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Newsletter

Labour and Employment Law

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Teachings of the Supreme Court of Canada in 2014: Think twice before closing shop!

and

R.I.P. Labour Standards Commission (1980-2015)?

Several noteworthy labour and employment law related cases were rendered in 2014. Indeed, the Supreme Court of Canada rendered a highly anticipated judgment relating to the closing of the Wal-Mart store in Jonquière. In addition, the Supreme Court of Canada clarified the obligations incumbent upon an employer with respect to the notice of termination given by an employee. That being said, the following provides an overview of three significant judgments that are likely to have an impact on how business owners in Quebec conduct business and how they manage their staff.

Bill-42, which was introduced on April 15, 2015, announced a major overhaul of certain labour law institutions. The following outlines the salient aspects proposed by the bill.

United Food and Commercial Workers, Local 503 v. *Wal-Mart Canada Corp.*, 2014 SCC 45

On June 27, 2014, the Supreme Court of Canada rendered a judgment in the case of the Wal-Mart store in Jonquière ("**Wal-Mart**"), and the accredited United Food and Commercial Workers Association, Local 503 (the "**Union**"). The highest court of the country ruled in favour of the Union, reversing the Court of Appeal's judgment and stated that the collective dismissal of 200 Wal-Mart employees constituted a unilateral change to their work conditions thereby contravening section 59 of the Labour Code.

Section 59 of the Labour Code states that from the filing of a petition for certification or the expiration of the collective agreement, and until the right to lock out or to strike is exercised or an arbitration award is handed down, no employer may change the conditions of employment of its employees without the written consent of each petitioning association. For the majority of the Supreme Court, there was no doubt that the concept of "condition of employment" must be interpreted liberally and that it includes the maintenance of the employment relationship.

However, the employer continues to enjoy his management right, even during the statutory freeze. An employer can therefore still resiliate an employment contract provided it does so for legitimate reasons, as long as the termination is consistent with the employer's normal management practices. Thus a change will be consistent with the employer's normal management policy if: (1) it is consistent with the employer's past management practices or, failing that, (2) it is consistent with the decision that a reasonable employer would have made in the same circumstances. In either case, the arbitrator must be satisfied that the circumstances, invoked by the employer to justify the change, exist and are genuine.

As such, this judgment confirms that an employer can no longer simply invoke a "business reason" if it desires to close its doors during the statutory employment condition freeze period provided for at section 59 of the Labour Code. Furthermore, in that event, the employer will have to provide explanations and be prepared to support its decision with elements of proof, if needed.

Quebec (Commission des normes du travail) v. *Asphalte Desjardins inc.*, 2014 SCC 51

In July 2014, the Supreme Court of Canada rendered a significant judgment with regard to notices of termination in the context of a contract of employment for an indeterminate term. In the case at hand, the employee gave his employer three weeks' notice of his intended resignation.

Having failed to convince the employee to remain with the company, the employer decided to terminate the employment contract immediately, without any other formalities, and without paying the employee any indemnity.

The Supreme Court of Canada concluded that the contract of employment was not automatically resiliated upon the employer's receipt of the employee's notice of termination. As such, the contractual relationship continues to exist and both parties must continue to perform their obligations under the contract until the notice period expires, which includes the obligation to give notice of termination as set out in article 2091 of the *Civil Code of Québec* (the "**C.C.Q.**").

Therefore, an employer who receives from an employee the notice of termination provided for in article 2091 *C.C.Q.* cannot terminate the contract of employment without in turn giving notice of termination or paying an indemnity in lieu of such notice.

Finally, this situation must be distinguished from that where an employee resigns effective immediately but nonetheless offers to keep working for a certain time. If the employer does indeed want the employee to leave immediately, there is "a meeting of minds" and notice of termination is unnecessary, given that a contract for an indeterminate term can be terminated by agreement of the parties. In such a case, because the termination of the employment does not flow from a unilateral act by the employer, the employer's obligation to pay an indemnity would not apply.

Allstate du Canada v. *Daunais*, 2014 QCCA 586

In this case, the Superior Court of Quebec had granted an indemnity equivalent to a notice of termination of 24 months, as well as moral damages to an employee who was dismissed without just cause. The employee in question was 51 years old, had worked for the employer for 32 years in a first-level management position and had an exemplary personnel file. The Court also took into consideration other factors, including the employee's efforts to mitigate her losses, as well as the availability of similar employment having regard to the experience, training and qualifications of the employee.

The Court of Appeal stated that a notice of termination of 24 months must only be awarded in exceptional cases, and held that the employer's offer of 18 months was reasonable under the circumstances. Furthermore, the Court of Appeal stated that the judge of first instance had erred by awarding moral damages to the employee and that they were not justified given that the employer had not terminated the contract of employment in an abusive manner.

Bill 42: C.N.T. 1980-2015

Bill-42 focuses mainly on the administrative reorganization of Labour agencies and courts, including the elimination of the *Commission des normes du travail*, which was established in 1980. Specifically, the bill provides for the consolidation of three organizations, namely the *Commission de l'équité salariale*, the *Commission des normes du travail* and the *Commission de la santé et de la sécurité du travail du Québec* (CSST) into a single body: the *Commission des droits, de la santé et de la sécurité du travail*. Moreover, Bill-42 also seeks to establish an Administrative Labour Tribunal, which would in effect consolidate the *Commission des lésions professionnelles* and the *Commission des relations du travail* into one single court.

Amongst the other noteworthy changes, Bill-42 provides that employers will see their contributions under the *Act respecting Labour Standards* diminish from 0.08% to 0.07% of eligible earnings. This contribution will also serve to finance the new Commission's pay equity activities which are currently being financed by the government.

Bill-42 also provides for certain particular changes. For example, a worker will now be able to intervene in an application to share in the costs of the benefits submitted by an employer pursuant to section 329 of the *Act respecting industrial accidents and occupational diseases*. This section provides that an employer may, when an employee has a pre-existing handicap, request that the Commission charge the costs associated with the accident to its consolidated fund rather than to the employer.

For the moment, Bill-42 has only been presented. As such, we will keep you informed of any further developments.

The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.

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