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Bill 42 and the reorganization of the Quebec labour-related institutions

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Last June 12, Bill 42, entitled « *An Act to group the Commission de l'équité salariale, the Commission des normes du travail and the Commission de la santé et de la sécurité du travail and to establish the Administrative Labour Tribunal*[1] » (the « *Loi Act to group the CÉS, the CNT and the CSST and to establish the ALT* » or the "Act"), received Royal Assent. The broad lines of this Act are unequivocal: its purpose is to reorganize the labour-related administrative structures as they currently exist.

ESSENTIALLY, THE ACT PROVIDES FOR THE FOLLOWING:

> the Commission de l'équité salariale ("CÉS"), the Commission des normes du travail ("CNT") and the Commission de la santé et de la sécurité du travail ("CSST") will be grouped into a new single administrative body named the Commission des normes, de l'équité, de la santé et de la sécurité du travail ("CNESST");
> the Commission des relations du travail ("CRT") and the Commission des lésions professionnelles ("CLP") will be grouped into a single tribunal named the Administrative Labour Tribunal ("ALT").

The new structures are expected to be operational as of January 1, 2016, the date on which the main provisions of the Act come into force.

THE COMMISSION DES NORMES, DE L'ÉQUITÉ, DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL

This new commission will group together three bodies with very different purposes, even though they all possess inspection and investigative powers:

> the CSST, which manages the compensation scheme for workers having suffered from workplace injuries and is responsible for the application of the Act Respecting Industrial Accidents and Occupational Diseases ("AIAOD"), the Act Respecting Occupational Health and Safety ("AROHS") and their regulations;
> the CNT, which is responsible for ensuring compliance with the Act Respecting Labour Standards ("ARLS") and its regulations and, if necessary, instituting the administrative, civil or regu¬latory proceedings necessary to ensure employer compliance with the Act or claim amounts due to employees;
> the CÉS, which is responsible for overseeing the job assessment process to ensure pay equity between men and women within an enterprise.

In the future, employers will deal with one organization, the CNESST. However, due to the distinctive character of the missions entrusted to the CNESST, it would not be surprising if, in fact, divisions for occupational health and safety, labour standards and pay equity were created.

Furthermore, as noted by the Conseil du patronat du Québec ("CPQ") in its comments on Bill 42[2] [TRANSLATION] "[m]anagement of the new commission will inevitably have to take the appropriate measures to avoid any conflict with respect to potentially related issues in the application of different

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regimes." The CPQ particularly refers to situations of psycho¬logical harassment, which can be the subject of both a labour standards claim and an employment injury claim and which must satisfy different criteria in both cases. The CPQ adds that [TRANSLATION] "[p]revention of conflicts of interest will also be necessary within the legal departments of the new commission, to the extent that certain lawyers employed by this organization will be called upon to represent employees pursuant to the Act Respecting Labour Standards."[3]

THE ADMINISTRATIVE LABOUR TRIBUNAL

The Act provides that the ALT acquires the rights and assumes the obligations of the CRT and the CLP,[4] which themselves also serve very different purposes. The CRT has jurisdiction regarding proceedings instituted under many labour related laws such as the Labour Code, the ARLS and the Act Respecting Labour Relations, Vocational Training and Workforce Management in the Construction Industry while the CLP has jurisdiction regarding proceedings instituted under the AIAOD and the AROHS. To reflect this diversity, the Act specifically provides that the ALT shall be separated into four divisions:

> the labour relations division ;
> the occupational health and safety division ;
> the essential services division ;
> the construction industry and occupational qualification division.

The Act provides for a standardization of the applicable procedure before the ALT and confers very broad powers to its president. For example, the Act provides that the president of the ALT will assign its members to one or more of its divisions and may reassign or temporarily assign a member to another division.[5]

The provisions pertaining to the assignment of a member to a section of the ALT are very important. CLP members have obviously developed medico legal expertise focused on employ¬ment injuries that members of the CRT have not. Conversely, CRT members have developed an expertise, particularly in the areas of employer/union labour relations and dismissals.

Although the Act provides that the president is to take specific knowledge and experience into account in assigning work to members,[6] nothing requires him to do so. It will therefore be interesting to see whether the president of the ALT will favour a generalist approach whereby members of the ALT will be assigned to several divisions, or if, on the contrary, specialization of the members of the new tribunal will be preserved by assign¬ments to specific divisions.

For example, under current law, an employee who claims having been dismissed or having experienced reprisals for having suffered an employment injury may file a complaint before the CSST pursuant to section 32 of the AIAOD. The decision of the CSST can subsequently be contested before the CLP. However, the provisions of the Act do not specify, for example, how such a complaint will be dealt with in the future. Will the complaint be heard before a member of the occupational health and safety division of the ALT or by a member assigned to the labour relations division?

