Ratification of The International Convention on The Right to Organise and Bargain Collectively

June 28, 2017

On June 14, 2017, Canada ratified the *Right to Organise and Collective Bargaining Convention (No. 98)* (the "Convention"), which had been adopted by the International Labour Organization of the United Nations.

Accordingly, when the Honourable Patty Hajdu, Minister of Employment, Workforce Development and Labour, deposited the instrument of ratification, Canada officially became the 165th country to ratify the Convention since its adoption in 1949.

The Convention is one of the eight so-called "fundamental" conventions of the International Labour Organization. Until June 14, the Convention was the only "fundamental" convention that Canada had not yet ratified.

By ratifying the Convention, Canada has formally committed itself to provide Canadian workers with adequate protections against so-called "anti-union" tactics.

Moreover, Canada has undertaken to take measures appropriate to Canadian conditions to encourage and promote the development and the most widespread possible implementation of voluntary collective bargaining for determining working conditions.

It is important to understand that the ratification of the Convention will have little impact on present-day legislation and the current situation in Canada, since the rights to associate and bargain freely are already very clearly protected in Canada, under both the *Canadian Charter of Rights and Freedoms* and the human rights legislation of every province, as well as by certain provisions of the *Canada Labour Code* and the statutes of the different provinces dealing with labour relations.

Consequently, we do not foresee any major legislative changes resulting from Canada's ratification of the Convention.

That being said, it is relevant to recall the importance accorded by the Supreme Court of Canada to international instruments in the field of labour law in interpreting the fundamental rights of Canadian workers, as evidenced in recent years by the Supreme Court's decisions in *Health Service and Support — Facilities Subsector Bargaining*

Assn. v. British Columbia[1] and *Saskatchewan Federation of Labour v. Saskatchewan*[2]. The right to a genuine collective bargaining process and the right to strike were respectively declared to be included in the constitutionally protected right to freedom of association.

Under these circumstances, it is not unthinkable that the ratification of the Convention, which constitutes a new international instrument, will lead the Supreme Court of Canada to pursue its reasoning along those same lines. Doing so could potentially affect relations between governments and public servants, either as regards the adoption of special laws like the one recently enacted to force government lawyers and notaries back to work, or special laws that relate to the provision of essential services.

It will therefore be interesting to follow developments in the case law and as well as legislative developments that will result from the coming into force of the Convention on June 14, 2018, one year after its ratification.

Along the same lines, the recent adoption by the Senate of Bill C-4 is noteworthy. The Bill, adopted by the Liberals and amending the *Canada Labour Code*, the *Parliamentary Employment and Staff Relations Act*, the *Public Service Labour Relations Act* and the *Income Tax Act*, strikes down the new rules that had been imposed on trade unions by the previous government. On the one hand, the Bill abolishes the obligation for labour unions to provide the Minister of National Revenue annually with certain financial information for public disclosure, particularly information concerning any transaction over $5,000. On the other hand, the Bill restores union certification and decertification procedures as they existed prior to June 16, 2015, such that mandatory secret ballot voting will no longer be required. The card-check system of union certification in the federal jurisdiction would thus be restored by Bill C-4.

Bill C-4 received Royal Assent on June 19, 2017 and came into force on June 22, 2017.

[1] 2007 SCC 27.

[2] 2015 SCC 4.

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