

**Linette A. Gibs**

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**Subject:** FW: Min Lee Q & A Round 2 Parliament - Civil Code Book 7  
**Attachments:** FINAL FINAL 170817 Parliament civil code Q & A CC Civil Code Round 2.docx

**From:** Nancy R. Guishard-Joubert  
**Sent:** Monday, December 4, 2017 4:23 PM

**From:** Alissa Rios [<mailto:alissa.s.rios@gmail.com>]  
**Sent:** Monday, December 4, 2017 4:18 PM  
**To:** Nancy R. Guishard-Joubert  
**Subject:** Fwd: Min Lee Q & A Round 2 Parliament - Civil Code Book 7



Good day Nancy,

With this being provided, will we still proceed with the meeting of tomorrow?

Kind regards,

Alissa Rios

## Round 1 – Central Committee meeting

### MP Frans Richardson

1. Will the Minister provide an information session for the public and businesses on the changes to come?  
Yes, information sessions will be provided for the employers' and workers' organizations as well as the general public.
2. How will the Ministry monitor the enforcement of this legislation?  
Enforcement of this legislation will be done through regular inspections by the Labour Inspectorate and other governmental agencies.
3. Is there a timeframe that the implementation will take place?  
Implementation of this legislation will commence upon ratification. The legislative trajectory still includes approval by Parliament and the Governor. It is then published and the Ombudsman is given 6 weeks to comment. Therefore we anticipate to implement by January 2018.
4. How do we ensure that persons who have been abused for years do not get fired as a result?  
Abuse of fixed term contracts is mainly in having too many of them in succession, and article 668a already stipulates (like before) that any combination of fixed-term contracts with intermissions of max 3 months and adding up to 36months, or any series of more than three fixed term contracts with same intermissions is by law converted into a permanent contract. The problem with the abuse of fixed term contracts is in the lack of compliance with and enforcement of article 668a. Therefore, if an employee is fired as a result of this legislation, and he/she has had 3 successive contract within a 3 year span, the employee is currently protected by the law.

### MP George Pantophlet

1. How will compliance be dealt with?  
This was already answered with the question from MP Frans Richardson
2. Please provide clarity as to, based on these changes, how has the abuse has been addressed?  
Employees who are in this predicament of having had successive short-term contracts for years in the current legislation and even more so in the draft legislation employees who have had successive short term contracts are in the predicament of abuse because they do not understand their rights.  
  
Though it is understandable for Parliamentarians to say that this legislation has not eliminated the problem, what we have done is find way to limit the possibility of abuse, and have mapped out the steps required for complete labor reform.
3. Pay slips aren't even given in hard copy, how will we control if they are sent out digitally?  
There is no real difference between paper and digital pay slips. In the end it is up to the worker to report the violations. This article just legalizes the possibility to use digital pay slips.

4. On the issue of labor contracts, employers have the authority to make up the contract. Is there particular criteria as to what is allowed in the contract?? Is there a way that an employer can come with their labor contract to review and take measures towards employer if abuse is evident?

In different pieces of legislation, there are stipulations as to what should be in a labor contract. Regarding content reviews of labor contract, if an employee needs such assistance they can contact the Department of Labor Affairs .

#### MP Tamara Leonard

1. Please give an example of what is meant by unregulated work in article 614b?

The term to which you are referring to is better defined as 'casual labor' – work that is temporary and only lasts the day or in other words, work done but not on a regular basis. For example, loading a container,

2. What are the possibilities of including an extension of the maternity leave and are their provisions to extend paternity leave?

Extension of maternity leave is included in article 629a of the legislation and is in accordance with ILO Standards namely Maternity Protection Convention 183.

Paternity leave is included only in cases of serious illness and death, then the father gets leave.

At the moment we are following ILO as a guideline and there are no provisions for paternity leave. In agreement with your employer, or through CLA you can negotiate a compromise with your employer for paid time off. It's a point for discussion between employees and employers, and in practice many employers often grant such leave requests.

#### MP Rudolph Samuel

1. Needs to be clear what is meant by article 668a 1 b, crystal clear. Down to earth language for people to understand. What is the true intention?

This has been addressed in the answers to MP George Pantophlet.

2. How is it possible for security workers who work for 12 hours to get paid 8?

It is a violation of the law and if reported it will be dealt with.

3. Can both legislations be published online?

Once approved and enforced, it will be published online.

4. How do the changes prevent another Pelican?

In the past there was no legal obligation to keep employees in cases of buy overs, now a legal obligations has been established in this legislation which mandates new owners to carry over the staff with the same benefits under the same conditions.

