

# G + Education

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## EDITORIAL



# Despite having pleaded guilty to obtaining sexual services in exchange for payment, a teacher is reinstated

M<sup>e</sup> Eylul Recber, Le Corre Lawyers

The Supreme Court's case law establishes that teachers play a role model in society, which requires them to adopt exemplary behaviour. Considering that school is a place for acquiring knowledge and societal values, higher moral standards are required from teachers, both at work and in their personal life. However, this raises a question: does the role model status that teachers hold due to their position require them to be perfect and infallible in their personal life?

It is precisely this question that is analyzed by the arbitrator in *Syndicat de l'enseignement de la région de Québec (FAE) et Centre de services scolaire des Premières Seigneuries*. In this decision, an elementary school physical education teacher with 20 years of experience pleaded guilty to offences of obtaining sexual services in exchange for payment and harassing a woman offering such services. He had visited an erotic massage salon and had a relationship with a woman in her thirties. After being informed of the charges against the teacher, the School Service Centre suspended the teacher and then terminated him on the grounds that these criminal offences were incompatible with his position as a teacher and conflicted with the school's duty to protect students and staff.

The arbitrator reiterated that the legal and regulatory framework governing education aims to ensure transparency regarding the legal status of teachers and an awareness of any situation that could reasonably raise concerns about the physical and psychological safety of students. However, he added that this legal framework must be interpreted considering section 18.2 of the *Charter of Human Rights and Freedoms* that aims to ensure job protection for individuals with criminal records. Section 18.2 of the Charter stipulates the following:

No one may dismiss, refuse to hire or otherwise penalize a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence.

The prohibition set out in section 18.2 of the Charter requires an objective connection between the criminal offence and the position held in order to justify the employer's decision to terminate an employee. The term "connection with the job" refers to the employee's ability to perform their duties effectively despite their criminal record.

The arbitrator concluded that there is no such connection between the offences committed by the employee and the teaching profession that would make him incapable of practicing it. Indeed, they fall entirely within the teacher's private life, they did not occur in the workplace or even in a context connected to the school environment, and they did not involve a minor, a colleague or a student. The School Service Centre based their decision to terminate the employee on a perception that he would be less capable of performing his duties as a teacher and less worthy of recognition as a human being because of his criminal record. According to the arbitrator, the employer established a correlation between sexuality and pedophilia, without any supporting evidence. The employee committed a lapse in judgment that must be assessed concretely, taking into account that all human beings are fallible.

In addition, the evidence demonstrated that the School Service Centre feared parents' opinion. According to the arbitrator, that does not, however, justify the decision to immediately terminate an employee whenever sexuality is involved, in order to avoid upsetting parents.

Having determined that the evidence did not support the conclusion that the employee's return to work would pose a risk to the safety and integrity of students and staff, the tribunal overturned the termination and ordered the employee's reinstatement. Furthermore, there was no evidence to suggest that parents' trust would be compromised.

This decision demonstrates that a misconduct by a teacher in their private life does not necessarily justify a termination. An analysis of all the facts is needed to determine if there is an objective connection between the offence and the position held. Referring to the arbitrator Rodrigue Blouin's statements in *Syndicat des enseignantes et enseignants du Collège Lévis-Lauzon* and *Collège Lévis-Lauzon*, the arbitrator emphasized that "tolerance and the principle of section 18.2 of the Charter are also values that the education system must promote".

1. 2025EXPT-1790, 2025 QCTA 391, Alain Turcotte

2. *Syndicat des enseignantes et enseignants du Collège Lévis-Lauzon and Collège Lévis-Lauzon*, SAE 7039, 2000-06-19, pp. 9-10

## RECENT DECISIONS

### 1 The “bad doctor game”: inadequate supervision by a preschool teacher

A teacher challenges her dismissal for gross negligence and lack of vigilance by failing to supervise students in her class, a kindergarten class for 4-year-olds. The evidence revealed that the eight students in her class played several times the “bad doctor” in her class, while she was there in front of her computer. The game involved the students’ private parts, including the insertion of objects into their orifices by other students, particularly with objects found in a medical kit. According to the arbitrator, the employee’s complete lack of introspection, her conviction that she performed her job well and her refusal to even consider the possibility that the game occurred more than once in her class seriously undermine the bond of trust that ties her to the employer. In order to maintain the dismissal, the arbitrator also considered several aggravating factors, including the nature of her duties, the employee’s long length of service, her conduct during the investigation and the hearing and the harm caused to the students and their parents.

