IN FACT AND IN LAW

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The Commission des Relations du Travail has Exclusive Jurisdiction to Hear Complaints Made Under Section 124 of the Act Respecting Labour Standards

By France Legault

On June 2, 2008, following the hearing of six cases[1] *at the same time, the Quebec Court of Appeal ruled that section 114 of the Labour Code grants exclusive jurisdiction to the Commission des relations du travail to hear complaints made under section 124 of the Act respecting Labour Standards. Despite the fact that section 124 of the Act respecting Labour Standards is considered to be a public policy provision granting procedural and fundamental rights to employees, the Court ruled that it was not implicitly incorporated into collective agreements.*

The legislative context

Appeal courts have rendered several significant decisions over the past few years dealing with the issue of incorporation of human rights and labour standards provisions into collective agreements. In 2003, in the *Parry Sound* case[2], the

Supreme Court of Canada ruled that public policy provisions contained in statutes pertaining to human rights and employment were implicitly incorporated into all collective agreements. In that case, a probationary employee who was dismissed following a maternity leave had filed a grievance despite the fact that her collective agreement did not give her the right to do so. In her grievance, she alleged that she was a victim of discrimination. The Court ruled that the grievance was arbitrable because human rights legislation was implicitly incorporated into the collective agreement.

In 2006, the Supreme Court of Canada clarified its thinking in the *Isidore Garon* case[3], deciding that only rules that are compatible with the collective labour relations scheme are implicitly incorporated into collective agreements. In that case, the Court had to decide whether the right to reasonable notice of termination, as provided for in article 2091 of the *Civil Code of Québec*, was implicitly incorporated into collective agreements. The Court ruled that it was not, since it constituted a standard that was incompatible with the collective labour relations scheme.

These decisions fuelled the debate concerning the implicit incorporation into collective agreements of standards and recourses under labour laws, particularly section 124 of the *Act respecting Labour Standards*[4] (hereinafter referred to as the "**A.L.S.**"). Under that section, an employee credited with two years of uninterrupted

1 *Procureur général du Québec v. Syndicat de la fonction publique du Québec et Laplante*, D.T.E. 2008T-513 (C.A.). The reasons given in the judgment also apply to the other cases published respectively under AZ-50495358, AZ-50495383, AZ-50495384, AZ-50495385 and AZ-50495386.

2 *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, [2003] 2 S.C.R.157.

3 *Isidore Garon ltée v. Tremblay; Filion et Frères (1976) inc. v. Syndicat national des employés de garage du Québec inc.*, [2006] 1 S.C.R. 27.

4 *An Act respecting Labour Standards*, R.S.Q. c. N-1.1.

service in the same enterprise who believes that he has not been dismissed for a good and sufficient cause may submit a complaint to the Commission des normes du travail except where a remedial procedure, other than a recourse in damages, is provided elsewhere in the A.L.S., in another Act or in an agreement.

The debate continues

Recently, at least six unionized employees who had been dismissed attempted to assert their rights under section 124 of the A.L.S. before an arbitrator appointed under the terms of a collective agreement. At the time of his dismissal, the status of each employee was precarious in that he was either an employee on probation, a casual employee, a temporary employee, an employee on a priority list or a contractual employee. In each case [5], the applicable collective agreement did not recognize the right of the employee to file a grievance in the event of termination of employment.

In light of the recent teachings of the Supreme Court of Canada, certain arbitrators felt that they had jurisdiction to rule on employees' complaints under section 124 of the A.L.S. while others thought they did not. The motions for judicial review filed in the Quebec Superior Court also gave rise to conflicting rulings on the issue of whether the application of section 124 of the A.L.S. was within the jurisdiction of grievance arbitrators or that of the Commission des relations du travail.

The decision of the Quebec Court of Appeal

Faced with the conflicting opinions, the Quebec Court of Appeal undertook, in the case of *Procureur général du Québec* v. *Syndicat de la Fonction publique du Québec* [6], to clarify the issues and put an end to the debate concerning the implicit incorporation of section 124 of the A.L.S. into collective agreements.

The six above-mentioned cases were joined and heard together by the Quebec Court of Appeal. It should be noted that the relevant collective agreements in the six cases did not explicitly incorporate section 124 of the A.L.S and did not grant to the employees the right to file grievances in the event of termination of employment, except to verify whether proper procedure had been followed and whether the employer's reasons were genuine and not discriminatory. On the other hand, all the employees concerned had the right to file a complaint for termination without proper cause under section 124 of the A.L.S. since each of them was credited with two years of uninterrupted service in the same enterprise within the meaning of section 124 of the A.L.S.

The Court had to answer the following question: is it an arbitrator or the Commission des relations du travail that has jurisdiction to deal with the recourse under section 124 of the A.L.S. of an unionized employee where his collective agreement does not provide him with a right to file a grievance for termination of employment?

After a contextual and teleological analysis of the A.L.S., the Court concluded that section 124 is not implicitly incorporated into collective agreements and that the Commission des relations du travail has exclusive jurisdiction to hear and rule on complaints filed under that section.

In its decision, the Court of Appeal first noted that, as decided in the *Produits Pétro-Canada inc.* v. *Moalli* case [7], section 124 of the A.L.S. is a labour standard and therefore a public policy provision under section 93 of the A.L.S.

The Court also confirmed that section 124 of the A.L.S. has two aspects: the merits and the procedure. Its main purpose is to protect the employee who is credited with two years of service in the event that he is dismissed without good and sufficient cause. It also deals with procedure by enabling employees who have no other means of enforcing their rights to seek recourse before the Commission.

