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La législation québécoise en matière de relations du travail : 1968-1976
Current Status of Labour Legislation in Québec : 1968-1976

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Article abstract

To make an assessment of the legislation concerning industrial relations in Québec in the past few years represents a gigantic task. Indeed the number of bills which have been presented to the National Assembly lately is really impressive.

Almost all aspects of labour have been touched as well in the private as in the public sector, as well in the construction industry as in mining or public transportation. We find legislative action on matters as varied as: democratic union practices, employers association, collective bargaining, grievance arbitration, disputes settlement, industrial desease compensation, training and qualification, etc.

We must say also that certain fields have not been modified significantly for numerous years: namely minimum working conditions and the juridical extension of collective agreements. Let us add also that a few bills, some of them considered as important, have never gone further than first reading at the National Assembly.

You will understand easily that facing such an impressive mass of bills and statutes,it is out of question to undertake here the analysis and examination of every pièce of this real puzzle.

I will limit myself to legislation concerning labour relations (leaving aside: training, worksmen compensation, etc) and my comments are grouped under four titles: the basic regime of labour relations, the construction industry, the public sector and some other particular regimes which have not been significantly modified. After a short exposé of the legislative effort (or the absence of it) in each of these fields, I will try to give some second thoughts with regard to the larger context of labour and industrial relations in Québec.

The effort of partial consolidation of many statutes related to labour made in 1964 and 1965 in what has been called the Labour Code (1) was followed by a quiet period of four or five years at the legislative level so that the period examined here in fact focuses, except for a few cases, on the period 1968-1969 and today.

THE BASIC RÉGIME

The basic regime defined in the Labour Code has shown proof of remarkable stability. As far as its general economy is concerned, this regime is highly similar to those in force elsewhere in Canada.

With the exception of some amendments adopted in 1969 (2), to abolish the Labour Relations Board and to replace it by investigation commissionners appointed by the Department of Labour and Manpower and to create the Labour Court, it has remained unchanged.

One must note however that an important project of modification to this Labour Code has been submitted to the National Assembly almost every year since 1974 but never went beyong the stage of the first reading. The preparation of this bill no. 24 (3) had gone through a hole series of consultations among the representatives of the social partners, particularly at the level of the Québec Advisory Council of Labour and Manpower.

This bill contains provisions dealing with many aspects of the basic regime of labour relations, namely: the right of association; the collective bargaining process: making conciliation optional ; grievance arbitration in increasing the powers of the arbitrators. It has also a complete new section devoted to the language issue: enforcing the use of French in collective bargaining, disputes settlement and arbitration of grievances « unless the certified association indicates its wish to use English ».

For unknown reasons, this longtime expected bill has never been discussed at the National Assembly nor in Parlimentary commission.

LABOUR RELATIONS IN THE CONSTRUCTION INDUSTRY

As far as the construction industry is concerned, the situation is far different.

Because of the features of this industry, the Québec Legislator has taken this sector away from the Labour Code in 1968 to have it governed by a specific law. It has been the Construction Industry Labour Relations Act (4) of 1968 which established industry wide bargaining at the provincial level and enforced plural unionism at the bargaining table.

We know also that there has never been a collective agreement legally signed in this industry since then — and this, up to date. The first round of negociations in 1970 ended up with back to work legislation (5) and at the following round in 1973, Bill 9 (6) made retroactively legal an « illegal » contract signed by unions affiliated to QFL and some, but not all, employers associations.

Also, in december 1974, by Bill 201 (7) the government obtained power to modify unilaterely the terms of the agreements signed by the parties, in order to settle disputes arising from union demands relating to wage indexation to the increasing cost of living.

This period was characterized by numerous acts of violence, the climax of which being the riot at the James Bay site in March 1974. This was followed by the creation of the Cliché Inquiry Commission on the « exercice de la liberté syndicale dans l'industrie de la construction ».

The Report of the Commission (8) was followed by series of legislative measures implementing most of the Cliché Commission recommendations and contained in four bills: creation of the « Office de la construction du Québec, » » entrusted with the carrying out of the collective agreement or the decree adopted under the Act ; » creation of a Joint Committee having charge of deciding any dispute respecting the interpretation of the collective agreement or the decree; establishment of a secret ballot for the determination of the representative associations and for the joining of the workers to such associations ; continuation of industry wide bargaining at the province level as well as of the juridical extension of the agreement ; limits of the number and powers of job site stewarts ; obligation for non-incorporated unions established in Québec to file at the Office a declaration complying with minimum standards defined in the law in relation with some democratic union practices (9) ; disqualification of persons found guilty of some criminal acts from acting as union representatives or executives (10); placing of three unions under trusteeship and prolongation of trusteeship in the case of two other unions (11); establishment of the « Régie des entreprises de construction du Québec » having charge to protect the public against bankruptcies and to assure that contractors are financially sound and technically and administratively capable (12).

