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Bill 15 decisions: where do we stand?

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The *Act to Foster the Financial Health and Sustainability of Municipal Defined Benefit Pension Plans* ("Bill 15") was passed on December 5, 2014.

The subject of much debate during the parliamentary sessions before its passing, much has been written about Bill 15 since it has come into force. It has also been the subject of multiple constitutional challenges filed before the Superior Court of Québec by many unions.

In addition, the courts have been seized of a number of disputes regarding the interpretation of some provisions of Bill 15, including those relating to the jurisdiction of the arbitrators named to render decisions regarding amendments to the pension plans. In this article, we will summarize some decisions dealing with these issues.

St-Jean-sur-Richelieu (Ville de) v. *Fraternité des policières et policiers de Saint-Jean-sur-Richelieu inc.*[1]

In this case, the City of St-Jean-sur-Richelieu (the "City") was seeking, among other things, an interlocutory injunction ordering the Fraternité des policières et policiers de Saint-Jean-sur-Richelieu inc. (the "Fraternité") to make itself available to immediately commence the process of negotiating and restructuring the police officers' pension plan.

Given that the collective agreement had been expired since December 31, 2011, the City was of the view that the plan was not in a situation where the deferral of the negotiation and restructuring process was possible. In light of the fact that one of the conditions for deferral (i.e.: the existence of an agreement in effect on December 31, 2013 and still in effect on December 5, 2014) was not satisfied, the negotiations had to be commenced no later than February 1, 2015, in accordance with the general rules provided under Bill 15.

The Fraternité disagreed with this position, arguing that a clause in the collective agreement had the effect of extending the agreement until it was renewed and as a result, all of the conditions for deferral had been fulfilled.

In its decision dated September 21st, the Superior Court first noted that at the stage of the interlocutory injunction, it did not have to render a decision on the merits as to whether the conditions for deferral were entirely satisfied in this case.[2] The Court then assessed the three criteria applicable to interlocutory injunctions, namely, the colour of right, the existence of serious or irreparable harm and the balance of convenience.

In this respect, the balance of convenience criterion proved to be a determining factor for the Court,

which concluded that it did not favour the City. The Court mentioned that if the negotiations needed to begin by February 1, 2015, the reference actuarial valuation which should be used for the purposes of the negotiations would be the valuation prepared with the data as of December 31, 2013. In contrast, if a deferral was granted pursuant to section 26 of Bill 15, the reference actuarial assessment would instead be the valuation prepared with the data as of December 31, 2014, in accordance with section 60 of Bill 15.

In the opinion of the Court, to order the Fraternité to undertake a negotiation process at this stage, without knowing which reference actuarial valuation must be used for the purposes of this process would raise a significant difficulty, not mentioning the cost and effort associated with conducting negotiations based on an actuarial valuation which may prove not to be relevant depending on what decision is rendered on the merits. The Court therefore refused the City's motion for an interlocutory injunction.

Sherbrooke (Ville de) v. *Syndicat canadien de la fonction publique, section locale 2729 et al.*[3]

This case also deals with a debate between the parties as to the date on which the negotiation and restructuring process was required to commence. It must be noted that one of the conditions for deferring the beginning of the process is that the actuarial valuation demonstrate that the current service contribution does not exceed 18% of the overall payroll of the active members and 20% of that of firefighters and police officers.

In this case, the pension plan covered various groups of employees. The service contribution of the firefighters' group was less than 20% while that of the other participants exceeded 18%. The City of Sherbrooke (the "City") argued that this meant that the conditions for deferral had not been satisfied and therefore that the negotiation process should have begun on February 1, 2015. By contrast, the unions were of the view that deferral was possible since it is enough that the service contribution limit is respected as it pertains to one of the groups, in this case, the firefighters.

The City went before the Superior Court, seeking, among other things, an order that the unions come to the negotiating table. In response to the proceedings filed by the City, the union filed grievances and argued that the Superior Court should decline jurisdiction on the grounds that the issue to be decided fell under the exclusive jurisdiction of the grievance arbitrator.

