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EDITORIAL



Grievance arbitration and new legal framework: are you ready?

M^e Lydia Fournier, Le Corre Lawyers

At the time of its adoption, the Labour Code¹ aimed, among other things, to prioritize the quick resolution of conflicts between employers and employees. However, it must be acknowledged that, over the years, the deadlines have been extended between the different steps leading up to a grievance hearing and the decision of an arbitrator. In order to, notably, improve and accelerate the grievance arbitration process, the legislator adopted *An Act to improve certain labour laws*², including the Labour Code. We present below the different changes made to the provisions relating to the grievance arbitration.

For all the new grievances filed after October 28, 2025, which is the date of assent to the Act, the following provisions are applicable:

Pre-hearing conference³ - The arbitrator may summon the parties to a pre-hearing conference. However, he must hold a pre-hearing conference at the request of one of the parties. Prior to these changes, the arbitrator had no obligation to summon the parties to a pre-hearing conference even at the request of one of them.

Mediation⁴ - The parties have the obligation to consider mediation to attempt to resolve a grievance before seeking arbitration.

Unless parties consent to it, nothing of what is said or written during the mediation process is admissible as evidence. The mediator is not compellable, that is, he is not required to disclose what has been revealed to him or what he has become aware of. In addition, unless parties consent to it, the appointed mediator will not be able to act as an arbitrator in the same matter.

Disclosure of the evidence⁵ - Unless there is urgency or unless otherwise decided to ensure the proper administration of justice during the pre-hearing conference, the parties must submit their exhibits or other evidence at least 30 days prior to the beginning of the hearing or within the timeframe specified during the pre-hearing conference. In the same way and unless there are valid reasons to withhold their identities, the parties must also communicate the list of the witnesses they intend to summon, including sworn statements, at least 30 days prior to the beginning of the hearing. The proof that the documents and the list of witnesses have been communicated to the other parties must be submitted to the arbitrator.

These new provisions will have an impact on the preparation of your arbitration files. First, if your aim is to resolve the

grievances brought before arbitration and to save on costs, it would be in your best interest to begin settlement discussions, long before the 30-day deadline expires. In the absence of a settlement, you must begin the preparation and mandate a lawyer to represent you, if applicable, sooner rather than later. This implies a preliminary preparation in order to, notably, compile the documentary evidence, elaborate the strategy and identify the witnesses. In other words, the preparation of the arbitration must be well before the 30-day deadline.

The arbitrator could allow a different deadline to “ensure the proper administration of justice”. It will be interesting to see how the courts will interpret this exception. For example, when the burden of proof falls on the union, the disclosure of the employer’s evidence before the hearing may imply a considerable work because of extensive documentary evidence, while part of this evidence may be unnecessary in light of the evidence submitted by the union.

In disciplinary matters, in which the employer has the burden of proof, the disclosure of evidence relating to an employee’s credibility, such as surveillance, will inevitably cause issues. When serious questions of credibility are raised, it will be interesting to see whether arbitrators will allow the disclosure of some of the employer’s evidence following the employee’s testimony.

Moreover, it will be interesting to see whether the arbitration tribunals office for the education sector will change its practices regarding the notices of hearing, because the time between receiving the notice and the date set for the hearing must allow the parties to comply with these new obligations regarding grievance arbitration.

Finally, some provisions will come into force on October 28, 2026, that is, the provision establishing a maximum period of 6 months to proceed with the appointment of an arbitrator⁶ and the provision providing that the hearing of a grievance must begin no later than one year after it is filed⁷. However, since the public and parapublic sectors are not targeted by these provisions⁸, they do not apply to school service centres and to school boards.

1. RLRQ, c. C-27 (hereinafter the “Code”)

2. L.Q. 2025, c. 28 (Bill 101)

3. Art. 100.2 of the Code

4. Art. 100.0.1.1 to 100.0.1.3 of the Code

5. Art. 100.3.1 of the Code

6. Art. 100.0.0.1 of the Code

7. Art. 100.3.2 of the Code

8. *Id.*, note 2, article 14

RECENT DECISIONS

1 The local agreement cannot modify the scope of the national agreement

The union filed grievances to have unsupervised recess periods to be considered part of teachers' tasks. As these periods are no longer included in their schedule, this would constitute an excess of work, entitling them to overtime pay. In fact, prior to the modification of the national collective agreement, a local provision provided that those periods were part of teachers' tasks and appeared on the work schedule. However, the new national collective agreement has been modified to ensure that only recurring tasks appear on the work schedule. Since the activities performed by teachers during these periods vary constantly, they cannot be scheduled. The arbitrator concluded that the local agreement's provisions on which the union relies to support the grievances change the scope of the national agreement. They are therefore invalid under the *Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors*. The grievances are dismissed.

