Labour Relations
Canada

1. INTRODUCTION

Canada is a federation. Its Constitution establishes a division of legislative jurisdiction between a central government, the Federal government and provincial governments.

With regards to work relations, social security or foreign workers rights, Labour Law does not escape this division of jurisdiction.

In addition to this fundamental characteristic, Canada, as well as Quebec, are strongly normalised societies that have adopted laws to protect fundamental rights and freedoms.

Among these rules of law, we must underline the existence of constitutional texts such as the Canadian Charter of Rights and Freedoms and the Quebec Charter of Human Rights and Freedoms to which the courts have given a quasi-constitutional character.

To these fundamental laws, we may add other public laws which establish minimal work norms, rules concerning work health and safety, a law on accidents in the work place as well as professional illnesses and, in Quebec, a law on pay equality.

1.1 THE CONSTITUTIONAL QUESTION

The Canadian Constitution states that conventional work relation issues are of Provincial jurisdiction. However, the Canadian Parliament has an exceptional jurisdiction, which is nonetheless exclusive, upon work relations within businesses that are of the Federal government's exclusive jurisdiction.

This is also the reason why the Parliament maintains direct legislative jurisdiction upon work conditions of Federal government employees. The Federal government also maintains jurisdiction over territories that do not fall within provincial borders such as the North West Territories and the Yukon. In addition, the Canadian Parliament has an exclusive jurisdiction over businesses that fall within this jurisdiction according to the provisions found in the 1867 Constitution Act under Section 91 and Section 92, mainly paragraph 10.

To simplify things, businesses that may be linked to navigation and transportation by water or to the operation of ships are of Federal jurisdiction. The same can be said for installations or work related to trains and to telephone lines that link through more than one province. Airports, radio stations and banks also fall within the exclusive Federal jurisdiction. With regards to businesses related to truck transportation, one must examine the degree of inter-provincial links to determine whether the business falls within a Federal or Provincial jurisdiction.

In addition, as for work relations, when the activities of a business may be linked to a business that falls under the authority and jurisdiction of the Canadian Parliament, this business may also be subject to Federal jurisdiction. To come to this conclusion, a factual analysis must determine that the link of the business subject to Federal jurisdiction is an essential aspect of the management and operation of the said business.

In consequence, any person who desires to do business in Canada, in regards to Canadian labour laws, has a vested interest in ensuring himself or herself whether or not a business falls within Federal jurisdiction. This may be accomplished by examining Section 2 of the Canadian Labour Code, which identifies specific federal businesses.

This question is important even if, in many ways, the framework for labour relations between both levels of government is analogous. Notable differences between the laws are certain specific details such as the tabulation of delays.

1.2 FUNDAMENTAL RIGHTS

In a society of rights, Canada and Quebec have adopted laws of a constitutional nature (the Canadian Charter is clearly a part of the Canadian Constitution) while provincial codes of human rights, such as in Quebec the Charter of Human Rights and Freedoms, have acquired, according to jurisprudence, a constitutional character.

The Canadian Charter of Rights and Freedoms has a direct incidence in labour law; provincial laws and regulations must respect its provisions. However, it has no direct application upon relations between individuals. In opposition, Provincial human rights codes, such as the Quebec Charter of Human Rights and Freedoms, apply directly to relations between individuals. Many provisions of the Quebec Charter have taken on more and more importance, such as:

- respect of domicile;
- respect for private life;
- respect of honour and dignity;
- respect of quality at work;
- the right to just and equitable working conditions;

In addition, these fundamental laws guarantee freedom of association, freedom of pacific assembly, freedom of speech, freedom of religion… The courts have developed the concept of duty to accommodate to force employers to find ways to organize work, schedules, etc., in a way to allow employees to benefit from these fundamental guarantees. The notion of duty to accommodate can also be applied in cases relating to disability.

To this fundamental law, in Quebec, we can also find a law on pay equality. This law's objective is to establish pay equity between two groups of which one of the two, generally of female predominance, has been unfavourably treated in comparison.

2. THE DIFFERENT TYPES OF EMPLOYMENT CONTRACTS AND THEIR TERMINATION

In the Canadian jurisdiction, as well as in provincial jurisdictions, such as Quebec, provisions relating to individual work relations and others relating to collective work relations can be found.

To determine the applicable judicial measures, we must first determine whether the concerned business is of a provincial or federal nature. The Canada Labour Code contains provisions,

under part III, entitled "Standard hours, wages, vacations and holidays". In Quebec, it is in the Act Respecting Labour Standards that we find such provisions. As a backdrop for these public order laws, the Civil Code of Quebec contains specific provisions regarding the contract of employment.

In Quebec and in Canada there are two types of individual contracts: fixed term contracts and indeterminate term contracts (the open-ended employment contracts). There is also one type of group contract which is the collective agreement.

