Passage of Bill 87: A step towards a more ethical governance of the public sector

March 6, 2017

Last December 9, the Lieutenant Governor assented to Bill 87 entitled *An Act to facilitate the disclosure of wrongdoings relating to public bodies* (the "Act"), whose purpose, as the name indicates, is to facilitate the disclosure of wrongdoing within public bodies, but also to establish a protection regime against reprisals. Moreover, the Québec Ombudsman is given a central role in the protection regime based on his expertise in conducting investigations and because of his independent and impartial status.

Counter wrongdoing in the public sector

Through the protections it contains, the Act attempts to allay the fears of persons who seek to report harmful situations in the public domain, notably in government departments, school boards, universitylevel educational institutions and budget-funded bodies, but also any act committed by persons appointed or designated by the National Assembly. It also applies to childcare and daycare centers having spaces with subsidized childcare services.

The Act not only covers acts committed within public bodies that are harmful to them, but also acts perpetrated by persons in the private sector against public bodies. This being said, it should be noted that it does not apply to the disclosure of wrongdoing made against private companies.[1]

Thus, any misuse of funds or assets belonging to a public body, any serious breach of the standards of ethics and professional conduct, any abuse of authority, any contravention of the laws of Québec, a federal statute or a regulation, or any inducement of a person to commit a wrongful act, is considered to be "a wrongdoing". The Act also seeks, through disclosure, to counter any act or omission that would or could seriously compromise the health or safety of a person or the environment.

Sanction against reprisals

Any person whatsoever may make a disclosure, and at any time, whether this is done anonymously or not.

In this regard, the Act gives the Québec Ombudsman broader powers to provide stronger support for whistleblowers. It imposes a mechanism for dealing with disclosures that enables the whistleblower, where their identity is known, to be informed of the various stages for processing the disclosure. The Québec Ombudsman also ensures that the identity of any whistleblower is kept confidential during the subsequent investigation following the disclosure for purposes of protecting that person.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

Furthermore, any employee, whether in the public or private sector, who has made a disclosure may request the intervention of the Québec Ombudsman or the Commission des normes, de l'équité, de la santé et de la sécurité du travail, if they believe they are the victim of reprisals. Whistleblowers can also take advantage of a service for the provision of legal advice before or after making a disclosure.

Finally, any person who takes, or threatens to take, retaliatory action ("a reprisal") against a whistleblower commits an offence and is liable to a fine of $2,000 to $20,000 in the case of a natural person, and $10,000 to $250,000 in all other cases.

Encourage disclosures made in the public interest

This statute is the government's response to certain recommendations of the Charbonneau Commission, and it therefore strengthens measures for preventing and fighting corruption in contractual matters in the public sector, and improves the whistleblower protection regime.

Sam Hamad, who was the responsible minister at the time, noted that the purpose of these provisions was not to counter any disclosures made to the media directly, but rather, to give whistleblowers more options.

Lastly, while the Act seeks to protect a broad spectrum of public bodies, it does not cover the municipal sector. However, in this regard, the *Municipal Ethics and Good Conduct Act* provides for a mechanism through which any person having grounds for believing that a member of a municipal council has breached a rule of ethics or conduct, can advise the minister thereof.

The Act will come into force on May 1, 2017.

---

1. In this regard, the parliamentary proceedings concerning the Bill show that there were numerous debates on the issue of whether or not the Bill should apply to the private sector. Ultimately, since there are already several bodies with jurisdiction to protect whistleblowers in the private sector, including UPAC, Revenu Québec, the Autorité des marchés financiers, and the Commission de la construction, the Act was limited to the public sector. We note also that by adopting this statute, Québec is following in the footsteps of the provinces of Alberta, Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador, which have similar statutes applying to the public sector. Only Saskatchewan and New Brunswick offer protection to whistleblowers in the private sector through their respective employment standards legislation.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.