THE ROLE OF THE STATE IN EMPLOYER-EMPLOYEE RELATIONS - A COMPARISON OF FRANCE AND THE PROVINCE OF QUEBEC

by

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PREFACE

"Si le législateur entend prohiber les coalitions... c'est qu'il entend se substituer aux parties dans la fixation des salaires. L'Interdiction des grèves postule donc la réglementation légale du prix de la main-d'oeuvre."[1]

Here is a statement, paraphrasing the sponsor of an early French enactment to legalize coalitions of workmen, expressing the choice which faces every state in its attempts to formulate a policy regarding employer-employee relations. Should the state leave the determination of the conditions of labour to the parties themselves, or should the state intervene in this relationship? Should intervention take the form of dictating the terms of agreements between the parties, or should the representatives of the state merely assist the parties to find their own solution?

The answers which the legislators of various states have given to these questions are expressed in the positive

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1 Edouard Dolléans and Gérard Dehove, Histoire du travail en France (Editions Domat Montchrestien, Paris, 1953), Vol. I, p. 258.

legislation of the state. The policy of a given state may vary over time. At a given point in time, the policies of various states may differ from one another. Statesmen, in preparing a new piece of legislation, often find it profitable to study the measures taken in other jurisdictions where similar conditions prevail. A comparison of the rules and institutions created by men of different countries to govern the employer-employee relationship is one of the more rewarding ways in which to evaluate critically each of those systems of rules and institutions.

A comparison of the role of the state in employer-employee relations in France with that of the Province of Quebec is a most natural one. Legal writers have long been accustomed to comparing the civil law of Quebec with that of France because it was precisely from the latter that the former was derived. Similarly, the Province of Quebec is indebted to France for much of her labour legislation. As far as the individual labour contract is concerned, it continues to this day to be based on the rules of the civil code, where the articles adopted by the Quebec codifiers closely follow those of

the Code Napoléon.[2] While the simple relationship foreseen by the codes has been modified by a mass of statutory enactment and, in the case of France, by a codification of the labour law, the similarity persists. In collective labour relations, the law of Quebec was, until the Labour Relations Act of 1944, drawn from that of France or influenced by the same forces.

For the economist, a study of the institutions governing the determination of the price of labour has a great deal of importance. The economist is concerned with the effects of the final outcome on wages, on prices, on distribution, on employment. If the rules concerning the way in which the price of labour is arrived at were changed, the average level of wages would be affected just as, if the rules of the game of baseball were changed to require four strikes before a batsman could be retired, instead of three, the scores of baseball games would be higher than they now are. The economist is also interested in the extent to which these considerations have been a factor in the answering of the basic policy question as to the proper degree of state intervention.

This work is a comparison of the existing law which

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2 Gregory Charlap, The Legal Status of the Worker in Quebec (unpublished Master's thesis, McGill University, Montreal, 1934), p. 1.

governs the employer-employee relationship, in France and in the Province of Quebec. It is written, it must be admitted, from the point of view of a Quebecer, looking to France as a past source of inspiration in the field of labour legislation to see which of that country's institutions could with profit be adopted by the Province of Quebec. It is by its nature expository and eclectic. Reference is made chiefly to texts of law and to writers commenting directly upon them. It is not, however, an attempt to write a legal treatise, and very little consideration is given to questions of procedure and sanctions. Moreover, since it concentrates on the existing law, questions of social and legislative history are only introduced where they would be of some assistance to the reader in understanding the current situation. It is not a purpose of this work to examine the historical development of each legislative measure.

Finally, as it is my purpose to emphasize the institutions which govern the determination of the price of labour, I do not propose to study such important aspects of employer-employee relations as industrial accidents, apprenticeship, safety regulations, nor such important manifestations of the role of the state as the laws concerning the establishment and administration of the department of labour. In

the case of France, I will limit myself to the metropolitan law, eliminating any consideration of the maritime code or the code for the overseas territories.

Some difficulty is presented in comparing a province's legislation to that of a country. Since my primary purpose is to compare the legislative policies of Quebec governments with the policies adopted by French governments, I will not deal with the legislation of the Dominion Government in Canada as it affects employer-employee relations in the Federal-Jurisdiction industries located in Quebec. I shall only deal with Federal legislation when, due to the provisions of the British North America Act, Quebec has no jurisdiction over a subject.

The work is divided into two parts. In the first I will examine the individual labour contract and, in the second, collective labour relations.

Some definitions might aid the reader in the understanding of this work. The need for them stems from a different use of certain words in France from that in Quebec. Whereas in Quebec the word "employé" is used as an almost direct translation of the English "employee", in France, the word has a very special meaning, and "employee" is translated as "salarié". "Employé" refers to a worker whose task is primarily intellectual as opposed

to manual, who has certain supervisory duties, who participates in administration rather than in direct manufacture of a product.[3] The worker whose task is manual is called "ouvrier". As opposed to these two classes, there is a third class of workers in France known as "les cadres". They are characterized by the fact that they possess some technical, administrative or commercial training which they apply in their work, they exercise the power to command, and receive a delegation of power from the employer.[4] The distinction is important in the labour law of France and so when referring to one of these particular categories, I shall employ the French term. When referring to all the employees of a firm, I shall use the English word, "employee".

A further distinction must be made between the meaning of the word "union" in French and the meaning which it has in English. In strictest terminology, "union" in English means only the national or international organization which grants charters to local branches, called locals, and which is affiliated with other unions in confederations, federations or congresses. Thus, the United Steelworkers

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3 A. Brun and H. Galland, Droit du travail (Paris, Sirey, 1958), p. 186.

4 Ibid. p. 188

of America are a union. However, the term is often used in colloquial speech to refer to the local branch. In France, "union" refers to either what are called "unions" in English, or to the federations, confederations and congresses of unions. It never refers to the basic unit, or local group which is called a "syndicat" or syndicate. To complicate matters further, the term "syndicate" is used in Quebec to designate combinations of workmen incorporated under the terms of the Professional Syndicates Act.[5] In France, only those combinations of workmen which are incorporated may sign a collective agreement, which is not the case in Quebec, where an association (which "includes a professional syndicate, a union of such syndicates, a group of employees or of employers, bona fide,"[6]) may also, under certain conditions be a party to a collective agreement. In the Professional Syndicates Act, moreover, the term "union" is used to refer to an affiliation of syndicates, but only on the first level, since an affiliation of "unions" is known as a confederation.

To solve this dilemma, I propose to use the term

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5 Chapter 162, R.S.Q., 1941

6 An Act to Constitute a Labor Relations Board, Chapter 162A, R.S.Q., 1941.S. 2(d)

"syndicate" only when referring to an incorporated combination of workmen, whether in France or in Quebec. I propose to use the word "association" when referring either to a syndicate or a group of employees or employers bona fide in Quebec. "Union" will mean an affiliation of syndicates, whereas "confederation" will be used to indicate an affiliation of "unions". I propose to derogate from these definitions only in the use of the term "union security clause" where "union" refers to any workman's organization signing a collective agreement, including a syndicate.

The term "représentants du personnel" has in France greater significance than its literal translation "representatives of the personnel". It refers to the members of the "comité d'entreprise" as well as to the delegates of the personnel, both of which are groups with a particular function. They will be discussed in Part Two, but it is important to retain the fact that "représentants du personnel" has a particular meaning. I will, for that reason, use the French phrase.

The bibliography consists both of works consulted and a selected list of major works on the subject. Since I had necessarily to restrict myself largely to actual texts of law, a list of works consulted would not direct

the reader to some of the further sources to which he might find it profitable to go.

The following abbreviations have been used in the footnoting:-

C.C.	Louis-Joseph de la Durantaye, ed. Petit Code Civil Annoté de la Province de Quebec, (Montreal, Wilson and Lafleur), 1956.
C.N.	Code Civil (Paris, Dalloz), 1957, (French Civil Code or Code Napoléon)
C.T.	Code du travail (Paris, Dalloz), 1959.
L.I.C.T.	Livre premier, code du travail.

I am deeply indebted to my tutor, Professor J. C. Weldon, as well as to Professor H. D. Woods of the Department of Economics and Political Science, whose broad view of labour relations policy helps one to see through the mass of legislative enactments to the broader purpose behind them. My appreciation must also be extended to Professors Louis Baudouin and Paul Crepeau and to Mr. Perry Meyer of the Faculty of Law whose clarification of some of the fine points of law involved in this work made it possible for a non-lawyer to complete.

My thanks as well to the staffs of the Redpath Library, the Commerce Library and the Library of the Faculty of Law, whose infinite patience with renewals enabled me to carry out my research.

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PART ONE

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CHAPTER ONE

THE CIVIL CODES AND THE ROLE OF THE STATE

Each and every employee in France and the Province of Quebec is deemed by law to have an individual labour contract with his employer. The employee may not be aware of this since, in an increasingly large number of cases, the terms and conditions under which he works are created by a collective labour agreement. Nevertheless, such a contract exists, and, in the absence of a collective labour agreement, is the sole source of his obligation to provide the employer with work, and of the employer's obligation to pay him a given salary.

The rules governing this important contract are based on the civil codes of France and the Province of Quebec, as well as statutory modification of these rules, which

has developed gradually since the time of the codifications, due to a basic change in policy as to what the role of the state should be.

> Au moment des deux Codifications, la liberté individuelle, avait pour corrollaire la reconnaissance de la liberté contractuelle, car toutes deux reposaient sur le sens de la responsabilité individuelle. La liberté contractuelle était inspirée dans les deux Codes par l'autonomie de volonté, véritable principe de philosophie selon laquelle la volonté individuelle seule, peut créer le droit et est de ce fait supérieure à la loi elle-même qui ne fait que la reconnaître. [1]

Though the codifiers of the Quebec code were instructed to "embody therein such provisions only as they hold to be then actually in force"[2] and though Quebec had been cut off from any development in the French law since 1763 when the province was ceded to the English, the principle of "autonomie de la volonté" stemming from the philosophy of Rousseau and the economics of "laisser-faire" pervaded both codifications. In simplest terms, the principle of freedom of the will in matters of contract presumes that the parties entering into an agreement know best what is

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1 Louis Baudouin, Le Droit civil de la Province de Québec, modèle vivant de Droit comparé (Montreal, Wilson and Lafleur, 1953), p. 649.

2 An Act Respecting the Codification of the Laws of Lower Canada relative to Civil Matters and Procedure, s.6, in John Durnford, Collection of Legal History Documents (Montreal, McGill University, Faculty of Law), p. 107.

in their own interest and can best be relied on to serve that interest.

It follows logically that the role of the state should be strictly limited. There should be no interference to dictate the terms of the agreement. Rather, the parties should be free to include any provision in the contract which is not contrary to what was then a very limited concept of public order.[3]

Labour contracts, like all other contracts, were to be governed by this rule. The juridical equality among contracting parties, which is the very basis of the principle of "autonomie de la volonté", was extended to the parties in the individual labour contract, with the price of labour, like the price of any other thing, to be arrived at by the bargaining between these parties. The actual economic inequality was ignored, with the result that the individual labour contract became what is known as "a contract of adhesion", where the terms are dictated by one party, the other party merely accepting or rejecting them, with no power to modify the terms.

In France, it was even contended that the state ought to intervene by outlawing coalitions, which, under the "ancien régime" had restricted the freedom of workers by

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3 Article 13 C.C.; Article 6 C.N.

extensive regulation. Thus, the French Revolution produced an early form of "right to work" law, the "loi le Chapelier" of 14-17 June, 1791. In Quebec, no such argument was necessary. With the cession in 1763 of Canada to the English, public law in Quebec became that of England automatically, in accordance with the recognized principles of International Law.[4] Public Law concerning combinations was, in England at that time, governed by the common law doctrine of conspiracy whereby any attempt to regulate employer-employee relations was held to be against the public interest as interfering with the freedom of commerce.[5] English criminal law was expressly continued in force in Quebec by the Quebec Act of 1774[6], while the liberalizing English statutes of 1824, 1859 and 1871 had no effect in Canada.[7]

Thus, at the time of the two codifications, the French in 1804, and the Quebec codification of 1866, public policy

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4 Edmond Lareau, Histoire du Droit canadien, (Montreal, A. Périard, 1889), p. 37.

5 Marie-Louis Beaulieu, Les conflits de droit dans les rapports collectifs du travail (Quebec, Les Presses Universitaires Laval, 1955), p. 30.

6 The Quebec Act, 14 George III, c.83, s.XI, in Durnford, op. cit., p. 37.

7 Emile Jules Colas, Le développement du concept de personnalité juridique et les unions ouvrières au Canada, (unpublished Master's thesis, McGill University, Montreal, 1950), p. 147

was directed towards protecting the freedom of the contracting parties, which freedom, it was believed, was best protected by preventing any group from imposing its will on the individual.

As on many other matters, the Quebec codifiers adopted, at least in effect, the articles of the French code on the subject of the lease and hire of the personal service of workmen, servants and others (as the individual labour contract is called).[8]

This absolute contractual freedom has been limited, since the time of the codification, by means of laws and statutes regulating the capacity to contract, the hours of work, minimum salaries payable and many other subjects. Public policy no longer leaves the parties free to put any terms they choose into the contract. While the civil codes have only been amended slightly, the legislator has, by means of particular laws, enlarged the meaning and the scope of article 6 C.N. and article 13 C.C. by creating new rules of public order which the parties cannot agree to contravene.

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8 Commission to codify the civil law of Lower Canada, Fourth Report (Quebec, George E. Desbarats, 1865), p. 30.

CHAPTER TWO

THE FORMATION OF THE INDIVIDUAL LABOUR CONTRACT

As can be gathered from what has been said in the first chapter, the rules governing the valid formation of the individual labour contract have two sources. On the one hand there are the articles of the civil codes, and on the other there are the statutes passed since the codifications, inspired by a growing sentiment in favour of state intervention to protect the weaker of the parties.

In the civil code, the lease and hire of work (a generic term which includes work by estimate and contract, and the engaging of the services of a carrier to transport goods or persons, as well as the lease and hire of personal services) is defined as "a contract by which one of the parties, called the lessor, obliges himself to do certain work for the other, called the lessee, for a price which the latter obliges himself to pay."[1]

As is the case with all contracts governed by the

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1 Article 1602 C.C. The French Code (Article 1710 C.N.) omits the appellations "lessor" and "lessee", but is otherwise identical.

civil codes, its formation is subject to certain requisites enumerated by article 984 C.C. (1108 C.N.), namely, that there must be parties legally capable of contracting, their consent legally given, something which forms the object of the contract and a lawful cause. Let us examine first of all the requirement that there be parties legally capable of contracting.

I. CAPACITY IN THE CIVIL CODES

Despite the general policy of the civil codes to allow parties to contracts to act with complete freedom, a need to protect certain classes of people was recognized, and the codes declare such persons incapable of entering into a contract.[2] We shall examine the cases of the minor, the married woman, and the interdicted person.

Minors, it is clear, can, in the law of both France and the Province of Quebec, sign contracts, and, moreover, such contracts are not void due to the minority alone of the signatory. They are, rather, voidable, that is, susceptible of being declared void upon proof by the minor that he has suffered lesion,[3] defined as "la rupture

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2 Articles 986, 986a C.C., 1124 C.N.

3 Baudouin, op. cit., p. 689.
P. B. Mignault, Le Droit civil canadien (Montreal, Librairie du Droit et de jurisprudence, 1901), V, 247.
Gérard Trudel, Traité de Droit civil du Québec, (Montreal, Wilson and Lafleur, 1946), V, 234.

d'équilibre entre ce qu'une partie donne et ce qu'elle reçoit."[4] The other party cannot raise the matter of the minor's incapacity.

A contract by an unemancipated minor would, in the law of Quebec, only be binding if it were undertaken with the aid of his tutor,[5] a labour contract being an act of mere administration[6] which the tutor is entitled to undertake in the name of the minor.[7]

The French law, which differs from the Quebec law, would make the contract voidable even if the minor was represented by his tutor.[8]

In either case, a minor who has been emancipated according to the terms of the code, may contract for the hire of his labour services.[9]

At the same time it is clear that a minor who is an employer may not have an employment contract annulled for lesion if he is a trader, that is, if the contract concerned a business enterprise owned by the minor. He would

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4 Baudouin, op. cit., p. 687.

5 Article 1002 C.C.

6 Charlap, op. cit., pp. 6-13.

7 Article 290 C.C., Article 450 C.N.

8 Article 1305 C.N.

9 Article 319 C.C., Article 481 C.N.

have such recourse if the contract was entered into on his part as a non-trader, for example, with a domestic servant.[10]

In the civil code of Quebec, as amended in 1888, a minor may act alone, without the aid of his tutor or the prior registration of his act of tutorship, in sueing for his wages once he has attained the age of fourteen years, and, with the permission of the judge, may bring any other action resulting from his contract of employment.[11] In the French code, there is no such provision, but the Labour Code provides that where representation of the minor before the Labour Tribunals by his father or tutor is impossible, the Tribunal may grant the minor permission to act before them.[12]

In practice, in both France and Quebec, large numbers of minors who have reached the legal working age of fourteen[13] engage themselves to provide their labour services without the aid of a tutor, or without a tutor ever having been appointed.

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10 Articles 1002 C.C., 1308 C.N.

11 Article 304 C.C.

12 Article 71, L. IV. C.T.

13 For France, Article 2 L. II. C.T.
For Quebec, Industrial and Commercial Establishments Act, c.175 R.S.Q., 1941, s. 6 (2).

In France, a project for the revision of the civil code has proposed to allow minors of sixteen and over to conclude labour contracts with the approval of their tutors, and, from the age of eighteen, alone.[14]

The capacity of married women is subject to different rules in France and Quebec. In Quebec, the capacity of a married woman to contract is dependent on the matrimonial regime she has chosen. In the case where there is community as to property, the wife requires the authorization of the husband before she can act.[15] The same applies if the marriage contract stipulates only that the husband and wife will be not common as to property. Where, however, the wife has been married under an arrangement whereby she is separate as to property from her husband, she retains the capacity to perform acts of administration, which include the hiring out of her labour services.[16]

Similarly, if she has been judicially separated from bed and board, she regains full civil capacity.[17] In the cases where the married woman requires her husband's

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14 Brun and Galland, op. cit., p. 350.

15 Article 177 C.C.

16 Article 1422 C.C.

17 Article 210 C.C.

authorization and does not receive it, her contract is absolutely null and anyone may attack it on that basis who has an interest in doing so.[18]

Married women, no matter what the requirements for their capacity to contract, may retain the wages of their labour and dispose of them as they see fit.[19] Wives who are public traders (having obtained the consent of their husbands to become public traders, whether such consent was express or implied) may validly contract for the purposes of their commerce, which includes the hire of labourers.[20] A wife who is not a public trader, and who is common as to property with her husband, may not hire the services of labourers.

Unmarried women, who are of the age of majority, are fully capable to lease their labour services or to hire the services of others.

The existing French rule has modified the stringent terms of the traditional incapacity of married women. The laws of February 18, 1938 and September 22, 1942 determine their capacity to hire labour services or to lease them. The married woman may take a job without

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18 Article 183 C.C.

19 Article 1425a. C.C.

20 Article 179 C.C.

her husband's consent, and she may even become an employer without his consent. His consent is presumed so long as he does not object. If he does object, it is his right to have the contract set aside. The wife retains a right to have the courts review the matter to determine whether her husband's action was really taken in the superior interest of the family, or for unjust cause.[21]

Persons who have been deprived of the exercise of their civil rights through the process of interdiction[22] may neither in France nor Quebec conclude a valid contract. In France, the causes of interdiction do not include prodigality, and prodigals and persons afflicted with weakness of understanding may validly contract without the assistance of judicial counsel.[23] In Quebec, prodigality is among the causes of interdiction and persons of weak understanding, or temporary derangement of intellect caused by disease, accident, drunkenness or other factors, are prohibited from contracting,[24] if such weak understanding or derangement of intellect was as a matter of fact sufficient to make impossible any formation of real consent.[25]

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21 Brun and Galland, op. cit., pp. 350-351.

22 Article 325 C.C., Article 489 C.N.

23 Brun and Galland, op. cit., p. 350.

24 Article 986 C.C.

25 Baudouin, op. cit., p. 696.

II. LEGAL LIMITATIONS TO THE FREEDOM TO HIRE AND TO BE HIRED

To the civil law rules protecting minors, married women and interdicted persons by declaring them incapable of contracting, the laws of France and Quebec have added legal impediments to the formation of certain labour contracts. The state has intervened to protect particularly weak parties, as well as to carry out other aims of policy, by limiting the freedom of certain employees to be hired, and of employers, in certain circumstances, to hire and not to hire.

In both France and Quebec, the general rule is that the minimum age for employment is fourteen, the age at which the obligation to continue in school ceases.[26] In the case of Quebec, a child who has finished elementary school before the age of fourteen, and who produces a certificate to that effect, may validly be hired by a firm;[27] as long as the firm is not an industrial or commercial establishment as defined in Section 2 (3) and (4) of the Industrial and Commercial Establishments Act.[28] In

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26 For France, Article 2, L.II.C.T., Law of Sept.25, 1948. For Quebec, Industrial and Commercial Establishments Act, c.175, R.S.Q., 1941; An Act Respecting Compulsory School Attendance, 7 Geo. VI, c.13, s.290a (May 26, 1943)

27 An Act Respecting Compulsory School Attendance s.290c

28 Industrial and Commercial Establishments Act, s.6 (2) (First passed 57 Vic. c.30, 1894, replacing the Quebec Factories Act, 48 Vic., c.32, 1885).

such establishments, a certificate of study must be produced by all boys and girls between the ages of fourteen and sixteen on the demand of the inspector of industrial and commercial establishments.[29] The employer may be required to produce a certificate signed by the parents or tutor of a boy or girl indicating the age of the employee.[30] The inspector has the right to require a medical examination of an employee to determine his age or physical fitness, and, if the doctor examining so advises, the employee may be discharged.[31] Moreover, the Lieutenant-Governor in Council is empowered to forbid the employment of girls or women under eighteen years of age, and of boys under sixteen years of age, in establishments classified as dangerous, unwholesome or incommodious.[32] In establishments where the work might be dangerous or harmful to their health, the Lieutenant-Governor in Council may prohibit entirely the employment of women and girls and of boys under the age of eighteen.[33]

In France, the Labour Inspector has the right to

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29 Industrial and Commercial Establishments Act, c.175, R.S.Q., 1941, s.10

30 Ibid., s.6 (4)

31 Ibid., s.7

32 Ibid., s.6 (1)

33 Ibid., s.6 (3)

provoke the medical examination of any person under the age of sixteen seeking employment in any industrial or commercial establishment, in any liberal profession or family workshop, to determine whether or not the job is too difficult for such person.[34] France has also signed and ratified an International Labour Covenant which provides that medical examinations must be given to all persons of eighteen years or under before they are hired, and periodic examinations subsequently until they reach the age of twenty-one.[35] A decree of May 24, 1938 makes it compulsory for persons between the ages of fourteen and seventeen to have a certificate proving that they have completed a course of training for a trade before obtaining employment.[36] A decree of July 19, 1958 lists a number of employments which are forbidden to women and a number which are forbidden to children on the grounds that they are too dangerous.[37]

In an effort to ration the available employment, the French have legislated against what is known as "travail noire", the taking of a second job by a person who is

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34 Article 4, L.II.C.T., Law of September 25, 1948.

35 Brun and Galland, op. cit., p. 324. (Ratified August 6, 1951)

36 Code du travail, (Paris, Dalloz, 1959), p. 375.

37 Ibid., p. 481.

already employed in order to increase his income. The law of October 11, 1940 prohibits permanent supplementary gainful employment or employment on the legally obligatory day of rest.[38]

The decree of August 1, 1936 (article 7)[39] and the decree of September 26, 1936 (articles 11 and 12)[40] forbid gainful employment during the compulsory annual paid vacations. Other measures have forbidden public employees in a specific list of functions to take on supplementary work at the same time in the private sector of the economy, and have prohibited pensioners of the public service from taking on full-time government employment, on pain of forfeiting a part of their pensions.[41]

In Quebec, under the Weekly Day of Rest Act,[42] providing for one day off in seven (not necessarily Sunday) for employees of hotels, restaurants and clubs,

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38 Brun and Galland, op. cit., p. 328. ("Pratiquement il est resté inappliqué par suit des difficultés de contrôle").

39 Code du travail, (Paris, Dalloz, 1959), p. 286.

40 Ibid., p. 289.

41 Decree, October 29, 1936, modified by the Law of December 31, 1953 and the Law of July 11, 1955. Brun and Galland, op. cit., p. 328.

42 c.166, R.S.Q., 1941, first passed 8 Geo. V, c.53 (1918).

such employees are prohibited from using such day of rest to take on other gainful employment.[43] The pensions of superannuated government employees are suspended if they return to full time government service, under Section 25 of the Pension Act, Chapter 13, Revised Statutes of Quebec, 1941.

It is forbidden to French employers to hire a foreign worker who does not possess a working permit issued by the Departmental Labour Authority.[44] The Government has the power to fix the percentage of foreign workers which may be allowed in private enterprises.[45] The Federal Government in Canada has passed an act, which affects Quebec, prohibiting the solicitation and importation of foreign labour under promise of a contract of employment.[46]

The freedom of the employer to hire has been limited in France by the Ordinance of May 1, 1945[47] which obliges the employer to reintegrate all former employees who,

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43 Regulations for the carrying out of the Weekly Day of Rest Act, No. 5, Gus. Francq, Code of Labour and Industrial Laws of the Province of Quebec and Federal Laws, (Montreal, Mercantile Printing, Ltd., 1960), p. 117

44 Article 64, L.II.C.T., Law of February 5, 1951.

45 Law of August 27, 1940, Code du travail (Paris, Dalloz, 1959), p. 493.

46 Alien Labour Act, R.S.C., c.109, 1952, s.2.

47 Code du travail, (Paris, Dalloz, 1959), p. 409.

through mobilization, deportation, captivity, forced labour, or participation in the Resistance during the war, have become unemployed. This obligation must be fulfilled as long as the firm is still doing the same amount and type of business, and as long as the former employee is still capable of performing his old task. The fact that new employees have been hired as replacements is no justification for the failure to reintegrate such persons.[48] The Law of August 2, 1949[49] establishes the same right for those released from compulsory military service provided the employee notifies his former employer of his desire to be reintegrated within one month of his release from military service.

In addition, the French legislature has established a series of categories whose members are to be given priority in hiring, though they may never have been employees of the firm. Such categories include war pensioners, women widowed due to the war, war orphans under the age of twenty-one, wives of men incapable of working due to mental illness brought on by the war, widowed mothers whose children died due to the war.[50] All firms employing

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48 Article 2, p. 410.

49 Article 25a, L.I.C.T.

50 Law of April 26, 1924, modified by the Decree of May 20, 1955, Code du travail (Paris, Dalloz, 1959), p. 393.

at least ten workers of eighteen years of age or more (fifteen workers of that age in the case of agriculture) are subject to an obligation to employ a minimum percentage of such people, to be established by regulation, with a maximum of ten per cent of the total number of employees of the firm. Firms may count victims of industrial accidents retained in employment towards fulfilment of the legal minimum. The Law of October 8, 1940[51] creates a similar privilege for fathers with at least three children, and widows with at least two children. Subsequent orders[52] add divorced, separated and abandoned women, and unmarried mothers of at least two children receiving no support from the father of the children, to this group.

There are no provisions for the prior hiring of members of certain groups in the law of Quebec. A Federal act, the Reinstatement in Civil Employment Act,[53] provided the right to reinstatement within three months of discharge from service in World War Two and, by virtue of an amendment,[54] in the Korean War.

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51 Code du travail (Paris, Dalloz, 1959), p. 406.

52 November 6, 1941. Brun and Galland, op. cit., p. 347.

53 c.236, R.S.C., 1952.

54 c.65, 2-3 Eliz. II, 1954.

The freedom of the employer not to hire has also been limited. France has made it illegal for an employment to take into consideration in any way the membership of a prospective employee in a syndicate.[55] In Quebec, it is a forbidden practice to refuse to hire a worker because he is an officer or member of an Association.[56]

A further restriction on the freedom to contract for the lease and hire of labour services appears both in the laws of France and of Quebec in the government control of placement bureaux. In France, after a series of dispositions attempting to restrict private paying placement bureaux and their abuses, which dates from the Ordinance of the Prefect of the Paris Police of the 20th day of Pluviose, in the Year XII, the Ordinance of May 24, 1945[57] (most ineffective in practice[58]) required the abolition of all employment offices where a fee was required from the person seeking work, with employment offices where the employee pays no fee continuing only on the authorization of the government Manpower Service. This was designed to

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55 Article 1a, L.III.C.T., Law of April 27, 1956.

56 Labour Relations Act, c.162A, R.S.Q., 1941, s.21, assented to February 3, 1944. This would also be an offence under the Criminal Code of Canada, s.367.

57 Code du travail, (Paris, Dalloz, 1959), p.390, p.435.

58 Brun and Galland, op. cit., p. 368.

enable syndicates to operate hiring halls, and to permit mutual aid societies and graduate societies of schools and universities to continue to provide such services. Paying placement bureaux were replaced by a government service.

All employees seeking work, and all employers offering it, must register with the Manpower Service. While the direct obtention of employment is not ruled out, all newspaper advertisements by demanders and suppliers of labour must receive the prior authorization of the Service, and actual employment, in the liberal professions, is subjected to the requirement of notifying the Service. In industrial, commercial, or artisanal establishments, the Service's approval must be obtained. While it is true that the Conseil d'Etat has declared that such authorization may only be refused on economic grounds (this being the purpose for which the Ordinance was intended)[59], and while in fact the power of refusal is only rarely used,[60] this represents a serious derogation from the traditional rules of freedom of contract of the civil code.

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59 René La Clavière ed., Droit du travail, Collection du Chef d'Entreprise, (Paris, Editions Techniques, S.A., 1960), Fasc. 530, p. 4.

60 Brun and Galland, op. cit., p. 369.
Rouast and Durand, Droit du travail, (Paris, Dalloz, 1957), p. 384.

While the Quebec Government has set up an employment service,[61] and even forbidden the keeping of employment bureaux to anyone but religious or workers' societies, charitable groups or employers who have their own employment offices, (and the aforementioned are excepted from the prohibition only if they refrain from charging any fee to the prospective employee[62]), it has not chosen to make registration with the Government bureaux compulsory, or to give the Government agency any power of veto over labour contracts established between employers and employees.

Thus, both France and Quebec have witnessed an increasing government intervention in the formation of labour contracts for the purpose of carrying out public policy, either to protect particularly weak parties or out of economic considerations. France has in both cases experienced a greater degree of intervention. While both France and Quebec have endeavoured to protect women and young people, as well as members of workmen's associations, France has extended its protective regime by creating, in favour of certain groups, a priority right in hiring. Both the French and Canadian (Federal) Governments have, for

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61 An Act Respecting Employment Bureaux, c.161, R.S.Q., 1941.

62 Articles 7 and 8, c.161, R.S.Q., 1941.

economic reasons, taken steps to limit the employment of foreign labour, but the French Government has followed a policy of pronounced intervention by limiting, for economic reasons again, the right to take on supplementary employment, and by subjecting new contracts of employment in the industrial, commercial and artisanal sectors of the economy to prior Government approval.

III. CONSENT, OBJECT AND CAUSE

The remaining requirements for the validity of a civil law contract under articles 984 C.C. and 1108 C.N. are consent, object, and cause.

Consent, considered the formative element of all civil law contracts,[63] may be communicated expressly or be implied,[64] and need not be manifested, in the case of the labour contract as for the majority of contracts, by a written signature. There are no conditions of form to be fulfilled before the labour contract can be validly formed, nor is there any requirement for publicity.

Consent is not considered to have been free when one of the parties was in error, defrauded, or subjected to violence in the granting of his consent, and that party

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63 Baudouin, op. cit., p. 656.

64 Article 988 C.C.

may demand the annulment of the contract on these grounds.[65] While in the French code lesion is recognized as a cause of annulment in certain cases of contracts signed by adults, the labour contract is not one of them. Therefore, in both codes, no matter how harsh the terms of a contract for the lease and hire of personal services, it cannot be annulled on those grounds alone.[66] Only minors, in the circumstances we have examined above, may ask the annulment of a labour contract on grounds of lesion.[67]

The object of the individual labour contract is the personal services which the workman agrees to lease to the employer.[68] In accordance with the rules of the civil code, the object must not be a kind of work which is contrary to the laws of public order and good morals.[69]

The cause of the contract, in the case of the employee, is the obligation of the employer to pay the price agreed upon, while the cause from the point of view of the employer, is the obligation of the employee to furnish his personal services.

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65 Article 1000 C.C., Article 1117 C.N.

66 Article 1012 C.C., Article 1313 C.N.

67 Article 1002 C.C., Article 1305 C.N.

68 Article 1602 C.C., Article 1710 C.N.

69 Article 13 C.C., Article 6 C.N.

CHAPTER THREE

THE CONTENT OF THE INDIVIDUAL LABOUR CONTRACT

If all the requirements outlined in Chapter Two are fulfilled, a contract for the lease and hire of personal services has validly been formed, and we must proceed to determine what is the content of this contract.

The content of the individual labour contract is governed, on the one hand, by the rules of the civil code, and, on the other, by the limitations which the legislator has seen fit to impose on the freedom of the parties. As public policy ceased to favour the contractual freedom of the civil code and began to lean towards increased protection for the employee on the grounds that he was the weaker party to the contract, state intervention in determining the content of the contract has markedly increased.

I. THE DURATION OF THE CONTRACT

The determination of the duration of the individual labour contract is governed by the civil codes, which

provided originally that the contract could only be for a limited term or for a determinate undertaking.[1] On first glance, this may lead to confusion. It is now accepted that the intention of these articles was only to prevent the engagement of one's services for life.[2] This would amount to the involuntary servitude which the philosophy of the Eighteenth Century found abhorrent. It does not mean that a contract must, of necessity, fix a date for its termination, and, in fact, the great majority of labour contracts do not. This kind of contract is one of undetermined duration, and quite different from one of unlimited duration.[3]

Since, in virtue of Article 1024 C.C. (1135 C.N.), "the obligation of a contract extends not only to what is expressed in it, but also to all the consequences which by equity, usage or law are incident to the contract, according to its nature," it is clear that the failure to express a limit to the duration of the contract does not imply that such a limit may not exist. Regard must be had to usage (Article 21 L.I.C.T.).

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1 Article 1667 C.C., Article 1780 C.N., Article 20 L.I.C.T.

2 Tadoussac v. Brisson, BR 644, (1959)
Charlap, op. cit., p. 35.
André Rouast and Paul Durand, Precis-Droit du travail (Paris, Dalloz, 1957), p. 401.

