

## SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N° : 500-17-030241-064  
500-05-047782-998

DATE : December 18, 2009

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**PRESIDING: THE HONORABLE CHANTAL CORRIVEAU, J.S.C.**

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**500-17-030241-064**

**GEORGE BARDIS**  
Plaintiff

Vs

**CONCORDIA UNIVERSITY**  
-and-  
**WAHHAB MONIR**  
Defendants

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**500-05-047782-998**

**GEORGE BARDIS**  
Plaintiff

Vs

**JEANNETTE SWITZER**  
-and-  
**CONCORDIA UNIVERSITY**  
Defendants

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**JUDGMENT**

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[1] Mr. Bardis registered at Concordia University (**Concordia**) in 1990 to pursue a Bachelor of Commerce degree.

[2] He graduated in 2003, despite not having completed the required curriculum.

[3] Mr. Bardis claims moral damages and loss of earnings from Concordia and two professors, Wahhab Monir (Prof. Wahhab) and Jeannette Switzer (Prof. Switzer), in two separate court files that were joined at trial.

[4] Mr. Bardis' actions are dismissed by the Court, since he was not successful in proving a fault committed toward him by any of the defendants. On the contrary, the Court concludes that he benefited from favourable treatment throughout his studies and upon his graduation.

### **FACTS RELEVANT TO BOTH CASES**

[5] In 1990, Mr. Bardis is admitted to Concordia to pursue a Bachelor of Commerce degree under the Extended Credit Program (ECP). This program requires that students obtain 120 credits from a list of courses, while students admitted from CEGEP must complete 90 credits.

[6] For each new student at Concordia, the annual Calendar applies until the completion of studies. The Calendar contains rules and regulations, a description of current requirements and available courses. In Mr. Bardis' case, the 1990-1991 Calendar applies.

[7] In his first year of study, Mr. Bardis fails and has to abandon his studies for medical reasons.

[8] In 1995 he is re-admitted to Concordia, in the same program, as a part time student.

[9] His re-admittance letter dated August 30, 1995 indicates that he is subject to the same conditions of admission and regulations in the 1990-1991 University Calendar.

[10] In the fall of 1997, Mr. Bardis encounters other health problems. He is often absent from class.

[11] At that time he is registered in a finance course, identified as FINA 315, taught by Defendant Jeannette Switzer (Prof. Switzer). He does not write the two mid-term exams and obtains a mark of 48% on his final exam. Since the final exam counts for 90% for those students who have not written the mid-term exams, and Mr. Bardis does not submit a group term paper counting for 10%, Mr. Bardis obtains a failing grade of 43% for the course.

[12] On January 27, 1998, Mr. Bardis goes to Prof. Switzer's office to meet her. The purpose of the visit is to enquire about his final grade.

[13] Since Mr. Bardis shows up unannounced, as Prof. Switzer is about to leave at the end of the day, she tells him she will review his file and contact him the next day. Mr. Bardis tells Prof. Switzer on this occasion that he had not written the term paper.

[14] The next day Prof. Switzer calls Mr. Bardis back to confirm his failing grade of 43%.

[15] This time, Mr. Bardis tells Prof. Switzer that he did write the term paper, alone, and that he submitted it an hour late.

[16] Prof. Switzer responds that she has not received the paper and invites him to fax it to her that day, saying that it will most likely not change his grade.

[17] Mr. Bardis tells Prof. Switzer that she is not acting fairly toward him. He never sends her his term paper.

[18] Prof. Switzer finds Mr. Bardis' tone of voice to be "extremely rude, hostile and threatening", as she writes to him in a letter two days later on January 30, 1998.

[19] She also writes that should there be future discussions with him she wants to be accompanied by the Chair of the Finance Department. A copy of the letter is sent to Mr. Abraham Brodt, Chair of the Finance Department, Ms. Suzanne Belson, Ombudsperson, and Ms. Danielle Morin, Associate Dean of the Commerce Faculty.

[20] A day before this letter is sent, on or about January 29, 1998, Prof. Switzer begins to receive a series of menacing letters and phone messages at home and at school. Without going into detail, the threats warn that if Prof. Switzer shows up for class, something unfortunate could happen to her and her family. Prof. Switzer is frightened by the threats and contacts Concordia security.

[21] She also contacts the Ombudsperson, Ms. Suzanne Belson, who is temporarily replacing Ms. Sally Spilhaus, the Advisor on Rights and Responsibilities at Concordia.

[22] Ms. Spilhaus' position was created after the death of two Concordia professors and a staff member in 1992. At that time, Concordia adopted a Code of Conduct on Rights and Responsibilities and formed a crisis management group to deal with potentially dangerous situations at the University.

[23] Prof. Switzer also contacts the Brossard police after she receives anonymous phone calls at home and an unexplained delivery of flowers on her doorstep.

