DENTONS

Employment and Labour Newsletter – Montréal

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In this issue

Supporting your employees in uncertain times: Federal work-sharing and supplemental unemployment benefit programs

In times of economic uncertainty or unforeseen disruptions, maintaining a skilled and engaged workforce poses a significant challenge for employers. To help mitigate the impact, particularly on employment relationships, and reduce the need for layoffs, the federal government offers two key programs:

1. The Work-Sharing Program (WSP); and
2. The Supplemental Unemployment Benefit Program (SUBP).

While these programs are not universal solutions, they can assist in retaining valuable expertise and promoting organizational stability during periods of disruption.

1. The Work-Sharing Program

The WSP is designed for employers experiencing a temporary downturn in business activity due to circumstances beyond their control—such as decreased demand, production delays or broader economic instability. Subject to specific conditions, the program enables employers to reduce their employees' working hours (by at least 10%) rather than proceeding with layoffs. Affected employees may then receive Employment Insurance (EI) benefits from the federal government to partially offset the reduction in hours.

Unlike standard EI benefits, which typically require an interruption of earnings of at least seven consecutive days (resulting from a complete work stoppage or a significant reduction—60% or more—in regular weekly earnings), the WSP allows eligible employees to receive EI benefits while continuing to work a reduced schedule agreed upon with the employer.

Eligibility criteria

To participate in the WSP, an employer must meet the following criteria:

- Operate year-round in Canada for at least two consecutive years;
- Demonstrate a reduction of at least 10% in normal business activity over the previous six months, due to external factors beyond the employer's control (excluding seasonal fluctuations or labour disputes);
- Develop and commit to a feasible recovery plan aimed at restoring normal business activity before the expiry of the term of the agreement;
- Establish a work-sharing unit consisting of at least two EI-eligible employees who agree to share available work and the associated reduction in hours equitably; and
- Enter into a formal tripartite agreement with the affected employees (and their union, where applicable) and Service Canada.

WSP eligibility period

A WSP agreement can be established for an initial period ranging from six to 26 weeks, depending on the employer's needs and the circumstances. In exceptional situations, this period may be extended up to a maximum of 38 weeks. Extensions are not automatic; employers must apply at least four weeks before the end of the initial agreement. Requests are assessed based on prevailing economic conditions and the continued impact on the business.

Benefits for employers

Participating in the WSP offers several advantages for employers, including:

- Retaining institutional knowledge and team cohesion;
- Reducing recruitment and training costs during the recovery phase; and
- Promoting employee trust and organizational commitment.

Special measures (tariffs)

The federal government may implement temporary special measures under the WSP in response to specific crises—such as economic downturns, natural disasters or national emergencies—to offer enhanced support to affected businesses.

In light of the economic uncertainty associated with potential US tariffs, the government has introduced special measures under the WSP, effective from March 7, 2025, to March 6, 2026.

These measures include:

- Extending work-sharing agreements for up to 76 weeks;
- Removing the mandatory waiting period between successive agreements;
- Broadening eligibility to include seasonal employers and businesses experiencing a decline in activity of less than 10%; and
- Allowing the inclusion of non-permanent employees—such as seasonal or cyclical workers—in work-sharing units.

2. Supplemental Unemployment Benefit Program (SUBP)

The SUBP allows employers to provide additional financial support to employees who are receiving Employment Insurance (EI) benefits during periods of temporary layoff, illness or injury. The goal of the SUBP is to minimize income loss for affected employees by allowing employers to "top up" their EI benefits.

Under this program, an employer may supplement EI benefits so that an employee receives up to 95% of their normal weekly earnings. For example, if an employee typically earns CA$1,000 per week and receives CA$573 in EI benefits, the employer can provide a supplement of CA$377, bringing the employee's total weekly income to CA$950.

Importantly, SUBP payments made in accordance with an approved plan do not reduce the employee's EI benefits. However, these payments are taxable for the employee, while remaining tax-deductible for the employer.

