

Indexed as:

**Krause v. Lakeshore School Board**

Between

Peter J.H. Krause, plaintiff, and  
Lakeshore School Board, defendant

[1998] Q.J. No. 1958  
No. 500-05-007129-933

**Quebec Superior Court  
District of Montreal  
Maughan J.**

June 5, 1998  
(32 pp.)

**Counsel:**

Jean-Paul Legault (Bélanger Sauvé), for the plaintiff.  
Cherine Cheftechi (McCarthy Tétrault), for the defendant.

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TEXT OF JUDGMENT

¶ 1 **MAUGHAN J.** :— The Lakeshore School Board (the "Board") covers the West Island of Montreal. It administers 14,000 students, 29 schools and 2,000 employees. The number one full time position in the Board's hierarchy is that of Director General. Peter Krause held that position for some eight years. On September 2, 1992, he was fired. He had abused his expense account and lost the trust and confidence of the Board's Council of Commissioners.

¶ 2 At the time of his dismissal, Mr. Krause had accumulated \$52,597 of unaccounted for expenses. Only \$15,000 of this was for Board related matters. He had spent the balance of some \$37,500 to pay for his own personal purchases.

¶ 3 Mr. Krause appealed his dismissal to an Appeal Committee composed of three arbitrators. The Committee found that he had been dismissed for just and sufficient cause.

¶ 4 For the purpose of this litigation, the parties admit the findings of fact of the Appeal Committee. They also accept its conclusion that Mr. Krause was dismissed for just and sufficient cause and that the decision of the Appeal Committee is final and binding. Lastly, they admit the amount claimed by the Board in its Cross-Demand and the validity of this claim. Mr. Krause contests, however, that interest on the Cross-Demand runs from the date of dismissal as opposed to the date of institution of the Cross-Demand.

- ¶ 5 The sole remaining issues left to this Court to be adjudicated upon are:
1. Mr. Krause's claim for \$488,968 for loss of future salary and pension benefits resulting from the decision of the Council of Commissioners not to reassign him to another position within the jurisdiction of the Board after he was dismissed; and,
  2. Mr. Krause's claim for \$17,463.13 resulting from the failure of the Council to give him a 60 days notice before dismissing him, as provided for in his contract with the Board.

¶ 6 In addition to the evidence at trial, the transcripts of the eleven-day hearing before the Appeal Committee, which the parties filed to avoid needless repetition, form part of the record of this Court.

## THE FACTS

### 1. BACKGROUND

¶ 7 Although the Court is dismissing Mr. Krause's action in its entirety, it cannot be said that this is a story of winners and losers. None of the actors involved in this sad episode in the life the Board can be particularly proud of the roll he played. Yet, the story must be retold to dispose fully of the claims raised by Mr. Krause in his action.

¶ 8 Mr. Krause was first hired by the Board in June of 1975. He held the position of Director of Personnel until October of 1984 when the Board appointed him Director General. As chief executive officer of the Board, he was directly responsible for the day-to-day operations of the Board; for recommending policies to the Board and for implementing them; for the management of the 29 schools under the Board's jurisdiction; and for ensuring that the administration and staff carried out the services expected of them by the Board.

¶ 9 Mr. Krause reported directly to the Council of Commissioners and, in particular, to its Chairman, Dr. Joel Hartt. The Council exercised limited administrative and operational authority. In fact, the Commissioners fulfilled their duties on a part time basis only. This was reflected in their salaries which were in the range of \$4,000 per annum.

¶ 10 The Board established over the years various procedures for the handling of expenses incurred on behalf of the Board by certain Board employees and Commissioners. However, Mr. Krause never saw fit to heed them. Typical was his insistence that he should not be obliged to wait the prescribed two or three working days to claim advances of funds from the accounting office. Employees felt that because he was the Director General, whatever he did or said had to be accepted at face value. They did not feel that they had the authority to challenge his demands for advances or the expenses he incurred.

¶ 11 With no one senior to himself to report to on a daily basis, Mr. Krause acted as though no authorization for his expenses was required. And, just to make sure whenever he needed an advance that he would have no difficulty or questions from David Lebaron, the Board's Director of Financial Services, he had Dr. Hartt sign on January 11, 1990 a letter dated September 11, 1989 which he prepared and which

was addressed to Mr. Lebaron authorizing "any advances" to the Director General during the school year. Mr. Krause failed to respect the one self-imposed condition attached to this authorization. That condition was that the advances had to be accounted for during the school year in which they were paid.