3 Article 1668 C.C.,Article 23, L.I.C.T.

The Quebec code explicitly provides for the tacit renewal of a contract of fixed duration by a continuation of the relationship after its expiration,[4] in which case the contract becomes one of indefinite duration. This solution has been admitted by French jurisprudence despite the lack of a text to that effect.[5] Article 22, L.I.C.T. provides that no agreement with an "ouvrier" can be for more than one year unless there are conditions of employment and a level of remuneration set out by an express agreement.

The contract is also regarded as having a fixed duration when it is entered into for a specific task, but a contract simply fixing maximum or minimum durations is one of undetermined duration.[6]

The interest of this problem of the duration of the contract lies principally in the question of the contract's extinction.

II. THE OBLIGATIONS OF THE PARTIES

The principal obligations of the parties to a civil

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4 Article 1667 C.C.

5 Gérard Lyon-Caen, Manuel de Droit du travail et de la sécurité sociale (Paris, Librairie Générale de Droit et de Jurisprudence, 1955), p. 194.

6 Ibid.

law contract for the lease and hire of personal services are, by the definitions of Articles 1602 C.C. and 1710 C.N., the obligation of the employee to perform the services, or to do the work which he engaged himself to do, and the obligation of the employer to pay the price agreed upon. These obligations have become the object of state intervention to an important degree, as we shall see in the ensuing sections of this chapter.

These obligations are, however, not the only ones which the contract creates. There is also the obvious obligation to continue the employer-employee relationship for the length of time stated, or to give notice before the unilateral resiliation of the contract if it is for an undetermined duration. The obligations not specified in the contract, but determined by equity, usage, law or the nature of the contract, also apply.[7] The employer must, by the nature of the contract, furnish the employee with work to do, of the kind agreed upon.[8] He also has an obligation to provide safe premises, adequate tools and fair treatment to the worker.[9]

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7 Article 1024 C.C., Article 1135 C.N.

8 Esdras Minville, La législation ouvrière et le régime social dans la province de Québec, Study prepared for the Royal Commission on Dominion-Provincial Relations, (Ottawa, 1939), p. 31.
Rouast and Durand, op. cit., p. 408.

9 Charlap, op. cit., p.54; Rouast and Durand, op.cit., p.408.

The employee is obliged to perform his task with respect, obedience and diligence, and to obey the disciplinary rules of the firm. He must avoid causing prejudice to his employer whether by taking on supplementary employment for a competitor or by working on his own in competition with the employer, or in any other way.[10] In France it has been made a penal offence to solicit or accept offers or promises for doing or neglecting to do anything involving his employment, as well as to reveal secrets of fabrication.[11] Section 368 of the Canadian Criminal Code makes it an offence for an employee to accept a bribe to do or omit to do any act relating to his employment. The obligation not to cause prejudice to the employer survives the contract of employment and, after its termination, the employee may not, for example, make use of lists of his employer's customers, nor reveal manufacturing and other trade secrets.[12] There may even be a specific clause in the contract limiting the right of the employee to take on work in a similar firm in the same area for a given length of time. These clauses have been held to be valid as long as they do not bind the employee

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10 Minville, op. cit., p. 30; Rouast and Durand, op.cit., p. 407.

11 Rouast and Durand, op. cit., p. 407.

12 Ibid., Charlap, op. cit., p. 53.

never to work at his trade again at any place.[13]

III. LEGAL LIMITATIONS TO THE OBLIGATION TO PROVIDE SERVICES

A. THE TIME OF DAY

The employee's obligation to provide services has been the object of a great deal of legislation concerning, among other things, the time of day at which the employee may validly be required to provide his services.

The Industrial and Commercial Establishments Act of Quebec,[14] Section 15, provides that women, girls, and boys under eighteen may not be employed in industrial establishments any later than six P.M. or any earlier than six A.M. In commercial establishments, these groups must not begin work before seven A.M. or continue it after eleven in the evening in a city of over ten thousand inhabitants. On the days before Christmas, New Year's Day, Easter Sunday, the limit past which they may not work in the evening is ten P.M.[15] When the inspector of industrial and commercial establishments uses his power to extend the length of the working day, the hours worked by the abovementioned groups must not begin before six A.M. and end any later than nine

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13 Brun and Galland, op. cit., p. 337.

14 c.175, R.S.Q., 1941.

15 Section 16, Industrial and Commercial Establishments Act.

o'clock in the evening.[16] In the case of plants working on a shift system, (after obtaining a permit from the inspector), the work of the two shifts must be done between six A.M. and eleven P.M. An hour must be given for lunch between ten in the morning and noon, and an hour must be allowed for supper between six and eight P.M.[17] Section nine provides that no boy or girl under sixteen years of age may be employed in selling papers or in doing any other business in the street after eight P.M.

A second act, The Early Closing Act,[18] provides that the municipal councils may make regulations concerning the closing of stores, with the reservation that the stores cannot be ordered to close between seven A.M. and six P.M.

The French rule which corresponds to Section 15 of the Industrial and Commercial Establishments Act is found in articles 21 to 23 of the second book of the Labour Code,[19] which provides that no minor under eighteen years of age and no woman may be employed in any industry or liberal profession between the hours of ten P.M. and five A.M. and

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16 Section 17, ibid.

17 Section 18, ibid.

18 c.239, R.S.Q., 1941, first passed 57 Victoria, c.5o, (1894), modified 1904, 1924, 1949.

19 Law of December 22, 1911, Law of January 24, 1925. The Law of March 22, 1841 had set the age at sixteen.

that such employees must have a full eleven hours rest between the end of one day's work and the beginning of another. This rule does not apply to agriculture, domestic service, and commercial establishments. The Law of January 24, 1925 did provide, however, that no children under the age of eighteen may be employed in certain commercial establishments (carriers, loading and unloading) between the hours cited.

Article 24, L.II.C.T. which has as its source the Law of January 24, 1925, permits temporary deviations from the above rules in two cases, providing that the labour inspector be notified beforehand. In the first place, boys between sixteen and eighteen years of age may work at times otherwise forbidden to them in case of accident or to prevent an imminent accident. Women over twenty-one years of age may temporarily derogate from the regulation of their hours in the case where perishable goods are involved which would inevitably be lost should work cease. Permanent derogations were allowed by the decree of May 5, 1928 which provides a list of industries (fruit preserves, canned vegetables and fruits, fish canning, industrial milk-treating establishments) which may employ women at night for varying numbers of days each year as laid down by the decree. Boys between sixteen and eighteen years

of age are allowed to work in factories with continuously-operating furnaces in certain tolerated tasks listed in the decree.

A rule for which Quebec has no counterpart is the absolute prohibition of baking and pastry-making at night. Article 20 of the second book of the Labour Code[20] requires that such establishments must be shut between ten P.M. and four A.M., with the exception that the Prefect may allow a departure from the rule for a two-week period if the public interest is at stake and providing he informs the Inspector of Labour and the interested professional employers' and employees' organizations.

IV. LEGAL LIMITATIONS TO THE OBLIGATION TO PROVIDE SERVICES

B. THE LENGTH OF THE WORK WEEK

In addition to legislating outside limits to the work day, the two jurisdictions have created a body of rules restricting the length of the work day or week for which the employee may validly lease his services.

Employment in industrial establishments in Quebec is limited to ten hours a day and fifty-five hours a week for women, and for boys and girls under eighteen years of age. One hour is to be allowed them for meals each day, and that hour is not counted in the number of hours they may

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20 Law of March 28, 1919.

work.[21] In commercial establishments in cities of over ten thousand inhabitants, the same groups may not work more than a sixty-hour week except during the two weeks preceding New Year's Day.[22] For a maximum of six weeks, the Inspector may extend both these limits to a sixty-five hour week, with no day of work being longer than twelve hours, if this action is necessary to make up for lost time or other exigencies of industry or commerce.[23] Where two shifts operate in an industrial plant, no shift may work longer than eight hours no matter who the employees are, but shifts may only be established in the first place under a permit granted by the Chief Inspector.[24]

An Act Respecting the Limiting of Working Hours[25] gives to the Lieutenant-Governor in Council the right to limit the working hours of manual labourers in any industry and region of the province in which they deem it advisable, excepting that this may not be done in the case of agriculture, nor to industries which would thereby be put in an inferior position with respect to foreign competition. No

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21 Industrial and Commercial Establishments Act, c.175, R.S.Q., 1941, s.15.

22 Ibid., s.16

23 Ibid., s.17.

24 Ibid., s.18.

25 R.S.Q., 1941, c.165. First passed 23 George V, c.40 (1933).

decree, however, can limit the working hours of any group to less than six hours a day or thirty-three hours a week. The employers' and employees' associations must be consulted before such action is taken. This act was designed to increase employment,[26] and very few decrees were actually issued. The decree concerning the building industry in Montreal[27] limits the work day of skilled workers to eight hours, that of manual labourers to nine hours. On all projects, at least fifty per cent of the cost of which is paid by the provincial government, the contractor is obliged to establish two shifts, each of six hours duration.[28] For the Eastern Townships and Quebec divisions,[29] the hours are set at an eight hour limit each day, or a maximum of forty-eight hours each week. Shifts set up under the terms of article two are to run for eight hours each, six days a week. In the ladies hairdressing industry,[30] the weekly limit is fifty-five hours of work.

The Minimum Wage Act of the Province of Quebec,[31]

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26 Section 4, ibid.

27 Order in Council No. 1253, June 14, 1933, modified January, 1935; April 1935; May, 1937; February, 1939.

28 Ibid., Article 2.

29 Order in Council No. 1635, June 3, 1936.

30 Order in Council No. 422, February 8, 1935, modified May 10, 1935.

31 c.164, R.S.Q., 1941. First passed 1940, replacing the Fair Wages Act, 1 Geo. VI, c.50 (1937).

applicable to all employees except those in agriculture, domestic service, and those covered by decrees extending a collective agreement under the Collective Agreement Act,[32] gives to the Minimum Wage Commission the power to issue ordinances governing the minimum wage. Ordinance No.4, 1960 provides that for the purposes of the calculation of overtime pay, a forty-eight hour week shall be deemed to be the normal work week and that every hour above and beyond forty-eight shall be paid at the overtime rate of one and one-half times the minimum. Once a man is called to work on a given day, he is to be given three hours of work as a minimum or be paid for that amount of work.[33]

Beginning as early as 1841, laws were adopted in France limiting the length of the working day. The 1841 law, applying to children under sixteen, limited working hours to eight daily for those eight to twelve years of age, and to twelve daily for those twelve to sixteen years of age. After a number of laws had provided specific regimes for various classes of workers,[34] a uniform work

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32 c.163, R.S.Q., 1941.

33 Articles 26 and 27, Ordinance No. 4, 1960.

34 Law of September 9, 1848; Law of May 19, 1874; Law of November 2, 1892.

day of ten hours was introduced in plants employing adults alongside minors.[35] The Law of April 23, 1919 created the eight-hour day, and the Law of June 21, 1936[36] instituted the forty-hour week. The Law was of public order, and provided that no employee of either sex could work more than forty hours a week even if the employee agreed to do so, but that it was legitimate to agree on a shorter work week. There was no minimum period for which the employer was bound to employ an employee who had been called to work. Like the Law of 1919, the Law of 1936 was to be applied without a reduction in the take-home pay of the worker. The Law still is in force, and has been incorporated into the Labour Code as articles six to ten of the second book. Applying originally to industrial, commercial and artisanal establishments only, its provisions were extended to cover the liberal professions, ministerial offices, syndicates, associations, and civil partnerships (but not family workshops or domestic employment) by the Law of March 21, 1941. The particular means of applying the terms of the law to any given industry were determined by a series of decrees issued by the Council of Ministers after consulting the interested employers' and employees'

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35 Jean Rivéro and Jean Savatier, Droit du travail, (Paris, Presses Universitaires de France, 1956), p. 338.

36 Articles 6-10, L.II.C.T.

organizations and the relevant section of the National Economic Council.[37] Sixty decrees were passed within a year and one half[38] and most provided for the partition of the forty hours of the work week over a period of five days, rather than spreading them out over five and one half or six days. In addition, the decrees generally outlawed the practice of running rotating shifts in such a way that the shift would be on duty for longer than forty hours weekly, though each individual worker would respect the limit. Thus, an arrangement whereby a shift would work six eight-hour days, with each member being allowed one day off during the week, or an arrangement whereby a shift would work for twelve hours every day, with individual workers only working eight of these hours, were forbidden. Similar in nature to the provisions of the Quebec Industrial and Commercial Establishments Act, the articles of the decrees allow for shifts only where the working time of the shift as a whole would not exceed the working time of each of its members. The decree of December 31, 1938 modified the regime resulting from the earlier decrees and permitted the employer to establish

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37 The Council was abolished by the Law of December 20, 1940. The Economic Council created by the Constitution of 1946 no longer fulfils this function.

38 For the entire list, Code du travail, (Paris, Dalloz, 1959), p. 269 ff.

such shifts after consulting the employers' and employees' organizations concerned and after obtaining the authorization of the Inspector of Labour, with the reserve that such shifts could only be on a temporary basis. Permanent provision for the use of the type of shifts described above could only be made by ministerial decree.

The decree of September 1, 1939 providing for war mobilization, extended the work week to sixty hours and permitted shift arrangements of all kinds.

The two latter decrees permitting shifts even where the working time of the shift exceeds the limit allowed to the individual worker have since been repealed, and public policy has reverted to the former view that such arrangements are illicit. They may nevertheless be permitted by ministerial order,[39] except in the case of women, and children under eighteen, for whom such shifts are absolutely prohibited.[40]

The Law of February 25, 1946 revived the regime of 1936 after the cessation of hostilities, and added to it a very important modification. Though the forty-hour week is still the legal work week, the normal week is to be considered a forty-eight-hour one. Overtime hours are permitted

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39 Brun and Galland, op. cit., p.387.

40 Article 16, L.II.C.T.

(providing they do not exceed twenty in any week) and it is taken for granted that there will normally be at least eight overtime hours (whence the designation of the forty-eight-hour week as the "normal" one). The authorization of the Inspector is needed before the employer can set up such overtime work, and the Inspector only decides after hearing the opinions of the interested professional organizations. No authorization is needed where the decree for the industry recognizes a permanent need for such supplementary hours, for example, in the lighting of furnaces and other preliminary work.

Overtime work is optional, and failure to perform it does not entail a breach of contract. Such extra work must be paid at the rate of at least one hundred and twenty-five per cent of the basic rate for the first eight hours, and at least one hundred and fifty per cent of the basic rate thereafter. However, by the provision of Article 14, L.II.C.T., women and children of eighteen years of age or less may under no circumstances work longer than ten hours in any day.

Special regimes exist in mining and agricultural industries. In the former, the Law of June 21, 1936 limited the work week to thirty-eight hours and the day to seven hours and forty-five minutes. In the case of agriculture, the Law of March 10, 1948 created a yearly limit

to the amount of work that a labourer could validly contract to perform. In any three hundred-day period, the number of hours worked must not exceed 2,400. The Prefect of each department has the task of dividing this number of days and of allocating them to given months, taking into consideration local conditions and requirements. The Prefect may also order a derogation from this regime.

There are also exceptions to the general regime. To repair or prevent an accident, workers may be asked to remain on the job, without any limitation on the day the emergency arises. No authorization or notification of the Inspector is necessary. On succeeding days, there may be no more than two supplementary hours for this purpose. With permission from the Inspector, and on furnishing proof of an unusually high work load which cannot be met by the hiring of new workers at a particular moment, the work week may be extended. Under no circumstances may the week extend to more than seventy-five working hours.[41]

In some of the decrees of application, it was recognized that the employee does not do actual work the whole time that he is present, and, as a consequence, the basic forty hours of work are not calculated by counting the hours that the employee is present, but by using a mathematical formula

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41 Brun and Galland, op. cit., p. 390.

relating hours present to hours worked in a particular industry. Thus, for example, the decree of April 27, 1937, applying to employees of retail grocery establishments, provides that forty-six hours of presence shall be considered equivalent to forty hours of work, and that the worker shall be paid for forty hours although present forty-six. Similar decrees exist for hairdressing personnel (forty-five hours being equivalent to forty hours of work in the Paris area, and in other areas, forty-eight to fifty-two hours being the equivalent to forty-hours of work)[42] and for retail employees in non-food establishments (where forty-two hours are equivalent to forty hours of labour)[43].

A further cause for the extension of the work week beyond the legal limit envisaged by the Law of 1946, is a process known as "récupération" or the recovery of lost hours. In cases where the entire work force (and not just an individual) failed to achieve the forty-hour ceiling for a given week due to accident, irresistible force, a slack season, intemperate weather, or holidays, the employer may recover those hours. In the case of industries governed by the decrees of application of the Law of 1936, recovery

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42 Decree of April 20, 1937.

43 Decree of March 31, 1937.

of lost hours for any other cause must be authorized by the Inspector. In such cases, the interruption of work must have exceeded one week, and recovery must be accomplished within five weeks of the event. On the other hand, industries not governed by such decrees are subject to the Decree of May 24, 1938 which allows recuperation for any reason except strike or lockout, requires only that the Inspector be informed before the recovery takes place, and allows such recovery to be effected at any time within twelve months of the cause of the lost time.

Hours recovered in this manner are paid as regular hours of work at the base rate without any increment for overtime even though in the week such hours are recovered the employee will have worked more than forty hours.[44]

There is no rule comparable to this in the law of Quebec.

V. LEGAL LIMITATIONS TO THE OBLIGATION TO PROVIDE SERVICES

C. THE WEEKLY DAY OF REST

A further way in which both France and the Province of Quebec have intervened to limit the obligation of the employee to provide his services has been to provide for a compulsory day of rest each week, either Sunday, or some

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44 Brun and Galland, op. cit., p. 390.

other day.

Quebec has a variety of legislation governing a weekly day of rest. In the first place, the Industrial and Commercial Establishments Act defines week as "the period between midnight on Sunday night and the same time on the following Saturday night".[45] Thus, all the rules in that act limiting the length of the work week are governed by this definition, and the number of hours which the act permits certain groups to work must be divided over six days, and not seven.

The Sunday Observance Act[46] goes further, expressly ruling out Sunday work:-

> No person shall on Sunday, for gain, except in cases of necessity or urgency, do or cause to be done any industrial work or pursue any business or calling ...
> No shop-keeper, peddler, hawker or other person shall sell or retail any goods, wares or merchandise during Sunday.[47]

These provisions are reinforced by the Lord's Day Act,[48] an act of the Parliament of Canada. Section 4 of that act prohibits the doing of any business or labour for gain on the Lord's Day. Persons who work at receiving

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45 Section 2 (6), c.175, R.S.Q., 1941.

46 R.S.Q., 1941, c.309.

47 Ibid., Ss. 3, 8.

48 c.171, R.S.C., 1952.

telegraph or telephone messages, or in an industrial process, or in transportation, may work on Sunday if they are compensated by twenty-four consecutive labour-free hours on another day of the week.[49] Certain necessary and merciful work is excepted from the provisions of this act, for example, work connected with worship, the sale of medicines, the provision of electricity, gas, water, light, heat or cold air, caring for live animals and dairy products, and starting or maintaining fires, or repairing furnaces.[50]

The Weekly Day of Rest Act[51] provides that hotel, restaurant, and club employees must have one day of rest (twenty-four consecutive labour-free hours) each week. The Labour Inspector may grant permission to substitute two eighteen-hour holidays in the same week for the twenty-four hour rest. None of these rest periods need be on Sunday. Where only one cook is employed, two rest periods of twelve hours each in the same week may be substituted for his single rest period of twenty-four hours.

The Quebec Minimum Wage Commission Ordinance Number 4,

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49 Section 5, c.171, R.S.C., 1952.

50 Ibid., s.11.

51 c.166, R.S.Q., 1941. First passed 8 Geo. V, c.53 (1918). S.2,and Regulations for the carrying out of the act, Art. 2, Francq, op. cit., p. 117.

1960,[52] provides that the employees in industries subject to the Ordinance must be given twenty-four consecutive hours of rest each week, or two periods of eighteen consecutive hours each. Ordinance Number 4 does not apply to household or agricultural employees, those covered by a decree of extension under the Collective Agreement Act, nor to blind persons in sheltered workshops, university and superior school students, the employer's consort, those summoned to assist in case of emergency, members of the clergy and religious institutions, employees with independence of action in the carrying out of their task.

In France, the Law of November 18, 1814, recognizing Catholicism as the official religion of France, instituted the regime of a workless Sunday. This legislation was abolished in 1880.[53] The present law dates from July 13, 1906[54], and applies, as it has since the outset, to industrial and commercial establishments and (since the Law of March 21, 1941) to the liberal professions as well as to agriculture (Law of March 10, 1948). Domestic servants and carriers by rail and water are not governed by this regime. For the latter, there are special provisions.[55]

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52 Francq, op. cit., p. 362, 363.

53 Brun and Galland, op. cit., p. 402.

54 Article 30 ff. L.II.C.T.

55 Brun and Galland, op. cit., p. 403.

The law provides that no worker may be employed more than six days weekly, that he is entitled to a minimum of twenty-four consecutive hours of rest, and that this rest must be given him on Sunday. In case of accident, or the need to prevent an accident, this principle may be derogated from on the condition that these hours are paid at the overtime rate. Women and children are not subject to the requirement to work on Sunday in case of emergency. In establishments where necessary work must be done on Sunday, a half day of work is allowed which must be compensated by a whole day as soon as two such half days have been worked. Establishments requiring full-time operation with continuously running furnaces, may require their personnel to work on Sunday, but must compensate them with another day of rest. In certain establishments, the employees may take their free day in rotation. Such is the case for hospitals, hotels, restaurants, florists, car and chair rentals, light, water and electricity companies, transportation by rail and air, industries dealing in perishable goods, and telegraph companies.

The Minister of Labour may suspend the provision for the weekly day of rest in the interest of national security. Where the closing of an establishment on Sunday would not be in the public interest, or would compromise the effective

running of the firm, the firm may ask the Prefect to allow it to choose an alternative plan for the weekly rest. The Prefect decides after asking the advice of the professional organizations involved, the municipal council and the chamber of commerce. Other enterprises in the same locality and business, with the same clientele, may then ask to have the exception extended to them.

For the purpose of holding fairs, the mayor of a town can substitute another day for Sunday, no more than three times yearly, after asking the advice of the professional organizations concerned, and this only for commercial establishments.

Since family establishments were not subject to any of the above rules, not having any employees as such, the Law of December 29, 1923[56] provides that, if the employers' and employees' syndicates agree, the Prefect may order the closing of all firms in one occupation in the region on Sunday, including those which are not subject to ordinary employer-employee laws.

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56 Article 43a, L.II.C.T.

VI. LEGAL LIMITATIONS TO THE OBLIGATION TO PROVIDE SERVICES

D. HOLIDAYS

Still a further method of limiting the amount of work for which an employee may validly contract (and of thus protecting the employee from his own weak bargaining position in the labour market) is to provide him with a number of statutory holidays.

The only such provision in Quebec law is that contained in Section 2 of the Early Closing Act[57] which provides that municipal councils may order that stores remain closed all day on New Year's Day, on the Feast of the Epiphany, on Ascension Day, on All Saints Day, on Conception Day and on Christmas Day. In the case of Henry Birks and Sons (Montreal) Ltd. et al v. The City of Montreal, [1955] SCR, 799, this section of the Early Closing Act was held to be ultra vires the provincial government.

In France, a series of measures have created holidays of eleven different days. The Order of 29 Germinal, in the Year X made holidays of Ascension Day, Assumption Day, All Saints Day and Christmas Day. The Conseil d'Etat declared in a judgment of March 23, 1810, that New Year's Day was also a holiday. The Law of July 6, 1880 made July 14th a holiday, while the Law of March 8, 1886 added Easter Monday

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57 R.S.Q., 1941, c.239. First passed 57 Vic. c.50 (1894).

and Pentecost Monday. November 11th was added by the Law of October 24, 1922, May 1st by the Laws of April 30, 1947 and April 29, 1948, and, finally, the second Sunday in May (victory in 1945) was added to the list by the Law of March 20, 1953, and the Decree of April 11, 1959. In addition, Good Friday is a holiday in Protestant regions of Bas-Rhin, Haut-Rhin and Moselle Departments.[58]

However, these holidays are only created for the benefit of women and of children under eighteen years of age who are employed in manufacturing, mining, construction and related industries.[59] Except for May 1st, which is a paid holiday for all workers of both sexes and all ages, in whatever employment they may be engaged, only women, and children under eighteen years of age, may avail themselves of these holidays even against the will of the employer, without this constituting cause for dismissal or being construed as a strike. Moreover, only employees in these groups who are paid by the week, every two weeks or by the month are paid for these holidays. They cannot earn any additional amounts by working on these holidays. Those women and children who are paid by the hour or day receive no pay if they avail themselves of the holiday, and,

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58 Brun and Galland, op. cit., p. 410.

59 Article 52, L.II.C.T.

if they work on the holiday, they are only paid the basic wage with no increment for overtime. Even May 1st is not paid when it falls on the weekly day of rest or during a period of strike. All of these days, including May 1st, are recuperable.

The day of the "Sainte Barbe" is a paid holiday for employees in the mines, according to the terms of the Law of March 20, 1951. In industries requiring continuous operation of their furnaces, boys and women of full age can be required to work even on holidays as long as they still get their weekly day of rest.[60]

VII. LEGAL LIMITATIONS TO THE OBLIGATION TO PROVIDE SERVICES

E. ANNUAL PAID VACATIONS

The final way in which the legislators of France and Quebec have chosen to limit the obligation of the employee to provide his services has been to create an obligation for the employer to allow the employee an annual paid vacation.

Paid vacations in Quebec are governed by an ordinance of the Minimum Wage Commission issued under powers granted the Commission by Section 14a of the Minimum Wage Act.[61]

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60 Article 53, L.II.C.T.

61 c.164, R.S.Q., 1941. First passed, 1940.

The ordinance (No. 3) applies to all employees governed by the Minimum Wage Act (which excludes domestic and agricultural workers) except employees who already have an annual paid vacation of at least one week in virtue of a collective agreement, or another ordinance. (Municipal and School Corporation employees, as well as forestry workers, are governed by separate ordinances.) Ordinance Number 3 also does not apply to employees who work at home, caretakers who are provided with lodgings, part-time help working less than three hours a day, and salesmen, or others, who are paid by commission, bonus or a share of the profits and who are self-reliant concerning the allocation of their working time.

For those who are subject to the ordinance (the great majority of industrial, commercial and other employees), the ordinance provides that a year of continuous service with one employer gives the employee a right to a continuous paid vacation of one week, and that, for employees employed less than a full year with the same employer, each full month of service creates a right to a half-day paid vacation.

For purposes of calculating the length of the holiday, May 1st is taken as the beginning of a new year. Thus, for every month served in the establishment by an employee

before April 30, that employee has a right to one half-day paid vacation, which must be taken before the following May 1st. Thus vacation credits cannot be saved for several years and taken all at once. The rate of pay is that which the employee would have earned had he remained on the job, for those paid by the week or longer period, and two per cent of the wages actually earned in the period of service which was taken into consideration to calculate the length of his vacation, if he is paid by the hour or by the day. This is payable before the employee leaves on the vacation.

If the labour contract is terminated, the employee is entitled to the pay he would have received before taking a vacation which is still owing to him at the time of the termination of the contract.

The ordinance is of public order, and it is forbidden to renounce in advance the right to a vacation provided for by law, or to agree to take a shorter vacation, and it is also forbidden for the employer to offer the employee a compensating indemnity in place of a vacation, except at the termination of the contract, at which time the indemnity must not be any less than the employee has a right to.

In calculating the length of service in virtue of which the length of the vacation will be determined, absence due to illness, days on which the establishment was closed,

the previous year's vacation, and authorized absences are all included as effective time worked, provided that the employee has not obtained any other employment during such periods. If the employee has not worked at all for an entire month for any of the above reasons, that month is not counted towards the calculation of the vacation.

In the construction industry, where employment with one employer is the exception, a system has been arranged whereby the employer affixes stamps equivalent to two per cent of the employees wages to a book which the employee takes with him to his next job. After April 30, the employee can redeem the stamps with the Commission and thus obtain his vacation pay. He is then entitled to a minimum of seven days off which the employer must allow him to use as a vacation. Section 17 of the ordinance enables employers and employees in other industries to adopt such a system of vacation with pay stamps.

The Annual Vacations Act (6 Eliz. II, c.24, assented to on January 31, 1958) provides for vacations with pay for employees in federal-jurisdiction industries. Those employees who have served less than two years with an employer are entitled to one week's vacation for each completed year; those who have served more than two years with an employer are entitled to two week's vacation for a completed year of employment.

The first attempt in France to take any legal steps to assure employees of an annual paid vacation was the Law of March 29, 1935 giving vacations of one month to journalists who had been employed by the same employer for one year and five weeks to those employed for ten years or longer. The Law of June 20, 1936 giving annual paid vacations to workers in industry, commerce, and the liberal professions, to domestic servants and to agricultural workers provided for vacations of one week or two weeks depending on the length of the employee's service. The regime now in force is the result of a number of modifications to the Law of 1936 which have been codified as articles 54f to 54n of the second book of the Labour Code, the most recent measure being the Law of March 27, 1956.

Under the present system, the right to any vacation at all accrues as soon as the employee has completed one month of service with the same employer, as is the case in Quebec. Previously, the Law of July 20, 1944 had set the minimum at four months. A month is defined as the number of regular working days in a calendar month, and not thirty days worked. In calculating the length of time worked, time lost during the last paid vacation, or during a pregnancy and subsequent birth is counted as time worked. A mother may not be employed for the two weeks

preceding and six weeks following childbirth[62] and has the privilege of extending the rest period to six weeks before and eight weeks following the delivery[63] without breaking her contract or being considered on strike, while fathers in government service have the right to three paid days off following the birth of each child.[64] Time lost due to an industrial accident or professional disease causing inability to work for a period of up to one year, is also considered time worked. Simple absence due to illness is not considered time worked (though it is in Quebec). A law of August 3, 1956 adds service in the army to the list of causes of absences which are taken as the equivalent of time worked.

While Quebec chooses May 1st as its arbitrary cut-off date for the calculation of the vacation due, France chooses June 1. As in Quebec, the vacation cannot be saved until the following year. Whereas in Quebec the employer is free to give the vacation at any time in the twelve months following the May 1st on which the length of vacation due was calculated, in France the vacation must be given the employee at some time between May 1 and October 31. The employer, in fixing the actual allocation

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62 Article 54a, L.II.C.T.

63 Article 29, L.I.C.T.

64 Law of May 18, 1946.

of time and order of departure, must consult the representative of the personnel.

As to the actual length of the holiday, the Law of March 27, 1956 increased it to one and one-half work days (from one) for each month worked, which, for twelve months, gives an employee eighteen work days of vacation (instead of twelve as in the previous regime). This works out to three complete weeks for employees working six days a week, to three and one-half weeks for those working five days a week. Remuneration is at the rate of 1/16th of the money earned over the period between June 1 of the previous year and May 31 of the current one, including money earned for overtime hours habitually worked. In no case, however, may the worker receive less as vacation pay than he could have earned by working during vacation.

For those under eighteen years of age on April 30 of the year for which the vacation is being awarded, the length of the vacation is twenty-four days (two days per month). In addition, even if these workers have not worked a full twelve months, they may still claim twenty-four days holiday, but they are paid only for the length of holiday they have earned. Those between eighteen and twenty-one years of age may claim eighteen days even if they have not earned that number, and are paid only for the holiday they have a right to in virtue of the time served with the employer.

After twenty years of service, whether it has been continuous or not, the employee is entitled to an additional two days of paid vacation. After twenty-five years, he is entitled to an additional four days, and after thirty years to an additional six days, bringimg the maximum vacation to twenty-four days.

Minor mothers get two days extra for each child under fourteen, but this extra vacation is reduced by one day per child if she has worked less than four months for the same employer.

These rules are of public order, and they cannot be derogated from by the parties. The employee cannot give up his vacation rights, nor can the employer prolong the vacation without paying the employee. The vacation must be continuous and may only be divided if the total due exceeds twelve days. In that case, one of the parts of the vacation must be equal to or greater than twelve days. The consent of the employee is required in dividing his vacation. For the division of the vacations of all the employees in the establishment, the agreement of the representatives of the personnel is necessary. For economic purposes, the Minister of Labour can order such a division of the paid vacation after consulting the appropriate professional organizations.

Special regimes are set up for employees doing their work at home. Their employers must give them a six per cent increment in their wages, which takes the place of holiday pay. Employees in industries where work is not continuously for one employer (dockers, construction, entertainment) are subject to a special regime whereby the employer pays an amount equivalent to vacation pay for the period the worker was employed by him to a compensation fund, which then pays the year's accrued vacation pay to the employee.

In France, if an employee leaves a firm, the amount of vacation pay accruing to him is paid to him or, if he has died, to his heirs. In Quebec, article 14 of the Minimum Wage Commission Ordinance strictly limits the right to vacation pay to the employee himself, and excludes the employee's legal representatives from claiming such pay.

Thus, both France and Quebec have experienced a large degree of state intervention to limit the employees obligation to work. Their legislations differ only in detail.

VIII. THE STATE AND WAGES

One of the most important questions facing the state is the determination of a policy regarding wages. Given the social and economic importance of the level of remuneration that workmen receive in return for their labour, it

is necessary for the state to decide whether the most desirable results will be obtained by allowing free market forces of supply and demand to determine the wage rate, or whether some state intervention is necessary to alter the situation produced by the market. The lack of regulation of wages in the civil codes does not indicate a lack of policy. A very conscious policy of "laisser faire" pervaded the codes, and the silence on the subject of wages is due to a positive belief in the work of the "invisible hand".

Since the time of the codifications, both Quebec and France have witnessed an increasing amount of state intervention in the setting of wages, primarily in the establishment of minimum wages, creating a lower limit to the level of remuneration for which the parties were free to contract.

The famous Decrêts Millerand were passed in France on August 10, 1899, and revised by the Decree of April 10, 1937. Since competition for government contracts involves bidders in trying to cut wages in order to submit a lower bid, these decrees established a "fair wages policy" for government contracts.

The Prefect of the Department where the contractor is to undertake a public work calls a commission of employers and employees to advise him as to what is the "normal" rate of pay in the industry. The Prefect may also consult the

professional organizations concerned, or other competent persons. When details and blueprints are sent to the contractors who have expressed an interest in submitting a bid, the "normal" rate of wages arrived at in the manner described above, is included along with the rest of the information, and the contractor who submits a bid is binding himself to pay that rate of wages. If the normal salary goes up during the course of the work, the Prefect may raise the salaries of the employees of the contractor, and compensate him by a corresponding increase in his return.