#### MP Ardwell Irion

1. What are the losses for not having paternity leave? (example -non-productivity of demotivated staff)

Paternity leave as such was not taken up in this particular proposal, however there is room for a reasonable amount of leave which can be used by a father for the birth of his child.

#### **MP Romeo Pantophlet**

Comment: I believe employer should identify all permanent positions in the business!

#### **MP Perry Geerlings**

1. How are we going to finance it? How are we going to afford it?

By extending maternity leave past the 14 weeks in addition to granting paternity leave, there has been no impact study conducted thus far to determine the effects. However, as substitutions for the positions occupied by these persons would be necessary, there will be an impact on both the organization and the SZV fund.

2. How are we going to control it and enforce it? Bad employers compliance?

This was previously answered in the questions for MP Frans Richardson .

3. What is the official language of this translation? Eng. Or Dutch

Official language is Dutch, the translated version was for your information purposes only and for the public to be able to get a better understanding of the law. However the Dutch version will be utilized should a dispute arise.

#### **MP SWW**

1. Who will benefit from these changes? For whom are we fighting for these changes for? (explain who really is affected by the abuse of short term labor contracts)

As a result of the implementation plan which includes information dissemination and the change in the maximum duration of successive labor agreements, every contract worker will benefit from the proposed changes.

2. Provide us with some data – work permit request, what positions; data on persons seeking employment.

No information received from Labour Affairs Department. July 28, 2017

3. Have you had any recent consultations with the tripartite?

Yes, the Tripartite Committee has met recently to discuss, various topics that are being discussed within the Ministry of VSA.

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### MP Rudolph Samuel

1. In the revised legislation what would be the new trial period? Would it remain 2 months or is between 24 months or a year? Is there a difference?

Yes there is a difference. The trial period of two months remains the same. Whereas, the 24 months which you are referring to is in reference to the maximum time period before an employee can be deemed permanent. It is proposed in the consensus document to change the 36 months to 24 months.

2. In the English version, part of Article 652 is missing. Please provide.

This has been provided in writing to Parliament.

3. Please explain Article 657a.

Article 657a states that an employer is obliged to regulate the labour in such a manner that the employee does not have to perform labour on Sundays and on those days which are equated with Sundays. Sundays in our culture are meant to be a day of rest. However, in various industries such as the hospitality industry, employees may be expected to work on Sundays and days equated with Sundays such as public holidays.

4. Based on article 668a paragraph 1 section b, can an employer send an employee home at the time an employee has received 3 labour agreements for a definite period of time which have succeeded each other with intervals of not more than 3 months, and hire someone else?

After each contract the person can be sent home. According to the proposed legislation at Parliament if an employee has received a third contract then that contract by law becomes permanent and the employer must go through the normal dismissal procedures to terminate. In proposed amendment has shortened the number of contracts before an employee is deemed permanent from more than 3 to more than 2

5. What type of work is considered short-term labour?

A short term labour agreement is any contract that contains an end date, also known as fixed term contracts.

6. How many employment agencies do we have and how many persons are employed under these agencies?

There are 4 employment agencies listed at the Department of Labour Affairs and there are 261 persons listed under these agencies.

7. Can you work for an employment agency for a short period of time?

Yes.

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8. When a director's license is requested, does an employment permit need to be requested or is it given automatically?

The director of the company does not require an employment permit.

9. A few years back 1200 Director's licenses were approved. Were employment permits given and are they working in the companies that they requested?

Not sure which year you are referring to. However, as indicated before Directors do not require employment permits from the Ministry of VSA but only a Director license from the Ministry of TEATT.

10. How do we categorize the labour agreement between the employment agency and the employee? Who does an employee of an employment agency actually work for? Can they work for one business and then work for another?

The employment agency is considered the employer, and the employee may have multiple jobs at various companies through the employment agency. Employment agency sector is further regulated in the National Ordinance regarding the provision of laborers.

11. Will this legislation govern the employment agency sector?

As far as the employer employee relationship is concerned yes this legislation applies to them.

**MP George Pantophlet**

1. Please provide clarification on the legality of employment agencies. Are there articles of incorporation, and can the employers charge a fee and withhold money from the employees?

Employment agencies are regulated in National Ordinance regarding the provision of laborers. Article 2 stipulates that a permit from the Minister of Health, Social Development and Labor is needed to operate an employment agency. Presently, this law does not preclude employment agencies from charging a fee to both parties.

HOW MANY?? WHEN??

2. There are several national ordinances that are part of the Civil Code. Is the matter of Maternity Leave, Pensions and Sole proprietors also part of it?