There are no particular rules for individual temporary employment contract nor special employment contract.

2.1 THE OPEN-ENDED EMPLOYMENT CONTRACT

Any contract for which the duration cannot be precisely determined is considered to be an indeterminate term contract. This contract may be verbal or written. It is generally constituted of the same obligations as the fixed term contract, but each of the parties can end the contract by giving a reasonable notice. The nature of a reasonable notice is determined by considering various circumstances, such as the nature of the job, certain particular circumstances in which the job is practiced, the duration of employment, the age of the worker, etc.

Superposed to the general legal principals that are found in the Civil Code of Quebec, labour standards also have provisions regarding termination. Notably, a person who has two (2) years of continued service and who is not considered a senior manager can file a complaint with the *Commission des normes du Travail* when this person believes that their dismissal was not for a good and sufficient cause. Besides important material compensation, this recourse allows a right to reintegration, which is not found in the Civil Code.

2.2 THE FIXED-TERM EMPLOYMENT CONTRACT

Generally, the fixed term contract is precise. Its constitution is based upon an explicit purpose. In case of doubt upon the nature of the contract, the jurisprudence considers the contract to be an indeterminate term contract. The principal distinction of interest between a fixed term contract and an indeterminate term contract is the manner that such contract may be ended. In all cases, the employer may, for a serious reason, unilaterally end a labour contract without notice. However, in the case when a fixed term contract is terminated without a serious reason, the employer must respect the entirety of the residual duration of the contract and therefore indemnify the employee accordingly for this period of time.

2.3 COLLECTIVE WORK RELATIONS

In Canada, as in Quebec, collective work relations are characterized by a monopoly of representation. An association of employees that groups 50% plus one of the employees of a determined group can see itself recognized the right to exclusively represent the entire team of the members of this group by obtaining permission from the competent authorities, the Canada Industrial Relations Board or the *Commission des relations du travail* for Quebec.

Obtaining such an accreditation and the effects of this accreditation are determined by labour laws. Accreditation allows this certified association to be considered as the sole representative, the sole negotiating agent of all of the employees of this determined group. It therefore belongs

to this union to take on and successfully negotiate a collective agreement and, if they believe it to be justified, to use pressure tactics such as striking. The employer, on his side, has the right to order a "lockout".

For all practical matters, a collective agreement constitutes a collective work contract that is passed between an accredited employee association and an employer. This collective agreement may contain any type of provisions related to work conditions. The only limit is the compliance of public order laws. Any request for an adjustment to the collective agreement while it is in effect is forwarded to a specialized labour authority, the grievance arbitrator, who becomes solely competent to determine any questions relative to the interpretation and application of the collective agreement. In past years, the competence deferred to this specialized decision maker has had the tendency to widen by recognizing that any question related to a collective agreement, may it be directly or indirectly, in an implicit or express manner, falls within the arbitrator's jurisdiction, thus, also allowing a liberalization of proof and procedure regulation.

Labour laws generally stipulate, this is the case in Quebec, the possibility to obtain arbitration for the first collective agreement, at the request of either of the parties. For the subsequent collective agreement, a dispute arbitration may be invoked if both parties have requested it. When it comes to duration, the first collective agreement cannot be more than three (3) years and cannot be less than one (1) year. For any subsequent agreement, the code does not stipulate a maximal duration. However, any collective agreement will come to an end. The Labour Code stipulates that, whatever the duration of the collective agreement, there are marauding periods, that is to say periods during which employees can request a change in their union allegiance. These periods are included to avoid that a unionized party and an employer sign a collective agreement for numerous years without the possibility to re-question the union allegiances.

3. SOCIAL CONTRIBUTIONS AND THE DIFFERENT KINDS OF BENEFITS IN QUEBEC

3.1 THE STATE PENSION SCHEME

Many businesses have a private retirement plan. The Government, by fiscal measures, also seeks to encourage savings for retirement, notably by REERs (registered retirement savings plan) which allows any person, by the intermediary of a fiscal deduction, to deposit, for retirement, an annual amount, per which the ceiling is calculated according to certain parameters, such as gained revenue and the possibility of benefiting from another retirement plan.

It may be noted that the Canadian government has instituted the "Canada Pension Plan" which applies everywhere in Canada except in Quebec. Quebec, for its part, has established its own collective retirement plan, which is managed by a ministry named *Régie des rentes du Québec*. This public regime is auto-financed by deductions made directly on employee salaries and by employer's contributions.