*Alliance des professeures et professeurs de Montréal and Centre de services scolaire de Montréal*  
2025EXPT-2122, 2025 QCTA 427, Frédéric Tremblay

### 2 The School Service Centre could not refuse automatically the requests for leave or progressive retirement

The union challenges a directive informing professionals working in a field experiencing a shortage and recruitment difficulties that their general requests for leave or progressive retirement would be automatically rejected, except as otherwise provided in the directive. As stated by the School Service Centre, they maintain their discretionary authority with respect to the provisions of the collective agreement relating to leave requests and progressive retirement. However, the grievance does not challenge this discretionary authority that implies a potential refusal, which still belongs to the employer as long as they use it in a reasonable way. The grievance instead targets the refusals stemming from a directive whereby the employer, without conducting an individual analysis, systematically rejects requests. On such a situation, case law, almost unanimously, establishes that the employer cannot renounce to its discretionary authority to grant leave or progressive retirement on the grounds of ensuring greater administrative efficiency in processing requests. The grievance is upheld.

*Syndicat des professionnelles et professionnels du milieu de l’éducation de Montréal (CSQ) and Centre de services scolaire de Montréal*  
2025EXPT-2377, 2025 QCTA 470, Robert L. Rivest

### 3 Failure of the probation period is challenged: the arbitrator’s fees are payable by the union

The arbitrator dismissed an employee’s grievance challenging the failure of his probation period. He must decide now who should bear the arbitration costs. The collective agreement stipulates that the arbitrator’s fees and expenses are covered by the employer in the event of a grievance challenging a dismissal. The arbitrator first noted that, within the meaning of the collective agreement, the end of employment of an employee who fails their probation period is an “end of engagement” and not a dismissal. Therefore, the arbitrator was not dealing with a dismissal grievance, but rather a grievance in which the union alleged that the employer acted abusively, arbitrarily and discriminatorily when assessing the employee negatively, which ultimately led to the end of his commitment. The entire evidence focused on how the employer carried out their assessment task. This is not a dismissal, but rather a failure of the commitment process. The cost and fees are therefore payable by the union.

*Syndicat des professionnelles et professionnels en milieu scolaire du Nord-Ouest and Centre de services scolaire de Rouyn-Noranda*  
2025EXPT-2070, 2025 QCTA 437, Éric-Jan Zubrzycki

## RECENT DECISIONS

### 4 The employer still has the right to reflect and discuss with their employees

The union filed a complaint alleging that the College had obstructed his activities by using the work of a committee to convince teachers to adopt his vision of working conditions regarding the school calendar and schedule. According to the tribunal, the fact that an employer reflects and discusses with their employees on ways to improve their work methods cannot be invariably considered as an obstruction; the approach must be motivated by an anti-union intention, which is not the case. The College acted within the limits of their freedom of expression. There was no threat or promise to bring teachers to adopt their point of view. The fact that the committee stated that it had given itself the right “to dream and innovate” does not imply that it appealed to the teachers’ emotions. There were no comments criticizing the union or attempting to undermine its credibility. The complaint is dismissed.

*Association du personnel de Sainte-Anne (FPEP/CSQ) vs Collège Sainte-Anne*  
2025EXPT-2217, 2025 QCTAT 4257, Henrik Ellefsen

### 5 The weather conditions for the city of Montmagny were not abnormal

A daycare educator is challenging the refusal of her claim by the CNESST. She alleges that she suffered an industrial accident due to unusual working conditions. In fact, according to the educator, the icy conditions that prevailed during that period, forcing her to wear cleated boots, as well as the “excessive” walking on uneven terrain, are said to have caused her a hip condition. According to the tribunal, the weather conditions were not unusual for the time of the year in the city of Montmagny. Above all, the medical doctrine submitted by the employee, according to which uneven terrain causes an overuse of the hip, cannot be considered credible in the absence of an analysis or comments from an expert physician or a healthcare professional in charge. A medical report is not evidence of a causal relationship, and in the case of a personal condition with a multifactorial source, the challenge is dismissed.

*Chassé and Centre de services scolaire de la Côte-du-Sud*  
2025 QCTAT 5049, Nathalie Gélinas

### 6 An evening between colleagues is not part of the inherent risks assumed by the School Service Centre

The employer is challenging the CNESST’s refusal to grant the cost transfer of the payments related to an employee’s injury under section 326 AIAOD. He alleges that the industrial accident is primarily due to a third party. The event happened during an end-of-year school party between colleagues, while the employee was on board a river shuttle to go to the Old Port of Montreal. A speedboat collided head-on with the employee’s boat, causing her to suffer a broken collarbone. The accident was investigated by the Transportation Safety Board and was covered in newspaper articles. However, an outing for the staff organized during a pedagogical day, without the presence of students, is neither part of a teacher’s usual duties nor of her inherent risks associated with the employer’s activities. It would therefore be unfair to make her bear the financial consequences of the accident. The challenge is upheld.

*Centre de services scolaire des Patriotes*  
2025 QCTAT 3772, Virginie Brisebois