Maternity leave is regulated in Title 10, Book 7 of the Civil Code the civil code. Pension has its own ordinance and for employees it must be regulated in labor contracts, and sole proprietors are not regulated in the civil code.

3. What impact studies will be done?

No impact studies are scheduled.

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4. How does reporting to the Department of Labor Affairs work? Specifically as it pertains to
- employees not receiving pay slips
  - persons who are being paid below the minimum wage
  - and security guards and others who have to work 12 hours, no overtime nor compensation?

Employee visit the Department of Labor Affairs, their complaint is heard and booked in, employer is then contacted for rebuttal and to get all sides of the story. Parties are brought together for mediation. If the employer is in breach, they are advised by us of what needs to be done. If the employer does not comply within the certain time frame allotted, the employee is advised to proceed through Court and if necessary offered legal aid. Employee receives a letter at each point in the process keeping them up to date on their case.

The Ministry is also working on creating an online platform for reporting.

5. With SZV if you are working 5 days a week consecutively you are covered for medical insurance, however if you are working 16 hours 4 days a week you are not. Are they covered for the amount of hours worked?

The coverage is based on ZV legislation and is regulated per day not hours. With the introduction of NHI this will no longer be the case.

6. Who is responsible for employee taxes and social premiums at the employment agencies?

The employment agency as the employer.

### MP Claret Connor

1. What is the period between the consecutive contracts?

The period between the consecutive contracts is maximum three months.

2. Is it up to the discretion of the employer to decide which means will be used to issue a pay slip?

The proposal as to whether a pay slip is provided digitally or in hard copy is a proposal of the Tripartite Committee and should also include that payslips will only be given digitally based on the request of the employee. Right now digital payslip are not even possible.

3. How does casual labor work in practice? Can a casual labourer be placed on a schedule or placed on multiple days? If it is not casual then what is it?

Casual labor is by definition incidental labor whereby a person can freely say no to the work being offered. A casual laborer can be placed on a schedule and work multiple days but the worker must have the ability to refuse and set its own schedule. The moment there is an authority relationship, there is a labor contract between employer or employee.

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4. The Minister mentioned that the maternity leave of a woman who has been hospitalized for an extended period can be transferred to the male. How is this done?  
**This would entail proof via the physician and SZV to the employer.**
  
5. Can the reports from the consultation with the Tripartite Committee be sent to Parliament, like copies of decisions and consultations taken so Parliament can see who was championing what? What were the positions of the members of the Tripartite Committee? How did those changes affect the final draft of the law?  
**The report that was generated as a result of the Tripartite Committee discussions on the proposed legislation to amend the Civil Code have been outlined in the “consensus-document” which was unanimously approved by the committee and has already been provided to Parliament.  
The committee felt that the internal working documents and minutes are confidential.**
  
6. How exactly will we be able to enforce these new regulations? Can the Minister explain how these supervisions will be done? Would more Inspectors be hired?  
**Key to enforcement will entail a public awareness campaign and support from the unions and business associations to ensure employees and employers are aware of their rights and obligations. This must be supported by facilitating ways that are easy and less cumbersome for employees to report abuse. In addition, joint controls will remain ongoing through the Ministry of VSA and other ministries to monitor and enforce compliance of employers.**
  
7. By changing the law how exactly will respect be given by those who are always looking to circumvent their way around the law?  
**Dissemination of information to employers and employees along with increased inspections and or controls to ensure compliance will increase.**
  
8. Can the Minister inform Parliament when can an employer give notice to terminate a contract with an employee and under what conditions?  
**The termination of labour agreements is stipulated in section 9, ‘End of the labour agreement’ - article 667.**

**MP Tamara Leonard**

**posed several questions pertaining to casual labor. Before I go into answering the questions I believe it is important to note that the term casual laborer is mentions in article 614a which based on the consensus document by the Tripartite Committee has been proposed to**



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**be removed. The article brought forward many issues that would be difficult to define, implement and enforce and left too many areas open for misinterpretation.**

1. What are the checks and balances to ensure that employers do not take advantage of hiring persons for casual labor?

Through regular inspections and by ensuring our labor force are well informed of their rights so that if need be they can file a complaint.

2. Do casual workers' pay taxes on what they collect?

All workers/income earners on St. Maarten are responsible to pay income tax.

3. Will there be a labour agreement for that casual labourer?

When there is an authority relationship between two parties, forming an employer and employee relationship, there should be a labor agreement. Any situation where the employer can tell the employee what to do and when to do it, a labor contract is required.