If one consider this long list of topics on which the legislator has focused, one might have the impression that nothing has been spared to insure the existence of a new juridical framework well adapted to this sector. Some may be in disagreement with certain types of measures: for instance, one might find irrealistic the obligation made to employers to all belong to the same association whom the law maintains union plurality on the workers' side; one might consider clearly anti-union certain provisions related to job site stewarts, to democratic practices or to union leaders having a criminal file; one might criticised the rules concerning the calculation of the degree of representativity of workers' associations. Nevertheless, this series of new provisions constitute a through revision of the juridical framework in force in this sector.

But there is one point which has not been directly dealt with by the legislator, and which, in my opinion, is the hard core of the problems arisen in this industry in the past few years: it is the freedom of association in relation with hiring procedures in a context of compulsory unionisation when associations are in competition to share the membership of construction workers. The Cliché Commission had recommended the abolition of union hiring halls to have them replaced by a public placement agency (13).

The legislator prefered not to tackle this problem directly: it has mandated the Office de la construction du Québec which must (not later than July 1., 1976) make anyregulation which shall provide with respects to these hiring halls any measure, including their regulation, their abolition or their replacement by a System controlled by the Office (14).

Personnally, I believe that this is the corner-stone of the whole reform undertaken in this sector. In fact, it is only in the light of the decisions made by the Office in these matters and after an examination of their implementation that it will be possible to evaluate the chances of success of more freedom for the workers in this industry.

With respect to other aspects, it would be at least premature to make a global judgment, the negociations for the conclusion of a first collective agreement being now in progress.

However there is place for some remarks on specific points : because of the new secret ballot created by the Act, the last « raiding » period in the fall of 1975 was really peacefull; the sole association of employers could hardly give itself the structures it needed and the government had to create it by order in council ; many questions have arisen and continue to be asked on the real efficiency of the trusteeship imposed to some unions; finally, it remains that despite all the provisions the Act puts forward in relation with collective bargaining, this new legislation on labour relations in the construction industry leaves an opened door to increase state regulation of working conditions according to the provisions of Bill 201 of December 1974 which have been incorporated in the Act of June 27, 1975 (15).

3 — THE PUBLIC SECTOR

In the public sector on the other hand, the Québec legislator had shown a certain sense of innovation in 1964 and 1965 when he recognised to the public employees the same rights of association, collective bargaining and strike the workers of the private sector had already obtained.

In this respect, the regime of labour relations between the State and his employees was becoming the more liberal in Canada.

Experience has showed that despite the generous intentions of the legislator at this time it was a mistake to believe that a framework which had been conceived and built for the private sector could as easily be transposed to the public sector.

Just remember those numerous and long strikes Québec had to cope with, the events of 1972 which led some union leaders to a one year emprisonment and, more recently, civil desobedience.

Let's mention that since 1965, not less than thirteen back to work laws were adopted, eleven of them with respect to public services, the other two in the construction industry (16).

Recent events show evidence that the parties, the State as an employer and the unions, do not accept anymore, have they ever, the set of rules defining the collective bargaining System in that sector.

This is a topic of great concern on which we will come back later on.

4 — THE FORGOTTEN AREAS

I would like to draw your attention on two fields from which legislative action has been dramatically absent for many years: the minimum working conditions and the juridicial extension of collective agreements.

Indeed, while other provinces and other countries were enlarging the concept of minimum wage to cover other conditions of employment such as maternity leave, advance notice, severance pay and some others (17), the Québec law (18) sticks to the basic concept of minimum wage with its usual complement (days of work and paid holidays) without forgetting the very efficient clout $10.00 fines may insure.

As far as the European inspired juridicial extension of collective agreements is concerned, in force in Québec since 1934 (19), two years before France, this juridicial technique had given rise to interest in many unions and employers associations during three full decades. It permitted also a lot of workers who could not have achieved it otherwise to profit from the collective bargaining System.

But instead of giving a new look at this mecanism which has proven useful in many countries and which has been for a long time an original feature of the Québec System in North America, it seems that it has fallen into obsolescence in such way that the number of extended agreements has decreased by half from 106 that it was in 1964 and most of the workers concerned falling under minimum wage ordinances.

CONCLUSION

But from this rapid guided tour, it comes out that since the adoption of the Labour Code in 1964, the interventions of the Québec legislator, as numerous as they are, have been more often than otherwise piecework legislation, aiming at coping with situations considered as urgent, except perhaps in the construction industry. But even there, isn't after a year inquiry by a Commission that the government decided to proceed.

Shall we consider as normal this new way of managing industrial conflict with piecework legislation?

Despite the evolution of the Québec labor movement in the recent years, we do not find on the government side the expression of a coherent and articulated policy in the field of industrial relations. Furthermore, there is no unity in the legislative action, each Department taking in turn the initiative of introducing its own labour bills depending on the needs of the moment.

Even if the situation is far from being as bad in the private sector as it is in the public sector, their is evidence that the legal framework badly needs to be reviewed.

But I do not believe, at this time, that a unilateral action from the part of the State has great chance to be successful.

Considering the evolution of the labor movement as well at the ideological level as at the level of a more radical action, we must note that the ideological consensus which Dunlop (20) was refering to and which has a binding effect on the industrial relations System is becoming something of the past.

It is more reasonable to believe that the labor movement will emphasize its political action, will try by all means to challenge the economic and social order andwill continue to propose some models of social organization which coincide better with the interests and aspirations of the working class.

