

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

NO: [REDACTED]

SUPERIOR COURT

[REDACTED] victim of a  
criminal act, residing and domiciled at  
[REDACTED]

Applicant

v.

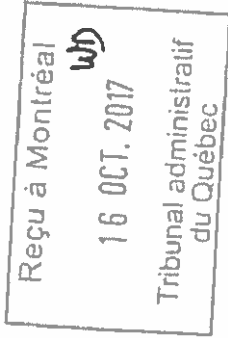
ADMINISTRATIVE TRIBUNAL OF  
QUÉBEC, 500 René-Lévesque Boulevard,  
21<sup>st</sup> floor, in the City and District of  
Montreal, H2Z 1W7,

Defendant

and

GENERAL ATTORNEY OF QUÉBEC,  
[Bernard Roy & Associés (Justice-  
Québec)], in her quality of representative  
of the Ministère du Travail, de l'Emploi et  
de la Solidarité sociale, 1 Notre-Dame  
Street East, office 8.00, in the City and  
District of Montréal, H2Y 1B6,

Impleaded Party



**APPLICATION FOR JUDICIAL REVIEW**  
(Sections 529 and following C.P.C.)

TO ONE OF THE HONORABLE SUPERIOR COURT JUDGES PRESIDING IN  
PRACTICE DIVISION IN AND FOR THE DISTRICT OF MONTRÉAL, THE  
APPLICANT SUBMITS THE FOLLOWING:

The Parties

1. The Applicant is a victim of a criminal act covered by the Crime Victims  
Compensation Act, CQLR c I-6, and has a severely limited capacity for employment

and thus receives social solidarity benefits from the Ministère du Travail, de l'Emploi et de la Solidarité sociale (hereafter « MTESS »);

2. The Administrative Tribunal of Quebec (hereafter « TAQ ») is an administrative tribunal whose function, among others, is to have exclusive competence over the deciding of disputes stemming from *Individual and Family Assistance Act, CQLR c A-13.1.1* (hereafter « LAFP »);
3. The Impleaded party the General Attorney of Quebec acts as representative of the MTESS;

#### The Facts and the Legal Proceedings

4. The Applicant is victim of a criminal act on February 24<sup>th</sup>, 2010; while bringing his grand-daughter home from school, masked individuals in « hoodies » shoot him and stab him in the leg and arm;
5. The Applicant has permanent physical and mental damage from this attack, notably, post-traumatic stress, a inextricable bullet in his left leg and traumatic tendinitis in his right shoulder;
6. The Direction de l'Indemnisation des victimes d'actes criminels (hereafter « DIVAC ») accepts the Applicant's application for compensation, and, after an initial contestation and trial at the TAQ, his percentage of permanent damage (hereafter « DAP ») is established at 17%, which includes 5% for the psychological portion and 12% for the physical portion, as it appears from the TAQ's decision of September 13<sup>th</sup>, 2017 denounced as *Exhibit P-1*;
7. This DAP of 17% means the Applicant is granted a monthly indemnity of \$201.84, an amount which would have been converted into a capital of \$21,000 in the absence of contestation;
8. The Applicant contests the psychological portion of his DAP, feeling his psychological damage was unfortunately more severe, in a context where he is unable to be in public, in crowds, or in public transportation because every time he sees someone wearing a "hoodie" he has flashbacks and panic attacks, and so he does not receive the capitalization of his monthly payment;
9. The MTESS renders a decision on September 11<sup>th</sup>, 2015, by which the benefits of social assistance of the Applicant are reduced by \$201.84 each month, and the Applicant is asked to repay the sum of \$8,279.70 for the retroactive payment of the monthly allowance of \$201.84 going back to February 24<sup>th</sup>, 2010;
10. The Applicant asks for the review of this decision, and the reimbursement claim is reduced by the MTESS to \$201.84 (for the month of September 2015 only) and the

reduction of his social assistance payments is maintained, in a decision dated March 8<sup>th</sup>, 2016;