4. What medical coverage do casual laborers have if something was to happen while they are loading or offloading?

If the casual laborer works less than 5 days per week consecutively, the employee is not entitled to medical coverage. This is unfortunate and further emphasizes the need for national health reform and national health insurance. The longer we wait the more people in our community are left without medical coverage.

5. How do you control how many hours a casual labourer works in one day? How many times can you employ a casual labourer to help out or work with the same company? What's the limit? At what point do we say no, this is no longer a casual labourer, this is an employee?

There is no legislation regulating the number of hours a casual laborer should work. Once the worker has the authority to say no to work, there is no limit to the amount of times an employer can utilize their services. Only when there is an authority relationship between two parties, forming an employer and employee relationship, then the casual laborer is no longer considered casual and is considered an employee.

6. Is there a possibility to include paternity leave and extend the time fathers gets in this amendment?

Discussions with the tripartite committee about paternity leave have commenced. I believe building consensus and social dialogue is critical to the process.

7. What according to the law is the amount of time given to the father when the child is born, twins, triplets, and quadruplets?

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In article 629, there is a provision for workers to get special paid leave for short periods of time and time off for your child is considered such an occasion,. This is left the reasonable discretion of the employer and employee. This can also be regulated in a CLA.

8. How do the amendments apply to other sectors outside of the hospitality sector? What about the Civil Servants, do they fall under this legislation? Were there discussion done with the unions concerning this?

The legislation applies to the private sector in general. It does not apply to civil servants. Civil servants have their own specific legal regulations, the LMA. And yes stakeholder consultations were held.

9. What are the inputs of the different unions and who is part of the Tripartite Committee?

The input of the different unions are presented in the Consensus Document. The Tripartite Committee consists of representatives from employers, employees and government organisations.

The Employers consists of representatives of the following associations; Sint Maarten Hospitality and Trade Association (SHTA), Sint Maarten Marine Trade Association (SMMTA), and Indian Merchants Association (IMA). There is a total of three members and three substitute members.

The employee representatives consist of reps from Windward Institute For Organized Labour (WIFOL) Windward Island Civil Servants Union (WICSU), Public Sector Union (PSU), Sint Maarten Communications Union (SMCU) Windward Island Chamber of Labour Unions (WICLU). And representing Government is the Department of Labor and the Minister himself.

10. What specifically are the remarks and suggestions of the Department of Labour? How do they feel about it? If you have any remarks or contributions from them can we get a copy?

The Department of Labour has been the lead agency within our Ministry. What has been presented to Parliament could not have been possible without their involvement and reflects their remarks and contributions.

11. What is provided in the law for both parents in the event that a child is sick and needs to be flown out? And what if there is more than one child?

The law gives the possibility for paid leave in special occasions. This could be such an occasion but is left up to the discretion of negotiations between employer and employees, or could also be regulated in the CLA.

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12. What happens if an employee reaches the end of their 3 year contract and is switched to another company?

At this moment this remains a concern that has not been addressed. The Tripartite is currently making an additional proposal that will recommend that situations where an employee is deliberately transferred from one company to another to avoid making the employee permanent should not be possible.

13. Are there changes to the cessantia? Is the cessantia different to what is here now?

No changes were made, only minor semantics. The word worker has been replaced with employee. However, in the consensus document as part of the overall labor reform, changes have been proposed. The idea is to move away from cessantia and that promotes mobility by implementing an unemployment benefit fund or pension that travels with the employee if they quit. Many people stay within unhappy work relationships, due to the fact that they will lose all cessantia benefits.

### MP Romeo Pantophlet

1. What is the Minister's position on making it mandatory for each company to identify all permanent positions within their organization?

I understand the objective however I have concerns about the additional bureaucracy and the effectiveness.

2. Article 612 is regarding the employment of minors which stipulates that at the age of 16 years they can enter a labour agreement with an employer. Was any consideration given to the law on compulsory education when this age was put in?

Compulsory Education is obligatory until 18 or if you have a secondary education diploma, whichever comes first. We have youngsters that do graduate at the age of sixteen and enter the labour market. This article is considered to be more in line with social reality.

3. Is there anything in the law about protecting children from dangerous conditions?

This is regulated in another piece of legislation better known as the Child Labor Law.

4. Where in the legislation are employees safeguarded from employers who force them to work and take time back rather than pay the overtime?

Overtime is not regulated in the Civil Code. It is regulated in a separate National Ordinance, called the Labor regulations. This must be established in an approved employee handbook stamped by the Court of First Instance or agreed upon in your labor agreement.

