

## 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 Civil Procedure*.

Before the introduction of these amendments, the members of the Commission municipale du Québec were called upon to rule on the appropriateness of terminations of employment, even though their area of expertise is municipal law, not labour relations. Thus, one of the principal purposes of the legislative amendments and the legislature's clear intent in introducing them was to transfer this jurisdiction to labour commissioners and to reserve decision-making powers in such matters for labour law specialists. Furthermore, the broader range of measures of relief which the decision maker can grant in favour of a municipal employer constitutes an improvement in that it provides a middle ground between reinstatement and non-reinstatement. Indeed, henceforth a labour commissioner will be able to decide that it is preferable, under the circumstances, to grant an indemnity to the complainant rather than order the employer to reinstate him. This new option confers upon labour commissioners powers similar to those set forth in section 128 of the *Act respecting labour standards* as regards the dismissal of an employee with more than three years of uninterrupted service with the same employer. We expect that the large number of decisions rendered with respect to this provision will serve as a reference for the interpretation and application of the new powers conferred upon labour commissioners.

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



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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.

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