The salaries of persons working at home are arrived at in a similar fashion. The commission mentioned above which determines the "normal" rate of wages for the purposes of government contracts, determines as well the rates of pay in employments corresponding to those being done at home. Then, with the help of employers and employees involved in this "putting out system", they give their opinion as to the length of time required to execute the work. The Prefect then issues a decree of minimum wages in home work.[65]

During the Second World War, in virtue of the Decrees

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65 Law of August 1, 1941, modified by the Law of June 28, 1943 incorporated as Articles 33 ff. L.I.C.T. Under the previous Law of July 10, 1915, the professional organizations of employers and employees would decide together on such salaries.

of November 10, 1939 and June 1, 1940, all wages were frozen, and only government authority could change them. It was only the Law of February 11, 1950 that brought a change in this arrangement.[66] The result of this measure is that, in principle, the parties in the general case are once more free to regulate their wages, but a highly complicated system of determining the minimum wage has been introduced which serves as a base to the system.

A Superior Commission of Collective Agreements, consisting, in virtue of the Decree of January 7, 1959, which modified the law of 1950, of the Labour Minister or his representative, who acts as chairman, the Minister of Economic Affairs or his representative, the President of the Social Section of the Conseil d'Etat, sixteen representatives chosen by the most representative national workers' confederations, sixteen employers' representatives, chosen by the most representative employers' national confederations, including representatives of agricultural employers, small businesses, public enterprises and artisan employers, three representatives of familial interests chosen by the National Union of Familial Associations, and finally representatives of interested government departments who are ex-officio members only, is set up. The task of

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66 Articles 31 ff. L.I.C.T.

the Commission is to establish a specimen budget for a typical working family and, given the determination of the prices of the items considered, the Commission is charged with recommending an appropriate minimum salary. The Council of Ministers, taking into consideration these facts, as well as economic circumstances and (since the Law of July 26, 1957) the national revenue, and not being bound in any way to agree with the Commission or accept their views, decrees an interprofessional guaranteed minimum salary.[67]

The first decree of the Government (August 23, 1950) set the salary in the Parisian area at 78 francs an hour, and the second raised it to 100 francs an hour. Eleven zones have been set up in which the basic Parisian rate is reduced in consideration of lower living costs in the provinces.[68]

This regime applies to all workers of both sexes who are over the age of eighteen and in normal physical health. Youngsters between fourteen and fifteen years of age receive

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67 The salary is guaranteed only in the sense that if an employee works, he will receive no less than that amount. There is no guarantee that he will be employed or paid an amount equivalent to the interprofessional minimum salary if unemployed. It is arrived at assuming the employee works forty hours a week. La Clavière, op. cit., Fasc.546, p. 9.

68 The Law of March 17, 1956 lowered the greatest reduction to eight per cent, from twelve per cent. La Clavière, op. cit., Fasc.546, p. 7.

only fifty per cent of the basic wage, those between fifteen and sixteen receive sixty per cent of the guaranteed salary, those under seventeen receive seventy per cent and those under eighteen receive eighty per cent.

Anything paid to the worker in virtue of the services he has performed, whether it be in money or in kind, is included for the purposes of determining whether or not the minimum guaranteed salary has been paid.[69]

Since collective and other agreements often provide for wages of qualified personnel and office workers as a function of the interprofessional guaranteed minimum salary, and inasmuch as Government policy sought to benefit only the least favoured of the labouring classes, the earliest modifications to the minimum salary came in the form of decreed additions to it, rather than an upward revision of the base rate itself, which the law provided was to be effected in the same way as the original setting of the salary. Thus, instead of raising the interprofessional guaranteed minimum salary, the decree of February 5, 1954 simply added fifteen francs per hour to the basic Parisian rate, thus enabling those actually paid at the base rate to avail themselves of the new base, while precluding any upward revision of salaries declared in contracts to be a

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69 La Clavière, op. cit., Fasc. 546, p. 8.

given increment above the base salary.[70]

The Decree of October 9, 1954, continuing the practice of ordering additions to the minimum salary, rather than increasing the base salary itself, added 6.5 francs an hour to the minimum for the Parisian region, bringing it to a total of 121.5 francs an hour, while the Decree of April 2, 1955 raised this to 126 francs an hour. This system was suppressed by the Decree of January 31, 1959 which fused the additions with the minimum salary.

The process of revision of the minimum salary has undergone several changes. While at first the revisions were to be made following the same procedure for the setting of the minimum salary, the Law of July 18, 1952 provided for a sub-committee of the Superior Commission of Collective Agreements composed of three Government representatives, four representatives each of the most representative employers' and employees' confederations respectively, and one representative of the National Union of Familial Associations. This sub-committee was to be furnished, by the National Institute of Statistics and Economic Studies, with price data enabling the sub-committee to determine the change in the cost of a list of 213 items. If the price of this list had risen five per cent or more,

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70 Ibid., p. 7.

the minimum salary would automatically be increased by an equivalent amount, provided that such adjustments could not be made more frequently than once every four months.[71]

This law was replaced by the Law of June 26, 1957 which provided that only the first increase of the minimum salary would operate as described in the former law. This occurred when the minimum salary was raised by 5.9 per cent on August 8, 1957. The new law also provided for a new procedure for the future revision of the minimum salary. A new list of 179 items replaced the former list of 213, and it was decided that the wage should be allowed to rise whenever the index for two consecutive months was two per cent or more higher than the index at the time of the last revision. The Labour Minister and the Minister for Economic Affairs are then to issue a joint decree increasing the minimum salary. This has occurred on six occasions and the wage, as of the Decree of November 1, 1959, stands at 160.15 francs an hour in Paris and environs, less eight per cent in Zone 11, the lowest paid.[72]

The Law of February 25, 1946 still applies, and all overtime hours are paid at the increased rate of 125 per cent of the minimum for the first eight hours, and at

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71 Brun and Galland, op. cit., p. 457.

72 La Clavière, op. cit., Fasc. 546, p. 7.

150 per cent of the minimum for all subsequent hours.

The Quebec Government has chosen to intervene in the setting of the wage which the employee receives in return for the provision of his services in much the same way as has the French Government, namely, by providing for fair wages in Government contracts and by introducing a minimum wage.

The Order in Council of October 5, 1932 provided that all Government departments and commissions or corporations under their control were, in granting contracts for the construction or repair of any public work, to insert a clause into their agreement with the contractor binding the latter to pay his workmen the wages current in the district where the public work is being undertaken, for that type of work. The hours of work are to be those customary in the same trade and locality. If customary hours and wages cannot be determined, then wages and hours in government contracts should be "fair and reasonable".[73]

The decision as to what is customary, fair or reasonable, is left to the Minister of Labour, who may amend the terms of a contract in force three months after its commencement. The Minister is also responsible for

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73 Francq, op. cit., p. 345.

classifying the type of work involved (a prerequisite to determining the wage which is customary in the same trade in the same locality) and for the classification of what constitutes overtime.

The Minimum Wage Act,[74] replacing the Fair Wages Act,[75] sets up a Minimum Wage Commission of at least five members which is given the power to issue ordinances governing minimum wages, overtime wages and other labour conditions for any categories of employees in any locality of the Province, which ordinances are to be applicable for a stated time. In principle, the Commission should issue such ordinances after assembling a joint committee of equal numbers of representatives of employers, employees, and of the public, presided over by a member of the Commission, in the case of a general minimum wage ordinance, or after assembling a conciliation board chaired by a delegate of the Commission and consisting of equal numbers of representatives of the employers and employees involved, where the ordinance is designed to apply to a particular group.

The committee or board hears the interested parties and then recommend wages and other conditions to the

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74 c.164, R.S.Q., 1941. First passed, 1940.

75 1 Geo. VI. c.50, (1937)

Minimum Wage Commission. The Commission may approve, amend or reject the recommendations. The Lieutenant Governor in Council then consider the proposed ordinance, after which, if it is approved, it comes into force twenty-eight days after its publication in the Quebec Official Gazette. Where the Commission is of the opinion that a more expeditious procedure is justified, the assembling of the board or joint-committee is not necessary.

The Minimum Wage Act does not apply to household servants, agricultural employees, or to those covered by a decree extending a collective agreement, the law preferring to allow the parties themselves, as far as is possible, to determine the terms and conditions of labour. The Commission is even instructed to lend its services as a conciliator for the purposes of establishing a collective agreement, indicating that public policy favours negotiation by the parties and will only use its regulatory power where the parties themselves fail to provide for the conditions of labour by means of a collective agreement.

Since the passing of the Minimum Wage Act, a series of ordinances have been issued. Ordinance Number 4 governs minimum wages, with the most recent order in that series having been passed in 1960, repealing the previous Ordinance Number 4, of 1957.

This ordinance applies to all those covered by the

Minimum Wage Act except employees explicitly covered by another ordinance, university and superior school students, blind persons in sheltered workshops, the employer's consort, those summoned to assist in case of emergency, members of the clergy and religious institutions, employees with independence of action in the carrying out of their work.

In Zone I, the Montreal metropolitan economic region, employees are entitled to a minimum wage of 70 cents an hour, while in Zone II, the rest of the province, the minimum wags is 64 cents an hour. Piecework employees in their first six months of employment, office boys, messengers, pin boys and bootblacks are entitled to a minimum of 56 cents an hour in Zone I, and to 52 cents an hour in Zone II. Caretakers supervising establishments who are provided with lodgings are entitled to a minimum of $40 weekly in Zone I and to $35 weekly in Zone II.

These rates are of public order, and it is forbidden to the parties to agree to a lower rate. Tips are not included in the minimum wage. Overtime is to be paid at the rate of one and one-half times the minimum hourly rate for every hour in excess of forty-eight weekly, except for employees who are paid on a weekly, monthly, or yearly basis, at the rate of at least $60 a week in Zone I

and $55 a week in Zone II, when these employees would receive the same pay even if they did not work a full week. These people cannot claim overtime pay.

Except in the method selected for the revision of the minimum wage (the French minimum being increased automatically with an increase in the cost of a list of 179 items, the Quebec minimum only by Ordinance of the Minimum Wage Commission) there are few significant differences in the ways in which the French and Quebec legislators have chosen to intervene in the regulation of wages. In both cases there is an attempt to favour the employee, considered the weaker party to the employment contract, by setting a minimum to the salary for which the employee can engage his services. This operates to the advantage of the least favoured of the employees. In both cases as well, there is an attempt to ensure that government contracts will not be the cause of forcing wages down, when, in an attempt to submit a lower bid than his competitor in order to be awarded such a contract, the employer offers his employees a rate of wages which is lower than that usual in the same trade and locality.

CHAPTER FOUR

THE EXECUTION OF THE MUTUAL OBLIGATIONS OF THE PARTIES AND THE REMEDIES FOR THEIR NON-EXECUTION

Once the contract between the employer and the employee has been validly formed, and the obligations arising from the mutual consent of the parties, from usage, equity or law become binding on the parties, the state must decide how far it will intervene to provide modalities of execution of the contract, as well as to ensure, by its initiative, the enforcement of the terms of the contract.

I. MODALITIES OF EXECUTION ARISING FROM THE LAW

While the parties are free, under the terms of the civil codes, to provide for particular means of carrying out their obligations, the law has intervened to lay down a number of rules, both in France and Quebec, concerning the frequency and the method of the payment of salaries by the employer.

In the case of France, the Law of December 7, 1909,

modified by the Law of April 23, 1924,[1] provides that those employees who belong to the class of "ouvriers" must be paid at least twice monthly, while "employés" must be paid at least once a month. Commissions for salesmen must be paid at least once every three months. Piece workers must receive full compensation within the fifteen days which follow the delivery of the finished work. It is, moreover, forbidden to employers to pay their workers on the weekly day of rest. This regime, applying originally to industrial and commercial establishments, was extended by the Law of March 21, 1941, to cover the liberal professions as well.

As far as the place of payment is concerned, the employer is prohibited from effecting such in a liquor store, or any other type of store, except for employees of such establishments.

The same Laws of 1909 and 1924 prohibit the payment of wages in kind, which had been imposed abusively on workers.[2] Except for those workers whose room and board is naturally a part of their remuneration, payment must be in coin or fiduciary money. Nor is the employer permitted

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1 Articles 44 ff. L.I.C.T.

2 Brun and Galland, op. cit., p. 487.

to run an "économat" or company store where the worker would be forced, either by moral pressure or by the payment of a part of his salary in coupons redeemable only at the store, to make his purchases, often at unreasonable prices.

Deductions from the wages of employees for debts owed to the employer have also been dealt with. Compensation (the automatic extinction of two liquid and exigible debts which two parties mutually owe each other)[3] does not apply when supplies have been advanced, except in the cases of tools and instruments necessary for the work, and materials of which the worker has the use and the care (or in the case of money advanced by the employer for these). When advances have been made for purposes other than the purchase of supplies, they can only be repaid at the rate of one-tenth of the salary of the worker, unless the worker agrees, at the time of the payment of his salary, to have a larger amount retained.

The freedom of the employer to require security or caution money from the employee has also been limited. In the case of hotel, entertainment, and transportation employees, such deductions or deposits are forbidden. In the case of other employees, such retentions must be deposited in a bank where they remain the property of the employee.

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3 Article 1289 C.N.

A pay bulletin, containing the name and address of the employer and the purpose of his business, the social security registration number under which the employer makes his contributions to the social security fund, the name of the employee and the position he holds, the number of hours worked, and the dates between which they were worked which correspond to the payment in question, the nature and amount of bonuses to be added to the salary earned, the gross earnings of the employee, the nature and amount of deductions made from this amount, the net earnings of the employee, and the date of payment, must be remitted to the employee every time his salary is paid. The employer keeps a register showing all of this information and to which the Inspector of Labour has access at all times.

All tips earned by the employees must be turned over to them, and are not to be considered part of the salary agreed upon, but may be taken into consideration where the employer has guaranteed the employee a level of earnings above the interprofessional guaranteed minimum salary.

The rules regarding deductions from wages, pay bulletins and gratuities find a parallel in the Minimum Wage Commission's Ordinance Number 4, 1960,[4] so far as

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4 Francq, op. cit., p. 358.

Quebec is concerned. No deductions are to be made from the wages of employees other than those imposed by law (income taxes, unemployment insurance) or by court order. Tips are the exclusive property of the employee and may not be retained by the employer or be considered part of the employee's salary. The pay statement, which the employer must include with the employee's pay, must indicate the employee's full name, the period for which the employee is being paid, the total number of hours of work, with overtime shown separately, the wage rate, the wages earned, the amount of deductions, and the employee's take-home pay. A record must be kept of this information, which the Commission can request to see. Where wages are paid in currency, they must be given to the employee in a sealed envelope. Wages may, however, include "compensation or benefit of a pecuniary value due for the labour or services of an employee".[5]

II. PUBLIC ENFORCEMENT OF THE OBLIGATIONS ARISING FROM THE LAW

The state, faced with the problem of enforcing the measures which it has taken to protect the employee by limiting his obligation to provide services, by obliging the employer to pay a minimum wage, and to carry out

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5 Minimum Wage Act., c. 164, R.S.Q., 1941, s.1 (h).

this payment in accordance with certain rules, has not left the enforcement of these measures to the regular police authorities alone (though police officers have authority to take action following the infringement of any of these laws, as of all laws generally) but has created, in both France and Quebec, a Labour Inspection Service with concurrent jurisdiction with the police for the supervision of the carrying out of labour legislation.

The Inspection, established in France by the Law of May 19, 1874, in order to supervise the work of women and children in manufacturing industries, has had its competence considerably enlarged. Article 93, L.II.C.T., gives it the supervision of the entire second book of the Labour Code, which governs the legal regulation of the obligation to work. Article 44b, L.I.C.T. gives the Inspection the right to demand to see the pay book in which details of each employee's remuneration are recorded, thus giving them control over the execution of the obligation to pay the minimum salary. In the accomplishment of their task, the Inspection has the right to enter premises, and to requisition books and documents. The procedure it follows when an infraction has been committed is not direct arrest, but the laying of a charge by means of a report to the Public Prosecutor's Office, and to

the Prefect.

In Quebec, the terms of reference of the Inspection are less wide. It is set up under the terms of the Industrial and Commercial Establishments Act[6] for the purposes of the carrying out of that act, and is given powers of entry and requisition of documents. The Weekly Day of Rest Act[7] gives to the Inspection of Industrial and Commercial Establishments (as the service in Quebec is called) the jurisdiction to supervise the carrying out of that act.

The Minimum Wage Act[8] gives to the Minimum Wage Commission the power to appoint agents to supervise the execution of that act and the ordinances made under it. Moreover, the Commission may, in their own name, bring legal action to obtain the payment of wages due to a workman if the latter has not served the employer with a writ within fifteen days after the wages became due. This they may do notwithstanding any opposition by the employee, any renunciation by him of the wages due, and without being required to prove a transfer of the claim to them by the employee, or to put him in default or

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6 c.175, R.S.Q., 1941.

7 c.166, R.S.Q., 1941, first passed 8 Geo.V, c.53 (1918)

8 c.164, R.S.Q., 1941.

inform him of the suit. It is up to the employer to raise the objection that a suit has been implemented by the employee within fifteen days of the date when the wages became due.

The penalties which would be imposed on those committing an infraction would, in all cases except the case of a suit for wages by the Minimum Wage Commission of Quebec, be penal in nature, and would vary from act to act. Prosecutions for infractions of laws governing the freedom to hire and be hired, the obligation to provide services and the level and mode of remuneration are brought, in France before the Police Tribunal for first offences and the Criminal Court for subsequent offences,[9] and in Quebec, before the Police Magistrate, the Court of Sessions, or the Justice of the Peace.

III. PRIVATE REMEDIES IN THE CASE OF THE NON-EXECUTION OF THE MUTUAL OBLIGATIONS OF THE PARTIES

Notwithstanding the right of the competent courts to impose penal sanctions on those who commit infractions of the legal provisions surrounding the individual labour contract, such infractions constitute a source of damage to the opposite party to the contract, and it is thus open

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9 Brun and Galland, op. cit., p. 152.

to him to bring a civil action which is separate from the penal prosecution. Moreover, a civil action may also be brought where there has been a breach of the contractual obligations not arising from the law discussed in Chapter III, Sections I and II. By and large the state has left the solution of these cases of individual injury due to a breach of a contractual obligation to the terms of the civil law.

In the case of the Province of Quebec, an individual who has suffered damage due to the breach of an obligation on the part of the other party, whether this obligation was purely consensual in origin or arose from the law, may seek before the civil courts of the Province to have the contract judicially resiliated, may ask that he be compensated by the awarding of damages in his favour, or may demand the specific performance of the obligation be ordered by the judge.[10] In disciplinary matters, he may ask that the action of the employer be overruled or reduced in severity. Specific performance is never ordered by a court when the court has no means of supervising the execution so ordered, as is necessarily the case where the contract is one of a continuous nature,[11]

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10 Article 1065 C.C.

11 Baudouin, op. cit., p. 569. Charlap, op.cit., p. 41

and thus, specific performance may be ruled out in the case of the individual labour contract. A worker wrongfully dismissed, then, cannot be awarded reinstatement by the civil courts, although the Labour Relations Board has the power to reinstate an employee who has been dismissed because of his activity in a workman's association.[12] It should also be pointed out that the judicial resiliation of the contract forms no bar to the party injured demanding damages as well.

Article 1142-1144 of the French Civil Code provide for compensatory damages and the judicial resiliation of the individual labour contract as remedies for the breach of contractual obligations, but specific performance is not a remedy which the parties may demand, but rather, one which the judge has the option of awarding.[13] The judge will never, in France, as in Quebec, order specific performance of a purely personal obligation like that involved in the labour contract, in order to avoid a revival of involuntary personal servitude.[14]

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12 c.162A, R.S.Q., 1941, s.21a.

13 Baudouin, op. cit., p. 567

14 Ibid.
Brun and Galland, op. cit., p. 594

In France, however, the civil courts are not, in principle, competent to hear rights disputes concerning the individual labour contract. A special jurisdiction, competent in such questions, was first set up by the Law of March 18, 1806, which applied only to the City of Lyons. It was extended to the rest of France by the decree of June 11, 1809. The tribunals at that time consisted of five employers and four foremen or supervisors. The Decree of May 27, 1848, provided for the inclusion of representatives of the remaining employees. The Law of March 27, 1907, has become the fourth book of the Labour Code and contains the current rules governing the labour tribunals known as "Conseils de Prud'hommes" (or councils of wise men).[15] Applying originally only to industry and commerce, the institution was extended by the Law of December 25, 1932, to cover agricultural employments and by the Decree of December 22, 1958, to all other professions and occupations where an employer is linked to an employee by an individual labour contract.

The councils are set up on the proposition of the Ministers of Justive, Labour and Agriculture in the localities where the number of employees in the professions

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15 Brun and Galland, op. cit., p. 128.

and industries under their competence is great enough to merit it. The advice of the municipal councils concerned must be heard, and in the case of industry, commerce and agriculture, such councils are established as a matter of right when the majority of municipal councils in the region to be governed as well as the departmental council ask that one be set up.

Before actually issuing the decree, its terms must be published by the Minister of Labour in the Official Journal. The opinions of chambers of commerce, agricultural and crafts groups, professional organizations and all interested parties are sought. Then a decree is issued setting up the council, and indicating its territorial competence, the industries, businesses, agricultural activities and other professions to be within the jurisdiction of the council, and the categories and sections into which the council is to be divided.

There is to be only one council for each city. Where the city is too large for one chamber to deal with all disputes, the council must be divided into sections, each of which is made up of several categories of professions. For example, a council might have an industrial section, a commercial section, an agricultural section, a professional section.

The decree also must set down the number of councillors to be elected, which must not be less than twelve, nor be an odd number. There must be at least two employers' and two employees' representatives for each professional category envisaged by the decree.

The councillors are elected by two separate colleges, one for employers and the other for "employés" and "ouvriers". To vote, members of both colleges must be qualified voters in regular state elections, exercise a profession covered by the decree and have exercised it for three years, the last of which must have been spent within the territorial competence of the council.

To be eligible for election, a worker or employer must be literate, over twenty-five years of age and of French nationality. He must have been an eligible elector for three years, have resided in the territorial competence of the council for three years, and have had no convictions for any infamous crime.

Lists of candidates are established for each category, and the election may require two ballots. On the first, the list which receives an absolute majority of the votes of its college elects all its candidates. If no list receives an absolute majority, then a simple majority of the college suffices on the second ballot.

Councillors are elected for six years with one-half the council members chosen every three years, in the first two weeks of November. Retiring members are eligible for re-election.

Each section meets in the first two weeks of January, and elects a president and vice-president, one of whom must be an employee and the other an employer, with the presidency alternating between groups. The vice-presidents and presidents of the various sections then meet and elect a council president from among the section presidents.

The task of this council is to hear disputes concerning the individual labour contract and that contract alone. To do this, each section has two bureaux, a conciliation bureau, and a bureau of judgment. It is compulsory to proceed first to conciliation on pain of having the judgment of the bureau of judgment quashed.

Summoned by regular mail, the parties must, in principle, appear in person. They may be assisted, or represented if there are good reasons for their being unable to appear, by fellow employers or employees of the same category, lawyers, delegates of the professional organizations, and, in the case of employers, by company directors or employees. Where an individual's right had its source in a collective agreement, the syndicate to which he belongs can exercise

that right before the "conseil de prud'hommes" without having to prove the existence of a mandate authorizing it to do so, unless the individual concerned objects.[16]

If conciliation succeeds, a report signed by the president and secretary is executory. If it fails, in whole or in part, the issues still in contention are sent before the bureau of judgment comprised of four councillors. Summoned by registered letter or by bailiff, the parties appear personally, but they may be represented by the same categories of persons, listed above, who were qualified to represent them at conciliation. Arguments are made verbally and witnesses heard. A verdict is rendered by absolute majority. If the council is divided evenly, a civil magistrate of first instance is called in to join the council and hear the dispute again. When the decision is rendered, it is susceptible of review by the Court of Appeal when the amount of the principal demand exceeds 150,000 francs. From there, it can go before the "Cour de Cassation" for an examination in law only of the merits of the decision.

The "cadres" are an exception to the rule that individual labour disputes are to be taken before the "conseils de prud'hommes". The plaintiff in a dispute between a "cadre"

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16 Article 31 t, L.I.C.T.

and his employer may, if he wishes, take the dispute before the jurisdiction which would be competent in the absence of a 'conseil de prud'hommes", or of a relevant section, that is, before the civil courts, where the first instance tribunals have jurisdiction in final resort up to 150,000 francs. Such a dispute may also be taken before the commercial tribunals.

The parties must go before the section of the council which is competent for their case, such competence being determined not by the nature of the establishment, but by the nature of the work. Thus, all disputes between employers and "employés", whether involved in commercial or industrial enterprises, will go before the commercial section of the council, while disputes between employers and "ouvriers" will go before the industrial section. The councils are competent in matters of disciplinary action taken by the employer, where they may uphold, or censure his action or reduce the punishment imposed on the worker.

In both France and Quebec, arbitration of individual rights disputes is open to the parties, if both parties agree to submit the problem to an arbiter or to a group of arbiters. However, the "clause compromissoire" written into the contract, and deciding that disputes that arise during the course of the contract will be submitted to

arbitration is absolutely null in France.[17] As to the Province of Quebec, the matter is still controversial, with one eminent jurist asserting categorically that "the clause compromissoire is valid in Quebec"[18] while admitting "our jurisprudence . . . is in a degree uncertain and conflicting"[19] while others deny the validity of such a clause.[20]

IV. THE QUESTIONS OF PROOF AND INTERPRETATION

Before the civil courts in Quebec and the "conseil de prud'hommes" in France, the rules of proof are those laid down by the civil codes. In cases in which the sum involved does not exceed $50 (in Quebec) or 5,000 francs (in France)[21] proof may be made by any means, including testimony, presumptions, written evidence.[22] In France, if

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17 Brun and Galland, op. cit., pp. 157, 963 Decree of December 22, 1959, article 81.

18 Walter S. Johnson, Q.C., The Clause Compromissoire, Its Validity in Quebec (Montreal, Thérien Frères Ltée., 1945) vii.

19 Ibid. See also Walter S. Johnson, Force of a Promise to Arbitrate; Clause Compromissoire, 27, Can. Bar. Rev., 596.

20 Beaulieu, op. cit., p. 328. Châteauguay Perreault, Clause Compromissoire et Arbitrage, [1945] R. du B., 74.

21 These sums are not equivalent.

22 Article 1233 C.C., 1341 C.N.

several demands are cumulated, their sum determines whether or not testimony is admissible, whereas in Quebec, the rule is the reverse. In Quebec, if the action includes demands based on more than one contract, the value of each contract is taken separately to determine whether or not the value of the action exceeds $50.[23]

In cases where the amount at issue exceeds $50 (5,000 francs), testimony and (in the case of France) presumptions are not admissible, and the proof must be in writing.[24] To allow for cases where no written contract exists, the law permits testimony to be introduced to prove the existence of a verbal contract provided that the party seeking to prove the existence of the contract can produce a commencement of proof in writing, that is, a writing emanating from the opposite party creating reason to suspect that the case alleged is true.[25] The pay statement can serve as such a commencement of proof in writing for the employee, while a receipt from the employee can serve the employer in a similar way.

Moreover, both laws allow for verbal proof in commercial

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23 Article 1345 C.N., Article 1237 C.C.

24 Article 1233 C.C., Article 1341 C.N.

25 Ibid.

matters.[26] Under the theory of "actes mixtes",[27] the labour contract can be considered a commercial contract on the part of an employer who is a professional trader or industrialist, and therefore, testimony may be used against him, though not on his behalf since from the point of view of the employee, the contract is civil and not commercial.

French law recognizes that testimony can be produced where there is a moral impossibility of obtaining a writing.[28] In Quebec, such moral impossibility is not in the law, but the Quebec law does not discount presumptions along with testimony, as does the French law, as soon as the amount at issue goes above $50.[29] Thus, even when the amount of the contract is greater than $50, the judge may presume the existence of a contract, for example where services are being performed.

In Quebec, Article 1669 C.C. provides that in the case of domestics and farm servants, "the master may, in the absence of written proof, offer his oath as to the

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26 Article 1235 C.C., Brun and Galland, op. cit., p. 311.

27 Brun and Galland, op. cit., p. 311.
For Quebec, see Richer v. Perusse, [1950] C.S. 108.

28 Article 1348 C.N.

29 Charlap, op. cit., p. 33, Article 1242 C.C.

conditions of the engagements and as to the fact of payment, accompanied by a detailed statement."[30] This oath may be refuted, as any other testimony, by contrary testimony. Before July 20, 1878, the article provided that the master was to be believed on his oath. Article 1781 C.N., which provided that the master was to be believed when his testimony contradicted that of the employee, was abrogated on August 2, 1868.

In interpreting contracts in the civil law of France and Quebec, prime attention must be given to the intention of the parties, rather than the literal meaning of the words they have written.[31] This applies to the individual labour contract as to civil acts in general.

There is a time limit, or prescription, within which actions for a breach of an obligation arising out of the individual labour contract must be taken. If the action is for the payment of wages, the prescription in France is six months,[32] except in the case of domestic servants, where it is one year.[33] In Quebec, fees for professional

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30 Article 1669 C.C.

31 Article 1013 C.C., Article 1156 C.N.

32 Article 49, L.I.C.T., Brun and Galland, op. cit., p. 505.

33 Article 2272, C.N.

services may be recovered by acting within five years of the date when payment became due, while for employees subject to the employer's authority in the carrying out of their work the prescription is shorter. It is two years where the employee has been hired for a fixed term which exceeds one year, in all cases except that of domestic servants. It is one year for domestic and farm servants regardless of the length of their engagement, and for all other employees hired for a fixed term of less than one year, or for an indefinite term.[34] For all other actions arising out of the labour contract, the prescription is thirty years in both France and Quebec.[35]

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34 Articles 2260, 2261, 2262 C.C., Beaulieu, op. cit., p. 456.

35 Article 2242 C.C., Brun and Galland, op. cit., p. 580.

CHAPTER FIVE

THE SUSPENSION OF THE INDIVIDUAL LABOUR CONTRACT

The civil codes say nothing about the possibility of suspending without terminating the individual labour contract. There are cases, however, where to consider that the contract had been terminated simply in view of the fact that the employee had ceased to provide his services would cause hardship to the employee. Such is the case, for example, of a cessation of work due to illness. The legislator, in some cases, and the jurisprudence in others, have intervened to create a theory of the suspension of the labour contract, which is part of the overall trend in the development of state intervention in employer-employee relations to protect the employee.

In France this theory is more firmly entrenched than it is in Quebec, and the causes of suspension are more numerous. First of all, suspension may be the result of mutual consent of the parties, for example, a request by the employee for a leave of absence due to some family event.

Sickness has, by the jurisprudence, been recognized as a cause of the suspension of the labour contract, rather than of its termination.[1] The result is that the employer cannot accuse the sick employee of a breach of contract, and must himself take steps to put an end to the contract which he may only do if the sickness is prolonged, or if the exigencies of the firm demand immediate replacement of the employee, which are matters for the courts to weigh. If he takes it upon himself to fire the employee without notice, he might expose himself to sanctions for abusive breach of contract. Moreover, notice cannot be given so as to run while the employee is ill, but must at least end after he has returned to work.[2] The employee must inform his employer immediately that he is ill, and furnish proof after his return that such in fact was the case.

The effects of such suspension are that the contract subsists, and that, at the end of his illness, the employee has the right to regain exactly the same employ that he left. If he fails to return, the employer must put him in default and sue for breach of contract or it will be considered that the employer has tacitly agreed to the termination of the contract, in which case no action in

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1 Brun and Galland, op. cit., p. 605

2 Ibid.

damages will lie. The employer who refuses to reintegrate the employee, exposes himself to an action for breach of contract. While the seniority rights of the employee continue to accrue during such a suspension, he receives no pay, nor does the law governing annual paid vacations consider time lost due to ordinary illness for the purposes of calculating the length of the vacation, though it does consider time lost due to industrial accident or professional disease.

Maternity is also a cause for the suspension of the labour contract. The source of this provision is not the jurisprudence, but the law. Article 29, L.I.C.T., provides that a woman has the right to take six weeks before the birth of her child and eight weeks afterwards without breaking her labour contract. It is absolutely forbidden to employ a woman during the two weeks that precede, and the six weeks which follow her delivery, under the terms of Article 54a, L.II.C.T. These provisions are sanctioned not only by damages for abusive breach of contract, in the case of the employer who refuses to reintegrate an employee who has been absent under their terms, but penally as well, under the Law of September 2, 1941. If there is an illness resulting from the pregnancy, the woman may extend the eight weeks of post-delivery suspension for an additional three weeks.

The employer may terminate her contract for reasons other than her pregnancy, for example if the firm is suffering economically due to her absence.

The effects of this suspension are that the woman has the right to regain her place in the firm, under the same conditions as employees whose contracts have been suspended due to illness. She also retains her seniority rights. Though she is not paid while the contract is suspended, the law on annual paid vacations provides that she does gain the right to paid holidays while on leave of absence due to maternity.

Article 25, L.I.C.T., provides that the contract cannot be considered broken for the sole reason that the employee has been called to preliminary military training, or reservists refresher training, recalled into the army, or ordered by the government to perform certain functions for the duration of a war. In these cases, the employee is as a matter of right reintegrated with full seniority rights as before the interruption. Though he receives no pay, his time served is counted towards the establishment of his annual paid vacation.

In the case of the compulsory period of military service, the contract is considered broken, but the employee has the right to be reintegrated without seniority on his release from the army, provided that he notifies

the employer within one month of his discharge of his desire to be reintegrated. The company must reintegrate him so long as his job, or others of the same category, still exist. Failure to reintegrate leaves the employer liable to an action in damages for abusive breach of contract. If he is not reintegrated, the employee has, for a period of one year, a priority right to be employed elsewhere.

Among the obligations undertaken by the employee when he leases his services to the employer, is that of obeying the disciplinary rules of the establishment. Moreover, it has been held[3] that the employee accepts, at the moment of the formation of the contract, the sanctions which his breach of such disciplinary rules will entail. Among those sanctions, there is the employer's right to suspend the contract of the employee. Thus, a suspension for disciplinary purposes is perfectly licit, and the employer is not breaking the contract by imposing it. The employee receives no pay while he does not work, and is under an obligation to resume his place in the firm at the end of the period of suspension.

