



Occupational Health and Safety Tribunal Canada

Date: 2016-04-20
Case No.: 2011-30

Between:

Jeff Wilkins, Appellant

and

Correctional Service Canada, Respondent

Indexed as: *Wilkins v. Correctional Service Canada*

Matter: Appeal under subsection 129(7) of the *Canada Labour Code* of a decision rendered by a health and safety officer

Decision: The decision that a danger does not exist is rescinded

Decision rendered by: Mr. Douglas Malanka, Appeals Officer

Language of decision: English

For the appellant: Mr. Giovanni Mancini, Counsel, Laplante et associés

For the respondent: Mr. Sean F. Kelly, Senior Counsel, Treasury Board Secretariat Legal Services

Citation: 2016 OHSTC 7

REASONS

[1] This decision concerns an appeal by Jeff Wilkins, a Correctional Officer (CO) with Correctional Service of Canada (CSC), under subsection 129(7) of the *Canada Labour Code* (the Code). CO Wilkins appealed the decision of absence of danger rendered on April 13, 2011 by William D. Gallant, a Health and Safety Officer (HSO) with the Labour Program at Human Resources and Skills Development Canada (now Employment and Social Development Canada).

Background

[2] On April 11, 2011, Jeff Wilkins, a CO employed by the CSC at the Springhill medium security prison located in Nova Scotia, exercised his right under section 128 of the Code to refuse to work in Housing Unit (HU) # 10. CO Wilkins' work refusal was based on his belief that CSC's choice to house protective custody inmates (PC inmates) in a housing unit for general population inmates (GP inmates) and to escort the PC inmates en masse through the GP inmate population to the gymnasium (Gym) and back to HU #10 exposed him to a danger.

[3] CO Wilkins stated the following in his refusal to work registration form :

There is a risk to my physical safety from the employer's choice to house protective custody inmates in the general population unit and escorting these inmates on masse through the general population.

[4] On April 11, 2011, HSO Gallant conducted an investigation into the work refusal. On April 13, 2011, HSO Gallant rendered a no danger decision given that, according to him, this housing option has been used at the institution for a number of years without any incident.

[5] On April 28, 2011, CO Wilkins filed an application to appeal the decision to an appeals officer. On February 16, 2012, a prehearing teleconference was held to discuss the upcoming hearing. The parties agreed that a view of the Springhill Institution is necessary and would be conducted on March 7, 2012, and the actual hearing would commence on March 8, 2012. Counsel for each party was confident that there was ample time to complete the oral hearing.

[6] The hearing commenced on March 8, 2012 and it became evident by the afternoon of March 9, 2012, that additional hearing days were necessary to complete the oral hearing. Counsel for parties consulted and advised the Tribunal that 5 more days of hearing were anticipated and they would be unavailable to resume until July 16, 2013. The Tribunal wrote and confirmed that the hearing was rescheduled for July 16, 2013. However, unavoidable circumstances arose making it impossible for Counsel to appear on July 16, 2013, and the hearing was rescheduled to September 10, 2013.

[7] The hearing recommenced on September 10, 2013 until September 13, 2013. Towards the end of the last day, parties informed the Tribunal that a further hearing day was required and asked that the hearing reconvene at a later date to be established shortly thereafter. The hearing finally reconvened on May 20, 2014 and closed later in the afternoon. Final written submissions were provided to the Tribunal on September 23, 2014.

[8] During the period between CO Wilkins' refusal to work on April 11, 2011 and the commencement of the hearing on March 8th, 2012, the PC inmates were moved from HU #10 to HU #8. The Parties, nonetheless, agreed to proceed with CO Wilkins' appeal because the policies and procedures as well as the infrastructure and safety issues are essentially identical in both HUs. For clarity, much of the evidence in this decision will refer to HU #8 as this is the current location where the PC inmates in question are housed, but some will historically refer to HU #10 where CO Wilkins was employed when he refused to work.

Issues

[9] This appeal raises the following issues for determination:

- whether a danger existed on the day the appellant exercised his right to refuse to work and;
- should I decide in the affirmative, whether or not the danger constituted a normal condition of employment.

Submissions of the parties

A) Appellant's submissions

[10] In addition to his own testimony, the following witnesses testified on behalf of the appellant: Mr. Doug White, Correctional Officer for 25 years and Regional President of UCCO Union, Mr. Rob Waye, Correctional Officer since 1989.

Testimony of CO Doug White

[11] CO White testified that certain inmates in a prison institution are placed on administrative segregation for control and discipline reasons while certain others are placed there to protect them from injury at the hands of inmates in the general population. Inmates placed in administrative segregation for control and discipline reasons are referred to by management as being in involuntary administrative custody. Inmates who are placed in administrative segregation to protect them are said to be in protective custody and are referred to in this decision as PC inmates. Inmates not on administrative segregation are referred to in this decision as general population inmates or GP inmates.

[12] CO White testified that not all inmates in a prison are regarded as equals and that an inmate's standing in the hierarchy is dictated by a Con Code that exists in prisons. CO White explained that PC inmates generally include inmates who were convicted of sex offences, who own debts to inmates or gangs in the general population, who are regarded as informants and/or low functioning inmates. PC inmates are generally hated and reviled by GP inmates who will attack them if the opportunity arises. CO White also held that PC inmates are normally housed separately from GP inmates in other institutions and recreate separately.

[13] CO White stated that incidents occur daily where PC inmates are verbally and physically assaulted by GP inmates. CO White cited an extreme situation where a PC inmate was killed within 6 hours of being reintroduced into the general population. CO White added that the Con Code dictates that new inmates must divulge the nature of the conviction that led to their incarceration to GP inmates. CO White stated that weapons are omnipresent in prisons including Springhill Institution. These weapons are in the form of make-shift knives and cutting devices made in prison by prisoners from a variety of materials. These devices are referred to in prison as shanks and shivs and are present despite management's best efforts to rid institutions of these through intelligence gathering and frequent surprise cell and inmate searches.

[14] On the subject of escorting, CO White testified that escorts in Atlantic region facilities are normally conducted using 2 COs per inmate. CO White opined that the practice at Springhill Institution of escorting PC inmates en masse from the housing unit they share with GP inmates to the Gym and back with only 2 COs exposes the COs to injury.

