference lasting one afternoon, convened with little notice, would not be sufficient to decide on a recommendation on the application of section 93.1 of the Code;
34. Moreover, AMPL submitted that any party put in such a situation could feel backed into a corner and forced to make concessions on points that they have not even had time to consider in order to avoid being rushed into arbitration;
35. AMPL also questioned the conciliator's apparent assertion that a party would have an absolute right to arbitration after a year following certification;
36. AMPL reminded that this is not what is provided for in the Labour Code;
37. A referral to arbitration is not a question of time, but rather a question of whether it is impossible to find a negotiated solution for the matters still under discussion;
38. AMPL also asserted that despite all these difficulties, during the meeting on June 18th 2024, AMPL's representatives demonstrated that movement was not only possible, but probable on several points, including two counter-proposals which AMPL confirmed that it was prepared to accept;
39. This was in line with the expectations expressed by the conciliator at the start of the meeting to AMPL's representatives;
40. During the meeting, McGill University stated that it preferred to obtain a global counter-proposal rather than continue to bargain individual articles or small bundles;
41. AMPL stated that this method is acceptable and confirmed that it could formulate such a counter-proposal for the next negotiation date in August, since it will need to evaluate all the articles and priorities as well as the consequences of the various terms and conditions proposed by McGill University before giving a global response;
42. All copies of the letters were sent to the conciliator as well as to the Ministre;
43. Despite all of this, AMPL was advised by the Ministre on July 24th 2024 that the dispute would be referred to arbitration, such as it appears from the decision, filed as exhibit **P-5**;

44. The decision has no reasons enclosed, such as it appears from said exhibit;
45. Following the decision, AMPL wrote a letter to the chief mediator at the Ministre to confirm that the dates set are still going to be held and asking for a new conciliator to be named, such as it appears from the letter filed as exhibit **P-6**;
46. The same day the chief mediator wrote back saying he would respond upon his return from vacation on August 12th 2024 and confirmed that the dates remain in the calendar of the parties, such as it appears from his response, exhibit **P-7**;
47. On August 1st 2024, McGill University wrote to AMPL to name an arbitrator, as it appears from the email filed as exhibit **P-8**;
48. On August 2nd 2023, AMPL responded stating that it was going to ask for a judicial review of the referral as well as a stay of the decision and confirming that it would continue bargaining on the dates on the calendar as per its exchange with the chief mediator, as it appears from the response, filed as exhibit **P-9**;
49. On August 5th, McGill University reiterated the request to nominate an arbitrator, without prejudice to AMPL's position in the current procedure such as it appears from its reply, filed as exhibit **P-10**;

III. THE GROUNDS FOR JUDICIAL REVIEW

50. AMPL respectfully submits that the Ministre's decision to refer the dispute to arbitration must be quashed on five grounds;

a) The decision contains no reasons

51. The Ministre's decision contains no reasons at all, and thereby violates the duty to give reasons¹;

b) The decision discloses no consideration or weighing of AMPL's constitutional right to bargain collectively

¹ *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3, 2002 SCC 1, *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708.

52. AMPL has a constitutional right to bargain collectively and strike, under s. 2(d) of the *Canadian Charter of Rights and Freedoms* and under s. 3 of the *Québec Charter of Rights and Freedoms*. The Ministre's decision discloses no consideration or weighing of AMPL's constitutional right to bargain collectively and strike, as required by *Doré* and *Loyola*, and is therefore unreasonable;

c) The decision does not consider AMPL's submissions

53. The Ministre's decision, exhibit P-5 does not address at all AMPL's vigorous contestation of McGill University's request for arbitration as is required by caselaw², and is therefore unreasonable;

d) The decision lacks transparency and intelligibility by disregarding criteria set out in the *Labour Code*

54. The Ministre's decision fails to explain how the circumstances of this case satisfy the specific criteria laid out in the *Labour Code* that have to be met in order for the Ministre to refer the dispute to arbitration;

55. As such, the Ministre's decision lacks the transparency and intelligibility required by caselaw³ to be reasonable;

e) The decision is unreasonable considering the compelling evidence to the effect that the criteria set by section 93.1 of the *Labour Code* have not been met

54. Section 93.1 of the *Labour Code* states that the Ministre can only refer the dispute to arbitration if the conciliator's intervention is unfruitful;

55. As it appears from the bargaining history between the parties, there was constant progress during the bargaining process and the parties were far from being at a standstill when McGill University asked for arbitration;

56. In fact, AMPL had received the monetary counter-proposal from McGill University and was getting ready to give a global answer in August 2024;

² *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 (hereafter "Vavilov").

