

C A N A D A

SUPERIOR COURT
(Civil Division)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No : 500-17-127706-235

THE ATTORNEY GENERAL OF CANADA,
on behalf of His Majesty the King in Right of
Canada, C/O Department of Justice Canada,
284, Wellington street, St-Andrews Tower, 6^e
floor, Ottawa, province of Ontario, K1A 0H8;

Plaintiff

c.

**COMMUNITY MEDIA ADVOCACY
CENTRE**, having an establishment at 1861,
Wellington street, Montréal, District of
Montréal, Province of Québec, H3K 1W2;

Defendant

ORIGINATING APPLICATION

IN SUPPORT OF ITS APPLICATION, THE PLAINTIFF STATES AS FOLLOWS:

A. The Parties

1. The Attorney General of Canada acts as the Plaintiff herein on behalf of His Majesty the King in Right of Canada, and more particularly for the Minister of Diversity and Inclusion and Persons with Disabilities (hereafter “the Minister”) and the Department of Canadian Heritage (hereafter “Heritage”).
2. The Defendant, Community Media Advocacy Centre, is a not-for-profit corporation, registered under the *Canada Not-for-profit Corporations Act*, **Exhibit P-1**.

B. The Contribution Agreement

3. In September 2019, the government of Canada launched the Anti-racism Action Program (hereafter “Program”) aimed at addressing barriers that exist within employment, justice and social participation among Indigenous peoples, racialized communities and religious minorities, as it appears from the webpages of the Program filed jointly, **Exhibit P-2**.

4. In the context of the Program, the government called for proposals for funding of projects that would contribute to the objectives of the Program of supporting communities confronting racism and helping to address barriers to employment, justice and social participation among Indigenous Peoples, racialized communities and religious minorities, Exhibit P-2.
5. The Defendant submitted a project proposal for funding under the Program entitled “Building an Anti-Racism Strategy for Canadian Broadcasting: Conversation & Convergence” (hereafter “the Project”). The objective of the Project was to “develop and disseminate an antiracism strategy that aims to impact the future of media employment and programming practices as well as to address reducing barriers to participation in broadcasting policy-making for racialized Canadians,” **Exhibit P-3**.
6. The Defendant’s Project was selected under the Program’s renewed funding of 2021-2022.
7. On October 21, 2021, the Plaintiff, as represented by the Minister (at the time the Minister of Diversity and Inclusion and Youth), entered into a Contribution Agreement with the Defendant (hereafter “Contribution Agreement”), **Exhibit P-4**.
8. The Contribution Agreement provided that the Minister would contribute a maximum amount of \$ 133 822 to the Defendant for it to implement the Project, Exhibit P-4, clause 1 and 2.
9. The Project was to run from September 1, 2021 to March 31, 2023, and was to address employment-related barriers facing racialized communities, Indigenous Peoples and religious minorities in Canadian broadcasting and media, Exhibit P-4, Annex A.
10. The Contribution Agreement provided that various activities such as outreach, regional engagement sessions, and a national conference would be funded. The expected outcomes included developing proposals to build an anti-racism strategy for broadcasting, increasing the awareness and understanding of racism, discrimination and hate speech, and the systemic barriers faced by equity-seeking populations, Exhibit P-4, Annex A.
11. An initial advance of \$ 22 214 was provided by the Plaintiff to the Defendant on November 23, 2021, **Exhibit P-5**.
12. A second advance of \$ 100 447 was provided by the Plaintiff to the Defendant on June 17, 2022, Exhibit P-5.

C. Termination of Contract

13. In July 2022, the Plaintiff was made aware that Laith Marouf, a consultant on the Project, had posted racist, antisemitic and hateful remarks on his Twitter account against Jewish and Indigenous people. Copies of Mr. Marouf's Twitter posts were later provided by the Plaintiff to the Defendant by letter dated September 9, 2022, **Exhibit P-6**.
14. On August 19, 2022, the Plaintiff communicated a Notice of Default to the Defendant. The Plaintiff indicated that it had been informed that Mr. Marouf, consultant for the Defendant had publicly made a number of racist, antisemitic and hateful remarks. The Plaintiff informed the Defendant that as a result:
 - it was suspending funding to the Defendant's project;
 - it was requesting that certain actions be taken by the Defendant and information be provided within a period of 30 days to correct the default, namely, a clear and detailed account of Mr. Marouf's affiliation with the organization and his role in the project, the organization's position on Mr. Marouf's comments, and an outline of the steps that the organization would take to distance itself from Mr. Marouf, and;
 - that failure to do so would result in the Contribution Agreement being rescinded and terminated.

The whole as it appears from the Notice of Default dated August 19, 2022, **Exhibit P-7**.

15. Between August 25, 2022 and September 9, 2022, the Plaintiff and Defendant exchanged further correspondence, but the Defendant did not respond to the Notice of Default, as it appears from the correspondence filed jointly as **Exhibit P-8**, in addition to Exhibit P-7.
16. On September 19, 2022, the Defendant provided its position in response to the Notice of Default. It did not condemn the comments made by Mr. Marouf, stating that it was hard to assess the comments without context, seemingly defending certain of his remarks, and stating that these fell within Mr. Marouf's exercise of his freedom of expression and that these comments did not constitute hate speech, **Exhibit P-9**.
17. On September 23, 2022, the Plaintiff informed the Defendant that it was rescinding and terminating the Contribution Agreement, and it demanded repayment of all the monies paid in the amount of \$ 122 661, **Exhibit P-10**.