11. The Applicant appeals this decision to the TAQ;
12. A Conciliation session is held at the TAQ in February 2016, concerning the Applicant's dispute with the DIVAC concerning his DAP for psychological damage;
13. During this session, the General Attorney of Quebec, intervening in the dispute, agrees to recognize a DAP for psychological damage of 15% (including the 5% already recognized), following the conclusions of the Applicant's mandated psychiatric expertise, bringing the Applicant's global DAP to 27%, as it appears from the Conciliation Agreement denounced as *Exhibit P-2*;
14. The Applicant is reluctant to agree to this increase of his DAP, realizing that though in principle this means he will receive more compensation, in fact he will receive less, because though the capitalization is not considered as income by the MTESS, the monthly payment for the permanent damage is considered as income;
15. Nevertheless, the Applicant signs the agreement granting him more compensation from the DIVAC, and his monthly payment increases to \$340.44 as of April 1<sup>st</sup>, 2016;
16. On July 5<sup>th</sup>, 2016, the MTESS renders a new decision reducing the amount of the Applicant's social solidarity benefits by \$340.44 a month;
17. The Applicant asks for the review of this decision, and then appeals to the TAQ the decision rendered after administrative review on October 18<sup>th</sup>, 2016, as it appears from pages 19 and 68 of the administrative file prepared by the MTESS denounced as *Exhibit P-3*;
18. June 15<sup>th</sup>, 2017, the TAQ hears the appeal of the Applicant of the decisions rendered on March 8<sup>th</sup>, 2016 and October 18<sup>th</sup>, 2016, along with the appeals of two other victims, who also contest the reduction of benefits by the MTESS because of their monthly payments from the DIVAC and who present the same legal arguments;
19. In front of the TAQ, the Applicant pleads that the monthly payments from the DIVAC to compensate him for his loss of physical and mental capacity should not be taken into account to calculate the amount of his social solidarity payments;
20. On September 13<sup>th</sup>, 2017, the TAQ renders a decision by which the Applicant's appeal is rejected, as is that of the two other victims;
21. The Applicant receives by mail the TAQ's decision of September 13<sup>th</sup>, 2017 on or around September 19<sup>th</sup>, 2017;

**The Standard of Review**

22. The TAQ has a specialized and exclusive competence in matters of social affairs, including the application and interpretation of the LAPP, as well as in matters stemming from the Crime Victims Compensation Act;
23. The Applicant recognizes that the standard of review in the current file is that of Reasonable Decision;

**The TAQ's decision of September 13<sup>th</sup>, 2017**

24. The TAQ explains the factual context and mentions that this factual context is not contested by the Parties in any of the three files being heard on this issue;
25. The TAQ reviews the applicable legislation regarding the question of monthly payments for permanent partial disability, notably Section 55 of the LAPP, Sections 111 and 138, paragraph 11 of the Individual and Family Assistance Regulation, and Section 38 of the Workers' Compensation Act, CQLR c A-3, which provides for the monthly payments to compensate for physical and/or mental impairment, as it appears from the TAQ's decision already denounced as exhibit P-1;
26. The TAQ, like the MTESS, concludes that the monthly payments for permanent partial disability should be governed by Section 55 of the LAPP, which stipulates that « any other earnings or other benefits » should be subtracted from the basic benefit established by this section;
27. The TAQ explains that, though the monthly payments to compensate for permanent partial disability are not specifically mentioned in the LAPP, if the Legislator had wanted these payments to be excluded from the calculation of last resort or social solidarity benefits, he would have explicitly mentioned this exclusion at Section 111 of the Regulation;
28. The TAQ adds that the LAPP has been modified on several occasions over the last decades, and the Legislator could have added this exclusion during one of these modifications, if that had been his intention;
29. Because Section 138, paragraph 11 of the Regulation does not mention "monthly payments", but only speaks of "sums paid to compensate for physical or mental impairment", the TAQ concludes that the Legislator had consciously decided to leave out the monthly payments for permanent partial disability from this section of the Regulation;
30. Despite the respect due for the opposing opinion, the Applicant respectfully asks this Court to intervene for the following reasons :

- a. The TAQ's interpretation of the monthly payments for permanent partial disability and of the pertinent sections of the LAPP is unreasonable and goes against the purpose of both the LAPP and the Crime Victim's Compensation ACT, as well as the principles and standards of legislative interpretation established by the Supreme Court of Canada;
- b. To determine which Section of the Law should govern the monthly payments for permanent partial disability, these payments should first be defined legally;
- c. The TAQ is looking for a specific exclusion of the "monthly" compensation payments, while the legal nature of these payments is crystal clear: they are "sums paid to compensate for physical or mental impairment", following Section 138, paragraph 11 of the Regulation;
- d. The form under which these payments are made is of little importance, when the content of the payments is clear, and in the absence of an explicit inclusion or exclusion according to the Law;
- e. The LAPP and the Crime Victim's Compensation Act are social laws which procure advantages to vulnerable people;
- f. The monthly payments made by the DIVAC to compensate permanent partial disability are made to victims who have undergone a rigorous medical evaluation, after which they are judged permanently disabled because of the criminal act they have suffered;
- g. The objective of the monthly payments is to help the victims counteract the negative consequences of the criminal acts they have suffered from, and not to respond to their basic needs like rent, food and electricity;
- h. By subtracting the sums received monthly in compensation for permanent partial disability, the MTESS denies victims their compensation and saves money at their expense;
- i. Legislation that takes away an advantage from a citizen should be interpreted restrictively;
- j. Legislation that grants an advantage should be interpreted largely;
- k. It is highly unreasonable to interpret largely and liberally Section 55 of the LAPP in order to include the monthly payments for permanent partial disability in the calculation of the last recourse or social solidarity benefits, and to interpret Section 138, paragraph 11 (which is moreover, much more specific and clear) restrictively in order to leave out the monthly payments from the exclusion provided for by this section;

