

Courtesy translation

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SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. 500-06-000074-985

DATE: January 27, 2009

PRESENT: THE HONOURABLE PIERRE JOURNET J.S.C.

HARRY DIKRANIAN

Plaintiff

v.

ATTORNEY GENERAL OF QUÉBEC

Defendant

JUDGMENT

[1] On December 17, 2007, the Court declared that the groups contemplated and the Members composing them were as follows:

[TRANSLATION]

All students who, on June 30, 1997, had obtained one or more student loans after signing a Loan Certificate issued by the administration of Aide financière aux études, who did not obtain other student loans after June 30, 1997, and who completed or abandoned their studies after June 30, 1997 ("Subgroup A").

All students who, on April 30, 1998, had obtained one or more student loans after signing a Loan Certificate issued by the administration of Aide financière aux études, who did not obtain other student loans after April 30, 1998, and who completed or abandoned their studies after April 30, 1998 ("Subgroup B").

[2] That judgment designated Aide financière aux études (AFE) of the Ministère de l'Éducation, du Loisir et du Sport to be in charge of managing the student claims.

[3] The judgment provided for the application for revision of the decisions rendered by AFE and specified the procedure to be followed.

[4] The Court also authorized any Member who was dissatisfied with the administrative revision to file a judicial contestation of that decision before the Court.

[5] Despite the terms and conditions provided for the revision and its contestation, the parties experienced difficulties, which resulted in the filing of the motion for ancillary instructions and orders relating to the claims of group Members who had resumed their studies.

[6] The problem resulted from AFE's refusal to indemnify 16 947 students out of a total of 79 655 potential claimants, because those people had resumed their studies after June 30, 1997, or April 30, 1998.

[7] The Court had already established that the three criteria for including a claim were as follows:

[TRANSLATION]

- (i) The Member was awarded a student loan before one of the pivotal dates, which establishes that the Member effectively has a vested right recognized by the Supreme Court of Canada;
- (ii) The Member completed or abandoned his or her studies after one of the pivotal dates, which establishes that the Member in fact suffered a prejudice because the interest that should not have been charged was wrongly capitalized and applied by the Defendant to the account of the Member (as opposed to those who completed or abandoned their studies before the pivotal dates and who were not charged interest); and
- (iii) The Member did not obtain a new student loan after either pivotal date, which establishes that the Member did not renounce his or her vested right by accepting a new loan that would have consolidated the previous loans obtained under the new terms and conditions provided for in the legislative amendments;

[8] AFE refused the claims of 16 947 students on the grounds that those students resumed their studies, that is, that they became students again after having ceased to be students following the coming into force of the legislative amendments.

[9] The parties agree, however, that AFE's refusal is justified in 1000 files since they concern students who obtained a new Loan Certificate following one of the legislative amendments, contrary to the third criterion for including a claim established in the 2007 Court judgment.

[10] AFE stipulated the inclusion of the 16 947 Members contemplated by the motion being considered by dividing them into two subgroups. It wrote the following:¹

[TRANSLATION]

That breakdown, provided and validated today by Aide financière aux études (AFE) of the MELS, and the common questions it raises are as follows:

1. A first group of 7184 persons resumed their studies on one or more occasions following one of the two legislative amendments. However, among those persons, around 1000 are excluded due to another common ground: around 800 persons were awarded a new loan after the amendments and around 200 persons are still students;
2. A second group of 9763 other persons also resumed their studies on one or more occasions following one of the two legislative amendments. However, AFE deems that those persons are not concerned by the description of the two groups due to another common ground: those persons were not pursuing studies and therefore were not students on July 1, 1997 (i.e. the effective date of the first legislative amendment) or on May 1, 1998 (i.e. the effective date of the second legislative amendment).

[11] The Attorney General of Québec submits that an argument based on possibilities cannot give meaning to the conclusions of a judgment. That runs counter to the principle that the conclusions of a judgment must not give rise to any interpretation.

[12] According to the principle of the clarity and comprehension of the conclusions of a judgment, the conclusions must not be interpreted according to [TRANSLATION] "what would not be excluded," as the plaintiff claims, but rather according to what is expressly and clearly stipulated.

[13] It ensues that the motion must be dismissed, all the more so since legal proceedings are under way for the 15 947 students reportedly dissatisfied with AFE's revision decision.

