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A Heads-up on Asbestos!

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Authors

Marie-Claude Cantin

Partner, Lawyer

Laurence Bich-Carrière

Partner, Lawyer

To allow for adequate planning, the Quebec government phased in the coming into force of certain regulatory amendments on building safety that were adopted in the past few years. These new standards were previously discussed in bulletin Nos. 6 and 9, issued in **April 2013** and **June 2014** respectively, of our *Lavery Real Estate and Construction* series. This newsletter serves as a brief reminder of the most imminent deadlines.

ASBESTOS: JUNE 6 IS FAST APPROACHING

Our newsletter No. 9, published in June 2014, summarized the new standards for safe asbestos management that came into force on June 6, 2013, most of which appeared in division IX.1, entitled "Provisions on the Safe Management of Asbestos", of the ***Regulation respecting occupational health and safety***, CQLR, c. S-2.1, s. 223.[1] This regulation was adopted from the perspective of occupational health and safety and imposes both an obligation to identify (and reduce) risks and an obligation to inform workers.

Identification of existing risks

The regulation provides that the employer must:

> (1) locate flocking in all buildings constructed before February 15, 1999, and heat insulating material in all buildings constructed before May 20, 1999, to find the asbestos they contain — by **June 6, 2015**;
> (2) thereafter, conduct inspections of such flocking and heat insulating material every two years;
> (3) at all times, make the necessary corrections to the flocking, heat insulating material or interior finishes whose condition has deteriorated or which pose a risk;
> (4) record this information in a register.

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Identification of high-risk work
Beginning June 6, 2015, all buildings covered by the regulation will have a register. These registers should be consulted by any person wishing to do work on the building, regardless of the scope of such work. Indeed, as soon as work is being considered that could lead to asbestos dust emissions, the employer is required to check for the presence of asbestos in any materials and products likely to contain it and, where it is found, to:

(1) take the appropriate corrective or mitigation measures;
(2) inform the person planning the work of any risks;
(3) inform the workers likely to be exposed to asbestos dust and, moreover, inform them of the risks, prevention methods and specific safe working methods for the work to be done; these workers also have the right to consult the registers.

Responsibility for these obligations
The regulation states that the employer's responsibility to inspect relates to "any building under the employer's authority". The key issue of who has authority over a building will necessarily vary depending on the nature of the building or the operations conducted therein. Thus, the employer-owner-occupant will undoubtedly generally hold the "authority" over the building, but a single tenant, real estate manager or tenant under an emphyteutic lease could also do so.

There is, however, no similar limitation on the obligation to take corrective measures, which seems to be imposed on the employer's authority even where the building is not under its control. It is therefore even more important to consult the registers under these circumstances.

Remember also that the ***Act respecting occupational health and safety***, CQLR, c. S-2.1, extends the employer's obligations to any person who retains the services of a worker for the purposes of the employer's establishment. As for the potential role of the Commission de la santé et de la sécurité du travail with respect to asbestos exposure of workers, we refer you to the **newsletter *Need to know*** prepared by our colleagues in the Labour and Employment sector.

In any event, prudence dictates that the various persons who may be exercising some form of control over the building should agree on the efficient sharing of responsibilities.

FACADES AND PARKING: WHEN WILL YOUR (NEXT) INSPECTION BE?

As we indicated in our newsletter No. 6 of April 2013, pursuant to chapter VIII entitled "Buildings", which was added to the ***Safety Code*** on March 18, 2013 by the ***Regulation to improve building safety***,[2] any facade of a public building with five or more storeys, and any underground or aboveground multistorey garage with a concrete slab whose driveable portion is not laid directly on the ground, must henceforth be the subject of an in-depth verification report every five years attesting that it is not in a dangerous condition (or indicating the corrective measures that must be taken[3]).

Inspection of facades
The deadlines for completing the first in-depth verification, which is to be signed by an engineer or architect, are being phased in based on the age of construction. Some deadlines have already passed and others are approaching — see the regulation for details. In all cases, the age of construction of the building is calculated in reference to March 18, 2013, the date the regulation came into effect.

Verification of multistorey garages
For multistorey garages built less than five years after the coming into force of the regulation, an in-depth verification report, supervised by an engineer, was required to be done by March 18, 2014. Owners of older multistorey garages have a longer time period, **until March 18, 2016**, to obtain

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such a report.

The regulation also requires every owner of a multistorey garage to conduct an annual verification, the first of which was to be completed in the first year following the adoption of the regulation, that is, by March 18, 2014. The wording of the regulation seems to imply that a serious visual inspection conducted by the owner himself is sufficient. We refer you to our bulletin No. 6 of April 2013 for more details.

Keeping a register

Here again, it is compulsory to maintain a register for keeping the verification reports and maintenance plans on file, but also the construction plans, photographs or description of the work done or to be done. Similar measures also exist for water cooling towers. We refer you to our bulletin No. 6 of April 2013 for more details.

SANCTIONS AND CONSEQUENCES

The Régie du bâtiment du Québec can impose similar sanctions for keeping an inadequate register as for the breach of the positive duties of verification or implementation of preventive measures.

We refer you to our bulletin No. 6 of April 2013 for an overview of the severe fines which offenders could face, as well as the consequences of these changes for contracts dealing with real estate, whether they relate to leasing, management, co-ownership, insurance or financing.

CONCLUSION

Finally, in closing, it should be borne in mind that while the purpose of the regulatory amendments passed by the government in the past few years is to enhance safety requirements in building construction and maintenance, they only set minimum standards. Indeed, every municipality is free to adopt more stringent standards.

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[1] *Regulation to amend the Regulation respecting occupational health and safety and the Safety Code for the construction industry*, **order in council 476-2013** of May 8, 2013, (2013) 145:21 GOQ.II, 1999.

[2] *Regulation to improve building safety*, **order in council** 1263-2012 (December 19, 2012), (2012) 145:3 GOQ.II, 179.

[3] See our newsletter No. 6 of April 2013 on this point.

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