SUBP requirements

Before making any supplementary payments under the SUBP, an employer must establish a formal SUB plan and obtain approval of the plan from Service Canada. The plan must outline how the top-up payments will be funded and administered. While there is no mandated format, Service Canada provides a sample template containing the required elements for approval.

Notably, there is no minimum or maximum duration for a SUB plan.

Benefits for employers

Participating in the SUBP offers several advantages for employers, including:

- Fostering employee loyalty during periods of absence;
- Reducing the risk of voluntary departures; and
- Providing a supportive, financially sustainable approach to workforce management.

3. Conclusion

The Work-Sharing Program and the Supplemental Unemployment Benefit Program are valuable tools for employers seeking to retain talent and maintain stability during times of uncertainty. These programs provide a proactive way to reduce the financial strain on both employers and employees, while preserving organizational continuity.

If you have any questions or would like assistance in implementing one of these programs, our Employment and Labour group would be pleased to assist you.

They came into force!

- On April 16, 2025, the *Regulation to amend the Regulation respecting occupational diseases* came into force. It updates the list of cancers recognized in firefighters to align with the lists used in other Canadian provinces.
- On February 6, 2025, the *Regulation to amend the Safety Code for the construction industry* came into force. The amendments aim to enhance protection against falls from heights and improve rescue procedures following such incidents.

Reminder

As of June 1, 2025, the francization requirements set out in the *Charter of the French Language* will be extended to businesses with 25 to 49 employees. This represents a lowering of the current threshold, which is set at 50 employees, for the application of these specific obligations. Businesses that have between 25 and 49 employees in Québec for a period of at least six months will be required to register with the Office québécois de la langue française (OQLF), conduct a linguistic analysis of their operations in Québec, and, if necessary, implement a francization program.

Summary of decisions

St-Georges Structures et Civil inc. v. Mahi, 2025 QCCA 235

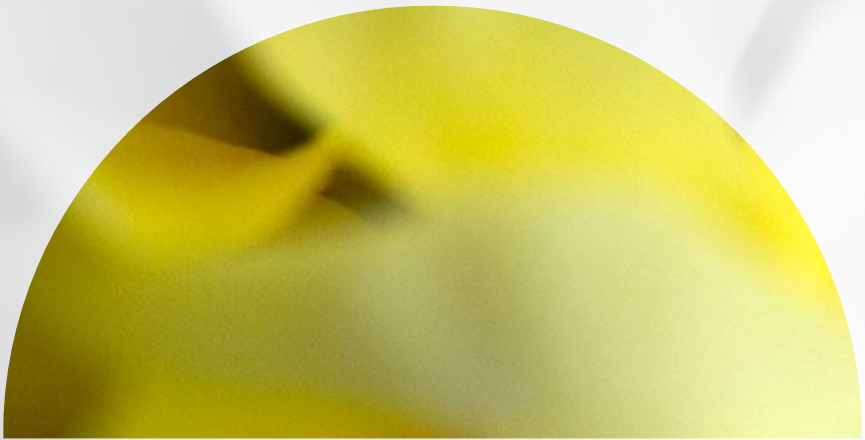
In this decision, the Québec Court of Appeal upheld a Superior Court ruling finding that a vice-president who was responsible for developing an international branch for a company operating in the civil engineering and steel structure sector had been dismissed without serious cause.

The respondent employee had been employed by the appellant employer since September 2017 under an indefinite term employment contract, with responsibilities focused on establishing a new branch in Morocco. He was dismissed in January 2019 following the announcement of the project's termination. At trial level, the Superior Court concluded that the dismissal was without serious cause and awarded the respondent nine months' salary in lieu of notice. The Court also held that the employer had breached its duty of good faith, notably by dismissing the employee in a reckless manner and by filing an injunction application that was later abandoned. The judge awarded CA$10,000 in moral damages. Additional amounts were granted to the respondent for the reimbursement of employment-related expenses incurred abroad for the costs he incurred for the recovery of his personal belongings, and various unpaid amounts under the employment contract, including a salary increase that had been agreed upon but not implemented. The Superior Court also dismissed the appellant's counterclaim for abuse of process.