- l. The interpretation of the monthly payments for permanent partial disability, of Section 55 of the Law and Section 138 of the Regulation applied by the MTESS and confirmed by the TAQ by the decision of September 13<sup>th</sup>, 2017 leads to inequitable, unjust, and even absurd results;
  - m. The victim with less permanent damage will receive a capitalisation of the monthly payments which is then paid as a lump-sum amount, as it appears from the Manuel des politiques IVAC denounced as *Exhibit P-4*;
  - n. When the victim receives a lump-sum amount, the MTESS considers that this amount becomes, magically, a “sum paid to compensate for physical or mental impairment” (whereas the monthly payment was somehow a different kind of sum) and excludes this amount from the calculation of available resources of the victim for the month of its reception, as it appears from the section of ADEL – Aide à la décision en ligne denounced as *Exhibit P-5*;
  - o. The victim with less damage who receives a lump-sum payment benefits fully from the compensation, can buy goods or services to help him counteract the negative consequences of the criminal act, put the money aside in a RRSP or pay back his debts, to name just a few possibilities, without their social solidarity assistance benefits being reduced;
  - p. The victim with more damage, like the Applicant, whose monthly payment is more than around \$208, will not see a cent of his compensation if he receives social assistance benefits, because these benefits will be reduced by the amount of the monthly payment;
  - q. According to the general interpretation of the MTESS and that of the TAQ in the decision of September 13<sup>th</sup>, 2017, the victim less severely disabled will be compensated and the victim more severely disabled will not be compensated;
31. This interpretative result is unacceptable, unreasonable, unjust and contrary to the spirit and letter of social legislation, like the LAPPF and the Crime Victim’s Compensation Act;
32. The Applicant has acted within a reasonable delay to undertake the present application for judicial review.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**REVISE AND CANCEL** the decision rendered by the Administrative Tribunal of Québec on September 13<sup>th</sup>, 2017;

**DECLARE** that the monthly payments for permanent partial disability made by the DIVAC to victims of criminal acts are « sums paid to compensate for physical or

mental impairment », not income, and are to be excluded from the calculation of resources for beneficiaries of social assistance for the month of their reception;

ORDER the impleaded party to reimburse the Applicant for the sums subtracted from his social assistance payments since September 1<sup>st</sup>, 2015 because of his monthly payments for permanent partial disability from the DIVAC;

WITHOUT LEGAL COSTS, unless contested.

MONTREAL, this 14<sup>th</sup> September, 2017.

Paulx Lemoine & Johnson  
PROULX LEMOINE & JOHNSON  
Lawyers for the Applicant  
Me Manuel Johnson  
Email address: [mjohnson@ccjm.qc.ca](mailto:mjohnson@ccjm.qc.ca)  
2533 Centre Street, office 101  
Montreal Qc H3K 1J9  
Tel : 514-933-8432  
Fax : 514-933-4381

COPIE CONFORME  
Paulx Lemoine & Johnson  
AVOCATS

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

NO: [REDACTED]

SUPERIOR COURT

[REDACTED], victim of a  
criminal act, residing and domiciled at  
[REDACTED]

Applicant

v.

ADMINISTRATIVE TRIBUNAL OF  
QUÉBEC, 500 René-Lévesque Boulevard,  
21<sup>st</sup> floor, in the City and District of  
Montreal, H2Z 1W7,

Defendant

and

GENERAL ATTORNEY OF QUÉBEC,  
[Bernard Roy & Associés (Justice-  
Québec)], in her quality of representative  
of the Ministère du Travail, de l'Emploi et  
de la Solidarité sociale, 1 Notre-Dame  
Street East, office 8.00, in the City and  
District of Montréal, H2Y 1B6,

Impleaded Party

Reçu à Montréal *WD*  
18 OCT. 2017  
Tribunal administratif  
du Québec

**APPLICATION FOR JUDICIAL REVIEW**  
(Sections 529 and following C.P.C.)

TO ONE OF THE HONORABLE SUPERIOR COURT JUDGES PRESIDING IN  
PRACTICE DIVISION IN AND FOR THE DISTRICT OF MONTRÉAL, THE  
APPLICANT SUBMITS THE FOLLOWING:

The Parties

1. The Applicant is a victim of a criminal act covered by the Crime Victims  
Compensation Act, CQLR c I-6, and has a severely limited capacity for employment



and thus receives social solidarity benefits from the Ministère du Travail, de l'Emploi et de la Solidarité sociale (hereafter « MTESS »);

2. The Administrative Tribunal of Quebec (hereafter « TAQ ») is an administrative tribunal whose function, among others, is to have exclusive competence over the deciding of disputes stemming from *Individual and Family Assistance Act, CQLR c A-13.1.1* (hereafter « LAFP »);
3. The Impleaded party the General Attorney of Quebec acts as representative of the MTESS;