And the future of collective bargaining ?

Although we must take into account some differences between the private and the public sector, collective bargaining will continue to function as far as the social partners will be able to achieve a minimum of concensus over the new rules of the game.

In this respect, one should not be surprised to see the Québec industrial relations Systems tend towards some European types of models not only as far as the political action of unions is concerned but also at the level of labour relations.

[1]See footnotes in French version.

La législation québécoise en matière de relations du travail
1968-1976

Jean Bernier

C'est en regroupant ses commentaires sous quatre titres, le régime fondamental des relations du travail, les relations du travail dans l'industrie de la construction, les secteurs public et para-public et les régimes particuliers qui n'ont pas connu des modifications significatives, que l'auteur tente d'établir brièvement une sorte de constat de la situation en regard du contexte plus global des rapports collectifs du travail au Québec.

Vouloir établir une sorte de bilan de la législation touchant au monde du travail au Québec en ces dernières années constitue une entreprise gigantesque. En effet, le nombre de lois et de projets de lois dont a été saisie l'Assemblée nationale depuis quelques temps est imposant. Rarement a-t-on vu un tel volume en si peu de temps dans un champ donné.

Presque tous les secteurs du monde du travail ont été touchés aussi bien dans le secteur privé que dans le secteur public, aussi bien dans l'industrie de la construction que dans celui des mines ou des transports. On y trouve des textes sur des matières aussi variées que la vie interne des syndicats, la création d'association patronale, la négociation collective, l'arbitrage des griefs, les conflits du travail, l'indemnisation des victimes de maladies industrielles, les bénéfices sociaux, la formation et la qualification professionnelle, etc...

Il faut dire aussi que certains champs n'ont pas connu de modifications significatives depuis de très nombreuses années: notamment celui des conditions minimales de travail et celui de l'extension juridique des conventions collectives. Ajoutons également que quelques projets de loi, dont certains peuvent être considérés comme importants, n'ont jamais dépassé l'étape de la première lecture à l'Assemblée nationale.

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Devant une masse aussi importante de lois et de projets de loi, il ne saurait être question d'entreprendre dans le cadre limité de cette communication l'examen de chacune des pièces de ce véritable puzzle.

Je me limiterai volontairement au domaine des relations du travail proprement dit (laissant de côté ce qui touche la formation professionnelle, les accidents du travail et les maladies industrielles, etc...) en regroupant mes commentaires sous quatre titres: le régime fondamental des relations du travail, les relations du travail dans l'industrie de la construction, les secteurs public et para-public et enfin les régimes particuliers qui n'ont pas connu de modifications significatives. Après un exposé sommaire de l'effort ou de l'absence d'effort législatif dans chacun de ces domaines, j'essaierai d'établir brièvement une sorte de constat de la situation en regard du contexte plus global des rapports collectifs du travail au Québec.

L'EFFORT LÉGISLATIF

Précisons d'abord qu'après l'effort de consolidation de plusieurs lois du travail opéré en 1964 et 1965 dans ce qu'on a appelé le Code du travail[1], a suivi une période d'accalmie au plan législatif d'une durée de quatre ou cinq ans de telle sorte que les événements dont je fais état ici se sont déroulés à quelques exceptions près depuis 1968-1969.

LE RÉGIME FONDAMENTAL

En ce qui concerne le régime fondamental des rapports collectifs du travail défini au Code du Travail, lequel ressemble, au moins quant à son économie générale, à celui qui prévaut ailleurs au Canada, il a fait preuve d'une remarquable stabilité. À part quelques modification apportées en 1969[2], et ayant notamment pour objet d'abolir la Commission des Relations du Travail, de la remplacer par des commissaires-enquêteurs, fonctionnaires du ministère du travail et de la main-d'œuvre, et de créer le Tribunal du Travail, il est demeuré inchangé.

Il est important de noter toutefois qu'un important projet de modification au Code du Travail a été déposé à l'Assemblée nationale chaque année depuis 1974 et n'a jamais été plus loin que la première

[1] *S.R.Q.* 1964, c. 141.
[2] *L.Q.* 1969, c. 47 et c. 48.

lecture. Il s'agit du projet de loi 24[3] dont la préparation et l'élaboration avait fait l'objet de consultations nombreuses et étendues auprès des représentants des acteurs sociaux, notamment au sein du Conseil consultatif du travail et de la main-d'œuvre.

Ce projet visait plusieurs aspects du régime fondamental des rapports collectifs du travail, notamment: le droit d'association; la négociation collective en rendant facultatif le recours à la conciliation, le droit de grève étant acquis quatre-vingt-dix jours après l'avis de négociation; le règlement des griefs en augmentant les pouvoirs des arbitres tout en les soumettant à un contrôle plus strict. Il comportait également toute une section nouvelle sur la langue de travail, prévoyant l'usage du français dans les négociations collectives, le règlement des différends et l'arbitrage des griefs, «sauf si l'association accréditée indique son désir d'utiliser l'anglais».

Pour des raisons que l'on ignore, ce projet de loi longtemps attendu mais dont on a des raisons de croire qu'il recevrait largement l'assentiment des parties n'a jamais pu être discutée à l'Assemblée nationale ou en Commission parlementaire.