It is within that framework that the Quebec Court of Appeal analyzed the text of section 124 of the A.L.S. and more particularly the meaning of the expression *"except where a remedial procedure, other..."* The Court concluded that because section 124 of the A.L.S. explicitly excludes employees who have a right under a collective agreement, it would be illogical that the provisions of section 124 be implicitly incorporated into a collective agreement:

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5 *Ville de Mont-Tremblant* v. *Commission des relations du travail et Michel Poulin*, D.T.E. 2006T-1090; *Commission scolaire des Sommets* v. *Claude Rondeau*, D.T.E. 2006T-345; *Syndicat des professeurs du Cégep de Sainte-Foy* v. *Me Francine Beaulieu*, *D.T.E.* 2007T-429; *Syndicat des professeures et professeurs de l'Université du Québec à Trois-Rivières* v. *Me Denis Tremblay*, D.T.E. 2007T-269; *Procureur général du Québec* v. *Maureen Flynn* et *Syndicat de la fonction publique du Québec* v. *Me Pierre Laplante*, D.T.E. 2006T-1000.

6 *Procureur général du Québec* v. *Syndicat de la fonction publique du Québec et Laplante*, D.T.E. 2008T-513 (C.A.). The reasons given in the judgment also apply to the other cases published respectively under AZ-50495358, AZ-50495383, AZ-50495384, AZ-50495385 et AZ-50495386.

7 *Produits Pétro-Canada inc. v. Moalli*, [1987] R.J.Q. 261 (C.A.).

"[Translation] **[50] Furthermore, this same text expressly provides that an employee cannot file a complaint where an equally effective remedial procedure is available under an agreement, including a collective agreement within the meaning of section 1(d) of the L.C. It is obvious that any implicit incorporation of section 124 of the A.L.S. into a collective agreement would significantly amputate the very text of the Act. Why refer to a remedial procedure contained, for example, in a collective agreement, if section 124 of the A.L.S. is implicitly incorporated in such agreement? Inasmuch as the employee is governed by a collective agreement, the exception respecting the admissibility of the complaint would be superfluous."**

Following an analysis of the wording, the structure and the relevant legal texts taken as a whole, the Court concluded that the legislature intended to give to the Commission des relations du travail, rather than to arbitrators, the responsibility to ensure the diligent application of section 124 of the A.L.S. The legislature opted for a specialized tribunal, the Commission des relations du travail, which must have full jurisdiction to accomplish its mission:

"[Translation] **[64] Furthermore, reading sections 124 of the A.L.S. and 100 of the L.C. together cannot justify the incorporation of section 124 of the A.L.S. into the collective agreement. The text of section 100 of the L.C. states that *"Every grievance shall be submitted to arbitration in the manner provided in the collective agreement (...)"*. However, the rule that requires that any grievance be submitted to arbitration is based on the premise that we are in the presence of an issue that is not within the exclusive jurisdiction of another decision-making authority, as in the present case. To hold the contrary would amount to denying the National Assembly the right to pass legislative provisions granting specific jurisdiction to an administrative tribunal to the exclusion of any other decision-making body."**

The Court did not consider the issue from the angle of the compatibility or incompatibility of the legal regimes (individual and collective) governing labour relations, as was done in the *Isodore Garon* case. This is explained by the fact that the debate concerned the issue of jurisdiction. The right of the employees to file a complaint under section 124 of the A.L.S. was not questioned in any of the cases. However, as regards the issue of the compatibility of the two regimes, the Court took the trouble to clarify that:

"[Translation] **[82] The indirect incompatibility would only appear if we were to accept the premise that section 124 of the A.L.S. is implicitly part of the collective agreement. It would only be created at that time, in response to the pivotal question in the appeal. This same incompatibility cannot be used as an argument to resolve the issue since it will only arise once the question is answered. In other words, the argument respecting compatibility or incompatibility is circular."**

Lastly, basing itself on the wording of section 114 of the *Labour Code*, the Court concluded that the Commission des relations du travail has exclusive jurisdiction to hear and rule on complaints under 124 of the A.L.S. filed by unionized employees who, under their collective agreements, cannot use the grievance procedure in the event of dismissal:

"[Translation] **[85] Regarding the main issues, we conclude that there are two aspects to section 124 of the A.L.S. (normative and procedural), which are inseparable from one another. The section is enacted for the benefit of the employee, whose complaint is admissible to the extent that the exception set out at the end of the first paragraph of the section does not come into play. In the absence of an amicable settlement of the dispute, only the C.R.T. has jurisdiction to hear the parties and rule on the complaint."**

The consequences of the decision

For the moment, this decision seems to have put an end to the debate respecting the proper forum for the hearing of complaints filed under section 124 of the A.L.S.: the Commission des relations du travail has exclusive jurisdiction.

According to the Court of Appeal, section 124 of the A.L.S. cannot implicitly form part of a collective agreement and employees whose status is precarious have a recourse before the Commission des relations du travail provided the conditions for the application of section 124 of the A.L.S. are met.

Following this judgment, we can infer that the public policy provisions of the A.L.S., such as its section 124, will retain their full effect, according to their scope and content.

We can also infer that, to the extent that a collective agreement grants the right to file a grievance to employees whose status is precarious, such recourse may be exercised before an arbitrator, under the conditions and within the limits determined by the parties, without the content of that agreement being modified by the incorporation of the provisions of section 124 of the A.L.S.

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