The Facts and the Legal Proceedings

4. The Applicant is victim of a criminal act on January 15<sup>th</sup>, 2014, when she is attacked in the street without reason by a stranger suffering from mental problems;
5. The Applicant has permanent physical and mental damage from this attack, notably, permanent damage to her lumbar region and post-traumatic stress and anxiety;
6. The Direction de l'Indemnisation des victimes d'actes criminels (hereafter « DIVAC ») accepts the Applicant's application for compensation, and determines that her percentage of incapacity for the physical and mental impairment stemming from the criminal act is 11.5%;
7. This percentage of incapacity of 11.5% means the Applicant is granted a monthly indemnity of \$165.88, an amount which was then converted in a capital of around \$17,000 in April 2016, as it appears from page 8 of the MTESS administrative file denounced as *Exhibit P-1*;
8. The capitalization of the monthly indemnity is not considered as income by the MTESS, and the Applicant was able to freely dispose of it, paying back debts, buying furniture and other necessities, without any reimbursement claim for dilapidation from the MTESS;
9. The MTESS renders two decisions on February 18<sup>th</sup>, 2016, by which the benefits of social assistance of the Applicant are reduced by \$165.88 each month, and she is asked to repay \$165.88, the amount which she received as monthly indemnity for physical and mental impairment during that month, as it appears from pages 10 and 12 of the MTESS administrative file already denounced as exhibit P-1;
10. The MTESS renders a third decision on February 19<sup>th</sup>, 2016, by which the Applicant is asked to repay the sum of \$1,907.62 for the partial retroactive payment of the monthly indemnity of \$165.88 going back to January 15<sup>th</sup>, 2014;

11. The Applicant asks for the reviews of these decisions, and, after review, the reimbursement claim of \$1,907.62 is cancelled by the MTESS and the claim of \$165.88 is maintained;
12. The Applicant appeals this decision to the TAQ;
13. On June 15<sup>th</sup>, 2017, the TAQ hears the appeal of the Applicant of the decisions rendered on February 18<sup>th</sup>, 2016, along with the appeals of two other victims, who also contest the reduction of benefits by the MTESS because of their monthly payments from the DIVAC and who present the same legal arguments;
14. In front of the TAQ, the Applicant pleads that the monthly payments from the DIVAC to compensate her for her loss of physical and mental capacity should not be taken into account to calculate the amount of her social solidarity payments;
15. On September 13<sup>th</sup>, 2017, the TAQ renders a decision by which the Applicant's appeal is rejected, as is that of the two other victims, as it appears from the decision of September 13<sup>th</sup>, 2017 denounced as *Exhibit P-2*;
16. The Applicant receives by mail the TAQ's decision of September 13<sup>th</sup>, 2017 on or around September 19<sup>th</sup>, 2017;

#### The Standard of Review

17. The TAQ has a specialized and exclusive competence in matters of social affairs, including the application and interpretation of the L.APF, as well as in matters stemming from the Crime Victims Compensation Act;
18. The Applicant recognizes that the standard of review in the current file is that of Reasonable Decision;

#### The TAO's decision of September 13<sup>th</sup>, 2017

19. The TAQ explains the factual context and mentions that this factual context is not contested by the Parties in any of the three files being heard on this issue;
20. The TAQ reviews the applicable legislation regarding the question of monthly payments for permanent partial disability, notably Section 55 of the L.APF, Sections 111 and 138, paragraph 11 of the Individual and Family Assistance Regulation, and Section 38 of the Workers' Compensation Act, CQLR c A-3, which provides for the monthly payments to compensate for physical and/or mental impairment, as it appears from the TAQ's decision already denounced as exhibit P-1;
21. The TAQ, like the MTESS, concludes that the monthly payments for permanent partial disability should be governed by Section 55 of the L.APF, which stipulates that « any

other earnings or other benefits » should be subtracted from the basic benefit established by this section;

22. The TAQ explains that, though the monthly payments to compensate for permanent partial disability are not specifically mentioned in the LAPPF, if the Legislator had wanted these payments to be excluded from the calculation of last resort or social solidarity benefits, he would have explicitly mentioned this exclusion at Section 111 of the Regulation;
23. The TAQ adds that the LAPPF has been modified on several occasions over the last decades, and the Legislator could have added this exclusion during one of these modifications, if that had been his intention;
24. Because Section 138, paragraph 11 of the Regulation does not mention “monthly payments”, but only speaks of “sums paid to compensate for physical or mental impairment”, the TAQ concludes that the Legislator had consciously decided to leave out the monthly payments for permanent partial disability from this section of the Regulation;
25. Despite the respect due for the opposing opinion, the Applicant respectfully asks this Court to intervene for the following reasons :
  - a. The TAQ’s interpretation of the monthly payments for permanent partial disability and of the pertinent sections of the LAPPF is unreasonable and goes against the purpose of both the LAPPF and the Crime Victim’s Compensation ACT , as well as the principles and standards of legislative interpretation established by the Supreme Court of Canada;
  - b. To determine which Section of the Law should govern the monthly payments for permanent partial disability, these payments should first be defined legally;
  - c. The TAQ is looking for a specific exclusion of the “monthly” compensation payments, while the legal nature of these payments is crystal clear : they are “sums paid to compensate for physical or mental impairment”, following Section 138, paragraph 11 of the Regulation;
  - d. The form under which these payments are made is of little importance, when the content of the payments is clear, and in the absence of an explicit inclusion or exclusion according to the Law;
  - e. The LAPPF and the Crime Victim’s Compensation Act are social laws which procure advantages to vulnerable people;
  - f. The monthly payments made by the DIVAC to compensate permanent partial disability are made to victims who have undergone a rigorous medical evaluation,

after which they are judged permanently disabled because of the criminal act they have suffered;

