REPORT ON BILL N°53: AN ACT TO UPDATE THE ACT RESPECTING COLLECTIVE AGREEMENT DECREES MAINLY TO FACILITATE ITS APPLICATION AND ENHANCE THE TRANSPARENCY AND ACCOUNTABILITY OF PARITY COMMITTEES.

Presented to

Committee on Labour and the Economy
Édifices Pamphile-Le May
1035, rue des Parlementaires, 3e étage, bureau 3.15
Québec (Québec) G1A 1A3

MONTRÉAL, OCTOBER 18th, 2016

Contents

Summary

In this report, RADIEM (*Regroupement pour l'abolition des décrets de l'industrie de l'entretien ménager* - Coalition for the Abolition of Decrees in the Public building cleaning Industry) raises several questions regarding the provisions of Bill n°53: An Act to update the Act respecting collective agreement decrees mainly to facilitate its application and enhance the transparency and accountability of parity committees.

On the one hand, are transparency and accountability of parity committees adequately guaranteed by the proposed amendments to the Act respecting collective agreement decrees (ARCAD)? On the other hand, would amending the ARCAD have required a further analysis of the rules of governance and impartiality that should govern the conduct of parity committees, which are quasi-governmental institutions?

With its studies and analyses, RADIEM concluded that the efficiency of the mechanisms proposed to increase the transparency and accountability within parity committees should be enhanced. For instance, by adopting a code of ethics for the parity committee, and by ensuring a mandatory rotation of the board members.

What is more, the interference of parity committee in the context of call for tenders raises concerns regarding the legality of this interference on the equitability of the process as well as on the compatibility of the committees with the provisions of the Federal Competition Act.

Moreover, RADIEM wants to share with the Committee on Labour and the Economy its serious concerns for the issuance process of criminal offences. During this exercise, RADIEM give its detailed reasoning on the subject and reaches the conclusion that the authority to prosecute provided by the ARCAD should be entrusted without delay to the *Directeur des poursuites criminelles et pénales* (DPCP) or to the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST).

Finally, for RADIEM, decrees do not meet neither the challenges of the new economy nor the organisational methods alternative to the employee-based workforce that recently appeared in the Quebecois labour law system.

To conclude, RADIEM makes detailed and supported recommendations analysing the impacts of the ARCAD within the building cleaning industry. RADIEM is fully aware that the adoption of all these recommendations will result, for parity committees, in losing powers and re-examining their real usefulness in the industry.

I. Introducing RADIEM

RADIEM (*Regroupement pour l'abolition des décrets de l'industrie de l'entretien ménager* - Coalition for the Abolition of Decrees in the Public building cleaning Industry) is a not-for-profit corporation incorporated in 2015, with headquarters in Montreal and whose directors, officers and members are employers from the building service industry.

RADIEM recruits its members through the signature of a letter of support. To this day, within less than a year of existence, 125 companies joined force with RADIEM. Even if the Parity Committee for the building services of the Montreal region (CPEEPM) points out in its report the "presence of a minority lobby group in the industry which is fighting for the outright abolition of the decree[1]", we want to indicate that RADIEM brings together the positive support of more companies than the number of them having served in the Parity Committee from the beginning of its existence.

Several entrepreneurs of the industry have also expressed an interest in joining RADIEM, but they chose not to do so officially because they fear retaliation from parity committees. We believe that this situation alone reinforces the urgent need to take actions.

RADIEM aims to:

- clean up the work climate;
- denounce the administrative burden;
- ensure **fairness** and **equal** treatment for all stakeholders in the industry;
- restore a healthy climate of competition;
- allow the building service industry to meet the challenges of the current economy and the new legal framework;
- encourage future entrepreneurs in the building service industry without arbitrary and excessive limitations.

Among others, RADIEM considers that the decree system, especially in the building service industry, is obsolete and inefficient, and that there are more efficient laws in Quebec to protect the employees' rights and interests. **More, there is no equivalent system in Canada and in North America**.

[1] *Mémoire du Comité paritaire de l'entretien d'édifices publics – Région de Montréal* (Report of the Parity Committee for the building services of the Montreal region). Presented as part of the special consultations and public hearings on Bill n°53, October 6th, 2016, p. 5

II. Why Bill n°53?

As shown in its title, Bill n°53 introduces adjustments to enhance the transparency and accountability in the decree system. But RADIEM believes that the suggested amendments in this bill look more "cosmetic" that remedies, and fail to address what is at stake.

On the one hand, as discussed further below, the suggested procedures to enhance the transparency and accountability appear to be entirely insufficient. On the other hand, the new measures never deal with accountability within parity committees.