Employees who serve on general or municipal councils, or on the board of directors of the Social Security Fund

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3 Brun and Galland, op. cit., p. 476

are, by the Law of August 2, 1949, given the right to attend the meetings of these bodies without breaking their labour contracts. While the contract is suspended, they are not paid. This provision was extended to cover members of the "conseil de prud'hommes" by the Law of May 24, 1951. The representatives of the personnel receive a certain number of hours each month to fulfil their functions, during which they are paid.[4]

In the case of construction industries, subject to the whims of the weather, a special system of compensating the employees during the suspension of their contracts has been organized.[5] The onus for remunerating the employees is on the employer, since changes in the weather do not constitute "force majeure" absolving him of his obligations. "Force majeure" only exists where the event preventing the execution of contractual obligations is both irresistible and unpredictable, and weather, it is felt, is, under modern conditions, reasonably predictable.

The employer must remit to the compensation fund established in connection with the paid annual vacation, a sum equal to five per cent of the salaries he pays, minus the sum of 1,008,000 francs. In the case of a

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4 Ordinance of February 22, 1945. Law of April 16, 1946.

5 Code du travail, (Paris, Dalloz, 1959), p. 443 ff.

storm, flood, or other weather making the work dangerous or impossible, the employer has the right to suspend work provisionally. Those employees who have worked 200 hours in the two preceding months, receive a payment from him of three-quarters of their salaries and fringe benefits, beginning the day following the stoppage of work up to a maximum of 48 days a year. The fund then reimburses the employer. This is not to be confused with a seasonal stoppage which is declared by the Inspector of Labour after consulting with the relevant regional professional organizations.[6]

Where a plant has been shut because of an employer's condemnation for an offence, he must continue to pay all salaries and benefits indefinitely.[7]

When, following the second world war, electricity and coal were rationed, the state arranged to compensate workers for hours lost during such suspension of their contracts, and paid the wages of all employees paid by the hour, day or week, while the employer continued to pay those workers paid by the month, who generally receive the same salary even if time is lost. The same arrangement

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6 Brun and Galland, op. cit., p. 612

7 Ibid., p. 613

was made where workers were unable to reach their place of work due to flooding.[8]

Though the employer has the right to resiliate the labour contract, by giving the proper notice, when the economic position of the firm cannot justify the continued employment of the entire staff employed at a given moment, it is the opinion of some writers[9] that the employer cannot invoke a temporary economic setback as a cause for the suspension of the contract, but that he must obtain the consent of his employees before suspending them or laying them off for economic reasons. The consequence of this is that the onus for resiliating the contract if the employee refuses is on the employer, whereas a theory which gave the employer the right to suspend labour contracts for this reason would shift the onus for the termination of the contract to the employee who was, against his will, suspended.

The Law of February 11, 1950 has formally declared that a strike suspends and does not break a labour contract.

In Quebec, the doctrine of suspension of the labour contract is much less developed. There is, in fact, no law specifically providing for any such thing. Ordinance

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8 Ibid., p. 613.

9 Brun and Galland, op. cit., p. 614

Number 3, 1957 of the Minimum Wage Commission[10] provides that absence due to illness (where the contract has not been cancelled), days on which the firm is closed, the annual vacation, the term of notice, and authorized absences provided that in all cases the employee held no other remunerative employment, are to be considered time worked for the purpose of calculating paid vacations. This is not the same thing as saying that the contract is suspended, and indeed on the days when the firm is closed, and when the employee is on his vacation there is no suspension at all, since on those days the obligation to provide services does not exist, and therefore need not be suspended.[11] Moreover, during the notice period the employee works and is paid and here too there is no suspension. However, the express mention of the possibility that there may be absence due to illness, and yet no cancellation of the contract, implies that the contract must be suspended.

> It (illness) does not, however, terminate the contract ipso jure, nor does it justify the dismissal of a servant without the customary notice, unless the master proves that he is compelled by circumstances to urgently replace the servant. Where the illness is of a nature to incapacitate the servant for several weeks,

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10 Francq, op. cit., p. 353

11 Rivéro and Savatier, op. cit., p. 442

> the master is at liberty to rescind the contract immediately without the customary notice.[12]

This differs from the French rule, which makes notice conpulsory in all cases.

There are no special provisions in the law of Quebec for the suspension of the labour contract for maternity, which is assimilated to illness. Nor is there provision for such suspension for Military service. While the Federal Reinstatement in Civil Employment Act, Chapter 236, Revised Statutes of Canada, 1952, does not provide for the suspension of labour contracts, it does decree that an employee who is reinstated after military service is to have all advantages he would have had had he remained in the service of the employer.

Disciplinary suspension is based on the prior acceptance by the employee of the right of the employer to carry out the rules of discipline of the firm, and to impose sanctions for their breach.

Beaulieu is of the opinion that the rule resulting from French jurisprudence and the Law of February 11, 1950, namely that a legal strike suspends and does not break the labour contract, ought to be formally accepted in Quebec.[13]

In general, the suspension of the labour contract

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12 Charlap, op. cit., p. 64

13 Beaulieu, op. cit., p. 461

absolves the employer from liability for the acts of his employees, which he bears while the contract is not suspended under the terms of articles 1054 C.C. and 1384 C.N.[14] Similarly, he is not responsible for accidents suffered by the employees while travelling to the place of work. His responsibility to fulfil his own contractual obligations, where there is a collective suspension, as in the case of a strike, is set aside only when the suspensions have the characteristics of "force majeure" that is, they are both irresistible and unpredictable.[15]

The legislator and the jurisprudence of France have, on the subject of suspension, taken greater pains to protect the employee than the legislator and the jurisprudence of Quebec.

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14 Brun and Galland, op. cit., p. 915

15 Ibid., p. 916

CHAPTER SIX

THE EXTINCTION OF THE INDIVIDUAL LABOUR CONTRACT

I. CAUSES OF THE EXTINCTION OF THE INDIVIDUAL LABOUR CONTRACT

It is the civil law, in both France and Quebec, which is the chief source of the causes of the extinction of the individual labour contract.

We have seen in Chapter V, Section III, that one of the parties can ask that the individual labour contract be judicially resiliated if the other party has not fulfilled his obligations. Such resiliation does not take place automatically, but must be pronounced judicially. The demand for such resiliation is far more likely to occur in the case where the contract is for a fixed term than where the term is undetermined, since in the latter case either party may unilaterally resiliate the labour contract on giving notice to the other party.

There are causes, however, which do bring the contract automatically to an end. The two codes provide

that the death of the employee is a cause of the automatic extinction of the labour contract.[1] This is an exception to the general rule in the civil law whereby the obligations as well as the rights of the deceased are transmitted to his heirs. The motive for such a provision is to prevent involuntary personal servitude and to recognize the fact that contracts of employment are, in general, made in consideration of the ability or skill of the person employed.

In Quebec, the death of the employer causes the termination of the contract "in some cases, according to circumstances".[2] Where the contract is intuitu personae, for example where the purpose was to employ a companion or a nurse for the deceased, the death of the employer results in the termination of the contract. Otherwise, the contract binds the heirs of the employer.[3]

In France, the situation is not the same. The Law of July 19, 1928, modifying Article 23, L.I.C.T., declares expressly that any change in the juridicial situation of the firm, whether by succession, sale, amalgamation, incorporation or other causes, does not affect the labour

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1 Article 1668 C.C., Article 1795 C.N.

2 Article 1668 C.C.

3 Charlap, op. cit., p. 59

contracts, and the new employer is bound by them. Naturally, this is only so if the firm continues to exist. Thus, the heir or purchaser would have to be using the assets of the firm to produce essentially the same product. Even where this is not the case, however, the contract is not automatically terminated, and the employer is bound to give notice to the employee when resiliating a contract of undetermined duration.[4] Similarly, sale of a firm does not, according to the jurisprudence of Quebec, bring about the automatic extinction of the labour contract.[5]

Article 1668 C.C. provides that the contract is terminated automatically when the employee becomes, without fault on his part, unable to perform the services agreed upon. The article does not make similar provisions for the impossibility of execution by the employer, but Article 1202 C.C. provides generally that "when the performance of an obligation to do has become impossible without any act or fault of the debtor and before he is in default, the obligation is extinguished and both parties are liberated." Similarly, although the French code has no specific provision dealing with obligations to do, the

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4 Brun and Galland, op. cit., p. 525

5 Charlap, op. cit., p. 68; Cobra Industries Ltd., v. Gagné, [1953] CS. 289; Pierre Beullac, De la rupture du contrat du travail, [1942] Rev. du B., p. 306.

jurisprudence has developed the notion of liberation due to the impossibility of performance.[6]

What actually constitutes impossibility is a matter for the courts to decide. Generally they demand that it be a complete, permanent and absolute impossibility, but where the contract involves a continuous relationship, as in the case of the labour contract, a temporary impossibility may, in certain circumstances have the same effect.[7] Moreover, where the inability to perform is due to fortuitous event or irresistible force, no action in damages will lie.[8]

The contract may be set aside by mutual agreement of the parties. This solution flows from the philosophy of the freedom of contract.

Where a contract was signed for an undetermined period, and neither the obligation to provide services nor the obligation to pay for such services was performed for a period of thirty years, during which neither party took any steps to require the other party to perform, the contract would be extinguished by prescription.

In contracts where a fixed term has been stipulated,

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6 Baudouin, op. cit., p. 553.

7 Ibid., p. 555.

8 Article 1072 C.C., Article 1148, C.N.

the arrival of the term puts an end to the contract. While strict adherence to the principles of the civil law would rule out any possibility of extinguishing the contract before the arrival of the term, and without the intervention of the courts, by the sole will of one of the parties, the jurisprudence has recognized that where one of the parties has been guilty of a fault against the other, the injured party may take the initiative to put an end to the contract, with the possibility of being overruled by the court and condemned to pay damages.[9]

In the case of contracts without a fixed term, the general rule is the extinction of the contract by the will of one of the parties. In France, the Law of December 27, 1890 amended Article 1780 C.N. by adding "Le louage du service fait sans détermination de durée peut toujours cesser par la volonté d'une des parties contractantes." This was later amended and incorporated into the Labour Code as Article 23 of the first book, by the Law of July 19, 1928.

Article 1668 C.C., by setting up terms of notice to be given by one party to the other, also recognizes the possibility of such unilateral resiliation.

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9 Brun and Galland, op. cit., p. 537; For Quebec, see Lang v. Modern Garment Co., /1950/, R.L., 296; Furman v. Muster /1950/, R.L., 464.

The notion of unilateral resiliation rests on a presumption that the parties have given their consent in advance to the resiliation of the contract by one of them.[10]

There is a limitation to this right common to both France and Quebec. In both cases, it is accepted that the party resiliating the contract must give notice to the other party.

In France, the employer must follow the usage of the locality and profession as to the length of the notice he must give the employee and vice versa. However, Article 23, L.I.C.T. provides that the notice which must be given by an employer to an employee may never be less than one month, provided that the employee has served the firm for a period of six consecutive months. Where the employee takes the initiative to break the contract, there is no such minimum notice period. The Law of March 29, 1935[11] fixes the notice period for journalists at one month for those employed for three years or less by the same employer, and at two months for those employed for over three years by the same employer. Travelling salesmen have the right to one month's notice during

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10 Baudouin, op. cit., p. 734

11 Article 29c, L.I.C.T.

their first year of employment, two months' notice during their second year, and three months thereafter, according to the Law of March 7, 1957, incorporated as Article 29(1), L.I.C.T. Superintendents of apartment buildings get a minimum of three months' notice.[12] Those incapacitated to the extent of 60 per cent, receive two weeks if paid by the week, two months if paid by the month.[13] Contractual employees of the state have had not a minimum but a maximum period of notice set by the Decree-Law of February 3, 1955. The notice is of public order and the parties may not agree to dispense with it.

In Quebec, the jurisprudence reasoning by analogy from the provisions in the civil code concerning the lease and hire of houses and things, decided that the frequency of payment determined the length of notice that had to be given.[14] This solution was continued by the Masters and Servants Act[15], and by the Act to Repeal the Masters and Servants Act[16] which incorporated into Article 1668 C.C. a provision to the effect that the notice period must be

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12 Law of January 13, 1939.

13 Law of April 26, 1924

14 Charlap, op. cit., p. 60

15 1941, R.S.Q., c.328,First passed 44-45 Vic., c.15, (1881)

16 13 Geo. VI, c.69 (1949).

of one week where wages are paid weekly, two weeks where wages are paid monthly, and one month when wages are paid by the year. In Quebec, the notice period is not of public order.[17]

If this notice period is not respected, it follows that there can be an action in damages for the amount of wages that the workman would have earned during the period of notice. The employer has the right to pay the employee his wages for the notice period and let him go immediately. The employee who initiates such a unilateral resiliation of the contract may also leave immediately if he pays to the employer the equivalent of the wages he would have earned during the notice period.[18] If the work relationship is continued, it remains on the same basis as before, with all benefits, including the right to the paid annual vacation,[19] accruing to the employee.

The jurisprudence recognizes, however, that if one of the parties has been guilty of a serious default with respect to the other, the party injured may resiliate the contract without notice.[20] This is reasonable in the

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17 Mancini v. La Ville de Montreal, /1958/ RL, 269.

18 Brun and Galland, op. cit., p. 557

19 Article 54g, L.II.C.T.
Ordinance No. 3, 1957, Minimum Wage Commission, Art.8.

20 Brun and Galland, op. cit., p. 549.
Charlap, op. cit., p. 65

case where the employee has proved to be a thief, for example, or where the employer refuses to pay the wages of the employee.[21]

It is up to the court to decide, necessarily after the event, whether the dismissal without notice was justified in the circumstances. The justifying causes that have been accepted in France and Quebec are similar. For example, disciplinary infractions, repeated failure or inability to perform the task assigned, personal conduct of the employee, have all been held to justify such action, though regard is had to the rank and record of the employee in deciding the case.[22]

When the cause of the dismissal is "force majeure", resulting in an impossibility of performance, there is no notice required.

The French jurisprudence has placed a further limitation on such unilateral resiliations. Although the parties have the right to unilaterally resiliate contracts, they may abuse this right by using it for the purpose of causing unnecessary damage to the other party,

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21 Similarly it has been admitted that where the employee or employer has been guilty of such an injury against the other, the party seeking judicial resiliation may provisionally suspend the contract, with no damages if the action in resiliation succeeds. Brun and Galland, op. cit., p. 537

22 Brun and Galland, op. cit., p. 550
Charlap, op. cit., p. 65

by using it with malicious intent, or for a purpose other than that for which the right was granted them by law. For example, dismissing an employee for his political or religious beliefs, or because he sought to exercise a right given him by law would be considered abusive. This rule, of jurisprudential origin, has been written into the civil code[23] by the Law of December 27, 1890, and later modified by the Law of July 19, 1928 and incorporated into the first book of the Labour Code as Article 23.

In Quebec, the doctrine of abuse of rights is not admitted, and the employer's or employee's motives for resiliating the employment contract are not investigated.[24] The Labour Relations Act[25] makes it an unfair labour practice to dismiss an employee for the sole reason that he was an officer or a member of a workmen's association. The act places the burden of proof of the motive for dismissal on the employer.

Article 23, L.I.C.T. lays down a set of criteria whereby French judges can determine the amount of damages

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23 Article 1780 C.N.

24 Baudouin, op. cit., p. 1284
Quaker Oats Co. of Canada Ltd. v. Coté, /1949/ QB, 389.
St. Laurent v. Lapointe et Tremblay /1950/ BR, 229

25 c. 162A, R.S.Q., 1941.

caused by an abusive resiliation of the contract. They include custom, the type of service the employee performed, seniority, age, and sums paid into the pension fund by the employee.

II. THE ROLE OF THE STATE

The role of the state at the moment of the termination of the labour contract is much more prominent in France than in the Province of Quebec.

Under the Ordinance of May 24, 1945, all unilateral resiliations of contracts by employers in the controlled sector (industrial, commercial and artisanal employments) must be approved by the Departmental Manpower Service, just as all new labour contracts in that sector are subject to approval. In the supervised sector (liberal professions, public offices, professional associations, civil partnerships) the Service must be informed of all unilateral resiliations. In the free sector, (agriculture, forestry, domestic service, entertainment) the parties need not even inform the Service.

Where the authorization of the Service is required, a reply must be sent by them within seven days of the request, after which silence is taken to indicate approval. Penal sanctions (six days to six months' imprisonment or

ten to one hundred thousand francs in fines or both) are imposed on the employer who fails to take the required steps. The Service has the right to demand an inquiry before announcing its decision, which is subject to review before the Departmental Director of Labour and the Administrative Tribunals, but in the case of the latter the appeal is only as to the legality of the decision, and not its aptness.

The resiliation, however, begins at the moment that the employee is informed, and not when the Service grants its authorization. The failure of the Service to agree does not *per se* make the dismissal abusive, nor does its approval render such dismissal justified. The employee may, moreover, bring an action before a "conseil de prud' hommes" claiming an abusive dismissal before the Service makes known its verdict.[26]

The reason for this is that the purpose of the Ordinance is economic, namely, to ensure the fullest possible employment of the available labour supply, and it is not to set up another court where the legal justification for the resiliation could be argued.[27] Therefore, as in the case of the hiring of new employees, the Service

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26 Brun and Galland, *op. cit.*, p. 597.

27 La Clavière, *op. cit.*, Fasc. 530, p. 4.

is only competent to pronounce upon matters for which it is competent. It can only refuse to authorize a resiliation on the grounds that it is not in the economic interest of the nation that an additional worker, or a particular worker, become unemployed.

Since economic grounds are among those that entitle the employer to resiliate the contract unilaterally, the state must compensate the employer for the prejudice he is caused by having to retain in his employ a worker whom he would otherwise dismiss.[28] This does not mean that the employer need not submit the resiliation to the Service for approval where the grounds are not economic in nature.[29]

Article 10 of the same ordinance provides that where there is no collective agreement, the rules of discipline must contain a disposition concerning the order of departure in the case of collective resiliation, for example, due to a slump in economic activity. The length of service, family size and professional qualifications must all be taken into consideration. This disposition is established by the employer after hearing the advice of the representatives of the personnel. Though he is not bound

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28 Brun and Galland, op. cit., p. 599.

29 In practice, "il arrive fréquement que (ces dispositions) ne soient pas respectées". Rouast and Durand, op. cit., p. 469.

to follow their advice, once the regulation has been established, the employer is bound to follow the order set down.

The representatives of the personnel themselves, as well as former representatives up to six months after leaving office, and candidates for such office have been protected by the Ordinance of February 22, 1945, modified by the Ordinance of January 7, 1959. The employer cannot dismiss the representatives of the personnel without the approval of the "comité d'entreprise", or, in the case where they fail to approve, that of the Inspector of Labour. Representatives of employees' syndicates, however, are not accorded the same protection.

Where a disciplinary committee of the employees is set up under a collective agreement, it frequently is the case that their approval is required before the dismissal of an employee.

Whether a contract is of fixed or of undetermined duration, the law of France requires that certain formalities be satisfied at the moment of its termination.

The employee has the right to obtain a Labour Certificate which the employer must deliver even if the employee does not request it. The Certificate must contain the names of the employer and employee, the date of entry into

and departure from employment, the nature of employment held, and where there were more than one, the dates between which each was held. The purpose of this is to enable the employee to obtain new employment, and so the employer must refrain from adding personal comments which would be unfavourable to the employee.[30]

The employer, in an effort to obtain a receipt from the employee in order to contest further demands for payment and to prove the closing of accounts between them, often in the past cajoled the employee into signing a receipt for all claims when in actuality the employee was still owed a part of his salary. To counter this, the jurisprudence evolved the rule that a generally worded receipt does not prove that a particular payment has been made, and that only express mention of a debt in the receipt would enable the courts to conclude that that debt had been satisfied. The law has intervened, and, by the Law of December 31, 1955, a receipt worded generally, written in full and signed by the employee, in two copies, one of which remains with the employer and one with the employee, made after the termination of the contract and not before, is presumed to be valid with respect to all

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30 Brun and Galland, op. cit., p. 531. Article 24, L.I.C.T.

payments owing to the employee. The employee may, however, renounce the receipt within two months by registered letter to the employer. In this case, the receipt is valid only for the payments actually made. After two months, a receipt, however general in language, is considered valid for all debts owed to the employee by the employer and the employee may take no further action. This does not mean that the employee cannot settle with the employer and actually agree to accept less than was due him, but whether or not there was such an agreement must be determined by the courts. Moreover the receipt cannot in any circumstances be presumed to cover damages owed due to an abusive dismissal.[31]

The law has created a number of indemnities which are due at the time of the termination of a labour contract. Where a contract of a journalist is resiliated by the employer without the employee having been guilty of a default of his obligations, the journalist has a right to one month's pay for each year of service, with a maximum of fifteen months' pay. He may avail himself of this indemnity even if it is he who takes the initiative to leave when the publication of his newspaper ceases, or

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31 Brun and Galland, op. cit., p. 533. Article 24a, L.I.C.T.

is ceded to another publisher, or changes its political orientation.[32] Similar provisions exist for employees in civil or commercial aviation[33] who receive either a full month's, or a half-month's, salary for each year served, with a maximum of twelve months', or six months' salary. Contractual employees of the state, and employees of state corporations receive half of one month's salary for each of the first twelve years they have served, one-third of one month's salary for subsequent years.[34]

The Law of July 18, 1937 establishes an indemnity to compensate travelling salesmen for their clientele if the employer has taken the initiative to resiliate the contract, where the contract is of undetermined duration, or to fail to renew the contract where it is of fixed duration.

The most important kind of indemnity, economically speaking, is that compensating the reclassification and retraining of the employee, designed to ensure quick transitions to new employment for members of the work force

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32 Article 29d and e, L.I.C.T.
Rivero and Savatier, op. cit., p. 470

33 Brun and Galland, op. cit., p. 585

34 Ibid.

whose jobs have been lost due to the closing down, reduction or reconversion of the activities of a firm. The state not only aids firms which undertake programs of retraining, but also pays the employee the costs of transporting his family and property to the place of new employment, as well as the costs of installing himself and his family there, providing he moves within six months of finding his new job. Payments vary with the size of the worker's family.[35]

These provisions (the requirement for the permission of a government service before resiliating the labour contract, the special protection afforded the representatives of the personnel at the time of dismissal, the obligations of the employer to issue a Labour Certificate, the regulation of the effect of a receipt signed by the employee, the indemnities payable for seniority and for displacement) do not exist in the law of Quebec.

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35 Decree, September 14, 1954, modified by the Decree, June 30, 1955 and the Decree, December 6, 1954.

CHAPTER SEVEN

CONCLUSION

The role of the state in employer-employee relations has increased considerably since the time of the codification of the civil codes. In both cases public policy has favoured the protection of the employee and measures have been introduced to that effect.

In this regard, the French Government has ventured further than that of Quebec, legislating, in almost all cases, in greater detail, to cover larger groups, and introducing greater protection for the weaker party to the individual labour contract.

The outstanding feature of the institutional framework within which individual labour relations are carried out in which there has been a divergence of policy between France and Quebec, has been the creation in France, as early as 1806, of a distinct tribunal to hear individual rights disputes in labour matters. This is especially important considering the fact that in France individual disputes are taken before these tribunals even when the

right being acted upon arose from a collective agreement.

In practice, it is the collective labour agreement, and not the individual labour contract, which creates the important provisions, in the substantive sense, which govern the employer-employee relationship. Increments to the minimum wage, shorter hours than provided for by law, longer paid vacations, a greater number of paid holidays and many other benefits have their source in the collective agreement. Let us proceed now to examine the role of the state in collective labour relations.

PART TWO

COLLECTIVE LABOUR RELATIONS

CHAPTER ONE

COALITIONS AND PUBLIC POLICY

As it became obvious to the legislator that the juridical equality of the parties to the individual labour contract did not reflect the real inequality that existed between them economically, the state intervened not only to modify the terms of the individual labour contract, but also to permit at least a partial redress of the imbalance in bargaining power by freeing workmen's combinations from the illegality which had surrounded them under the regime of laisser faire liberalism. To the extent that the state has chosen to allow the parties to bargain collectively concerning the terms and conditions of labour, the philosophy of liberalism has been preserved. In principle, both France and the Province of Quebec prefer,

as a matter of policy, the determination of the conditions of labour by the parties to the setting of such conditions by state decree.

The change in the attitude of public policy towards workmen's combinations has been a slow one. Quebec, as a ceded territory from 1763, was governed from that date by the public law of England, in conformity with the long-established rule of International Law that public law follows the flag.[1] Criminal law being a part of public law, it was the common law of England which governed Quebec in criminal matters from 1763, and combinations of workers for the purpose of attempting to raise wages or alter conditions of labour were held by that law to be criminal conspiracies, contrary to the freedom of commerce, and consequently, against the public interest.[2]

The Quebec Act of 1774[3] explicitly declares that the criminal law of England, the benefits of which "have been sensibly felt by the inhabitants from an experience of more than nine years during which it has been uniformly administered"[4] was to continue in force.

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1 Lareau, op. cit., p. 37

2 Beaulieu, op. cit., p. 30

3 14 George III, c.83.

4 Section XI, Ibid.

The Constitutional Act[5] dividing Quebec into Lower and Upper Canada, continued in force all laws and statutes in effect before its passage.[6] The same provision was made by the Act of Union,[7] creating the Province of Canada, by uniting Upper and Lower Canada.

The British North America Act, 1867, Section 91 (27) put criminal law into the hands of the Federal Government.

Under the Union Government, an act was passed in 1841 to consolidate and amend the laws relating to offences against the person.[8] It outlawed assault committed while taking part in an attempt to raise wages in combination. In 1869, after Confederation, another act was passed to consolidate the laws of the various provinces concerning offences against the person.[9] Assault, or the use or threat of violence, to prevent or dissuade anyone from working at a given trade was made an offence punishable by two years' imprisonment.

It was only in 1872, after a strike of typographers in Toronto, that Parliament was persuaded to bring the Canadian criminal law into line with English criminal law

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5 31 George III, c.31.

6 Ibid., Section 33.

7 3-4 Victoria, c.35, Section 46.

8 4-5 Victoria, c.27.

9 32-33 Victoria, c.20.

on the subject of combinations of workmen, English law having been amended in 1824, 1825, 1859 and 1871, rendering such combinations legal. Accordingly, the Trade Unions Act,[10] a copy of the English act of 1871, was passed, by which associations attempting to regulate relations between employer and employee, or to impose restraints on trade were freed from the doctrine of criminal conspiracy. However, the act provided that no court could admit actions to enforce agreements between members of such associations setting conditions under which they would or would not work, or providing for the payment of dues or fines to the organization, or for the use of the funds of the organization, nor could they hear actions involving agreements between two associations.[11]

Moreover, only associations which registered under the terms of the law were protected by it. Seven individuals or more could ask the Registrar-General of Canada to register such an association. They had to forward their constitutions and by-laws, a list of their executive officers, and indicate the location of their permanent head-office. The similarity of this provision to the

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10 35 Victoria, c.30.

11 Colas, op. cit., p. 149.

French law of 1884 is striking.[12]

The association was to be administered by an assignee, or a number of them, a general council, treasurer, and other officers. The assignees were not personally responsible for deficits (unless due to their acts constituting a crime) and in their name the association could buy or rent up to one acre of land, act in justice for the property of the association, sue the treasurer. The association was required to report to the Registrar-General each year the amounts of association receipts, disbursements, assets and liabilities.

Large portions of the Trade Unions Act have been held to be ultra vires the Federal Government, and yet the measure remains unchanged in the Revised Statutes of Canada.[13] At any event, organized labour did not take advantage of the privilege of registering with the Government, and the same status of legality was conferred on them without registration by the Criminal Code. In 1892, Section 517 of the Code put workmen's associations outside the pale of the crime of conspiracy in restraint of trade. The section has become Section 409 of the new Criminal Code of 1955. While Section 520 of the Code of 1892,

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12 Ibid., p. 151.

13 Beaulieu, op. cit., p. 86

codifying a law of 1889,[14] expressly made workmen's associations liable to prosecution for conspiracy to limit the facilities of transportation and production and to restrain industry and commerce (virtually wiping out the gains of 1872), the section was amended in 1900[15], to the effect that "this section does not apply to combinations of workmen or employees for their own reasonable protection as workmen or employees".

Thus, by 1900, the legality of workmen's associations was clearly established. Alongside this development, there was the extension to these associations of the right to avail themselves of the self-help techniques which are a vital part of bargaining strategy.

The Criminal Law Amendment Act of 1872,[16] following the lead of the English act of the same name passed in 1871, forbade the use of intimidation, violence or molestation to force an employer to fire a worker or to cause a worker to quit, to force an employer not to offer or an employee not to accept employment, to force an employee or employer to join or not to join an association, to force an employer or employee to pay any fine

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14 52 Victoria, c.41

15 63-64 Victoria, c.46

16 35 Victoria, c.31

imposed by such an association, to force an employer to alter the method of direction of the company, or the number of employees in his employ. Molestation or violence would be interpreted to include the continuous pursuit of a person from place to place, the hiding of tools, clothes or other effects owned or used by such an individual, watching or besetting a house or place where the individual resides or works. The latter provision was intended to outlaw picketing.

An act of 1876[17] revised these measures in the following terms:-

> 1) Every one who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he has a lawful right to do, or to do anything that he has a lawful right to abstain from doing
> a) uses violence or threats of violence to that person or to his wife or children, or injures his property, or
> b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted upon him or a relative of his, or that the property of any of them will be damaged[18]

will be guilty of the crime of intimidation. Molestation or threats still included persistent pursuit, hiding of tools and watching and besetting, but an

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17 Colas, op. cit., p. 156.

18 Ibid. (now section 366, Criminal Code, 1955).

exception was added:-

> 2) A person who attends at or near or approaches a dwelling house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

This creates an area of legal picketing. In 1892, when the Canadian criminal law was first codified, subsection 2, quoted above was not included along with the rest of the 1876 law which became sections 523, 524 and 525 of the Code, since it was thought unnecessary to make express mention of peaceful picketing as being legal. The subsection was restored in 1934[19] and with the former sections 523 to 525 has become Section 366 of the Criminal Code, 1955.

In 1877, a law was passed repealing the old English rule that it was a crime to break a labour contract.[20] Section 521 of the Criminal Code of 1892 makes it criminal to break a contract when there is reasonable cause to know that the probable consequences will be to endanger life, cause bodily injury, expose valuable property to destruction or serious injury, delay or prevent the running of a locomotive engine or other car on a railway. Subsection 2 excludes employees acting alone or as members

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19 24-25 George V, c.47

20 40 Victoria, c.35

of an association as long as the provisions of law or in contract concerning the settlement of disputes has been observed. This has become Section 365 in the Code of 1955.

Removing the crime of breach of contract was a first step towards legalizing the strike as the ultimate weapon in bargaining. Section 519 of the Code of 1892 provided that it was not to be considered conspiracy to refuse to work with a workman, or for an employer, or to do any act for the purpose of a trade combination, unless such an act is expressly made an offence. Trade combination is defined as a combination between masters, or workmen, or other persons for the purpose of regulating or altering the relations between masters and workmen, or the conduct of a master or workman in or in respect of his business, employment or contract of employment or service. This has become Section 410 of the new Criminal Code. Taken together with Section 411, it protects employees who strike from being charged with conspiracy if the object of the strike is the furtherance of a trade combination, or their own reasonable protection. Thus, any other object would make the strike illegal. A strike is also illegal if its object, or the means of carrying it out are illegal.[21]

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21 Alfred Cosby Crysler, Handbook on Canadian Labour Law (Toronto, Carswell, 1957), p. 70.

The protection of sections 410 and 411, therefore, would not cover sympathy strikes, or strikes whose purpose is the revolutionary overthrow of the government.[22]

Not every work stoppage is a strike[23] and it would be up to the judge in a given case to determine whether a strike had occurred. Making use of the definition in Section 2 of the Quebec Labour Relations Act[24] which declares a strike to be "a concerted cessation of work by a group of employees", it appears that the necessary elements would be an actual stoppage of work, a concerted action implying a decision by the group to strike. Section 52 of the new Criminal Code exempts strikers from the charge of sabotage.

Slowdowns are a self-help technique which are not illegal under the criminal law of Canada, but which has been made an unfair labour practice in Quebec.[25] By implication, it is not considered a strike. This conforms to the situation in France.

The blacklist is not illegal in Quebec, since under Section 410 of the Criminal Code, it is not contrary to

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22 Ibid. p. 75

23 c.162 A, R.S.Q., 1941, s.24.

24 Ibid., s.2.

25 Ibid., s.24.

law to refuse to work with a workman. Under certain circumstances it might be actionable civilly.

The law also has chosen to allow employers a self-help technique as a counter-attack. Lockouts are not treated in the criminal law, but are defined in the Labour Relations Act[26] as "the refusal by an employer to give work to a group of his employees in order to compel such employees, or to aid another employer in compelling his employees to accept certain conditions of employment".

The development in the attitude of public policy towards combinations of workmen and towards the self-help techniques they use in bargaining with employers has followed a path in France similar to that taken in Canada. From a period when such combinations were strictly illegal under the criminal law, the law has been altered so as to look more favourably upon such groups as affording a measure of protection to the isolated employee.

The French Revolution produced the idea that such combinations were dangerous to the liberty of the individual worker. In the words of the sponsor of the "Loi Le Chapelier", "il n'y a plus que l'intérêt particulier de chaque individu et l'intérêt général. Il n'est permis à personne d'inspirer aux citoyens un intérêt intermédiaire,

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26 Ibid., s. 2(g)

de les séparer de la chose publique pour un esprit de corporation."[27]

The Decree of March 2-17, 1791 abolished the guilds, and provided that each citizen would have the freedom to choose his employment. The Loi Le Chapelier itself, June 14-17, 1791 forbade permanent employees or employers combinations under Article 2. Article 4 prohibited more temporary coalitions:-

> Si contre les principes de liberté et de la Constitution, des citoyens attachés aux mêmes professions, arts et métiers prenaient des délibérations, faisaient entre eux des conventions tendant à refuser de concert ou à n'accorder qu'à un prix déterminé le secours de leur industrie ou de leur travaux, lesdites délibérations et conventions, accompagnées ou non du serment seront declarées inconstitutionelles, attentatoires à la liberté et à la déclaration des droits de l'homme et de nul effet.[28]

The individual contract was in the mind of the legislator of 1791 the only type of agreement consistent with the preservation of liberty.

The Law of 22 Germinal in the Year XI confirmed this prohibition, but dealt more leniently with employers' associations than with those of employees. Article 6 provides that where an employers' association attempts

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27 Jean Montreuil, Histoire du mouvement ouvrier en France (Paris, Aubier, 1946) p. 43.

28 Ibid., p. 44.

to unjustly and abusively force a reduction in salaries, the employers may be fined between 100 and 3,000 francs or be sentenced to an imprisonment of up to one month, or both. Article 7, however, provides that an employees' coalition to arrange a concerted stoppage of work shall render liable such employees to imprisonment of up to three months, or if the acts were accompanied by violence, assault or rioting, the parties and accomplices are liable to still heavier penalties.