³ *Vavilov and Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, 2008 SCC 9.

57. It is clear that McGill University is using the arbitration process to short-circuit the bargaining process and take away AMPL's fundamental rights in the process;
58. As such, the Ministre should not have referred the dispute to arbitration when he did;

IV. THE GROUNDS FOR A STAY

56. AMPL requests that the execution of the decision to refer the decision to arbitration be stayed pending the determination on the merits of the application for judicial review;
57. This would allow the parties to continue conciliation as was previously planned, on the dates that are still reserved for that purpose;
58. It is important to note that during the relevant period, McGill University published a communiqué on its website concerning bargaining with AMPL that states the following, to justify why McGill is not moving faster:

“Is it taking unusually long for McGill and AMPL to reach a collective agreement?”

No. Collective bargaining is not a speedy process, given the many elements that need to be considered, as well as the complexity of issues discussed at the bargaining table. Reaching a first-ever collective agreement takes an average of nearly three years at McGill. Renewal of a collective agreement takes an average of two and a half years. Issues are especially complex in the context of McGill's first collective agreement with tenured and tenure-track professors. Notably, it is necessary to work out the relationship between the collective agreement and the dozens of McGill regulations that currently apply to all such professors.

The first bargaining session with AMPL occurred less than 18 months ago, in December 2022, although AMPL did not submit proposals until March 2023.

Many articles have been agreed on and significant progress was being made. Many proposals remain to be discussed and agreed on, relating to nonmonetary as well as monetary issues. While McGill and AMPL are moving forward, the unresolved issues exceed what could realistically be dealt with in one or two days of concerted negotiation.

It's unclear on what basis AMPL expected to have a collective agreement by 23 April 2024, a deadline it set unilaterally."

(Bold by us. The page was updated on June 14th 2024)

Such as it appears from the communiqué, filed as **Exhibit P-11**;

a) Serious question to be tried

59. In light of the grounds for judicial review, it is respectfully submitted that there is plainly a serious issue to be tried, namely the reasonableness of the decision by the Ministre to refer the dispute to arbitration considering the context which clearly called for the opposite decision;
60. It is incontestable that the parties had progressed on many articles and had many articles left to discuss, including the monetary proposals when the Ministre referred the file to arbitration;
61. It is also clear that McGill University had asked for a global answer to its proposals and AMPL was getting ready to give that answer in August and continue bargaining;
62. It is equally important to consider that in light of the evolution of the protection afforded to collective bargaining as well as the right to strike, such a decision cannot be made unless it is clear that bargaining has failed despite the intervention of the conciliator;
63. There is therefore a serious issue to be tried as to whether or not the Ministre's decision should be quashed;

b) Irreparable harm

64. AMPL and its members will suffer irreparable harm pending the determination of the merits of this application for judicial review should a stay of the decision to refer the file to arbitration not be granted;
65. As per sections 93.4 and 93.5 of the Labour Code, interest arbitration can end bargaining and as such, put an end to any right to strike as well;
66. Ending AMPL's right to strike will affect AMPL's balance of power adversely;

67. A referral of this matter to arbitration at this time will also irrevocably disrupt the ongoing conciliation process which should be continuing in August and September 2024;

c) Balance of convenience

68. The balance of convenience in this case clearly favours AMPL and its members;

69. If the decision is not stayed, AMPL's fundamental rights will be irrevocably violated and the conciliation process disrupted whereas if a stay is granted, McGill University will suffer no harm from continuing with the conciliation and hearing AMPL's positions and responding;

c) Urgency

70. It is urgent to decide this matter, since the referral has happened already and McGill University is pushing to nominate the arbitrator despite the conciliation dates set up in August;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