Finally, the reform of the Act respecting Collective agreement decrees (ARCAD) (CQLR, c. D-2) do not address any of the key issues that are the current work organisation and the new economy: franchising, subcontracting, workforce employment agencies, self-employment. Since we are to review the decree system and its applications, we believe it would have been good to expand the debate to the economic and social context in which the system is implemented.

The cleaning industry is composed of much of small and medium-sized enterprises[2] facing an excessive administrative and regulatory burden due to the decree system, which hampers entrepreneurship. What is more, even the structure of the system is obsolete as it opens the door to the industry being controlled by a small group of players who monitor the decrees administration. Thus, the ambiguity of the role of the parity committees' directors raises ethical concerns, and they have lead to abuses that we need to avoid perpetuating, as discussed below.

Self regulation of the cleaning industry has reached its limits and is not a viable option in 2016. Since the adoption of the ARCAD, more than 80 years ago, Quebec and Canada have enacted several laws to ensure the effective protection of workers.

- Quebec
    - Act respecting occupational health and safety (CQLR, c. S-2.1)
    - Act respecting industrial accidents and occupational diseases (CQLR, c. A-3.001)
    - Pay Equity Act (CQLR, c. E-12.001)
    - Act respecting labour standards (CQLR, c. N-1.1)
    - Act to promote workforce skills development and recognition (CQLR, c. D-8.3)
    - Act respecting parental insurance (CQLR, c. A-29.011)
    - Act respecting the Québec Pension Plan (CQLR, c. R-9)
    - Voluntary Retirement Savings Plans Act (CQLR, c. R-17.0.1)

[2] 90% of the companies subject to the Parity Committee for the building services have fewer than 20 employees. See the presentation of Christiane Bigras on behalf of the CPEEPM during the special consultations and public hearings on Bill n°53, on October 6th, 2016.

- Canada
    - Employment Insurance Act (S.C. 1996, c. 23)
    - Canada Labour Code (R.S.C., 1985, c. L-2)
    - Canadian Human Rights Act (R.S.C., 1985, c. H-6)
    - Wage Earner Protection Program Act (S.C. 2005, c. 47, s. 1)
    - Employment Equity Act (S.C. 1995, c. 44)

Why then put weight on the framework of an industry in which 90% of the companies have fewer than 20 employees?

A. Genesis of Bill n°53

As presented in other reports, the adoption of the Collective Agreements Extension Act (1934, c. 56), ARCAD's ancestor, occurred during shaky economic conditions when legislative provisions protecting workers were practically nonexistent. The system was then focused on parties and left out government interventionism.[3]

Since its adoption in 1934, the ARCAD did not face any major reform, except in 1996 when Quebec was dealing with globalisation and the involved trade liberalisation. In 1992, the Interministerial Committee on collective agreement decrees, responsible for evaluating the relevance of repealing the decree system, recommended to maintain the system, adapting the provisions to the socio-economic context. That report led to the adoption in 1996 of the Act to update the Act respecting collective agreement decrees (CQLR, 1996, c. 71). Among the 29 decrees in force in 1996,[4] only 16 remain at present.

On January 31st, 2012, the minister of Labour launched a consultation to provide food for thought for an update of the ARCAD.[5] Unfortunately, no company of the cleaning industry was consulted, so that it was impossible for the government to have an overall image of how the industry's stakeholders perceive parity committees and applicable decrees.

In particular, the issues identified during the consultation related on the representativeness of the associations negotiating work conditions leading to the decree, the degree of representation of third parties, the type of control exercised by parity committee, the deadlines for processing requests to modify decrees, and the maintenance of the required qualification

[3] BERNIER, Jean and LÉA FONTAINE, Laurence. « L'extension juridique des conventions collectives au Québec : Bilan et conditions d'une relance », Cahiers de l'Alliance de recherche universités-communautés (ARUC), Université Laval, April 2012, p. 10. Available in French.

[4] Ministère du Travail, Direction des politiques du travail, *Rapport sur la consultation relative à la Loi sur les décrets de convention collective*, June 2014, p. 3. Available in French.

[5] For reasons that are unclear to us, the names of 24 out of 39 participants have been blacked out in the list of the groups met by the *Ministère du Travail, de l'Emploi et de la Solidarité Sociale*.

system under the responsibility of parity committees.[6] The question of repealing decrees or certain decrees has not been addressed sufficiently.

[6] 25 reports were submitted as part of this approach that was spread out on 24 consultation periods during which 39 groups have been consulted.

III. Bill n°53: The Minister and the achievement of objectives

A. Reproaches addressed to cleaning service parity committees

RADIEM considers necessary to express its critics towards the Parity Committee for the building services of the Montreal region as well as of Quebec, analyzing them from the points exposed in Bill n°53.