LES RELATIONS DU TRAVAIL DANS L'INDUSTRIE DE LA CONSTRUCTION

Quant aux relations du travail dans l'industrie de la construction, la situation se présente autrement.

On sait qu'en raison du caractère particulier de cette industrie, le législateur québécois avait soustrait ce secteur d'activité du régime juridique commun en matière de relations du travail pour l'assujettir à un régime spécifique. Ce fut le bill 290, devenu la «Loi des relations du travail dans l'industrie de la construction»[4] en 1968 instituant la négociation collective à l'échelle de toute l'industrie et consacrant le pluralisme syndical et patronal à la table des négociations.

On sait aussi qu'il n'y eut jamais de convention collective également conclue dans l'industrie de la construction depuis lors, et ce, jusqu'à ce jour. On sait que dès la première ronde de négociation en 1970, le législateur mettait fin à la grève en adoptant une loi spéciale[5]. Lors des négociations suivantes en 1973, le bill 9[6] venait rendre rétro-

[3] Projet de Loi no 24, *Loi modifiant le Code du Travail et d'autres dispositions législatives*, (première lecture), Deuxième session, trentième législature, 1974.

[4] *S.Q.* 1968, c. 45.

[5] *Loi concernant l'industrie de la construction*, L.Q. 1970, c. 34.

[6] *L.Q.* 1973, c. 28.

activement légale une entente «illégale» conclue entre les unions affiliées à la F.T.Q. et certaines associations patronales.

De même, en décembre 1974, par la présentation du bill 201,[7] le gouvernement se fait donner le pouvoir de modifier unilatéralement les ententes conclues entre les parties afin de régler les différends qui naissaient des demandes syndicales en matière d'indexation des salaires au coût de la vie.

Toute cette période fut marquée de nombreux recours à la violence dont le point culminant fut le saccage du chantier de la Baie James en mars 1974, lequel devait conduire à la création de la Commission d'enquête Cliche sur l'exercice de la liberté syndicale dans l'industrie de la construction.

Le dépôt du rapport de la Commission[8] devait être suivi de tout un train de mesures législatives s'inscrivant pour la plupart dans la ligne des recommandations de la Commission Cliche et contenues dans quatre projets de lois: création de l'Office de la Construction du Québec, «chargé de la mise à exécution de la convention collective ou du décret», d'un comité mixte «chargé de décider de tout litige quant à l'interprétation de la convention collective ou du décret; établissement d'un mode de scrutin secret pour la détermination des associations représentatives et l'adhésion des salariés à telles associations; maintien de la négociation sur une base provinciale et de l'extension juridique de la convention; limite quant au nombre et au pouvoir des délégués de chantiers; obligation pour les groupements non incorporés œuvrant au Québec de déposer à l'Office une déclaration comprenant entre autres leurs statuts et règlements lesquels doivent être conformes à certaines normes minimales définies dans la loi[9]; interdiction d'agir comme dirigeant ou représentant syndical pour toute personne trouvée coupable de certains actes[10]; mise en tutelle de trois locaux de la F.T.Q. construction et prolongation de la tutelle dans le cas de deux autres locaux[11]; création de la Régie des entreprises de construction du Québec chargé

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[7] *L.Q.* 1974, c. 38.

[8] *Rapport de la Commission d'enquête sur l'exercice de la liberté syndicale dans l'industrie de la construction,* Éditeur officiel du Québec, 1975, 355 pages + annexes.

[9] *Loi constituant l'Office de la construction du Québec* et *modifiant à nouveau la Loi sur les relations du travail dans l'industrie de la construction,* L.Q. 1975, c. 51.

[10] *Loi modifiant la Loi sur les relations du travail dans l'industrie de la construction,* L.Q. 1975, c. 50.

[11] *Loi sur la mise en tutelle de certains syndicats ouvriers,* L.Q. 1975, c. 57 (et prolongeant la tutelle établie par L.Q. 1974, c. 116).

d'assurer la qualification professionnelle des entrepreneurs de construction[12].

À considérer cette longue liste de sujets qui ont fait l'objet de l'attention du législateur, on peut avoir l'impression que rien n'a été épargné afin d'assurer l'existence d'un cadre juridique bien adapté à ce secteur industriel. On peut diverger d'opinion sur le caractère de certaines de ces mesures: par exemple, on pourra trouver irréaliste l'obligation faite aux employeurs d'appartenir tous à la même association alors qu'on maintient le pluralisme syndical du côté des travailleurs; on pourra trouver nettement antisyndicales certaines dispositions relatives aux délégués d'atelier, à la démocratie syndicale ou aux dirigeants syndicaux ayant un dossier judiciaire; on pourra s'attaquer au mode de calcul de la représentativité des associations en présence; il demeure qu'il s'agit d'une revision importante du cadre juridique régissant les relations de travail dans ce secteur.

