

# Salaries Paid To Student Employee An Important Decision by the Quebec Human Rights Tribunal

May 25, 2018

On May 11, 2018<sup>1</sup>, the Québec Human Rights Tribunal (the “Tribunal”) ordered the Aluminerie de Bécancour (“ABI”) to pay its student employees damages to compensate them for losses they had sustained as a result of being paid a reduced hourly wage under the salary scales that applied in each collective agreement. These Tribunal also ordered each student employee to receive \$1,000 in moral damages.

In addition, the Tribunal instructed ABI to amend the relevant clauses of its collective agreements and render them compliant with the Charter of Human Rights and Freedoms 2(the “Charter”), by eliminating a distinction in pay based on the employees’ status as students.

## The Factual Background

The Québec Human Rights Commission (the “Commission”), acting on a complaint from the United Steelworkers Union, Local 970 (the “Union”), instituted proceedings before the Tribunal, alleging that the salary scales that applied to student employees were discriminatory, on the ground that the students were being paid a lower hourly rate than other employees, even though they were doing the same work. For its part, ABI contended that the work done by the students differed from that done by regular or casual employees, within the meaning of the applicable collective agreements.

## The Tribunal’s Conclusions

The Tribunal concluded that the salaries provided to students were *prima facie* discriminatory and that the reduced salary scale for students, compared to that of regular and casual employees, was based on prohibited grounds of discrimination under section 10 of the Charter, in this case, social condition and age. The Tribunal also held that this distinction violated the dignity of the student employees, contrary to section 4 of the Charter, owing to the fact that ABI had not respected their right to receive equal pay for equal work, without any discrimination.

More specifically, the Tribunal held that social condition was a distinctive factor in this case, given that the students made up a small percentage of the overall number of unionized employees, that collective bargaining had occurred while these student employees were not on the job and that they had not been asked to vote on their salary scales. Likewise, the Tribunal found that age was also a distinctive factor since the students were younger than the majority of the unionized workers.

Moreover, the Tribunal concluded that these discriminatory distinctions could not be justified under any of the exemptions set forth at section 19 of the Charter, namely: experience, seniority, length of service, merit, productivity or overtime. The Tribunal cited the following reasons:

- the student employees worked in the same hazardous and potentially toxic environment as regular and casual employees;
- the student employees were just as competent as the regular or casual employees;
- when the student employees worked overtime, they were paid at the rate that applied to casual employees;
- the hourly rate paid to casual employees who were being trained was higher than the rate paid to students who had completed their training periods and who were working on the production line; and
- from their first day at work, casual employees earned more than student employees that had worked four different periods of summer employment and who had worked on as many occasions during holiday periods.

Lastly, the Tribunal decided not to hold the Union jointly and severally liable with ABI for this salary-based discrimination. The Tribunal ruled that the Union had never desired to create a pay differential for student employees. Rather, ABI had unilaterally raised the issue at the bargaining table.

### **The Possible Consequences of this Decision**

To our knowledge, this is the first decision on this point ever rendered under the Charter in Québec. **In view of the potential and very serious repercussions of the decision, both for ABI and for a number of other Québec employers, it is to be expected that the decision will be appealed to the Québec Court of Appeal.**

**In the meantime, Québec employers that are subject to the provisions of the Charter would be well-advised to be cautious in establishing salary scales for their student employees, as those conditions will be viewed in accordance with the provisions of sections 4, 10 and 19 of the Charter, and may be determined to be discriminatory. In particular, employers must be able to show that any difference in the wages paid to their student employees is truly based on their experience, seniority, length of service, merit, productivity or overtime work.**

1 Commission des droits de la personne et des droits de la jeunesse (Beaudry et autres) c. Aluminerie de Bécancour inc., 2018 QCTDP 12.

2 CQLR, c. C-12 [the “Charter”].

[Rose Massicotte](#)

Expertise

[Labour & Employment](#)

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

## BLG Offices

### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.