1. Breach of the basic rules of transparency and accountability

Parity committees' sources of revenue are 1) mandatory charges of parties (1% of payroll), 2) penalties of 20% imposed upon salaries claims, and 3) fines collected.[7] This financing mechanism justifies an increased transparency from parity committees, not only on their management, but also on the allocations of sums constituting their budget. Article 23 of the ARCAD requires parity committees to prepare different official documents to submit to the Minister, among them audited financial statements and a status report of each administered fund. Yet, both parity committees of Montreal and Quebec regions objected to this information being transmitted by the Ministry to the industry stakeholders who so requested. Actions are currently pending before the *Commission de l'accès à l'information* (Commission on Access to Information).[8]

In this era of transparency where accountability is unavoidable, RADIEM finds it hard to explain why two parity committees fight stubbornly to escape their responsibilities under applicable laws.[9] Especially when we know that significant sums are held by committees which, in addition to managing their funding, conclude financial arrangements with companies. What is more, for the Montreal Parity Committee, the administration of the group retirement savings plan involves significant sums of money being handled.

---

[7] As provided in the ARCAD, respectively Articles 22) i) (regulations approved under this provision), 22) c) and 52 paragraph 2 that provides that the fine imposed for such an offence belongs to the committee, when it has taken charge of the proceedings.

[8] The *Ministère du Travail, de l'Emploi et de la solidarité sociale* has received a request for access to the information by one of RADIEM's members aiming to obtain all the different documents listed in Article 23 of the ARCAD. The person responsible for access to information consulted both public building cleaning parity committees, they both addressed comments to the Minister, supporting their refusal to communicate information. On September 13th, 2016, the departmental officer responsible for access to documents and protection of personal information issued a decision ruling that the referred documents were not confidential nor they would lead to the effect provided for by Article 24 of the Access Act. CPEEPM and CPEEPQ attorneys decided to seek review of that decision.

[9] It should be noted that an increased duty of transparency could have prevented an underlying fraud implying a parity committee and one of its employees, as it appears from the facts in the decision delivered *Comité paritaire de l'industrie des services automobiles de la région de Montréal (CPA Montréal)* c. *Société d'assurances générales Northbridge (Lombard General Insurance Company of Canada)*, 2015 QCCA 2039 (CanLII).

The drafters of Bill n°53 did not follow the recommendation of the 2012 report per which the agendas and minutes of parity committees' meetings should be made public as the information required by Article 22.3 if adopted, except for Section 8 of this Article.

RADIEM considers Section 8 should be extended to cover agendas of the next meetings, and to compel the disclosure of minutes. More generally, parity committees should expressly fall under the Act respecting Access to documents held by public bodies and the Protection of personal information (CQLR, c. A-2.1).

Concerning pension plans administered by parity committees or by a trustee they designate, Bill n°53 seems to remain mute about the positive duty of parity committees to disclose. We believe that Article 22.3 should be amended and a section added to oblige parity committees to report the pension plan management and its results, at least on its website.

More generally, transitional provisions of Bill n°53 should provide for an obligation for committees to fulfil the requirements of Articles 18 and 22.3 within 30 days of the Act entering into force, otherwise each committee member could be sanctioned under Article 32. The purpose of this provision would be to encourage parity committee to comply with articles requiring them specific regulations not yet adopted or disclosed.

RECOMMENDATIONS

1. Accounting of parity committees reflected in public accessibility to annual reports and statistics of their activities, as well as to the agendas and minutes of their meetings.

2. Increase the number of elements for which the parity committees must be accountable.

3. Specify the obligation for parity committees to meet certain requirements under the ARCAD.

2. Breach of the representativeness and accountability rules

The basic rule and preliminary condition to any accountability question is that the person concerned, as well as any third party, should have at all times an accurate picture of the members composing a parity committee which, in addition, can exercise authority of a prosecutor under the ARCAD.[10]

Parity committees themselves are responsible for preparing the regulations for their creation, the number of members, their admission and replacement, the alternating members, and the fund administration, subject to approval by the government.[11] Regulations on the creation of cleaning building service committees are not published on their websites nor are they easily

[10] Article 52 provides that the committee may, in accordance with Article 10 of the Code of Penal Procedure (CQLR, c. C-25.1), institute penal proceedings for an offence under a provision of this Act. The fine imposed for such an offence belongs to the committee, when it has taken charge of the proceedings.
[11] Articles 18 and 19 of the ARCAD.

accessible to concerned parties. Moreover, regulations relating to the appointment of CPEEPM's directors have not changed since 1976.[12]

At the *Registraire des entreprises* level, the available information for the CPEEPM allows us to notice a certain inertia concerning the board members. For the CPEEPQ, information is not available as there is only one director registered. Finally, both committees do not meet the requirement of the Act respecting the legal publicity of enterprises (CQLR, c. P-44.1).[13]

As of today, the CPEEPM and the CPEEPQ are dead last in terms of representativeness and accountability, even after more than 50 years of existence and operation, as shown by data on the composition of the boards presented in the annex.