Mais il y a un point cependant que le législateur n'a pas touché directement et qui, selon moi, se situe au cœur même des problèmes qu'a connus cette industrie en ces dernières années: c'est celui de la liberté syndicale en matière d'embauche dans un contexte de syndicalisation obligatoire alors que plusieurs centrales syndicales sont en concurrence pour se partager l'adhésion des travailleurs de la construction. La Commission Cliche en avait fait l'objet de l'une de ses principales recommandations en préconisant l'abolition des bureaux de placement syndicaux et leur remplacement par un réseau public[13].

Plutôt que d'aborder directement le problème, le législateur en a confié le soin à l'Office de la construction du Québec qui a jusqu'au 1er juillet 1976 pour adopter tout règlement prévoyant à l'égard de ces bureaux, toute mesure, y compris leur réglementation, leur abolition ou leur remplacement par un système que contrôle l'Office[14].

Personnellement, je crois que c'est là la pierre angulaire de toute la réforme entreprise dans ce secteur d'activité. En fait, ce n'est qu'à la lumière des décisions qu'aura prises l'Office en ces matières et à l'expérience de leur usage, qu'il sera possible d'apprécier les chances de succès d'une plus grande liberté pour les travailleurs dans ce secteur.

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[12] *Loi sur la qualification professionnelle des entrepreneurs en construction*, L.Q. 1975, c. 53.

[13] *Op. cit.* note (8), recommandations no. 111, 116 et 117.

[14] *Loi sur les relations du travail dans l'industrie de la construction*, S.Q. 1968 c. 45, art. 32 telle que modifiée par L.Q. 1975, c. 51.

Quant au reste, il serait pour le moins prématuré de vouloir porter un jugement sur cet ensemble de lois, les négociations en vue de la conclusion d'une première convention collective étant présentement en cours.

Il y a cependant place pour quelques remarques sur des points précis: en raison du nouveau mode de scrutin mis sur pied, la dernière période de maraudage l'automne dernier s'est déroulée de façon fort pacifique; l'association unique des employeurs a eu bien du mal à se structurer et il a fallu que le gouvernement intervienne d'autorité; bien des questions se sont posées et continuent de se poser sur l'efficacité réelle de la mise en tutelle de certains syndicats; enfin, il demeure qu'en dépit de toutes les dispositions qu'elle contient relativement à la négociation collective, cette nouvelle loi des rapports collectifs du travail dans l'industrie de la construction constitue une porte ouverte vers la réglementation étatique des conditions de travail en vertu des dispositions déjà prévues dans le projet de loi 201 de décembre 1974 et qui furent reprises dans la loi du 27 juin 1975[15].

LES SECTEURS PUBLIC ET PARA-PUBLIC

Dans les secteurs public et para-public par ailleurs, le législateur québécois avait fait preuve d'un certain sens de l'innovation en accordant en 1964 et 1965 aux salariés de ces secteurs les mêmes droits en matière de droit d'association, de négociations collectives et de grève qu'aux autres salariés du secteur privé. En fait, ces gens sont simplement devenus des salariés au sens du Code du Travail.

À cet égard, le régime des rapports collectifs du travail entre l'État et ses employés devenait le plus libéral au Canada.

L'expérience a démontré que malgré les intentions généreuses des responsables de l'époque, ce fut une erreur de croire qu'on pouvait simplement transposer dans le secteur public un régime de relations du travail qui avait été conçu et élaboré pour le secteur privé.

Qu'il suffise de rappeler simplement les nombreuses et pénibles grèves qu'a connues le Québec dans ce secteur depuis lors, les événements de 1972 qui ont conduit à l'emprisonnement des chefs syndicaux et plus récemment encore, à la désobéissance civile.

Qu'il suffise de mentionner que depuis 1965, pas moins de treize lois de retour au travail ont été adoptées dont onze s'appliquaient à

[15] *L.Q.* 1975, c. 51.

des salariés de services publics, les deux autres à ceux de l'industrie de la construction[16].

Les événements récents montrent à l'évidence que les parties État-employeur comme syndicats n'acceptent plus, si elles l'ont déjà fait, les règles du jeu définissant le régime de la négociation collective.

C'est là un sujet de vive inquiétude sur lequel nous reviendrons plus loin.

LES CHAMPS IGNORÉS

Mais je voudrais auparavant attirer l'attention sur deux domaines dans lesquels l'action législative a fait grandement défaut depuis plusieurs années: il s'agit de la législation concernant le salaire minimum et l'extension des conventions collectives.

En effet, pendant que d'autres provinces et d'autres pays élargissaient la notion de conditions minimales de travail pour englober des objets tels que le congé-maternité, le préavis de licenciement et autres[17], la loi québécoise[18] en est toujours demeurée à la notion élé-

