

NEGOTIATIONS IN THE CONSTRUCTION INDUSTRY: AT LAST A ROLE FOR THE ULTIMATE CLIENTS

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BILL 33,¹ WHOSE VERY TITLE ANNOUNCED THE ELIMINATION OF UNION PLACEMENT OF EMPLOYEES TO IMPROVE THE OPERATION OF THE CONSTRUCTION INDUSTRY, WAS ASSENTED TO ON DECEMBER 2, 2011, AND IT HAS RAISED A LOT OF COMMENTS.

THE MEDIA MADE A GREAT DEAL OF THE CHANGES PROPOSED IN THIS BILL, REGARDING MAINLY UNION PLACEMENT OF EMPLOYEES IN THE CONSTRUCTION INDUSTRY.

THIS BILL WAS ALSO MEANT TO SPELL OUT THE TERMS OF THE NEGOTIATIONS TO TAKE PLACE IN THE CONSTRUCTION INDUSTRY STARTING IN THE FALL OF 2012.

BRIEF REMINDER OF THE PRINCIPLES

In the construction industry, a collective agreement is entered into for each industry sector by that sector's bargaining parties.

The date of expiry of the various collective agreements is, by law, on April 30 every three (3) years. Accordingly, all the collective agreements currently in force will expire on April 30, 2013.

Under the *Act respecting labour relations, vocational training and workforce management in the construction industry*² (the "Act"), only the Association of Building Contractors of Québec (ABCQ) and sector-based employers' associations qualify as employers' agents for bargaining purposes.³

However, the role of the ABCQ is limited to negotiating general clauses having to do with union security, disciplinary measures and grievance management, while the sector-based employers' associations are responsible for all other matters.

On the union's side, five (5) representative associations may take part in the bargaining process. They are the *FTQ-Construction*, the *Conseil provincial du Québec des métiers de la construction* (International), the CSN, the CSD and the *Syndicat québécois de la construction* (SQC).

Since the implementation of this labour relations regime in the construction industry, in 1968, the entities for which the work is actually performed (the "Ultimate clients") have always been ignored in the collective agreement bargaining process, despite the fact that in the end, they are the ones who foot the bill.

Bill 33 for the first time gives the right to speak, however limited, to the Ultimate clients.

Indeed each sector-based employers' association, except the one for the residential sector, will be required to consult the Ultimate clients to obtain their comments and suggestions in connection with collective agreements to be renewed.

We are of the view that this is a very important step, as for the first time, Ultimate clients will be able to communicate their concerns and needs regarding working conditions in this industry.

¹ *An Act to eliminate union placement and improve the operation of the construction industry*, S.Q., 2011, c. 30.

² R.S.Q., c. R-20.

³ For the residential sector, the *Association provinciale des constructeurs d'habitations du Québec* (APCHQ), for the institutional and commercial sector and the industrial sector, the *Association de la construction du Québec* (ACQ), and for the civil engineering and roads sector, the *Association des constructeurs de routes et grands travaux du Québec* (ACRGTQ).

But who are these Ultimate clients who will have to be consulted?

The legislator wished to frame this consultation process by having the Minister of Labour, in consultation with the Minister of Economic Development, Innovation and Export Trade, identify the Ultimate clients to be consulted.

The Act provides that these may be a corporate client of an employer, or an association thereof.

Once they have been recognized by the Minister for consultation purposes, the sector-based employers' associations will be required to consult the Ultimate clients.

It is therefore important, first, that Ultimate clients be made aware of their new role in the construction industry's collective bargaining process.

Second, it will be up to Ultimate clients, if they so see fit, to make comments and suggestions to bring to the attention of the employers' negotiators their own needs and the irritants contained in the current collective agreements.

If they decide to do so, Ultimate clients will need to take the necessary steps in order to be recognized by the Minister of Labour, thus entitling them to have their say when collective agreements are being negotiated.

Lastly, once they have been recognized, Ultimate clients will have to review the collective agreement(s) of the sector(s) which is (are) of interest to them so as to be able to voice their concerns during the consultation process to be held in the fall of 2012.

In closing, we urge all Ultimate clients, regardless of their industry sector, to seek recognition for the consultation process called for by the Act or to be represented by an association whom they trust.

One must keep in mind that many businesses or associations will seek to be recognized by the Minister. Accordingly, an Ultimate client who fails to get involved in the consultation process risks to find itself "represented" by associations or other competing businesses of its industrial sector who, in practice, will speak in its name without having received the formal mandate to do so, and thus, be deprived of the opportunity which is offered to it for the first time since the labour relations regime in the construction industry was implemented, to express its own needs and concerns.

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