Article 15 of Bill n°53 allows the minister to name an observer within a parity committee, and Article 20 allow him or her to review the committee regulations regarding its members' appointment. RADIEM welcomes these measures, but suggests a rotation of the directors to be introduced to vary the composition of the members[14] with the purpose of:

- Ensuring a renewed management of the parity committee;
- Avoiding to perpetuate the errors made by some members whose work is not checked;
- Ensuring gradually that each industry stakeholder can be represented within his or her parity committee.

RADIEM raises the derisory nature of the penalty provided for in Article 32 of the ARCAD, as well as the amendment provided for in Article 28 of Bill n°53. It is at least absurd that the only penalty provided for in the ARCAD in respect for a committee member who does not fulfill his or her duties is only $25, and that this meagre penalty remains the lowest of the act even if it is amended, i.e. $100 to $300.

This penalty certainly does not meet the deterrent criteria that a criminal provision should normally target. Regarding its importance, it should be substantially increased in order to be in line with those applied to the concerned parties at fault.

The provision of the article should also provide to whom will be paid the amounts if a fine is imposed. Moreover, the way the complaint will be dealt with should allow any concerned party to intervene directly, for there is good reason to bet that parity committees will not decide to bring criminal action against one of their members.

[12] According to the information received from the Ministry of Labour after an access to information request dated October 14th, 2016.

[13] In particular, regarding the obligations relating to updating.

[14] For instance, a company could not be part of the board more than two consecutive years and could not ensure a second mandate during a period of 20 years.

As such, and for the purpose of establishing a real accountability, RADIEM is more of the opinion to make the parity committees' members personally liable, on the civil side, in the event of a serious fault or gross negligence in their management.

RECOMMENDATIONS

4. Enforce a rotation of parity committees' directors.

5. Subject parity committees to the Act respecting the legal publicity of enterprises (CQLR, c. P-44.1).

6. Subject parity committees to the Act respecting Access to documents held by public bodies and the Protection of personal information (CQLR, c. A-2.1).

7. Increase penalties regarding the parity committees so they meet their deterrent purpose.

8. Provide for a personal liability regarding parity committees' members who commit a serious fault or a gross negligence.

3. Interference in the tendering process: unfair competition

The CPEEPM intervened in the tendering process of some companies, informing work providers they had to require from tenderers a certificate of conformity, which was granted arbitrarily by the CPEEPM to tenderers. The CPEEPM refused to grant a certificate of conformity to employers who had been found guilty of breaching the ARCAD or the building cleaning services decrees.

Therefore, when issuing even one ticket, the CPEEPM could disqualify a tenderer in order to promote one of the tenderer whose company is represented within the CPEEPM. As RADIEM still does not have access to the data indicating the number of disadvantaged tenderers, we are not yet able to assess precisely the extent of damages caused by this practice which has been declared ultra vires for the CPEEPM by the Superior Court on April 3rd, 2014, later confirmed by the Court of Appeal on November 10th, 2015.[15]

For example, a company was disqualified from entering into a cleaning contract for SAQ branches, whereas its tender was significantly lower than that of the winning tenderer. The illegal interference of the CPEEPM led to an increased financial hardship for the Quebec government, but also for all taxpayers. Not to mention that the winning tenderer was sitting in both CPEEPM and CPEEPQ… and authorised the issuance of a statement of offence against the disqualified company. In this respect, the functioning of parity committees is a fertile ground for collusion.

[15] *PR Entetien d'édifices Inc. c. Comité paritaire de l'entretien d'édifices* publics, Montreal region, 2014 QCCS 1360 (CanLII), upheld on appeal 2015 QCCA 1861 (CanLII).

The CPEEPQ implemented a letter of conformity program, which we think it is unclear due to secret attribution rules. In this way, the CPEEPQ decided quite arbitrarily those who was given a contract or not.

According to the information we currently hold, it appears that building cleaning parity committees continue to give instructions to work providers so they need a registration certificate from tenderers and a release and consent form to communicate data. With a partial application of Article 16 of the ARCAD, this approach leads indirectly to the results obtained with the conformity certificates system, all in violation of decisions passed on the illegality of conformity certificates.

RADIEM believes that this requirement should go hand in hand with article 27 of Bill n°53. A violation by a parity committee of its own code of ethics, adopted in a similar manner as its regulations under Article 18 of the ARCAD, would make an action admissible under Article 31.1 to be adopted.

