

Memorandum of Agreement

between
McGill University
(the “University”)
and
Association of McGill Professors of Law
 (“AMPL”)

Commented [EF1]: The University sent us this MoA yesterday, Sept 29. With the exception of the few minor changes in track changes below, it is the same proposal we received on Saturday, Sept 28.

WHEREAS the AMPL has been certified to represent:

Tous les professeur.e.s à temps plein de la faculté de droit de l'Université McGill

by the Tribunal administratif du travail, the whole as appears from the decision issued by the TAT on November 7, 2022 (the “**Certification**”);

WHEREAS the Certification has been challenged by the University, by way of a motion of judicial review (CS# 500-17-123248-224; the “**Motion**”);

WHEREAS the parties, despite multiple bargaining and conciliation sessions, have not yet concluded a first collective agreement (the “**CA**”);

WHEREAS an arbitrator has been assigned to settle the parties’ disputes regarding the content of the CA (Me Jean Allard; the “**Arbitrator**”);

WHEREAS the Arbitrator has declared that he could not yet determine if he would have to determine the terms of the CA;

WHEREAS AMPL’s members are currently on strike;

WHEREAS the strike will cause the cancellation of the Fall semester courses assigned to be taught by AMPL’s members if it is not concluded very rapidly;

WHEREAS two other associations have filed petitions for certification seeking to represent professors of the University on a per faculty basis (TAT # 1337529 and 1362541; the “**Petitions**”);

WHEREAS the University disputes the appropriateness of the bargaining unit proposed through the Petitions, notably on the basis that “per faculty” certifications are not appropriate within the meaning of the Labour Code;

WHEREAS the parties, in a joint effort to save the Fall semester, have agreed to the following representations and mutual agreements;

Commented [EF2]: We are advised that this recital, if sent to members directly by the University, would violate the TAT’s cease and desist order against the University to not interfere in AMPL’s affairs.

WHEREAS the spirit of this Memorandum of Agreement is that, subject to the end of the strike and the establishment of a “federated system” (as described in paragraph F) below, the University is willing to renounce legal arguments, recourses and contestations alledging, in substance, that “per faculty” bargaining units of professors are not appropriate within the meaning of the Labour Code (i.e., which notably means that the University is willing to withdraw the Motion irrevocably, upon confirmation that a “federated system” can be established, its motion for judicial review challenging the Certification);

Commented [EF3]: Paragraph F below, in conjunction with the final recital, make the University’s obligations to drop the judicial review and challenges to the Arts and Education unions, as set out in this document, entirely conditional on the University’s approval of what it describes as a “federated system.”

WHEREAS the parties agree that, in order to ensure efficient and binding negotiations regarding the establishment of a “federated system”, it is required to maintain a reasonable level of incentives for both parties and to make certain obligations contained in this Memorandum of Agreement conditional upon establishing a “federated system”;

WHEREAS, in regard to the previous paragraph, it is specifically agreed by the parties that it is their intent to rapidly engage in good faith discussions regarding the “federated system” and they both believe that these discussions have a reasonable chance of success, although it is possible that they will not reach an agreement regarding which subjects are to be governed by this “federated system”;

WHEREAS the parties recognized that this Memorandum of Agreement is only valid if it is fully executed by the parties and that, in the event where any obligation mentioned thereafter is not executed, this entire Memorandum of Agreement, as well as any document executed in its implication, shall be deemed null and void and shall be inadmissible as evidence in the course of any judicial or administrative procedure, being consider as a privileged document exchanged by the parties, through counsel, for the sole purpose of trying to settle a dispute;

Commented [EF4]: A crucial obligation is found in Paragraph F, where the University and the three faculty unions are envisioned to establish a federated system by 8 November 2024 to which the University can withhold its consent and thereby render this entire agreement null and void, as the recital immediately above makes clear expressly.

THE PARTIES HEREBY AGREE THAT:

A) They will instruct their respective counsel to contact the Arbitrator as soon as possible and no later than Monday, September 30, 2024, at noon, to inform him that, further to additional exchanges between the parties, they are now in agreement that, subject to the agreements already reached and/or susceptible to be reached by the parties in the future, he will have to determine the content of the CA, as it is not possible to conclude a CA within a reasonable delay. Counsel shall ask the Arbitrator to inform the Labour Minister of this fact as soon as possible and no later than Monday, September 30, 2024, at 5 pm.

Commented [EF5]: In this paragraph the University asks AMPL to in effect renounce its strike irrevocably, more than five weeks prior to when the University would drop the judicial review, if the University at that time agrees to the federated system.

Should the Arbitrator refuse to inform the Labour Minister of the parties’ common conclusion, this Agreement shall be null and void.

Commented [EF6]: The Arbitrator concluded in his decision on Friday that the Labour Code requires him to attempt mediation. Should he maintain that view and decline to inform the Minister that the parties wish to decline mediation and move straight to binding arbitration, the University’s obligations under this agreement would be null and void.

Should the Arbitrator agree to inform the Labour Minister of the parties’ common conclusion, but be unable to inform him by Monday, September 30, 2024, at 5 pm, AMPL will definitively end its strike on Monday, September 30, 2024, at 6 pm and issue, at that time, a public communiqué to this effect (in accordance with paragraphs # to # of the Memorandum of Agreement).