- g. The objective of the monthly payments is to help the victims counteract the negative consequences of the criminal acts they have suffered from, and not to respond to their basic needs like rent, food and electricity;
- h. By subtracting the sums received monthly in compensation for permanent partial disability, the MTESS denies victims their compensation and saves money at their expense;
- i. Legislation that takes away an advantage from a citizen should be interpreted restrictively;
- j. Legislation that grants an advantage should be interpreted largely;
- k. It is highly unreasonable to interpret largely and liberally Section 55 of the LAPP in order to include the monthly payments for permanent partial disability in the calculation of the last recourse or social solidarity benefits, and to interpret Section 138, paragraph 11 (which is moreover, much more specific and clear) restrictively in order to leave out the monthly payments from the exclusion provided for by this section;
- l. The interpretation of the monthly payments for permanent partial disability, of Section 55 of the Law and Section 138 of the Regulation applied by the MTESS and confirmed by the TAQ by the decision of September 13<sup>th</sup>, 2017 leads to inequitable, unjust, and even absurd results;
- m. The victim with less permanent damage will receive a capitalisation of the monthly payments which is then paid as a lump-sum amount, as it appears from the Manuel des politiques IVAC denounced as *Exhibit P-3*;
- n. When the victim receives a lump-sum amount, the MTESS considers that this amount becomes, magically, a “sum paid to compensate for physical or mental impairment” (whereas the monthly payment was somehow a different kind of sum) and excludes this amount from the calculation of available resources of the victim for the month of its reception, as it appears from the section of ADEL – Aide à la décision en ligne denounced as *Exhibit P-4*;
- o. The victim with less damage who receives a lump-sum payment benefits fully from the compensation, can buy goods or services to help him counteract the negative consequences of the criminal act, put the money aside in a RRSP or pay back his debts, to name just a few possibilities, without their social solidarity assistance benefits being reduced;

- p. The victim with more damage, like the Applicant, whose monthly payment is more than around \$208, will not see a cent of his compensation if he receives social assistance benefits, because these benefits will be reduced by the amount of the monthly payment;
- q. According to the general interpretation of the MTESS and that of the TAQ in the decision of September 13<sup>th</sup>, 2017, the victim less severely disabled will be compensated and the victim more severely disabled will not be compensated;
26. This interpretative result is unacceptable, unreasonable, unjust and contrary to the spirit and letter of social legislation, like the LAPP and the Crime Victim's Compensation Act;
27. The Applicant has acted within a reasonable delay to undertake the present application for judicial review.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**REVISE AND CANCEL** the decision rendered by the Administrative Tribunal of Québec on September 13<sup>th</sup>, 2017;

**DECLARE** that the monthly payments for permanent partial disability made by the DIVAC to victims of criminal acts are « sums paid to compensate for physical or mental impairment », not income, and are to be excluded from the calculation of resources for beneficiaries of social assistance for the month of their reception;

**ORDER** the impleaded party to reimburse the Applicant for the sums subtracted from her social assistance payments since February 1<sup>st</sup>, 2016 because of her monthly payments for permanent partial disability from the DIVAC;

**WITHOUT LEGAL COSTS**, unless contested.

**COPIE CONFORME**  
*Prouly Lemoine & Johnson*  
AVOCATS

MONTREAL, this October 17<sup>th</sup>, 2017

*Prouly Lemoine & Johnson*

PROULX LEMOINE & JOHNSON

Lawyers for the Applicant

Me Manuel Johnson

Email address: [mjohnson@ccjm.qc.ca](mailto:mjohnson@ccjm.qc.ca)

2533 Centre Street, office 101

Montreal Qc H3K 1J9

Tel : 514-933-8432

Fax : 514-933-4381

CANADA

PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

NO: [REDACTED]

COUR SUPÉRIEURE

[REDACTED] victime  
d'actes criminels, résidant et domicilié au

[REDACTED]  
Partie demanderesse

c.