The Criminal Code of 1810 codified these provisions with some modifications. The penalty for employers was made a fine of from 200 to 3,000 francs. To be punishable, the employers must have made an actual attempt at executing their conspiracy. Workers' coalitions were punishable even if there were no attempt at execution by a minimum of one month and a maximum of three months' imprisonment. Article 416 created a new crime, with the same punishment, that of a worker who blacklists or fines an employer or another worker. The leaders of coalitions prohibited under articles 414-416 would be imprisoned for a period of from two to five years or be put under police surveillance of at least two years' duration, and possibly five. Penalties were increased in 1834.

Even the Revolution of 1848 did not do much to alleviate the suppression of employees' and employers'

associations. Though the Decree of February 29, 1848 enunciated the principle of the liberty of association, which was inscribed in the Constitution of November 4, 1848, the fear still existed that coalitions "ont pour effet manifeste de détuire ou de modifier les effets de la concurrence et de la proportion entre les offres et les demandes"[29] and the only reform was to equalize the punishments for workers and employers under the criminal code. Article 416 was extended to employers, but it was still illegal to form even a peaceful coalition.

Under the "coup d'état" of December 2, 1851, the freedom of association disappeared even in principle.

With the advent of the liberal phase of the reign of Napoléon III, the first breakthrough occurred. Following a strike of typographers, the Emperor pardoned those who had been convicted for carrying on an illegal combination. The law of May 25, 1864 provided for the freedom of coalition. Nothing was to be illegal when done by a group which would not be illegal when done by an individual. Articles 414-416 of the Criminal Code were replaced and the new offence of interference with the freedom of labour was created. The new Article 414 punished the use of violence, assault, threats or fraudulent acts

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29 Dolléans and Dehove, op. cit., Vol. I, p. 164

designed to provoke or maintain a collective cessation of work by a prison term of from six days to three years and a fine of from 16 to 3,000 francs or one of the two. This simply reinforces the penalties for the offences of violence, assault, threats or fraud when used otherwise than in a labour dispute. Article 415 punished the same acts when done collectively, where 414 dealt with the case of an individual, or of several unorganized individuals. Article 416 made it an offence to impose, by concerted plan, any fines or prohibitions endangering the freedom of labour. According to the sponsor of the legislation, the purpose of this article was to prohibit the blacklist while not making illicit a strike for legitimate purposes.[30]

The reform of 1864 covered only temporary groupings of workmen, and permanent organizations were still subject to the ban of Article 291 of the Criminal Code which provides that groups of twenty people or more must have government permission before forming and meeting. On representations from the workers of Paris that eighty employers' groups were being tolerated, Napoléon II extended such toleration to employees on condition that such groups deposit their by-laws and constitutions,

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30 Dolléans and Dehove, op. cit., Vol. I, p. 258

announce their meetings in advance to the public authorities, and allow a Government representative to attend.

The toleration was revoked temporarily in Paris in 1872 and in Lyons in 1874, out of growing fear of the strength of the Communist International. After 1876, toleration was again extended to workers' associations.

It was only with the fundamental law of March 21, 1884, still on the statute books and governing the constitution and formation of employees' and employers' syndicates that the right of permanent professional association was granted. A general right of association was not introduced until 1901. As modified in 1920, this law constitutes the basic right to recognition for professional syndicates.

Self-help methods have been extended by the law to these syndicates. The Law of 1884 repealed Article 416 of the Criminal Code, which took the blacklist out of the realm of the criminal law. Jurisprudence has held, however, that the use of the blacklist incurs the civil responsibility of the user.[31]

Articles 414 and 415 of the Criminal Code remain today as they were in 1864, prohibiting interference with the freedom of labour by using violence, threats, assault

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31 Rivero and Savatier, op.cit., p. 53.

or fraud to provoke or maintain a cessation of work. Thus, picketing which does not make use of such methods of persuasion is legal. The fines for offences against these articles have been increased.

When articles 414 and 415 of the Criminal Code were replaced in 1864, the last prohibition of strikes disappeared. Under the jurisprudence, however, a strike involves a number of elements, the absence of which makes the group or individual stopping work civilly liable for damages. A strike must be concerted, which implies a premeditated decision of a group, it must actually result in a stoppage of work, and must have as its aim the defence or amelioration of conditions of work. It has been held in judicial decisions that a slowdown, since it does not result in a stoppage of work, is not a strike. Since the defence or amelioration of the conditions of work are not the primary aim of a political strike, these too have been held to be abusive. Where the sympathizing group has no interest, a sympathy strike incurs the civil responsibility of the strikers.[32]

Strikers, of course, may not commit a criminal offence in the course of a strike. Thus, causing the deterioration of instruments of manufacture or of merchandise,

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32 Brun and Galland, op. cit., pp. 899, 901 and 917.

contrary to Article 443 of the Criminal Code, or rioting or inciting to riot, contrary to articles 5 and 6 of the Law of June 7, 1848, are still offences in the course of a strike. The practice of occupying the struck plant which was for a time the favourite of French syndicates, has been declared interference with the property rights of the employer and the police may be ordered to expel the strikers. If the police choose not to expel them in order to maintain the peace, the state must pay damages to the employer.[33]

The Law of July 11, 1938 permits the state to requisition the services of persons where the security of the state is involved. Continued in force annually after the war, and indefinitely by the Law of February 28, 1950, its constitutionality when used to requisition the services of strikers in vital areas of the economy was upheld by the Conseil d'Etat in 1950.[34]

As in Canada, lockouts do not form the subject matter of any article of the Criminal Code, and so must be considered legal subject to the provisions of the civil law governing their use for illegitimate purposes, in which case the employer would be liable for damages.

From an examination of the development in French and

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33 Ibid., p. 894

34 Brun and Galland, op. cit., p. 889.

Canadian criminal law towards allowing the formation of permanent employers' and employees' associations, and towards permitting them the use of various self-help techniques in bargaining, we now turn to a discussion of the rules governing the constitution and formation of such associations.

CHAPTER TWO

THE CONSTITUTION AND FORMATION OF EMPLOYERS' AND EMPLOYEES' ORGANIZATIONS

The legislator, while adopting a policy of favouring collective bargaining in the solution of disputes between employers and employees, has surrounded the constitution and formation of collective organisms of employees and employers with a number of dispositions.

The Professional Syndicates Act of Quebec[1], which is still law in the Province, was the first legislative step taken by the Government of Quebec to provide for the formation of permanent groups of employers and employees for the purpose of the "study, defence and promotion of the economic, social and moral interests of their members"[2]. By contrast, the act was not intended to permit the formation, under the guise of professional syndicates, of political, commercial, religious or frivolous organizations.[3]

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1 c.162, R.S.Q., 1941. First passed as 14 George V, c.112, (1924)

2 Section 3, Ibid.

3 Beaulieu, op. cit., p. 128

Passed at the instance of the Catholic syndicates (which were forming without benefit of legislation in the Provinces[4]) and modelled on the legislation of France of 1884 and 1901,[5] it provides for the voluntary incorporation of professional syndicates. Any twenty persons or more, who must be Canadian citizens, engaged in the same profession, the same employment, or in similar trades, or doing correlated work having as object the establishment of a determined product, may make and sign a memorandum setting forth their intention of forming an association or professional syndicate.

In this memorandum, they must indicate the name of the association, its object, the full names, nationalities, and addresses of the first directors (of which there must be no less than three, no more than fifteen) and of the first president and secretary. The site of the principal headquarters of the group must also be mentioned. The constitution and by-laws of the group must be forwarded with this declaration.

On receipt of such a declaration, the Provincial Secretary may, though he is not obliged to do so, incorporate the group, which incorporation becomes effective

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4 H.A. Logan, Trade Unions in Canada, (Toronto, MacMillan, 1948), p. 425.

5 Beaulieu, op. cit., p. 114.

on publication in the Quebec Official Gazette at the expense of the syndicate.

Minors of at least sixteen years of age may join such syndicates without the permission of their tutors, and married women may join saving the case in which the husband makes a formal objection. Only Canadian citizens may be members of the board of directors or employees of the syndicate, but foreigners may make up as much as one-third of the total membership. Members may resign from the syndicate at will, but in that case, the syndicate may claim three months' dues.

The by-laws must mention the number of directors to be elected (not less than three, not more than twenty-five, unless the Provincial Secretary authorizes the syndicate to provide for a greater number when he deems it to be in their interest), as well as the amount of the entrance fee (not less than one dollar) and annual assessment (not less than $6) to be paid by members. Payment of the assessment may be suspended by the by-laws in the case of unemployed members. In all other cases, failure to pay dues results in the suspension of the members whose dues are more than three months in arrears. The syndicate may alter its by-laws or change its name with the approval of the Provincial Secretary. Syndicates are required to keep minutes of the meetings of the members and of the board of

directors, and records showing the full names, address, nationality and occupation of each member, his date of admission to the syndicate, his retirement from it or his suspension, as well as of the revenues and expenses, assets and liabilities of the syndicate.

Such syndicates, being incorporated and thus having a civil personality, have the right to act in justice, acquire movable or immovable property both by onerous and by gratuitous title, for the carrying out of their objectives. They are also given the specific privileges to create funds to indemnify members against death, illness, unemployment, to devote part of their resources to low-cost housing, workmen's gardens, and physical and hygienic training, to establish information bureaux for offers of and applications for work, to establish and administer professional projects for scientific, agricultural or social training, lectures, and publications of professional interest. They may also subsidize and assist production and consumption co-operatives, buy, sell, lend or distribute necessaries for the maintenance of families or professional activity (tools, raw materials, and so on), organize and advertise sales of products which are made by their members, register their label. Most important, they are given the right to enter into agreements or contracts with other syndicates, partnerships, firms or persons, relating to the collective conditions of

labour. They may exercise in court the rights of their members with respect to all acts prejudicial to the collective interest, and in favour of each member, without specific authorization, to defend his rights arising out of the collective agreement, unless he specifically objects.

The accounting of the syndicate must be so arranged that each specific service is recorded separately. A specific fund may be liquidated without affecting the status of the syndicate. Pension and special mutual benefit accounts are unseizable, except for the payment of the benefits which they were set up to provide. This measure is clearly designed to encourage registration and incorporation of employees' groups under the act. In fact, however, only the national Catholic workmen's organizations have availed themselves to any extent of the provisions of the act.[6] Members, moreover, are not liable for the debts of the syndicate.[7]

The act further provides that three or more such syndicates may unite to form a "union" or federation, for the debts of which member syndicates are not responsible, by following the same procedure for the setting up of the

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6 Beaulieu, op. cit., p. 116

7 Colas, op. cit., p. 173

syndicates themselves, with the added requirement that the resolution of the member syndicates indicating their decision to form such a "union" must accompany the memorandum to the Provincial Secretary. In 1947, due to doubts as to the legality of the existence of the Canadian and Catholic Confederation of Labour, Section 15A was added, which provided that "unions" and federations may further combine themselves into confederations, enjoying all the rights granted to federations, by following the same procedure as that for the constitution of federations. Section 28, added at the same time, specifically validated and legalized the incorporation of the Canadian and Catholic Confederation of Labour.

Indemnity funds set up by such confederations may, on the approval of the Provincial Secretary, and on the recommendation of the Superintendent of Insurance, be given a corporate personality. The federations have the power to administer the special funds set up by member syndicates if the syndicates so wish. They may also institute councils of conciliation and arbitration for the settlement of disputes between syndicates. Municipal corporations are empowered to grant tax exemptions on the immovable property of the syndicate used for meetings, or as a library or lecture hall.

The Provincial Secretary may terminate the existence of

a syndicate if he ascertains that they have ceased to exercise their corporate power, if they have fewer than twenty members who are Canadian citizens, or if fewer than two-thirds of the members are Canadians. Federations may have their corporate existence terminated when they have fewer than three member syndicates. A curator appointed under the terms of the Public Curatorship Act becomes ex-officio liquidator. The syndicates may also be voluntarily liquidated by the members. The property is not to be divided among the members, but once the costs of the liquidation are paid, and provision has been made for the maintenance in trust of the indemnity funds, all gifts must be returned to the donor or to his legal representatives, and all other property must be devoted to a similar undertaking to be determined by the Provincial Secretary and the Minister of Labour.

Several questions of interpretation arise. Can owners of urban or rural property which is rented for the purpose of earning revenue be deemed to exercise a professional activity under the terms of the act? The answer is that such activity is not a profession.[8] While corporations are explicitly regarded by the act as fit members for employers' syndicates, and Section 5 of the act was amended

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8 Beaulieu, op. cit., p. 122.

to this effect in 1941, school and municipal commissions are excluded on the grounds that while they may be employers, they are not professional employers, but are exercising a public function.[9]

Employers and employees are at liberty to join the same syndicate since the act requires only that they exercise the same profession or employment or similar trades. Only a few such organizations exist.[10] A person may belong to more than one syndicate.[11]

There is no explicit mention in the act as to whether or not members of the liberal professions may form syndicates. The practice is for such professions to apply to the legislator for a special law creating a corporation of the members of a given profession and giving that corporation the power to regulate the ethics, conditions for admission, and professional training of the profession. In France, such corporations are not regarded as incompatible with the formation of syndicates by members of a liberal profession.

Civil servants are in a similar position. While not mentioned explicitly in the act, they have adopted the

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9 Ibid., p. 119

10 Ibid.

11 Ibid.

practice of forming associations under the Companies Act.[12] or the Recreation Clubs Act.[13] As is the case with the liberal professions, they are certainly covered by the general provisions of the Professional Syndicates Act inasmuch as they exercise a profession within the meaning of that act. Municipal employees have formed syndicates under the Professional Syndicates Act.[14]

Former members of a profession are, under the terms of the act, not admitted to membership in a professional syndicate. They are allowed to be employees of the syndicate, and often serve as administrators and advisors. In France, members of a syndicate may continue to hold that status when they retire from their profession if they have exercised the profession for at least one year.[15]

Agricultural employees are covered by the Professional Syndicates Act, though not by the Labour Relations Act, and in 1947 the existing professional organization, incorporated under the Companies Act, was reincorporated under the Professional Syndicates Act, setting up syndicates, federations and a confederation all at once.[16]

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12 c.276, R.S.Q., 1941.

13 c.276, R.S.Q., 1941.

14 c.304, R.S.Q., 1941.

15 Article 7, L.III.C.T.

16 Beaulieu, op. cit., p. 117.

While professional syndicates are free to establish conditions of membership, it would be an abuse of this right to refuse membership to anyone without valid reason when such refusal would result in his being unable to obtain employment due to an arrangement for union security with the employer. It is also incompatible with the certification process provided for by the Labour Relations Act for a syndicate to refuse membership to a member of the bargaining unit which the syndicate represents.[17]

Though no attempt was made by the Quebec government to force incorporation upon those workmen's associations which did not avail themselves of the provisions of the Professional Syndicates Act, it was found necessary to pass an act to provide for the summoning of unincorporated groups.[18] The act provides that:-

> every group of persons associated for the carrying out in common of any purpose for advantage of an industrial, commercial or professional nature in this Province, which does not possess therein a collective civil personality recognized by law and is not a partnership within the meaning of the civil code

may be summoned by serving one of the officers at the ordinary office of the group, or by summoning the group

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17 Beaulieu, op. cit., p. 126.

18 2 George VI, c. 96 (April 12, 1938); incorporated as Division VIII, c. 342, R.S.Q., 1941.

under its collective name. Previously it had been necessary to summon each individual member and to make him a party to the action. A judgment is valid against all members of the group, and all movable and immovable property of the group may be seized in execution of the judgment. The individual property of members may not be seized. This does not give such associations a civil personality, but on the contrary, provides for their summoning despite the lack of a civil personality on their part. They have not, therefore, the right to sue under the collective name of the association. The act also has the effect of making it beneficial for associations to incorporate, since the property of such syndicates which is devoted to special mutual benefit or pension funds cannot be seized.

The Public Services Employees Disputes Act[19] allows the formation of associations or syndicates of such employees, subjecting them, however, to the following conditions:-

> 6. No person belonging to any of the following categories, to wit:
> 1) Constables employed by a municipal corporation in this Province,
> 2) Members of the Quebec Provincial Police Force and of the Liquor Police,
> 3) Other functionaries within the meaning of the Civil Service Act (Chap.11)
> shall remain or become a member of an association which does not consist solely of persons in the same

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19 c. 169, R.S.Q., 1941. First passed 8 George VI, c. 31 (1944).

> category or which is affiliated with another association or organization.

This provision is reinforced by the Act Respecting Public Order[20] :-

> An association which admits to its ranks members of a municipal police force, or persons who are at the same time members of such police force and of a municipal department of firemen and which is not exclusively composed of employees of the same category and in the service of the same municipal corporation, or which is affiliated with another association shall not be qualified to negotiate a collective agreement, nor be a party thereto, nor to be recognized by the Labour Relations Board of the Province of Quebec as representing a group of employees.

The document in virtue of which the majority of workmen's associations in the Province of Quebec obtain their legal status is the Labour Relations Act.[21] The act is of even greater importance because it was the first occasion on which the state intervention in collective labour relations departed from the type of intervention practised by the French government. As we shall see when we examine the French legislation, the Professional Syndicates Act was a virtual copy of French legislation. With the Labour Relations Act, Quebec chose to adopt what has become a Canadian pattern[22] and which owes a great

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20 c. 57, 14 George VI (1950).

21 c. 162A, R.S.Q., 1941. First passed c. 30, 8 George VI, (1944).

22 François Bregha, Etude comparative des lois provinciales du travail (Quebec, Department of Labour, 1960) p. 71.

deal of its inspiration to the Wagner Act of the United States.[23]

The act recognizes the basic right of every employer and employee to be a member of an association, and to participate in its lawful activities. The act does not cover, however,

> 1. Persons employed as manager, superintendent, foreman, or representative of an employer in his relations with his employees;
> 2. the directors and managers of a corporation;
> 3. any person belonging to one of the professions contemplated in chapter 262 to 275, or admitted to the study of one of such professions;[24]
> 4. domestic servants or persons employed in agricultural exploitation.

The act sets up machinery in the form of the Labour Relations Board, which consists of a chairman, vice-chairman and six other members, three of whom are to be recommended by the most representative employees' associations and three of whom are to be recommended by the most representative employers' associations in the Province. All appointments are made by the Lieutenant-Governor in Council. Functionaries deemed necessary to ensure the proper operation of the Board are also appointed. A quorum of the Board consists of three members, either the chairman or vice-chairman, and one representative each of the

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23 Beaulieu, op. cit., p. 179.

24 The liberal professions.

employees and employers. Thus, the Board can, and does, sit at two places at once. The corporate seat of the Board is at Quebec City, but sittings may be held anywhere in the Province, and in fact the Board also has a permanent office in Montreal. Decisions of the Board are taken by majority vote, with a decision in writing signed by all the members of the Board being equivalent to a resolution passed at a regular sitting. The Board is provided with the powers of investigation exercised by Commissioners under the Public Inquiry Commission Act[25], as well as the power to verify the observance of the act by any association, employer or employee.

The minutes of the sittings of the Board, and approved by them, as well as copies or extracts certified by a member or the secretary or assistant secretary are authentic documents. The Board may make regulations for the carrying out of the act which come into force after approval by the Lieutenant-Governor in Council and publication in the Quebec Official Gazette.

The Board thus constituted receives applications from associations (presumably already existing de facto), by petition in writing, to be recognized as representing a group of employees or of employers. Recognition, the act

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25 C.9, R.S.Q., 1941.

provides, is to be granted where an association can claim as members an absolute majority of the members of a group of employees or employers. The Board is at liberty to decide that it would be more appropriate not to consider all the employees of one employer as a "group" but to divide them into several groups, according to occupation or task, and recognize one association as representing each of the several groups. Two or more associations may combine to make up a majority of an appropriate unit, and thus seek certification.

The petition must be accompanied by a copy of a resolution of the association authorizing the petition, and signed by the president and secretary. No association tolerating a member of the Communist Party among its officers can be granted a certificate of recognition.

In order to decide whether or not an association is really representative of a group of employers or of employees, the Board may examine the books and records of the association. All those who are at least sixteen years of age, who have been regularly admitted and have signed a duly dated admission form, and personally paid an entrance fee of at least one dollar, and who are obliged to pay a fee of not less than fifty cents a month, and who have done so for at least one month, in the case of new members, and for which they are not more than three months in arrears in

the case of initiated members, will be counted in order to determine the representative character of the association.[26] Members must also hold a regular employment connected with the normal professional occupation of the employer concerning whom recognition is requested. These conditions must have been complied with on the day of the filing of the petition with the Board.

The good faith of the association is also taken into consideration, which means that, in addition to having properly made its petition to the Board, accompanied by the required resolution of the membership, the association must have as its purpose the regulation of relations between employers and employees, and the study, defence, and development of the economic, social and moral interests of its members, with respect for law and authority. Good faith also includes the observance of the sections of the act setting forth certain forbidden practices.

Where the Board is of the opinion that constraint has been used to prevent a number of employees from joining an association, or to force them to join, or if a large number of the employees are members of more than one association, the Board may order a vote by secret ballot of any group of employees. The employer is obliged to

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26 By-Law No. 1, Order in Council No. 886, August 28, 1952.

facilitate this vote and every employee in the group specified is required to vote unless he has a satisfactory excuse.

Once the Board has decided what is the appropriate group to consider and which association is most representative of that group, it issues to the association a certificate, authorizing it to represent the entire group of employers or of employees in collective negotiations. Without such a certificate, a group may negotiate a collective agreement, but this becomes void the day another association is recognized. Moreover, until an association is recognized, strikes or lockouts are prohibited. Recognition does not confer a civil personality on the association.

The certificate which is issued remains the property of the Board, and if revoked, must be returned. It must be signed by a member of the Board as well as by the secretary or assistant secretary, and bear the seal of the Board. The Board notifies the employer or association of employers concerning whom the recognition was granted, by registered mail. When a petition for recognition is refused, a new one cannot be heard from the same association with respect to the same employer and group of employees until a period of three months has elapsed, unless the refusal was the result of a technical error.

To protect the newly-certified association, the law

sets up certain forbidden practices. No employer, or person acting for him, or association of employers, may in any way seek to dominate or hinder the formation or the activities of an employees' association. No association of employees can, as a corporate body, belong to an association of employers, even if it is an employer, nor can it seek to dominate or hinder the formation or activities of an employers' association.

It is also forbidden for an employer or his agent to refuse to employ any person because he is an officer or member of an association, nor can he seek by intimidation, threat of dismissal or other threat or penalty, to compel anyone who is already an employee to abstain from becoming or to cease to be a member or officer of an association. Members or officers of associations may be disciplined for other good cause.

If such a dismissal for activity in an employees' association be proved, on an action taken by the dismissed man within fifteen days of the event, the Board may order the man reinstated within eight days, with all the remuneration he lost due to the illegal dismissal, and all other rights and privileges. The man may refuse to return to his employment in which case he is entitled to his salary from the date of his illegal dismissal until the eighth day after the Board orders him reinstated, even if the

employer offers to reinstate him immediately. If, however, he has been employed elsewhere, the indemnity he gets from the delinquent employer will be reduced by the amount he has actually earned. The Board fixes the salary where this is disputed between the employer and employee, and may, if the employee fails to act to recover what is due him within twenty-four days, exercise his recourse on his behalf. That recourse is prescribed by six months from the eighth day after the decision of the Board. The burden of proof in these cases as to the motive of the dismissal is on the employer.

No person may use intimidation or threats to induce anyone to become, refrain from becoming, or cease to be a member of an association. The employer's consent is required if an association wishes to solicit an employee during working hours to join the association, or if the association wishes to convene employees at their place of employment for such solicitations.

No association that has entered into a collective agreement under the terms of the act, nor any group of employers or employees who are members of such an association may take steps to affiliate with another association or become a member of another association except during a period beginning sixty days before the expiration of the collective agreement, and ending at the expiration, or

renewal, of the agreement.

Every association must file with the Board a certified copy of its constitution and by-laws, and the amendments to these, as well as a statement of the entrance fees and periodic dues charged to members. After each election or appointment of officers each association must forward the names and addresses of such officers to the Board.

The act also provides for the termination of the certificate. Between the sixtieth and the thirtieth day preceding the termination of a collective agreement entered into by an association, another association may apply to be certified in its stead or as representative of a more appropriate group. The certification of a new association automatically revokes the certification of the old. For purposes of computation, the sixtieth day is included, but not the thirtieth.

The certificate may also be revoked or revised by the Board for cause, which, it has been judged, does not include an illegal strike or a forbidden practice or the whim of the Board, or any other fact or state of affairs which has not been made expressly by law a cause of decertification. Thus, by the terms of Section 50, the certificate of a company-dominated employees' association, of an employers' association which seeks to dominate an employees' association, of an employees' association which attempts to belong

to and dominate an employers' association, may be revoked after full hearing. Similarly, the loss of the support of a majority of the members of the group represented would be cause for revocation, but the decertification power cannot be used as a punishment where the law does not provide for it.[27]

The act also provides that there is no appeal from the decision of the Board. It has been held that such a provision cannot rule out the recourse which an association might have against the Board for exceeding its jurisdiction.[28]

Unlike the situation in Quebec, France has only one regime for the constitution and formation of syndicates. This regime is governed by the Law of March 21, 1884, as amended by the Law of March 12, 1920, and thereafter in 1938, 1956 and 1957.

There are few significant differences between the rules contained in those laws, and the provisions of the Quebec Professional Syndicates Act.

One of the differences occurs in the very first provisions:-

> Les syndicats ou associations professionels de personnes exerçant la même profession, des métiers

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27 Beaulieu, op. cit., p. 303.

28 Beaulieu, op. cit., p. 406.

> similaires, ou des professions connexes concourant à l'établissement de produits déterminées ou la même profession libérale, peuvent se constituer librement.[29]

Thus, there is no preliminary governmental authorization to be received before the syndicate can come into existence. The only condition required is the deposition of two copies of the by-laws and constitution of the syndicate, along with the names of the administrators or directors. Each change in the constitution or by-laws,or in the directors, must likewise be communicated. This is done in Paris at the Prefecture of the Seine Department, in the provinces, at the town-hall. The mayor or prefect must send a copy of such documents to the Attorney of the Republic.

As in Quebec, the members of a syndicate must exercise the same or a related profession in order to form a valid syndicate together. As in the case of Quebec, again, owners of immovables which are rented, and proprietors of rented agricultural land who do not take part in the exploitation of the land, are not considered to be exercising a profession. In practice, owners of rented agricultural land do participate in the agricultural syndicates.[30]

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29 Article 2, L.III.C.T.

30 Brun and Galland, op. cit., p. 650.

The Law of April 17, 1957 allows employers of domestic servants to form a syndicate, even though there is no professional aspect to the hiring of such servants.

Employers and employees may, under the terms of the law, join together in the same syndicate. As in Quebec, this is not usually done, except in agricultural syndicates.[31]

In France, unlike Quebec, there has been no explicit modification of the text of the law to admit corporations (as moral persons) to syndicates. They are, in fact, admitted to employers' syndicates.[32]

The French law states:-

> Les syndicate professionnels ont exclusivement pour objet l'étude et la défense des intérêts économiques, industriels, commerciaux et agricoles[33]

(whereas the Quebec text uses the phrase "economic, social and moral interests of their members").[34] This provides some idea of the scope of the law, with the liberal professions being explicitly mentioned by Article 2, L.III.C.T., as amended in 1920. Where such a liberal profession is organized into a corporation for the regulation of professional ethics, qualifications, conditions for admission

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31 Ibid., p. 654.

32 Ibid., p. 655.

33 Article 1, L.III.C.T.

34 c.162, R.S.Q., 1941, s.3.

(for example, a medical association or a bar association), the corporation defends the moral and disciplinary interests of the profession. Membership in it is a sine qua non for the exercise of the profession, and there is only one corporation for each profession. The syndicate, membership in which is optional, and of which there may be several in each profession, defends the economic and material interests of the profession. A number of ordinances have specifically recognized the rights of the members of certain professions to form syndicates, for example, the Ordinance of September 24, 1945 concerning the medical profession, the Ordinance of May 5, 1945 concerning pharmacists, that of December 31, 1940 applying to architects, and that of September 19, 1945 concerning accountants. The Ordinance of November 2, 1945, forbids the formation of syndicates to ministerial officers. The ordinance relating to the medical and dental professions states that the syndicates may act together with the Order or corporation to suppress the illegal practice of those professions.

Civil servants have been defined by the Conseil d'Etat as those holding:-

> un emploi permanent et titularisés dans un grade de la hiérarchie des cadres d'une administration centrale dépendant de l'État, des services extérieurs en dépendant, ou des etablissements publics de l'État.[35]

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35 Brun and Galland, op. cit., p. 200

The Law of October 19, 1946 granted civil servants the right to form syndicates (which had in fact existed previous to the enactment and bargained effectively on their behalf) on condition that they deposit their constitutions and by-laws, and the names of their directors, with the prefect and with the government department to which they belong. At the same time, this right was denied to members of the armed forces and to magistrates. Employees of autonomous establishments, such as nationalized firms, are, by the definition of the Conseil d'Etat, not civil servants, and there is no doubt that they may form syndicates.

Unlike the Quebec law, the French law, as amended in 1920, provides that members of a syndicate who have exercised their profession for more than a year may, on retirement from the profession, continue to be members of the syndicate. This does not mean that former professionals who are not members may join.

Admission to a syndicate is allowed by law to all those at least sixteen years of age. Minors between sixteen and twenty-one must withdraw if their parents or tutor object. In any case they cannot participate in the direction of the syndicate. Married women may belong without the previous authorization of their husbands (and this was so even before the reform of the status of married women by the Law of February 18, 1938). They may also

participate in the administration of the syndicate. Those who have lost their civil capacity due to imprisonment are none the less eligible to join a syndicate, as are foreigners, but neither group may participate in its administration. There is no minimum number of members, whereas in Quebec there is a minimum of twenty.

The Cour de Cassation has held that syndicates have the power to create more onerous conditions for membership than those provided for by law, and that they may exclude prospective members without stating a reason. It has also been held, however, that the exercise of this right in such a way as to deprive the individual of the ability to work at his profession would be abusive. Moreover, such complete liberty would not be consistent with the trend towards giving syndicates the privilege to speak for the entire profession.[36]

The rights given to the syndicates in order to carry out the defence of the professional interests of their members are very similar to those which the professional syndicates of Quebec are allowed.

Syndicates in France have a civil personality. They may take judicial action and acquire, without authorization from the government, both movable and immovable property, by onerous or gratuitous title. They may exercise all civil

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36 Beaulieu, op. cit., p. 127
Brun and Galland, op. cit., p. 658.

recourses concerning facts which cause a prejudice, direct or indirect, to the collective interest of the profession they represent. This right is not limited to the most representative syndicates, and includes any prejudice whether arising from a collective agreement or in any other way. They may allocate a part of their resources to the creation of low-cost housing, and the acquisition of land for workmen's gardens, or physical or hygienic training.

Syndicates may create and administer information bureaux concerning offers of and requests for employment. They may establish, administer, or subsidize such professional undertakings as professional provident institutions, laboratories, experimental fields, educational, scientific, agricultural and social works, lectures and publications in matters of interest to the profession. Immovable property and movables necessary for meetings, libraries, and courses of professional instruction are unseizable. Quebec, in adopting these measures, did not include the last, and granted freedom from seizure to only a very restricted segment of the property of the syndicate.

Syndicates may subsidize co-operative societies of production and consumption. Syndicates can make contracts or agreements with all other syndicates, partnerships, or firms. Since the law of April 17, 1957:-

> sont seules admises à discuter les conventions collectives les organisations de travailleurs

> constituées en syndicats conformément au present titre, à l'exclusion des associations quel qu'en soit l'objet.[37]

Moreover, associations are subject to greater restrictions as to their formation, and have not powers as wide as those given to the syndicates under Articles 10 - 23, L.III.C.T.[38]

Where the constitution of the syndicate so authorizes, the organization may buy, rent, lend or divide among the members all objects necessary for the exercise of the profession, raw materials, tools,instruments, machines, fertilizer, seed, plants, animals and feed. They may also assist in the sale of the products of their members, or of syndical operations, and facilitate the sale by exhibitions, advertisement, publicity, the collection of orders, and by shipping, but may not do this under the syndical name or responsibility. Nor may they distribute the profits among the members of the syndicate. All of these powers are equally given to Quebec syndicates by the Professional Syndicates Act.

The syndicates may be asked to furnish their opinions when disputes arise which require an expertise in their profession for their solution. Syndicates may avail themselves of the laws concerning the registration of trade

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37 Article 15, L.III.C.T.

38 Brun and Galland, op. cit., p. 665, p. 649.

marks and register their labels. They may create mutual security and retirement funds which are unseizable, as they are in Quebec.

The object of a syndicate may not be political, religious, commercial or recreational solely. While the French syndicates have not been able to concern themselves with professional matters to the exclusion of politics, and while the preference of each of the large confederations is well-known, the law requires that syndicates refrain from direct participation in elections or attempting to modify the existing regime. As the role of the state in employer-employee relations grows, it becomes increasingly difficult to defend professional interests without entering the political arena. A general strike with political overtones in 1920, led to the famous judicial dissolution of the Confédération générale du travail on January 13, 1921, a sentence which was never carried out.[39] The Confédération française des travailleurs chrétiens, the Catholic confederation, was exonerated of the charge of being confessional in purpose on August 11, 1922.[40]

Members have the right, notwithstanding any clause or text to the contrary, to withdraw from the syndicate at will.

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39 Dolléans and Dehove, op. cit., p.16, Vol. II.

40 Brun and Galland, op. cit., p. 687.

The syndicate retains the right, in such cases, to exact membership dues for the six months that follow. By contrast, the ex-syndicalist retains the right to remain a member of the mutual security society for retirement and old age to which he has contributed.

A syndicate may expel a member, in the absence of a text, for any reason it deems a fitting one. The jurisprudence in France has held that this right can be abused, and in any case, expulsion can only be for a cause outlined in the constitution. A member must also be given a chance to defend himself against the charge, which must be made known to him, and the courts retain the power to review the matter. Only a court can pronounce the expulsion where the cause is non-performance of the obligations of membership.[41]

The dissolution of the syndicate may be voluntary or pronounced judicially. Voluntary dissolution may be at a term set by the constitution, or by the agreement of the members. In 1947, when large groups ended their affiliation with the Confédération générale du travail, the question arose as to whether a majority of a syndicate's members could agree to dissolve the syndicate and, keeping control of the property of the syndicate, affiliate with the

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41 Ibid., p. 659

Confédération générale du travail - Force ouvrière, or whether unanimity was required to change the affiliation of the group. The preponderance of jurisprudence held that unanimity was required.[42]

Unlike Quebec, where the forced dissolution of a syndicate may be ordered by the Provincial Secretary, such dissolution in France can only be pronounced by a court on the demand of the Attorney for the Republic for the failure of the syndicate to conform to the rules in the third book of the Labour Code concerning the formation of syndicates. The court may choose only to impose a fine, and need not grant the request of the Attorney for the Republic.