[15] CO White testified that COs are required by their job description to protect inmates and that this duty exposes them to the risk of physical and mental injury during an assault. CO White agreed that COs are trained and equipped to deal with incidents and that there are processes to assist in their protection. However, CO White stated that the training, equipment, processes in the form of directives, post orders etc. and the intelligence gathering activities of management in prisons do not ensure that COs will not be physically or psychologically injured while protecting PC inmates during an assault. On the subject of training, CO White testified that CO training is not kept current on gangs in the institution.

Testimony of CO Rob Waye

[16] CO Waye testified regarding the layout of Springhill Institution in HUs #10 and 8, the relationship between PC and GP inmates in HU #8, GP inmate assaults on PC inmates and the daily tension between the two inmate populations in question.

[17] CO Waye testified that he worked in various posts at Springhill Institution including HU #8 and HU #10 and stated that it really gets dicey when PC inmates

are mixed with GP inmates. The meeting room outside of the barrier to the range housing PC inmates and the four Parole offices (two to the left and right of the immediate entry point to HU #8) are only equipped with light wooden doors that could be breached by inmates during an altercation.

[18] CO Waye testified that there is an opportunity for GP inmates to assault segregated PC inmates being escorted between Unit 8 and the Gym for the following reasons :

- The doors at HU, #50, #51 and #58 are unsecured during the escorted trips between HU#8 and the Gym;
- The gateway between HU#50 and HU#51 is unsecured;
- The gateway at the breezeway is unsecured; and
- The inside-outside yard is not always used to access the Gym and back;

[19] The hearing adjourned before CO Waye's cross-examination was completed and his cross-examination was carried over to the next hearing session which resumed on September 9th,

2013. On September 11, 2013, CO Waye testified with regard to new procedures being followed in connection with PC inmate escorts from HU #8 since the adjournment.

Testimony of CO Jeff Wilkins

[20] Mr. Wilkins has been a Correctional officer since 2002 with 7 years experience at Springhill Institution at the time of the hearing. CO Wilkins testified that Springhill Institution has a higher institution security rating than other prisons in the Atlantic region due to the violent nature of crimes committed by inmates there, the presence of multiple gangs in the institution and the number of inmates who have an increased number of charges.

[21] CO Wilkins stated that all new inmates in the Atlantic region are sent to Springhill Institution for assessment and subsequent assignment to a minimum, medium or maximum security prison. Inmates requiring protective custody protection can be moved to housing unit # 8 during the assessment period if the Reception Centre becomes over populated even though the inmate has not been fully assessed. These factors put Springhill Institution at the high end of medium security classification. Springhill Institution has previously been designated as a high end medium facility until CSC reduced the classification levels.

[22] CO Wilkins referred to item #5 of a document entitled, National Standard for the Deployment of Correctional Officers: Medium Security to support his view that Springhill Institution constitutes a high-medium security prison. Item 5 of the document reads :

Beginning in fiscal year 2009-10, CSC will implement a revised strategy to deal with “unresponsive inmates” in medium security institutions. This comprises those inmates who opt not to follow their correction plans, or who otherwise lack the motivation or desire to rehabilitate themselves and who can cause significant disruption in a penitentiary, through either their gang affiliations or their involvement in the drug trade. Specifically, each region has designated one medium security institution where unresponsive inmates will be situated in separate units.

[23] CO Wilkins also testified that weapons are omnipresence in Springhill Institution and that assaults occur on a regular basis. CO Wilkins stated that PC inmates are normally fully segregated in other prisons with individual cells, double doors to housing units so that there is no opportunity for the two populations to come in contact with each other.

[24] CO Wilkins held that infrastructure and procedural changes need to be implemented in the housing unit to ensure that contact between the two populations can't occur. To mitigate the opportunities for attack on PC inmates, CO Wilkins testified that a recreation yard should be built behind housing unit # 8 and clear written policies and procedures should be developed by the health and safety committee regarding escorts.

[25] With regard to infrastructure changes, CO Wilkins testified that a second barrier gate to the entrance of the PC inmate range on HU #8 is needed to enable the CO in the Control office to defeat any effort by GP inmates to tamper and disable the range barrier gate or to swarm the gate and overpower it from closing. CO Wilkins stated that GP inmates determined to assault a PC inmate could breach the doors to the offices located in HU #8 because they are constructed of wood and open inwardly. In his opinion, these doors should be constructed of steel.

[26] CO Wilkins testified that GP inmates are employed as kitchen help and are able to return to their housing unit early during the program/work hours contrary to paragraph 86 of Post Order 310, # 10 Housing Unit Operations CO II. They are not locked in their cell or their range as required despite the fact that this corresponds to the time when PC inmates are going to their meetings on the unit. CO Wilkins additionally testified that he has raised his concerns with management over time but the infraction continues to occur. Paragraph 86 reads :

86. All inmates not participating in a program/work assignment will be locked in their unit during the program/work day hours. From 1300 hours to 1630 hours. Inmates will not be locked in their cells however will be required to remain on their respective ranges.

[27] CO Wilkins testified that inmates are not routinely frisked for weapons when they leave the work shop and have an opportunity to hide a weapon on the grounds between HU #50 and #51 for retrieval later should they succeed in fabricating a lethal weapon.

[28] With regard to escorting PC inmates, CO Wilkins stated that Springhill Institution normally assigns 2 COs per inmate for escorts and that escorting up to 18 PC inmates en masse to the Gym and back with only two COs for inmates constituted a danger to him.

[29] CO Wilkins testified that GP inmates behind HU#10 and by the Sweat Shop on the opposite side had opportunity to contact PC inmates being escorted from HU #10 to the Gym and back. PC inmates had to be escorted by HU #10 if the inside-outside yard was closed in winter due to snow and GP inmates going to or returning from work in programs could contact them.

[30] Finally, CO Wilkins testified that COs are required by their job descriptions to protect inmates and other COs and that withdrawal from an attack is not a realistic option every time. CO Wilkins added that unprovoked, unexpected and instantaneous assaults can make withdrawal from the event impossible and can cause him physical or psychological injury before backup arrives.

[31] Mr. Mancini, counsel for the appellant, held that the case law establishes that the *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (the CCRA) and any CSC policy or directive, assessment standard or other documents are secondary to the Code when dealing with refusals to work under section 128 of the Code. That is, the question is not whether CSC is conforming to departmental directives, post orders etc., but whether a danger under the Code exists in the circumstances present in the workplace. Mr. Mancini cited paragraphs 289, 291, 331, 328, 334, 336, 342, 344 and 349 in the *Eric v. and al. v. Correctional Service of Canada*, OHSTC-09-09 (*Vandal*), and paragraphs 57 and 74 in *Armstrong v. Canada (Correctional Service)* 2010 OHSTC 6 (*Armstrong*).