[14] Article 4.2 of the *Code of Civil Procedure* stipulates the following:

In any proceeding, the parties must ensure that the proceedings they choose are proportionate, in terms of the costs and time required, to the nature and ultimate purpose of the action or application and to the

¹ Letter dated December 2, 2008, from Mtre. Mario Normandin to Mtre. Guy Ste-Germain.

complexity of the dispute; the same applies to proceedings authorized or ordered by the judge.

[15] On the basis of those provisions, the Court deems it appropriate to rule on the motion in order to avoid the potential filing of a great number of judicial contestations as regards the costs and time required to determine the right to reimbursement.

[16] The ruling will resolve the difficulties encountered by the parties and allow the majority of the claims to be processed, with the results of AFE's calculation or quantum being subject to revision or contestation.

DISCUSSION

[17] The plaintiff claims that simply resuming studies without obtaining a new loan does not constitute a ground for the ineligibility of a Member.

[18] The defendant maintains on the contrary that the Member of a group who resumes his or her studies after having completed or abandoned them loses the right to the reimbursement of interest.

[19] Let us remember what the Supreme Court declared regarding the loans being considered:

I would therefore allow the appellant's action: (1) student borrowers with student loans that were active on July 1, 1997 have a vested right with respect to the duration of the exemption period applicable when the contracts were signed, as this right was not affected by the *Amending Act, 1997*; and (2) students with loans that were active on May 1, 1998 have a vested right with respect to the duration of the exemption period applicable when the contracts were signed, as this right was not affected by the *Amending Act, 1998*. The case is remanded to the Superior Court to determine the method for making claims, the amounts owed by Quebec and the payment procedures.

[20] In accordance with that ruling, students who obtained a loan after June 30, 1997, or April 30, 1998, were exempt for the period originally agreed to. The *Amending Act* did not change the interest payment exemption period in those cases.

[21] However, upon obtaining a new loan, a student lost his or her vested right with respect to the initial exemption period.

[22] The Court stresses that that is the only situation expressly provided for in which a claim for reimbursement filed with AFE can be rejected.

[23] It is possible, however, that a student could complete or abandon his or her studies and resume them more than once after the adoption of the *Amending Act*.

[24] The Court points out that the Supreme Court ruling in this case confirms the vested right of students who obtained a loan before June 30, 1997, or April 30, 1998, who have not obtained another loan since those dates and who completed or abandoned their studies after those respective dates for each loan.

[25] The matter of a Member resuming his or her studies after having abandoned them was never raised or mentioned. One must therefore conclude that the vested right applies to the reimbursement of a loan and the completion or the abandoning of studies after the deadlines for obtaining those loans in 1997 or 1998.

[26] The subsequent return to studies therefore does not affect their eligibility for the reimbursement to which they are entitled. To decide otherwise would run counter to the interpretation required to ensure the full effect of the Supreme Court ruling.

[27] One must therefore conclude that the only eligibility criteria for a student to have a vested right recognized by the Supreme Court are the existence of a loan on one of the dates concerned; the non-renewal of the loan; and the ultimate abandoning or completion of studies. The interruption and resumption of studies are not elements that must be considered in determining the rights of students or their eligibility for reimbursement.

[28] The cases of Members who resumed their studies are therefore contemplated by the judgment of December 7, 2007.

[29] Therefore, the Court:

[30] **ALLOWS** the motion;

[31] **DECLARES** that the return to studies after June 30, 1997, or April 30, 1998, does not constitute grounds for excluding Members from a group if they completed or abandoned their studies after those dates;

[32] **ORDERS** that the Members whose claims for reimbursement were rejected on the grounds that they resumed their studies be indemnified within 30 days of this judgment, without requiring any action on their part;

[33] **DECLARES** that the judgment applies to all claims that are active or that could yet be filed in accordance with the strict time limits set in the judgment of December 7, 2007;

[34] **DECLARES** that this time limit could be modified if the Attorney General of Québec wished to obtain within 30 days authorization to change the individual claim process in order to comply with this judgment.

[35] The whole **WITHOUT COSTS**.

(s)
PIERRE JOURNET J.S.C.

Mtre. Pierre Sylvestre
Mtre. Guy St-Germain
Mtre. Leon Greenberg
Sternthal Katznelson Montigny
Counsel for the plaintiff

Mtre. Mario Normandin
Bernard, Roy
Counsel for the defendant

Date of hearing: November 27, 2008