

TRANSLATION

**Organization of American States (OAS)
Inter-American Conference of Ministers of Labor (IACML)**

Inter-American Network for Labor Administration (RIAL)

Workshop on

**STRATEGIES TO IMPROVE COMPLIANCE
WITH LABOR LEGISLATION**

**PANEL 1 – STRENGTHENING LABOR INSPECTION: INNOVATIVE APPROCHES
AND ACTIONS FOR THE PROTECTION OF FUNDAMENTAL RIGHTS WITH
EMPHASIS ON FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING**

Labour Standards and Protection of Freedom of Association and
Collective Bargaining: Rules in Québec, Canada

by

Jean Paquette, lawyer

Administrative judge and vice-president of the Tribunal administratif du travail

LL.L., B.Sc.Soc.(Economy), M.Sc.(Industrial Relations), MBA (Management Consulting)

San José, Costa Rica

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jean.paquette@tat.gouv.qc.ca

Labour Standards: the *Act respecting labour standards*

- **Employee** – a person who works for an employer, including a dependent contractor.
- **Standards of public order** – no exceptions may be made, except those allowed by the *Act respecting labour standards* (the Act). They provide:
 - more advantageous conditions of employment;
 - continued application, even if the business is sold.
- **Labour standards** – wages, hours of work, statutory holidays, annual leave, rest periods, absences owing to sickness or for family matters, work performed by children, psychological harassment, notice of termination of employment, collective dismissal, retirement, differences in treatment, personnel placement, temporary foreign workers, prohibited practices and dismissal without good and sufficient cause.
- **Civil recourse** – Québec’s worker’s compensation board, the Commission des normes, de l’équité, de la santé et de la sécurité du travail (CNESST) is a public body that receives complaints, holds inquiries, defends an employee’s rights and seeks monetary remedies on the employee’s behalf.
 - Complaints may be filed through the CNESST’s website or by phone.

Inquiry

- Upon receiving a complaint, the CNESST conducts an inquiry. It may also act on its own initiative.
- Unless consent is given, the employee’s identity remains confidential throughout the inquiry.
- Investigators may compel a person to provide information or documents for the purpose of applying the law.
- At any reasonable time, investigators may enter a place of work, inspect the premises, and examine registers or any other documents.
- Any copy the investigator makes has the same probative value as the original document before a court of justice.
- If the CNESST finds the complaint to be groundless, it gives notice of its decision to the employee, provides reasons therefor and informs the employee of the right to apply for a review of the decision.

Recourse

- If the CNESST finds the complaint to be justified, it will send written notice to the employer, demanding payment of the amount requested.
- If no settlement is reached, the CNESST will institute proceedings before a court of justice on behalf of the employee.
- The CNESST may claim a penalty of 20% of the amount due. This additional amount, plus interest from the date the demand notice is sent, belongs to the CNESST.
- Prescription for taking action is 1 year, but a notice of inquiry suspends prescription for 6 months. A court of justice must hear and decide such matters by preference.

- **Recourse against prohibited practices** – protection of employment and against any sanctions for exercising a right under the Act.
 - There are 18 grounds protected by the Act.
 - The time limit for filing a complaint with the CNESST is 45 days.
 - Conciliation services are available, and any information collected during the process is confidential.
 - If no agreement is reached, the complaint is referred to the Tribunal administratif du travail (the **Tribunal**), Québec's labour court.
 - The CNESST provides a lawyer in order to represent the employee before the Tribunal.
 - If the conditions for the recourse are met, presumption applies and the evidentiary burden is on the employer.
 - The remedial measures are reinstatement and payment of lost wages.

- **Recourse for psychological harassment** – protection from any form of psychological harassment, as the employer is required to provide a work environment that is free from psychological harassment.
 - Psychological harassment means any vexatious behaviour that affects an employee's dignity or psychological or physical integrity and results in a harmful work environment.
 - The time limit for filing a complaint with the CNESST is 2 years.
 - The CNESST shall make an inquiry with due dispatch.
 - Conciliation services are available, and any information collected during the process is confidential.
 - If no agreement is reached, the complaint is referred to the Tribunal.
 - The CNESST can provide a lawyer in order to represent the employee before the Tribunal.
 - The burden of proving the psychological harassment is on the employee.
 - Remedial measures include reinstatement, payment of lost wages, punitive and moral damages, an indemnity for loss of employment and psychological support.

- **Recourse for illegal dismissal** – protection from dismissals not made for good and sufficient cause.
 - The employee must be credited with 2 years of uninterrupted service.
 - The time limit for filing a complaint with the CNESST is 45 days.
 - The CNESST may ask the employer to provide the reasons for the dismissal in writing.
 - Conciliation services are available, and any information collected during the process is confidential.
 - If no agreement is reached, the complaint is referred to the Tribunal.
 - The CNESST can provide a lawyer in order to represent the employee before the Tribunal.

- If the conditions for the recourse are met, the evidentiary burden is reversed and placed on the employer, who must prove, on a preponderance of probabilities, that the employee was dismissed for good and sufficient cause.
- Remedial measures include reinstatement and payment of lost wages. Punitive and moral damages, an indemnity for loss of employment or other appropriate measures may also be ordered.