¶ 12 A curious and unexplained practice which developed over the years allowed certain Board employees and Commissioners to pay for personal expenses out of cash advances taken for Board related business. They were also entitled to pay for personal expenses with the American Express credit card in the name of the Board which the Board issued to them for Board related expenses. Personal expenses, of course, had to be reimbursed. However, it was never suggested that this practice should be discontinued or could lead to abuse. No one seemed to care either that these advances were being made out of public funds and at a time when the Board had a deficit approaching \$3 million.

¶ 13 This rather cavalier manner of administering advances and expense accounts seems to find its roots in the degree of trust which existed between the Board and its senior administrators. To quote Dr. Hartt:

And so, one of the differences, I'd say, between the Catholic and the Protestant systems is that within the Protestant system, and certainly at the Lakeshore School Board, ever since I can recall there was a great deal of trust given to senior administrators. And many issues, many political issues were decided on the basis, on the fact that we had trust in the administrators. And given that trust, if they would come forward with a recommendation of a policy or advice on how to deal with a problem, we would generally support the administrators.

(Vol. 6 of transcript of hearing before Appeal Committee, pp. 14, 15)

¶ 14 As for Mr. Krause, the Council, generally, and Dr. Hartt, in particular, held him in the highest esteem. Dr. Hartt says that over the years he and Mr. Krause developed both a close professional relationship and a close personal friendship. In fact, it was Dr. Hartt who supported Mr. Krause's candidacy for the position of Director General in 1984. He even had a signature stamp made for Mr. Krause to use whenever he was not around and his signature as Chairman was required. To quote Dr. Hartt again, "... that's the way we did business at the Lakeshore School Board" (Vol. 6, p. 133).

¶ 15 Dr. Hartt and his fellow Commissioners may have been well-intentioned in conducting business in this manner. Unfortunately, their laissez aller attitude afforded Mr. Krause the opportunity to abuse their misplaced trust in him. Simply put, there likely never would have been a problem had the Commissioners, from the start, forbidden advances and the use of the American Express card for personal expenses. To state the obvious, Dr. Hartt recognized that the purpose of the card was to facilitate the conducting of Board business. It was not to provide Mr. Krause or anyone else with a means of financing their own day-to-day expenses.

¶ 16 It is against this background that the events leading up to Mr. Krause's dismissal must be examined.

## 2. THE ABUSE

¶ 17 It is difficult to pinpoint exactly when the accumulation of expenses became a problem for Mr. Krause and the Board. What is clear, however, is that in January of 1990, matters got totally out of hand.

¶ 18 In January 1990 Mr. Krause already owed the Board in excess of \$16,000. He then borrowed from the Board a further \$10,000 bringing the total of his unaccounted for expenses to in excess of \$26,000.

¶ 19 Dr. Hartt was aware of this indebtedness. He even participated in a scheme to assist Mr. Krause in paying down his debts to the Board. They agreed that Mr. Krause should arrange for a loan from a finance company of \$25,000 and that the cheque to be remitted by the finance company to Mr. Krause should be made payable to the order of Dr. Hartt. This would avoid the embarrassment of having to divulge to the finance company that Mr. Krause owed this money to the Board. After the cheque was issued, Dr. Hartt endorsed the cheque to the order of Mr. Krause who deposited it into his bank account. Mr. Krause then used the money to pay off in February 1990 the \$10,000 advance received at the beginning of January, plus interest, plus an additional \$11,338 of indebtedness. It left a book balance of \$5,642 in unaccounted for expenses.

¶ 20 Dr. Hartt should have known from this experience alone that he and the Board would have to be more vigilant with Mr. Krause's use of Board funds. Instead, he chose to sign, almost blindly, the January 11, 1990 letter which Mr. Krause put before him and which gave Mr. Krause the right to obtain advances from the Board at will and only have to account for them on a yearly basis. In fact, Dr. Hartt provided this rather unusual benefit to Mr. Krause at a time when Mr. Lebaron was attempting to tighten controls by having Mr. Krause and others reimburse personal expenses charged to their American Express card on a monthly basis.

