

Case No.: 2005-36

**Canada Labour Code**  
**Part II**  
**Occupational Health and Safety**

Michelle Ingram  
*appellant*

and

Correctional Services Canada  
*respondent*

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Decision No.: CAO-07-006  
March 12, 2007

This case was decided by Appeals Officer Serge Cadieux.

**For the Appellant**

Michel Bouchard, CSN Ontario Union Advisor  
Michelle Ingram, Correctional Officer II

**For the Respondent**

Karen Clifford, Counsel, Treasury Board, Legal Services  
Bruce Somers, A/Deputy Warden, Warkworth Institution

**Health and Safety Officer**

Bob Tomlin, Human Resources and Skills Development Canada

[1] This case concerns an appeal made on September 7, 2005 under the *Canada Labour Code*, Part II (the *Code*), subsection 129(7)<sup>1</sup>, by Ms. Michelle Ingram of Correctional Services Canada at the Warkworth Institution. Ms Ingram had exercised her right under the *Code* to refuse to work if danger exists. The appeal was made against the decision rendered by Health and Safety Officer (HSO) Bob Tomlin to the effect that the danger referred to by the employee does not exist.

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<sup>1</sup> 129(7) If a health and safety officer decides that the danger does not exist, the employee is not entitled under section 128 or this section to continue to refuse to use or operate the machine or thing, work in that place or perform that activity, but the employee, or a person designated by the employee for the purpose, may appeal the decision in writing to an appeals officer within ten days after receiving notice of the decision.

[2] Ms. Michelle Ingram is a correctional officer level II (CO II) at the Warkworth Institution. This Institution is a federal medium security penitentiary. Ms. Ingram had refused to work at 11:30 hrs on September 2, 2005. HSO Bob Tomlin investigated Ms. Ingram's refusal to work and issued the decision under appeal. He reported Ms. Ingram's Statement of the refusal to work in his Investigation Report and Decision as follows:

The length of time it takes for assistance to arrive in response to a cell alarm is too long and places me in a potential danger. Also, I might be required to respond to an emergency cell alarm alone and this places me in potential danger.

[3] The parties agreed that this appeal and the appeal case number 2005-35<sup>2</sup> should be heard concurrently by the appeals officer given their similarity. Furthermore, they also agreed that these cases should proceed with a full oral hearing.

[4] Prior to the four-day hearing that had been scheduled to commence on March 6, 2007, this appeals officer convened the parties to a pre-hearing telephone conference to be held on February 27, 2007. Both, Mr. Michel Bouchard for the employees and Ms. Karen L. Clifford for the employer took an active part in the telephone conference which ended on a positive note and an agreement on the amount of time needed by each party for the hearing.

[5] On March 2, 2007, Mr. Michel Bouchard sent a fax to the Canada Appeals Office in which he notified the Appeals Office "...that we are withdrawing the appeals in the subject files, scheduled for hearing on Tuesday March 6th, 7th, 8th and 9th in Kingston, with apologies for the eleventh hour notification."

[6] Considering the written notification of withdrawal of the appeal and having reviewed the file in this case, I accept Mr. Bouchard's withdrawal of appeal on behalf of Ms. Ingram. I declare this case closed.

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Serge Cadieux  
Appeals Officer

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<sup>2</sup> Appeal of an identical decision on a similar set of circumstances rendered by a different HSO at the same Institution a few hours later.

## Summary of Appeals Officer's Decision

**Decision No.:** CAO-07-006

**Appellant:** Michelle Ingram

**Respondent:** Correctional Services Canada

**Key Words:** Withdrawal, CO II, cell alarm

**Provisions:** *Canada Labour Code: 129(7)*

### **Summary:**

On September 7, 2005, Michelle Ingram appealed a decision of no danger following a work refusal. On March 2, 2007, Michel Bouchard, union representative of Ms. Ingram, withdrew the appeal. The case is therefore close.