- 18. Since that time and despite further requests for repayment, the Defendant has not repaid the amount owed.
- 19. As of October 31, 2023, this amount with interest is of \$ 132 413, as it appears from **Exhibit P-11**.

D. The Contribution Agreement is null and the Plaintiff is entitled to the amount it paid under that agreement

- 20. The condition of formation of the Contribution Agreement must be struck with absolute nullity to protect the general interest.
- 21. The objective of the Contribution Agreement was to provide public funding to combat racism. Such public funding being provided to an individual that publicly espouses racist, antisemitic and hateful views undermines the dignity of society.
- 22. Nullity must be declared to ensure the protection of the fundamental values and collective interest of society.
- 23. The Contribution Agreement should also be declared null because the Plaintiff's consent was vitiated.
- 24. The Defendant asserted and warranted to the Plaintiff that it had disclosed all the relevant information on the Project. The Contribution Agreement sets out that:

The recipient represents and warrants:

1.4 that the description of the Project in Annex A accurately reflects what it intends to do, that the information contained therein is accurate, and that all relevant information has been disclosed;

General Conditions of the Contribution Agreement, Annexe C, Exhibit P-4.

- 25. Mr. Marouf was proposed by the Defendant as a member of the Project team when the proposal was submitted to Heritage, as it appears from Exhibit P-3. The Defendant knew, at the time of the proposal, that it intended to have Mr. Marouf work on the project, execute part of it and act as a consultant.

26. As a corporation that retained the services of Mr. Marouf, the Defendant knew or ought to have known that Mr. Marouf espoused racist, antisemitic and hateful views, and that this was relevant information to the Plaintiff.
27. This is all the more evident, since the proposal by the Defendant as well as the Contribution Agreement were signed by Gretchen Beth King, at the relevant time, the Secretary of the Board of Directors of the Defendant.
28. Mr. Marouf and Mrs. King are the co-founders of the Defendant, as it appears from Exhibit P-3, and are also spouses.
29. The Defendant, and Mrs. King who acted as the representative of the Defendant, knew or ought to have known that the views of Mr. Marouf were relevant and should be disclosed to the Plaintiff.
30. Had the Plaintiff known that Mr. Marouf publicly espoused racist, antisemitic and hateful views against Jewish people, Indigenous people and francophones, it would not have entered into the Contribution Agreement with the Defendant, the purpose of which was to combat racism.
31. The fact that Mr. Marouf espoused such views was relevant information that should have been, but was not, disclosed to the Plaintiff, contrary to clause 1.4 of the General Conditions of the Contribution Agreement, Annexe C, Exhibit P-4.
32. By withholding the said information, the Defendant led the Plaintiff into error and vitiated the consent of the Plaintiff.
33. As a result of the nullity of the Contribution Agreement, the Plaintiff is entitled to full restitution in the form of the repayment of the amounts paid to the Defendant under the Contribution Agreement.
34. The Defendant is not entitled to restitution of the costs incurred in the execution of the Project as the partially executed Project in support of anti-racism efforts has lost all value by reason of Mr. Marouf's public comments.
35. Even if the Court determines that the Project has some value, the Court should exercise its discretion to not award restitution to the Defendant, given the facts of this case.

E. Alternatively, the Plaintiff is entitled to repayment pursuant to resiliation

36. Alternatively, and if the Court finds that the Contribution Agreement should not be struck for nullity, it should nevertheless order the repayment of the amounts paid under the Contribution Agreement given that the Plaintiff terminated the agreement following the Defendant's default.
37. Mr. Marouf uttering racist, antisemitic and hateful remarks constituted a default pursuant to articles 10.1 and 10.2, of the General Conditions of the Contribution Agreement, Annexe C, Exhibit P-4.
38. When the Plaintiff was made aware that Mr. Marouf had uttered racist, antisemitic and hateful remarks publicly, it put the Defendant in default and gave the Defendant an opportunity to remedy the default within a period of 30 days, Exhibits P-7 to P-10, and article 10.4 of the General Conditions of the Contribution Agreement, Annexe C, Exhibit P-4.
39. The Defendant failed to remedy the Default, as it appears from Exhibit P-9.
40. The Plaintiff therefore terminated the Contribution Agreement on September 23, 2022, Exhibit P-10.
41. The Defendant did not contest the termination of the Contribution Agreement.
42. As of September 23, 2022, all the Plaintiff's financial obligations arising out of the Contribution Agreement were terminated, pursuant to article 10.2 of the General Conditions of the Contribution Agreement, Annexe C, Exhibit P-4.
43. As of September 23, 2022, the Plaintiff was entitled to the repayment by the Defendant of the amounts already paid under the Contribution Agreement, subject to any eligible costs that had already been incurred prior to the date of termination, pursuant to articles 10.2 and 10.4, of the General Conditions of the Contribution Agreement, Annexe C, Exhibit P-4.
44. Since that time, the Defendant has not repaid any amount owed.
45. The Defendant had informed the Plaintiff that it incurred costs of \$ 22 214 pertaining to the Project, up to March 31, 2022, **Exhibit P-11**. The Plaintiff is not aware of any other costs that would have been incurred.