¶ 21 Exactly what motivated Dr. Hartt's largesse on January 11, 1990 remains a mystery. Whatever the reason, it is a fact that he never told his Council of the events of January 1990, much less obtained its authorization to sign the January 11 letter or to advance the \$10,000 of additional funds to Mr. Krause.

¶ 22 The book balance of \$5,642 did nothing but climb from that point in time on. During the summer of 1991, Dr. Hartt learned from Christopher Campbell, the new Director of Business Services, that it had reached \$20,000. When Dr. Hartt requested Mr. Krause to bring his accounts up to date, since \$20,000 was a significant amount, Mr. Krause assured him that the matter would be dealt with quickly. He explained that it was made up largely of Board related expenses and that it was just a matter of doing the paper work to comply with Dr. Hartt's wishes. Just as he had told Mr. Krause at the beginning of 1990 that he should never again accumulate such a large debt, Dr. Hartt repeated the same message in September of 1991. He set the end of the calendar year as the settlement deadline.

¶ 23 Once again, the Court must question why Dr. Hartt was being so tolerant and naive. He knew from the past that Mr. Krause did not play by the rules. He also knew that the indebtedness which Mr. Krause had accumulated in the past resulted from personal use of Board funds. Why else would Mr. Krause have needed to borrow \$25,000 from a finance company in January of 1990? Would it not have been much easier at that time to have done "the paper work" if, in fact, the accumulation resulted from Board related expenses? Whatever the reason, the fact is that Dr. Hartt again hid the problem from his Council and this, despite the fact that the Board's auditors were now starting to question the account and the outstanding balance.

¶ 24 In the meantime, rather than attempting to reconcile the outstanding balances or to pay down the debt, Mr. Krause totally ignored Dr. Hartt's mild admonitions. The account had gone from \$5,642 in February of 1990 to \$13,403 in June of 1990. A year or so later, it stood at \$32,700. As a gesture of defiance to Dr. Hartt's request to take care of matters by the end of 1991, Mr. Krause claimed "as owing" to him a further \$7,500 between October and December of 1991. By the end of December 1991, the book balance stood at \$40,000.

¶ 25 By October of 1991, Marcus Tabachnick learned of the problem. Mr. Tabachnick is now the new Chairman of the Board. When Dr. Hartt was Chairman, he was the President of the Executive Committee.

¶ 26 In December 1991, he too told Mr. Krause to bring his account into line. He set March of 1992 as the deadline. Mr. Krause told him that this was acceptable since he intended to remortgage his farm and this would enable him to pay off the debt.

¶ 27 Unfortunately, the March deadline came and went with no reduction in the book balance. As a matter of fact, it had climbed from \$40,000 in December of 1991 to \$47,000 in March of 1992 before reaching \$52,597 by June 30, 1992.

¶ 28 Only then did Mr. Tabachnick feel that it was necessary to bring this matter to the attention of Council. He did so because, in his words, there was "no foreseeable resolution of the problem".

¶ 29 Why it took Mr. Tabachnik from October of 1991 to June of 1992 to realize there was "no foreseeable resolution" remains unclear. It seems that he should have known well before June of 1992 that the account was out of control. He certainly did not have to wait until the problem could not be resolved before informing the Council. If the Council had been warned of the problems from the start, it would have been able to consider appropriate action earlier and possibly limit an increase in the debt and further embarrassment.

¶ 30 The only attempt to deal with the problem in late 1991 appears to have come, once again, from Business Services. Just as Mr. Lebaron attempted to control personal expenses in early 1990 by having American Express accounts paid monthly, Mr. Campbell brought in a new policy in October 1991 whereby the old American Express cards issued to Dr. Hartt, Mr. Krause and Jean-Paul Rathé would be destroyed or withdrawn and a new card would be reissued.

¶ 31 Unlike the old card, the reissued card would be in the name of the individual. Each individual would be responsible for paying off the balance monthly and the Board would reimburse Board related expenses on remittance of monthly expense account claims. If the individual failed to pay the expenses he incurred, the Board remained ultimately responsible to American Express.

