

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

SECURICOR CANADA LIMITED

*Applicant*

and

CANADIAN AUTO WORKERS UNION

Local 4266-A

*Respondent*

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Decision No.: 06-002

January 25, 2006

This case was decided by Katia Néron, appeals officer, based on the written documents provided by the parties and the health and safety officer.

**For the applicant**

Tim White, General Manager

Tim O'Connell, Cash In Transit (CIT) Section Manager

**For the respondent**

Chantal Masson, armoured guard

Carl H. Webb, armoured guard

Ed Torre, Canadian Auto Workers (C.A.W.) Union, Local 4266-A

Steve Matthews, armoured guard and employee co-chair of the work place health and safety committee

**Health and safety officer**

Serge A. Marion

Human Resources and Skills Development Canada

Labour Program, Ottawa, Ontario

- [1] This case concerns an appeal made under subsection 146(1) of the *Canada Labour Code*, Part II (the *Code*), on November 4, 2002, by Tim White, General Manager for Securicor Canada Limited.

[2] T. White appealed the direction issued on October 25, 2002, by Health and Safety Officer (HSO) Serge A. Marion under paragraph 145(2)(a) of the *Code*, following his investigation of the refusals to work exercised on October 24, 2002, by Chantal Masson and Carl H. Webb. Both employees were armoured guards working for Securicor Canada Limited.

[3] According to HSO Marion's investigation report, C. Masson and C. H. Webb were assigned on October 24, 2002, at approximately 15:45, to service an Automated Banking Machine (ABM) located at the Foodliner situated on Pembroke Street East in Pembroke, Ontario. The ABM was located in a high traffic zone within the Foodliner. C. Masson was the custodian and her job required her to move the money from the armoured vehicle to the ABM. To open the front of the ABM and unlock the upper combination, both employees had to enter their own combination number. During this time, C. H. Webb was responsible for protecting himself, C. Masson and the liability.

[4] Both employees complained that there was a danger for them since C. H. Webb had not been issued a sidearm as per standard procedures. Consequently, he was not able to protect himself or his colleague at the site. They also believed that it was unreasonable to ask C. Masson, who was armed, to ensure the safety of all parties involved, at the same time she would have her back turned to the public for the purpose of spinning off her combs and disarming the alarms.

[5] C. Masson's statement for her refusal to work is as follows:

Having to work with an unarmed person. It would not be permitted in Ottawa and I feel that my life could be in danger at this point. I have to guard him but has a team we are suppose to help each other and come at there help if they in some way indispose but if my partner is unarmed there is nothing he can do to help.

[6] C. H. Webb's statement for his refusal to work is as follows:

My rights and conditions of employment under the new agreement. And were fully explained for the first time. I do not wish to work on ABM Sites replenishment that are exposed to the public. I do not feel I could adequately protect myself or defend my partner. These ABM's can be opened anywhere fm. 15-25 minutes. Being in an unarmed condition I am must vulnerable and subject to injury or worse in the event of a robbery.

[7] Tim O'Connell, Cash In Transit (CIT) Section Manager of the employees, considered the situation safe for the following reasons:

- numerous locations are currently serviced by two person crews where only one of the crew members is armed with a sidearm;
- the location in question was not as busy as some of the locations serviced by a two person crew where only one crew member is armed with a sidearm;
- the armed guard, the custodian in this case, could position themself in a spot that is satisfactory for guarding while the unarmed guard serviced the ABM;

- there are numerous locations where an armed custodian has to spin a combination on a customer store safe while being guarded by an unarmed guard. T. O’Connell held that the guard, although unarmed, is still a second pair of eyes which is more than a one armed person crew who is sometimes assigned for servicing in other locations. He also held that this procedure was never considered unsafe;
- a robbery attempt is unpredictable and can occur at any time;
- the size of the crew and the number of armed individuals does not appear to prevent a robbery from occurring.