RECOMMENDATIONS

9. Frame the influence of parity committees to work providers in order to protect the fairness of the tendering process.

10. Develop and adopt a code of ethics for parity committees.

4. Allocation of employers' numbers: a tool to restrict competition

The CPEEPM and CPEEPQ are also unclear regarding the allocation of the professional employer status for companies subject to the decree. They proceed arbitrarily and without disclosing their evaluation criteria. Finally, the status of a subcontractor can vary from time to time and become an employee status, without any significant change.

Building cleaning parity committees claim that the subcontractor status or the employee status can change on a few occasions within the same year, according to their own interpretation – purely arbitrary – of the definition of employees and subcontractors.

In order to standardize the file processing in all committees and to avoid any potential conflict of interest, it would be better if the question of the subcontractor status was given to an independent and impartial body, such as the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST).

RECOMMENDATION

11. Entrust an independent and impartial body with the question of the subcontractor status, such as the Commission des normes, de l'équité, de la santé et de la sécurité du travail *(CNESST).*

5. Biased exercise of the authority to prosecute from parity committees

As mentioned above, Article 52 of the ARCAD provides for the possibility for a parity committee to act as a prosecutor in accordance with Article 10 of the Code of Penal Procedure, and to collect the resulting amounts.

But on the face of it, the issuance process of statement of offence voted during committee board meetings appears as a breach of natural justice. As presented, the method of appointing and the obscure nature of the boards where resolutions are passed ensure that it is possible to detect conflicts of interest and suspect favouritism. What is more, because parity committees' budgets are partly based on collected fines, this twists the reasons underlying the prosecutor's exercise.

To avoid the situations of abuse mentioned above, RADIEM believes this authority should be removed from the ARCAD and entrust to the DPCP or CNESST.

The committee acts then as un inspector, as it is the case in applying the Charter of the French language (CQLR, c. C-11) or the Act respecting hours and days of admission to commercial establishments. After investigating, it would submit its file to the DPCP or the CNESST to institute an action, subject to the provision of sufficient evidence and the preponderant demonstration of the offence having been committed by the prosecuted or whom who should have been.

This approach would allow an independent and experimented prosecutor in assessing the files and would avoid the parity committee being both judge and party.

RECOMMENDATION

12. Entrust the DPCP or CNESST with the authority to prosecute as provided for under the ARCAD.

6. Disproportion of the power balance between parity committees and concerned parties who are not members of the board

Even if RADIEM recognises that judicial remedies are in principle possible in some cases to challenge parity committees' decisions, the reality catches quickly the theory. Indeed, fees and charges implied by such remedies are too expensive for SMEs or small entrepreneurs who have also to fight an endless battle against the committees being financed through their revenues.

The power balance is so limitless that any affordable and quick judiciary solution seems illusory for most concerned parties. Need we point out that 90% of the companies subject to the public building cleaning decree of the Montreal region have 20 or fewer employees?

In the public building cleaning industry, this situation is particularly disturbing since RADIEM has been served with two formal notices from the CPEEPM and the CPEEPQ, requesting to stop its advocacy activities for its cause. Not only this intervention goes beyond the mandate of parity committees strictly speaking, but it is also an example of a disembodied application of the powers conferred by the ARCAD.

What is more, this approach looks like a strategic lawsuit against public participation (SLAPP), a practice strongly condemned by Quebec's Department of Justice in 2009, when adopting Article 54.1 of the old Code of Civil Procedure[16] (now Article 51 of the CCP), which aims to prevent that type of legal intimidation.

RADIEM believes this is just the tip of the iceberg and then understands the conduct of the supporters who want to remain anonymous regarding their abolitionist approach. Hence the Minister should investigate on both public building cleaning parity committees as soon as possible.

At the end of this process, a trusteeship might be the most appropriate measure to protect the rights of thousands of individuals and hundreds of companies.

[16] See the Act to amend the Code of Civil Procedure to prevent improper use of the courts and promote freedom of expression and citizen participation in public debate (CQLR 2009, c. 12).

RECOMMENDATION

13. The Minister should initiate without delay an investigation process on both public building cleaning industry parity committees.

B. Other recommendations relating to Bill n°53

1. Ministerial intervention

The legislator may have noticed that the concerns raised regarding the governance and administration of parity committees could justify the Minister's intervention. RADIEM recognizes the Minister's initiative to be more proactive when intervening towards parity committees, especially by adopting Articles 6.0.1, 6.3, 6.4, 15, 16, 17, 18, 19, 20, 22.3 (3) and (9) giving the Minister a more direct power.

However, it would appear necessary to precise, for instance about Article 20, the conditions that could justify the Minister's intervention regarding parity committee regulations, as well as the procedures to be followed by the interested party, if so.