¶ 32 Mr. Krause endorsed the new system. He even distributed the new cards and advised in a covering memo that each individual was fully responsible for expenditures made with the card.

¶ 33 Unfortunately, an administrative error led to the reissuance of the old American Express card. Rather than returning or destroying it, Mr. Krause kept using it along with the new card. Since he received the monthly billings directly, no one at the Board knew that he had possession of the old card and was using it.

¶ 34 Mr. Krause's use of the old card eventually resulted in an accumulation of charges totaling \$5,600, resulting mostly from personal use. What's more, he failed to pay a penny of the outstanding indebtedness he incurred while knowing full well that his failure to do so was imperilling the Board's credit rating. When the Board finally discovered the unauthorized use, with much embarrassment Mr. Campbell had to write to American Express, pay off the outstanding balance and request that the personal credit rating of the two non-users, Dr. Hartt and Mr. Rathé, not be adversely affected by Mr. Krause's delinquency.

¶ 35 All the while that Mr. Krause was using both the old and new cards, he was submitting the bills which he paid for with the use of the cards to the Board and receiving reimbursements. In addition, when he went on trips, he would ask for and receive cash advances and then pay for travel expenses with the American Express cards and not the cash advances. Therefore, for any given trip, the Board could end up paying for part of all of Mr. Krause's expenses three times over once with the cash advance; a second time when Mr. Krause submitted his travel expense claims; and a third time when the Board had to pay the balance due on the cards.

¶ 36 An illustration of his utter disdain for the warnings which had been given to him is the advance of \$4,500 which he asked for and received in May of 1992 for his summer travel. The travel he was planning was still many weeks away and, as it turned out, no more than half this sum was spent for Board related business. With the house of cards falling in on all sides, Mr. Krause might have either cancelled his trips or found another way to finance them.

¶ 37 Events during the summer of 1992 moved swiftly. After a June deadline had not been met, Dr. Hartt and Mr. Tabachnick finally read the riot act to Mr. Krause over lunch at Moishe's Restaurant on July 31, 1992. They told him in no uncertain terms that they now had to bring the matter to the attention of the Council and that his job was on the line if he did not attend to the reconciliation of accounts immediately. Mr. Krause declared at that meeting that the "overwhelming" amount of expenditures had been incurred on Board business. He assured them once again that the matter would be settled, this time by mid-August. In fact, shortly after the meeting, Mr. Krause remitted to Mr. Campbell a cheque for \$52,597 post-dated August 17, 1992, representing the full amount of the indebtedness.

¶ 38 On the surface, it would appear that Mr. Krause was finally getting the message. However, the Court has to question seriously his good faith at the time of the Moishe's meeting and when he issued the cheque for \$52,597. If it was the case that the "overwhelming" part of the \$52,597 outstanding was Board related, why would he have felt it necessary to issue a cheque for the full amount? Would it not have been easier to simply do the paper work and pay the Board that part of the \$52,597 which related to personal expenses?

¶ 39 The postdated cheque may have given Mr. Krause two weeks of grace but it did not solve the problem. Before it could bounce, he advised Mr. Campbell not to present it for payment since he did not have sufficient funds to cover it.

### 3. THE DISMISSAL

¶ 40 Dr. Hartt and Mr. Tabachnick finally advised the Council of the situation on August 24, 1992. This was followed by a meeting the same day between the Council and Mr. Krause. Once again, Mr.

Krause stood by his position. He said that most of the expenses were Board related. He added that he had already been able to account for \$27,000 of Board expenses. He left the Commissioners with the impression that with a bit more time, he would find more Board related receipts.

¶ 41 Not surprisingly, many members of the Board were livid - livid with Mr. Krause for having allowed this situation to develop and livid with Dr. Hartt for not having brought the matter to their attention earlier. The next day the Council wrote to Mr. Krause. They gave him one week and access to the auditors to do nothing but put the accounts in order.

¶ 42 On August 31, 1992 Mr. Krause informed Dr. Hartt that he could only justify \$15,000 as being Board related expenses. Dr. Hartt was devastated. So were the Commissioners. They fired him two days later.

