# IN FACT AND IN LAW

Labour

January 2002

# The New Jurisdiction of the Office of the Labour Commissioner General Over the Dismissal of Municipal Officers

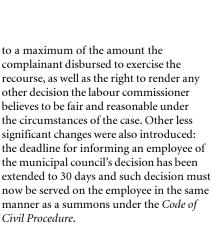
By Marie-Claude Perreault

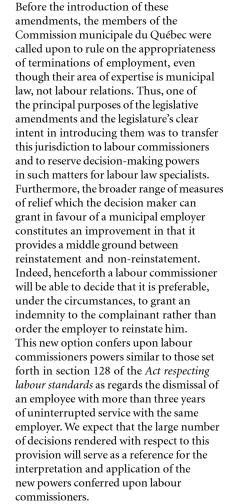
Following the recent municipal elections which took place throughout most of Quebec, it is certainly relevant to consider the changes which the Quebec legislature has adopted regarding the protection of the employment of municipal officers. Until recently, in order to guard against the arbitrary whims of municipal councils and to prevent the employment relationship of municipal officers from being subject to the results of municipal elections and to changes in the composition of the municipal council, the legislature, through the Cities and Towns Act (R.S.Q., c. C-19), had conferred upon the Commission municipale du Québec the jurisdiction to assess the grounds for the dismissal, suspension without pay or reduction in salary of senior municipal employees.

Since the coming into force of An Act to again amend various legislative provisions respecting municipal affairs (S.Q. 2000, c. 54), it is the Office of the Labour Commissioner General which hears complaints from municipal officers who consider that the decision of the municipal council to dismiss them is arbitrary and not based on grounds of proper administration. Thus, a labour commissioner seized of a case will exercise his jurisdiction in accordance with the provisions of the Quebec Labour Code and the general principles of labour law. The Quebec legislature also amended the decision maker's powers by granting a labour commissioner the right to order the reinstatement of the complainant, the payment of an indemnity up to the maximum salary the complainant would have received had there been no disciplinary action, or the payment of compensation up



to a maximum of the amount the complainant disbursed to exercise the recourse, as well as the right to render any other decision the labour commissioner believes to be fair and reasonable under the circumstances of the case. Other less significant changes were also introduced: the deadline for informing an employee of the municipal council's decision has been extended to 30 days and such decision must now be served on the employee in the same manner as a summons under the Code of





Three decisions have already been rendered by labour commissioners since the coming into force of the Act to again amend various legislative provisions respecting municipal affairs. In two of these cases, the issue was the application of the transitional



Marie-Claude Perreault has been a member of the Quebec Bar since 1990 and specializes in Labour law



provisions of the Act with respect to the transfer of jurisdiction from the Commission municipale du Québec to the Office of the Labour Commissioner General. [Laberge -and- Prévost (City of), 2001T-642, Commissioner Jacquelin Couture; Côté -and- Montreal (Urban Community), 2001T-913, Commissioner Suzanne Moro].

In the most recent decision, Beaulieu and City of Cabano, Commissioner Paquette was called upon to rule on the appropriateness of the resolution of the municipal council which had refused to renew the complainant's employment contract and had further decided to abolish the complainant's position and replace it with a technician's position. Mr. Beaulieu held the position of manager of the recreation department. With respect to the resolution not to renew the employment contract, the municipal council reproached the complainant for the lax manner in which he had monitored the accounts receivable, resulting in a substantial loss of revenues for the City. In his judgment, Commissioner Paquette ruled that the decision not to renew the contract had no basis because the employer had not attempted to carry out a detailed investigation of the facts or the complainant's version thereof. With regards to the abolition of the complainant's position, the Commissioner ruled that the City had not shown its decision to abolish the complainant's position and replace it with that of a technician to be serious, reasonable or commendable. Moreover, the Commissioner decided that this decision followed upon the decision not to renew the employee's contract. For these reasons, the Commissioner ordered the City to

reinstate the complainant, to pay him an indemnity equal to the salary and benefits denied to him since the severance of his relationship with his employer as well as an amount equal to the costs incurred by him to exercise his legal remedies. Commissioner Paquette's ruling provides a good summary of the legislative changes and the distinctions to be made between the former jurisdiction of the Commission municipale du Québec and the jurisdiction now conferred upon labour commissioners.

Although the Act to again amend various legislative provisions respecting municipal affairs is relatively recent, thirty-two complaints have been filed to date with the Office of the Labour Commissioner General. Nine of these complaints were settled out of court, leaving twenty-three cases pending in which a labour commissioner could be called upon to decide. These decisions should give us an indication of the trends and positions which the labour commissioners will adopt regarding their new jurisdiction.

Given the likely impact of the municipal mergers on the employment relationship of certain municipal officers, we expect the Office of the Labour Commissioner General and its successor body to be called upon to render many decisions on these issues over the coming year.

Should you require further information, please do not hesitate to contact Marie-Claude Perreault at (514) 877-2958.

Marie-Claude Perreault Antoine Trahan You can contact any of the following members of the Labour group in relation with this bulletin.

at our Montréal office Pierre L. Baribeau Jean Beauregard Anne Boyer Monique Brassard Denis Charest Michel Desrosiers Jocelyne Forget Philippe Frère Alain Gascon Michel Gélinas Isabelle Gosselin Jean-François Hotte Guy Lemay Carl Lessard Dominique L'Heureux Catherine Maheu Véronique Morin Marie-Claude Perreault Jean Pomminville Érik Sabbatini Antoine Trahan

at our Québec City office Pierre Beaudoin Danielle Côté Christian R. Drolet Pierre C. Gagnon Claude Larose

**at our Laval office** Pierre Daviault Gilles Paquette René Paquette

Montréal
Suite 4000
1 Place Ville Marie
Montréal, Quebec

Telephone: (514) 871-1522 Fax: (514) 871-8977

H3B 4M4

2

#### Québec City

Suite 500 925 chemin Saint-Louis Québec, Quebec G1S 1C1

## Telephone: (418) 688-5000

rax: (418) 688-3458

#### Laval

Suite 500 3080 boul. Le Carrefour Laval, Quebec H7T 2R5

#### Telephone: (450) 978-8100 Fax:

(450) 978-8111

#### Ottawa

Suite 1810 360, Albert Street Ottawa, Ontario K1R 7X7

### Telephone: (613) 594-4936

Fax: (613) 594-8783

#### Web Site

www.laverydebilly.com

All rights of reproduction reserved. This bulletin provides our clients with general comments on recent legal developments. The texts are not legal opinions. Readers should not act solely on the information contained herein.

Lavery, de Billy January 2002