[16] *Loi modifiant la Loi de la Régie des transports,* S.Q. 1965, ch. 1.
Loi assurant le droit de l'enfant à l'éducation et instituant un nouveau régime de convention collective dans le secteur scolaire, S.Q. 1966-67, ch. 63.
Loi assurant aux usagers la reprise des services normaux de la Commission de transport de Montréal, S.Q. 1967, ch. 1.
Loi assurant aux citoyens de Montréal la protection des services de police et d'incendie, L.Q., 1969, ch. 23.
Loi assurant le droit à l'éducation des élèves de la Commission scolaire régionale de Chambly, L.Q., 1969, ch. 68.
Loi concernant l'industrie de la construction, L.Q., 1970, ch. 34.
Loi concernant les services médicaux, L.Q., 1970. ch. 40.
Loi modifiant la Loi sur les relations de travail dans l'industrie de la construction, L.Q., 1972, ch. 10.
Loi assurant la reprise des services dans le secteur public, L.Q., 1972, ch. 7.
Loi sur les services essentiels de l'Hydro-Québec, L.Q., 1972, ch. 9.
Loi assurant aux usagers la reprise des services normaux de la Commission de transport de la Communauté urbaine de Montréal, L.Q., 1975, ch. 56.
Loi visant à assurer les services de santé et les services sociaux essentiels en cas de conflit de travail, L.Q., 1975, ch. 52.
Loi concernant le maintien des services dans le domaine de l'éducation et abrogeant une disposition législative, L.Q., 1976, ch. 38.

[17] Voir: Louis J. LEMIEUX et Kim CHI TRAN VAN, « Étude comparative des législations concernant le salaire minimum et les conditions minima de travail au Québec, dans les autres provinces et dans quelques autres pays. » Étude effectuée pour le groupe de travail sur la politique du salaire minimum, *Travail Québec,* vol 11, no 3 annexe C, mai 1975, 54 pages.

[18] *Loi du salaire minimum,* S.R.Q. 1964 c. 144.

mentaire de salaire minimum avec ses compléments habituels (heures de travail et vacances annuelles) sans compter ses amendes fortement dissuasives pour les employeurs fautifs: à savoir $10.00!

Quant à l'extension juridique des conventions collectives, d'inspiration européenne, le Québec faisait figure de précurseur en l'adoptant dès 1934[19], deux ans avant la France. Cette technique juridique devait connaître la faveur de nombreux syndicats et de nombreuses associations patronales durant une bonne trentaine d'années. Elle permettait également à de nombreux travailleurs qui n'auraient pu le faire autrement, de bénéficier du régime de la convention collective.

Mais plutôt que de rajeunir ce mécanisme qui a fait ses preuves dans bien des pays et qui a constitué pendant longtemps un élément original du système québécois en Amérique du Nord, on paraît le laisser tomber en désuétude de telle sorte que le nombre de conventions collectives étendues, de 106 qu'il était en 1964 a diminué de moitié, la plupart des travailleurs visés se retrouvant assujettis aux ordonnances du salaire minimum.

CONCLUSION

De ce rapide tour d'horizon, il se dégage d'abord que depuis l'adoption du Code du Travail en 1964, les interventions du législateur québécois ont été le plus souvent ponctuelles, visant à faire face à des situations considérées comme urgentes. Il y aurait lieu de faire exception ici pour l'industrie de la construction, mais même là n'est-ce pas à la suite d'une Commission d'enquête que le gouvernement a procédé.

En dépit de l'évolution qu'a connue le mouvement syndical québécois en ces dernières années, on ne retrouve pas du côté gouvernemental l'expression d'une politique articulée en matière de relations du travail. Bien plus, on n'y retrouve même pas une certaine unité au niveau de l'action législative, chaque ministère proposant ses projets de loi selon les besoins du moment.

D'ailleurs, je ne crois pas à ce moment-ci qu'une action unilatérale de la part de l'État en vue de redéfinir le cadre juridique des rapports collectifs de travail soit vouée au succès.

Considérant l'évolution du mouvement syndical tant au plan idéologique qu'au plan de l'action, force nous est de constater que si ce

[19] *Loi des décrets de convention collective*, S.R.Q. 1964 c. 143.

consensus idéologique dont parlait Dunlop[20] qui a pour effet d'assurer la cohérence du système de relations du travail, fut jadis très fort au Québec, en apparence tout au moins, il tend a faire place de plus en plus à un pluralisme incitant à de sérieuses remises en cause des postulats qui sous-tendent le système.

Il est raisonnable de croire que le mouvement syndical accentuera son action politique et cherchera par tous les moyens à contester l'ordre économique et social que nous connaissons et à proposer des modèles d'organisation sociale correspondant davantage aux intérêts des travailleurs.

Et l'avenir de la négociation collective dans tout cela?

Bien qu'il faille tenir compte de certaines distinctions entre les secteurs privé et public, la négociation collective ne pourra continuer à fonctionner particulièrement dans le secteur public que dans la mesure où les partenaires sociaux pourront en venir à une acceptation minimale des règles du jeu dont une simple modification ne saurait à elle seule rétablir un climat largement détérioré en ces dernières années.

Et à cet égard, il n'y aurait pas lieu de s'étonner de voir évoluer le système québécois vers des modèles de type européen non seulement sur le plan de l'action politique des syndicats mais également sur celui des relations du travail proprement dites et de leur encadrement juridique.

Current status of labour relations legislation in Quebec

To make an assessment of the legislation concerning industrial relations in Québec in the past few years represents a gigantic task. Indeed the number of bills which have been presented to the National Assembly lately is really impressive.

Almost all aspects of labour have been touched as well in the private as in the public sector, as well in the construction industry as in mining or public transportation. We find legislative action on matters as varied as: democratic union practices, employers association, collective bargaining, grievance arbitration, disputes settlement, industrial desease compensation, training and qualification, etc.