¶ 43 The Appeal Committee summarized the reasons for the dismissal as follows:

Il appert aussi de la preuve que les Commissaires ont tenu beaucoup compte de la déclaration du plaignant, le 24 août 1992, qu'il avait déjà trouvé pour au-delà de 27 000 \$ de pièces justificatives et pourrait en trouver davantage, si le temps lui était donné. L'annonce par le plaignant, une semaine plus tard, qu'il n'avait dans les faits trouvé que pour 15 091,95 \$ de pièces justificatives les a fortement ébranlés et désappointés. Ils sont alors venus à la conclusion que le plaignant les avait induits en erreur, qu'ils ne pouvaient plus lui porter confiance, que ses agissements manquaient de transparence et de sérieux, que ses explications démontraient un manque important de jugement de sa part et qu'en somme le plaignant avait commis "a fundamental breach of his obligations toward the Lakeshore School Board." Voilà les raisons du congédiement du plaignant.

(page 77 of decision)

¶ 44 The Appeal Committee was thus satisfied that when the Council adopted the Resolution on August 2, 1992 to dismiss Mr. Krause, it had sufficient facts at its disposal to justify a dismissal for cause. That said, it is interesting to note the Council made its decision despite the fact that it was not aware at the time of the unauthorized use of the old American Express card the unaccounted for expenses of \$16,000 in January of 1990 which Mr. Krause could only pay off with the assistance of a finance company and the intervention of Dr. Hartt; and the advance of \$4,500 in May of 1992 for summer travel. Nor was the Council aware of an advance of \$3,500 received on August 26, 1987 for the purchase of a computer which Mr. Krause never ended up buying. Had the Commissioners known these facts, they would have only added to their resolve to fire him immediately.

¶ 45 The computer incident is particularly revealing. When Mr. Krause received the \$3,500 advance, he was told that the monies had to be accounted for by the end of February 1988 at the latest. Mr. Krause never did buy a computer. Nor did he heed Mr. Lebaron's gentle reminder in January 1990 that this advance had to be accounted for. Nor did he pay back the \$3,500 advance when the Board purchased for him in 1992 a \$6,500 NEC laptop computer. At the risk of speculating, the Court must question whether, after five years, Mr. Krause would have ever voluntarily reimbursed the \$3,500 if intervening events had not triggered his dismissal on September 2, 1992 and, subsequently, a squaring of accounts.

## DISCUSSION

## 1. THE CONTRACT

¶ 46 Mr. Krause signed two contracts with the Board after he was named Director General in 1984. He drafted them both. The first was for the period from October 10, 1984 to October 9, 1987. The second dated October 26, 1987, was for the period of October 10, 1987 to June 30, 1993.

¶ 47 Both contracts are entitled "Contracts of Assignment". Both provide that Mr. Krause is to undertake his responsibilities of Director General as determined by the Board. Both state that Mr. Krause is to comply with the provisions of the Administrative and Salary Policy applicable to Directors General and full-time Assistant Directors General of School Boards for Protestants (the PAS). Both add in the section entitled Salary and Conditions of Employment that the Board shall grant to Mr. Krause all the advantages and privileges provided for in the PAS.

¶ 48 The first contract was preceded by a Resolution of the Board dated October 10, 1984. It states that the conditions of employment of Mr. Krause are to be in accordance with the PAS. It is not known whether the Board adopted a similar resolution at the time the October 26, 1997 Contract of Assignment was signed.

¶ 49 Clause 6 of the October 26, 1987 Contract of Assignment reads as follows:

This contract will commence on October 10, 1987 and end on June 30, 1993 unless it is expressly renewed by the Board. This contract may also terminate by mutual written agreement or for cause with a sixty (60) day written notice.

In the event of termination of this contract, the reassignment provision of the Administrative and Salary Policy (PAS) shall apply.

¶ 50 Mr. Krause argues that the Board breached these provisions of the contract since the Board did not give him a 60 days notice when he was dismissed and since it failed to reassign him to another position within the jurisdiction of the Board following his dismissal.

¶ 51 The Board argues that Clause 6 does not apply. It submits that the 60 days notice and the reassignment policy of the PAS can only be invoked in the event of a "termination" of the contract, as defined by the PAS and not in the event of a dismissal.

