

CANADA
Province of Quebec
District of Longueuil

S U P E R I O R C O U R T
(C l a s s a c t i o n s)

N° 505-06-000023-205

STÉPHANIE BERNIER

and

PIERRE-ANDRÉ FOURNIER

Plaintiffs

v.

COLLÈGE CHARLES-LEMOYNE DE
LONGUEUIL INC. ET AL

Defendants

DEFENSE OF ACADÉMIE YÉSHIVA YAVNÉ

1. Académie Yéshiva Yavné (hereinafter the "**School**"), is a private school in Montreal and a non-profit organization within the definition of the *Act Respecting Private Education* (R.S.Q., c. E-9.1).
2. The School refers to the affidavit signed by Samuel Mellul and dated January 11, 2021 (the "**Affidavit**"), as well as to the summary defense dated May 2, 2022, both already filed into the Court record.

A. THE CONTEXT

3. As appears from the educational services contract (for primary level) for the school year 2019-2020 (the "**Contract**"), which is signed by parents for each student attending the School, the School undertakes to provide its students with educational services at the primary level, in accordance with the education program set by the *Ministère de l'Éducation du Québec* (the "**MEQ**") for the school year in question.

4. Moreover, as appears from the Contract, the School offers its students Jewish studies, which form part of the academic curriculum offered by the School for the year.
5. The curriculum for the Jewish studies segment is not regulated by the MEQ and is left up to the entire discretion of the School, to be determined by the School for each grade for the upcoming school year.
6. As appears from the Contract, the fees to be paid by the parents to the School for the upcoming school year are essentially divided as follows :
 - (i) Tuition fees;
 - (ii) Fees for Jewish studies;
 - (iii) Miscellaneous fees such as registration, security and building;
 - (iv) Optional fees, such as daily hot lunch, after school supervision and for lunch/after school activities;
7. In the context of providing the students with the curriculum imposed by the MEQ for the upcoming school year for their respective grades, the School offers a program which is fluid, flexible and adaptive, and involves a mix of in person teaching, homework, various creative learning projects (to be done in groups or individually) and interactive technological learning tools and activities.
8. The program offered by the School is not "set in stone" for any given day, but fluid and flexible to adapt to the students (individually and/or as a group) or unforeseen events, and to make sure the curriculum required by the MEQ is properly deployed and reviewed by the students over the school year.
9. Throughout the school year, the teachers periodically evaluate the students in different ways, to make sure that by the end of the school year, they have reviewed the curriculum required by the MEQ and are qualified to graduate to the next grade, in accordance with the standards set by the MEQ.

B. THE COVID-19 PANDEMIC

10. On March 13, 2020, in response to the COVID-19 pandemic and by order in council 177-2020, the Government of Quebec issued an immediate closure order for all schools in Québec.
11. The School (as all other schools in Quebec) was therefore not allowed to receive its students "in person".
12. In effect, the closure order issued by the Government of Quebec lasted until the end of the school year.
13. The School immediately undertook the necessary steps to implement online schooling for all of its students.
14. To do so required the staff to quickly reorganize its typical methodology to make sure that the students had access to the necessary school materials online and were able to attend interactive daily online classes.
15. A daily schedule was elaborated for each grade and communicated to the students and parents.
16. An online platform via which the students had access to the necessary school materials for their online classes and communicate with the teachers was set up and refreshed daily or sometimes multiple times a day.
17. The School management would regularly discuss with the teachers to make sure the students were actively participating to the online classes, that their progression was adequately monitored and that they received all the necessary academic curriculum in the circumstances.
18. In its communications with the schools after the March 13, 2020 order in council, the MEQ advised as follows:
 - (i) Encouraging schools to transition to online schooling;

- (ii) The schools were asked to review their respective academic curriculums to make sure that (i) the topics already taught earlier in the year were reinforced with the students; and (ii) they focused on the essential subject matters, namely (as specifically identified by the MEQ) languages, mathematics, history and science;
 - (iii) The government exams were cancelled for the current school year;
 - (iv) The decision to have a child graduate to the next grade would be based upon the professional judgment of the teachers;
 - (v) The end of year report card would reflect pass or fail grades for the different subject matters;
 - (vi) The school year would not be extended beyond June 2020.
19. Within the MEQ guidelines mentioned above, the School set up daily classes via an online video platform for its students.
20. The online platform permitted the teachers to interact with the students regularly and make sure they had, in these exceptional circumstances, all the necessary materials and support.
21. The online platform also permitted the students to interact with each other and with their teachers during class, and during recess. For example, the School provided computers to forty (40) families who needed them and implemented the following activities :
- (i) Online recess; and
 - (ii) Weekly online activities.
22. From March to June 2020 (the "**Covid Period**"), the School was therefore able to provide the students with the required curriculum, in accordance with the guidelines issued by the MEQ, as well as to provide the students, on a weekly basis, with Jewish studies.

23. All the students in the School successfully completed their academic year, in accordance with the standards set by the MEQ.
24. Throughout the Covid Period, the School would regularly communicate with parents via newsletters or other means, informing and updating them as to the measures put in place regarding the curriculum and online schooling.
25. After further verifications, the School did not charge the optional fees (mentioned above) in advance and therefore the School did not have to reimburse to parents any "unused" portion of said fees for the school year 2019-2020.
26. The parents accepted the services offered by the School during the Covid Period.
27. As indicated above, in the midst of the Covid Period, the parents were informed of the measures taken by the School to pivot to online learning.
28. If the parents were not satisfied with the services proposed by the School for the Covid Period, they could have terminated the Contract with the School.
29. However, not only did all the students of the School fully benefit from the services offered during the Covid Period, but the parents paid the school all the required fees (less those credited as indicated above), including parents that have continued paying them in installments for the months of April, May and June 2020.
30. The parents cannot, on the one hand, have paid for and benefited from all the services offered by the School during the Covid Period, and now, post facto, claim a reimbursement on the basis that said services were never compliant with the Contract.
31. The parents knew, in real time, what the circumstances were and the nature of the services offered and accepted them (and paid for them) "*en toute connaissance de cause*". They no longer have a claim against the School.

C. FINANCIAL AID

32. For the 2019-2020 school year, 321 students of the School benefited from a subsidy or financial aid from the School or a community program in average of \$5,370 per student, which *inter alia* exceeds the claim put forth by the Plaintiffs.
33. That said and if this Court deems that parents of the School have a viable claim against the School for the Covid Period (which is categorically denied), then the parents who have received financial aid must be removed from such a group.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO :

DISMISS the application filed by the Plaintiffs;

GRANT the present defense;

THE WHOLE with costs.

Montréal, November 23, 2022

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**COUR SUPÉRIEURE
(Actions collectives)**

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Demandeurs

-C.-

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Défenderesses

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Notre dossier : 148140-1001

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