When a syndicate is dissolved, by whatever the means, the property is distributed according to the method foreseen by the constitution. Should no method have been provided, the general assembly of the syndicate decides. Under no condition is the property to be divided among the members. Property contributed to the syndicate returns to the contributor.

While the original law of 1884 provided for the creation of federations of syndicates, it was only the law of 1920 which gave them full civil capacity. Federations may form freely following the same rules laid down for the syndicates

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42 Brun and Galland, op. cit., p. 681.

themselves, and for the same purposes. Federations (and confederations) are subject to two additional rules. Their constitutions must determine the representation to be allowed each of the member syndicates in the general assembly and on the board of directors. Along with the deposit of their constitutions and the names of their officers, federations and confederations must inform the government of the names and principal locations of the syndicates of which such federations or confederations are composed.

Since the passing of the laws of 1884 and 1920, there has been a development away from the perfect equality of syndicates created by those laws and towards the notion of the most representative syndicate. The term "most representative syndicate" does not carry the same connotation as in Quebec, where an association most representative of the employees in a unit selected as appropriate by the Labour Relations Board is granted a certificate to bargain on behalf of all the members of the unit. The notion of "representativity" is broader and more flexible in France.

Numerous texts provide special privileges for most representative organizations. For example, the National Economic Council, envisaged by the Constitution of 1946 as an advisory organ on economic planning had forty-five members

designated by the most representative professional organizations. Similarly, the employees' and employers' representatives on the Superior Council of Social Security and Family Allowances, the Superior Council of the Civil Service, the Superior Commission of Collective Agreements, are nominated by the most representative professional organizations.

On the level of the firm, only the most representative employees' syndicates may present lists of candidates on the first ballot for the election of representatives of the personnel. In addition, they are given the right to decide with the employer, before the election for these positions, on the division of the available places among the various categories of employees, as well as to divide the personnel into electoral colleges, along with the employer.

In the nationalized enterprises, the most representative employees' syndicates send delegates to the board of directors. Most representative syndicates are also given the monopoly of the ability to conclude collective agreements susceptible of extension to the entire profession.

The question as to which syndicates are the most representative must be decided within the framework of the particular privileges to be awarded such syndicates. If it is the privilege of nominating candidates as representatives

of the personnel of a firm, then it is the most representative employees' syndicate in the firm that must be selected. If it is the privilege of bargaining collectively for the employees in a single plant, then it is the most representative employees' syndicate in that plant that must be determined. If it is the privilege of nominating representatives to the board of directors of the nationalized banks, then it is the syndicate(s) most representative of the employees of those banks that must be selected. It is not necessary to select a single syndicate as most representative. All syndicates which can lay claim to being representative may be nominated.

Since the problem of selecting most representative syndicates first was posed in 1919 in connection with the selection of delegates to the International Labour Conference, various laws and ordinances have laid down criteria to be used in the selection of representative organizations. At the present time, this matter is governed by the Law of February 11, 1950.[43] The primary requirement is a preponderance of numbers. All other things being equal, the syndicate with the majority of the category under consideration as members will be chosen. Failing this, two or three making a majority together may be chosen. Supplementary criteria may, however, be brought into play. The

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43 Article 31f, L.I.C.T.

independence of the syndicate, primarily from employer control, the amount of the dues regularly paid into the treasury, the experience and seniority of the syndicate, and its patriotic attitude during the war are all considered, the last of these having become relatively unimportant. The decision in each case is up to the government department charged with carrying out a particular measure, and this decision is subject to appeal before the administrative tribunal, or, if the matter exceeds the territorial jurisdiction of that tribunal, before the Conseil d'Etat. On the other hand, it may be submitted to arbitration, but the arbitrator has only the power to quash the decision of the administration and cannot substitute his own choice.[44] In the case of elections for the representatives of the personnel, the justice of the peace is competent to hear disputes concerning representativity.[45]

Thus, both Quebec and France have, in addition to recognizing and permitting the existence of employers' and employees' organizations, legislated concerning the constitution and formation of such organizations. With

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44 Brun and Galland, op. cit., p. 729.

45 On the question of representativity, see Brun and Galland, op. cit., pp. 676-681; Lyon-Caen, op. cit., pp. 84 - 88; Rouast and Durand, op. cit., pp. 229 - 233; Rivero and Savatier, op. cit., pp. 69 - 72.

France as the source of inspiration for the early Quebec legislation, the regimes in the two jurisdictions were in most important respects alike from the passage of the Professional Syndicates Act in Quebec in 1924 until 1944. As the place given to the most representative organizations grew in both France and Quebec, Quebec turned to the Canadian adaptation of the American Wagner Act for inspiration rather than to the French example, and since 1944, French-inspired legislation has declined in importance in Quebec, with even incorporated syndicates seeking and obtaining certification under the Labour Relations Act.

CHAPTER THREE

INSTITUTIONS TO ENSURE THE PEACEFUL SETTLEMENT OF COLLECTIVE LABOUR DISPUTES

Alongside the development of the law concerning the formation and constitution of employers' and employees' organizations, there has been, in both France and Quebec, the establishment of institutions to regulate the disputes which might occur between such organizations, whether they were incorporated, certified to represent a group, or whether they simply existed de facto.

In France, the legislation concerning the formation of permanent professional organizations preceded the first measure to provide machinery for the settlement of collective labour disputes. In Quebec, machinery for the settlement of disputes existed before the first steps were taken to provide a juridical status for professional syndicates.

The problem facing the legislator in the area of machinery for the settlement of disputes is a crucial one. How far is it necessary for the state to intervene in the bargaining of the parties in order to protect the general

interest? To what extent is the use of force by the parties in settling their differences compatible with the smooth functioning of the economy?

The French have tried a number of systems of dispute settlement. The first was introduced by the Law of December 27, 1892, following two mining strikes at Carmeau which were settled by the arbitration of the President of the Republic.[1] There was no distinction made between rights and interest disputes, that is between disputes arising from the application of an agreement, where the rights of one of the parties had been infringed upon, and those arising during bargaining, when neither party had acquired any rights, but merely had an interest at stake. The machinery consisted of a conciliation procedure and an arbitration procedure, both optional. The justice of the peace was to organize a conciliation committee if the parties so desired. The parties would, if they agreed to proceed to conciliation, nominate the delegates themselves. If conciliation succeeded, there was no way in which to enforce an agreement, and parties had only a moral obligation to proceed to enter into a collective agreement. If conciliation failed, (and by conciliation is understood a process whereby "les parties confrontent

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1 Rivero and Savatier, op. cit., p. 201.

leurs point de vue, et s'efforcent de trouver une formule de compromis sur laquelle elles puissent s'accorder.... Il s'agit ici d'une simple negociation",[2]) then the parties were at liberty to agree to proceed to arbitration, the board being set up by the nomination of an equal number of arbiters by each of the parties. The decision of the board was not binding. This text, not formally repealed until 1950, was made use of in only 17 per cent of the disputes between 1895 and 1920, while in the same period, 23,000 strikes or lockouts occurred.[3]

The social upheaval which led to the general strikes and the occupation of factories in 1936, and which brought about the famous Accord Matignon between the newly-united Confédération générale du travail, the employers' Confédération de la production française, and the Popular Front government of Léon Blum, also brought numerous measures of social legislation, among which was a new provision for the peaceful settlement of collective labour disputes.

The Law of June 24, 1936 on collective agreements stipulated that all collective agreements capable of being extended were to contain a procedure for the handling of rights disputes during the term of the agreement, as well

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2 Ibid., p. 198

3 Brun and Galland, op. cit., p. 931.

as a procedure to be followed at the time of the renewal or revision of the existing agreement. Disputes would first be submitted to a bipartite committee for conciliation. If this should fail, two arbitrators, one nominated by each of the parties for the duration of the agreement, would judge the dispute, in equity if it was an interest dispute, in law if it was a rights dispute. Should their decisions not be the same, the final and binding decision would be made by an umpire, chosen from a list established at the time of the signing of the agreement by the mutual accord of the parties or, failing this, by the first president of the Court of Appeal, and containing five names at least.

This procedure applied only to disputes arising between parties to an agreement capable of being extended, that is, between the most representative regional or national employees' and employers' syndicates, in industry and commerce.

The Law of October 1, 1936, on the devaluation of the franc, provided for the setting up by the government, on the advice of the Economic Council, of pro tempore arbitration and conciliation procedures to hear disputes resulting from the higher prices brought on by the devaluation[4], but neither this law nor that of June 24 covered the majority

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4 Rouast and Durand, op. cit., p. 336.

of disputes. These were still under the regime of the law of 1892, with the exception of the few industries which had had special systems set up for them, for example, that of the merchant marine in 1909, that of national defence establishments in 1917, and that of the railway industry, in 1921.[5]

It was the Law of December 31, 1936 which created a generally-applicable system for the peaceful settlement of collective labour disputes. The procedures of conciliation and arbitration were made obligatory, in that order, before the beginning of any strike. It provided for a cumbersome process, including three successive steps for conciliation, which was to be dealt with first by a departmental conciliation commission, then by a bipartite commission, and finally by a national interprofessional commission.

The Law of December 31, 1936, was amended by that of March 4, 1938. The machinery was improved and simplified, and designed to operate only in the cases where there was no collective agreement susceptible of extension, since these agreements were covered by the Law of June 24. Strikes were forbidden until the compulsory process of conciliation and arbitration were completed.

Conciliation was to take place before a departmental

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5 Paul Durand, Cours de Droit du travail (Paris, Les Cours de Droit, 1957), p. 275.

conciliation commission, presided over by the prefect, and consisting of an equal number of employers' and of employees' representatives. In the event of a failure to reach an agreement before this commission, each party was to select an arbitrator, or, in default of a nomination by one or both of the parties, the prefect would select the arbitrator(s) from prepared, official lists. If the two arbitrators failed to reach a unanimous decision, the parties would be obliged to select an umpire by mutual agreement, or, in the case where they could not agree on an umpire, the prefect would select one. His decision, known not as a collective agreement, but a "provisional regulation of the conditions of labour" was binding.

The only distinction made between rights and interest disputes was an instruction in article 9 of the Law of March 4, 1938, that arbitrators were to decide in law in the former case, in equity in the latter. Salaries were to be revised in accordance with changes in the cost of living, taking into consideration the state of the economy and the industry concerned.[6]

The decision of the arbitrators or umpire became binding on deposit at the registry of the civil court, as did an official report of a successful conciliation. While

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6 Dolléans and Dehove, op. cit., Vol. II, p. 60

no sanctions of a penal nature enforced these measures, the party injured by the non-observance of a binding agreement or award, or by the failure to follow the procedures required by the law, could seek compensation in damages, or specific performance in the form of a condemnation "sous astreinte", a fine which increases in amount until a party ordered by the court to do or stop doing something complies with that order. A strike or lockout following the final solution of a dispute would constitute an abusive breach of contract. A final sanction was added in the form of the loss of professional advantages. For the employer this involved the loss of eligibility for certain positions, or the loss of government contracts. For the employee, this meant a loss of unemployment insurance and the interruption of the accrual of holiday benefits while on strike. Thus, while the law did not explicitly take away the right to strike, viewed in its totality it produced this effect. Despite the law, strikes, primarily of the "wildcat" variety, were frequent.[7] At the same time, syndical membership rose considerably, in the case of the Confédération générale du travail from one million in March, 1936 to five million members in March, 1937.[8]

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7 Montreuil, op. cit., p. 473; Dolléans and Dehove, op. cit., p. 53.

8 Dolléans and Dehove, op. cit., Vol. II, p. 50

The Law of March 4, 1938 also set up the Superior Court of Arbitration. This court was given the power of review over arbitral awards, but only in questions of competence, excess of jurisdiction, or violation of the law. Only by exception, in the public interest could the Minister of Labour give the court the power to judge a case on the merits. Of 4,250 decisions by umpires between March 5, 1938 and August 1, 1939, 1,350 were appealed to the Superior Court of Arbitration. On many occasions its decisions differed from, and conflicted with, decisions of the Cour de Cassation, establishing two co-existent bodies of jurisprudence.[9]

The Chautemps government in 1938 favoured, but never implemented, a plan to forbid strikes unless approved by a majority vote of the employees, in which case the plant would be neutralized, and no one would be permitted to enter it, including employees and management who wished to continue to work.[10]

The Decree of September 1, 1939, suspended all arbitration and conciliation. No procedure was restored, despite a law in 1946 permitting collective agreements, until 1950.

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9 Brun and Galland, op. cit., p. 933.

10 Dolléans and Dehove, op. cit., p. 58, Vol. II.

The present regime for the peaceful settlement of collective labour disputes in France results from the Law of February 11, 1950, and the regulations which followed it on February 27, 1950. Applicable to industry, commerce, the liberal professions, agriculture, domestic service and to those public enterprises where the conditions of employment are not laid down by special statute (the list of these enterprises is found in the Decree of June 1, 1950) it was extended to cover even this last category (public enterprises listed in the Decree of June 1, 1950) by the Law of July 26, 1957. The Law of 1957 provided for the establishment of commissions composed of representatives of the management of the enterprise, the interested government ministry and the most representative syndicates of the employees to handle disputes. When the dispute concerns the remuneration of the employees, the Ministers of Labour and of Finance may also send representatives to the commission. Civil servants are not covered by the legislation. Rights disputes between them and the state are heard by the administrative tribunals,[11] while interest disputes do not exist due to the fact that conditions of employment in the civil service are regulated by statute.

In the general case, the procedure consists of three

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11 Brun and Galland, op. cit., p. 200

stages. The first is a process of conciliation, which, in principle, is compulsory, but the measure does not stipulate that conciliation must be resorted to before any strike or lock-out. As in the previous regime, there are no procedural distinctions made between rights and interest disputes.

All collective agreements must provide for a conciliation procedure to deal with rights disputes arising from the application of the agreement, as well as for the handling of interest disputes on the occasion of the renewal of the agreement.

Where there is no collective agreement, a regulatory procedure exists to handle collective labour disputes. On the national level, a permanent interprofessional organism known as the National Conciliation Commission is set up. It has jurisdiction when the conflict involves an entire industry, or entire industries, when the dispute involves firms in several different regions, or when, as a result of the numbers involved, a dispute is of national importance. The Commission, whose members are named by the Minister of Labour on the suggestion of the most representative national syndical organizations (that is, of the confederations), is composed of at least three employees' representatives, at least three employers' representatives, and a maximum of three representatives of government, including

the Minister of Labour or his nominee, who presides, and the Minister for Economic Affairs, or his nominee.

Where the conflict is restricted in scope to a single region, a regional commission, permanently established at the seat of each divisionary inspector of labour, and composed of three employees' representatives, three employers' representatives and two representatives of the government, who in this case are the Divisionary Inspector of Labour or his nominee, who presides, and a member of the administrative tribunal, deals with the dispute.

There can be departmental sections of the regional commission set up to deal with disputes that are limited to a single department. In all cases, national and regional, in which the "cadres" are involved, a fourth employees' representative is added to the commission, who must be a member of this category, and a fourth employers' representative is added to equalize the representation.

The Minister of Labour, in national disputes, or the Prefect or Divisionary Inspector of Labour, in regional disputes, may attempt to conciliate the parties to any dispute. Should they fail, or choose not to participate personally, they may, of their own accord, notify the relevant commission of the dispute, and the commission must then summon the parties. Either one of the parties may also begin the procedure by writing to the Minister of

Labour, or to the Prefect, who pass the letter on to the appropriate commission.

The parties must appear personally, subject to a fine of from 18,000 to 36,000 france if they do not, without sufficient reason, and which is increased to 36,000 to 720,000 francs for failure to appear, without sufficient reason, at a second hearing eight days later. Where the parties have good reason, and cannot appear, a mandatary, belonging to the same organization or exercising a permanent professional activity in the firm where the conflict has arisen, may appear on their behalf. The parties, when they appear, or their mandatary, may be assisted by a member of the professional organization to which they belong.

Before the commission, pure bargaining and compromise takes place, with the commission using any method of getting an agreement which it deems fit, without actually suggesting the solution to the parties. If there is an agreement, then an official report must be communicated to the Minister or Prefect by the president of the commission within a delay of one clear day, and copies must be sent to the parties. Such an agreement is executory from the moment of the deposit of the report by the more diligent party at the secretariat of the "conseil de prud'hommes" or the registry of the justice of the peace. Where no agreement is reached, a report must be drawn up showing the remaining areas of

disagreement, to delineate the issues before an arbitrator, should the parties choose to proceed before one. The parties, as well as the Minister or the Prefect, must be sent copies of the report within one clear day of the ending of proceedings. All reports must be signed by the parties, or their representatives, and by the members of the commission.

Failure to bring a dispute before a conciliation commission before resorting to strikes or lock-outs does not give rise to an action in damages, or for the resiliation of contracts, since the law only provides that conciliation is compulsory without specifying that it is compulsory before any strike or lock-out can take place. Unlike the 1936 regime, failure to resort to conciliation does not automatically bring about the obligation to submit the dispute to arbitration. Since 1957, when the sanction of a fine was added to the law for failure to appear before a conciliation commission before resorting to strikes or lock-outs, the procedure has become more effective. Of more than 10,000 disputes arising within the jurisdiction of the conciliation commissions from the implementation of the law in 1950 until November 15, 1955, only 734 were brought before the organisms set up by this law, and only 181 of these were completely settled.[12]

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12 Rouast and Durand, op. cit., p. 344.

It is only when a collective agreement provides that there shall be no strike before resort to conciliation that such a strike becomes a breach of contract engaging the responsibility of the syndicate ordering it. In practice, the strike is ruled out, in collective agreements, only for short periods of time, for example, two days in the collective agreement of the textile industry, and five days in the construction industry.[13] In any case, the strike can be resorted to after the conciliation process has terminated if it has produced no binding agreement.

The second step in the existing French machinery for dispute settlement is voluntary arbitration. Contrary to the case of individual labour contracts, where a "clause compromissoire" is invalid, Article 9 of the Law of February 11, 1950 allows and encourages the parties to provide for the arbitration of rights disputes arising from the application of the agreement, or of interest disputes at the time of its renewal, and even permits them to name the arbitrators in advance, or to set methods for choosing arbitrators. Where there has been no such provision, or when there is no previous agreement between the parties, arbitrators may be chosen by the consent of both parties.

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13 Brun and Galland, op. cit., p. 939.

The arbitrator is to decide rights disputes in law and interest disputes in equity. He must show the reasons for his award, and communicate the decision to the parties within twenty-four hours by registered letter. The decision is executory on deposit, by the arbitrator, at the secretariat of the "conseil de prud'hommes", which must be done within twenty-four hours of the rendering of the award, or, if there is no "conseil de prud'hommes" competent for the profession and territory which the award encompasses, the deposit must be at the registry of the justice of the peace, either at the place where the existing collective agreement of the parties is deposited, or, when there is no collective agreement, at the place where the decision was rendered. The effects of the award run from the day of the request for conciliation of the dispute (which encourages the parties to resort as soon as possible to the procedure, and eliminates for the most part the contentious issue of retroactivity). This is a derogation from the provision in the Code of Civil Procedure requiring the intervention of the president of the civil tribunal to give executory force to an arbitral award.

Where the award is one interpreting a collective agreement, the terms of the award are incorporated into the agreement. The signatory organizations of an extended collective agreement may together ask the extention of

the award.

The sanctions for failure to adhere to an arbitral award are the same as those for a breach of a collective agreement, and thus are civil in character, in the form of individual or collective actions for damages or for the resiliation of the contract.

The only appeal from an arbitral award is to the Superior Court of Arbitration, which was revived by the Law of 1950. This body, composed of five members of the Conseil d'Etat, and four civil magistrates, is presided over by the Vice-President of the Conseil d'Etat or the President of one of the Sections of that Council. The Court judges in law only, to determine whether an administrative organism has exceeded its jursidiction, or whether a law has been violated, but not on the facts or the merits of a case.

Recourse to the law is begun by notifying the Court of the arbitral decision which is being appealed within eight days of the award, and by sending a copy of the decision, as well as the grounds of complaint, to the Court. The appeal does not suspend the execution of the sentence. The Minister of Labour no longer has the power to allow the Court to judge the merits of a case, at his discretion, as was the case under the Court set up in 1938.

If the Court annuls the award in whole or in part, the parties are free to choose to have the matter arbitrated again or not. If they decide to resort to a new arbitration, and if the decision is again appealed and overruled, the Superior Court of Arbitration may judge the case on its merits.

Arbitration is not resorted to a great deal in France, with the result that there are few appeals to the Superior Court of Arbitration. In the month of December, 1954, for example, only five decisions were handed down by the Court.[14]

A distinction which is very important in France, but not in the Province of Quebec, is that bewteen individual and collective disputes.[15] In France, individual disputes are, in principle, taken before the "conseil de prud'hommes", whether they arise out of an individual contract or out of a collective agreement, and it is only rights disputes which are dealt with by the machinery. Collective disputes are dealt with by recourse to conciliation and arbitration. In the case of collective disputes, both interest and rights disputes are handled by the same organisms.

The criteria for distinguishing between collective and individual disputes have been set down by the Superior Court of Arbitration, as established in 1938, and are still

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14 Brun and Galland, op. cit., p. 943.

15 Beaulieu, op. cit., p. 259.

valid today.[16] A collective interest must be at stake for there to be a collective dispute. It is not sufficient merely to have the interest of several individuals involved. The interest of the syndicate itself as a juridical personality, or the interest of the profession generally must be at stake. The mere application of a clause in the collective agreement to an individual need not necessarily involve a collective interest. The interest is only collective when the repercussions of the interpretation of the clause will affect the parties generally. It is left to the judge in a particular case to decide whether a collective dispute is involved.

A second criterion laid down by the Superior Court of Arbitration is the necessity that a group of employees be involved. A single employer may be involved in a dispute which is considered to be collective. The group need not be a syndicate, but may merely be a de facto group. Taken together with the first criterion, this eliminates all disputes where only a single employee is involved, regardless of the possible repercussions on the collective interest.

If the parties do not agree to go to arbitration, this does not mean that their rights are unenforceable.

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16 Brun and Galland, op. cit., pp. 952, 953.

Either of them may, in the case of collective disputes, have recourse to the civil courts. This does not apply where the parties have agreed to arbitrate, since in this case the award of the arbitrators is final and binding.

Thus, the parties, when deciding whether or not to go to arbitration, weigh the possibility of getting a favourable decision by an arbitrator, against the possibility of obtaining a solution which favours their position from a civil court. The question is extremely important in practice, since the jurisprudence of the Superior Court of Arbitration is often in opposition to that of the Cour de Cassation. For example, until the Law of 1950 declared expressly that a strike only suspends, and does not break, the labour contract, the Superior Court of Arbitration decided in favour of the suspension theory, while the Cour de Cassation held that a strike is an indication of the employee's intention to leave his employment.[17] While the Cour de Cassation refused to order the reintegration of employees who were wrongly dismissed and contented itself with merely awarding damages, the Superior Court of Arbitration ordered reinstatement.[18] The Superior Court of Arbitration has held that the burden of proof of the

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17 Lyon-Caen, op. cit., p. 23.

18 Brun and Galland, op. cit., p. 76.

motive for the dismissal of an employee lies with the employer, while the Cour de Cassation has observed the traditional civil law rule that he who alleges bad faith must prove it.[19] The Cour de Cassation has held that the status of representatives of the personnel terminates at the expiry of their term of office despite the fact that no new election has been held, while the Superior Court of Arbitration has decided that representatives of the personnel retain their status at the expiration of their mandates until their successors are named.[20]

In the case of interest disputes, this conflict does not exist since the civil courts are not competent.

A third step was added to the machinery for the peaceful settlement of collective labour disputes by the Decree of May 5, 1955, issued under special powers delegated to the Council of Ministers, and amended by the Law of July 26, 1957. It sets up a process of mediation, inspiration for which was provided by the Taft-Hartley Act of the United States, and its provision for the establishment, in certain cases, of a fact-finding board.[21] Mediation is applicable to all branches of economic activity

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19 Article 2268 C.N.

20 Brun and Galland, op. cit., p. 838.

21 Rivero and Savatier, op. cit., p. 208.

where a collective agreement is possible, that is, all private, and, since the Law of 1957, all public enterprises. This procedure is applicable only in interest disputes and not in rights disputes, where the mediator, if called upon, must recommend that the parties take their dispute to arbitration or to the civil tribunal.

Mediation is a term which does not have the same meaning in France as in North America. While Canadians would define mediation as "a means of settling labour disputes whereby the contending parties use a third person - called a mediator - as a passive go-between"[22], to the French the process is one in which:-

> " c'est à un tiers, choisi par les parties, qu'il appartient de dégager une solution pour le litige, au terme d'une enquête qu'il effectue lui-même. Mais la solution qu'il préconise prend la forme d'une simple recommandation ... l'autorité de la recommandation du médiateur est donc purement morale ... toutefois, le procédé fait souvent appel à la pression de l'opinion: la publicité donnée à la recommandation du médiateur peut rallier celle-ci."[23]

Thus, mediation is in France what a conciliation is in the Dominion Industrial Relations and Disputes Investigation Act in Canada, and what Canadians understand as "mediation" is called "conciliation" in France. In Quebec

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22 Labour Terms (Toronto, C.C.H. Canadian Limited, 1958), p. 48.

23 Rivero and Savatier, op. cit., p. 198.

"conciliation" has the same meaning as in France, while "mediation" refers purely to "good offices".

Mediation can take place on the failure of conciliation, and until the Law of 1957 could take place before conciliation. It is not a necessary preliminary to arbitration, nor is arbitration excluded by the failure of the mediation process. While mediation is not a procedure to which both parties must agree before resort is had to it, there is no legal stipulation that it must occur at any time, or, indeed, at all.

A written request stating the reasons for the request and the issues involved in the dispute may be sent by one of the parties to the president of the conciliation commission. The president forwards the request to the Minister of Labour if the conflict involved is a national or regional one, or to the Prefect if the dispute is limited in territorial scope to a single department. The Minister of Labour, the Prefect, or the president of the conciliation commission, may set the procedure into motion without any such request having been made. Both parties may agree to resort to mediation, in which case the request to the president of the conciliation commission is unnecessary.

The parties agree on and name a mediator. If they cannot agree, the Minister of Labour (or the Prefect) chooses

one from a pre-established list of mediators. This list is established after consultation with the most representative syndicates of employers and employees. Mediators must be French, and have the full exercise of their civil rights. They must possess a high degree of moral authority and be knowledgeable in economic and social matters.

Within eight days of the request, the mediator is called in by the Minister or the Prefect. The parties present written submissions and, if necessary, appear in person to present supplementary oral submissions. They can only be represented by third parties if there is serious cause and if the representatives have full authority to agree to a solution to the dispute. The mediator must inform himself concerning the economic situation of the firm and of the employees, in the process of which he may call upon experts to enlighten him, or require the submission of documents for the examination. Failure to submit documents requested is sanctioned, since 1957, by a fine of from 36,000 to 720,000 francs.

The mediator is held to secrecy concerning anything he may learn. The parties may agree to suspend his powers, or revoke them, at any time.

After considering the relevant information, the mediator recommends a solution to the problem, and gives his reasons. This must be done within fifteen days of his being called in,

with a possibility of an eight-day extension if he requests it. If his recommendations are accepted by the parties, such acceptance has the force of an agreement in conciliation, and the report becomes executory under the same conditions as those applicable to conciliation. If there is not immediate acceptance of his recommendations by both parties, they are given 48 hours to decide whether or not to accept them. At the end of this period, the recommendations and the reasons behind them are sent to the Minister of Labour, unless the parties request a further postponement to resume discussions. The Minister must publish the report within three months in the Journal Officiel unless the parties ask a postponement of publication or the complete suppression of the report in order to resume discussion. When the recommendations are published, the Minister of Labour has the power to decide not to publish the reasons given by the mediator for his recommendations. The publication may also take place in the press, on the radio, or by posting in public places as the Minister thinks fit, in order to bring the force of public opinion to bear. The mediator also must send a supplementary confidential report to the Minister which is not published.

In the case of disputes involving public enterprises, the mediator notes the advice of the Interministerial

Committee on Salaries which he attaches to his report.

In the first year of operation (1955), of thirty-seven procedures of mediation undertaken, twenty-one were completely successful, nine led to agreement in some of the firms involved, two failed, and six were still pending at the year's end.[24]

The parties may resort to the strike or to the lock-out at any stage in the proceedings. A legal strike does not break but merely suspends the labour contract, according to the express terms of the Law of February 11, 1950.

The strike has been forbidden to the police by the Law of September 28, 1948 and to the Compagnies républicaines de sécurité by the Law of December 27, 1947. The right to strike having been made a basic right by the Constitution of 1946, it was shared by the civil service as well as the employees of public enterprises, though previous to 1946 this right had been denied them. The Conseil d'Etat has decided that:

> il appartient au gouvernement, responsable du bon fonctionnement des services, de fixer la nature et l'étendue

of this right.[25] In practice, the government has issued circulats forbidding strikes according to the nature of the work done, the rank of the employee and the circumstances,

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24 Rouast and Durand, op. cit., p. 350

25 Rivero and Savatier, op. cit., p. 177.

and has been upheld by the courts.[26] In the present state of legislation, however, the strike is not absolutely prohibited to civil servants.

In Quebec, unlike France, the present regime for the peaceful settlement of collective labour disputes has been established by the evolution of the original procedure. Instead of replacing one set of machinery with another, Quebec has, for the most part, developed her procedures by way of addition to, rather than repeal of, earlier measures.

The first provision for the settlement of collective labour disputes in Quebec was that contained in the Trade Disputes Act of 1901.[27] Inspired in part by the French Law of December 27, 1892[28], the act is general, applying to "any person or body of persons, incorporated or unincorporated, employing not less than ten workmen in the same business"[29] and their employees.

The nature of the disputes which may be dealt with by the procedures set up by the act include matters concerning wages, hours, damage done to work, delay in finishing work or the quality of workmanship, the quality of materials

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26 Ibid., p. 178.
Brun and Galland, op. cit., p. 887.

27 c.167, R.S.Q., 1941. First passed I Ed.VIII, c.31.

28 Beaulieu, op. cit., p. 95.

29 c.167, R.S.Q., 1941, s.3.

The Registrar may initiate such mediation of his own accord where he learns of the dispute through the newspapers or by other means. In either case, he must report on the results of his mediation as soon as possible to the Minister of Labour.

A dispute may be referred to a council of conciliation if both parties, or one of them, apply to the Registrar. A council is to consist of four members, two chosen by each of the parties. After the first party has submitted his written nominations, the other party has six days in which to submit his. Vacancies are filled by the party who first appointed the conciliator to the vacant position.

The parties may be represented before such councils by from one to three representatives, who must have the power to agree to a solution which will bind the party represented. Such power is obtained either by an authorization to act signed by all the members of the group which is represented or, if the group numbers more than twenty, by a resolution of a meeting of the group, passed in any way they deem advisable. A copy of the resolution must be sent to the Registrar. The parties draw up a statement of the issues in dispute, together if they can agree, or separately if they cannot, which is also forwarded to the Registrar.

Once the conciliators have been appointed, the Registrar is empowered to call a meeting of the council of conciliation.

The council hears the parties, inform themselves of the facts and attempts to conciliate the parties. It then reports to the Registrar on its success or failure as the case may be.

In the case of a failure of conciliation, certified copies of the council's report are sent to the parties, either of whom may then ask the Registrar to refer the matter to arbitration. Both may agree to submit a dispute to arbitration without previously resorting to conciliation.

Members of a council of arbitration must be at least twenty-one years of age, and Canadian citizens. Until 1909, there were permanent councils of arbitration. The system was amended in that year.[30] Each party, under the current regime, must recommend an arbitrator who is then appointed by the Minister of Labour. If either, or both parties, fail to recommend an arbitrator within ten days, the Minister of Labour appoints one in their stead. Within five days of the later appointment of the two, the arbitrators recommend jointly a third arbitrator, who is to be a competent and impartial person who will act as president of the council. Where they fail to do so within five days, the Minister appoints:-

> an experienced, impartial person not personally connected with or interested in any trade or industry, or likely by reason of his occupation,

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30 9 Ed. VII , c.32.

> business vocation or other influence to be biased in favour of or against employers or employees.[31]

Vacancies are filled in the same manner in which the person whose place has fallen vacant was appointed.

The sittings of the council are public, unless the council on its own, or on the motion of one of the parties, decides to make them private. The president of the council has all the powers of a judge of the Superior Court, (except that of committing persons for contempt of court) for the purpose of preserving order during the sittings. The council is to decide the disputes not in law, but in equity and good conscience.

The council may require the parties to name not more than three persons to act as their representatives before the council. The decision of the council is to be rendered within thirty days of the appointment of the president, unless the Minister, at the request of the council, grants a supplementary delay.

The decision of the council is to be written and signed by the majority of its members. It is sent to the Minister of Labour. The parties are not bound by the decision, but can, at any time before it is rendered, or thereafter, agree

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31 c.167, R.S.Q., 1941, s.18.

to be bound. If both agree, then the decision becomes executory in accordance with Article 1443 of the Code of Civil Procedure.[32] If, however, the parties do not choose to accept the award, then this forms no bar to their referring the dispute to a council of conciliation again.

The councils of conciliation and arbitration are given powers to visit the locality of the dispute and hear all interested parties, summon witnesses, and, in the case where the latter fail to appear, to apply to the justice of the peace for an order compelling their attendance. They are also empowered to administer oaths or to take the solemn affirmations of witnesses.

The act makes no distinction between interest and rights disputes. Rendered almost inapplicable because of the restrictive list of disputes it covers, the act is made use of today almost solely when its provisions are referred to by, or incorporated in, another act. The mediation procedure is never used.[33] At the time of its passage, however, it was a stronger procedure than the French Law of 1892, allowing a single party to initiate the proceedings instead of requiring the agreement of both.

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32 "Any extrajudicial award of arbitrators can only be executed under the authority of a competent court, upon a suit brought in the ordinary manner to have the party condemned to execute it".

33 Beaulieu, op. cit., p. 98.

Unlike the French law, it provides for the preliminary procedure of mediation. The machinery for conciliation and the powers of the council of conciliation are similar in both cases, and the word "conciliation" is used in both cases to mean the attempt of the council or commission to bring about an agreement using any means it thinks advisable short of recommending to the parties what, in its opinion, the solution ought to be. Again, the Quebec Law of 1901 allows a single party to request that a dispute be submitted to arbitration, whereas the French Law of 1892 required the joint agreement of the parties. In neither case was the award of the arbitrator binding.

