

Newsletter



Robinson Sheppard Shapiro
Avocats • Lawyers

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Streamlining the payment of public construction contracts

Many of us still recall very vividly the hearings of the Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction, better known as the Charbonneau Commission. In its report, the Commission made several recommendations to spruce up the public procurement market for construction projects.

One of these, Recommendation 15, dealt with the time frame for payments to contractors. The Commission revealed that belated payments are an increasingly frequent and severe complication. The problem stems from the significant discretion given to on-site supervisors in charge of approving provisional payments, thus restricting the pool of companies capable of overcoming a potential cash shortage before the case gets decided by a court.

The Commission therefore recommended that the Quebec government should:

Adopt statutory or regulatory measures to put forward a standard for the production of progress estimates, and payments applicable to principal contracts and subcontracting agreements, to decrease the control of on-site supervisors and public clients on construction companies and stop the potential involve-

ment of organized crime. (*Rapport de la Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction*, vol. 3, p 122; our translation)

With Order number 2018-01 dated July 3, the Chair of the Conseil du trésor implemented this recommendation by launching a "Pilot project to facilitate payment to enterprises that are parties to public construction work contracts and related public subcontracts".

The broad characteristics of this initiative are:

- It is a pilot project targeting public construction contracts (s 1 of the Order);
- "The public body must pay the amount owing to the general contractor on or before the last day of the month in which it received a payment application." (s 14)
- Payments owing to subcontractors are also subject to deadlines (s 15 and 16);



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- Any dispute must be submitted to an adjudicator selected from a registry maintained by the Institut de médiation et d'arbitrage du Québec (s 21);
- "Once the documents and information have been received, the adjudicator has 30 days to render a decision." (s 28);
- The adjudicator must conduct proceedings in the most practical and economical manner: in writing, by conference call or in person (s 29);
- The decision is enforceable as soon as it is received by the parties and payment, if any, must be made within 10 days of the receipt of the decision (s 37);
- Issuance of a decision by the adjudicator does not deprive parties of their right to bring proceedings before an arbitrator or a court of general jurisdiction (s 42).

Initially, considering their status as major clients, two organizations will be involved in the pilot project:

- The Société québécoise des infrastructures;

- The ministère des Transports, de la Mobilité durable et de l'Électrification des transports (as it was known at the time of the announcement).

Other public organizations will gradually be added to the project.

Obviously, this initiative could usher in major changes in the execution of public contracts, and even spread to the private procurement process.

RSS has a unique position

Our firm will have a unique vantage point to observe the development of the pilot project since this author is one of the 20 mediators or arbitrators appointed by the Institut de médiation et d'arbitrage du Québec to be part of the pool of qualified adjudicators.

From this exceptional position, we shall keep subscribers to this newsletter informed of the development of the project.