RECOMMENDATION

14. Precise the conditions that justify the Minister's intervention.

RADIEM also believes that Bill n°53 avoids dealing with the real economic issues and those related to working methods organisation.

2. Use of employment agencies

Social protection evolution and the creation of medium and long term paid vacation with the implementation of the Quebec parental insurance plan have moved the world of work. Employers had to face a new issue: replace several employees for periods up to a few weeks, without being able to break the employment relationship. Difficulties in recruiting can be resolved by using workforce employment agencies.

The growing use of the services provided by those agencies is important in the current structure of the world of work. Besides, the government itself uses them a lot, especially in the healthcare system. Bill n°53 should consider this reality of the labour market to govern the triangular relationship between the employee, the employer and the employment agency, to avoid any confusions regarding the exercise of remedies by an employee whose rights have been violated.

For this purpose, a framework should be provided regarding the use of employment agencies. This recommendation may be illustrated by the creation of a provision similar to Article 5 of the Act respecting industrial accidents and occupational diseases (CQLR, c. A-3.001).

RECOMMENDATION

15. Insert one or more provisions governing the use of employment agencies.

3. Salaried employees and other forms of work organisation

The use of subcontractors, franchises and self-employed workers are well established in the 21st century. However, are salaried employees the best form of work organisation for all parties? Without considering the studies on the subject, RADIEM believes that, for the public building cleaning industry, this model removes flexibility to stakeholders.

The decree system should get with the current world of work and adapt to changing economic trends, to encourage entrepreneurs. How can we expect to witness the growth of companies which could – who knows? – have an impact on the Canadian stage, and even on the world stage, if the entrepreneurial spirit is stifled by the legislation? On the contrary, economic development in Quebec is largely related to SMEs, and the province should increase without delay the emergence of new companies which can create more wealth to share.

According to RADIEM, the right to pursue a livelihood should not be limited by a decree system.

Thereupon, the straitjacket of salaried employees can be advantageous for large industry players who wish to increase the number of employees while closing off potential competing companies. However, this approach is not consistent with today's reality of the free market.

RECOMMENDATION

16. The decree system in the public building cleaning industry should be reviewed, especially regarding its economic efficiency and its capacity to serve the interests of all stakeholders.

4. New economy

At the national level, the current Canadian economy concentrates various institutions from one province to another. For some companies, this concentration is reflected in the introduction of standard contracts with providers. In this respect, the decree system limits the competitiveness of Quebec companies at the Canadian level.

More generally, the interference of parity committees in determining the contractor status and the ability for a stakeholder to conduct business limits the free market access.

That is exactly why RADIEM would like to reiterate the need of:

- Regulating the influence of parity committees on work providers to protect the fairness of the tendering process (recommendation 9);
- Developing and adopting a code of ethics for parity committees (recommendation 10).

5. Compatibility of the ARCAD with the Competition Act

At the time of its adoption in 1934, one of the ARCAD's purpose was to prevent an unfair competition between companies to the detriment of the working conditions of the employees. The compatibility of its provisions with the Competition Act (R.S.C., 1985, c. C-34), as adopted by the federal government in 1985, has never been dealt with during the various revisions of the ARCAD until today.

In this regard, RADIEM argues the purposes mentioned in Article 1.1 of the Competition Act are:

- To maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy;
- To expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada;
- **To ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy;**
- To provide consumers with competitive prices and product choices.

However, we are entitled to ask if the questionable actions of parity committees do not constitute a barrier to the "equitable opportunity of small and medium-sized enterprises to participate in the Canadian economy"?

RECOMMENDATION

17. Carefully examine the legality of ARCAD provisions and regulations implemented by the parity committees to ensure their compatibility with the Competition Act.

6. Simplifying the current structures

The CNESST was created on January 1st, 2016, following the grouping of the *Commission des normes du travail* (CNT), the *Commission de l'équité salariale* (CES) and the *Commission de la santé et de la sécurité du travail* (CSST).

The CNESST aims to be a unique way to ensure access to services relating to work in Quebec. The founding law of this body, here the Act to group the *Commission de l'équité salariale*, the *Commission des normes du travail* and the Commiss*ion de la santé et de la sécurité du travail* and to establish the Administrative Labour Tribunal, provides for only one tribunal to adjudicate disputes that were previously brought before the CNT or the *Commission des lésions professionnelles* (CLP).

The aim of this major restructuration was to save money and to reduce the number of gateways to deal with disputes relating to labour relationships.[17] In this context, RADIEM believes that the government should consider the possibility to group the matters covered by the decree under the authority of the CNESST.