The present French regime is closer to that of the Trade Disputes Act. In this case, the Minister, Prefect or Divisionary Inspector of Labour may attempt conciliation on their own, which is equivalent to the preliminary mediation by the Registrar provided for by the Quebec Law. Then, either party may, in both the French Law of 1950 and the Trade Disputes Act, request that the dispute be submitted to a conciliation commission. The French system, however, no longer provides for pro tempore conciliation commissions to which the members are appointed by the parties to the dispute, as does the Quebec Law, but sets up permanent conciliation commissions. Moreover, in France, the agreement of both parties is required to submit a

dispute to arbitration and the decision is final and binding, whereas in Quebec the case is the reverse.

In 1932, the Quebec Legislature passed the Industrial Disputes Investigation Act[34] which was an enabling provision designed to permit the application to employer-employee relations within the jurisdiction of Quebec of the Dominion Industrial Disputes Investigation Act of 1907.[35]

The act gave to the Lieutenant-Governor in Council the power to apply by proclamation any amendment that might be made in the future to the federal act to all disputes within the jurisdiction of Quebec. This act became inapplicable when the Industrial Relations and Disputes Investigation Act[36] was passed in 1948, repealing the earlier act.

The Quebec Labour Relations Act[37] set up a procedure for the settlement of both rights and interest disputes between employers' and employees' associations recognized and certified under that act. Since, in practice, the vast majority of collective agreements are made under the terms of this act, the importance of its procedures for the peaceful settlement of disputes is great.

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34 c.168, R.S.Q., 1941.

35 6-7 Ed. VII, c.20.

36 11-12 Geo. VI, c.54, now R.S.C. 1952, c.152.

37 c.162A, R.S.Q., 1941.

When an association is recognized by the Board, and it wishes to avail itself of this recognition to solve an interest dispute, that is, to negotiate a collective agreement, it must give eight days' notice in writing to the opposite party of the time and place at which its representatives will be ready to meet with that party to begin negotiations. After the negotiations have been carried on for thirty days, or when either party believes they are not likely to terminate within a reasonable time, he may notify the Board, indicating the difficulties encountered.

The Board, on receipt of the notice informs the Minister of Labour who must instruct a conciliation officer to meet with the parties and endeavour to effect an agreement. This officer must report to the Minister on his mission within two weeks of receiving his instructions. Where the report shows that there has been no agreement, the Minister must appoint a council of arbitration according to the terms of the Trade Disputes Act, without waiting for a request from one or both of the parties concerned. The award of the arbitration council is not binding.

The employees are free to strike, and the employer to lock-out, fourteen days after the report of the council of arbitration is received by the Minister.

Should a collective agreement eventually be signed, all

rights disputes must be submitted to arbitration, either following a procedure set up by the agreement, or, where the agreement does not establish any such procedure, according to the terms of the Trade Disputes Act. Strikes or lock-outs are forbidden until fourteen days after the report of the arbitrators is received by the Minister, when the award has not been accepted. A legal strike suspends, and does not break the labour contract.[38]

An association which has not been recognized to bargain for the employees may not strike, but if it comprises at least twenty employees corresponding to at least ten per cent of the bargaining unit governed by a contract signed by another association, and where it is believed that the agreement or the Labour Relations Act has been violated, such an association may submit its complaint in writing to the employer, who calls before him representatives both of the complaining association and of the association which was a party to the agreement, and hears the complaint.

The pattern of the machinery for dispute settlement laid down in the Labour Relations Act, is based on that which the Dominion Government brought into force by means of Order-in-Council 1003, despite the fact that the Labour

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38 Beaulieu, op. cit., p. 460.

Relations Act was assented to two weeks before the passing of the Order-in-Council. Quebec adopted the peculiarly Canadian mixture of American, British and other institutions and for the first time made a serious break with the practice for taking the inspiration of her labour legislation from France. This accounts for the fact that, in Quebec, the entire procedure under the Labour Relations Act is different from that of the French Law of 1950. In Quebec, the two steps of the conciliation officer and council of arbitration are compulsory, but no binding decision can be forced upon the parties. In France, conciliation, before a permanent commission, not a single officer, is obligatory, but arbitration is not. Where the parties agree, in France, to resort to arbitration, the award is binding.

Quebec has a special procedure for dealing with disputes between public services and their employees. In 1921, an Act Concerning Disputes Between Employers and Employees of Municipal Services[39] was passed, ruling out strikes and lock-outs in the services governed by it until all disputes concerning wages, hours of labour and dismissals for activity in employees' associations were submitted to a non-binding arbitration. The act applied only to fire, police, water and sanitation services employing more than twenty-five people.

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39 11 Geo. V, c.46 (1921).

The Law Relating to the Arbitration of Disputes Between Certain Charitable Institutions and their Employees[40] required that collective labour disputes be submitted to a council of arbitration and prohibited strikes to the employees of the institutions covered by the act, namely, those recognized for public assistance.

An Act Respecting the Public Services Employees Disputes[41] repealed the two laws just discussed. In their place it created a comprehensive system for the settling of all collective disputes between the public services and their employees. The public services referred to are municipal and school corporations, public charitable institutions, Insane Asylums, the essential services of transmitting messages by telephone or telegraph, transportation, railways (except those under the jurisdiction of the federal parliament) tramways or navigation, or the production, transmission, sale or distribution of gas, water, or electricity, and those services of the government in which the employees are subject to the Civil Service Act.

In the case of these services, every dispute, whether a rights or an interest dispute, concerning the conditions of employment, must be submitted to arbitration, either

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40 3 Geo. VI, c.60, (1939).

41 c.169, R.S.Q., 1941. First passed 8 Geo. VI, c.31, (1944).

following a procedure set forth in the collective agreement, or under the terms of the Trade Disputes Act. The award of the majority of the arbitration board is binding and may be executed by any individual or group entitled to act judicially who has an interest in such execution, or on the suit of the Labour Relations Board which need not make the party on whose behalf it is acting a party to the suit.

Where civil servants are concerned, the Civil Service Commission acts as arbitrator. Strikes and lock-outs are prohibited to all classes of employees and employers covered by this act.

The act does not apply to managers, superintendents, foremen or representatives of the employer in his dealings with his employees, nor to directors and managers of a corporation, the members of the liberal professions employed by public services, nor to domestic and agricultural labour.

In all other respects, the Labour Relations Act is to apply to public services and their employees. Any association which orders a strike or lock-out prohibited by this act, forfeits the right to certification as representative of the employees or employers in a given bargaining unit.

An Act Respecting Municipal and School Corporations and their Employees[42] sets up organisms for the arbitration of

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42 13 Geo. VI, c.26, (1949).

disputes involving such corporations and their employees. Every two years, at the end of the current fiscal year, the corporation must recommend a person who, for the next two years, will act as a member of a council of arbitration in such disputes. At the same time, the employees of the corporation or the association representing them recommends an arbitrator to represent the employees. Where there are several associations representing various categories of employees, each association may recommend an arbitrator who will act when the dispute concerns that category. The Minister of Labour appoints those nominated, and, where there has been no nomination within the thirty days preceding the end of the fiscal year, the Minister personally designates the arbitrator. The third member of the arbitration board represents the public, and acts as president. He is appointed by the Lieutenant-Governor in Council. Vacancies are filled in the same way in which the person to be replaced was appointed.

When the term of one council expires and another begins, the retiring council finishes the cases it has begun, but begins to hear no new ones, even if the cause of action arose before the expiration of the term.

No decision of such a board which raises the expenses of the corporation is to be executory until the end of the

current fiscal year, and the effects of the award may not be made retroactive to more than twelve months before the rendering of the decision of the board. Every award or collective agreement imposed by award is to last for two years. There is no appeal from the awards of the councils of arbitration under this act.

The differences between the French and Quebec methods of handling public service disputes are numerous. Whereas in Quebec, civil servants are absolutely denied the right to strike, and all disputes between them and the government are heard by the Civil Service Commission which acts as final arbitrator and whose award is binding, in France, civil servants are not absolutely prohibited to strike, and as long as the government department for which they work has not ordered them not to, they retain that right. Rights disputes between French civil servants and the French government are heard by the administrative tribunals.

Most of what in Quebec are considered "essential services" have been nationalized in France. The employees of these public enterprises are in the same position as civil servants as regards the right to strike, but disputes between them and the public services that employ them are handled by a special conciliation procedure set up by agreement between the management, the most representative

employees' syndicates and the Ministry responsible. Where the dispute concerns remuneration, representatives of the Ministers of Labour, of Finance, and of Economic Affairs participate in the procedure.

In Quebec, employees of essential services are prohibited from striking and all disputes between them and their employers must be submitted to a final and binding arbitration under the terms of the Trade Disputes Act.

CHAPTER FOUR

THE COLLECTIVE AGREEMENT

Where a state legalizes collective employees' and employers' organizations, and sets up means whereby they can negotiate with each other to settle their differences, it is almost invariably because the state contemplates allowing these organizations, following the procedures prescribed by law, to arrive at collective agreements concerning the conditions of labour. Where the state intends to regulate the conditions of labour by law, the collective organizations of employers or employees become only formal bodies, and the procedure for dispute settlement becomes unnecessary. Both France and Quebec have adopted the former solution, that is, it is a matter of public policy to permit the parties to determine, by bargaining, the terms of their employer-employee relationship. The subject of this chapter is the extent to which this freedom is allowed the parties, and the limits which the state imposes by intervening to control the content of the collective agreement.

The first law in France dealing with collective agreements was that of March 25, 1919. It provided that collective agreements could be made by any group of employees, with a single employer or with a group of employers, and did not subject such agreements to the condition that any of the signing parties be a syndicate set up under the Law of 1884.

The parties were free to determine the content of the agreement, but its effects only extended to those individuals actually signing the agreement, the individuals they represented, unless such individuals resigned from the group within eight days of the registration of the agreement and notified the "conseil de prud'hommes" or the registry of the justice of the peace of their intention not to be bound by the agreement. At any later stage, a member could resign from a group bound by the agreement on thirty days' notice. Anyone who subsequently joined one of the signatory groups became bound by the agreement and subject to its terms.

In addition, it was presumed that the terms of the agreement applied to contracts of employment entered into between two parties, only one of whom was subject to the collective agreement, as a member of a group. This presumption could be destroyed by the simple mention in such a contract that the terms of the collective agreement

were not to apply. Where an individual subject to the agreement signed an individual contract with terms incompatible with the collective agreement, the syndicate could take judicial action to have those terms annulled. The syndicates were also given the power to demand the specific performance of the terms of the agreement, or to claim damages for the non-observance of its provisions.

The plural syndicalism set up by the Law of 1884, resulted in the provision in the Law of 1919 that there could be more than one agreement to govern the same profession in any area.

In 1919, 557 collective agreements were signed under the terms of this law, in 1920, 545. The number continued to fall to 128 in 1925 and 20 in 1933,[1] due to the overly-liberal provisions allowing individuals to withdraw themselves from the application of the agreement, which made such agreements ineffective determinants of the conditions of labour.[2]

The Law of June 24, 1936, in France, which followed the accords Matignon of June 7, 1936, established two types of collective agreement. The first was a reproduction of the type established by the Law of 1919. The

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1 Dolléans and Dehove, op. cit., Vol. II, p. 27.

2 Brun and Galland, op. cit., p. 715.

second type was an innovation. It could be concluded only by syndical organizations on both the employers' and the employees' sides, and only by the most representative of these on a national or regional level in industrial or commercial employments.

Either an employees' or an employers' syndicate could provoke a meeting of the most representative syndicates in a given profession and region, or this could be done by the Minister of Labour. The parties would then negotiate a collective agreement, the contents of which they were free to determine.

The Minister of Labour, after seeking the advice of the relevant section of the Economic Council, and after publishing in the Official Journal a notice of his intention to extend the agreement to all the employees and employers in the region and profession, and asking for expressions of opinion from interested parties, could extend the agreement without changing any of its provisions. It was not possible, under this type of agreement, for individual employers or employees to denounce the terms, or to contract for different terms. The contract became the law of the profession in the region in which it was extended.

The Law also provided that there were to be certain clauses which the parties were obliged to include in such an agreement. Among them were clauses recognizing the

liberty to associate in syndicates, the freedom of opinion of the employees, the institution of "délégues du personnel", and clauses setting minimum levels of remuneration for each category of employee, the length of the notice period before the unilateral renunciation of the agreement by one of the parties, or the duration of the agreement if it was to be of fixed length. The agreement also had to contain provisions concerning the organization of apprenticeship, the prohibiting of "travail noire", and the procedure of conciliation and arbitration to be followed in dealing with rights disputes during the course of the agreement, or with interest disputes at the time of its re-negotiation.

The number of collective agreements rose from 29 in 1935 to 2,336 in 1936.[3] Between June 24, 1936 and July 15, 1937, 4,945 agreements were reached, of which 720 were extended.[4] In all, under the regime of this Law, over 6,000 agreements were concluded.[5]

The Decree-Law of October 27, 1939 froze the conditions of labour resulting from collective agreements for the duration of the war. Under the Decree of November 10, 1939 any new collective agreement had to receive the approval

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3 Dolléans and Dehove, op. cit., p. 51, Vol. II.

4 Montreuil, op. cit., p. 494.

5 Brun and Galland, op. cit., p. 715.

of the Minister of Labour. The Decree of June 10, 1940, gave the Minister of Labour complete power to determine wages.

The Law of December 23, 1946 revived collective agreements, but under a system of state tutelage. There was but a single type of collective agreement. On the demand of the most representative syndicates of employers or employees on the national level, or of the Minister of Labour, a mixed commission was established to work out the details of an agreement. No non-representative syndicate or de facto group could conclude any agreement until the national agreement in the profession was completed. The Minister of Labour acted as conciliator in the negotiations. If within one month of the request for the setting up of the mixed commission there was still no agreement, the Minister of Labour could regulate the conditions of labour in the profession by decree.

When an agreement was reached, it was subject to the previous approval and homologation by the Minister before it could have any effect. If approved, it applied as an extended collective agreement to all members of the profession of all categories in the country. No member of the profession could contract for other terms. If the agreement was not approved, it was not in force even between

those who signed it.

The only other possible type of agreement was that entered into by the most representative syndicates on the regional or local level which could slightly modify the national agreement to adapt it to local conditions. Non-representative syndicates and simple groups could conclude agreements only within the plant, and these too had to be in conformity with the national agreement. The Law divided the economy into twenty-five professions, thus limiting the number of possible agreements.

The parties were not free to include any provisions for salaries in the agreement, as these were regulated by the state. Because this essential element was explicitly excluded from the agreements, only two national agreements were signed under this law.[6]

The Law of February 11, 1950 provided for a new regime for collective agreements in France, and this law is still in force. Like the Law of 1936, it provides for two types of collective agreement, the ordinary and the extendable. Applying to industry, commerce, agriculture, the liberal professions, domestic service, work done at home, and those public enterprises not listed in the Decree of June 1, 1950, the Law does not cover the civil service, nor those public

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6 Lyon-Caen, op. cit., p. 170.

enterprises listed in the Decree of June 1, 1950, where the conditions of labour are determined by statute. This latter group of public enterprises includes the French National Railways, the Paris Transportation Administration, Electricity and Gas of France, the Coal Mines of France, and Air France.

Agreements can be concluded on the national, regional, local, or even plant level. Only syndicates may be parties to ordinary agreements on the employees' side, to the exclusion of unincorporated groups, whereas a single employer or a de facto group of employers may be a party to such an agreement. The representatives of groups or syndical organizations must be able to prove that they have the authority to bind the members of the group they represent, and must prove that this authority has been given them by the constitution of the organization, a resolution of a meeting of the group, or written mandates signed by each member of the group.

An agreement can be set aside if it can be proven that the consent of either party was given in error, or obtained through fraud or through violence.

The agreement must be written on pain of nullity. Although it need not be written in authentic form, that is before a notary or other public officer, it has the value, when making proof, of a solemn contract, and may only be

attacked through the procedure of improbation.[7] Three copies must be filed at the secretariat of the "conseil de prud'hommes" of the place where it was concluded, or at the registry of the justice of the peace if there is no competent "conseil de prud'hommes". The secretary of the "conseil de prud'hommes" or the clerk of the justice of the peace sends one copy to the Minister of Labour, and another to the Departmental Manpower and Labour Administration within two days. In the case of an agreement in agriculture, two additional copies must be filed, one to be sent to the Minister of Agriculture and the other for the Departmental Administration for the Control of Social Laws in Agriculture. Anyone may obtain free copies of the agreement, paying the cost of delivery only.

The effects of the agreement commence on the day following registration, unless the agreement itself provides to the contrary. There is no provision requiring preliminary government approval or homologation.

Notice must be posted in each establishment governed by the agreement, and at the places where hiring usually takes place, of the existence of the agreement. The notice must show the date and place of registration, and the names of the signing parties. For agreements in

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7 Articles 1319, 1320, C.N.

agricultural, the liberal professions or home work, the posting may be at the town hall of the place of residence of those covered by the agreement. The employer must also make a copy of the agreement available to his employees.

There is no order in which these agreements must be established, as was the case in 1946 when a hierarchy of agreements existed, whereby national agreements were to be concluded before the regional or local. National, regional, and local agreements may be made at any time, but agreements covering only a single plant may only adapt an agreement of wider application to the special conditions of the plant, and may only create terms and conditions more favourable to the employee. If no such agreement of wider effect exists, the plant agreement must limit itself to the questions of salary and the accessories of salary. Only the most representative employees' syndicate may sign a plant agreement.

The parties are left to determine the content of the agreement for themselves, but no provision in a collective agreement may depart from the minimum conditions set down by law with respect to wages, vacations with pay, hours of work and other conditions of labour, except in a direction more favourable to the employee. There are, however, certain matters which the agreement must deal with. There

must be a provision concerning the conciliation procedure to be followed in settling rights disputes that may arise during the course of the agreement, as well as for the handling of negotiations at the time of its renewal. The duration of the agreement must also be clearly declared. Among the clauses that collective agreements may not contain are those providing for "union security". Until the Law of April 27, 1956, the jurisprudence held that these clauses were valid, despite the fact that they ran counter to the basic principle of the free choice of syndicates, if they were entered into for a professional motive, and not with the sole intent of harming a syndicate or an individual syndicalist.[8] The Law of April 27, 1956 declared that:-

> il est interdit à tout employeur de prendre en considération l'appartenance à un syndicat ou l'exercise d'une activité syndicale pour arrêter ses décisions en ce qui concerne notamment l'embauchage, la conduite et la répartition du travail ... les mesures de discipline et de congédiement ... Ces dispositions sont d'ordre public.[9]

Thus, the law "frappe de nullité la clause de 'closed shop' creant un monopole syndicale de l'emploi".[10]

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8 Rouast and Durand, op. cit., p. 208.

9 Article 1(a), L.III.C.T.

10 Lyon-Caen, op. cit., (Supplement, November 1, 1957) p. 2. See also Rivero and Savatier, op. cit., p. 295.

The Law of April 27, 1956 explicitly forbade the inclusion in French collective agreements of a clause providing for the check-off of syndical membership dues even if the individual concerned agrees to have the deductions made.

The agreement may be of a fixed, or of undetermined, duration. In the case where the duration is set down by the agreement, this may not exceed five years. Unless it is explicitly stated in the agreement that it is to terminate on the date of expiry, the agreement continues in force after this date, but as one of undetermined duration. Agreements of undetermined duration may be renounced by either party. The agreement must provide for the length of the notice period which must be given to the other party, as well as for the periods and forms in which the agreement can be unilaterally renounced.

All those who have signed the collective agreement, the members of the organizations which they represent, and the members of all organizations which adhere to the agreement at a later date are bound by its terms and conditions. The agreement affects adherents from the day after their notification of adhesion is received by the secretariat or registry where the collective agreement is registered. However, the adhesion does not bind the employer of such adherents unless he is a member of a signatory organization

or has signed the agreement himself. The general principle is that the employer-employee relations in a given firm are bound by the conditions set out in the collective agreement whenever the employer is bound by it, whether or not his employees are parties to the agreement. When the employees are parties to the agreement, or members of an organization which is a party, but the employer is not, the conditions of labour in that firm are not determined by the collective agreement. Resigning from a syndicate, therefore, does not remove an employee from the effects of the agreement as long as he remains in his employment.

When an agreement which is capable of being extended is made applicable to a firm which was previously governed by an ordinary agreement, this does not nullify the ordinary agreement. The two agreements exist side by side with the provision most favourable to the employee being the one applied on each subject.

The Law forbids the parties to do anything to compromise the effective execution of the agreement. Organizations are not, however, the guarantors of the execution of the agreement by their individual members unless the agreement specifically declares that this is to be the case.

The Inspectors of Labour, and, in agriculture, the Inspectors of Social Laws, were given co-ordinate

jurisdiction with the regular police to supervise the penal sections of the law, namely, those which provide for the posting of notices, or which prohibit the payment of any salary which is less than the Guaranteed Inter-professional Minimum Salary or the level of remuneration set out in an extended collective agreement.

Collective agreements which are capable of extension differ from the ordinary agreements in that only the most representative syndicates on both the employers' and the employees' sides may be parties to them. The Minister of Labour, or his representative, may institute the procedure leading to the establishment of such an agreement on the request of the most representative syndicates of either the employees or the employers in one of the "branches of activity" set up by the Superior Commission of Collective Agreements, or on his own accord. These agreements may be concluded on a national, regional or local level with no specific order prevailing, but if a national agreement is signed, the regional and local agreements must adapt it to local conditions and do nothing more.

The Minister calls a meeting of representatives of the most representative syndicates on both sides. One agreement for the profession is concluded, and there are no separate agreements for the "cadres", "ouvriers" or "employés". These categories may conclude annex agreements

adapting the general agreement to their particular requirements.

An agreement, if one is concluded, is subjected to the same requirements of form and publicity that apply to ordinary agreements. The agreement must be written, registered and posted.

The parties are obliged to include provisions in the agreement which is susceptible of extension on a number of subjects. The agreement must deal with the free exercise of syndical rights and the freedom of opinion, the minimum professional salary for the unqualified worker, the coefficients by which this minimum salary is to be multiplied to obtain the wage for each level of skill, the premiums to be paid for difficult, dangerous, or dirty work, and the means by which the principle "equal pay for equal work" is to be applied to women and children. Further provisions which the parties are obliged to include are those dealing with hiring and dismissal, the order of departure where there are individual lay-offs, the notice period to be observed in the profession in the resiliation of individual contracts, and the representatives of the personnel and the financing of their work. Stipulations must also be included governing the date and order of departure of the paid vacations, the means of organization of apprenticeship

in the profession, particular conditions of labour for women and children and the procedure of conciliation to be followed in the application of the agreement and at the time of its renewal.

The Law suggests a further list of subjects concerning which the parties might include provisions in their agreements. Such matters as supplementary hours, the organization of shifts, night work, Sunday work, holiday work, bonuses for seniority and fidelity, piece work rates, the repayment of the employee's professional expenses, indemnities to compensate displacement, rates for part time work, a supplementary retirement plan and finally an arbitral procedure are among those on which the parties are free to include a clause or not. This list is not limiting, and the parties may deal with any other subject they like.

Once such an agreement has been concluded, it acquires force on registration, as if it were an ordinary collective agreement, for the employees and the employers bound by it. On the initiative of the Minister, or of the most representative syndicate of either the employees or the employers, however, the agreement may be extended. The Minister of Labour seeks the advice of the Superior Commission of Collective Agreements, which is composed of the Minister of Labour, or his representative, who presides, the Minister

for Economic Affairs or his representative, the President of the Social Section of the Conseil d'Etat, sixteen representatives of the most representative national syndicates of employees, sixteen representatives of the most representative national syndicate of employers, among whom there must be employers in agriculture, small and average-sized firms, public enterprises and artisanal employers, and finally three representatives of the National Union of Familial Associations.

The Minister of Labour then publishes a notice, in the Official Journal, of his intention to extend the agreement, and asks the interested professional organizations as well as individuals to make known their views, within fifteen days. He then may extend the agreement by Decree, making its term obligatory for all employers and employees in the profession within a given area. The Minister may not, in extending the agreement, make any changes in its provisions, except that he may, after seeking the opinion of the Superior Commission of Collective Agreements, eliminate dispositions which are contrary to law or which are not applicable to the branch of activity concerned, provided that in so doing he makes no changes in the economic provisions of the agreement. The decree is published in the Official Journal.

The extension decree comes to an end when the agreement

which was extended has ceased to apply between the parties signing it, whether by the arrival of the termination date, or because of the unilateral renunciation in the case of agreements with undetermined duration. The decree may also be withdrawn if, in the Minister's opinion, the agreement no longer suits the needs of the branch of activity concerned. On his own authority, or on the request of one of the signing parties, the Minister may publish a withdrawal of extension in the Official Journal after seeking the advice of the Superior Commission of Collective Agreements.

The Professional Syndicates Act of Quebec[11] adopted not only the provision of the French Law of 1884 on the constitution of syndicates, but a good deal of the Law of 1919 on collective agreements.[12] It is for this reason that there is a great deal of similarity between the French regime for ordinary collective agreements and the collective agreements provided for under Division III of the Professional Syndicates Act.

Unlike the French Law of 1919, which allowed a group of employees to sign an agreement, the act applies only to agreements entered into between a syndicate of employees and a single employer, several employers or a syndicate of

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11 c.162, R.S.Q., 1941.

12 Beaulieu, op. cit., p. 114.

employers. Federation and Confederations of syndicates were also given the right to sign collective agreements.

Agreements entered into under the act are binding upon those who actually sign them, the members of the syndicate or group they represent, unless the latter resign from the group within eight days, and deposit within the same delay a written notice of their resignation with the secretary of the group and with the Minister of Labour, and upon the members of a group which adheres to such an agreement who fail to resign within eight days of the notice of adhesion. Those who join a group which is either a party or an adherent to an agreement are also bound. These provisions are identical to those of the French Law of 1919.

The Quebec Law also provides that an agreement may validly stipulate that any workman shall receive a stated wage, even though such a workman is not a member of the syndicate which signed the agreement, nor of a group adhering to it. The workman is entitled to this stipulated wage even if he expressly contracts for less with his employer.

The collective agreement must be in writing to be valid. It comes into force on deposit with the Minister of Labour of a copy of the agreement.

Agreements may be enforced by a signatory syndicate

defending the collective interest, or by any individuals whose rights resulting from the collective agreement have been infringed upon. Any syndicate may exercise the rights of a member without having to prove a power of attorney or a transfer of litigious rights, provided that the individual has been notified and has not expressly objected. The member may intervene during the proceedings according to the provisions of Articles 220 - 224 of the Code of Civil Procedure, as may any group bound by the agreement, whether or not any of their members have been harmed by the inobservance of the agreement, as long as the outcome will affect the collective interests they represent. All such actions must be taken before the civil courts and are prescribed by six months.

The Professional Syndicates Act has not been repealed by subsequent legislation dealing with collective agreements. The Collective Agreements Extension Act[13] merely dealt with the extension of agreements signed under the earlier act, as well as of agreements entered into by any association not governed by the Professional Syndicates Act. This act concerning the extension of agreements came two years before the French law dealing with extension, and was based on Italian and German precedents.[14]

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13 24 Geo. V, c.56; Replaced in 1937 by 1 Geo. VI, c.49, and in 1940 by 4 Geo. VI, c.38.

14 Beaulieu, op. cit., p. 137.

Except that it does not apply to agriculture, railways operating under the jurisdiction of the Parliament of Canada, or blind workers, there are no limitations laid down by the law as to who may conclude a collective agreement capable of extension. Any party to a collective agreement may apply to the Lieutenant-Governor in Council by petition to have an agreement extended to cover the members of a given profession in a particular region or for the whole Province. A copy of the agreement must accompany the Petition.

The agreement is then published in the Quebec Official Gazette with notice that there has been an application for extension, as well as in an English newspaper and a French newspaper. Any objection to such an extension must be made within thirty days. The Minister of Labour may order an inquiry on the merits of the petition or of an objection made to it.

If the Minister is of the opinion that the terms of the agreement have acquired "a preponderant significance and importance for the establishing of conditions of labour"[15], he may recommend to the Lieutenant-Governor in Council the issuing of a decree extending the agreement to the region in question, or to the whole of the Province.

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15 c. 163, R.S.Q., 1941, s.6.

To decide whether an agreement has in fact acquired such a preponderance, the Minister may take into consideration such things as the number of employees involved, the proportion of the market held by the employer and the amount of his investment.[16] Several agreements may be extended at once.

The Minister is also obliged to consider the effect of such extension on the competitive position of Quebec industries vis-à-vis those of other Provinces or other countries.

Unlike the French case, the decree may amend the agreement, notably for the purpose of dealing with economic conditions peculiar to the various regions of the Province. The decree is published in the Quebec Official Gazette and comes into force on that date unless it is otherwise stipulated.

The Lieutenant-Governor in Council may extend the decree to still further groups or repeal it, or, after consulting the contracting parties and after publishing a notice in the Quebec Official Gazette requiring any objections to be made within thirty days, amend it. Repeal, amendment and extension must all be signified by the publication of notice in the Quebec Official Gazette, the

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16 Beaulieu, op. cit., p. 150

first two coming into force on publication, the last on adoption.

The provisions which automatically become obligatory when a decree is passed are those concerning wages, hours of labour, apprenticeship and the proportion of skilled workers to apprentices, the specification of which days are working days and which are not, and the time at which a work day begins and ends. The provisions concerning the times of commencement and termination of work are subject to the by-laws passed under the authority of the Early Closing Act.[17]

The decree may extend the provisions concerning vacations with pay, family allowances, and the classification of operations and of employees. The decree may also order that parties now covered by the terms of an agreement shall be regarded as having signed the agreement.

No employee can contract for terms less favourable to himself than those set down by the decree. He is entitled to the wage fixed by the decree without having to establish the nullity of his subsidiary agreement. Employees and employers may, however, contract for terms more favourable to the employee than those of the decree. When an employer contracts with a sub-contractor,

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17 c.239, R.S.Q., 1941.

the employer is jointly and severally responsible with the sub-contractor to see that the wage fixed by the decree is paid.

Except that in Quebec there is no requirement that the parties to an extended collective agreement be the most representative syndicates on either side, that there is no list of subjects on which the parties in Quebec are obliged to include a clause, and that a body known as the Superior Commission of Collective Agreements is set up to advise the Minister in France, the two regimes for the extension of collective agreements are similar with respect to the actual issuing of the decree. It is in regard to the administration of the decree that the most significant difference appears. Whereas in France this is left to the Inspector of Labour Quebec has set up a joint organism known as the Parity Committee. The committee is made up of the parties to the agreement, and not more than two representatives each of the employers and the employees governed by the decree but not parties to the agreement who may be added at the discretion of the Minister of Labour. The Lieutenant-Governor in Council may decide, with the consent of the parties, that the agreement should be supervised by an already-existing committee.

The committee is charged with adopting regulations

concerning its formation, the number of members, their admission and replacement (any party to the agreement may replace its appointee after one year), the appointment of substitutes and the administration of funds. The committee fixes a corporate seat and decides on a name.

The regulations, and any subsequent amendment to them, are submitted to the Minister for approval by the Lieutenant-Governor in Council, notice of which is published in the Quebec Official Gazette.

The committee is constituted as a corporation on publication of the notice. It has all the powers of a civil corporation and may act in its own name to obtain the payment of wages due to an employee as the result of a decree for which the employee has not sued within fifteen days of the date on which they became due. This they may do whether or not the employee concerned had objected, or renounced his claim to payment, without being obliged to prove that the employee has signed over his claim to the committee or that the employee himself has not sued for the same wages. The party on whose behalf the committee is acting need not be informed of the suit or put in default. The committee may also continue a suit instituted by an employee, with which the latter has not proceeded for fifteen days.

The committee may impose fines on employers who pay, and employees who accept wages below the level determined by decree. In a claim for wages on behalf of the employee, the committee has the power to execute a settlement.

The committee may appoint a secretary, inspectors, or other officials. The secretary and inspectors have the right to inspect and take extracts from the registers and pay lists of the employer, at any time, in order to verify wage rates, hours of labour, the apprenticeship system, and the general carrying out of the provisions of the decree. They may exact a signed statement of testimony from any employer or employee.

The committee may require, by means of a regulation approved by the Lieutenant-Governor in Council, that an employer keep a register showing the names and addresses of each employee, his competency, the hour at which work was begun, suspended, resumed and terminated each day, the nature of the work and the wage paid, and the method and time of payment. A monthly report of this information may also be required of the employer.

By a regulation approved by the Lieutenant-Governor in Council, the committee may tax the employers or employees or both, to raise the amounts needed for the expenses of the committee. The estimate of returns from this levy, which must not exceed one-half of one per cent of the

employee's wages or the employer's wage bill, must be submitted to the Lieutenant-Governor in Council. Employers may be required to retain the amount of the employee's share from his wages. The levy may at any time be diminished or revoked by the Lieutenant-Governor in Council.

The committee has the power to permit an employee who is not physically or mentally fit to work at wages below those stipulated by the decree. Where the decree provides for family allowances, the committee may collect contributions, verify family size, and pay allowances to the employee as trustee for the child, or to the person who has the care of the child.

The committee reports to the Minister quarterly on its finances, and annually concerning its activities. An inspector may be appointed by the Minister to verify the work of the committee. Reports of the committee must be available to anyone requesting to see them.

Employers and employees may complain in writing concerning the application of the decree, and the committee must consider such complaints.

When the decree ceases to be in force, the committee continues in existence. In such a case, however, the Minister of Labour may require immediate delivery of the committee's property to him to be devoted to a similar work

designated by the Lieutenant-Governor in Council. When the committee is dissolved, such delivery of property is automatic.

The committee is also given powers to certify the professional competency of workmen in the industry. Such a certificate may be made obligatory by a committee for all workmen within its jurisdiction, provided that the regulation establishing such a certificate be approved by the Lieutenant-Governor in Council and that a board of examiners be set up. By an approved regulation, the committee may delegate this power of certification to an association.

On March 31, 1959, there were one hundred and three decrees in force.[18]

The Labour Relations Act[19], because it was the first Quebec legislation to deal with collective agreements made by unincorporated associations in any respect other than their extension, has acquired an importance which exceeds that of other Quebec legislation on collective agreements in practice. Of 1,891 collective agreements in force on March 31, 1959, 1,038 were made under the Labour Relations

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18 General Report of the Minister of Labour of the Province of Quebec, (Quebec, Publications Service, Department of Labour, 1959), p. 159.

19 c.162A, R.S.Q., 1941.

