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The *Canadelle* case and the importance of contesting certain CNESST decisions promptly

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On June 17, 2016, the Superior Court[1] affirmed the 2014 decision of the *Commission des lésions professionnelles*[2] ("CLP") in *Canadelle, s.e.c.* and *Commission de la santé et de la sécurité du travail*.[3] This decision put an end to the jurisprudential controversy regarding the application of sections 31 and 327 of the *Act Respecting Industrial Accidents and Occupational Diseases*[4] ("AIAOD" or "the Act"), and settled the following question of law:

> Does a final decision from the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* ("CNESST"), recognizing a link between a new diagnosis and an employment injury or initial incident, bar an employer from subsequently seeking a transfer of costs under section 327(1) of the AIAOD?

The CLP's decision

After reviewing the factors that can give rise to the application of section 31(1) of the AIAOD, the CLP (represented by a panel made up of three administrative judges) clarified what had previously been a controversial question of law, namely, whether or not a transfer of costs can be sought under section 327 of the Act in cases where a decision of the CNESST recognized a link between the new diagnosis (which purported to be an employment injury arising out of or in the course of care within the meaning of section 31 of the Act) and where the initial event had not been contested. The CLP's conclusions can be summarized as follows:

> An injury or illness that arises in the course of a file and is considered a "new diagnosis" can be related either to the employment injury within the meaning of section 2 of the AIAOD or to the care or lack of care within the meaning of section 31, but it cannot be linked to both at the same time.
> Consequently, when the CNESST renders a decision recognizing the relationship between a new diagnosis and the employment injury or the initial event and this decision is not contested,[5] that finding bars a request for the transfer of costs under section 327(1) of the AIAOD.
> Therefore, an employer that wishes to demonstrate that the new diagnosis actually results from one of the situations to which section 31 of the AIAOD applies must contest the CNESST decision before it becomes final and irrevocable.[6] If the decision does in fact become final and irrevocable, the effect would be to establish a link

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between the employment injury and the new diagnosis, which means that the new diagnosis is considered an employment injury under section 2 of the Act.
An employer failing to contest such a decision, or abandoning its challenge of such a decision, has the effect of rendering any subsequent request made under section 327 of the AIAOD inadmissible.
The powers granted to the CLP (now the Administrative Labour Tribunal) under section 377 of the AIAOD do not authorize it to challenge or modify a final and irrevocable CNESST decision.

The Superior Court's decision

After analyzing the CLP's decision, the Superior Court found that it was reasonable and that there was no basis on which the Court should interfere with it. Accordingly, the CLP's conclusions, as summarized above, remain applicable.

Commentary

The *Canadelle* decision serves as a reminder that, upon receipt of a CNESST decision, it is vital for an employer to immediately perform a further analysis of the decision in order to be able to make its position known and assert its rights in a timely manner.

In cases where a decision recognizes a connection between the new diagnosis and the employment injury or the initial event, once the period provided for in the Act for contesting such a decision has expired, it is too late to allege that the injury arose out of care (or lack thereof) unless one can show reasonable grounds for being relieved from the obligation to apply for a review of the decision within the time period provided for by the Act. When in doubt, the holdings in *Canadelle* suggest that employers ought to act with an abundance of caution, which might include "preventive" challenges of decisions recognizing a new diagnosis where there is a chance of a remedy being available under section 31 of the AIAOD.

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1. 2016 QCCS 2806.
2. On January 1st 2016, when 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, S.Q. 2015, c. 15, came into force, the *Commission de la santé et de la sécurité du travail* (CSST) was replaced by the "Commission des normes, de l'équité, de la santé et de la sécurité du travail" ("CNESST") and the CLP was replaced by the Administrative Labour Tribunal. For more details about this reform, see the Right to Know newsletter entitled "Bill 42 and the reorganization of the Quebec labour-related institutions" (July 2015).
3. 2014 QCCLP 6290.
4. CQLR, c A-3.001.
5. It should be noted that the CLP draws a distinction between situations where the CNESST renders no specific decision regarding the new diagnosis claimed to be covered by section 31 of the AIAOD, and situations where the CNESST renders a decision finding a link between the new diagnosis and the initial event or the recognized employment injury. (See para 20 of the decision).
6. Section 358 of the AIAOD states that contestation of a CNESST decision must be filed within thirty (30) days of the notification of the decision.

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