[24] When she is asked by Concordia security and the police if she has had any problems with a staff member or student, Prof. Switzer identifies her meeting and unpleasant conversation with Mr. Bardis.

[25] Nevertheless, several days later on February 4, 1998, Prof. Switzer informs Ms. Spillhaus that she does not believe the author of the threats to be Mr. Bardis.

[26] In an e-mail dated February 5, 1998, Ms. Spillhaus informs those persons at Concordia who are aware of the threats that Mr. Bardis can have free access to any area of the University, but cannot have contact with Prof. Switzer.

[27] Mr. Bardis is convinced that his failures at Concordia are a result of his having been suspected as the author of the threats against Prof. Switzer.

[28] The anonymous threats against Prof. Switzer continue for several months. She takes a leave of absence from Concordia for a few weeks. After a brief return, Prof. Switzer takes a sabbatical leave, following which she leaves Québec to take a teaching position in another province.

[29] The author of the threats against Prof. Switzer is never identified. The witnesses from Concordia testify that they do not believe Mr. Bardis to be the author of the threats.

[30] Nevertheless, Mr. Bardis refers to several minor events, which took place at the time, as confirming that he has always remained under suspicion.

[31] On one occasion, Prof. Switzer's husband, who teaches at Concordia, is informed that Mr. Bardis is close to his wife's office. He takes it upon himself to ask the Concordia security guard who was assigned to protect Prof. Switzer on Concordia grounds, to ask Mr. Bardis to leave the premises. Soon after, apologies are offered to Mr. Bardis as Concordia acknowledges that the security guard should not have taken instructions from Prof. Switzer's husband.

[32] On Good Friday in April 1998, Mr. Bardis is refused access to a University building on the grounds that he is an undergraduate student with no special permission to enter a closed building. However, Mr. Bardis is not treated any differently from other students on this occasion.

[33] Evidence was made as to how Mr. Bardis' numerous requests were handled by Concordia throughout his studies from 1998 to 2003, when he graduated.

[34] Mr. Bardis failed the 1998 winter term. According to Concordia policy, he should have been expelled from the University for a three year period because he had failed two terms since his admission.

[35] However, Concordia exceptionally re-admits Mr. Bardis, recognizing that he may have suffered anxiety as a result of the suspicions against him. As outlined in a September 23, 1998 letter, Mr. Bardis, who is then re-admitted for a second time, was obliged to abide by the admissions criteria established in 1990; that is, he had to obtain

120 credits under the ECP, and to complete the required courses, or their equivalent as described in the 1998 Calendar.

[36] Since Mr. Bardis has failed the winter semester and not done well in his summer courses, Concordia re-admits him as a part time student in order to lighten his course load.

[37] Mr. Bardis was unhappy about this, since he wanted to be re-admitted on a full time basis.

### **DISCUSSION CONCERNING PROF. SWITZER'S CASE**

[38] Mr. Bardis was unable to prove a fault committed by Prof. Switzer or Concordia in this case.

[39] Prof. Switzer did not appreciate the way Mr. Bardis interacted with her during their initial meeting and their follow up conversation. Prof. Switzer testified that Mr. Bardis was rude and aggressive toward her. Although Mr. Bardis denied acting this way during his encounter with Prof. Switzer, Mr. Bardis employed an aggressive tone of voice to make his point during his testimony in court. The Court believes Prof. Switzer's testimony that she felt threatened by Mr. Bardis.

[40] When Prof. Switzer contacted the police after receiving threats at home she did not commit a fault toward Mr. Bardis.

[41] Prof. Switzer was also justified in alerting Concordia security, since the threats made reference to her work at the University. The threats could have come from someone who was aware of her teaching schedule, the location of her office and mailbox at Concordia, her home address, or the fact that her husband also taught at the University.

[42] It took only six days for Prof. Switzer to conclude that the author of the threats was probably not Mr. Bardis. The voice on some of the phone messages was not Mr. Bardis'. The threatening notes were short, well written and did not contain spelling mistakes, which was inconsistent with Mr. Bardis' writing style. As early as February 4, 1998, Prof. Switzer informed key people at Concordia that she did not believe Mr. Bardis to be the author of the threats.

[43] In the aftermath of the Fabrikant events of 1992, Prof. Switzer informed a limited number of persons at Concordia of the events: the Ombudsperson, the Dean of Commerce, the Advisor on Rights and Responsibilities, the Chair of the Finance Department and the head of security.

[44] Most of the other persons who knew that Mr. Bardis had been a suspect were informed by Mr. Bardis himself.

[45] Prof. Switzer did not commit a fault toward Mr. Bardis by refusing to meet him alone and to have no contact with him.

