

**SUPREME COURT OF CANADA FINDS AUTOMATIC TERMINATION CLAUSES NOT
NECESSARILY DISCRIMINATORY**

*McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de
L'Hôpital général de Montréal (January 26, 2007) (S.C.C.)*

By Natasha L. Savoline

On January 26, 2007, the Supreme Court of Canada issued a significant decision that clarifies years of debate about whether automatic termination clauses in collective agreements are discriminatory.

In March 2000, the Employee took a leave of absence due to problems with her health. Return to work efforts were unsuccessful despite repeated attempts over a two-year period. The Employer extended a rehabilitation period in the collective agreement in an effort to provide the Employee with a further opportunity to return to work. However, the Employee suffered further injuries in an automobile accident shortly before her scheduled return. The collective agreement provided that employees would lose their seniority rights and their employment by reason of an absence or illness or of an accident other than an industrial accident or occupational disease after the thirty-sixth month of absence. In March 2003, the Employer notified the Employee that her employment would terminate effective April 3, 2003.

The Arbitrator dismissed the Union's grievance. The Arbitrator found that the Employer accommodated the Employee by extending the prescribed rehabilitation period in the collective agreement, and given that the Employee remained unfit for work at the end of the three-year period stipulated in the collective agreement. The Québec Superior Court of Justice upheld the Arbitrator's decision, but the Court of Appeal disagreed. The Employer appealed to the Supreme Court of Canada.

The Employer argued that it had discharged its duty to accommodate the Employee, particularly given that the Employee remained unable to return to work in the foreseeable future.

The Union argued that it was contradictory to argue that accommodation must be assessed on a case-by-case basis while allowing an employer to discharge its duty to accommodate by mechanically applying an automatic termination clause.

The majority of the Supreme Court of Canada found that automatic termination clauses are *prima facie* discriminatory. However, parties to a collective agreement have a right to negotiate, in good faith, provisions to ensure that employees attend and complete their work. An automatic termination clause, while aimed at ill or disabled employees, is merely a form of negotiated accommodation freely bargained by the parties. The majority of the Court also found that while the length of the absence in any automatic termination clause is a factor to be considered when assessing whether the employer has met its duty to accommodate, this period is not determinative of the accommodation to which the employee is entitled. Rather, each case much

be assessed on an individualized basis. The majority of the Court emphasized that the right to equality is a fundamental right such that parties to a collective agreement cannot negotiate a level of protection inferior to that afforded to employees pursuant to human rights legislation. As a result, employers and unions cannot definitively determine the applicable period in advance and the particular circumstances of each case must be weighed in conjunction with any automatic termination provision.

The majority of the Supreme Court found that the Arbitrator considered the automatic termination clause in the collective agreement, and correctly, did not apply it automatically. Rather, the Arbitrator properly considered the particular facts of the case including all of the Employer's efforts to accommodate the Employee, and the fact that the Employee remained unable to return to work in the foreseeable future. In this context, the majority of the Court found that the Arbitrator was correct in concluding that the Employer was not required to continue to employ the Employee. As a consequence, in the particular circumstances of the case, the automatic termination provision in the collective agreement was not discriminatory.

For different reasons, the minority decision of the Supreme Court agreed that there was nothing improper about the Employer's actions. Unlike the majority of the Supreme Court, the minority found that automatic termination provisions in collective agreements are *not* presumptively discriminatory. The minority of the Supreme Court noted that the Employee did not argue that the provision was discriminatory and neither the Arbitrator nor the Superior Court found that the Employer acted in a discriminatory manner in declining to continue to employ the Employee. The minority of the Supreme Court concluded that, absent any finding of *prima facie* discrimination, the Employer was not required to justify the automatic termination provision or its actions.

The Supreme Court's decision clarifies years of debate over whether automatic termination provisions in collective agreements are contrary to employees' human rights. The Supreme Court's decision indicates that an automatic termination provision is not necessarily discriminatory, but is one of many factors to be considered when assessing whether an employer has satisfied its duty to accommodate an ill or disabled employee. Where the employer has otherwise met its duty to accommodate, as in the *McGill University* decision, the Supreme Court's decision suggests that an employer's exercise of its rights under an automatic termination provision will not be discriminatory. Including a generous term in any automatic termination provision that is likely to meet the accommodation needs of as many employees as possible will increase the likelihood that the clause will withstand scrutiny.

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