46. The Plaintiff is entitled to repayment by the Defendant of \$ 100 447, subject to verification that the costs incurred are eligible, any adjustment necessary and interest calculated and compounded monthly at the average bank rate plus 3% since the date of termination.

THESE REASONS, MAY IT PLEASE THE COURT TO:

DECLARE the Contribution Agreement null.

CONDEMN the Defendant to pay the Plaintiff the amount of \$ 132 413 with interest calculated and compounded monthly at the average bank rate plus 3% from October 31, 2023, to the date of service of the originating application, and with interest at the legal rate, plus the additional indemnity provided by law, to accrue from the date of service of the originating application.

ALTERNATIVELY CONDEMN the Defendant to pay the Plaintiff the amount of \$ 100 447 following the Defendant's default and the termination by the Plaintiff of the Contribution Agreement, with interest calculated and compounded monthly at the average bank rate plus 3% from the date of September 23, 2022, up to the date of the service of the originating application, and with interest at the legal rate, plus the additional indemnity provided by law, to accrue from the date of service of the originating application.

THE WHOLE, with legal costs.

Ottawa, November 17, 2023

Attorney General of Canada

ATTORNEY GENERAL OF CANADA

Department of Justice Canada

Quebec regional office

284, Wellington street, TSA-6

Ottawa (Ontario) K1A 0H8

Fax : 613-952-6006

NotificationPGC-AGC.civil@justice.gc.ca

Per : M^e Sara Gauthier

Telephone : 343-548-1636

Email : sara.gauthier@justice.gc.ca

Our file: 500144468

Counsel for the Plaintiff

SUMMONS
(articles 145 and following C.C.P.)

TO: COMMUNITY MEDIA ADVOCACY CENTRE,
1861, Wellington street,
Montréal, Québec, H3K 1W2

TAKE NOTICE that the plaintiff has filed this originating application in the office of the Court of Québec in the judicial district of Gatineau.

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal, situated at 1, rue Notre-Dame Est, City of Montréal, Province of Québec, H2Y 1B6 within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiff is not represented, to the plaintiff.

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgment may be rendered against you without further notice and you may, according to the circumstances, be required to pay legal costs.

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- Defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- Propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

If you qualified to act as plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

In support of the originating application, the plaintiff intends to use the following exhibits copies of which are available on demand:

| | |
|---------------------|---|
| EXHIBIT P-1: | Community Media Advocacy Centre's Federal Corporation Information – Registration 943479-8 |
| EXHIBIT P-2: | Anti-Racism Action Program and Application Guidelines webpages, filed jointly |
| EXHIBIT P-3: | Community Media Advocacy Centre's General Application and Supplement |
| EXHIBIT P-4: | Contribution Agreement between the Community Media Advocacy Centre and the Minister, signed October 21, 2021 |
| EXHIBIT P-5: | Grants and Contributions Payment Form dated June 8, 2022 |
| EXHIBIT P-6: | Letter from the Plaintiff to the Defendant dated September 9, 2022, with copies of the racist, antisemitic and hateful Twitter remarks made by their consultant |
| EXHIBIT P-7: | Notice of Default dated August 19, 2022 |
| EXHIBIT P-8: | Correspondences between the parties dated August 25, 2022 and September 7, 2022, filed jointly |
| EXHIBIT P-9: | Community Media Advocacy Centre' Response to the Notice of Default, dated September 19, 2022 |

| | |
|----------------------|--|
| EXHIBIT P-10: | Notice of termination of Contribution Agreement, dated September 23, 2022 |
| EXHIBIT P-11: | Community Media Advocacy Centre's Detailed Quarterly Cash Flow for Fiscal Year 2021-2022 |

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

PLEASE ACT ACCORDINGLY,

Ottawa, November 17, 2023

Attorney General of Canada

ATTORNEY GENERAL OF CANADA
M^e Sara Gauthier

Counsel for the Plaintiff

No : 500-17-127706-235

**SUPERIOR COURT
(Civil division)**

DISTRICT OF MONTRÉAL

THE ATTORNEY GENERAL OF CANADA

Plaintiff

c.

COMMUNITY MEDIA ADVOCACY CENTRE

Defendant

ORIGINATING APPLICATION

ATTORNEY GENERAL OF CANADA

Department of Justice Canada

Quebec regional office

284, Wellington street, TSA-6

Ottawa (Ontario) K1A 0H8

Fax : 613-952-6006

NotificationPGC-AGC.civil@justice.gc.ca

Per : Me Sara Gauthier

Telephone : 343-548-1636

Email : sara.gauthier@justice.gc.ca

Counsel for the Plaintiff

BM-1935

Our file: 500144468