On appeal, the Court confirmed the absence of serious cause for dismissal. It emphasized that the criticisms raised by the appellant had not been clearly communicated to the respondent before his termination, nor were they mentioned in the termination letter. The Court also found the nine-month notice period to be reasonable, considering the nature of the respondent's position, the particular context of his employment (he was viewed as a co-shareholder), his experience, his multilingual skills, his network of professional contacts and his age.

The Court of Appeal further concluded that the trial judge had not made any reviewable error in awarding moral damages or in ordering the reimbursement of expenses incurred during the respondent's employment and for the retrieval of his personal effects in Morocco. The Court reiterated that a trial judge has broad discretion in awarding such sums and that appellate intervention is only warranted where a manifest and determinative error is shown.

Finally, the Court dismissed the appellant's claim for abuse of process, finding that the employer had not established any blameworthy or reckless conduct on the part of the respondent. The mere fact that a court reduces the amount claimed by a plaintiff does not, in and of itself, constitute abusive litigation.



FIQ - Syndicat des professionnels en soins de l'Outaouais v. Daviault, 2025 QCCS 376

The FIQ – Syndicat des professionnels en soins de l'Outaouais (the "Union") sought judicial review of an arbitration award on the ground that the arbitrator violated the *audi alteram partem* rule (the right to be heard) by relying, on his own initiative, on a clause of the collective agreement to conclude that several individual grievances were inadmissible, without affording the parties the opportunity to address the application of that clause.

Twenty-two employees had challenged, through individual grievances, the employer's imposition of mandatory overtime between 2017 and 2019. In response, the employer raised a preliminary objection to the admissibility of the grievances, invoking the *doctrine of laches* (i.e., a bar resulting from the complainants' failure to act within a reasonable timeframe, thereby causing undue prejudice to the opposing party). However, the arbitrator declared the grievances inadmissible primarily on the basis of a clause in the collective agreement, even though that clause had not been invoked or argued by either party.

Upon judicial review, the Superior Court applied the standard of correctness, given that the matter in dispute involved procedural fairness, thereby requiring no deference to the arbitrator's decision. On the merits, the Court concluded that, since the clause in question had not been raised by the employer and bore no close relation to the *laches theory* on which the objection was founded, the Union could not reasonably have anticipated the need to submit evidence or arguments concerning that provision. An arbitrator who intends to base a decision on a new means or angle that has not been considered by the parties is obligated to provide the parties with an opportunity to adduce evidence and make submissions on the issue. Failing to do so constitutes a breach of the *audi alteram partem* rule. Finding a violation of procedural fairness, the Court held that the award was fatally flawed and therefore absolutely null. Moreover, in light of reasonable concerns regarding the arbitrator's ability to render an impartial decision, the Court referred the matter to a different grievance arbitrator, who would rehear the grievances de novo.

Centre de la petite enfance Aux Portes du Matin inc. et Audet, 2025 QCTAT 406

Following a psychological harassment complaint filed in April 2023, the employer requested access from the CNESST to the full investigation file, including the report. While the CNESST disclosed certain redacted documents, it refused to release the report. At the employer's request, the Administrative Labour Tribunal (ALT) ordered the production of the report for the Tribunal's file.

Upon review, the Tribunal found that the order was legally flawed, as it mandated the disclosure of a document protected under section 123.3 of the *Act respecting labour standards* (ARLS). This provision explicitly renders confidential all information collected during a CNESST investigation into psychological harassment, barring disclosure except in penal proceedings. The confidentiality applies even before courts or anybody exercising judicial or quasi-judicial functions.

The Tribunal acknowledged the tension between two core evidentiary principles—the right to present relevant evidence and the restrictions imposed by statutory confidentiality—but concluded that section 123.3 ARLS provides no discretion to override confidentiality. In obiter, the Tribunal also distinguished CNESST investigations under section 123.8 ARLS from employer-initiated investigations under section 81.19 ARLS. While CNESST investigations are governed by sections 103 to 110 ARLS and conducted by officials with quasi-judicial powers, internal or third-party investigations do not enjoy the same protections or confidentiality.