We must say also that certain fields have not been modified significantly for numerous years: namely minimum working conditions and the juridical extension of collective agreements. Let us add also that a few bills, some of them considered as important, have never gone further than first reading at the National Assembly.

You will understand easily that facing such an impressive mass of bills and statutes,

[20] John T. DUNLOP, *Industrial Relations Systems,* Southern Illinois University Press, Carboudale, 1971, 399 pages.

it is out of question to undertake here the analysis and examination of every piece of this real puzzle.

I will limit myself to legislation concerning labour relations (leaving aside: training, worksmen compensation, etc) and my comments are grouped under four titles: the basic regime of labour relations, the construction industry, the public sector and some other particular regimes which have not been significantly modified. After a short exposé of the legislative effort (or the absence of it) in each of these fields, I will try to give some second thoughts with regard to the larger context of labour and industrial relations in Québec.

The effort of partial consolidation of many statutes related to labour made in 1964 and 1965 in what has been called the Labour Code (1) was followed by a quiet period of four or five years at the legislative level so that the period examined here in fact focuses, except for a few cases, on the period 1968-1969 and today.

THE BASIC RÉGIME

The basic régime defined in the Labour Code has shown proof of remarkable stability. As far as its general economy is concerned, this regime is highly similar to those in force elsewhere in Canada.

With the exception of some amendments adopted in 1969 (2), to abolish the Labour Relations Board and to replace it by investigation commissionners appointed by the Department of Labour and Manpower and to create the Labour Court, it has remained unchanged.

One must note however that an important project of modification to this Labour Code has been submitted to the National Assembly almost every year since 1974 but never went beyong the stage of the first reading. The preparation of this bill no. 24 (3) had gone through a hole series of consultations among the representatives of the social partners, particularly at the level of the Québec Advisory Council of Labour and Manpower.

This bill contains provisions dealing with many aspects of the basic regime of labour relations, namely: the right of association; the collective bargaining process: making conciliation optional; grievance arbitration in increasing the powers of the arbitrators. It has also a complete new section devoted to the language issue: enforcing the use of French in collective bargaining, disputes settlement and arbitration of grievances « unless the certified association indicates its wish to use English ».

For unknown reasons, this longtime expected bill has never been discussed at the National Assembly nor in Parlimentary commission.

LABOUR RELATIONS IN THE CONSTRUCTION INDUSTRY

As far as the construction industry is concerned, the situation is far different.

Because of the features of this industry, the Québec Legislator has taken this sector away from the Labour Code in 1968 to have it governed by a specific law. It has been the Construction Industry Labour Relations Act (4) of 1968 which established industry wide bargaining at the provincial level and enforced plural unionism at the bargaining table.

[1] See footnotes in French version.

We know also that there has never been a collective agreement legally signed in this industry since then — and this, up to date. The first round of negociations in 1970 ended up with back to work legislation (5) and at the following round in 1973, Bill 9 (6) made retroactively legal an «illegal» contract signed by unions affiliated to QFL and some, but not all, employers associations.

Also, in december 1974, by Bill 201 (7) the government obtained power to modify unilateraly the terms of the agreements signed by the parties, in order to settle disputes arising from union demands relating to wage indexation to the increasing cost of living.

This period was characterized by numerous acts of violence, the climax of which being the riot at the James Bay site in March 1974. This was followed by the creation of the Cliche Inquiry Commission on the «exercice de la liberté syndicale dans l'industrie de la construction».

The Report of the Commission (8) was followed by series of legislative measures implementing most of the Cliche Commission recommendations and contained in four bills: creation of the «Office de la construction du Québec,» «entrusted with the carrying out of the collective agreement or the decree adopted under the Act;» creation of a Joint Committee having charge of deciding any dispute respecting the interpretation of the collective agreement or the decree; establishment of a secret ballot for the determination of the representative associations and for the joining of the workers to such associations; continuation of industry wide bargaining at the province level as well as of the juridicial extension of the agreement; limits of the number and powers of job site stewarts; obligation for non-incorporated unions established in Québec to file at the Office a declaration complying with minimum standards defined in the law in relation with some democratic union practices (9); disqualification of persons found guilty of some criminal acts from acting as union representatives or executives (10); placing of three unions under trusteeship and prolongation of trusteeship in the case of two other unions (11); establishment of the «Régie des entreprises de construction du Québec» having charge to protect the public against bankruptcies and to assure that contractors are financially sound and technically and administratively capable (12).

If one consider this long list of topics on which the legislator has focused, one might have the impression that nothing has been spared to insure the existence of a new juridicial framework well adapted to this sector. Some may be in disagreement with certain types of measures: for instance, one might find irrealistic the obligation made to employers to all belong to the same association when the law maintains union plurality on the workers' side; one might consider clearly anti-union certain provisions related to job site stewarts, to democratic practices or to union leaders having a criminal file; one might criticised the rules concerning the calculation of the degree of representativity of workers' associations. Nevertheless, this series of new provisions constitute a through revision of the juridicial framework in force in this sector.

