

# INDEX

  
DE GRANDPRÉ CHAIT S.E.N.C.  
LAWYERS

Vol. 2 Issue 1 February 2004

www.dgclex.com

## Notes of the month

### Real Estate

#### The Scope of the Obligation of Good Faith: Is a Contract Still the "Law of the Parties"?

With the coming into force of the **Civil Code of Québec** in 1994, the Legislature has codified the obligation for all parties to a contract to act in good faith. This obligation, which has given rise to an abundant jurisprudence has, until recently, rarely been applied within the context of the early termination of a contract until now, that is.

In a recent Court of Appeal judgment rendered in the case of **Groupe Clifton v. Meta-4 inc.**, the Court of Appeal confirmed the overriding nature of a party's obligation to act in good faith, even if its co-contractant has failed to fulfil its own obligations under the contract. By **Me Louis Samuel** [Complete Text](#)

### Labour and Employment

#### Can an Employee Injured on the Job Bring a Civil Liability Action Against His Employer as a Result of the Injury?

Section 438 of the **Act respecting industrial accidents and occupational diseases** (AIAOD) expressly stipulates that a worker may not institute civil liability proceedings against his employer **by reason of his employment injury**.

In 1996, the Supreme Court of Canada confirmed the principle of civil immunity of employers. [ ] Following this landmark Supreme Court ruling, other cases were heard before the courts. In January 2001, the Québec Court of Appeal ruled that an employer can benefit from civil immunity even when the employee has not filed a claim with the CSST. It is sufficient if the injury is **compensable** under the AIAOD. By **Me Jean Benoît** [Complete Text](#)

## Highlights

### Real Estate

#### Proposed Reform of the Agricultural Land Preservation Regime

The media recently announced the intention of the Minister of Agriculture, Fisheries and Food, Françoise Gauthier, to establish a committee to assess the adequacy of the mechanisms implemented by the **Act respecting the preservation of agricultural land and agricultural activities** which was enacted in 1978. [ ] At this point, there is no indication whether the Minister's intention is to relax or strengthen the rules governing applications for the authorization to use agricultural land for purposes other than agriculture and applications for the exclusion of land forming part of a permanent agricultural zone. Therefore, **vigilance is recommended, particularly for those affected by issues relating to real estate development.** By **Me Vincent Piazza** [Complete Text](#)

### Labour and Employment

#### Coming Into Force of the Sections Dealing With Subcontracting

Certain amendments to sections 45 and 46 of the **Labour Code** came into force on February 1, 2004. The following is a brief overview of the three principal elements with a significant impact on unionized firms or firms carrying on business with unionized firms:

- If the subcontracting **is not a substantial transfer** to a third party;
- If there is a **transfer of part of the operation**;
- If the transfer is meant to conceal **an unfair practice** by the firm towards an association that is certified or is about to be certified.

By the **Labour and Employment Group** [Complete Text](#)

## Conferences

### Construction

**Me David Kauffman** will be one of the guest lecturers at the first joint conference of the **American** and **Canadian College of Construction Lawyers** to be held in Coral Gables, Florida, from **February 26 to 29, 2004**.

On **January 22, 2004**, **Me Yves Poirier** gave a conference on the legal aspects of design-built projects in the civil engineering field. The conference, entitled **Design Built : application au génie civil**, was part of the 60th annual convention of **The Québec Road Builders and Heavy Weight Association** (ACRGTQ) at which the Québec Minister of Transport indicated his interest in these types of contracts and the important role they will play in the future development of the department.

### Professional Liability

On **January 29, 2004**, in the presence of some forty doctors and health care professionals of the Centre hospitalier de LaSalle, **Me Martin Tétreault** gave a conference entitled **Obligation d'information et consentement éclairé : Principes et limites** (Duty to Inform and informed Consent: Principles and Limits).

The topic of **Me Martin Tétreault**'s upcoming conference, to be presented on **March 11, 2004** to the dentistry students at the Université de Montréal, will be that of **Confidentiality in the context of professional practice**.

### Municipal

As part of the symposium entitled **Développements récents en droit municipal** (recent developments in municipal law), organized by the continuing education department of the Barreau du Québec, **Me Vincent Piazza** will present a conference entitled **Communicating Information to Municipal Assessors** on **March 26, 2004** at the Delta Trois-Rivières Hotel.

## INVITATION DGC Breakfast Conference

### Update on The Public Financing of Québec SMEs: One Year Later

Public financing is an alternative and major complementary source of financing to traditional venture capital. Since its introduction a year ago, the Capital Pool Company Program of the TSX Venture Exchange has been tremendously successful in Québec.

**Me Claude Désy, FCA** and **Me Michel Beaudin** have practical experience in this area, having established several such companies. They will share their knowledge with you and explain how you too can take advantage of this source of financing at our upcoming breakfast conference to be held on **February 24 and March 4, 2004**, from 7:30 a.m. to 9:00 a.m. at our offices.

DGC breakfast conferences are offered free of charge to all our clients, colleagues and friends. Space is limited, so please take a moment to register by phone at 514 878-3223, extension 3335 or, online at: [mktg@dgclex.com](mailto:mktg@dgclex.com). Don't forget to provide your name, telephone number and the date you have selected so we can advise you of any scheduling changes.

## NEW

### In-House Information Sessions on Psychological Harassment

The DGC Breakfast Conferences on the topic of psychological harassment are sold out! Nearly 100 employers registered to learn about psychological harassment and their new obligations in relation thereto as well as the measures that should be implemented to prevent harassment in the workplace.

**Given the importance of fostering awareness of this new reality among management and senior executives**, the lawyers in our Labour and Employment Group are also offering **in-house information sessions, free of charge**. For further information, please do not hesitate to contact **Me Andrée Gosselin**, head of the Labour and Employment Group, at (514) 878-3231.



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