C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

COURT OF APPEAL

(Civil Division)

No.: 500-09-030806-236

500-17-120468-221

SOCIÉTÉ QUÉBÉCOISE DES INFRASTRUCTURES APPLICANT – Defendant

Vs.

KAHENTINETHA
KARENNATHA
KARAKWINE
KWETTIIO
OTSITSATAKEN
KARONHIATE RESPONDENTS – Plaintiffs

And

McGILL UNIVERSITY
CENTRE UNIVERSITAIRE DE SANTÉ McGILL
HÔPITAL ROYAL VICTORIA
VILLE DE MONTRÉAL
PROCUREUR GÉNÉRAL DU CANADA
IMPLEADED PARTIES – Defendants

And

PROCUREUR GÉNÉRAL DU QUÉBEC
IMPLEADED PARTY- Impleaded party

And

OFFICE OF THE INDEPENDENT SPECIAL INTERLOCUTOR FOR MISSING CHILDREN AND UNMARKED GRAVES AND BURIAL SITES ASSOCIATED WITH INDIAN RESIDENTIAL SCHOOLS – KIMBERLY MURRAY

IMPLEADED PARTY – Third-Party Intervenor for Conservatory Purposes

OUTLINE OF ORAL ARGUMENT

INDEPENDENT SPECIAL INTERLOCUTOR FOR MISSING CHILDREN AND UNMARKED GRAVES AND BURIAL SITES ASSOCIATED WITH INDIAN RESIDENTIAL SCHOOLS ("SPECIAL INTERLOCUTOR"),
INTERVENOR FOR CONSERVATORY PURPOSES

PART I: OVERVIEW

1. The Applicant, McGill University, fails to establish errors of law or irremediable injury.

2. The Superior Court issued a valid order pursuant to its authority under Special Case Management.[1] The Applicants had full procedural rights on a sufficient factual record at the hearing. The order is a stopgap measure to enforce the homologated Settlement Agreement ("the Agreement") until a case management conference in three months.

PART II: FACTS

3. Quebec law and jurisprudence are ill-equipped to adjudicate the rights outlined by the self-represented Indigenous Respondents in their originating application.[2]

4. In May 2022, the Applicants initiated Special Case Management, which effectively advanced a major issue before trial: investigating the existence of potential unmarked burials of Indigenous children before those potential remains are disturbed by the Applicant's redevelopment project.[3] The parties jointly appointed an Expert Panel in the homologated Agreement to impartially oversee and guide the investigation.

5. In August 2023, the Applicants unilaterally terminated the Expert Panel. The Respondents subsequently sought an order to enforce the Agreement.

6. On November 20, 2023, Justice Moore ordered the Applicants to abide by the Agreement and follow the Expert Panel's binding recommendations until the next case management conference in March 2024. The decision found that the Applicants repeatedly interpreted the homologated Agreement in a restricted and narrow fashion leading to their premature dismissal of the Expert Panel. McGill now argues irremediable harm for having to re-implement a term it previously agreed to.

PART III: ARGUMENTS

a) The November 20, 2023 decision is not a structural injunction

7. The decision is an interlocutory order for the Applicants to abide by the terms of the homologated Agreement for three months. The Applicants have not demonstrated

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[1] *Code of Civil Procedure*, CQLR c C-25.01, Article 157
[2] The Court interpreted this argument in paras 14-15 of the Oct. 27, 2022 Order, Applicants' Appendix 2.
[3] See, for example, the Rectified Settlement Agreement homologated on April 20, 2023.

harm or prejudice arising from the period they were in compliance with the Agreement.

8. McGill is conflating a special case management measure with a structural injunction. The Superior Court **did not** take carriage of any aspect of the investigation. The Superior Court **interpreted a term** of the Settlement Agreement following an extensive hearing in which McGill had full procedural rights—including the ability to provide all the evidence they sought to rely on and share with the Court. Therefore, McGill is not prejudiced.

9. The Superior Court interpreted the Settlement Agreement with the benefit of a complete evidentiary record and issued an order, akin to a declaratory judgment, that fosters mediation between the parties until the next case management hearing.

b) The Court correctly distinguished the case at hand from Limouzin

10. The Court in *Limouzin* hastily imposed a Safeguard Order affecting **private entities** engaged in a rapidly evolving business dispute with an incomplete file record. The Court failed to properly manage the file following the Safeguard Order, neglecting to facilitate mediation or even schedule the next hearing.[4]

11. The Applicants in *Limouzin* were therefore barred from commercial activities without the opportunity to be heard, compromising their business. This is precisely what justified the Court of Appeal's intervention.[5] *Limouzin* has been distinguished when the Court is in firm control of case management,[6] and in different procedural contexts.[7]

c) Proportionality favours the self-represented Indigenous Respondents

12. The Superior Court implemented a special case management tool as a stopgap measure to enforce the homologated Agreement. The Applicants consistently resort to litigation tactics and culturally incompentent and insensitive comments[8] to advance their interests in the redevelopment project. It is not in the interests of justice to subject the Kanien'kehá:ka Kahnistensera to the complex appeals process on this issue.

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[4] *Limouzin c. Side City Studios Inc*., 2016 QCCA 1810 at para 63.
[5] *Ibid*, *Limouzin* at para 65.
[6] *144781 Canada inc. c. Weiner*, 2019 QCCA 1794 at para 20-21,
[7] *Procureure générale du Québec c. 9105425 Canada Association*, 2018 QCCA 580 at paras 49-50.
[8] See for example para 38 of *Leave* application where Respondents call the investigation baseless.

Toronto, Ontario, January 11, 2024

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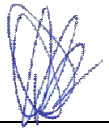
Saskatoon, Saskatchewan, January 11, 2024



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Pointe-Claire, January 11, 2024

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QUEBEC COURT OF APPEAL

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OF **OFFICE OF THE INDEPENDENT SPECIAL INTERLOCUTOR**

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