[8] Following his investigation which included the exam of the *CIT/ABM Service Standard Operating Procedures* of Securicor Canada Limited, the *Securicor New Hire Firearms Manual* revised July 2001, the *Firearms Training Program* for the employees and the *Company Policy and Procedures*, HSO Marion was of the opinion that the situation constituted a danger for both employees for the following reasons:

- HSO Marion observed a very high level of pedestrian traffic in proximity of the ABM;
- during the time C. Masson would leave the van with the money, enter the store, walk to the ABM, open the front panel and unlock the upper or lower combination of the lock, C. H. Webb was without a sidearm to protect himself, the custodian and the liability;
- as per *Securicor New Hire Firearms Manual* revised July 2001, Securicor Canada Limited trains its guards extensively on the proper handling and use of firearms including the use of lethal force. The definition for the term “lethal” as per the dictionary (Merriam Webster) is “deadly”. It is also the last level of the Pressure Point Control Tactics (PPCT) Force Continuum Model which is used by Securicor Canada Limited to train their guards to reduce the potential for significant injuries;
- Securicor Canada Limited provides the sidearm as a deterrent to minimize the inherent danger of armed guard duties. Securicor Canada Limited recognizes the use of sidearms as an industry practice;
- in this situation C. H. Webb was not provided with the minimum equipment which he was trained on, and normally uses to perform the duties of an armed guard. Not providing the sidearm to the guard increases the inherent danger of the job, hence creating a dangerous situation for C. Masson and C. H. Webb.

[9] As found in the *Securicor New Hire Firearms Manual* mentioned above, PPCT Force Continuum Model is defined as follows:

PPCT FORCE  
CONTINUUM

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The PPCT Force Continuum has been designed to give a model in which to learn the various levels of subject resistance and the appropriate subject control response.

This is only a model and your response should be based from the subject’s actions, your perception of the threat and your knowledge of his/their and your own abilities.

The Force Continuum is designed to be followed by Law Enforcement officers in the course of their duties.

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LEVELS OF  
RESISTANCE

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1. Psychological Intimidation
  2. Verbal Non-Compliance
  3. Passive Resistance
  4. Defensive Resistance
  5. Active Aggression
  6. Aggravated Active Aggression
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LEVELS OF  
CONTROL

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1. Officer Presence
  2. Verbal Direction
  3. Empty Hand Control
    - a. Soft Empty Hand Control
    - b. Hard Empty Hand Control
  4. Intermediate Weapons
    - a. Soft Intermediate Weapon Control
    - b. Hard Intermediate Weapon Control
  5. Lethal Force
- 

[My underline.]

- [10] In addition, HSO Marion specified in his investigation report some of the responsibilities of the guards found in the Securicor *CIT/ABM Service Standard Operating Procedures*. These specific responsibilities are as follows:

- 7. Guard Responsibilities
  - 7.1 Preparation of shift
    - 7.1.1 **the guards main function is the safe protection of the custodian,**
    - 7.1.5 **after receiving your firearm,** proceed to the designated firearm loading/unloading station (gun box) and observe proper firearm maintenance and loading procedures.
    - 7.4.3 **the guard does not** hold open doors, carry things, or assisting with the moving of cargo outside of the vehicle or site location. **This distracts you from your primary function,** which is to provide safe protection of the custodian.
  - 7.6 Route Completion
    - 7.6.2 the guard will then proceed to the firearm loading/unloading station (gun box) and observe proper unloading procedures for the sidearm and if applicable, the shotgun.

[My underline.]

- [11] Consequently, on October 25, 2002, HSO Marion issued a direction of existence of danger under paragraph 145(2)(a) of the *Code*. The statement of his direction is as follows:

**In the Matter of the *Canada Labour Code*  
Part II – Occupational Health and Safety**

**Direction to the Employer Under Paragraph 145(2)(a)**

On Thursday October 24, 2002, the undersigned health and safety officer conducted an investigation following the refusal to work made by Chantal Masson and Carl H. Webb in respect of a work activity under the control of Securicor Canada Limited, located at 1303 Michael Street, Gloucester, Ontario, K1B 3M9, being an employer subject to the *Canada Labour Code*, Part II, the activity being conducted at the Foodliner, located at 425 Pembroke Street East, Pembroke, Ontario, K8A 3L1.

The said health and safety officer considers that the performance of an activity constitutes a danger to employee(s) while at work:

Carl H. Webb, the Securicor Canada Limited guard, working at the Automated Bank Machine (ABM) located at Foodliner, 425 Pembroke Street East, Pembroke, Ontario, K8A 3L1, on Thursday October 24, 2002, at approximately 16:00 hours,

was required to protect himself, the custodian and the liability as part of his duties. The said guard was not provided with the adequate level of protective equipment, namely lethal force, contrary to the employers' standard operating procedures thereby causing a situation which exceeds the inherent risk of the job, and therefore creating a danger to himself and the custodian.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(a) of the *Canada Labour Code*, Part II, to protect any person from the danger immediately.

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[12] The issue in the present case is to determine whether or not HSO Marion erred when he issued his direction to Securicor Canada Limited. To do so, I must consider the facts, circumstances and pertinent legislation related in the case.