Act, while 853 were entered into by syndicates incorporated under the Professional Syndicates Act. Moreover, even the agreements made under the Professional Syndicates Act were registered according to the terms of the Labour Relations Act, which is made applicable to the earlier measure by Section 19a.[20] Thus, the most important Quebec legislation on collective agreements is the measure which first broke the tradition of looking to France for inspiration in labour legislation and turned instead to the Canadian adaptation of the American Wagner Act.

An association which has been certified must give eight days' notice to the other party to the effect that it is ready to negotiate a collective agreement. While nothing in the act prevents an unrecognized association from entering into an agreement, this agreement becomes void the moment another group is certified to bargain with the employer. The law provides that a party who refuses to meet and bargain in good faith is subject to a fine of from $100 to $1,000 for each day the refusal continues.

Collective agreements, including those entered into by non-certified groups, may be made for one, two or three years but for no longer. A one year agreement may be continued from year to year by an automatic renewal clause,

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20 General Report of the Minister of Labour of the Province of Quebec, 1959, p. 29.

which extends the agreement for another year unless one of the parties has given notice to the other of its desire to terminate or amend the agreement or negotiate a new one. Such notice must be given between the sixtieth day and the thirtieth day preceding the termination date. An agreement may be made for less than a year to cover the intervening period between the cessation of one agreement and the completion of negotiations on a new one.

Collective agreements entered into by recognized associations must be forwarded to the Labour Relations Board and the agreements only take effect when such deposit is made. Professional syndicates make the deposit of collective agreements signed by them with the Minister of Labour instead of with the Labour Relations Board, and the Minister forwards the agreement to the Board.

There are no clauses which the parties are bound to include in the agreement. "Union security" clauses, which are null and illegal in France, are valid in Quebec.[21] While the French legislator has continually reiterated the principles of syndical pluralism and "la liberté syndicale" in spite of the increasing number of privileges accorded to representative syndicates, the law of Quebec has never enshrined these principles and "nos gouvernements

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21 Beaulieu, op. cit., p. 436.

l'ont abandonée dans les faits depuis assez longtemps déjà, et l'ont reniée dans les lois votées ces dernières années."[22] The Labour Relations Act prohibits the refusal to hire or the dismissal of an employee because he is a member of an association, but says nothing about such refusal or dismissal because he is not a member. The act also forbids the use of threats and intimidation to induce anyone to become a member of an association, but the free exercise of the employer's right to refuse to hire, or to dismiss on giving due notice does not amount to threats or intimidation.[23] Since the doctrine of abuse of rights does not apply in Quebec,[24] these rights must be taken as being absolute. Nevertheless, an employer who was forced to break an individual contract with a fixed term due to a "union security" clause would subject himself to an action in damages.[25] On this subject there is a paucity of civil jurisprudence and an abundance of conflicting arbitral awards.[26]

Maintenance of membership clauses are, like union shop

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22 Ibid., p. 425.

23 See Section 366 of the Criminal Code of Canada (1955).

24 Baudouin, op. cit., p. 1,284.

25 Beaulieu, op. cit., p. 437.

26 Ibid., p. 414.

and closed shop clauses, valid in Quebec. They amount to a renunciation of the employee's right to resign from the syndicate or association which he is free to give, since the rule permitting withdrawal from an association or syndicate is not of public order.[27]

Voluntary check-off clauses are valid even if the employee renounces his right to revoke the permission he has given. Obligatory check-off clauses are valid and bind the employee just as the association bargaining on his behalf is free to enter into an agreement binding him to certain hours of work. No amount, however, can be deducted from the minimum wage even with the consent of the employee.[28]

The Rand Formula is, in the law of Quebec, valid and binding on non-members of the association signing the agreement.[29]

The parties are not bound to include a clause in their agreement providing for the compulsory arbitration of rights disputes arising during the course of the agreement, or of interest disputes at its renewal. They are, however, free to do so, and the "clause compromissoire"

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27 Ibid., p. 438.

28 Ibid., p. 440.

29 Syndicat Catholique des Employés de Magasins de Quebec v. Cie. Paquet Ltée, [1959] S.C.R., p. 206.

is valid in collective agreements. In practice, many agreements contain such clauses for the handling of rights disputes only. The law of Quebec does not make the distinction made in France between collective and individual disputes, and any dispute arising from the collective agreement may be arbitrated.

There are many significant differences between the existing French laws on collective agreements taken as a whole and those of Quebec. In the first place, the French agreements tend to be made on a national or regional level, while those in Quebec tend mostly to involve a single plant, with regional and province-wide agreements less frequent. In France, only syndicates may be parties to collective agreements on the employees' side, while in Quebec, this right is extended to associations recognized under the Labour Relations Act. In extendable collective agreements, both require that they be entered into by representative groups, France deciding to limit them to the most representative syndicates on either side, and Quebec only extending agreements which have acquired a preponderant significance for setting the conditions of labour in a given region or in the Province. While both allow the most representative syndicate to sign agreements at the plant level (and Quebec includes the most representative associations) the French relegate such agreements to an

inferior status by limiting them to questions of salary and the accessories of salary, or, where an agreement with a wider scope exists, to adapting that agreement to the plant.

French agreements which are extendable must contain clauses dealing with certain designated subjects while in Quebec there are no such requirements. While Quebec sets up a Labour Relations Board to certify associations and a Parity Committee to administer a collective agreement, France has neither of these, but establishes a Superior Commission of Collective Agreements to advise the Minister of Labour on the question of extension of an agreement.

While "union security" clauses are valid in Quebec, they are not in France.

Finally, whereas in France all civil servants and the majority of employees of essential services can not sign collective agreements, but have the conditions of their employment regulated by statute, and whereas only the employees of those public enterprises not listed in the Decree of June 1, 1950 may conclude a valid agreement, in Quebec, the employees and employers covered by the Public Services Employees Disputes Act[30] and the Municipal and School Corporations and their Employees Act[31] are

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30 c.169, R.S.Q., 1941.

31 13 Geo. VI, c. 26.

required to establish the conditions of labour in such employments by means of a process of compulsory, binding arbitration, with the award taking the place of a collective agreement.

The Public Services Employees Disputes Act provides that "no arbitration award establishing conditions of employment shall bind the parties for a period of more than one year"[32] while the Municipal and School Corporations and their Employees Act provides that "every arbitration award and every collective agreement, in the case of a municipal or school corporation, must be for a term of twenty-four months and must contain a clause of automatic re-adjustment of salaries during the period the award or agreement is in force according to the fluctuations of the official cost of living index for Canada. They shall not contain any clause or condition coming into conflict with the rights and powers assigned by law to municipal or school authorities in matters of the engagement and dismissal of their employees."[33]

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32 c.169, R.S.Q., 1941, s.4.

33 13 Geo. VI, c.26, s.13

CHAPTER FIVE

THE RELATIONSHIP BETWEEN THE COLLECTIVE LABOUR AGREEMENT AND THE INDIVIDUAL LABOUR CONTRACT

The question of the effect that a collective agreement has upon the individual labour contract is a most important one. The conditions of labour that will apply where the two conflict, or where the collective agreement is silent must be determined.

Given the fact that collective agreements must respect the minimum provisions concerning wages, hours and all other conditions of employment laid down by law, such agreements prevail over individual contracts and dictate their terms. No employee in France or Quebec works without an individual contract, though it may be so tacit that he does not realize this. All existing individual contracts are deemed to contain the provisions set out in the collective agreement, and all new individual contracts are deemed to be entered into under the provisions of the collective agreement. The individual may not contract for terms less favourable to the employee than those laid down by the collective agreement. An individual agreement may provide for terms more favourable to the employee.

Where there is a decree extending a collective agreement, this becomes the new minimum for the profession governed, and supplementary collective agreements may only provide for terms more favourable to the employee than those of the decree, and the individual contract may only provide for terms more favourable to the employee than the complementary collective agreement.

Where the collective agreement is silent, the individual contract, which includes the terms provided by usage and custom, prevails.[1]

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1 Brun and Galland, op. cit., p. 742
Beaulieu, op. cit., p. 231.

CHAPTER SIX

THE FIRM AS AN INSTITUTION

Many of the measures adopted by the French legislator cannot be explained in terms of contractual relations, either individual or collective. They establish collective relationships between employees and employer which have led some analysts to view the firm as an institution, or as "un ensemble d'éléments humains et de moyens matériels, ordonnés en vue d'une fin".[1] They view the employer and his employees as united in a common economic aim, each making his contribution, the employer of the capital and organization and the employee of his labour.

This view is used to explain the instrument known as the "règlement d'atelier" or "règlement intérieur". In a country where collective agreements are professional creations, and not those of the firm, the "règlement", which lays down the rules applicable to the firm in such matters as the time of commencing and terminating work, the allocation of certain periods as rest periods, discipline, security, hygiene and sometimes even the date of

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1 Paul Durand, in Brun and Galland, op. cit., p. 175

payment which the collective agreement could not cover, has come to be regarded as the legislation of the collective institution, the firm.

The Ordinance of November 2, 1945 makes such a set of regulations obligatory in all commercial and industrial establishments having twenty or more regular employees. It must be established within three months of the coming into existence of the firm. The "comité d'entreprise" must be consulted concerning the regulations, and if there is no such "comité" in the firm, the "délégués du personnel" must be consulted.

The employer is not bound to accept the advice of the representatives of the personnel. The regulations, along with the opinions of the representatives of the personnel, are then submitted to the Inspector of Labour who can demand the retraction of all provisions contrary to law. In all other respects the regulations stand as the employer drew them up. They must be posted at locations where hiring takes place and in the place of work, and be deposited at the secretariat of the "conseil de prud'hommes" or at the registry of the justice of the peace where the collective agreement is deposited.

There are two legal limitations as to what the regulations may contain. The Law of February 5, 1932 forbade fines for poor work, and permitted such a penalty

only for breaches of discipline or the rules of security or hygiene. In no case may the fine exceed one-quarter of the day's salary. The approval of the Inspector of Labour is required on the scale of disciplinary fines at the time the regulations are established. His decision is made after consulting the organizations of employers and employees of the region. A register must be kept of all fines imposed and the employer is forbidden to keep the proceeds of these himself. He must allocate them to a mutual security fund in favour of the employees.

The Ordinance of May 24, 1945 provides that the regulations must set up an order for collective dismissals (in cases where these do not involve a cause personal to the employee). Account must be taken of family-size, seniority and professional qualifications. The order to be followed in individual dismissals is governed by collective agreements.

The Law of February 25, 1946 allows the employer to set up his own regime of supplementary hours.

Once these regulations have been set up, they must be followed by employer and employee alike. Failure to do so may give rise to an action in damages.

In Quebec, no such legislation exists, with most of the subject matter of such regulations being included in the collective agreement. This is feasible where the

majority of collective agreements are concluded at the plant, at firm level.

The concept of the firm as an institution results as well from the provisions of French law concerning the representatives of the personnel. The personnel are entitled to two forms of representation, the first by "délégués du personnel", the second by the members of the said "comité d'entreprise."

The "délégués du personnel" are, in essence, a legally imposed grievance committee. It is their task to bring all the grievances of the employees, and not only those arising from the collective agreement, to the attention of management.

Originally an institution de facto resulting from the policies of social thinkers and benevolent employers[2], they were given their first legal status by the Law of July 8, 1890 establishing "délégués" in mining industries whose chief duty was to supervise the security of the employees.

During World War One an appeal by the Minister of Armaments to firms that they set up a grievance committee to ensure better employee-employer relations for the duration, resulted in the establishment of "délégués" in 347 firms.[3]

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2 Brun and Galland, op. cit., p. 831.

3 Ibid., p. 832.

The Law of June 24, 1936 provided that all collective agreements capable of being extended must contain an article on the establishment of the position of "délégué du personnel" in plants employing more than ten workers. The Decree-Law of November 12, 1938 made the establishment of such "délégués" obligatory in all plants employing more than ten workers.

The Decree Law of November 10, 1939 suspended the election of the "délégués" for the duration of the war, giving the most representative syndicates the power to appoint them. The Vichy Charter of Labour of October 4, 1941 created social committees which handled most of the functions of the "délégués".

It was only with the Law of April 16, 1946 that the "délégués" were re-established, and this law constitutes the present regime governing the "délégués", as modified by the Law of July 7, 1947 on the method of selecting such representatives.

The regime applies to industry, commerce, ministerial offices, agriculture, the liberal professions, civil partnerships, professional syndicates (insofar as they are employers) and to associations. It does not apply to the public establishments or to domestic service. Though in principle the regime could be applied to the

nationalized firms, these benefit from a legislative status either establishing a type of "délégué" peculiar to the firm (as is the case with Electricity and Gas of France) or giving the employees participation on the board of directors, making further liaison superfluous, (as with the Paris Transportation Administration).

All plants regularly employing more than ten workers are obliged to establish the position of "délégué" for their employees. Home workers are counted in computing the number of a plant's employees, as long as they are regularly employed.

In plants where there are 11-25 employees, there is one "délégué"; for 26 to 50 employees, there are two. Employees of a plant having between 51 and 100 employees are entitled to three "délégués". From 101 to 250 employees, the number of "délégués" is increased to five. Where there are between 251 and 500 employees, there are seven "délégués", while there are nine "délégués" in the plant which employs between 501 and 1,000 employees. For every additional 500 employees, or a part thereof, an additional "délégué" is elected.

For every "délégué" elected, there is always an alternate to replace him in case of death, resignation, the resiliation of his contract of employment, or of the loss by him of the conditions of eligibility for office.

Collective agreements may provide for the establishment of the position of "délégué" in plants employing fewer than ten workers.

To be eligible to vote, an employee must be at least eighteen years of age, and have worked in the same firm for six consecutive months. In computing the length of service, periods during which the contract was suspended are considered as time worked. Moreover, an employee may vote even if his contract is suspended at the time of the election. It has been held by the courts that those returning from military service may avail themselves of their prior seniority, even though military service breaks and does not suspend the labour contract.[4] Electors must enjoy their civil rights, but there is no requirement that voters be French, nor any distinction made between the sexes.

Candidates must be twenty-one years of age or more, be of French nationality (only foreigners who are holders of a privileged resident's card may be candidates), have worked continuously for twelve months in the firm, with periods where the contract was suspended included, and be literate. Close relatives of the employer are not eligible, but members of the "comité d'entreprise" are. The Inspector,

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4 Brun and Galland, op. cit., p. 835.

after consulting the most representative syndicates, may authorize a derogation from the rules concerning length of service, especially where the application of them would have the effect of reducing the number of eligible voters or candidates by at least one-quarter.

For voting purposes, the employees are divided into two colleges, one for "cadres" and the second for "employés" and "ouvriers". The interested syndicates and the employer decide on the classification of the personnel into these categories and on the division of the places available between the colleges. If they fail to agree, the Inspector of Labour decides. Collective agreements may change the number or composition of the colleges.

The Law of 1946 provided for election by list with a majority vote electing an entire list. This resulted in a virtual monopoly for the Communist-dominated Confédération générale du travail,[5] the outcome being that the election procedure was amended by the Law of July 7, 1947.

The lists of candidates presented on the first ballot are established by the most representative employees' syndicates in the firm. Each elector has as many votes as there are "délégués" to elect. He votes not for a list but for individuals on the lists, and is free to vote for

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5 Brun and Galland, op. cit., p. 797.

individuals on different lists. The votes obtained by the individuals on each list are then added and the total divided by the number on the list (to obtain the average number of votes received by the candidates on the List). This average is called the number of votes received by the list, a process which favours syndicates putting forward less than a full slate of candidates.

The number of valid ballots is then divided by the number of "délégués" to be elected, giving a figure known as the "electoral quotient". The number of votes received by the list is then divided by the electoral quotient. If the dividend exceeds one, a seat is immediately awarded to that list. If the dividend exceeds two, two seats are immediately awarded, and so on.

Unless the division has left no remainder, it will then result that some of the seats have still to be allotted. These are distributed according to a concept known as the highest average. The number of votes received by each list is divided by the number of seats already allotted to that list plus one. The dividends are compared, and the highest receives a seat. If two lists have an equal average, the list with the most votes gets the seat. If these two are equal, then the oldest candidate is elected.

If there are still further seats to be allotted, the last procedure is performed again, this time including the

seat just awarded in the denominator of the list concerned. The process is continued until all the seats have been distributed.

Within each list, seats are awarded to the individual candidates in the order of the number of votes they received. Separate elections are held following the same rules for the alternates.

If fewer than one-half of the eligible voters have participated on the first ballot, a second ballot is held within fifteen days, at which time anyone may present a list of candidates. The justice of the peace is competent to hear disputes over the election, and there is a non-suspensive recourse to the Cour de Cassation.

The delegates are elected for one year, and are indefinitely re-eligible. The syndicate which presented his name originally can ask the recall of a "délégué", which, in order to be enforced, must be approved by the majority of the college which elected him.

The duty of the "délégué" is to present to the employer all individual and collective demands which have not been directly satisfied (when presented by the individual or individuals concerned) with respect to the application of the salary scale, professional qualifications, hygiene, social security and all other matters arising from the application of the agreement or of the Labour Code and other laws

and regulations. They represent only their own college.

Like the Law of 1938, the Law of 1946 empowers the "délégué" to call in the Labour Inspector when laws or regulations have not been observed. When the Inspector visits the plant, the "délégué" accompanies him on his tour.

The employer must meet with the "délégués" at least once a month, and, on request, must meet with an individual "délégué". Two days before every meeting, a note is sent to the employer explaining the nature of the demands to be made. This is inscribed in a special register. The employer must answer, giving his reasons, and enter the answer in the register within six days. The register must be put at the disposal of the employees one work-day every two weeks. The Labour Inspector is free to consult the register at any time.

The employer must provide the "délégués" with a place to meet. The "délégués" report to the employees by means of posted notices on the notice boards allocated to syndical announcements, and at the entrance to the establishment. In practice, the "règlement intérieur" often makes provision for meetings with the totality of the personnel, or for office hours to be held by the "délégues". The employer must allow the "délégués" fifteen hours each month to perform their functions. These hours are paid as hours of work.

The "délégué" cannot be dismissed by the employer without the agreement of the "comité d'entreprise" or, should they fail to agree, that of the Inspector of Labour. Such approval by the "comité" of the Inspector does not preclude a "conseil de prud'hommes" from declaring a dismissal abusive none the less. The Cour de Cassation has ruled that this provision was only aimed at unilateral resiliations of the contract, and the employer may, instead of asking the approval of the "comité d'entreprise" to a unilateral resiliation, go before the "conseil de prud'hommes" or a civil court and ask the judicial resiliation of the contract.[6] While awaiting the judicial decision, the employer may suspend the "délégué" if the latter has been guilty of a serious fault, and this suspends his right to exercise his functions. If the employer is in good faith, there is no penalty for doing this. Interference, without just cause, with the "délégué" in the performance of his functions, is sanctioned by a fine or imprisonment or both. The Ordinance of January 7, 1959 extended this protection to candidates for the office of "délégué" and to former "délégués" for a period of six months following the expiration of their mandates.

Such protection does not exist for syndical representatives or officers. The law of France assigns to them a

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6 Brun and Galland, op. cit., p. 844.

very minor role. In addition to nominating candidates for the position of representative of the personnel, on the first ballot only, and initiating their recall, the syndical representatives are limited to attending meetings of the "comité d'entreprise", without a vote, accompanying the "délégué" at his meetings with the employer, and posting notices concerning syndical business. Some collective agreements provide for meetings between the representatives of the employees' syndicates with the employer, or for permission to collect syndical dues at the place of work.

In Quebec, there is no legislative provision creating an obligatory grievance procedure. Most collective agreements provide some method of dealing with disputes before they are taken to arbitration.

The analysis of the firm as an institution is also brought to bear by French writers to explain the "comité d'entreprise", a timid step taken by the French legislator towards the participation of the personnel in the management of the firm.

At the end of the Second World War, there was a great deal of popular support for such a measure. The arrest of collaborators left many firms without executives and they were run, in fact, by committees of the employees.

Moreover, the measure was considered socially advanced.[7] The Ordinance of February 22, 1945 did not create a collective management of the firm, but provided for a small degree of employee participation through a "comité d'entreprise" or committee of the firm.

Originally extending only to industry and commerce, the regime was further extended by the Law of May 16, 1946 to cover the liberal professions, public and ministerial offices, civil partnerships, professional syndicates, and associations. It does not apply in agriculture or in public enterprises. The Conseil d'Etat decided on May 2, 1958 that nationalized enterprises are subject to the Ordinance of 1945 and the subsequent amendments unless explicitly excluded by law or regulation.[8] In practice, the legislative measure creating the terms and conditions of employment in such enterprises often gives the employees the right to participate in the management of the firm, exceeding that which they would have under the Ordinance of 1945.[9]

There is a "comité" in all firms regularly employing

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7 Rouast and Durand, op. cit., p. 150.

8 La Clavière, op. cit., Fasc. 595, p. 1.

9 Brun and Galland, op. cit., p. 826.

more than fifty employees. Those who work at home for the firm are counted as long as they are regularly employed. Collective agreements may provide for "comités" in firms employing fewer than fifty employees. The Minister of Labour, the Minister for Industrial Production or other ministers, may make a "comité" obligatory in a firm employing fewer than fifty workers.

Separate plants of a firm have their own committees, with a central committee being formed by representatives of each of the plant committees. Such a central committee may not have more than twelve members. The allocation of the available positions among the various plants is by the employer and the interested syndicates together. If they fail to agree, the Inspector of Labour allocates the seats. There may also be inter-firm committees.

Within the plant, or within the single-plant firm, the committee is composed of the employer, the syndical representative, who has no vote, and the members elected by the personnel. For election purposes, the Law of 1946 divides the employees into two colleges, one for the "cadres" and the other for "employés" and "ouvriers". The classification of the employees into these colleges and the division of the seats available between the colleges is done by the employer and the most representative employees' syndicates. If they fail to agree, the Inspector of Labour

decides.

In firms employing 50 workers there are two members to be elected by the personnel. For fifty-one to seventy-five employees, there are three. Between seventy-six and one hundred employees, the number is increased to four, and between 101 and 500, to five. Where there are from 501 to 1,000 employees, the employees elect six representatives, while in firms employing from 1,001 to 2,000, the employees are entitled to seven members on the committee. Eight committee members are elected by the personnel in firms employing between 2,001 and 5,000 persons, and nine are elected in firms employing between 5,001 and 7,500 persons. Where there are between 7,501 and 10,000 employees, the committee consists of ten employees' representatives, and where there are more than 10,000 employees there are eleven employees' representatives. For every member, there is an alternate.

The engineers and service chiefs who, under the Ordinance of 1945 were organized into a separate college, must be reserved a seat in firms employing more than 500 employees. There is nothing to prevent a greater number of members of this category from being elected by the "cadres".

To be eligible to vote in the selection of the committee, employees must be at least eighteen years of age, and be French. Only foreigners who have worked in France for at

least five years, or those holding the privileged resident's card, may vote. There is also a requirement that any elector must have worked in the firm for a period of six months. The Inspector of Labour may authorize a derogation from this last rule if its application would reduce the total number of eligible voters by at least one-quarter.

In calculating the length of service, the time during which the individual contract is suspended, is counted. Electors must be in possession of their full civil rights.

Candidates must be twenty-one years of age or more, be French, or the holder of a privileged resident's card, be literate, have worked at least one year in the firm and may not be close relatives of the employer.

On the first ballot, held one month before the expiration of the term of the previous committee, the lists are presented by the most representative syndicates only. A second ballot is only proceeded to if fewer than one-half of the eligible voters participate on the first ballot. At that time, anyone may present a list of candidates.

The election and the allocation of seats follows exactly the same procedure as that described above for the election of the "délégués du personnel".

The committee is elected for two years. The mandate

of a member ends with death, resignation, dismissal, or the loss of eligibility for office. The mandate of the committee expires at the end of its term, even though there have been no new elections. Any member of the committee who is elected by the personnel may be recalled on the proposal of the syndicate which nominated him and the approval of the majority of the college which elected him.

The members of the committee must be given twenty paid hours a month (and more in exceptional circumstances, on the authorization of the Inspector of Labour).

The employer may not dismiss a member of the committee, a candidate for such office, or a former member of the committee within six months of the end of his mandate, without the approval of the committee, or, if they refuse to give their approval, of the Inspector of Labour. The committee member may be suspended if he has committed a serious fault while the decision is awaited. The resiliation may still be declared abusive by the "conseil de prud'hommes" if the authorization has been given by the committee or the Inspector. The employer may avoid asking for authorization by seeking a judicial resiliation by the "conseil de prud'hommes".

The principal function of the committee is to manage the social works and services undertaken by the employer

for the benefit of the employees. While the employer is not obliged to institute such works, the Decree of November 2, 1945 provides for varying extents of control by the committee over those services which have been set up.

The participation of the committee is some cases is limited to a mere check on the management of certain services. Such is the case for mutual aid and social security associations, housing projects, workmen's gardens, professional training and apprenticeship centres. The committee is given the right to choose two representatives who will attend meetings of the board of directors of such services and of any supervisory commissions of the board, and one representative who attends the meetings of all committees of the service. Their function is merely to observe and report to the committee on the work of these organisms and on the decisions reached. The committee must be consulted before any change is made in the constitution of such works, or before new works are created in these fields or old works abolished. Where a government approval is required for decisions of such boards, the opinion of the committee must be sent to the official who makes the decision on behalf of the government. The committee may, in all other cases, veto decisions which propose a change in the constitution of any such service, or the creation of new, or the abolition of old services.

Their veto is appealable by the board of directors before the Minister of Labour.

In some cases, however, the committee is given the right to participate directly in the management of a social undertaking as defined above. This is the case for all projects which possess a civil personality under the law and which are not among the list mentioned above where the participation of the committee is merely supervisory. It also includes sports projects, production and consumption co-operatives, retirement plans. In these cases, one-half of the members of the board of directors, as well as of any supervisory commissions, must be members of the committee of the firm. All committees named by the board of directors must include one member of the committee of the firm.

The committee has the complete management of those works which do not possess a civil personality, except apprenticeship centres. This includes canteens, vacation colonies and nurseries.

The committee is given the opportunity to express its opinion on the provisions of the "règlement intérieur" by the Ordinance of May 24, 1945. Where the time of the year when vacations with pay are to be taken, has not been established by the collective agreement, the employer must consult the committee and the "délégués du personnel" before

establishing such periods. The committee also acts as a disciplinary body for its members, the "délégués du personnel" and the industrial doctor and social counsellor.

As far as the financial and technical management of the firm is concerned, the role of the committee is limited. They must be consulted on questions which concern the organization, management and general running of the firm, but in practice only major questions are put before them, for example, matters concerning changes in prices, methods and programmes of manufacture, and the re-equipping of the plant. On the details of manufacturing processes they are held to secrecy. The committee studies proposals to increase productivity submitted to it, and may ask compensation for an employee who has put forward an exceptionally good idea. Agreements which provide for the sharing of increases in productivity with the employees, are submitted to the committee for their opinion. The committee must also be informed as to the amount of profits earned by the firm. They may make suggestions as to the dispositions of such profits.

There are special privileges accorded to the committees in incorporated companies. The employer in such firms must submit the firm's annual report, the profit and loss statement and the auditor's report to the committee before these are presented to the annual meeting of the shareholders.

The committee may call the auditor before it and question him, and their opinion on the finances of the company is submitted to the annual meeting of shareholders. They may obtain the assistance of an accountant for this purpose, chosen from a list established at each court of appeal by the Minister of Labour. The committee also has the right, in incorporated companies, to have two representatives at the meetings of the board of directors, with no vote. One of these must represent the "cadres" and the other, the "employés" and "ouvriers".

To carry out its objectives, the law has given the committee a civil personality. It can act in justice to accomplish the purposes for which it was set up, and may acquire movable and immovable property. It may only accept gifts and legacies with the authorization of the Prefect who consults the Departmental Director of Labour and Manpower.

The employer must continue to bear the costs of the social undertakings of the firm. Even though at the outset the employer's contribution was entirely voluntary, he is no longer free to reduce his contribution below the level attained in that year among the previous three in which his contributions were the highest. The Law of August 2, 1949 has added that in no case may the proportion between the contributions to social works and wages paid be less than it was in that year among the previous three in

which it was the greatest.

The committee meets once a month, the central inter-plant committee, twice a year, on the convocation by the employer or, on the demand of one-half of the members, by the Inspector of Labour. The employer must supply a place, the materials necessary, as well as the indispensable personnel for such meetings. The order of business is prepared by the employer and sent to the members at least three days before the meeting. Decisions are reached by majority vote and copies of the minutes given to all the members, as well as to the Inspector of Labour, at his request.

Answers to propositions made at a meeting must be given by the employer at the following meeting. At the end of each year, the committee makes a financial report to the personnel by means of notices posted at the place reserved for syndical notices. At the expiration of its term of office a committee must make a complete report on its mandate to the new committee.

Interfering with the proper choice of the committee or with its functioning is sanctioned by a fine or imprisonment or both.

The only institution which resembles such a committee which has been set up in Quebec, is the Joint Productivity Committee fostered during the Second World War by the

Federal Government, and which was restricted in competence to technical questions.[10]

The law of France also provides for the participation of the employees in the industrial medical service. Under the Law of October 31, 1941, a medical service must be established in all firms except mines and quarries, agriculture, or employers of domestic servants. The main purpose of this service is to practise preventive medicine by means of periodic examinations.

The Minister of Labour classifies the firm into one of three categories depending on the amount of time a doctor would have to spend on the premises. If the time spent would exceed 173 hours a month, the law requires that a full-time doctor be employed. If the time spent would be less than 173 hours, but there are more than fifty employees, the firm can choose between hiring a full-time doctor or participating in an inter-firm medical service. Where the time spent would be less than 173 hours and there are fewer than fifty employees, the firm joins with other firms in setting up an inter-firm medical service.

The committee of the firm is given the power to veto the hiring or dismissal of a particular doctor. Where the veto power is exercised, the Inspector of Labour decides

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10 Rouast and Durand, op. cit., p. 149.

whether the doctor should be hired after consulting with the Medical Inspector of Labour. While the administration of the autonomous medical service is in the hands of the employer, the committee of the firm has supervisory powers.

At the end of the year, the report of the doctor which is submitted to the Inspector of Labour must be submitted to the "comité d'entreprise"as well .

Where there is an inter-firm medical service, this is either administered on a joint basis by representatives of the employers and employees, or by an inter-firm committee set up in the same way as an inter-plant committee of the "comités d'entreprise". The employers elect a representative who presides, and the various "comités d'entreprise" elect two representatives each, one from among the "cadres" and one representing the "employés" and "ouvriers". The total number of members of this inter-firm committee may not exceed twelve. Where such a committee exists or is established, the full administration of the inter-firm medical service belongs to them. The doctor has a contract of employment with the president of the inter-firm committee. The consent of the employers must be obtained before the committee hires a particular doctor. Where such consent is refused, the Inspector of Labour decides whether or not he ought to be hired.

A further aspect to the institutionalization of the

firm is the creation of Social Labour Services set up by the Law of July 28, 1942. A Social Service, managed by a counsellor holding a special diploma awarded by the state, is obligatory in every plant regularly employing more than 250 workers. The selection of the counsellor is subject to the approval of the committee of the firm, as is the dismissal of a counsellor. Should they fail to agree, the final decision rests with the Inspector of Labour.

The counsellor's task is to aid the workers in adapting to work, to watch over the situation of minor, women, or infirm workers, to promote the establishment of social undertakings, and to help the employees in the familial problems which are affecting their work. In her capacity (the counsellor is usually a woman), the counsellor attends meetings of the committee of the firm, without a vote, whenever social questions are on the agenda. She may be given the management of one or more social undertakings. She reports on her activities to the committee every three months.

According to the Decree of August 1, 1947, a hygiene committee must be set up in industrial establishments regularly employing more than fifty employees and in commercial establishments, the liberal professions, public and ministerial offices, civil partnerships, professional

syndicates and associations where more than five hundred workers are regularly employed. The Minister of Labour may order that such a committee be set up where the number of employees is less than that required by law.

The committee is composed of the employer, the doctor, the social counsellor, the chief of the safety service or an engineer, and representatives of the personnel, three where there are fewer than 1,000 workers, six where there are more, of which either one or two must be master tradesmen. The "comité d'entreprise", where one exists, and the "délégués du personnel" choose the employees' representatives, and the hygiene committee functions as a sub-committee of the "comité d'entreprise". Where no "comité d'entreprise" exists, the hygiene committee is elected in the same manner as that prescribed for the "comité d'entreprise".

The duty of the hygiene committee is to investigate serious accidents or professional injuries which have caused death or permanent injury or which reveal a serious danger. They also organize the instruction of volunteer fire fighting teams. They inspect the plant to ensure that the laws and regulations concerning hygiene and safety are obeyed. They try to develop in the employees an understanding of the professional risks.

The committee meets three times a year and whenever a serious accident has occurred. The hours spent at meetings

are paid as far as employees' representatives are concerned. The committee records the minutes of its meetings, including suggestions made to the employer, and puts the register at the disposal of the Labour Inspector.

There are no legal requirements in Quebec for the creation of jointly-administered medical services, social counselling or a hygiene committee.

It thus appears that the French legislator has gone further to ensure an employee participation in the life of the firm, which surpasses the mere supplying of labour in return for a money wage. By establishing a "comité d'entreprise", albeit with powers limited to managing services for the welfare of the employees and with very little to say in technical and economic questions, the legislator has taken a timid step towards "co-gestion". With the setting up of an obligatory grievance mechanism, and employee participation in the control of preventive medicine, social counselling and hygiene, the legislator has altered the contractual nature of the employer-employee relationship and has begun the transformation of the firm into a veritable institution.

CHAPTER SEVEN

CONCLUSION

The legislator in both France and Quebec has departed from the classical doctrine of the civil law of the relativity of contracts. No longer does individual face individual, each bargaining on his own behalf. On behalf of the employees and employers, the law has seen fit to permit the growth of collective organizations which, following a procedure laid down by law, bargain on behalf of their members, as well as on behalf of some who are not members of the organization. The actual terms of employment are determined in practice by collective agreements rather than by individual bargaining.

In this development, the legislator of Quebec followed the lead of the French at first, passing the Trade Disputes Act of 1901, which in part adapted the French Law of 1892 to the Quebec situation, and the Professional Syndicates Act of 1924, which borrowed from French Laws of 1884 and 1919. Even the Collective Agreements Extension Act of 1934, which preceded French legislation on extension by two years, was influenced by European legislation which at the

same time acted as an influence in France.[1] It was only with the Labour Relations Act that the Quebec legislator ceased to look to France for the inspiration for legislation in the field of collective labour relations. The development since the war in employee participation in the management of the firm, while by no means extensive, which has taken place in France, has not been copied in Quebec.

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1 Dolléans and Dehove, Vol. II, p. 31.

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