

CANADA
PROVINCE OF QUEBEC
District of Québec
No 200-06-000179-146

(Class Action)
SUPERIOR COURT

SOCIÉTÉ QUÉBÉCOISE DE GESTION
COLLECTIVE DES DROITS DE
REPRODUCTION (COPIBEC)

CLASS REPRESENTATIVE

AND

GUY MARCHAND

SECOND CLASS REPRESENTATIVE

AND

JEAN-FRÉDÉRIC MESSIER

THIRD CLASS REPRESENTATIVE

-V-

UNIVERSITÉ LAVAL

DEFENDANT

SETTLEMENT AGREEMENT WITH THE REPRESENTATIVES OF AN AUTHORIZED
CLASS ACTION

Whereas the Court of Appeal authorized on February 8, 2017, in the Court File 200-09-009232-163, a class action against Université Laval and designated Copibec, Guy Marchand and Jean-Frédéric Messier as representatives of the proposed class;

Whereas, on or around May 23, 2017, the Honourable Justice Simon Hébert was appointed to hear the merit of the action;

Considering that arm's length settlement negotiations have taken place between the representatives and the defendant in order to settle this matter out of court, without any admission of liability on either part, to avoid the costs and inconveniences of further procedures;

Whereas by this settlement, the claims of the various group of class members described in the procedures are in fact globally and completely solved.

THE PARTIES AGREE AS FOLLOWS:

1. Université Laval shall suspend the application of the *Politique et directives relatives à l'utilisation de l'œuvre d'autrui aux fins des activités d'enseignement, d'apprentissage, de recherche et d'étude privée à l'Université Laval* of May 21, 2014 and of the *Règlement sur le matériel de cours à l'Université Laval* no later than thirty (30) days from the ratification of this transaction, ensuring that transitional measures are put in place to allow a harmonious transaction, through the harmonization of its policies, regulations and processes in the context of the signing of Copibec's licence;

2. Université Laval undertakes to contract retroactively Copibec's general university reproduction licence for the years of 2014-2017 and the first year of the agreement 2017-2021, in accordance with the approved agreement with the universities of Quebec. Université Laval shall sign the required documents and pay Copibec the costs of the licence, namely:

a) 2014-2015:	\$491,160
b) 2015-2016:	\$498,405
c) 2016-2017:	\$496,065
d) 2017-2018:	\$446,458

For a total amount of **\$1,932,088**, all interest free, plus applicable taxes.

It is understood that Copibec will then remit these amounts to the beneficiaries according to its rules and practices and based on the declarations filed by Université Laval in 2012-2013 and 2013-2014.

3. Université Laval shall collect and communicate to Copibec the information concerning what was reproduced by its staff and the number of copies produced, as well as the information traditionally required for the purpose of declarations in the licence as of June 1, 2018, in accordance with Copibec's general university reproduction licence 2017-2021.

4. Within thirty (30) days of the ratification of this transaction, Copibec shall release the amounts retained, following the collection of royalties, to remit them to the entities of Université Laval.

5. Université Laval shall contract Copibec's general university licence 2017-2021, effective June 1, 2018, according to the approved agreement with the universities of Québec.

6. Université Laval shall send a letter from its Vice-Rector to all professors and lecturers, with a copy to Copibec, within thirty (30) days of the ratification of this agreement:

i. informing them that it suspends the application of the Policy and Regulations (mentioned in paragraph 1) and that it will rapidly harmonize its policies, regulations and processes in the context of the signing of the Copibec agreement.

ii. reminding them of the obligation to respect, under the terms of this licence, the reproduction limits provided for in the agreement, the obligation to request a specific authorization beyond these limits, and the obligations to declare uses;

iii. reminding them that the right to reproduce a work includes the obligation to mention the exact name of the author, the title of the work and its source (publisher, place and year of publication, copyright if known) and requesting them to comply with this obligation;

iv) reminding them that the reproduction must respect the reputation of the author.

7. a) Université Laval shall pay Copibec, for the remittance to the concerned authors, the following amounts representing compensation for the alleged violation of their moral right of authorship:

- Kamal Benkirane \$1,000
- Laurence Biron \$500
- Marie-Maude Boissiroy \$500
- Robert Campeau \$500
- Solange Cormier \$500
- Marcel Côté \$500
- Isabelle Crépeau \$500

- Pierre DuBois \$500
- Rhéa Dufresne \$500
- Nathalie Ferraris \$500
- Hergé (Estate of Rémi Georges) \$2,000
- Michèle Lalonde \$2,500
- Paul-Marie Lapointe (Estate) \$1,000
- Guy Marchamps \$1,000
- Caroline Mérola \$1,000
- Michel Nadeau \$1,000
- Stanley Péan \$500
- Pierre Pelletier \$500
- Raynald Pineault \$1,000
- Jean-Pierre Proulx \$1,000
- Michel Saint-Onge \$500
- Marcel Thouin \$1,000

For a total amount of **\$18,500.**

b) plus an additional sum of fifty thousand dollars (\$50,000) per year, or two hundred thousand dollars (\$200,000) in total, intended for other authors, natural persons or their estates only, in general compensation for the violations their moral rights, to be divided equally among all the other authors identified in the declarations of Université Laval for the years of 2013-2014.