Should the Arbitrator agree to inform the Labour Minister of the parties' common conclusion, counsel shall also ask the Arbitrator to reschedule the hearings currently scheduled for October 8, 9, and 14 to later dates, dates to be established by the parties in good faith, on an expedited basis that respect the parties' (and their representatives') mutual availabilities.

- B) The parties will immediately engage in good faith negotiations to establish the terms of a "Back to Class" protocol, with the aim of reaching an agreement by Thursday, October 3, 2024, at 5 pm. It is understood that this "Back to Class" protocol is not a traditional "Back to Work" protocol, notably since it shall be focused on the administrative procedures to be established and followed to allow those Fall semester courses assigned to be taught by AMPL members to start as soon as possible and be completed by Christmas, rather than on the impacts of the strike on the professors' working conditions. For clarity, all questions regarding the impacts of the strike on the professors' working conditions, if any, shall be submitted to the Arbitrator if no agreement can be reached between the parties, in the context of the ongoing arbitration process.

Should the parties fail to reach an agreement by the above-mentioned date to allow those Fall semester courses assigned to be taught by AMPL members to start, the University shall unilaterally implement a "Back to Class" protocol, which shall take into consideration any suggestions made by AMPL in the course of the above-mentioned negotiations, to ensure that all courses of the Fall semester will be completed by Christmas.

- C) The University will instruct its counsel to forward a signed notice of withdrawal of its Motion to AMPL's counsel by Monday, September 30, 2024, at 5 pm.

Said notice of withdrawal shall only be filed with the Court, by either party, at such time as they have reached an agreement on the "federated approach" (as described in paragraph F) of this Memorandum of Agreement).

- D) The University will instruct its counsel to take the appropriate steps to cease to challenge the appropriateness of the bargaining unit proposed by the Petitions on the basis that per faculty professors' bargaining units are not appropriate within the meaning of the Labour Code. It is expressly understood that the University shall retain and/or reserve the rights to dispute the appropriateness (or the precise scope) of the bargaining unit proposed by the Petitions on any other basis than the basis mentioned above.

- E) By Monday, September 30, 2024, at 5 pm, the parties will agree on the terms of a joint communication affirming their mutual commitment to student success and collegial relations between the university and academic staff.

Said communication shall jointly recognize that McGill and AMPL have agreement on several matters and that the relevant clauses outlining such agreement will be incorporated

Commented [EF7]: The University proposes that AMPL end its strike irrevocably, and only then negotiate a back to work protocol, giving the University unilateral authority to set terms if the parties don't reach agreement by October 3. AMPL on Saturday (Sept 28) proposed the Return to Work Agreement members have worked on for the past two weeks. The University ignored it, reaffirming yesterday Sept 29 essentially the same proposal it sent us Saturday evening, Sept 28.

Commented [EF8]: Again, the University can simply refuse to agree to a federated approach sought by the three faculty unions, and thereby avoid its obligations in this agreement.

unconditionally into the eventual collective bargaining agreement which will be finalized through the ongoing process with the Arbitrator.

It shall also recognize that, nevertheless, important and legitimate differences on key employment and governance matters remain and have created an impasse that would benefit from the Arbitrator's continued intervention. Those matters will ultimately find their way into a collective bargaining agreement as the arbitration process continues.

Should the parties be unable to agree on the terms of a joint communication, ~~the Memorandum of Agreement shall be deemed null and void. no joint communication shall be issued and each party shall be free to issue communications at its own discretion, subject to its legal obligations.~~

- F) AMPL recognizes that it is normal and necessary that certain working conditions of the University professors, including the professors of the Faculty of Law, be established on a "University wide" basis (as opposed to a "per faculty" basis) and that this requires that, as it concerns these working conditions, a system be established that allows:
- a. That all relevant certified employees' associations (as well as other associations representing non-unionized professors) be consulted prior to the implementation of these working conditions.
 - b. That all relevant certified employees' associations have an opportunity to negotiate the terms of these working conditions, ideally on a collective basis (i.e., through a federated approach), the whole without giving a minority of the University's professors the power to block or otherwise prohibit the implementation of changes supported by the University and a majority of its professors.

Accordingly, the parties shall immediately instruct their counsel to engage in negotiations (parallel and distinct from any discussions related to the arbitration on the terms of the CA), to be conducted as efficiently as possible and concluded by no later than November 8, 2024, with the aim of agreeing on the terms of contractual agreements establishing the above-mentioned system. It is understood that these negotiations will require the involvement of the employees' associations at the origin of the Petitions.

Should the parties be unable to agree on the terms of contractual agreements establishing the above-mentioned system by November 8, 2024, the Memorandum of Agreement shall be deemed null and void.

The parties shall also immediately instruct their counsel to engage in negotiations to establish which working conditions should or should not be established on a "University wide" basis. Any unresolved dispute regarding whether a specific working condition should or should not be established on a "University wide" basis shall be submitted for determination to the Arbitrator, in the course of the arbitration regarding the CA.

Commented [EF9]: This clause and the many others that reinforce it leave the validity of agreement and therefore the validity of the University's obligations entirely at the discretion of the University, while AMPL will have already ended its strike irrevocably and agreed to negotiate a back to work protocol with no bargaining power.

The Arbitrator shall be informed of the above representations and agreements by the parties.

IN ACCORDANCE THEREWITH, THE PARTIES HAVE SIGNED ###

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