[32] Mr. Mancini submitted that the Appeals Officer must consider the opinions expressed by correctional officers based on their experience. He referred me to paragraph 50 of the Federal Court judgment in *Verville v. Canada*, 2004 FC 767 (*Verville*), and paragraphs 287, 288, 314 and 317 in *Vandal* and paragraphs 49, 51 and 52 of *Armstrong*, to support of his position.

[33] Mr. Mancini maintained that the definition of danger includes potential hazards and that the definition does not require a reasonable expectation of injury every time the activities occurs. Rather, the hazard must only be capable of causing injury at any time but not necessarily every time. In this regard, Mr. Mancini cited: paragraphs 31, 32 and 34 in *Verville*; paragraphs 286, 330 and 346 in *Vandal*; paragraph 49 in *Armstrong*; and paragraphs 37 and 38 in *Martin v. Canada (Attorney General)* 2005 FCA 156 (*Martin*).

[34] Mr. Mancini held that the danger for CO Wilkins does not constitute a normal condition of employment and referred to paragraph 297 in the *Vandal* decision of the Tribunal cited previously, where the appeals officer clarified with constitutes a normal condition of employment. Mr. Mancini submitted that the appeals officer's

interpretation in that case was upheld in the Federal Court decision in *P&O Ports Inc. v. International Longshoremen's and Warehousemen's Union, Local 500*, 2008 FC 846 (*P&O Ports Inc.*).

[35] Mr. Mancini submitted that the employer implemented a risky unprecedented experiment at Springhill Institution of housing PC inmates in the same housing as GP inmates in a range dubbed by officials as the “Enhanced Supervision Range (ESR)” or “transition range”. Mr. Mancini referred to the CCRA which he held specifies that PC inmates must be protected from GP inmates and that this has historically meant that PC inmates are fully segregated from GP inmates in prisons.

[36] Mr. Mancini held that the practice of housing PC inmates with GP inmates has not been established under the CCRA or national policy direction and was implemented without consultation with employees. Mr. Mancini held that this unprecedented practice increases risk to the health and safety of COs employed in the shared housing unit and COs escorting PC inmates en masse to the Gym and back to the housing unit. Mr. Mancini referred to the testimony of Cos White and Wilkins to the effect that housing PC inmates with GP inmates is not done at other prisons or other units at Springhill Institution such as the Reception.

[37] Mr. Mancini submitted that the testimony of CO Wilkins establishes that Springhill Institution is a high end medium security prison that houses a higher percent of violent inmates and gang members than other Atlantic region prisons and that gangs run the underground movement of drugs and money. Mr. Mancini also referred to the documentary evidence produced by Deputy Warden Breen that confirms the dangerous nature of the inmate population at Springhill Institution and the level of violence of those inmates that led to their incarceration.

[38] Mr. Mancini argued that GP inmates generally despise PC inmates within the Institution. In this regard, Mr. Mancini referred to the testimony of COs White and Wilkins that inmates in the general population enforce a Con Code that puts PC inmates at the bottom of the hierarchy and at risk of assault by GP inmates. Mr. Mancini additionally referred to the testimony of CO Waye that there is regular taunting of PC inmates by GP inmates; there are past incidents of violence including murder; GP inmates damaged water pipes to flood PC inmates on the bottom floor with water and urine when the PC inmates were being housed in HU #10; GP inmates throw garbage at the entrance to the range where PC inmates are housed; there are overflows from the Reception area; and there have been close calls during escorts.

[39] Mr. Mancini submitted that a single barrier gate to the entrance of the PC inmate range in housing Unit #8 is inadequate because GP inmates can tamper with the gate or swarm the barrier to gain access to the PC inmates range. Mr. Mancini also submitted that the meeting room outside of the barrier to the range housing PC inmates and the four Parole offices (to the left and right of the

immediate entry point to HU#8 are only equipped with light wooden doors that could be breached by inmates.

[40] Mr. Mancini maintained that the testimony of CO Wilkins established that there are times when GP inmates can move freely during the day within the Institution and in housing HU #8. Mr. Mancini maintained that all this movement creates occasions where GP inmates have an opportunity to assault PC inmates and that unsecured kitchen workers present in HU#8 is of particular concern.

[41] Mr. Mancini held that Deputy Warden Breen knew that GP inmates from HU# 8 as kitchen workers in Unit 8 were returning to their unit during the work/program period during the day and, contrary to Post Order 310, were not being locked in their ranges. Mr. Mancini further held that Deputy Warden Breen knew that GP inmates were moving freely in Unit 8 when GP inmates return to Unit 8 from shops or evening recreation.

[42] Mr. Mancini held that escorting up to 18 PC inmates to and from the Gym with as few as 2 COs is contrary to normal practice at Springhill Institution and constitutes a danger for Cos.

[43] Mr. Mancini stated that the testimony of CO Waye that followed the lengthy adjournment of the hearing established that the CSC changed the routine used to escort PC inmates from HU #8 to the Gym and back. Mr. Mancini accepted that the new routine eliminates the risk involved in escorting PC inmates from HU #8 and stated that these changes are part of the remedy sought by the appellant. Mr. Mancini held that escorts are still being conducted with too few COs.

[44] Mr. Mancini held that the assertion by the employer that COs can simply withdraw if they feel that their health and safety is at risk during an attempted assault is inconsistent with the CO's job description and the training and protective equipment that the employer provides to COs and is not practicable.

[45] Mr. Mancini requested that the present appeal be upheld and that HSO Gallant's finding of no danger be rescinded. Mr. Mancini further requested that the appeals officer require the employer to install a second barrier at the stairs leading to the PC inmates range and secure the four offices on unit 8 with steel doors.

[46] Furthermore, Mr. Mancini requested that the employer and the local section of UCCO-SACC CSN Union at Springhill Institution be ordered to implement the above measures through the local health and safety committee, and produce a clear protocol for implementation of the present order. Similarly, Mr. Mancini requested that the appeals officer remain ceased of the appeal for 60 days while the requested remedies and any other ordered remedies are put in place.

