

# G + Education

INFO

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## EDITORIAL



### For or Against Staff Members on the Board of Directors?

M<sup>e</sup> Lucie Roy

The staff members of the French School services centres (SSC) who sit on the Board of Directors (BOD) are full members, which is the intention of the legislator. Indeed, the new composition of the SSC reflects the legislator's clear choice to share the efforts related to the management of the SSC among several groups that may have different points of view and interests.

It is interesting to note that section 307 of the *Act to amend mainly the Education Act with respect to school organization and governance*<sup>1</sup> (Bill 40), as originally introduced in October 2019, did not include any restrictions on the right of staff members to participate in the BOD. In response to the concerns of professional associations regarding the increased risk of conflicts of interest related to the presence of staff members on the BOD during periods of negotiation, submission of staffing plans, and presentation in the event of disciplinary measures or dismissals, the Minister of Education had established a temporary framework for staff members on the BOD in Bill 40, pending the regulation in this regard.

As promised, a draft version of the *Règlement sur les normes d'éthique et de déontologie applicables aux membres du conseil d'administration d'un centre de services scolaire francophone*<sup>2</sup> (the "Regulation") was finally tabled in March 2021. While the Regulation sets out the standards of ethics and professional conduct applicable to all members of the BOD, for the purposes of this article, we will solely focus on staff members.

In addition to the conflict of interest's rules (s. 12, 13, 15 and 16 of the Regulation), staff members must be careful and exercise reserve in their publications on a website, blog or social network (s. 19 and 22 of the Regulation).

In connection with the dual role of employee and BOD member, section 20 of the Regulation states that:

The member sitting as a staff member must, on pain of revocation of his mandate, abstain from any question concerning the hiring, the employment relationship, the remuneration, the benefits and the other individual or collective working conditions of any employee of the school service center.

He shall also, after having been given an opportunity to make representations, withdraw from the meeting for the

duration of the deliberations and the vote on the matter. (*translation*)

This paragraph is largely inspired by section 12 of the *General and Vocational Colleges Act*<sup>3</sup> and section 37.2 of the *Act Respecting the Université du Québec*<sup>4</sup>. It is therefore on the basis of decisions rendered in the context of these legislations that we can establish the process to be followed when the exclusion of a staff member sitting on the BOD is requested in the context of a discussion at a BOD meeting concerning one of the subjects set out in section 20 of the Regulation.

Thus, the notice of the meeting at which the item will be discussed should announce the intention to request the exclusion of staff members sitting on the BOD under section 20 of the Regulation, and provide sufficient information to allow each member of the BOD to judge whether their exclusion is justified and to be prepared to contest it if it is not. In the latter case, they may appear at the BOD meeting and if another member requests exclusion, they may propose to the full BOD the reasons against the exclusion before a vote is taken on the matter.

It should be noted that before being a member of the BOD as a staff member representative, the Administrator is first and foremost an employee of the SSC. As such, his obligations under the *Civil Code of Québec*, the collective agreement or the Code of ethics for SSC employees remain in force and must guide his words and actions in the context of his duties on the BOD.

In response to our initial question, we are of the opinion that there are certainly several advantages to having SSC staff members take part in the decision-making process and be able to express the employees' point of view. That being said, the reality on the ground may be more nuanced, which is why we encourage you to discuss the process to be followed in the event of an exclusion request with the members of the BOD before an issue arises, subject to any changes that may be made to the final text of the Regulation.

1. LQ, 2020, chap.1

2. *Gazette officielle du Québec*, Partie 2, 153<sup>e</sup> année, no 12, 24 mars 2021, p. 1507-1512

3. RLRQ, chap. C-29

4. RLRQ, chap. U-1

## RECENT DECISIONS

### 1 No to Distance Learning for All

Following the dismissal of a safeguard order, the Superior Court was called upon to rule on the right to distance learning for all, without any condition, at the parent's choice, as it was desired by the plaintiffs. The plaintiffs alleged that the requirement of a medical note to benefit from distance learning violated the rights guaranteed in section 7 of the *Canadian Charter of Rights and Freedoms*, those set out in section 39 of the *Charter of Human Rights and Freedoms* as well as sections 10, 14, 21, 32 and 33 of the *Civil Code of Québec*. The Court dismissed the application, finding that the challenged measure withstood the constitutional attack and was valid. The Court noted that the requirement had neither the purpose nor the effect of requiring the plaintiffs to send their children to school or of exposing them to risk, but rather that it was because of the obligation to attend school that distance learning for all was not possible.