8. Université Laval shall implement, with the collaboration of Copibec, awareness and training activities for its teaching staff, for a period of twenty-four (24) months following the ratification of the present transaction, on the application of the licence and the importance of mentioning sources and respecting copyrights, and to declare the use of the work of others.

9. Université Laval shall pay to Copibec a sum of **\$161,294** in remuneration for the management, distribution and remittance of the sums to the beneficiaries, this sum corresponding to 7.5% of the sums paid in paragraphs 2 and 7, excluding taxes, (7.5% of \$2,150,588), plus applicable taxes.

10. a) Université Laval shall pay to Copibec an additional compensation of **\$41,327** for various legal costs and disbursements incurred with regards to the dispute and not covered by the Fonds d'aide (purchase of books, traveling and lodging fees of its staff and representatives).

b) plus two thousand dollars (\$2,000) for the representative Guy Marchand, five hundred dollars (\$500) for the representative Jean-Frédéric Messier and five hundred dollars for the alternate representative Stanley Péan (\$500), as a compensation for their travel and living expenses, for a total of **\$3,000**.

11. Université Laval shall pay directly to the Fonds d'aide aux actions collectives:

a) an amount of eighty-nine thousand five hundred and forty-nine dollars and thirty-two cents (\$89,549.32) for the reimbursement of the sums paid as financial assistance for the payment of fees, disbursements and expenses of the class action;

b) an amount to be determined representing the percentage deducted by the FAAC in accordance with the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR c R-2.1, r. 2, at the rate of 2%, 5% or 10%, depending on the amount to be returned to each individual entitled to the deduction, as determined at the time of distribution of the sums to the members of the class by Copibec, as provided for in the last paragraph of paragraph 2, as well as in paragraph 7 of the present transaction.

12. Université Laval shall pay to Mtre Daniel Payette, attorney, the additional fees according to the agreed percentage of fifteen percent (15%) of the amounts mentioned in the paragraphs 2 (\$1,932,088), 7 (\$218,500), 9 (\$161,294) and 10 (b) (\$3000) hereof, **\$399,230.34**, which amount includes applicable taxes.

13. This agreement must first be ratified by the Board of directors of Copibec and Université Laval within twenty-one (21) days of the signing of the present transaction, and each party must give written confirmation thereof to the other party by its representative within seven (7) days. The transaction will become officially effective upon receipt of the last of these confirmations which constitutes the "ratification" of the present transaction.

14. The parties request the Court to extend the composition of the class until May 31, 2018, and all new members of the class will become bound by this settlement unless it opted out within the time limit decided by the Court for the purpose of the ratification of this agreement.

15. This settlement agreement is submitted to the Court for approval, publication of the required notices and homologation. The publication costs of the notices are entirely at the expense of Université Laval.

16. All amounts payable under this agreement shall be paid within thirty (30) days of the approval of the settlement agreement by the Court.

17. Once ratified and approved, this transaction binds Université Laval, Copibec and the authors and publishers who mandated Copibec, and the other representatives of the class.

18. Copibec is in charge of the management of the settlement and the distribution of the sums between the beneficiaries according to its rules and practices.

19. Subject to compliance of the terms of this settlement and the payment of the agreed amounts, the parties mutually give the other party discharge from all claims and cause of actions regarding the facts and the period alleged in the authorized class action, including the period as amended on May 31, 2018, in accordance with paragraph 14 of this transaction and the procedures between them.

20. This transaction is not confidential. Copibec and Université Laval, as soon as the agreement is ratified and homologated, will issue a joint press release, the text of which must be to the complete satisfaction of the parties, essentially explaining that after reassessment of the situation and taking into account the terms and conditions of the agreement that Copibec and the other universities in Quebec have reached, Université Laval considered that there was a balance between the needs of the university community and the rights of rights holders and that the collective management of rights offered advantages and favoured academic freedom.

21. The parties shall refrain from making any other public statements about the agreement, other than to express that they are satisfied to have found an amicable solution to their dispute and to have avoided a costly litigation.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED:

MONTREAL, June 18th, 2018

QUÉBEC, June 21st, 2018

(S) *Frédérique Couette*
COPIBEC, by
Me Frédérique Couette,
Duly authorized for Copibec
and the other representatives of
the class

(S) *Robert Beauregard*
UNIVERSITÉ LAVAL, by
Robert Beauregard
duly authorized.

(S) *Payette Avocats*
PAYETTE AVOCATS
Me Daniel Payette
Attorneys of Copibec,
the representatives and the class

(S) *Stein Monast s.e.n.c.r.l*
STEIN MONAST
Me Samuel Massicotte
Attorneys of Université Laval