But there is one point which has not been directly dealt with by the legislator, and which, in my opinion, is the hard core of the problems arisen in this industry in the past few years: it is the freedom of association in relation with hiring procedures in a context of compulsory unionisation when associations are in competition to share the membership of construction workers. The Cliche Commission had recommended the abolition of union hiring halls to have them replaced by a public placement agency (13).

The legislator prefered not to tackle this problem directly: it has mandated the Office de la construction du Québec which must (not later than July 1., 1976) make any

regulation which shall provide with respects to these hiring halls any measure, including their regulation, their abolition or their replacement by a system controlled by the Office (14).

Personnally, I believe that this is the corner-stone of the whole reform undertaken in this sector. In fact, it is only in the light of the decisions made by the Office in these matters and after an examination of their implementation that it will be possible to evaluate the chances of success of more freedom for the workers in this industry.

With respect to other aspects, it would be at least premature to make a global judgment, the negociations for the conclusion of a first collective agreement being now in progress.

However there is place for some remarks on specific points: because of the new secret ballot created by the Act, the last «raiding» period in the fall of 1975 was really peacefull; the sole association of employers could hardly give itself the structures it needed and the government had to create it by order in council; many questions have arisen and continue to be asked on the real efficiency of the trusteeship imposed to some unions; finally, it remains that despite all the provisions the Act puts forward in relation with collective bargaining, this new legislation on labour relations in the construction industry leaves an opened door to increase state regulation of working conditions according to the provisions of Bill 201 of December 1974 which have been incorporated in the Act of June 27, 1975 (15).

3 — THE PUBLIC SECTOR

In the public sector on the other hand, the Québec legislator had shown a certain sense of innovation in 1964 and 1965 when he recognised to the public employees the same rights of association, collective bargaining and strike the workers of the private sector had already obtained.

In this respect, the regime of labour relations between the State and his employees was becoming the more liberal in Canada.

Experience has showed that despite the generous intentions of the legislator at this time it was a mistake to believe that a framework which had been conceived and built for the private sector could as easily be transposed to the public sector.

Just remember these numerous and long strikes Québec had to cope with, the events of 1972 which led some union leaders to a one year emprisonment and, more recently, civil desobedience.

Let's mention that since 1965, not less than thirteen back to work laws were adopted, eleven of them with respect to public services, the other two in the construction industry (16).

Recent events show evidence that the parties, the State as an employer and the unions, do not accept anymore, have they ever, the set of rules defining the collective bargaining system in that sector.

This is a topic of great concern on which we will come back later on.

4 — THE FORGOTTEN AREAS

I would like to draw your attention on two fields from which legislative action has been dramatically absent for many years: the minimum working conditions and the juridicial extension of collective agreements.

Indeed, while other provinces and other countries were enlarging the concept of minimum wage to cover other conditions of employment such as maternity leave, advance notice, severance pay and some others (17), the Québec law (18) sticks to the basic concept of minimum wage with its usual complement (days of work and paid holidays) without forgetting the very efficient clout $10.00 fines may insure.

As far as the European inspired juridicial extension of collective agreements is concerned, in force in Québec since 1934 (19), two years before France, this juridicial technique had given rise to interest in many unions and employers associations during three full decades. It permitted also a lot of workers who could not have achieved it otherwise to profit from the collective bargaining system.

But instead of giving a new look at this mecanism which has proven useful in many countries and which has been for a long time an original feature of the Québec system in North America, it seems that it has fallen into obsolescence in such way that the number of extended agreements has decreased by half from 106 that it was in 1964 and most of the workers concerned falling under minimum wage ordinances.

CONCLUSION

But from this rapid guided tour, it comes out that since the adoption of the Labour Code in 1964, the interventions of the Québec legislator, as numerous as they are, have been more often than otherwise piecework legislation, aiming at coping with situations considered as urgent, except perhaps in the construction industry. But even there, isn't after a year inquiry by a Commission that the government decided to proceed.

Shall we consider as normal this new way of managing industrial conflict with piecework legislation?

Despite the evolution of the Québec labor movement in the recent years, we do not find on the government side the expression of a coherent and articulated policy in the field of industrial relations. Furthermore, there is no unity in the legislative action, each Department taking in turn the initiative of introducing its own labour bills depending on the needs of the moment.

Even if the situation is far from being as bad in the private sector as it is in the public sector, their is evidence that the legal framework badly needs to be reviewed.

But I do not believe, at this time, that a unilateral action from the part of the State has great chance to be successful.

Considering the evolution of the labor movement as well at the ideological level as at the level of a more radical action, we must note that the ideological consensus which Dunlop (20) was refering to and which has a binding effect on the industrial relations system is becoming something of the past.

It is more reasonable to believe that the labor movement will emphasize its political action, will try by all means to challenge the economic and social order and

will continue to propose some models of social organization which coincide better with the interests and aspirations of the working class.

And the future of collective bargaining?

Although we must take into account some differences between the private and the public sector, collective bargaining will continue to function as far as the social partners will be able to achieve a minimum of concensus over the new rules of the game.

In this respect, one should not be surprised to see the Québec industrial relations systems tend towards some European types of models not only as far as the political action of unions is concerned but also at the level of labour relations.