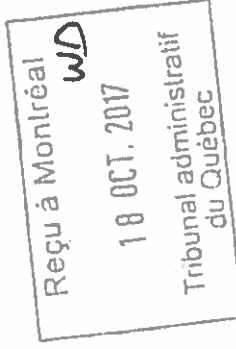
TRIBUNAL ADMINISTRATIF DU  
QUÉBEC, 500 boul. René-Lévesque  
Ouest, 21<sup>e</sup> étage, dans les cité et district de  
Montréal, H2Z 1W7,

Partie défenderesse

et

PROCUREURE GÉNÉRALE DU  
QUÉBEC, [Bernard Roy & Associés  
(Justice Québec)], en sa qualité de  
représentante du Ministère du Travail, de  
l'Emploi et de la Solidarité sociale, 1 rue  
Notre-Dame Est, bureau 8.00, dans les cité  
et district de Montréal, H2Y 1B6,

Mise en cause



**DEMANDE DE POURVOI EN CÔNTRÔLE JUDICIAIRE**  
(Art. 529 et ss. C.p.c.)

À L'UN DES HONORABLES JUGES DE LA COUR SUPÉRIEURE SIÉGEANT EN  
DIVISION DE PRATIQUE DANS ET POUR LE DISTRICT DE MONTRÉAL, LA  
REQUÉRANTE EXPOSE CE QUI SUIT :

Les parties

1. La partie demanderesse est une victime d'actes criminels au sens de la *Loi sur l'indemnisation des victimes d'actes criminels*, RLRQ c I-6, et a reçu des prestations d'assistance sociale de derniers recours du Ministère du Travail, de l'Emploi et de la Solidarité sociale (ci-après désigné « MTESS ») entre le 1<sup>er</sup> mars 2015 et le 31 décembre 2016;

2. Le Tribunal administratif du Québec (ci-après désigné « TAQ ») est un Tribunal administratif dont la fonction, entre autres, est de décider de façon exclusive des litiges émanant de la *Loi sur l'aide aux personnes et aux familles*, RLRQ c A-13.1.1 (ci-après désignée « L'APF »);
3. La mise en cause la Procureure générale du Québec agit comme représentante du Ministère du Travail, de l'Emploi et de la Solidarité sociale (ci-après désigné « MTESS »);

#### Les faits et les procédures

4. La partie demanderesse est victime d'un acte criminel le 28 janvier 2011, alors qu'elle est témoin d'un braquage de banque et subit des voies de faits;
5. Le 24 février 2011, la partie demanderesse fait une demande d'indemnisation auprès de la Direction de l'Indemnisation des victimes d'actes criminels (ci-après désignée « DIVAC »), laquelle est acceptée par le DIVAC le 25 mars 2011, tel qu'il appert de la décision rendue à la suite d'une révision administrative en date du 16 septembre 2015 dénoncée comme *pièce P-1*;
6. La partie demanderesse est de nouveau victime d'un acte criminel le 16 août 2012, alors qu'elle se trouve dans le chemin des voleurs ayant fait un délit de fuite et subit encore des voies de faits;
7. La partie demanderesse fait une nouvelle demande d'indemnisation auprès de la DIVAC le 20 août 2012, laquelle est acceptée le 29 août 2012, tel qu'il appert de la décision du 16 septembre 2015 déjà dénoncée sous la cote P-1;
8. La partie demanderesse travaille dans le domaine des assurances comme expert en sinistre au moment des actes criminels, et, en raison des séquelles qui y sont liées, ne peut pas effectuer son travail habituel;
9. La DIVAC verse donc une indemnité totale temporaire (ci-après désignée « ITT ») à la partie demanderesse en conséquence, jusqu'au 29 janvier 2015, après avoir déterminé que la partie demanderesse était en mesure d'effectuer son travail habituel à partir du 19 décembre 2013, mais, qu'elle était admissible au programme de réadaptation professionnelle entre le 1<sup>er</sup> février 2014 et le 31 janvier 2015, ce qui lui donnait droit à une prolongation de son ITT;
10. Les montants versés par la DIVAC à la partie demanderesse sont détaillés à la page 2 du dossier administratif de la mise en cause, tel qu'il appert du dossier administratif du MTESS dénoncé comme *pièce P-2*;
11. La partie demanderesse souffre d'un syndrome de stress post-traumatique avec symptômes dépressifs, en raison des actes criminels, tel qu'il appert de la décision du 16 septembre 2015 déjà dénoncée sous la cote P-1;