[47] With regard to escorts, Mr. Mancini requested that the appeals officer order that escorts be conducted through the "outside-inside" yard and that: the doors to

HUs #50, #51 and #58, the gateway between HUs #50 and #51, the breezeway, the barrier to the service road be secured during escorts; and that the barrier to the service road be secured. Mr. Mancini also requested the appeals officer to order that: GP inmates are not ever to be unsecured in HU #8; the SM 9 post be made permanent; and that the snow in the “inside-outside” yard be removed during winter months.

B) Respondent’s submissions

[48] The respondent called two witnesses to testify on its behalf: Correctional Manager (CM) Greg McCloud and Deputy Warden Lorne Breen.

Testimony of Correctional Manager Greg McCloud

[49] CM McCloud worked at Springhill Institution for 6 years and served as CM at HU #10 for fourteen months. CM McCloud testified regarding his responsibilities, CO job descriptions, the responsibilities of COs while on duty, the layout in Unit 10 and on how inmate movement is to be monitored and controlled in accordance with Commissioner Directives, policies and directives. CM McCloud also testified regarding searches conducted on inmates and their cells, staffing levels and responsibilities during shifts and measures that mitigate risk should GP inmates attempt to attack PC inmates.

[50] CM McCloud further testified regarding CSC Post Orders and staffing levels for HU #8, the responsibility of COs with respect to dynamic security, static security, responding to emergencies, inmate counts and the inmate movement pass system at Springhill Institution and the normal inmate routine that occurs on HU #8 and during escorts.

[51] CM McCloud stated that PC inmates housed in HU #10 that have been assigned as kitchen staff or cleaners have never stormed the gate to the range housing PC inmates and or participated in an incident where a CO was injured attempting to protect a PC inmate from assault.

[52] During cross-examination, CM McCloud agree that GP inmates are a threat to PC inmates and that an attack could happen any day despite measures taken in the prison to mitigate against this. CM McCloud further agreed that situations arise where GP inmate kitchen workers in HU #8 are not secured in their cells as required when they return early from their shift and when they go to their range or to the Gym contrary to rules, that inmates are not always frisked at work areas as required and that anywhere from 4 to 6 inmates are employed as labours in restricted areas and the garden and that GP inmates could attack PC inmates despite the fact they are being supervised.

[53] CM McCloud also agreed that GP inmates could run from the work shop to attack a PC inmate and that GP inmate kitchen workers in other housing units are not secured in their cell and could possibly leave their housing unit to attack a

PC inmate. CM McCloud countered that kitchen staff and cleaners are screened by a Board before they are appointed and pose minimal risk.

Testimony of Deputy Warden Lorne Breen

[54] Deputy Warden Lorne Breen who had held the post since July of 2009 testified regarding the number and types of inmates at Springhill Institution, the nature of administrative segregation, and the number of COs employed in the Institution.

[55] Deputy Warden Breen testified extensively regarding CSC policies and procedures in the form of CSC Commissioner Directives, Standing Orders, Post Orders and Policy Bulletins in place at Springhill Institution to mitigate every risk including housing PC inmates in HU #8. Deputy Warden Breen maintained that there was no additional risk having PC inmates housed with GP inmates in HU # 8 or 10.

[56] Deputy Warden Breen testified extensively regarding information gathering procedures performed daily at the Institution by the various staff at the Institution including COs that ensures that Management and staff are aware of the mood and tenor at the prison on a daily basis.

[57] Deputy Warden Breen stated that it is highly unlikely that a CO working in HU #8 (or previously HU #10) or escorting PC inmates to the Gym and back would be injured given the training and protective equipment that COs receive from the employer to ensure their health and safety on the job as well as all the measures that are taken to mitigate the risk to the COs health and safety.

[58] Mr. Kelly, counsel for the respondent, submitted that the Federal Court of Appeal in both *Martin* and *Canada Post Corporation v. Pollard*, 2008 FCA 305 (paragraphs 37 and 16 respectively) found that in order to arrive at a conclusion of danger under the Code, one must weigh the evidence to determine whether it is more likely than not that the alleged hazard will injure an employee before the hazard can be corrected.

[59] Mr. Kelly held that the evidence demonstrates that there is no danger for CO Wilkins connected with practice of housing PC inmates in a HU for GP inmates or escorting the PC inmates to the Gym and back.

[60] Mr. Kelly held that the testimony of CM McCloud and Deputy Warden Breen and documents entered as evidence in connection with their testimonies demonstrate that CSC ensures a physical presence of 4 COs in Unit 8 which is one CO above the normal staffing level in medium security housing unit. Mr. Kelly submitted that this ensures a physical presence of a minimum of 33 COs during the day shift (06:30 to 14:30) and 29 COs during the evening shift (14:30 to 22:30) some of whom could respond to any emergency.

[61] Mr. Kelly submitted that the testimony of the COs, witnesses for the respondent in addition to the documentary evidence presented confirm that CSC ensures that all COs are highly trained to perform their duties and are equipped with personal protective equipment. Furthermore, the training is updated in areas such as the use of force, self-defence, dynamic security and gangs.

[62] Mr. Kelly held that CSC plans and conducts regular searches of inmates as well as the entire Institution in accordance with Commissioner's Directives 566-7, 566-8, and 566-9 to mitigate the presence of any inmate weapons.

[63] Mr. Kelly submitted that the testimony of Deputy Warden Breen establishes that CSC ensures additional physical presence of highly trained Emergency Response Team with access to additional equipment such as batons, shields, firearms and gas in the event of an emergency and CSC Directives 567, 567-1, 567-2 and Standing Order 567-2 provide a strategic plan to properly respond to any emergency including but not limited to any violence in Housing Unit 8.

[64] Mr. Kelly submitted that CSC training courses, documents, guides, summaries and course material related to gangs and organized crime ensure that COs are highly trained in many areas such as the use of force, self-defence, dynamic security and gangs. Mr. Kelly stated that the training is updated.

[65] Mr. Kelly submitted that COs constantly observe and interact with inmates to identify inordinate safety risks in accordance with Commissioner's Directives 568-1 and Post Orders cited by Deputy Warden Breen and the incidents are reported by COs to identify inordinate safety risks.

[66] Mr. Kelly held that the testimony of Deputy Warden Breen establishes that CSC conducts risk assessments of all inmates prior to assigning a PC inmate to HU #8 to mitigate risk in accordance with Commissioner's Directive 706. Mr. Kelly further added that the evidence establishes that there is no danger for CO Wilkins because CSC can implement a myriad of options to deal with attacks or the threat of attacks by GP inmates on PC inmates including increasing the number of COs in the Institution or reducing or eliminating inmate activities in the event additional risk is identified.