In its decision dated February 5, 2016, the Superior Court concluded that the dispute was rooted in the collective agreement and that the grievance arbitrator has the necessary authority to grant the remedies sought. The Court therefore declined jurisdiction.

A grievance arbitrator[4] heard the parties in April 2006 and in a decision issued on June 13th last,[5] dismissed the union's grievances. After analysing many provisions of Bill 15, the parliamentary debates and a guideline published by Retraite Québec, the arbitrator concluded, among other things, that Bill 15 expresses a pressing and even imperative desire to act with respect to the restructuring of defined benefit pension plans in the municipal sector. Moreover, the arbitrator concluded that section 26 of Bill 15, which allows for the deferral of the negotiation and restructuring process in certain cases, is an exception which must be interpreted restrictively.

The arbitrator added that nothing in this section can be reasonably interpreted to support the contention that the legislator intended to split the active members of a plan in two hermetic groups in the manner suggested by the unions. He was of the view that section 26 requires, as a condition to deferral, that the service contribution does not exceed 18% for all groups and exceptionally, 20% for police officers and firefighters. This rule applies for all active members of a plan and since the limit was not respected for all the active members, the conditions for deferral set out in section 26

were not entirely satisfied in the case under review.

An application for judicial review of this decision has been filed by the unions.

Arseneault v. *Québec (Procureure générale)*[6]

Section 62 of Bill 15 provides that members in a plan who have begun receiving a pension or who have filed an application to receive a pension "between 1 January 2014 and 12 June 2014" are considered to be members who are retired as of December 31, 2013.

On June 12, 2014, that is on the same day Bill 3[7] was introduced, 35 members of the Association des pompiers professionnels de Montréal informed their employer of their decision to retire immediately.

Through a motion for a declaratory judgment, these 35 firefighters and their Association sought to have the Superior Court declare that they qualified as retirees within the meaning of section 62 of Bill 15 on December 31, 2013.

Retraite Québec and the Attorney General contested the motion. In their view, the application for retirement had to have been made prior to June 12, 2014 for the firefighters to be considered retirees on December 31, 2013. Moreover, Retraite Québec had published a directive according to which a member was required to have filed an application to receive a pension prior to June 12, 2014 to be considered as a retiree within the meaning of section 62.

In its decision dated March 7, 2016, the Superior Court ruled that the 35 firefighters were retirees on December 31, 2013, for the purposes of the application of Bill 15. [8]

The Court was of the view that the wording of section 62 appeared to be clear and the ordinary meaning of the words used by the legislator caused no problem. The wording of the Act is a determining factor in the communication between the legislator and the public and to agree with Retraite Québec and the Attorney General, the word "avant" ("before") should be added to the wording of section 62 such that it would read "[…] between 1 January 2014 and before 12 June 2014". The Court concluded that in the context of the analysis it was not necessary to rely on other methods of interpretation of statutes so as to alter what the legislator had written at section 62.

This decision has not been appealed.

Ville de Montréal and Fraternité des policiers et policières de Montréal and Procureure générale[9]

In this matter, the arbitrator appointed by the parties in accordance with Bill 15 was seized of a preliminary motion brought by the Fraternité des policiers et policières de Montréal (the "Fraternité"). More precisely, the Fraternité sought to have the arbitrator stay the proceedings regarding the restructuring of the pension plan due to the procedures undertaken by the Fraternité before the Superior Court, including one contesting the constitutionality of Bill 15. According to the Fraternité, even if the arbitrator had jurisdiction to rule on the constitutionality of Bill 15, it was in the interests of justice and the parties that the arbitration be stayed pending the decisions of the Superior Court.

The Ville de Montréal (the "City") and the Attorney General contested this motion.

The arbitrator first concluded that he had neither the jurisdiction to decide on an issue of law or to rule on the constitutionality of Bill 15. He then expressed the view that he had jurisdiction to grant a

stay of the hearing as requested by the Fraternité and that the criteria applied in the *Metropolitan Stores*[10] case had to be used to determine whether the stay sought should be granted. It must be mentioned that these criteria are similar to those applicable to an interlocutory injunction, that is, colour of right, the existence of serious or irreparable harm and the balance of convenience.