12. La partie demanderesse recherche de travail intensivement en 2014, sans succès, et se rend compte que les symptômes du syndrome de stress post-traumatique nuisent à sa recherche d'emploi; c'est dans ce contexte qu'elle n'a pas le choix que de faire une demande de prestations auprès de la mise en cause en février 2015;
13. Le 25 février 2015, la DIVAC détermine que la partie demanderesse conserve une atteinte permanente dont le déficit anatomo-physiologique (ci-après désigné « DAP ») est de 5%, ce qui lui donne droit à rente mensuelle pour l'incapacité permanente (ci-après désignée « rente IP ») de 125,64\$ ou, s'il n'y a pas de contestation, à une capitalisation d'environ 13 000\$;
14. La partie demanderesse conteste le taux de pourcentage déterminé par la DIVAC, avec pour résultat qu'elle ne reçoit pas de capitalisation, mais continue à recevoir une rente IP de 125,64\$;
15. Le 19 janvier 2016, le MTESS rend une décision par laquelle les prestations d'assistance sociale de la partie demanderesse sont réduites de 125,64\$ par mois, soit le montant que la DIVAC verse mensuellement à la partie demanderesse pour lui compenser pour la perte d'intégrité psychique, tel qu'il appert de la première décision du 19 janvier 2016, à la page 3 du dossier administratif du MTESS déjà dénoncé sous la cote P-2;
16. Par une deuxième décision rendue le même jour, la mise en cause détermine que la partie demanderesse doit rembourser au MTESS les montants de rente IP reçus depuis le 1<sup>er</sup> novembre 2015, soit la somme de 376,92\$, tel qu'il appert de la page 5 du dossier administratif du MTESS déjà dénoncé sous la cote P-2;
17. Le 25 janvier 2016, la partie demanderesse demande la révision des deux décisions rendues le 19 janvier 2016, tel qu'il appert de la page 8 du dossier administratif du MTESS déjà dénoncé sous la cote P-2;
18. Le 2 mai 2016, la partie demanderesse loge un appel auprès de la partie défenderesse le Tribunal administratif du Québec (ci-après désigné « TAQ ») à l'égard des deux décisions du 19 janvier 2016, puisqu'aucune décision de révision n'avait été rendue par la mise en cause dans le délai de 90 jours prévu par la L.A.P.F., tel qu'il appert de la page 18 du dossier administratif du MTESS déjà dénoncé sous la cote P-2;
19. Le 17 mai 2016, la mise en cause a rendu une décision en révision confirmant les deux décisions du 19 janvier 2016, tel qu'il appert de la page 27 du dossier administratif du MTESS déjà dénoncé sous la cote P-2;
20. Le 15 juin 2017, le TAQ a entendu l'appel de la partie demanderesse, dont le recours a été joint à ceux de deux autres demandeurs, à la suite d'une demande de l'avocat de la partie demanderesse qui a été accueilli par un des juges coordonnateurs de la Section des affaires sociales du TAQ;



21. Devant le TAQ, la partie demanderesse plaide que la rente IP devrait être exclue du calcul du montant des prestations d'assistance de dernier recours;
22. Le 13 septembre 2017, le TAQ a rendu une décision par laquelle il rejette le recours de la partie demanderesse et des deux autres demandeurs;
23. La partie demanderesse a reçu par le poste la décision du 13 septembre 2017 le ou vers le 19 septembre 2017;

**La norme de contrôle**

24. Le TAQ possède une compétence spécialisée en matière des affaires sociales, dont l'application de la LAPP, ainsi qu'en matière d'indemnisation des victimes d'actes criminels;
25. La partie demanderesse reconnaît que la norme de contrôle en l'espèce est celle de la décision raisonnable;

**La décision du TAO du 13 septembre 2017**

26. Le TAQ fait une mise en contexte factuelle, souligne que les faits dans le dossier de la partie demanderesse et ceux des deux autres demandeurs ne sont pas contestés, et révisé les dispositions législatives pertinentes au litige entre la partie demanderesse et le mis en cause, dont l'article 55 de la LAPP, les articles 111 et 138, paragraphe 11 du *Règlement sur l'aide aux personnes et aux familles*, et l'article 38 de la *Loi sur les accidents de travail*, qui prévoit le versement de la rente IP aux victimes d'actes criminels ayant subi une atteinte permanente à l'intégrité physique ou psychique, tel qu'il appert de la décision du TAQ du 13 septembre 2017 dénoncée comme *pièce P-3*;
27. Le TAQ, à l'instar du MTESS, conclut que la rente IP doit être régie par l'article 55 de la LAPP, qui stipule que les « autres avantages de toute nature » doivent être soustraits du montant de prestation de base;
28. Le TAQ précise que, bien que la rente IP ne soit mentionnée spécifiquement dans la LAPP, si le Législateur voulait l'exclure du calcul de prestation des bénéficiaires, il l'aurait explicitement exclue du calcul à l'article 111 du Règlement, où les exclusions quant aux avantages réalisés sont énumérées;
29. Le TAQ rajoute que la Loi a été modifiée à plusieurs reprises au travers les dernières décennies, et que le Législateur aurait pu exclure la rente IP du calcul de l'aide de derniers recours, à une de ces occasions, si tel était son intention;
30. Puisque l'article 138, paragraphe 11 du Règlement ne mentionne pas une « rente », mais seulement une « somme accordée pour perte d'intégrité physique ou psychique », le TAQ conclut que le Législateur a sciemment décidé d'écarter la rente IP de cette catégorie;

31. Malgré le respect dû pour l'opinion contraire, la partie demanderesse soumet respectueusement au Tribunal que son intervention est nécessaire pour les motifs ci-après énoncés :