[67] Mr. Kelly held that CSC plans and conducts regular searches of inmates as well as the entire institution in accordance with Commissioner's Directives 566-7, 566-8, and 566-9 to mitigate the presence of any inmate weapons.

[68] Mr. Kelly stated that Commissioner's Directive 567, COs instructs COs not to take any measures that would jeopardize their safety and to withdraw from the situation if their personal safety is at risk.

[69] Mr. Kelly held that the testimony of Deputy Warden Breen and documents reviewed by Deputy Warden Breen establish that CSC is able to discipline any

inmate in order to dissuade them from any misconduct including assaulting a PC inmate in accordance with Commissioner's Directives 580 and 709 and Standing Order 709. Mr. Kelly added that there is no evidence of any attempted attacks by GP inmates on PC inmates in Housing Unit 8 since PC inmates were housed on GP inmate housing units.

[70] Mr. Kelly submitted that Deputy Warden Breen and CM McLeod, are experienced senior officials at Springhill Institution and both are of the opinion that housing PC inmates in Housing Unit 8, and previously at housing Unit 10, pose no danger within the meaning of the Code.

[71] Mr. Kelly held that the testimony of CM McCloud and Deputy Warden Breen establish that the front of the range housing PC inmates in Unit 8 is equipped with a security grill of Lexan Glass and that the existing doors and barrier gate in the unit are sufficient for delaying GP inmates from reaching PC inmates in the housing unit until help arrives. Mr. Kelly added that each cell door on the range in Unit 8 housing PC inmates is equipped with a steel door which can be closed and locked by the PC inmates or controlled by the COs. A GP inmate wishing to attack a PC inmate in Unit 8 would have to breach the security door of the individual cell(s) giving COs time to respond safely.

[72] Mr. Kelly noted that Deputy Warden Breen testified that the four offices in HU #8 are equipped with solid oak doors that can be locked and offer protection from and delay to potential assault.

[73] Mr. Kelly referred to the testimony of Deputy Warden Breen that clarified that GP inmates in HU #8 are not permitted to move within the housing unit during the day with the exception of a small proportion of inmates such as cleaners, or inmates returning from work. Mr. Kelly maintained that GP inmates from HU #8 who return early from their work are generally secured in their cells throughout the day. Mr. Kelly added that the barrier to the range in Housing Unit 8 housing PC inmates is always closed.

[74] Mr. Kelly held that the testimony of Deputy Warden Breen shows that CSC ensures that a CO is posted in the secured control post next to the range housing PC inmates on HU #8 to observe all movement and respond to any situation if necessary. Mr. Kelly submitted that there is no evidence that the hazards alleged by the appellant relative to housing PC inmates in housing units for GP inmates support a finding of danger under the Code. Mr. Kelly further argued that the employer has taken all reasonable steps to mitigate risk and that any danger found thereafter constitutes a normal condition of work under the Code.

[75] Mr. Kelly submitted that the uncontested evidence in this appeal was that measures have been implemented to address all hazards associated with escorting PC inmates to the Gym and back to Housing Unit 8 with the exception of securing doors of the other housing units.

[76] Specifically, Mr. Kelly stated that the evidence of Deputy Warden Breen and CO Wayne establishes that: (a) presently the inside-outside yard is always used for escorts (unless there is snow at which time the escort is cancelled); (b) the gateway between units 50 and 51 is secured; (c) the gateway at the breezeway is secured during escorts; (d) the barrier to the service road is secured during the escorts; and (e) the multifunction post previously known as SM 9 is operational.

[77] Mr. Kelly held that any risk of violence during an escort if doors to HU #s 50, 51 and 58 are unlocked is limited to the short window of time in which PC inmates are in the inside yard or courtyard (i.e., the moment they leave HU #8 and before they enter the inside-outside yard) as the escort takes place behind locked barriers at all other times. Mr. Kelly added that the escort protective measures in place, including the fact that GP inmates are not permitted to exit other housing units during an escort, are in effect during this short window of time.

[78] Mr. Kelly added that the testimony and evidence of Deputy Warden Breen revealed that :

- GP inmates in housing Unit 8 are secured behind the barrier in the ranges before the commencement of an escort;
- the inside yard or courtyard is swept visually before the start of an escort to ensure no inmate is present;
- the Gym is visually swept and locked before the start of an escort to ensure no inmate is present;
- Central Control monitors the escort via the camera system and can call for reinforcements if necessary;
- at least 2 COs escort the PC inmates and other COs may join them; and
- movement of PC inmates to the Gym and back to Housing Unit 8 is now conducted via the inside-outside yard; and the escort is cancelled if the inside-outside yard is covered with snow.

[79] Mr. Kelly held that the hazards were remediated due to CSC's constant efforts to update and improve its policies and procedures to ensure the health and safety of COs is protected. In support of this position, Mr. Kelly cited paragraph 46 in *P&O Ports Inc.*, and to paragraph 47 in the *Martin-Ivie v. Canada (Attorney General)*, 2013 FC 772 decision and to paragraph 48 in *Jack Stone v. Correctional Service of Canada*, OHSTC-02-019 wherein the appeals officer considered an analogous fact scenario at Springhill Institution.

[80] Mr. Kelly referred to paragraph 46 of the *P&O Ports Inc.* decision cited previously, where the Federal Court held that a danger that constitutes a normal condition of employment is a residual hazard that remains after an employer has taken all reasonable steps to mitigate it. Mr. Kelly held that any danger that exists in this appeal is a normal condition of employment.

[81] Mr. Kelly submitted that there is no evidence that the hazards alleged by the appellant relative to escorting PC inmates to the Gym and back to Unit 8 support a finding of danger under the Code. Mr. Kelly further argued that the employer has taken all reasonable steps to mitigate risk and that any danger found thereafter constitutes a normal condition of work under the Code.

[82] On the basis of all the foregoing, Mr. Kelly requests the dismissal of the appeal.

C) Reply

[83] Mr. Mancini held that the mitigation measures implemented by the employer do not fully address CO Wilkins' health and safety concerns. Mr. Mancini held that most of CSC policies and procedures submitted and described by Deputy Warden Breen in testimony do not relate directly to the hazards established by CO Wilkins' evidence. Mr. Mancini added that, while overall staffing levels remain a consideration in the safe operation of a prison, this has no bearing relative to the spontaneous assault on inmate, a PC inmate or a CO which plays out in seconds.