¶ 52 The Board further submits that even if Clause 6 were interpreted to mean that Mr. Krause was entitled to a 60 days notice and to a reassignment, Clause 6 does not apply in the present case for two reasons. First, the parties never intended that the provisions of Clause 6 would apply in the event of a dismissal for cause. Second, Mr. Krause's behaviour leading up to his dismissal was so reprehensible that he had lost the trust and confidence of the Board. In these circumstances, he could not be reassigned to another position within the Board and he was not entitled to a 60 days notice.

¶ 53 The contract was entered into before the provisions of the Civil Code of Quebec came into force on January 1, 1994. Mr. Krause was dismissed before this date as well. The parties agree, and the Court

accepts, therefore, that the provisions of the Civil Code of Lower Canada apply, more particularly, Articles 1013 to 1021 C.C.L.C. on the interpretation of contracts. [See Note 1 below] Articles 1013, 1014, 1015 and 1019 are of particular relevance. They read:

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Note 1: See also *Emballage Dawson Inc. v. Béland* J.E. 94-1079, S.C. Montreal 500-05-000871-945.

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Art. 1013. When the meaning of the parties in a contract is doubtful, their common intention must be determined by interpretation rather than by an adherence to the literal meaning of the words of the contract.

Art. 1014. When a clause is susceptible of two meanings, it must be understood in that in which it may have some effect rather than in that in which it can produce none.

Art. 1015. Expressions susceptible of two meanings must be taken in the sense which agrees best with the matter of the contract.

Art. 1019. In cases of doubt, the contract is interpreted against him who has stipulated and in favor of him who has contracted the obligations.

## 2. THE CLAIM FOR FAILURE TO REASSIGN

¶ 54 The Court is of the view that in interpreting the second paragraph of Clause 6 cited above dealing with reassignment, it must necessarily refer to the PAS which, by reference, forms part of Mr. Krause's contract of employment. Both the Contract of Assignment itself and the Resolution which preceded the first contract provide that recourse must be had to the PAS to determine the nature and the extent of Mr. Krause's conditions of employment. And, the second paragraph of Clause 6 clearly states that it is the reassignment provision of the PAS which applies in the event of a termination.

¶ 55 According to Clause 2 - 3.01 of the PAS, one of the benefits provided to an employee, such as Mr. Krause, is the right to maintain, in certain circumstances, employment ties with the Board and to be reassigned to another position. This right may be exercised following the nonrenewal of an employee's appointment or following the termination of an appointment. The PAS does not provide, however, for a reassignment in the event of a dismissal. All these expressions are defined by the PAS.

¶ 56 A dismissal is the "break in the employment ties by the Board with cause during or at the end of the period of the mandate". Clause 2 - 5.01 of the PAS adds that the Board may dismiss an employee for reasons of "incapacity, negligence, insubordination, misconduct, immoral behaviour or incompetence". Mr. Krause himself has admitted that he was dismissed in accordance with these provisions.

¶ 57 A nonrenewal of appointment is "the nonrenewal of the mandate at the end of the latter". A termination of appointment is "the cancellation of the mandate during the latter".

¶ 58 Mr. Krause's dismissal was not a nonrenewal of appointment since it did not occur at the end of

his mandate. However, was the dismissal also a termination of appointment? It was, to the extent that the appointment as Director General was cancelled. However, the dismissal was more than just that. The August 2, 1992 Resolution of the Council states that Mr. Krause was dismissed "from the employ" of the Board. The Resolution does not refer to a "termination". In fact, it would not make sense, within the meaning of Art. 1015 C.C.L.C., that in the event of a "break in the employment ties ... for cause", as opposed as a mere termination of appointment, an employee could be reassigned to another position within the Board. The obvious intent was to prevent an employee who has been "dismissed" from retaining any employment ties with the Board.

¶ 59 In the opinion of the Court, the reference in the second paragraph of Clause 6 of the Contract of Assignment to a reassignment in the event of termination means that Mr. Krause was only entitled to invoke the PAS reassignment provisions in the event that his appointment, as Director General, was terminated during the term of his mandate. Clause 6 does not mean that reassignment was available in the event of a break in the employment ties resulting from a dismissal, which was the effect of the August 2, 1992 Resolution.