Accordingly, the Tribunal revoked the portion of the order requiring the production of the CNESST report, confirming that it must remain confidential.

St-Yves v. Norauto inc., 2025 QCTAT 958

In this case, the Tribunal considered a complaint of prohibited practice and a dismissal without just and sufficient cause filed by a sales manager dismissed by her former employer, a car dealership. The complainant alleged she was terminated due to an illness-related absence, while the employer asserted the dismissal stemmed from her dishonesty regarding her father's death.

The evidence showed that the complainant informed her employer of her father's passing, which allowed her to take several weeks off and receive workplace accommodations. Upon her return, she continued to be frequently absent, citing responsibilities related to the estate. However, a chance encounter with a family member revealed to the employer that the complainant's father was, in fact, still alive. When confronted, the complainant stated she was referring to her adoptive father. Finding this explanation unconvincing and viewing it as a continuation of the deceit, the employer immediately terminated her employment.

The Tribunal found that although the complainant was exercising a protected right at the time of dismissal—thereby triggering a presumption of reprisal—the employer successfully rebutted this presumption by proving that the dismissal was based on repeated dishonesty. The complainant had maintained this deception for nearly three months and continued to lie even after being confronted. The Tribunal considered this breach of trust to be serious and irreparable.

It therefore concluded that the employer had just cause to terminate the complainant's employment, as the relationship of trust essential to her role had been fundamentally broken.

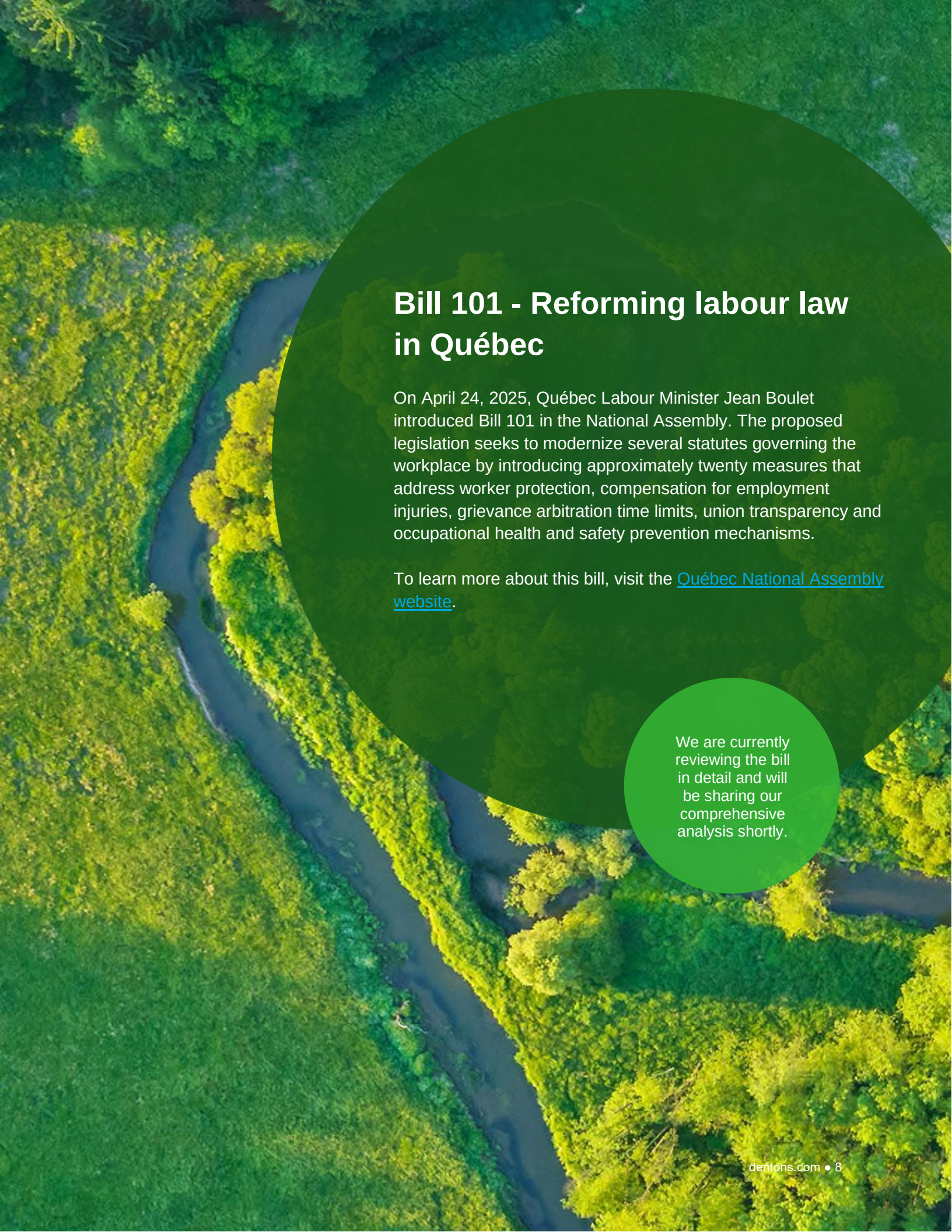
Ville de Montréal v. Turmel, 2025 QCCS 694