[84] Mr. Mancini confirmed that the appellant agrees with the employer that the presence of a 4th officer is an important measure that helps to mitigate the hazards to COs and asked that the 4th officer be established through protocol ordered by the Tribunal. Mr. Mancini reiterated that despite the presence of the 4th officer, the measures to mitigate the hazards remain insufficient without a second barrier at the stairway leading to the range in Housing Unit 8 housing PC inmates.

[85] Mr. Mancini disputed the respondent's submission that GP inmates in HU #8 are not permitted to move within HU #8 during the day and noted the qualified statements made by CM McCloud and Deputy Warden Breen that GP inmates are "generally" secured in their ranges or "supposed to" be.

[86] Mr. Mancini held that the evidence revealed that GP inmates move throughout the Institution, that GP inmates are not secured in their range many times a day and inmates go to and from workshops, kitchens, work programs, health care, long periods of recreation, meeting with parole officers on a continuous basis. Mr. Mancini additionally maintained that the evidence clearly establishes that the range housing PC inmates is not always closed and that there are many windows of opportunity for GP inmates to assault PC inmates.

[87] Mr. Mancini held that the barrier door to the PC inmates range on Housing Unit 8 could be easily breached every time it is opened and the employer's contention that PC inmates would have time to secure themselves in their cell in the event of an attack by GP inmates is speculative.

[88] Regarding the respondent's argument that there is no evidence of any attempted assaults on PC inmates, Mr. Mancini stated that the Federal Court in *Verville* and the Federal Court of Appeal in *Martin* ruled that it is unnecessary to establish that an assault has occurred in the past for a finding of danger under the Code.

[89] Finally, Mr. Mancini disagreed with the respondent's contention that COs can withdraw from a situation if their personal safety is at risk. Mr. Mancini held that the uncontested evidence is that the role of a CO faced with an unpredictable spontaneous assault is to protect the inmate and not to withdraw. Mr. Mancini further maintained that even in circumstances where a CO would have time to withdraw, this does not negate the hazard to COs that could be reduced by the remedies sought.

Analysis

[90] As previously indicated, the issue in this appeal is whether or not a danger existed for CO Wilkins at the time he exercised his right to refuse dangerous work on April 11, 2011.

[91] The term "danger" is defined by subsection 122(1) of the Code as follows:

"danger" means any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system"

[92] The definition of danger has been interpreted numerous times by the Federal Court and the Federal Court of Appeal. In *Verville*, Justice Gauthier stated at paragraph 36:

[36] In that respect, I do not believe either that it is necessary to establish precisely the time when the potential condition or hazard or the future activity will occur. I do not construe Tremblay-Lamer's reasons in *Martin* above, particularly paragraph 57, to require evidence of a precise time frame within which the condition, hazard or activity will occur. Rather, looking at her decision as a whole, she appears to agree that the definition only requires that one ascertains in which circumstances it could be expected to cause injury and that it be established that such circumstances will occur in the future, not as a mere possibility but as a reasonable one.

[Underlining added]

[93] To conclude that a danger existed for CO Wilkins, I must therefore ascertain the circumstances in which the hazard could reasonably be expected to cause injury before the hazard can be corrected, not as a mere possibility but as a reasonable

one. At paragraph 51 of *Verville*, Justice Gauthier indicated how a reasonable expectation of injury can be established. Paragraph 51 reads:

[51] Finally, the Court notes that there is more than one way to establish that one can reasonably expect a situation to cause injury. One does not necessarily need to have proof that an officer was injured in exactly the same circumstances. A reasonable expectation could be based on expert opinions or even on opinions of ordinary witnesses having the necessary experience when such witnesses are in a better position than the trier of fact to form the opinion. It could even be established through an inference arising logically or reasonably from known facts.

[Underlining added]

[94] In this regard, I gave significant weight to the evidence given by the COs that is based on their experience. They appeared to be well-informed as to what was actually occurring at Springhill Institution.

[95] CO Wilkins refused to work on April 11, 2011, because CSC had implemented a practice of housing PC inmates in a housing unit with GP inmates contrary to the practice at all other medium security institutions of separating the two inmate populations. CO Wilkins alleged that this practice is risky and constitutes a danger for him because it creates opportunities for GP inmates to attack PC inmates in HU #8 or during escorts. CO Wilkins held that it is likely that he would be injured collaterally or directly when intervening to protect inmates and/or fellow COs from injury as he is required to do by his job description.

[96] CO Wilkins referred in testimony to specific situations that arise in HU #10 (and HU #8) and during escorts where GP inmates have opportunity to attack PC inmates and held that this constitutes a danger for him.

[97] Before addressing the specific situations raised by the appellant, I would first like to make a comment regarding his assertion that the housing practice adopted by the employer at Springhill is in contravention of the CCRA and that it creates a danger in and of itself. The role of an appeals officer and a health and safety officer when dealing with a work refusal is to review the situation to determine whether or not a danger as defined in the Code existed. It is not to look at whether the employer's practice is in conformity with the CCRA.

[98] With regard to CO Wilkins allegation that CSC's decision to house the two inmate populations in HU #10 and subsequently HU #8 is risky, there is no express provision in the Code prohibiting CSC to implement the contested housing practice. However, any risk that results must be considered in my determination.

[99] There are two issues that I need to consider in deciding whether or not CO Wilkins was exposed to danger. The first issue concerns CO Wilkins' assertion that his employer has not implemented sufficient measures to mitigate the risk of contact between the two inmate populations in HU #8 and the second concerns the

escorts of PC inmates from unit 8 to the Gym area. I will deal with each issue separately.

Alleged Hazards regarding the housing of PC inmates in the GP unit.

[100] First, the evidence of COs who testified was that normal practice at other federal medium security institutions and the Reception Hall at Springhill Institution is to keep the two inmate populations in separate living quarters and that the practice of housing the two inmate populations is unique.

[101] The appellant has argued that the housing of the PC inmates in GP unit poses several risks to the health and safety of the COs. These alleged hazards are:

- the barrier gate to the PC inmate range in Housing Unit #8 was inadequate as GP inmates could tamper or swarm the gate and gain access to the PC inmate range;
- there are times when GP inmate kitchen staff from Housing Unit #8 are not secured in their cells when they are released early from their shifts;
- GP inmates appointed as kitchen staff and cleaners were not always prevented from free movement in the GP inmate area of the housing unit as required.