¶ 60 This interpretation would also appear to conform to the intention of the parties. The facts which support this conclusion are the following.

¶ 61 First, when Mr. Krause drafted Clause 6 of the Contract of Assignment of October 26, 1987, one of his objectives was to give himself job security, in the event that a newly elected Council might decide to terminate his services. As the former Director of Personnel, he was familiar with Board employment contracts and the PAS. He was also known to be an able labour negotiator. The Court must assume, therefore, that when he used the word termination in the second part of Clause 6 of the Contract of Assignment, he did not intend to include a break in employment ties for cause.

¶ 62 Second, Dr. Hartt testified that when he agreed to the new provisions of Clause 6, he did not intend to give to Mr. Krause unconditional lifelong employment - certainly not in a case where Mr. Krause's behaviour was of such a nature that it could give rise to a dismissal for cause.

¶ 63 The Court also finds that despite the apparent clarity of the word "termination" used by the parties in Clause 6, it would not be logical or bring about a fair result if Mr. Krause could maintain employment ties following a dismissal for cause. In this regard, the Court adopts, as its own, the comments of Mr. Justice Monet of the Court of Appeal [See Note 2 below].

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Note 2: Richer v. Mutuelle du Canada (LA), Cie d'assurance sur la vie [1987] R.J.Q. 1703 (C.A.), 1705.

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Dans cette oeuvre d'interprétation, le juge peut écarter les termes utilisés par les parties, s'il est démontré que malgré leur clarté les termes invoqués, pris dans le sens littéral, sont incompatibles avec l'ensemble du contrat et l'intention évidente des parties.

and, the comments of Mr. Justice Estey of the Supreme Court of Canada [See Note 3 below]:

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Note 3: Consolidated-Bathurst v. Mutual Boiler and Machinery Insurance Company [1980] 1 S.C.R. 898, 901.

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Even apart from the doctrine of *contra proferentum* as it may be applied to the construction of contracts, the normal rules of construction lead a court to search for an interpretation which, from the whole of the contract, would appear to promote or advance the true intent of the parties at the time of entry into the contract.

Consequently, literal meaning should not be applied where to do so would bring about an unrealistic result or a result which would not be contemplated in the commercial atmosphere in which the insurance was contracted. Where words may bear two constructions, the more reasonable one, that which produces a fair result, must certainly be taken as the interpretation which would promote the intention of the parties.

¶ 64 Finally, if there were doubt as to the interpretation to be given to Clause 6, which the Court does not believe to be the case for the reasons already stated, the clause must be interpreted against Mr. Krause who drafted the clause.

### 3. THE CLAIM FOR FAILURE TO GIVE A 60 DAYS NOTICE

¶ 65 As indicated above, the first paragraph of Clause 6 cited above refers to the right of Mr. Krause to a 60 days written notice in the event the contract may "terminate... for cause". Unlike the second paragraph of Clause 6, it makes no reference to the PAS. In any event, the PAS does not define "termination for cause.

¶ 66 The wording alone of the Contract of Assignment thus supports the proposition that when "the contract" is terminated for cause, Mr. Krause is entitled to a 60 days notice. Therefore, if the Council by its Resolution of August 2, 1992 had merely terminated his appointment as Director General, either for cause or for any other reason, but maintained employment ties with the Board, Mr. Krause would have been entitled to a 60 days notice. But, the Council did not do that. It did more. It dismissed him "from the employ" of the Board.

¶ 67 Therefore, for this reason alone, the Court is of the view that Mr. Krause was not entitled to a 60 days notice.

¶ 68 Considering as well the circumstances which led to his dismissal, the Court is of the opinion that Mr. Krause is not be entitled to benefit from the notice provisions of the contract. The acts of Mr. Krause constitute more than mere negligence or insubordination. His behaviour went beyond that. He was dismissed because the Council was of the opinion that he had misled the Board and because he was no longer worthy of its trust or belief. To that extent, the Court has no hesitation in concluding that Mr. Krause acted dishonestly. By misrepresenting certain facts to the Commissioners which he knew or should have known were not true, he was in bad faith [See Note 4 below].

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Note 4: Bank of Montreal v. Kuet Leong Ng [1989] 2 S.C.R. 429.