[13] Paragraph 122(1) of the *Code* defines the term of « danger » as follows:

**122(1)** « 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.

[14] To establish if there is a danger, I must determine the hazard, condition or activity that could reasonably be expected to cause injury or illness to the person. I must also determine if this hazard, condition or activity existed at the time of HSO Marion's investigation or if it could reasonably be expected to exist in the future. Finally, I must determine if, in the circumstances, the hazard or condition could be corrected or activity altered before the injury or the illness could occur. If this is not possible, the hazard, the condition or the activity constituted a danger.

[15] In the present case, the potential hazard was that C. Masson and C. H. Webb could become the target of a robbery.

[16] At the time of HSO's Marion investigation, a robbery was not imminent. However, in his opinion and in my opinion, there was a reasonable possibility that this situation could occur in the future during the performance of the tasks of C. Masson and C. H. Webb.

[17] In addition, I am of the opinion that a theft or an assault could occur without warning and that it is unlikely to identify the potential aggressor before the situation occurs.

[18] I am also of the opinion that while the hands of the custodian, C. Masson, would be occupied carrying the money from the van to the ABM and her back would be turned to the public for the purpose of spinning off her combs and disarming the alarms of the ABM, she would not be able to position herself to safeguard or to react rapidly against an attack from an aggressor as she was trained. In addition, without a sidearm, the guard, C. H. Webb,

would not be able to react in order to protect himself or his colleague as he was trained to do should a situation suddenly occur where it would be necessary, in his judgement, to use lethal force. Under these circumstances, I am of the opinion that an assault or a robbery did not constitute a normal condition of their employment.

- [19] To ensure the protection and the safety of their employees, Securicor Canada Limited established safety procedures and training as per *CIT/ABM Service Standard Operating Procedures*, *Securicor New Hire Firearms Manual* revised July 2001, *Firearms training Program* and the *Company Policy and Procedures*.
- [20] As noted by HSO Marion in his investigation report, article 7.4.3 of the *CIT/ABM Service Standard Operating Procedures* states that the armed guard shall not hold open doors, carry things, or assisting with the moving of cargo outside of the vehicle or site location. This distracts the guard from his or her primary function, which is to provide safe protection of the custodian.
- [21] According to T. O'Connell, during the time the armed individual, the custodian in this case, C. Masson, would leave the van with the money, enter the store, walk to the ABM, open the front panel and unlock the upper or lower combination of the lock, she would be able to ensure a safe guarding at the same time. He added that the guard at this time, C. H. Webb, although unarmed, was still a second pair of eyes which would provide safe protection of the custodian. These opinions were contrary to the safety procedure pursuant article 7.4.3 mentioned above and, in my opinion, an extra pair of eyes is not a mitigating measure.
- [22] In addition, C. H. Webb was trained to perform his duties as a guard with a sidearm and not without this equipment. This equipment was also required and mentioned in the safety work procedures and training established by Securicor Canada Limited for a guard to perform his duties.
- [23] I concluded that the safety work procedures for the guard were not applied in this case.
- [24] Therefore, I agree with HSO Marion's decision that a danger existed for C. Masson and C. H. Webb because:
- methodology imposed on the guard and custodian varied from standard safety procedures in Securicor *CIT/ABM Service Standard Operating Procedures* without any mitigating measures to minimize the additional risk that was created by the change;
  - the crew was not provided with the proper equipment, e.g. sidearm, should a situation arise requiring the use of lethal force.
- [25] Consequently, I confirm the direction of HSO Marion.

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Katia Néron  
Appeals Officer

## Summary of Appeals Officer's Decision

**Decision No.:** 05-002

**Applicant:** SECURICOR CANADA LIMITED

**Respondent:** CANADIAN AUTO WORKERS (C.A.W.) UNION,  
Local 4266-A

**Keywords:** Direction, notice of danger, servicing an Automated Banking Machine, unarmed guard

**Provisions:** *Canada Labour Code*, Part II 146(1), 145(2)(a)  
Regulation

### Summary:

Two employees were assigned to service an Automated Banking Machine. Because the employee assigned as being the guard was unarmed and because both employees believed that this situation constituted a danger for their security, they refused to perform their tasks.

Following his investigation, the health and safety officer decided that a danger existed and issued a direction pursuant paragraph 145(2)(a) of the *Canada Labour Code*, Part II.

Pursuant subsection 146(1) of the *Canada Labour Code*, Part II, the employer appealed against the direction.

The appeals officer confirmed the direction of the health and safety officer.