- a. L'interprétation du TAQ de la rente IP et de la LAPF est déraisonnable et va à l'encontre de l'objet de la LAPF et de la Loi sur l'IVAC, ainsi qu'aux principes d'interprétation des lois établis par la Cour suprême du Canada;
- b. Pour déterminer quel article de la Loi ou du Règlement régit la rente IP de l'IVAC, il faut d'abord la qualifier juridiquement;
- c. Le TAQ cherche, et ne trouve pas, une exclusion pour une *rente*, alors que la nature juridique de la rente IP est claire; elle s'agit bel et bien d'une « somme accordée pour compenser la perte d'intégrité physique ou psychique », au sens de l'article 138, paragraphe 11 du Règlement;
- d. La forme sous laquelle cette somme est accordée est de peu d'importance, en l'absence d'exclusion ou inclusion explicite de la rente IP dans la Loi;
- e. La LAPF et la Loi sur l'IVAC sont des lois de nature sociales, qui procurent des avantages à leurs bénéficiaires, qui sont généralement des personnes vulnérables;
- f. Les bénéficiaires de la rente IP versée par la DIVAC sont des personnes qui, à la suite d'un rigoureux processus d'évaluation médicale, ont été jugées partiellement handicapés de façon permanente;
- g. La rente IP vise à pallier aux conséquences de l'atteinte permanente à l'intégrité physique ou psychique des victimes d'actes criminels, et non pas à combler leurs besoins de base tels que définis par la LAPF;
- h. En soustrayant le montant de la rente IP des prestations mensuelles d'assistance sociale de dernier recours, le MTESS prive les victimes de leurs indemnités et fait des économies sur leur dos;
- i. La disposition législative qui prive une personne d'un avantage doit être interprétée restrictivement;
- j. La disposition législative qui procure un avantage à un administré doit être interprétée de façon large et libérale;
- k. Il est déraisonnable d'interpréter l'article 55 de la Loi de façon libérale pour inclure la rente IP, et d'interpréter l'article 138, paragraphe 11 du Règlement (qui est, de surcroît, beaucoup plus précis et décrit l'essence juridique de la rente IP) de façon restrictive pour écarter la rente IP de l'exclusion établie par cet article;

- l. L'interprétation de la rente IP et de l'article 55 de la loi appliquée par le MTESS et confirmée par le TAQ par sa décision du 13 septembre 2017 produit des résultats inéquitable, injustes, voire absurdes;
  - m. La victime avec un DAP moins important recevra la capitalisation de sa rente qui est versée sous la forme d'une somme forfaitaire, tel qu'il appert de l'extrait du Manuel des politiques IVAC dénoncé comme *pièce P-4*;
  - n. Puisque la rente IP est versée sous la forme d'une somme forfaitaire, le MTESS considère qu'elle devient, par une induction qui échappe à la partie demanderesse, une « somme accordée pour la perte d'intégrité physique ou psychique » et l'exclut du calcul pour le mois de sa réception, suivant l'article 138, paragraphe 11 du Règlement, tel qu'il appert de l'extrait de l'ADEL – Aide à la décision en ligne dénoncé comme *pièce P-5*;
  - o. La victime avec un DAP moins important qui reçoit des prestations d'assistance sociale de dernier recours bénéficiera donc pleinement de son indemnité IP, pourrait acheter des biens et services dont elle a besoin pour pallier aux séquelles de l'acte criminel, payer des soins, placer l'indemnité ou rembourser ses dettes (pour ne nommer que quelque possibilités) sans que ses prestations d'assistance sociale soit réduites;
  - p. La victime avec un DAP plus important, dont le montant de la rente mensuelle dépasse environ 208\$ par mois, ne verra pas un sou de son indemnité si elle reçoit des prestations d'assistance sociale de dernier recours, car ses prestations seront réduites en conséquence, du montant exact de la rente;
  - q. Cette victime avec un DAP plus important a pourtant des séquelles plus graves résultant de l'acte criminel;
  - r. Selon l'interprétation du MTESS plus généralement et du TAQ dans sa décision du 13 septembre 2017, la victime moins atteinte sera indemnisée, tandis que la victime plus atteinte ne le sera pas;
  - s. Ce résultat est inacceptable, déraisonnable, injuste et contraire à l'objet des lois sociales, dont la LAPF et la Loi sur l'IVAC;
32. La partie demanderesse a agi dans un délai raisonnable pour entreprendre le présent recours.

**POUR CES MOTIFS, PLAISE À LA COUR :**

**ACCUEILLIR** la présente demande de pourvoi en contrôle judiciaire;

**RÉVISER, ANNULER ET CASSER** à toutes fins que de droit la décision rendue par le Tribunal administratif du Québec le 13 septembre 2017;

DÉCLARER que la rente IP est une « somme accordée pour la perte d'intégrité physique ou psychique » et devrait exclure du calcul des ressources des prestataires d'assistance sociale pour le mois de sa réception;

ORDONNER à la mise en cause de rembourser à la partie demanderesse les sommes injustement soustraites de ses prestations d'assistance sociale en conséquence;

LE TOUT sans frais de justice, sauf en cas de contestation.

MONTREAL, ce 12 octobre 2017



PROULX LEMOINE & JOHNSON

Avocats de la partie demanderesse

Me Manuel Johnson

Adresse courriel : [mjohnson@ccjm.qc.ca](mailto:mjohnson@ccjm.qc.ca)

2533 rue Centre, bureau 101

Montréal Qc H3K 1J9

Tél : 514-933-8432

Télé : 514-933-4381

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