Bill 162 Charbonneau Commission Recommendations

April 24, 2018

The Province of Québec has long had a licensing regime to qualify its construction contractors. The *Building Act*[1] and its regulations set out the licensing requirements pursuant to which a contractor or a subcontractor looking to legally carry out construction work in the province must have a licence to do so.

In addition to validating the qualifications of the contractors operating in Québec, the regime looked to ferret out and prohibit unlicensed construction work. It was one of many measures implemented to counter the growth of illegal construction activity outside of the province's statutory and regulatory framework. One such measure was to preclude a corporation in violation of various tax and criminal code provisions from qualifying to bid on the province's public projects.

Following an extensive investigation into corruption in the construction industry, the Charbonneau Commission released its report in November 2015, which included a number of recommendations to increase oversight of the industry and alleviate corrupt activity in the future.

The provincial government recently tabled Bill 162 titled "*An Act to amend the Building Act and other legislative provisions mainly to give effect to certain Charbonneau Commission recommendations"* which, among a number of other changes, amends the licensing regime in order to reflect and implement a number of the Charbonneau Commission's recommendations. The measures look to reinforce the Régie du Bâtiment du Québec's ("RBQ") ability to assess and oversee a contractor and/or its principals' integrity.

The licensing regime requires that a corporation seeking a licence must be sought by an individual who acts as its "guarantor" for licensing purposes. A corporation can have a number of different guarantors who qualify the licensee in specific spheres of activity: technical, administrative, health and safety and project and site management.

The guarantor must be an "officer" of the corporation (which is now defined as a director), an officer, as defined in the provincial corporate statutes, or a shareholder holding 10 per cent or more of the voting rights of the corporation's shares.

The amendments also clarify the guarantor's statutory responsibilities, which include who must be responsible for managing the activities for which he/she has qualified the licensee. The guarantor is now responsible for the corporation's interactions and ensuring that the corporation complies with its obligations vis-à-vis the RBQ. A failure by the guarantor to comply with his/her obligations under the Act or making a false declaration may now result in the suspension or cancellation of the licence. These measures look to curtail those situations where corporations appointed guarantors strictly for licensing purposes, but who, in fact, played no role in the management of the corporation's construction activities.

Setting a 10 per cent voting share ownership threshold now places said shareholder within the RBQ's scrutiny when assessing whether a corporation and its officers meet the integrity test set out in the legislation.

The RBQ's authority to assess a potential licensee's probity and its discretion to either refuse to issue or cancel an existing licence have grown. The RBQ can refuse to deliver a licence where it considers that the construction work for which the licence is sought is incommensurate with the operation's sources of financing or that its corporate structure enables the potential licensee or any another person to evade the application of the *Building Act*. Moreover, the RBQ can refuse to deliver a licence where a person or an officer of the corporation has, in a previous licence application, falsely, misrepresented or failed to report a fact in order to obtain a licence. It can also refuse the licence where it considers that applicant is the continuation of another person that would not have otherwise qualified for a licence.

The amendments also provide that regulations will be enacted which will require all licensed contractors to provide both performance and labour and material payment bonds to ensure that construction work and payments will continue in the event that a licence is either cancelled or suspended.

The Charbonneau Commission had recommended enhanced "whistle-blower" protection in order to eradicate the culture of silence that has enabled the systemic corruption the inquiry uncovered. To that end, Bill 162 will add a new division to the *Building Act* named "*Immunity and protection against reprisals.*" Any person who notifies or advises the RBQ of actions or omissions which may constitute a violation of the licensing scheme is shielded from civil liability for having done so and is protected from any threats of and actual reprisals, including any made in the course of that person's employment.

While these measures have yet to be implemented, they will likely be welcomed as there has been some concern in Québec about the government's willingness to follow through with the Charbonneau Commission's recommendations. With Bill 162, the Québec government confirms its intention of staying the course established by the Charbonneau Commission.

[1] RSQ , c. B-1.1.

Expertise

Infrastructure

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.