As for colour of right, the arbitrator noted that neither the Attorney General nor the City contested that the proceedings filed before the Superior Court by the Fraternité raised serious issues. As for the serious or irreparable harm, the arbitrator mentioned, among other things, that to commence and complete the arbitration may cause serious harm or create a situation that a final decision on the issue of the constitutionality of Bill 15 could not remedy. Finally, according to the arbitrator, the balance of convenience favoured the Fraternité. In his view, there could be many drawbacks for the Fraternité if the arbitration was to proceed despite the proceedings before the Superior Court. The arbitrator concluded that the interests of the parties, and of justice, would be better served by not moving forward with the arbitration pending the decisions of the Superior Court regarding the proceedings filed by the Fraternité. Therefore, he granted the application of the Fraternité and stayed the arbitration under Bill 15 pending the decisions of the Superior Court regarding the proceedings filed by the Fraternité.

An application for judicial review in respect of this decision has been filed with the Superior Court.

Ville de Montréal and Syndicat des professionnelles et professionnels municipaux de Montréal[11]

Less than a month after the arbitrator issued his decision in the *Ville de Montréal* case discussed above, another arbitrator appointed in accordance with the provisions of Bill 15 rendered a decision in respect of a similar stay application filed by several unions.

This second arbitrator also concluded that he did not have the jurisdiction to decide either on an issue of law or on the constitutionality of Bill 15. However, in contrast to his colleague, this second arbitrator expressed the opinion that he lacked the jurisdiction under Bill 15 to grant a stay such as the one requested by the unions. In his view, such an application does not constitute a simple issue of case management akin to a postponement, particularly due to the unavoidable effects that such a stay would have on the application and objectives of Bill 15. The arbitrator stressed that the proceedings on the constitutionality of Bill 15 before the Superior Court will not begin before the fall of 2007 at the earliest and are estimated to last between 60 and 135 days. He added, among other things, that if the stay was granted, the unions' application would paralyze the application of Bill 15 for at least two years despite the fact that the legislator has created a mechanism which requires expediency.

The arbitrator indicated that the unions' application was instead more akin to a provisional measure such as a stay of proceedings and that he had lacked the jurisdiction to grant it.

The arbitrator also mentioned that even if he had jurisdiction, he would have had to analyze the unions' application in the light of the criteria set forth in the *Metropolitan Stores* case. However, he was of the view that the evidence did not reveal that the denial of their application would cause the unions irreparable harm. Moreover, the arbitrator concluded that the balance of convenience did not favour the unions since the public interest requires that the objectives of Bill 15 be accomplished. Indeed, the time limits to complete the restructuring process are an integral part of the objectives set by the legislator. As a result, the arbitrator dismissed the unions' application for a stay of proceedings.

An application for judicial review has also been filed with the Superior Court in respect of this decision.

Conclusion

As appears from the foregoing, the debates regarding Bill 15 are far from over. In addition to the cases discussed above, it appears that negotiation process provided for under Bill 15 has resulted in few agreements being reached[12] and as a result, the mandatory arbitration under the Act will be necessary in many cases.

It will be interesting to follow the evolution of case law regarding this legislation.

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1. 2015 QCCS 4350.
2. This issue would have to be decided at the stage of the permanent injunction.
3. 2016 QCCS 676.
4. M^{e} Serge Brault.
5. *Ville de Sherbrooke et Syndicat des pompiers et pompières du Québec, section locale Sherbrooke et al.*, 2016 CanLII 39704 (QC SAT).
6. 2016 QCCS 917.
7. Which, once passed, became Bill 15.
8. Mr. Justice Yergeau also ruled that Retraite Québec's guidelines were in breach of section 62 of the Act.
9. Arbitration award of arbitrator Claude Martin dated June 1, 2016 (2016 CanLII 39703).
10. *Manitoba (A.G.)* v. *Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110.
11. Arbitration award of arbitrator René Beaupré dated June 17, 2016 (2016 CanLII 39705).
12. In cases where the negotiations were required to commence no later than February 1, 2015, the negotiation period will expire on July 31, 2016, at the latest.