On the application for a stay:

GRANT the present application for a stay of the execution of the Ministre's decision rendered on July 19th 2024 and communicated on July 24th 2024 to refer the dispute to arbitration pending a determination on the merits of the application for judicial review;

ISSUE any other order this honourable Court esteems appropriate;

On the merits of the application for judicial review:

GRANT the present application for judicial review;

QUASH the Ministre's decision rendered on July 19th 2024 and communicated on July 24th 2024 to refer the dispute to arbitration;

ISSUE any other order this honourable Court esteems appropriate;

THE WHOLE

with judicial costs.

Montreal, August 6th 2024

Melançon Marceau Grenier Cohen s.e.n.c.

MELANÇON MARCEAU GRENIER COHEN, S.E.N.C.

(Me Sibel Ataogul)

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Attorneys of the Applicant

if you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

In your answer, you must state your intention to either:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service; or
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

In support of the originating application, the Applicant files the following exhibits:

Exhibit P-1:	Certification decision;
Exhibit P-2:	Letter sent to the conciliator and the Ministre on May 22 nd 2024;
Exhibit P-3:	Letter sent to the conciliator and the Ministre on June 13 th 2024;
Exhibit P-4:	Letter sent to the conciliator and the Ministre on June 19 th 2024;
Exhibit P-5:	Decision from Ministre dated July 24 th 2024;
Exhibit P-6:	Letter sent to the chief mediator on July 25 th 2024;
Exhibit P-7:	Response from the chief mediator dated July 25 th 2024;
Exhibit P-8:	Email from McGill University to AMPL dated August 1 st 2024;
Exhibit P-9:	Response from AMPL dated August 2 nd 2024;
Exhibit P-10:	Response from McGill University dated August 5 th 2024;
Exhibit P-11:	Communiqué by McGill University on collective bargaining with AMPL;

These exhibits are filed with the instant proceedings.

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, August 6th 2024

Melanson Marceau Grenier Cohen s.e.n.c.

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**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT
(CIVIL DIVISION)**

N° :

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Respondent

And

**MCGILL UNIVERSITY, legal person
with its office at 845 Sherbrooke Street
West, Montréal, Québec, H3A 0G4**

Impleaded Party

SWORN DECLARATION BY EVAN FOX-DECENT

I, , **MAKE OATH AND SAY:**

1. I, Evan Fox-Decent, am a member of the bargaining unit represented by AMPL, as well as president of AMPL and a member of its bargaining committee;
2. I solemnly declare that the facts mentioned in paragraphs 1 to 71 are accurate and true, to the best of my knowledge.

SOLEMNLY DECLARED before me at
the City of Montreal, in the Province of
Quebec, this 6th day of August 2024



#240929

Evan Fox-Decent

A Commissioner for taking sworn
declarations.

NOTICE OF PRESENTATION

TO: **MCGILL UNIVERSITY**
845 Sherbrooke Street West
Montréal, Québec
H3A 0G4

TAKE NOTICE that this Application a stay is to be presented for adjudication before the court on **August 9th 2024, at 9:00 am, in room 2.16** of the courthouse located at 1 Notre-Dame East, in Montreal, or so soon thereafter as counsel may be heard.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Montreal, August 6th 2024

Melanson Marceau Grenier Cohen S.E.N.C.

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No. :

SUPERIOR COURT
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(AMPL) ASSOCIATION MCGILLIENNE DES
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Impleaded Party

**APPLICATION FOR JUDICIAL REVIEW AND
APPLICATION FOR A STAY ORDER
(ss. 34, 529 and 530 C.C.P.), SUMMONS, SWORN
DECLARATION, AND NOTICE OF PRESENTATION**

ORIGINAL

M^e Sibel Ataogul
File : 5477-000

mmgc

**Melançon Marceau
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