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Bill 162: An Act to amend the Building Act and other legislative provisions mainly to give effect to certain Charbonneau Commission recommendations

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Tabled on December 1, 2017 by Lise Thériault, the Minister responsible for Consumer Protection and Housing, the main purpose of Bill 162 is to give effect to certain recommendations contained in the final report of the Commission of inquiry on the awarding and management of public contracts in the construction industry.

Amendments to the *Building Act*

Firstly, the Bill amends the definition of "officer" contained in the *Building Act* so as to include any shareholder of a partnership or corporation holding 10% or more of the voting rights attached to its shares, particularly for purposes of the assessment by the Régie du bâtiment du Québec (the "**Board**") of an undertaking's integrity.

The notion of "guarantor" is added to the *Building Act* to describe a natural person who, by applying for a licence on behalf of a partnership or legal person, or by holding such a licence himself or herself, becomes responsible for managing the activities for which the licence is being issued.

In addition, the Board's powers of inquiry, verification and inspection are expanded.

Finally, the Act provides for immunity from civil proceedings and protection from reprisals for any person who communicates information in good faith to the Board regarding any act or omission which he or she believes constitutes a violation or offence under the *Building Act*. Certain penal provisions have also been added for the purpose of sanctioning any person who takes reprisals in response to the disclosure of such information, or who submits false or misleading information to the

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Board.

Additions to the *Building Act*

Secondly, a conviction for certain offences, which already previously warranted restricted access to public contracts, will now lead to a refusal by the Board to issue a licence, and may result in the cancellation or suspension of an existing licence. Furthermore, where such a conviction leads to a person's imprisonment pursuant to a sentence, a licence can only be issued to the person once five years have passed following the end of the said term of imprisonment.

The Board will be required to cancel a licence where the licence holder, or any officer of an undertaking holding a licence, is convicted of an offence or any indictable offence referred to in the *Building Act*, where the said person was already convicted of such an offence or indictable offence within the five preceding years.

The Board is given new grounds pertaining to the integrity of undertakings to refuse to issue, suspend or cancel a licence, particularly where the corporate structure of the entity enables it to evade the application of the *Building Act*.

In this regard, the Board is obliged, by regulation, to require any contractor to provide either a performance bond or security for wages, materials and services for the purpose of ensuring construction work continues, or the payment of creditors, in the event of the cancellation or suspension (in certain cases) of a licence.

Lastly, a new penal offence for the use of "*prête-noms*" (nominees) is being added, and the prescription period in penal matters is being extended from one year to three years from the date on which the prosecutor had knowledge of the offence, without however exceeding seven years from the date of commission of the offence.

Conclusion

This Bill, which notably implements four recommendations of the Charbonneau Commission, will be worth watching when parliamentary proceedings resume in the National Assembly on February 6, 2018.

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