*Karounis v. Procureur général du Québec*  
2021 QCCS 310, Justice Chantal Chatelain

### 2 The Number of Teaching Hours Must Be Sufficient to Achieve the Objectives

The union contested the Governing Board's approval of the subject grid because it did not respect the requirements of the *Education Act*, the Basic School Regulation and the collective agreement with respect to the time allocated to the course "Ethics and Religious Culture". The school board objected to the arbitrator's jurisdiction to decide the grievance. The arbitrator concluded that the object of the grievance was not to determine the subject grid, but rather to determine whether the employer had violated the collective agreement, which implicitly included the Basic School Regulation. There is therefore a sufficient connection between the substance of the dispute and the collective agreement to give the arbitrator jurisdiction to hear the grievance. Despite its decision-making powers, the governing board that approves the subject grid must ensure "that the compulsory objectives are achieved and the compulsory contents of the official programs of studies are acquired". The grievance was partially granted.

*Syndicat de l'enseignement de la Haute-Yamaska et Commission scolaire du Val-Des-Cerfs*  
SAE 9449, 2020-04-06, M<sup>e</sup> Jean-Yves Brière (T.A.)  
Application for judicial review, 2020-08-24

### 3 Time to Clean Up!

Following numerous complaints about the school's uncleanliness, the Principal, in consultation with the school's maintenance team and representative from the school services center, had decided, as a last resort, to change the work schedule of a caretaker who had been absent for a long period due to illness. When the latter returned to work, the union contested the change in the employee's schedule, citing her family situation and the fact that the change in schedule made it extremely difficult to balance work and family life. The employer argued that the change was necessary for pedagogical and administrative purposes. Considering that the change in schedule had an immediate positive effect, that the premises were now clean and that the students and staff were happy, the arbitrator concluded that the employer had discharged its burden of proof by establishing that the change in schedule was necessary in accordance with clause 8-2.10 of the collective agreement. The grievance was denied.

*Centre de services scolaire Marguerite-Bourgeoys c. Syndicat canadien de la fonction publique, section locale 1208*  
SAE 9516, 2021-04-15, M<sup>e</sup> Pierre St-Arnaud (T.A.)

## RECENT DECISIONS

### 4 A Delayed Surgery Due to COVID cannot Penalize an Employee

Contrary to the conclusions of both parties' experts, who recognized that the employee could return to work gradually, the employer argued that she could not do so within a reasonable time. As such, the employer terminated her employment because of her physical disability. In light of the facts demonstrated during the arbitration, the Arbitrator concluded that the employer did not attempt to accommodate the employee by refusing to apply the gradual return to work mechanisms established by the collective agreement. The postponement of a surgery for several months due to COVID could not penalize the employee. The employer had to take into account the particularity of the event identified by the treating physician and not ignore it. The grievor was able to perform her work in a reasonably foreseeable future. In short, the employer failed to analyze the employee's situation as a whole and the duty to accommodate that was imposed on it. Grievance granted.

*Syndicat de l'enseignement de l'Outaouais c. Centre de services scolaire des Draveurs*  
SAE 9523, 2021-05-13, M<sup>e</sup> Jean-Pierre Villaggi (T.A.)

### 5 The Union cannot Disavow an Agreement it has Negotiated and Signed

Despite the terms of the collective agreement, the parties signed a Letter of Agreement specifying that the addition of hours to an employee's schedule did not have the effect of changing his status, even if this was done at the occasion of the staffing plan's adoption. On behalf of ten regular part-time employees, the union then filed a grievance in which it argued that the grievors had acquired the status of permanent full-time employees by virtue of the mechanism provided for in the collective agreement and claimed their permanence. Despite the fact that the agreement reached did not comply with the provisions of the *Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors* and the national collective agreement, the grievance is denied. The union agreed to negotiate the terms of the agreement for its members and signed it with full knowledge of the facts. Given this approval, it would be inappropriate to disavow the Letter in Agreement in order to benefit from the terms of the collective agreement.

*Syndicat du personnel de soutien de la Commission scolaire des Hauts-Cantons et Centre de services scolaire des Hauts-Cantons*  
SAE 9481, 2020-11-19, M<sup>e</sup> Pierre St-Arnaud (T.A.)

### 6 Violence against a Coach at a Hockey Game is an Exceptional Situation

A teacher and hockey coach suffered an employment injury after being hit in the head at the end of a hockey game. While exchanging a handshake with the opposing team at the end of a game, a player refused to shake hands with his opponent, called him names and made racist remarks. When the employee stepped in to prevent a verbal escalation, he was struck in the head and lost consciousness. The court granted the employer's request to impute the cost of benefits payable due to a third-party fault, as the assault was a highly unlikely event and exceptional in the circumstances. The fact that the Réseau du sport étudiant's code of ethics is strict and does not tolerate violence, and that, since 2008, the record of infractions does not include any infractions involving a player and a coach, made the situation exceptional.

*Commission scolaire des Grandes-Seigneuries*  
2020 QCTAT 1593 (SST), j. a. Gaétan Guérard