

The New Commission des relations du travail Soon in Operation

By Catherine Maheu

Last February and March, the Minister of Labour Jean Rochon took another step toward the setting up of the brand new Commission des relations du travail by naming its president and two vice-presidents.

Louis Morin, a former judge of the Court of Québec and a member of the Labour Court since 1977, officiates as president since February 4, 2002.

The two vice-presidents are Mr. Robert Côté, Esq., and Mr. Pierre Flageole, Esq.

Mr. Côté has worked for a long time defending employee and union rights before the courts. Five years ago, he gave a new direction to his career and has acted since as a mediator and grievance arbitrator.

Mr. Flageole has a long experience practising on behalf of management in labour relation matters. For many years, he was a practitioner in labour law with Borden Ladner Gervais.

The Commission des relations du travail is destined to replace the Office of the Labour Commissioner General in the coming months. The Commission will therefore inherit all the powers and duties formerly vested in the Office, such as the certification of bargaining agents, and it will rule upon individual complaints lodged under the *Labour Code*, the *Act respecting Labour Standards* and other statutes.



In addition to the institution of the new Commission des relations du travail, the reform of the *Labour Code* initiated in 2001 by the acting government has introduced many changes relating to the transfer of rights and obligations under sections 45 and 46 (transfer of the operation of an undertaking) and relating to dispute settlement between unions and employers.

For example, in the case of the alienation or transfer of the operation of an undertaking, the reform introduces a delay for the purpose of obtaining recognition of the application of section 45 and imposes on the union, upon receipt of a notice of the transaction by the employer, the obligation to file before the Commission a motion to request the application of section 45 within 90 days after the date of receipt of such notice; in the absence of such a notice, the delay for filing such motion is 270 days from knowledge of the fact of the alienation or transfer.

Moreover, in the case of a transfer, the reform now allows the parties to agree upon the non application of section 45. Contrary to what was formerly law as regards section 45, which, as a rule of public order, received automatic application, the new *Labour Code* allows the parties to waive preemptively the application of section 45 and, therefore, forgo the transfer of the certification to the new employer.

There shall be no appeal from the decisions rendered by the Commission; therefore, the Labour Court will disappear.

It is hoped that the Commission shall dispose promptly of any matter submitted to its consideration. More specifically, the certification process should not exceed 60 days. As for any other matter within its jurisdiction, it should be adjudicated upon within 90 days after the beginning of deliberations.



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Another change allows new flexibility to the new employer: in the event of a transfer of rights and obligations, the collective agreement binding the union to the new employer expires 12 months after the date of the transfer, or earlier, depending on the expiry date fixed according to the terms of the collective agreement itself, whereafter the new employer becomes free to negotiate new labour conditions.

As for the powers vested in the new Commission in matters of transfer of rights and obligations, it is now recognised that it may merge bargaining units as well as seniority lists, determine which collective agreement will remain in force and which terms of the agreement shall be applicable.

In dispute settlements, especially where the negotiation process of a collective agreement fails, the employer may now demand that a secret ballot of the employees be held upon its last offers, which the Commission will authorize if it considers that such measure is likely to facilitate the negotiation or the conclusion of the collective agreement.

It is still too early to ascertain which orientations the new Commission will adopt on many matters relating to labour relations, but, one thing is for sure, the Commission has been vested with the mandate to establish a whole new environment for labour relations. We will be pleased to keep you posted on jurisprudential developments in the next few months. In the meantime, feel free to contact us for more information.

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