On judicial review brought by the Ville de Montréal, the Superior Court ruled that a grievance arbitrator had rendered an unreasonable decision in upholding grievances *contesting* the suspension and dismissal of an employee.

Until 2020, the employee managed, with a colleague, a social fund used to finance gifts and organize employee celebrations, funded by profits from coffee and food sales. After stepping down, he failed to transfer the fund to new volunteers designated by management and falsely claimed that he had already done so. When being questioned by managers and during a subsequent investigation by the Office of the Comptroller General (OCG), he admitted the transfer had not occurred but misrepresented the amount held. The OCG also found he temporarily moved part of the funds into his personal account before returning them. The employer suspended and ultimately *dismissed* the employee for dishonesty and lack of transparency.

The arbitrator upheld the grievances, reasoning that the employer had not demonstrated any misappropriation of *funds* and that the employee was not accountable to the employer for the fund's management, as it fell outside his official job duties.

The Superior Court overturned this decision, finding it unreasonable. It emphasized that the employer was not required to prove misappropriation, as this was not the basis of the dismissal, and criticized the arbitrator for disregarding the employer's legitimate interest in seeking explanations regarding the use of funds collected in the workplace for employees' benefit. The Court reiterated that settled jurisprudence allows employers to investigate off-duty conduct when it affects the workplace environment, institutional image, or *employees'* sense of security. Additionally, it found that the arbitrator had applied an incorrect analytical framework by labelling the investigation abusive, imposing an unjustified burden on the City, and recognizing employee rights not grounded in the collective agreement.



Bill 101 - Reforming labour law in Québec

On April 24, 2025, Québec Labour Minister Jean Boulet introduced Bill 101 in the National Assembly. The proposed legislation seeks to modernize several statutes governing the workplace by introducing approximately twenty measures that address worker protection, compensation for employment injuries, grievance arbitration time limits, union transparency and occupational health and safety prevention mechanisms.

To learn more about this bill, visit the Québec National Assembly website.

We are currently reviewing the bill in detail and will be sharing our comprehensive analysis shortly.

Stay tuned!

Labour Spotlight Series

A webinar series aimed at providing unionized employers across Canada with regular updates on the latest developments in labour law.

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Authors

Arianne Bouchard
Partner and CRHA
arianne.bouchard@dentons.com

Sarah-Émilie Dubois
Senior Associate
sarah-emilie.dubois@dentons.com

Nicolas Séguin
Associate
nicolas.seguin@dentons.com

Daniel Santos Vieira
Associate
daniel.santosvieira@dentons.com

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