[46] Mr. Bardis has claimed for years that he wants his name to be cleared. He has become, in the Court's view, obsessed with this idea. However, in this case, his name does not have to be cleared.

[47] On April 21, 1998, Prof. Switzer agreed to meet Mr. Bardis with the Dean, the Ombudsperson and the Advisor on Rights and Responsibilities. The purpose of the meeting was to try to convince Mr. Bardis that he was not suspected of issuing the threats to Prof. Switzer and that he should continue with his studies. However, the meeting did not take place when Mr. Bardis failed to appear at the designated time.

[48] Concordia did not commit a fault toward Mr. Bardis in providing Prof. Switzer with a security guard while she was on campus. The security guard was assigned to protect Prof. Switzer from the person issuing the threats, not Mr. Bardis.

[49] The allegation that Mr. Bardis was under surveillance by Concordia in 1998 is also not proven. Mr. Bardis claims that his photo was circulated among Concordia security guards and that on one occasion he was escorted out of a University building, although there is no proof this happened.

[50] The only evidence is that for six days Mr. Bardis was suspected of issuing threats to Prof. Switzer. During that time, and thereafter, he was not prevented from attending classes or circulating on university premises. The only restriction is that he was told not to have contact with Prof. Switzer or to go near her office.

[51] On the sole occasion when Mr. Bardis was improperly asked to leave a Concordia building at the request of Prof. Switzer's husband, Mr. Bardis was given an apology. Thereafter, Mr. Bardis received favourable treatment when he was re-admitted after failing a second term without having to respect the three year waiting period.

[52] Accordingly, the action against Prof. Switzer and Concordia is dismissed.

### **FACTS RELEVANT TO PROF. WAHHAB'S CASE**

[53] Prof. Wahhab is asked by Mr. Bardis in early October 1999 to review the courses he needs to follow in order to graduate.

[54] On October 6, 1999, Prof. Wahhab writes to Mr. Bardis and identifies the courses in question. As of April 23, 1998, Mr. Bardis had changed his major from finance to international business. Among the list of courses, was MATH 205, which by 1998 had replaced MATH 211. Mr. Bardis also had to pass FINA 315, which had replaced FINA 380.

[55] Prof. Wahhab's October 6, 1999 letter to Mr. Bardis is returned undelivered, with an indication that it had been sent to the wrong address. Nevertheless, Concordia had sent the letter to Mr. Bardis' address contained in its records.

[56] Mr. Bardis never claims the letter from Prof. Wahhab. It is given to him by hand on January 31, 2000.

[57] Following receipt of the letter, Mr. Bardis makes a series of requests to be exempted from MATH 205 and FINA 380.

[58] Mr. Bardis takes *mandamus* proceedings against Concordia, asking the Court to order Concordia to deliver his diploma to him. By then, Mr. Bardis has completed 120 credits, but has not successfully completed the required curriculum, including MATH 205 and FINA 380. The motion in *Mandamus* is dismissed on February 19, 2002. In her decision, Justice Pepita Capriolo cites Mr. Bardis' failure to pass the required courses in the 1990 Calendar.

[59] The Court of Appeal refuses Mr. Bardis' motion for leave to appeal.

[60] Mr. Bardis eventually passes FINA 380 during the winter of 2003, but he never passes the math course.

[61] On March 23, 2006, Mr Bardis institutes the present action in damages against Prof. Wahhab and Concordia.

## **DISCUSSION RELATING TO PROF. WAHHAB'S CASE**

[62] The action alleges that Prof. Wahhab committed two faults. First, it is alleged that Prof. Wahhab did not correctly advise Mr. Bardis in 1999, concerning the courses he had to take in order to graduate. Mr. Bardis alleges that until he received the letter on January 31, 2000, he was prevented from registering in certain courses, delaying his graduation. Secondly, Mr. Bardis alleges that at the *mandamus* hearing Prof. Wahhab gave false evidence to the effect that the 1990 Calendar governed Mr. Bardis' curriculum requirements.

[63] At the present hearing, a motion to dismiss was presented by Prof. Wahhab and Concordia's attorney arguing that Mr. Bardis' action is prescribed, since more than three years have elapsed since the alleged faults. They also argued that the action should be dismissed since there is *res judicata* in light of Justice Capriolo's dismissal of the *mandamus* motion.

[64] In the Court's opinion, Mr. Bardis' action is prescribed because more than three years have elapsed between the alleged faults committed on October 6, 1999, the date of Prof. Wahhab's letter, and February 19, 2000, the date of the *mandamus* decision based on Prof. Wahhab's allegedly false testimony.

[65] Mr. Bardis' action was only instituted on March 23, 2006.

[66] As for *res judicata*, section 165(1) of the *Code of Civil Procedure* allows the dismissal of the action based on the authority of a final judgment<sup>1</sup>. In this instance, the decision rendered by Justice Capriolo rejecting the *mandamus* is alleged by the defendants as constituting such a final judgment.

