

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Case No.: 2007-36

Decision No.: OHSTC-08-032

**CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY**

Gerrit Kitchen, Randy Dunkley and
Laurie Normington
appellants

and

Correctional Service of Canada
respondent

Decision No.: OHSTC- 08-032
December 30, 2008

This case was decided by Appeals Officer Michael McDermott.

For the appellants

Gerrit Kitchen represented himself and the two other appellants.

For the respondent

Ms. Isabelle Lajeunesse.
Senior Employer Representation Officer
Treasury Board of Canada.

Health and Safety Officer

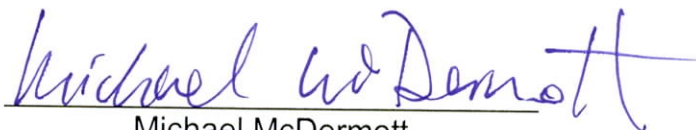
Michael J. O'Donnell
Human Resources and Skills Development Canada

Canada 

- [1] This case concerns an appeal made on December 11, 2007, pursuant to subsection 129(7) of the *Canada Labour Code*, Part II, (the Code), by Gerrit Kitchen, Randy Dunkley and Laurie Normington, Correctional Services Officers at the Correctional Service of Canada (CSC) Warkworth Institution, Campbellford, Ontario, against a decision of absence of danger issued on November 28, 2007, by Health and Safety Officer (HSO) Michael J. O'Donnell. The appellants' appeal was initially addressed to the HSO at the HRSDC Labour Program Toronto District Office and forwarded to the Canada Appeals Office where it was received on December 13, 2007.
- [2] On the morning of July 31, 2007, pursuant to subsection 128(1) of the Code, the appellants invoked the right to refuse work that they considered represented a danger. At the time, the appellants were working their regular shifts at the Institution's Transitional Unit. According to information contained in the HSO's Investigation Report and attachments, a complement of three Correctional Officers is historically the requirement for staffing the Transitional Unit. On the morning in question, the appellants were advised that one of them would be redeployed to cover a temporary assignment in another part of the Institution. Again from the HSO's Report, it would appear that such a reduction in the normal complement would have required a lock down of the unit. The appellants believed that the resulting disruption to the routine would aggravate the inmates' stress levels and increase the risk of spontaneous, retaliatory assaults on Correctional Officers. That and other related matters, such as their concerns about the adequacy of response times to alarm calls, constituted for the appellants the danger that led to their refusal to perform the work.
- [3] The HSO's Report indicates that the respondent's account of the events at the Warkworth Institution Transitional Unit on July 31, 2007, was that it proposed securing offenders in their cells while the third Correctional Officer was temporarily away from the unit on other duties for approximately one to three hours. A supervisor, also a trained Correctional Officer, would be available in the area if needed. Management at the Institution was of the view that inmates may become agitated for a host of reasons and did not accept that there is a relationship between a disruption in the routine and the incidence of violence. It further maintained that there are protocols in place in the unit to address emergencies and that the overall complement of Correctional Officers within the Institution would not be reduced.
- [4] Although the HSO's Investigation Report and Decision indicates that he had contact earlier with both the appellants and representatives of the respondent, the date and time of the notification of the refusal to HRSDC's Labour Program is given as October 15, 2007, at 1000 hours, the same day and time as the formal investigation began. In the course of the investigation, which included a visit to the Transitional Unit at Warkworth, the HSO determined

that certain provisions of Part XIX of the Canada Occupational Health and Safety Regulations, with respect to a job hazard analysis, had been contravened and he issued a corrective direction to the respondent employer accordingly. That direction was not appealed and is not a subject of this decision.

- [5] With respect to the appellants' refusal to undertake work they believed constituted a danger, the HSO analysed statistics provided to him concerning the number of times over the four month period, from April 1 to July 30, 2007, that Correctional Officers had been temporarily redeployed from the Warkworth Transitional Unit and the number of times a security incident in the unit had been reported. He also examined statistics covering a longer period on the total numbers of security incidents involving inmates at the unit. The HSO concluded that the prospect of a violent reaction to a disruption of the inmates' routine was uncertain and speculative. He then issued his decision of an absence of danger in the case of the right to refuse, pursuant to subsection 129(7), invoked by the appellants on July 31, 2007.
- [6] After the appeal was assigned to me for hearing, I arranged for a telephone conference call with the parties to discuss procedure and logistics. The conference call took place on October 6, 2008. Mr. Gerrit Kitchen took part indicating that he was also participating on behalf of Randy Dunkley and Laurie Normington. It was agreed that a hearing would be scheduled for December 2 and 3, 2007, in Belleville, Ontario. On November 28, 2008, Mr. Kitchen sent a letter to the Acting Case Management Officer at the Occupational Health and Safety Tribunal Canada, advising that he and his two colleagues wished to withdraw their appeal.
- [7] Considering the written request to withdraw the appeal and having reviewed the file, I accept the withdrawal and declare this case closed.



Michael McDermott
Appeals Officer