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¶ 69 The keystone to the execution of contracts generally is honesty and good faith. This principle holds true in contracts of employment, particularly those of senior executives whose obligations of loyalty and fair dealing increase with the responsibilities attached to the positions they hold. Their conduct must be, at the very least, above all suspicion.

¶ 70 Mr. Krause's behaviour fell short of the high standard which the Board was entitled to expect of him. He broke his many promises to the Chairman of the Council of Commissioners and to the Board. He embarrassed the Board. He treated it with contempt. He lost its confidence. He abused his authority. He misused taxpayer's funds. Nor can he say with any credibility that the Board's tolerance and inaction are to blame. While the Court does not condone its failure to act sooner, which afforded Mr. Krause the opportunity to act as he did, two wrongs don't make a right.

¶ 71 By acting in his own self-interest, the Court considers that it would be repugnant that Mr. Krause should be entitled to any of the termination benefits provided for in his contract of employment. Even assuming that the provisions of Clause 6 meant that Mr. Krause was entitled to a 60 days notice or to a reassignment (which the Court believes not to be the case) Mr. Krause's breaches of loyalty and good faith disentitle him from invoking Clause 6. In this regard, Mr. Justice Delisle of the Court of Appeal had this to say [See Note 5 below]:

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Note 5: Daigle v. Caisse Populaire Les Atchemins J.E. 95-1070 C.A. Québec 200-09-000089-901.

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Une personne ne peut prétendre avoir droit de rester à l'emploi d'une autre et invoquer un contrat à cette fin si, du même souffle, elle démontre une absence de bonne foi.

Le contrat de travail implique nécessairement la bonne foi; à compter du moment où cet élément n'existe plus chez l'une des parties, la relation employeur-employé cesse d'être possible. (Banque de Montréal c. Kuet Leong Ng, [1989] 2 R.C.S. 429; Commission des droits de la personne du Québec c. Immeubles Ni/Dia inc. [1992] R.J.Q. 2977 (T.D.P.Q.); A. Edward Aust, Les obligations de loyauté de diligence et de coopération du cadre supérieur, *Développements récents en droit du travail* (1993), p. 45-64). La bonne foi constitue une composante essentielle qui gouverne cette relation et chapeaute, bien que rarement exprimée dans un contrat écrit, les clauses les plus restrictives de terminaison d'emploi.

#### THE CROSS-DEMAND

¶ 72 Mr. Krause admits that he owes the Board \$12,504 for various unpaid claims arising out of the misuse of his expense account. He also admits that he owes interest of \$7,015 which accumulated on these claims and other claims against him which have now been settled, for a total of \$19,519.

¶ 73 The Board claims interest on the \$12,504 from the date of the dismissal and on \$7,015 from the

date of the Cross-Demand. The Court sees no reason why an exception should be made in this case to the general rule that interest on both sums should accrue from the date of the judicial demand against Mr. Krause.

#### COSTS

¶ 74 In exercising its discretion pursuant to Art. 477 C.P.C., the Court could have seen fit not to award any costs in favour of the Board. Had it not been for the laxness and inaction of Dr. Hartt, in particular, and of Mr. Tabachnick, to a lesser extent, it may well have been the case that the events giving rise to this litigation would never have occurred. However, since it is the taxpayers who ultimately are the ones who have had to finance this litigation, it would be inequitable to deprive, them of their right to recover taxable court costs. The Court will thus follow the general rule that the losing party must pay costs.

¶ 75 FOR THESE REASONS, THE COURT:

DISMISSES the Plaintiff's action, with costs on an action of \$506,431.13;

ORDERS Plaintiff to pay the Defendant the sum of \$19,519 plus interest as provided for by law from the date of institution of Defendant's Cross-Demand, with costs.

MAUGHAN J.

QL Update: 980710  
qp/s/jcr

QUICKCITE

Case Name: Krause v. Lakeshore School Board  
Court: 1998 Québec Superior Court

Reported at:  
[1998] Q.J. No. 1958 #1

Summary of Judicial Consideration  
Mentioned: 5

Treatment

Mentioned  
(QCSC)  
Wood c. Commer-tech America inc. #2  
[2003] J.Q. no 16883 Locus Para 59  
(2003) J.E. 2004-53 #3

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