For this purpose, RADIEM agrees with Professor Jean Bernier according to whom parity committees should not undertake a power of surveillance and monitoring, which should be transferred to the CNESST - Labour Standards Division, for three (3) main reasons.[18]

Those reasons are the following:

1) As a matter of principle: it is up to the state authority, through an appropriate body, independent of the parties, to ensure the compliance with the decree, which regulates working conditions;
2) Feared conflicts of interest: due to their creation, parity committees' boards were found to rise conflicts of interest, real or feared, which resulted in trusteeships;
3) With a view to standardization: to ensure uniform procedures of control and surveillance, from a committee to another.

The second paragraph of Article 16 of the ARCAD specifically provides for this possibility. **From our perspective, this measure could justify the abolition of parity committees.**

RECOMMENDATION

18. The CNESST should be charged with the monitoring and control of the decrees.

[17] Portail Québec, Services Québec, Adoption du projet de loi n° 42 - Une porte d'entrée unique aux services en matière de travail au Québec et un seul tribunal pour trancher les litiges [http://www.fil-information.gouv.qc.ca/Pages/Article.aspx?idArticle=2306116603]. Available in French.
[18] J. Bernier, *loc. cit.*, pp. 26 and 27.

IV. Report of the Parity Committee for the building services of the Montreal region

RADIEM is forced to respond to the report presented by the CPEEPM on October 6th and to reproduce some of the assertions.

A. The law allows, but does not require the creation of parity committees in an industry.

1. RADIEM agrees with this analysis, but contests the representativeness of parties sharing the determination to be subject to a decree.
2. Moreover, if parties want to be subject to a decree, RADIEM believes parity committees should not be their administrators.

B. A parity committee administrating a pension plan also allows to reduce administrative costs for employers.

1. Employers should have the choice to offer or not a supplemental pension plan to their employees, and those should have the choice to contribute or not to such plan, subject to the obligations related to the Voluntary Retirement Savings Plans Act (CQLR, c. R-17.0.1).
2. Employers or employee's associations could agree on designating a trustee to their personalized pension plan and ensuring themselves the management and conditions.
3. Management fees and administrative costs of this plan for the CPEEPM are not made public; this opacity raises a doubt on the alleged cost reduction.

C. The requirement of an operation license.

1. This recommendation exceeds the mandate of the committee and, above all, violates directly the Superior Court and Court of Appeal decisions regarding the certificate of conformity.
2. It represents a risk when parity committees use their arbitrary power to restrict the access to the industry to thousands of companies, hampering entrepreneurship.
3. It represents an unwarranted administrative burden for artisans, small employers or SMEs without the means to judicially contest the arbitrary decisions of the CPEEPM.
4. This practice could lead to discrimination by employers.

D. Several companies would benefit from ambiguities and legal loopholes to denature the notion of self-employment in order to avoid the decree.

1. The committee should not have the authority to be judge in such a situation without being subject to an obligation to make publicly available its criteria of evaluation.

2. The status of artisan has evolved during the past decades, which has led some to believe artisans should not be subject to decrees.[19]
3. In today's world of work, the position of the committee refuses to acknowledge the existence of forms of work alternative to salaried employees, such as subcontracting or franchising, even though those mechanisms are legal and allow to effectively serve the market.
4. Public building cleaning stakeholders should enjoy freedom regarding their status. It is difficult to conceive that parity committees have the legal authority to hamper such a freedom.

E. Defining "entrepreneur" and "employee".

1. The proposed definition of "employee" generalizes this status to any person, including artisans, who works in the cleaning industry.
2. The proposed definitions denature the reality of the entrepreneur and the employee.
3. They call for a full-scale application of the decree and deny the freedom of choice of the entrepreneurs and artisans regarding the conditions of their service provision.
4. Contrary to the CPEEPM's claims, those amendments will lead to multiply the judicial remedies instead of reducing them.
5. Furthermore, adopting these definitions will reduce the use of subcontractors, whereas adopting Bill n°31 was intended to facilitate this practice.[20]
6. This proposal would increase the discrimination power of the companies belonging to employers who are members of a parity committee board, and thus increase their power over the market.

It appears the CPEEPM seeks to abolish any form of subcontracting, an unattainable goal with a significant risk of causing harm to both companies and employees, as well as bogging down the justice system.

Thereupon, RADIEM quotes the concise and well-structured comments of Diane Bellamare regarding subcontracting and Bill n°31: subcontracting is an economic tool to improve companies' performance. Vital from an economic point of view, it has positive effects on economy and employment, supporting innovation and not cheap labour. Ultimately, it seems preferable to favour the general interest rather than the specific interest of some groups, in addition to preventing an outright protectionism.[21]

---

[19] J. Bernier, *loc. cit.*, pp. 26 and 27.