Syndicat de l'enseignement du Haut-Richelieu and Centre de services scolaire des Hautes-Rivières
2026EXPT-741, 2026 QCTA 121, Nathalie Massicotte
Application for judicial review, 2026-04-16 (C.S.) 755-17-004159-268

2 The dismissal procedure did not apply

The union is challenging the employer's decision not to offer a new contract to a part-time teacher who is not registered on the recall list due to her attitude at work. The union alleges that it constitutes a dismissal and that the employer did not follow the procedure set out in the collective agreement. The arbitrator specified that the dismissal procedure applies when a contract is terminated. A termination occurs during the execution of a contract and not at its expiration. In this case, the employer did not end prematurely the contract, they rather decided not to offer another contract to the employee. The dismissal procedure was therefore not applicable. Similarly, the non-renewal procedure does not apply because the employee is not a "permanent teacher". The decision not to offer a new contract falls under the employer's right to manage. This decision is not made in bad faith, arbitrary or discriminatory. The grievance is dismissed.

Centre de services scolaire des Premières-Seigneuries and Syndicat de l'enseignement de la région de Québec
SAE 9898, 2026-04-07, Hélène Bédard

3 Replacing an employee absent for an indefinite period

The union is challenging the employer's decision to fill a temporarily vacant position with an external candidate. For section 5-1.15 of the collective agreement to apply, three preconditions must be met: 1. a vacant position; 2. the decision to fill it and; 3. an expected period of absence of 17 weeks or more. The employment priority provided for in this provision has meaning when the period of absence is planned from the beginning, for example, during a maternity leave. However, in the event of a disability with no foreseeable end date, the clause is not applicable. It is then up to the *Cégep* to decide whether to fill a temporarily vacant position and to access the expected period of the absence. The employer chose not to fill the position with an internal candidate to avoid a second cycle of staffing when the duration of the replacement does not justify it. This decision is not arbitrary, discriminatory or abusive. The grievance is dismissed.

Syndicat du personnel de soutien du Cégep Edouard-Montpetit and Cégep Édouard-Montpetit
SAE 9906, 2006-04-27, Claire Brassard

RECENT DECISIONS

4 Verbal and psychological violence against students: teaching license suspended

An elementary school teacher filed a complaint before the Administrative Tribunal of Quebec to challenge the minister's decision to revoke his teaching licence. This decision was made following complaints filed by parents regarding remarks made and behaviour exhibited by the teacher, which could be considered verbal and psychological abuse toward students. The school service center imposed a five-day unpaid suspension on the employee for those same remarks. According to the tribunal, the employee's conduct was serious, and a severe sanction is appropriate. However, the tribunal considers the revocation of the teaching license to be too harsh for a first offense. Despite showing limited self-criticism, the employee nevertheless acknowledged that he should correct his behaviour and he cooperated with the investigation committee. The tribunal concluded that a nine-month suspension of the teaching license was appropriate. The application was partially granted.

A.B. v. Ministre de l'Éducation
2026EXP-328, 2025 QCTAQ 1174, David Perron

5 A workplace injury related to a criminal act: the employer does not have to bear the costs

The school service centre is challenging the refusal of its request of transfer of costs under section 326 of the AIAOD. The school service centre alleges that a third party is mainly responsible for the workplace accident involving a student supervisor, resulting in a post-traumatic stress disorder. While the employee was in her car in the employer's parking lot, she noticed 4 young men in a "suspicious" vehicle, but it quickly left the area. The vehicle later returned with a different licence plate, and it blocked the employee's car. One of the individuals then got out of the vehicle, approached the employee and aggressively shouted at her to open her window while acting as if he had a weapon under his jacket. The intervention of the school management pushed the individuals to leave. A call was made to the police. According to the tribunal such circumstances are considered a criminal act, which cannot be regarded as part of the risks associated with the employer's operations. The complaint is upheld.

Centre de services scolaire Marie-Victorin
2026 QCTAT 820, David Martinez

6 A few years late to challenge the suitable job

The employee is challenging the CNESST's decision reducing the annual amount of the reduced benefits to which she is entitled. Above all, she questions the process by which her suitable position as an educational adviser was determined a few years earlier. The employee alleges that she was misled or insufficiently informed by the CNESST's officer and poorly represented by her union during this process, which resulted in a significant loss of profits for her. Particularly, she alleges a loss related to her pension plan. However, the tribunal's powers only allow it to confirm, modify or overturn the contested decision. In this case, the contested decision concerns only the review of the reduced income replacement indemnity paid to the employee. She cannot, through this process, seek a review of the terms of the rehabilitation plan agreed to in 2022 or of the decisions that followed. The complaint is dismissed.

Lévesque and Centre de services scolaire de la Capitale
2026 QCTAT 918, Michel Sansfaçon