Another example of a situation that the Act does not definitively address is that of the rules of evidence and procedure applicable before the ALT. Currently, the CRT and the CLP have separate and distinct rules of evidence and procedure. The Act provides for a single procedure for proceedings before the ALT.[7] However, it will have to be supplemented by the adoption of regulations containing specific rules of evidence and procedure before the ALT, the ins and outs of which we still know little about. However, these new rules may considerably affect the current manner in which such proceedings are currently conducted.

The Act also states that in the context of a hearing, an ALT member may visit the premises or order

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that an expert report be prepared by a qualified person who he designates to examine and assess the facts of a matter presented to him.[8] Therefore, the adjudicator may designate and request that a third party provide him with an opinion on, and assessment of, the facts before him. The CLP currently possesses these powers,[9] but the CRT does not. The Act does not specify whether this power will be limited to the occupational health and safety division or whether it will be applicable to all divisions. The generalization of this power is likely to have significant impacts on the way in which labour-related disputes are adjudicated before the new administrative tribunal.

OTHER ASPECTS OF THE ACT TO GROUP THE CÉS, THE CNT AND THE CSST AND TO ESTABLISH THE ALT

The Act also provides for the following changes:

The CNT is currently exclusively funded by employer contributions. The surpluses accumulated by the CNT in accordance with the provisions of the Act,[10] which represent tens of millions of dollars, will be paid into the Consolidated Revenue Fund and credited to the Generations Funds, the aim of which is to reduce public debt. The ALT will be mostly funded by employer contributions, particularly those paid in accordance with the AIAOD and the AROHS.[11]

A worker whose employment injury claim is the subject of a cost sharing application by the employer will now be entitled to intervene in the context of such an application.[12] At first glance, since the transfer of amounts attributed to a file following an employment injury has no effect on the benefits received by a worker, the worker has little or no interest in intervening in such a dispute and this new right can only serve to burden the cost sharing process.

In a unionized environment, the deadline to file a complaint under section 47.2 of the Labour Code, which deals with complaints regarding union wrongdoing, is specified. The Act provides that the employee must file a complaint with respect to any such wrongdoing “within six months of the employee becoming aware of the actions giving rise to the complaint.”[13] However, the Labour Code currently provides that such a complaint must be filed within six months, without reference to the awareness of the action giving rise to the complaint. Due to the delays that can occur between when a decision is made with respect to an employee and the exercise by the employee of this right as provided under the Act, employers will have to ensure that the measures taken regarding said employee are well documented since a file may resurface several months after a decision is made.

Under the Labour Code as it is currently drafted, a party seeking to file a decision of the CRT with the Superior Court for enforcement purposes must obtain the CRT’s permission. However, the Act eliminates this step and provides that the forced execution of a decision of the ALT is to henceforth be carried out “by the decision being filed with the office of the Superior Court”.[14]

CONCLUSION

Despite the planned dissolution of the labour-related bodies as they are currently constituted, the Minister of Labour, Employment and Social Solidarity has stated that their services and missions will be maintained.[15] It remains to be seen whether, in fact, the CNESST and the new ALT will really preserve the expertise developed by their specialized predecessor organizations. The adoption of specific rules of evidence and procedure applicable before the ALT should also be closely watched.

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[1] S.Q. 2015, c. 15.
[2] Conseil du patronat du Québec, « Commentaires sur le projet de loi n° 42 », April 2015, (French only)
[3] *Id.*, 11.
[4] *Act to group the CÉS, the CNT and the CSST and to establish the ALT,* sec. 255.
[5] *Id.*, sec. 83.
[6] *Id.*
[7] *Id.*sec. 262 and 263.
[8] *Id.*sec. 41
[9] AIAOD, sec.429.40.
[10] *Act to group the CÉS, the CNT and the CSST and to establish the ALT,*sec. 240.
[11] *Id.*,sec. 97 and following.
[12] *Id.*,sec. 113.
[13]

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Id., sec. 131 and 132.

[14] *Id.*, sec. 51.

[15] *Journal des débats de l'Assemblée nationale, 1st sess., 41st legis., May 21, 2015, "Adoption du principe du projet de loi n° 42 – Loi regroupant la Commission de l'équité salariale, la Commission des normes du travail et la Commission de la santé et de la sécurité du travail et instituant le Tribunal administratif du Travail", 11:30 a.m. (Mr. Hamad), (French only).*

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