[20] DUTRISAC, Robert et Alec CASTONGUAY. « Toutes portes ouvertes vers la sous-traitance », *Le Devoir*, November 14th, 2003 [http://www.ledevoir.com/non-classe/40672/toutes-portes-ouvertes-vers-la-sous-traitance]. Available in French.

[21] BELLEMARE, Diane. « Des mythes tenaces à défaire », présentation au colloque du Conseil du patronat du Québec, « La sous-traitance (article 45 du Code du travail) - États du droit et projet de loi », November 21st, 2003, 8 p.]. Available in French.

V. Recommendations

A. In brief

According to RADIEM, the problems affecting the way decrees work are structural and not conjectural, and the amendments suggested by Bill n°53 unfortunately do not help to addressing them.

RADIEM took note of the recommendations made by the Canadian Federation of Independent Business (CFIB) in this consultation, and agrees with most of them.[22] Yet RADIEM adds its own recommendations, as outlined in this report.

To conclude, in view of the content, the number and the importance of recommendations that we raise, **we think Bill n°53 must not be adopted in its current form**.

Moreover, as **the integration of all the suggested recommendations would create a structure so heavy that the decree system administration would become counter-productive, RADIEM suggests that it should even disappear** considering:

- The current economic issues;
- The integration of new forms of work organisation;
- The numerous legislations contemporary to the ARCAD containing similar provisions;
- Governance problems;
- Serious issues regarding the bias and accountability of parity committees concerning decrees management.

That is why **RADIEM also asks for the abrogation of decrees in the building cleaning industry**.

[22] Canadian Federation of Independent Business. *LDCC : il est temps de passer au XXIe siècle!*, Mémoire déposé dans le cadre des consultations particulières et auditions publiques sur le projet de loi no 53, October 2016, pp. 15 and 16. Available in French.

B. Reminder of the recommendations

1. Accounting of parity committees reflected in public accessibility to annual reports and statistics of their activities, as well as to the agendas and minutes of their meetings.

2. Increase the number of elements for which the parity committees must be accountable.

3. Specify the obligation for parity committees to meet certain requirements under the ARCAD.

4. Enforce a rotation of parity committees' directors.

5. Subject parity committees to the Act respecting the legal publicity of enterprises (CQLR, c. P-44.1).

6. Subject parity committees to the Act respecting Access to documents held by public bodies and the Protection of personal information (CQLR, c. A-2.1).

7. Increase penalties regarding the parity committees so they meet their deterrent purpose.

8. Provide for a personal liability regarding parity committees' members who commit a serious fault or a gross negligence.

9. Frame the influence of parity committees to work providers in order to protect the fairness of the tendering process.

10. Develop and adopt a code of ethics for parity committees.

11. Entrust an independent and impartial body with the question of the subcontractor status, such as the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST).

12. Entrust the DPCP or CNESST with the authority to prosecute as provided for under the ARCAD.

13. The Minister should initiate without delay an investigation process on both public building cleaning industry parity committees.

14. Precise the conditions that justify the Minister's intervention.

15. Insert one or more provisions governing the use of employment agencies.

16. The decree system in the public building cleaning industry should be reviewed, especially regarding its economic efficiency and its capacity to serve the interests of all stakeholders.

17. Carefully examine the legality of ARCAD provisions and regulations implemented by the parity committees to ensure their compatibility with the Competition Act.

18. The CNESST should be charged with the monitoring and control of the decrees.

Annex

Information included in *the Registraire des entreprises du Québec* (REQ) on the Parity Committee for the building services of the Montreal region (CPEEPM)

- Registered on November 2nd, 2007. Before this date, impossible to know who was member of the CPEEPM board.
- From November 2nd, 2007 to August 8th, 2013, approximately five (5) years after the date of registration of the CPEEPM, only Christiane Bigras is mentioned in the REQ as Secretary member of the board.
- No other member of the board has been declared.
- The six (6) seats reserved for trade unions are occupied by Service Employees Union – Local 800 (hereafter "SEU-800").
- On the employer's side, of which the vast majority of companies is syndicated with this trade union, the same eight (8) companies are members of the board year after year.
- It should be noted that the CPEEPM members are all, without exception, the same members of the board of the Quebec Building Service Contractors Association.

Information included in the *Registraire des entreprises du Québec* (REQ) on the Parity Committee for the building services of the Quebec region (CPEEPQ)

- Registered on June 9th, 2011. Before this date, impossible to know who was member of the CPEEPQ board.
- Sylvain Simard is registered as Secretary. No other director is declared.
- No other information on directors is available, neither on the REQ or on the committee website.

388, rue Saint-Jacques
3e étage
Montréal (Québec)
H2Y 1S1

1 844 RADIEM1 (723-4361)

info.radiem@gmail.com