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5. Is it listed somewhere specifically, that the father is eligible to paternity leave?  
*This was already answered.*
6. How much Director permits were issued in 2016? Would the ministry consider implementing fees?  
*The Ministry of VSA is not responsible for issuing Director Licenses nor with regards to this establishment of associated fee. This is the responsibility of the Ministry of TEATT. Contact was made with the Department of Economic Licenses and Permits, however their system is down and figures could not be provided.*
7. In the English version part of article 657b is missing, please provide.  
*This has been provided to Parliament in writing to the Griffier.*
8. What happens if the employer does not oblige with stipulations laid down in article 657b?  
*The employee can file an official complaint at the Department of Labour Affairs.*

**MP Brownbill**

1. How many people in the labour force have legal residence and have labour contracts?  
*The only figures we would be able to illustrate this is based on the figures from labor inspections and SZV.  
Out of the 789 labor inspection there was a total of 131 Critical violations in 2016 which included one or more foreign employees without valid documents and no insurance.  
At SZV in 2016 there are a total of roughly 3,000 workers without legal residency out of the 23,000 working employees registered at SZV.  
Those who are not in compliance have not been included in these figures.*
2. Who is responsible for the departure of immigrants after contract is ended and who controls this?  
*The Ministry of Justice is responsible.*
3. Is old age pension, put on hold if an employee continues working after the pension?  
*At pensionable age all registered persons are entitled to collect their old age pension. Your contribution is no longer collected, and once you apply for it you will begin to get paid. It does not matter if they are employed or not.*
4. Is sick days during maternity leave considered part of leave or sick days?  
*If a mother gets sick during maternity leave it is considered as sick days and if the sick leave has not exceeded the amount of days weeks allotted for maternity leave, the mother*

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may take the remaining weeks. If mother is hospitalized, maternity leave can be transferred to the father.

### MP Sarah Wescot-Williams

1. What is the Tripartite Committee's opinion on amending maternity leave from 14 to 18 weeks as recommended by ILO?

The Tripartite Committee is of the opinion that it should be left at 14 weeks due to financial impact. However, on a side note discussion are currently on-going and it seems that they will be proposing to implement paternity leave for 5 working days.

2. Is it possible to have labour agreements be issued in the English language?

It is possible, however it is not currently regulated by law and therefore left up to an employer's discretion. Recently, Tripartite Committee, has proposed that it should be made mandatory for labor contracts to be provided in English to the employee upon the employees request.

3. There is currently a loophole whereby businesses are requesting Director Licenses rather than employment permits. What has been put in place to curb this situation?

It would appear that request for directors licenses has increased. While no checks and balances have been implemented, this is something that is on the table for discussion between the Minister of Justice, the Minister of Economic Affairs, and Minister VSA.

4. Please provide Parliament with information regarding the application of ILO Conventions and regarding any discussions if any have taken place within the context of the Kingdom.

Annually the Department of Labor submits an ILO country Report. Reports from 2011-2016 which can be provided to Parliament.

5. The latest labour force survey shows an unemployment rate of 6.2%. Could you provide data such as when this survey took place. The last figure was 8.2 and now it's 6.

The latest labour force survey was executed February 2017, during the high season. This is a possible explanation for the difference, a gain highlighting that our economy is highly seasonal and suggests that a better performing tourism economy could greatly improve labor market and job stability.

6. How does the Minister know that when he talks to the employers representative that they are getting the feedback from the businesses and business sector on Sint Maarten? How does this feedback take place?

The Tripartite structure is based on the fact that the representatives are nominated by their constituents and caucus on a regular basis.

CONSENSUS PROCESS TOOK A LONG TIME

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1. BUILD TRUST
2. REPRESENTATIVES NEEDED TO CAUCUS

7. How has the current proposal at Parliament transpire from the original proposal by the National Alliance Faction in 2011?

The National Alliance (NA) faction and Member of Parliament Frans Richardson submitted an initiative draft National Ordinance amending the Civil Code to limit this improper use of short term labor contract.

The Ministry of Public Health, Social Development and Labour recognized the urgency of the problem tackled by the NA proposal. However, certain elements in the solution proposed – in particular a license system for short term contracts - appeared to be overly bureaucratic in nature and possibly counter-productive. Moreover, extensive stakeholder consultations made clear that the short term contract abuse cannot effectively be tackled in isolation from other labour issues. Therefore, a more comprehensive package of changes to the Civil Code is now proposed, to be complemented by changes in other laws, including changes to the regulation of temporary employment agencies, procedures for termination of a labour contract, the matter of transfer of enterprise and the minimum wages, including those for minors.

8. How can we ensure that the TPC Consultations that are taking place now will continue for the execution of this legislation? We need continuous buy in to get things done.

The Tripartite Committee has been focused on the legislation, now looking at more practical points moving forward.