

FASKEN

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

800 Victoria Square, Suite 3700
P.O. Box 242
Montréal, Quebec H4Z 1E9
Canada

T +1 514 397 7400
+1 800 361 6266
F +1 514 397 7600
fasken.com

January 31, 2018
File No.: 300169.00003/15756

Antoine Aylwin
Direct +1 514 397 5123
aaylwin@fasken.com

By Courier

THE REGISTRAR
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario
K1A 0J1

Dear Sir:

Re: Lynne Threlfall v. Carleton University SCC File No. 37893
Pursuant to Rule 27 of the *Rules of the Supreme Court of Canada*

Carleton University (the “**Respondent**”) provides the following response to Mrs. Lynne Threlfall’s (the “**Applicant**”) application for leave to appeal to the Supreme Court of Canada, in accordance with Rule 27 of the *Rules of the Supreme Court of Canada*.

We submit that the Applicant’s application for leave to appeal does not raise any question of public or national interest. This file concerns the application of the absence provisions of the *Civil Code of Quebec*, which are rarely applied. In fact, upon conducting a review of the Court of Appeal’s caselaw over the last 25 years, we did not find any decisions, with the exception of the decision being appealed, concerning the application of said provisions. Therefore, the Respondent humbly submits that there is no need for the Supreme Court to hear and decide on this matter.

Further, the judgement of the Court of Appeal was the correct one. The trial judge, whose reasoning was confirmed by the Court of Appeal, merely applied the Respondent’s Retirement Plan as drafted and refused to accept the Applicant’s submission that she should benefit from the overpayment of the pension plan received after the date of death.

The deceased, Mr. George Roseme, opted for a “Life Only” pension plan and as such the benefits from such plan were to cease upon his death. Such interpretation was confirmed at paragraph 48 of the Court of Appeal’s reasons¹:

“[48] Ms Threlfall has not convinced me that the expression “payable for the remaining lifetime of the retired Member” in paragraph 8.02(b)(i) of the

¹ *Threlfall v. Carleton University*, 2017 QCCA 1632 (p. 10 of Application).

FASKEN

Retirement Plan refers to the date on which death was proven rather than the true date of death. The reference to benefits “ceasing with the payment for the month in which the Member’s death occurs” is a plain indication that entitlement ends at the true date of death, as the judge decided. The contractual language indicating that entitlement ended in the month that death occurred is clear; thus the ordinary meaning of the words chosen by the parties can be considered to reflect their common intention. The ordinary meaning here, as the judge held, was that the entitlement to benefits ended at the true date of death. Ms Threlfall has shown no palpable or overriding or other reviewable error in his measure of the parties’ intention” (references omitted)

Therefore, for the above mentioned reasons, the Respondent respectfully submits that the Applicant’s application for leave to appeal must be dismissed.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP



Antoine Aylwin

AA/ma

cc Benoît M. Duchesne
Sophie Arsenault