

IS THE RECOURSE PROCEDURE IN ARTICLE 124 OF AN ACT RESPECTING LABOUR STANDARDS IMPLICIT CONTENT IN A COLLECTIVE AGREEMENT?

By : *Me Patrick Choquette*, lawyer

In a recent decision, the Appeal Court of Québec was asked to decide on a matter of labour law jurisprudence that has been controversial for several years.

Article 124 of *An Act respecting Labour Standards* allows any employee who has worked for two (2) continuous years for the same company and who believes he has been fired without sufficient or just cause, to deposit a complaint to the Commission des normes du travail within 45 days of his dismissal. The complaint, if deemed valid, could order that the employee be reinstated with a compensatory grant.

The controversy was regarding the matter of employees covered by a collective agreement but with an uncertain status by virtue of probation and/or clauses of the collective agreement excluding the right to deposit a grievance in case of dismissal.

Some adjudication decisions allowed these unionized employees to deposit a grievance regarding the process of dismissal and to verify if the motives for dismissal were discriminatory or not, while other appeals by employees were simply referred to the Commission des normes du travail.

In the case of *Procureur général du Québec vs. Syndicat de la fonction publique du Québec* and *Pierre Laplante*¹, the Court answered the question in the negative, giving exclusive jurisdiction to the Commission des relations du travail.

¹ 500-09-017087-064, June 2, 2008

According to the Appeal Court “The reading of articles articles124 L.N.T. et 100 C.T.² does not support integrating article 124 L.N.T. into the collective agreement. The text of article 100 of the Labour Code states that all grievances must be subject to arbitration as specified by the collective agreement. However the rule that all grievances must be subject to arbitration is based on the premise that the question is not one that is under the exclusive jurisdiction of another duly empowered authority as in this specific case.”

In addition, the Appeal Court considered that Article 124 of An Act respecting Labour Standards does not fall under the collective agreement and consequently the exclusive representation of the union does not apply.

In brief, unionized employees with an uncertain status will no longer be represented by their union in matters regarding their dismissal, but by an attorney from the Commission des normes du travail.

EXTINCTION OF GUARANTEES

By: *Me Alexandre Lebeau*, lawyer

Over time, as people’s status and positions change, the context in which they may accept to guarantee an obligation can also change. Because of this, and to protect guarantees, legislators have provided certain specific clauses regarding the extinction of guarantees.

Primary among the above-mentioned extinction clauses is the death of the guarantor, which extinguishes the obligation in spite of any stipulation to the contrary. When the guarantor dies, the heirs remain responsible for debts assumed before the death but they are not responsible for debts incurred following the death.

² *Labour Code*

Another cause for extinguishing a guarantee which should be brought to the attention of business directors and administrators, is the termination of the specific functions of the guarantor. This may occur when the guarantor can demonstrate that his function was one of the reasons the creditor requested the guarantee. In this case the guarantor is not responsible for debts incurred after he changed jobs, but he remains liable for debts that were incurred prior to the change. To use this extinction clause, the guarantor is not obliged to send a notice to the creditor to advise him that his job has ended unless this is stipulated in the guarantee clause or contract. However we believe that it is in the best interest of guarantors to advise the creditor so that there is no ambiguity regarding the matter.

The law also specifies that a guarantor can terminate his obligation when a guarantee was granted to cover future undetermined debts or granted for an indeterminate period, and if the debt has not become due and payable¹. This right is granted to the guarantor after a period of three (3) years, even if there is no clause to this effect. The guarantor must give adequate and explicit advance notice the debtor, the creditor or to other guarantors. The notice of cancellation terminates the guarantee only from that time forward, so that the guarantee remains valid for preexisting debts.

However, because the above two (2) guarantee extinction clauses are not public and the parties may override compliance contractually, it would be to the advantage of the guarantor to carefully read the guarantee contract or clause that binds him, or to refer to his legal advisors before presuming that he is able to take advantage of either two means of extinguishing his guarantee.

¹ This rule does not apply in the case of a judicial obligation.

NEWS FROM OUR FIRM!

- Congratulations to **Me Etienne-Louis Morin** who was sworn in on September 8th.
- **Me Patrick Choquette** will lead the ACAIQ Disciplinary Committee's ongoing training workshops (Association des courtiers et agents immobiliers du Québec) during a conference on October 16th and 17th at Manoir Saint-Sauveur. He will give a speech on obligatory content of contracts to procure insurance-agreements, subsequent to the decision of the Supreme Court of Canada in the matter of *Proprio Direct*.
- The team of **Prévost Fortin D'Aoust** has been a proud partner of the Fondation Marc Chouinard since the beginning and we are pleased to note that the annual golf tournament held on September 4th at Club de Golf Le Portage de L'Assomption was a great success. Over \$25 000 was collected for people who have suffered head injuries. In 1986, Marc Chouinard was involved in a vehicle accident and was in a coma for five (5) years. He died from complications related to his condition. We want to thank everyone who contributed to the success of this event.
- On September 27th **Me Stéphane Sansfaçon** will be a conference leader at the annual FQM (Fédération Québécoise des Municipalités) congress in Quebec which brings together over 2000 elected representatives. **Me Sansfaçon** will speak about the most recent legal developments and legal decisions regarding municipal and environmental affairs.

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