Respect for freedom of association: the *Labour Code*

- **Right of association** – the right to belong to the association of employees of one's choice.
 - Interference with an association is prohibited.
 - Intimidation and threats are prohibited.
 - Employment protection in relation to the exercise of a right pursuant to the *Labour Code*.
 - Union democracy exercised by secret ballot: election for union duties, strike vote, signing of a collective agreement.
- **Right to be certified** – any association of employees comprising the absolute majority of the employees of an employer or of a separate group.
 - An association of employees obtains certification within 60 days following the filing of its petition.
 - The fact that a person belongs to an association of employees is confidential. Anyone who becomes aware of the fact that a person belongs to an association is bound to secrecy.
 - The representative character of an association is determined by the number of membership applications. A vote by secret ballot only takes place as provided for by law or further to a decision made by the Tribunal for legal reasons.
 - In an open field situation, the filing of a petition for certification renders inadmissible any other petition filed after that date.
 - Certification may be cancelled if the association has ceased to exist or the group no longer comprises the absolute majority of employees of the bargaining unit.
 - Certification is transferred in situations of operation by another in whole or in part or in situations of alienation of an undertaking – the decision must be rendered within 90 days from the filing of a petition.
- **Role of the labour relations officer (the LRO)** – a person, member of the Tribunal, designated to assume the powers and carry out the functions and duties provided for in the *Labour Code*.

The employer's obligations

- Upon receiving the petition for certification, the Tribunal sends it to the employer. The employer must keep it posted in a conspicuous place, along with the notice of hearing, for at least five consecutive days.
- It must also post the list of employees concerned by the petition for five days, send a copy of the list to the petitioning association and place a copy at the disposal of the LRO.
- The employer has 15 days to refuse his agreement on the bargaining unit, set forth his reasons and propose the unit he thinks suitable, failing which he is presumed to have given his agreement.

Inquiry on the right to certification

- Upon receipt of a petition for certification, the LRO will assure himself of the right to certification of the association of employees, of its representative character and compliance with the rules established by the *Labour Code*.
- The LRO may inquire on any issue related to certification or the protection or exercise of the right of association.
- The LRO may, at any time, carry out all the verification checks he feels required with any association, employer or employee in order to ensure compliance with the rules set out in the *Labour Code*.
- Without delay, the LRO checks the petition for certification, the resolution authorizing the petition, the applications for membership and the books and records of the association of employees, as required.
- At the employer's premises, the LRO examines the list of employees concerned by checking the payroll records, for example. The LRO also questions the employees in order to ascertain whether they are joining the union of their own free will and make sure rules are followed.
- The LRO has no obligation to hold hearings, but parties must be allowed to present their observations and produce documents.

Certification decision made by the LRO

- If there is an agreement on the bargaining unit and the persons contemplated in the petition, and the association has the required representative character, the LRO will certify the association immediately. Failing this, the LRO must present a report to the Tribunal, specifying the reasons why certification was not granted.
- If there is agreement on the bargaining unit and 35% to 50% of the employees comprised in that unit are union members, the LRO must hold a secret ballot. He will certify the association if it obtains the absolute majority vote of the employees comprised in the bargaining unit. Failing this, the LRO must present a report to the Tribunal, specifying the reasons why certification was not granted.
- In case of disagreements where the association is nevertheless representative, the LRO certifies the association and makes a report to the Tribunal, which will rule on the disagreements as necessary.

Interference

- During the certification process, the LRO can, of his own initiative or at the request of the Tribunal, investigate allegations of interference by the employer in the affairs of the association of employees.
- If the LRO has reason to believe that the employer interfered with the process or a party has filed a complaint for interference, the LRO can suspend the examination of the representative character of the association and he may not certify the association of employees.
- For the purposes of the inquiry, the LRO may have access to any work place or establishment, at any reasonable time, and require any information or document, or examine the books.
- The LRO must provide an inquiry report to the president of the Tribunal.

- **Role of the Tribunal administratif du travail** – labour relations division:

Certification

- The Tribunal administers the union certification system, which is based on the United States *Wagner Act*.
- If the LRO cannot certify the association, the Tribunal must ascertain entitlement to certification and compliance with the rules imposed by the *Labour Code*. It must also protect the rights of third parties that are not parties to the petition.
- The Tribunal may require the petitioning association to file its constitution and by-laws.
- The inquiry is done by the Tribunal, which is not bound by the agreements between the parties.
- Petitions for certification are published on the Tribunal's website and decisions are public.
- The Tribunal cannot certify an association if there was interference and it may, of its own motion, invoke non-compliance.

Interference

- The Tribunal has an emergency call service and can intervene at any time further to a party's request.
- It can make any order, including an injunction, that is, an order to do something, not to do something, or to stop doing something.
- The Tribunal can make a provisional order it considers appropriate to safeguard the parties' rights until it can render a decision on the merits.

Compliance with collective bargaining: the *Labour Code*

- **Collective bargaining rules:**

- Purpose of the association of employees: to negotiate and enforce a collective agreement.
- Union dues are collected by the employer.
- The union has an obligation of fair representation of all employees in the bargaining unit, regardless of whether they are members.
- Notice of negotiation = beginning of the negotiating stage.
- Negotiations must be begun and carried on diligently and in good faith.
- Possibility of holding a ballot on the last offers made by the employer.
- Exercise of the legal right to strike and lock-out: the use of strike-breakers is prohibited.
- A party may request conciliation.
- The Tribunal can make any order (see above).
- Public services are required to provide essential services during a legal strike.