[102] The respondent takes the position that any risk of injury to COs is mitigated through CSC's overall health and safety program that includes: CSC policies, procedure and directives that controls and direct the way COs are to carry out their duties safely and effectively; the health and safety training that COs receive; the protective equipment that COs are provided by the employer; dynamic and static security measures, the intelligence systems in place at Springhill Institution; and the availability of staff at the prison to react immediately to an emergency enables the employer to anticipate and react to potential disturbances.

[103] In *Union of Canadian Correctional Officers v. Canada (Attorney General)*, 2008 FC 542, the Federal Court ruled that it is not enough for the appeals officer to look at the mitigation measures CSC has in place to eliminate or control the hazard in question. The appeals officer must determine the effectiveness of the measures. Paragraph 34 of the decision reads:

[34] ... It is not sufficient for the appeals officer in assessing whether or not the first part of his "danger" test is met, to simply look at the measures taken by the CSC to reduce the danger. The test requires that the appeals officer not only look at the actions of CSC, but also the success of those actions in eliminating, or controlling the hazard, condition, or activity. In my opinion, the appeals officer failed to consider evidence as to the effectiveness of the measures taken by the CSC [...].

[104] I am in agreement with the appellant's position that all the directives, post orders, standing orders discussed by CM McCloud and Deputy Warden Breen and through dynamic security, CO Officer observation reports, shift briefings, intelligence and emergency response systems in place are insufficient to ensure the

health and safety of COs is protected during the initial moments when a CO is attacked by an inmate without warning or provocation. All witnesses in this case agreed that assaults are frequent, unprovoked and unpredictable and attack is possible at any time. Moreover, CM McCloud and Deputy Warden Breen agreed that an attack can occur anytime without warning or provocation.

[105] The respondent made much of the fact that no GP inmate has ever assaulted or attempted to assault a PC inmate housed in HU #8 (and previously in HU #10) or during an escort. However, as established by the jurisprudence on the concept of danger, it is not necessary to establish that someone else has been injured in the past for a finding of danger. The fact that no injury has occurred is not a guarantee in a medium security that an event will not happen in the future. Moreover, the evidence of the appellant has revealed that taunting between PC inmates and GP inmates occurs daily.

[106] I find particularly concerning that CM McCloud and Deputy Warden Breen acknowledged during their testimonies that situations exist where the policy and procedures to prevent contact between PC inmates and GP inmates are not always followed. Specifically, Deputy Warden Breen acknowledged during cross-examination that he was made aware by COs that GP inmates from HU #8 employed as kitchen help were returning to their housing unit during the program/work hours and are not locked in their cells contrary to directives and post orders. Deputy Warden Breen was also made aware that GP inmate kitchen staff went to the Gym after their shift ended at 6:30 pm and this was still occurring at the time of CO Wilkins' refusal to work.

[107] In addition, the minutes of the Springhill Institution Labour Management Meeting held on April 17th, 2013, indicate that inmates were still moving freely from Food Services approximately two and a half years after Wilkins' refusal to work. Deputy Warden Breen stated that this was occurring contrary to the inmate movement pass rules and that the situation could have existed at the time of CO Wilkins' refusal to work.

[108] However, I was not convinced that the unauthorized movement of kitchen staff and cleaners in HU #8 that occurs from time to time constituted a danger under the Code for CO Wilkins. I am persuaded by Deputy Warden Breen's testimony that inmates are vetted before they are appointed a kitchen staff or cleaner and are unlikely to attack PC inmates. In addition, Deputy Warden Breen testified that he addresses the issue of unauthorized inmate movement when it occurs.

[109] Additionally, I was not persuaded by the evidence that the barrier gate to the range housing the PC inmates is inadequate to prevent GP inmates from gaining access to the PC inmate range by disabling or swarming the barrier gate. The CO in the Control Post is there to monitor the overall situation including ensuring that the gate is not disabled. The evidence produced by the respondent also showed that

PC inmates on the range have the ability to run into a cell and lock it before the GP inmates can reach them.

[110] I therefore find that the allegations of the appellant that GP inmates disabling or swarming the barrier gate as well as the fact that the wooden doors to the offices in HU #8 and 10 were inadequate for holding off an attack by GP inmates because they are constructed of wood and open inwardly are based on hypothesis or conjectures. There was therefore no reasonable possibility of injury to CO Wilkins as a result of these issues.

[111] For these reasons, I conclude that the alleged hazards associated with the housing of PC inmates in housing unit #8 did not constitute a danger for CO Wilkins.

Alleged Hazards during escorts

[112] With regard to the hazards alleged by CO Wilkins connected with escorting PC inmates, I am persuaded by the evidence that having to escort PC inmates to the Gym and back constituted a danger for CO Wilkins for the reasons that follow.

[113] First, the testimonies of the COs have convinced me that there are a lot risks associated with the escorting of the inmates from Unit 8 to the Gym. CO Wilkins testified regarding numerous situations where there was possibility for GP inmates to attack PC inmates being escorted. These included GP labour gang inmates working behind HU #10, on the road behind Unit 10 and the Gym and inmates in the Sweat Shop. CO Wilkins also testified that GP inmates travelling back and forth to work programs could attack PC inmates being escorted particularly if the inside-outside yard was closed in winter due to snow. He held that GP inmates could attack PC inmates because the doors to housing unit along the way were not secured during escorts.

[114] Second, I find that the following facts make it reasonably possible that a CO could be injured while escorting a PC inmate to the Gym and back:

- 1) The inmates were not always frisked for weapons as they left the work shop;
- 2) The escorts are always conducted at the same time of day and sometimes the same day of the week giving GP inmates who wishes to attack PC inmates the opportunity to do so.
- 3) There is a policy at Springhill that permits as few as two COs to escort up to 18 PC inmates en masse to the Gym and back and that in my opinion, increases the possibility of an attack of a PC inmates.
- 4) The Con Code and the omnipresence of weapons at Springhill Institution in the form of make shift knives and cutting instruments referred to in prison as shanks and shivs despite regular inspections and removal of weapons from inmates and cells.