[67] Section 2848 of the Quebec Civil Code states that the authority of a final judgment is an absolute presumption:

**2848.** The authority of a final judgment (*res judicata*) is an absolute presumption; it applies only to the object of the judgment when the demand is based on the same cause and is between the same parties acting in the same qualities and the thing applied for is the same.

However, a judgment deciding a class action has the authority of a final judgment in respect of the parties and the members of the group who have not excluded themselves therefrom.

[68] In this instance, Concordia is a party to both actions, whereas Prof. Wahhab is not. Prof. Wahhab was one of the main affiants in the *mandamus* proceeding. Mr. Bardis alleges faults by Prof. Wahhab in the course of his duties at Concordia. In applying the principle of representation, the *res judicata* rule applies to Prof. Wahhab<sup>2</sup>.

[69] The other two criteria of the *res judicata* rule are met, as there is identity of cause<sup>3</sup> and object<sup>4</sup> between the two cases.

[70] Indeed, the same question at issue in the *mandamus* proceeding is submitted to this Court, that is the veracity of the assertions made by Prof. Wahhab, Associate Dean Danielle Morin and Registrar Lynne Prendergast, all of whom filed affidavits at the *mandamus* proceeding, stating that Mr. Bardis had to complete the curriculum set out in the 1990 Calendar in order to graduate. Mr. Bardis continues to insist that since he was re-admitted in 1998, he did not have to pass the math and finance courses according to the 1998 Calendar.

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<sup>1</sup> Jean-Claude ROYER et Sophie LAVALLÉE, *La preuve civile*, 4<sup>e</sup> éd., Cowansville, Les Éditions Yvon Blais, n<sup>o</sup> 790; *Contrôle technique appliqué Ltée c. Québec (Procureur général)*, [1994] R.J.Q. 939 (C.A.), par. 20.

<sup>2</sup> *Roberge c. Bolduc*, [1991] 1 R.C.S. 374; DUCHARME, *Précis de la preuve*, Montréal, Wilson & Lafleur, 2005, p. 246 et 247; *Bernier c. Sovereign General Insurance Co.*, EYB 1995-56110 (C.A.), paragr. 22.

<sup>3</sup> *Dorion (Ville de) c. Union Canadienne (L'), compagnie d'assurances*, J.E. 1992-1738 (C.A.).

<sup>4</sup> *Vassilantonopoulos c. Montréal (Ville)*, J.E. 2005-1906 (C.S.), paragr. 34 à 39.

[71] Since the very same question is raised in the present action, the Court concludes that the action should be dismissed on the basis of *res judicata*.

[72] In any event, having heard the evidence, the Court concludes that Mr. Bardis had to follow the 1990 Calendar according to the rules of the University. It is not for this Court to review these rules, which constitute a prerogative of the University.

[73] Under the circumstances Mr. Bardis is fortunate to have received his diploma from Concordia. The evidence is that he was treated generously by the University.

[74] In 2003, Mr. Bardis brought a second motion in *mandamus* seeking an order forcing Concordia to deliver a diploma to him despite his failure to pass MATH 205.

[75] On August 4, 2003, Dr. George Kanaan, Associate Dean of Academic and Students Affairs, informed Mr. Bardis that Concordia had exercised its discretionary authority, once more, and had recommended that the Registrar deliver a Bachelor of Commerce degree to him.

[76] Mr. Bardis stopped his *mandamus* proceeding and received his diploma in December 2003.

[77] Despite bringing two actions in damages and two motions in *mandamus*, making eighteen requests to the Student Request Committee, being re-admitted twice, failing semesters and numerous courses, Mr. Bardis graduated from Concordia, still convinced however that the University is responsible for his troubles. This is not the case.

[78] Consequently, Mr. Bardis' action against Prof. Wahhab and Concordia is dismissed.

[79] **FOR THESE REASONS, THE COURT:**

**In Court file number 500-05-047782-998**

[80] **DISMISSES** the action instituted by George Bardis against Jeannette Switzer and Concordia University;

[81] **The whole with costs.**

**In Court file number 500-17-030241-064**

[82] **DISMISSES** the action instituted by George Bardis against Monir Wahhab and Concordia University;

[83] **The whole with costs.**

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CHANTAL CORRIVEAU, j.s.c.

Me Normand Haché et Mme Marie-Pierre Doucet, stagiaire  
Normand Haché et Associés  
For Plaintiff Mr. George Bardis

Me France Dulude  
Robinson Sheppard Shapiro  
For Defendants Jeannette Switzer, Monir Wahhab  
and Concordia University

Dates of hearing: November 16,17, 18, 19, 20, 23, 24, 25, 2009.