3.2 THE UNEMPLOYMENT BENEFITS SYSTEM

The principle law on the subject is a Federal government law, Employment Insurance Act, which applies everywhere in Canada. This Act is based upon the premise of an insurance regime, as it sets out to establish employer and employee contributions to be paid. These contributions

finance an indemnity and payment regime. With time, situations which are entitled to receive such indemnities and payments have broadened to include, other than situations of lost work due to a lack of work in said sector; periods of suspended work related to maternity or to illness according to the terms and conditions set out explicitly for this period. However, to ensure the viability of such a regime, the Canadian government has tightened admissibility criteria according to a minimal number of hours worked, limited insurable revenue and limited number of weeks one has the right to such payment.

Through the Employment Insurance Act, the Federal government can also intervene by funding job creation endeavours and help fund professional training programs.

The Act Respecting Labour Standards includes a delay in notice for layoffs when the layoffs are for a duration of six (6) months or more and affect at least ten (10) employees. Other than the right for a longer notice or a consequential financial compensation, the Act also stipulates that for businesses of fifty (50) employees or more, committees are established to help with reassignment.

As for unionized workers, collective agreements can contain certain provisions that maintain employment or certain different employment termination notices.

3.3 SUPPLEMENTARY SOCIAL PROTECTION

Generally, provincial legislators have adopted laws concerning industrial accidents and occupational disease. It is a no fault regime. The treatment and compensation for industrial accidents and occupational diseases falls within the competence of specialized instances, as stipulated in laws such as the *Commission de la santé et de la Sécurité du travail* (Health and safety labour commission) and the *Commission des lésions professionnelles* (Commission on employment injuries). These laws include a variety of ways to compensate or to allow injured or sick workers to reintegrate the work market by allowing a right to rehabilitation. The system is based upon a financial insurance ladder created by employer contributions that are established according to parameters, which, in principle, consider risk according to the employer's sector of activity.

4. FOREIGNERS WORKING IN CANADA – TRANSFERS OF UNDERTAKINGS

4.1 FOREIGNERS WORKING IN CANADA

Employing foreign workers can be an essential part of the company's business strategy. In almost all cases, foreign workers must have a valid work permit to work in Canada. When hiring a foreign worker to work in Quebec, the employer must generally:

- Submit an HRSDC Foreign Worker Application for a labour market opinion to the Service Canada Centre;
- Submit to the Ministère Québécois de l'Immigration et Communautés culturelles a complete MICC application form;

- Once HRSDC (federal) and MICC (Quebec) have approved the job offer, the employer must send a copy of the joint HRSDC/MICC confirmation letter to the foreign worker;

- The foreign worker must apply to obtain a work permit from Citizenship and Immigration Canada (CIC), which decides whether the foreign worker will get a work permit according to the requirements that apply to workers and temporary residents in Canada.

Under the *Immigration and Refugee Protection Act (IROA),* in some instances, employers do not need an HRSDC confirmation to hire foreign workers, and the Foreign Worker does not need a Citizenship and Immigration Canada (CIC) work permit. The employer should also be aware that special hiring criteria apply for some industry sectors and occupations including: academics, seasonal agriculture, film and entertainment, information technology, live-in-caregivers; and pilot project for occupations requiring at most a high-school diploma or job-specific training.

New bilateral agreements, such as the one between France and Quebec, may also apply and new ones should be negotiated by the Canadian authorities in the years to come, to facilitate mobility of personnel in various predetermined fields and allow recognizance of qualifications and diplomas.

The case of each potential foreign employee and its employer must therefore be looked at carefully, to be able to determine the possible requirements and if any special program may facilitate the temporary transfer. Permanent residency in Canada is under totally different procedures of selection and admissibility. Evaluation as to a possible permanent transfer of a foreign candidate should also be examined right from the start.

4.2 TRANSFERS OF UNDERTAKINGS

The principle according to which employment contracts remain in force in case of the transfer of an undertaking is well established in all Canadian jurisdictions, including Quebec as well as for individual contracts and collective agreement.

The *Quebec Civil Code*, article 2097, stipulates: A contract of employment is not terminated by alienation of the enterprise or any change in its legal structure by way of amalgamation or otherwise. The contract is binding on the successor employer.

The Act respecting labour standards, article 97, stipulates that the alienation or concession in whole or in part of the undertaking, or the modification of its juridical structure, namely by amalgamation, division or otherwise, does not affect the continuity of the application of the labour standards.

In the collective work relations, the Quebec Labour Code specifies in article 45 that certification is not invalidated by the alienation or operation by another in whole or in part of an undertaking. The new employer is bound by the certification or the collective agreement as if he were named therein shall become *ipso facto* a party to any proceeding relating thereto, in the place and stead of the former employer.

The purpose of these articles is to prevent employees from losing their job every time a business is transferred or to lose their working conditions. However, those dispositions or

articles raise many problems in particular in the of field collective work relations. The *Commission des relations du travail* must intervene to regulate the problems raised by article 45.

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