[115] Moreover, I was persuaded by CO Wilkins' evidence that situations arise where they do not have a clear option to withdraw from an assault on an inmate or another CO and are, in fact, expected to stay and protect inmates and their co-workers from an inmate assault. In this regard, I note that the CX-01 job description put into evidence states on page 13 the following:

There is a requirement to intervene in threatening or violent situations to protect members of the public, staff and inmates, including incidents where the use of force may be necessary. There is a potential for inmates to verbally abuse or physically assault the incumbent, which involves a risk of severe injury and/or death. There is also the risk of Post-Traumatic Stress Syndrome following traumatic incidents to which the incumbent is subjected (e.g. the permanent impairment or death of members of the public, staff or inmates) and the necessity for the incumbent to use force which may be lethal.

[116] The uncontested evidence of COs White, Wayne and Wilkins was that, despite their defence training and protective equipment, it is likely that they will be injured physically or physiologically if they are forced to fend off an attack and protect a PC inmate or other COs from an assault. This was not just their experience based testimony but a fact stated in the job descriptions of COs.

[117] The evidence submitted in this appeal also establishes that Springhill Institution is a high medium security prison even though CSC no longer uses this terminology or category. For this, I rely on the document proffered by the appellant entitled, *National Standard for the Deployment of Correctional Officers: Medium Security*. The document states that CSC was to implement a revised strategy beginning in fiscal year 2009-10 where each region designated one medium security institution where unresponsive inmates who otherwise lack the motivation or desire to rehabilitate themselves and who can cause significant disruption in a penitentiary, through either their gang affiliations or their involvement in the drug trade will be housed. The evidence was that Springhill Institution was selected for this.

[118] According to the COs, the Con Code establishes a hierarchy of inmates in an institution and places PC inmates at the lowest level of respect. According to COs, PC inmates are generally reviled by GP inmates for the following reasons: for having been convicted of sex offences, owing debts to inmates or gangs in the general population, for having been accused of being an informant or because they are regarded as a low functioning inmate. The evidence of CO White was that PC inmates cannot ever function in the inmate general population and that they may be attacked as a trophy.

[119] I find particularly relevant the testimony of CO Waye that taunting between PC inmates and GP inmates occurs daily in HU #10, that GP inmates have been overheard name calling and threaten each other, that GP inmates regularly hurl garbage and excrement at the barrier gate to the PC inmate range and that GP inmates smashed toilet plumbing pipes above the PC inmate range to flood their range with water and urine.

[120] Based on all the above, I find that a danger existed for CO Wilkins at the time of his refusal to work because necessary mitigation measures to prevent GP inmates intent on injuring PC inmates from attacking them while being escorted were not in place. In my opinion, it is reasonable in the circumstances to expect that this could cause injury to CO Wilkins before the hazard could be corrected.

Does the danger constitute a normal condition of employment?

[121] Having decided that CO Wilkins was exposed to a danger on the day he exercised his right to refuse to work, I must now determine whether the danger constitutes a normal condition of employment so as to preclude the employee from refusing to work.

[122] In *P&O Ports Inc.* cited previously, the Federal Court of Canada upheld the appeals officer's interpretation of the notion of a danger that constitutes a normal condition of employment. At paragraph 46 of that judgment, it is stated :

[46] The Appeals Officer held as follows at paragraph 152:

[152] I believe that before an employer can say that a danger is a normal condition of work, he has to identify each and every hazard, existing or potential, and he must, in accordance with the Code, implement safety measures to eliminate the hazard, condition, or activity; if it cannot be eliminated, he must develop measures to reduce and control the hazard, condition or activity within safe limits; and finally, if the existing or potential hazard still remains, he must make sure that employees are provided with the necessary personal protective equipment, clothing, devices and materials against the hazard, condition or activity. This of course, applies, in the present case, to the risk of falling as well as to the risk of tripping and slipping on the hatch covers.

[153] Once all of these steps have been followed and all the safety measures are in place, the "residual" hazard that remains constitutes what is referred to as the normal condition of employment. However, should any change be brought to this normal employment condition, a new analysis of that change must take place in conjunction with the normal working conditions.

[...].

[123] On January 27, 2010, the Federal Court of Canada upheld a decision¹ rendered by an appeals officer regarding the interpretation to be given to the concept of "normal condition of employment." The appeals officer decision defines a danger that constitutes a normal condition of employment as follows:

¹ *Éric v. and al. v. Correctional Service of Canada*, OHSTC-09-009 and *Canada v. Vandal*, 2010 CF 87

[302] ...There is also an important distinction to be made between such a danger and a danger that constitutes a normal condition of employment that would preclude a refusal to work. The latter presupposes that the employer has first determined that a danger exists during escorts and has then taken all of the measures necessary to protect its employees, i.e. it has identified and controlled all of the factors that could have a major negative impact on the duty of conducting escorts. At that point there is nothing more the employer can do to protect its employees any further.

[124] After a careful review of the evidence and particularly, given that the evidence establishes that the employer took additional measures after the day the employee exercised his right to refuse to work, which will be discussed in greater details below, I am unable to conclude that the employer has taken all the necessary steps to eliminate, reduce or control the danger. Therefore, the danger previously identified is not a normal condition of employment of COs.

Conclusion

[125] In similar cases dealing with an appeal under subsection 129(7), after having concluded that a danger existed that is not a normal condition of employment, I would normally pursuant to my powers under paragraph 146.1(b) issue a direction under subsection 145(2) of the Code enjoining the employer to correct the situation and/or to protect the employees from the identified danger.

[126] However, in the case at hand, I have to conclude that there is no need to issue such a direction since it was demonstrated to my satisfaction that the employer took remedial steps to eliminate the danger. Indeed, the employer implemented the following remedial measures, during the course of the appeal hearing that, in my view, eliminate the opportunity for GP inmates to attack PC inmate during escorts to the Gym and back:

- a) The gateway between units 50 and 51 is secured during the escort;
- b) The gateway at the Breezeway is secured during escort;
- c) The barrier to the service road is always secured during the escort;
- d) The multifunction post (previously the SM-9) is operational;
- e) The general population in HU #8 is secured during the escort;
- f) The inside-outside yard is presently always used and the escort is cancelled if there is snow; and

[127] My decision not to issue a direction is not to be interpreted to mean that CO Wilkins or any other CO are prohibited from refusing to work in this regard if circumstances change at Springhill Institution such that the measures taken by the employer are withdrawn, modified or rendered ineffective.

Decision

[128] For all the above reasons, the decision of no danger issued by HSO Gallant on April 13, 2011, is rescinded.

Douglas Malanka
Appeals Officer