

CANADA LABOUR CODE  
PART II  
OCCUPATIONAL SAFETY AND HEALTH

Review under section 146 of the Canada Labour Code, Part II,  
of a direction issued by a safety officer

Applicant: Correctional Service Canada  
Leclerc Institution  
Laval, Quebec  
Represented by: Pierrette Beaulieu, Human Resources counsellor

Respondent: Union of Solicitor General Employees (USGE)  
Public Service Alliance of Canada)  
Represented by: Jacques Girard  
Local Leclerc 10170

Mis-en-cause: Pierre Morin  
Safety officer  
Human Resources Development Canada

Before: Serge Cadieux  
Regional safety officer  
Human Resources Development Canada

The case was heard on October 28, 1997, at Laval, Quebec.

**Background**

The detailed report of the safety officer states as follows:

On August 12, 1997, as part of an investigation into Corrections Officer Francine Boudreau's refusal to work, I went to the Leclerc Institution, at 400 Montée St-Francois, in Laval. The findings of the investigation into the refusal to work confirmed the non-existence of danger.

The information and facts gathered during the above-mentioned investigation led me to find that the work procedure established by the employer could create a dangerous situation.

The dangerous situation is related to the work procedure prescribed for escorts for inmates from Block 2AB (segregated inmates) to the Visits unit. On their way there, they have to pass through the inner yard at a time when inmates from the regular population may be present.

The points which led me to find that danger existed were as follows:

- the fact that things have been thrown into the windows of Block 2AB;
- the fact that Block 2AB, which is reserved for post-suspension inmates (segregation) has separate infrastructures such as: cells, cafeteria and yard, in order to prevent any contact between the inmates in this block and the regular population;
- the fact that the employer made it mandatory for inmates of Block 2AB going to the Visits unit to be escorted;
- the fact that the mandatory escort for 2AB inmates identifies them to the regular population (because of the escort) and created a situation where an inmate uttered threats to the officer escorting him;
- I consulted an officer experienced in case assessment, Guy Gauthier, about the work procedure implemented by the employer. Mr Gauthier's opinion is that the work procedure at issue constitutes a danger;
- the fact that a previous refusal to work by Corrections Officer Jocelyn Théorêt in similar circumstances led to a finding that danger existed;
- the fact that there is rising tension between the inmate populations;
- the fact that the use of handcuffs and shackles are forms of restraint that a corrections officer may use only in a punitive situation, and that the employer does not allow such restraints to be used for daily escort duty;
- the fact that the medical examination service is provided in Block 2AB by a nurse who attends the inmates in this Block so that they will not have to be moved to the hospital—which confirms that the employer wishes to avoid having the inmates move about in the institution's common areas.

I therefore issued a direction (APPENDIX) verbally and in writing requesting the employer to take measures to ensure the safety of its employees.

### **Employer's argument**

The Applicant's memorandum, submitted initially by Michel Deslauriers, Warden, Leclerc Institution, was entered into the file. According to the memorandum, there are basically two points at issue, to wit:

1. Does the work procedure established by the employer create a dangerous situation?
2. Are adequate security measures in place to ensure the safety of the officers who escort inmates to the administrative building?

Ms Beaulieu submits that the procedure established by the employer does not create a dangerous situation for the corrections officer since the latter is simply accompanying an inmate who has requested it. The memorandum states:

The population of Block 2AB is composed of post-suspension inmates who have local protection problems. These inmates are sometimes afraid of moving about freely among the regular population, and upon request, must be escorted by an officer in the common areas where they may be in contact with inmates from the regular population. A clear distinction must be made between the inmates who indicate a need for protection upon their request and the other inmates who must be placed in administrative segregation because of the serious protection needs they represent.

The memorandum refutes each of the points considered by the safety officer and contends that they do not represent a danger per se.

As concerns the safety measures, Ms Beaulieu submitted abundant case law which tends to show that a corrections officer may not come to the conclusion that a person, in a prison environment, can constitute a danger. In any case, says Ms Beaulieu, the danger alleged by a corrections officer is a danger inherent in the CO's work and constitutes a normal work condition.

### **Argument for employees**

Mr Girard claims that some of the arguments submitted by the employer are incomplete and are not conclusive. Mr Girard concludes that the inherent risk related to their work certainly does not mean that they must disregard the danger that exists in accompanying this type of inmate.

### **Decision**

The question to be solved in this case is as follows: Does the situation described by the safety officer in the direction constitute a danger for corrections officers?

The situation in question (hereinafter the Escort) is described in these terms: The officers who must escort inmates from Block 2AB (segregated inmates) to the Visits unit are exposed to confrontations between two groups of inmates, since they must pass through an inner yard in which inmates from the regular population may be present, whereas at any other time there is no contact at all between the two types of population.

The concept of danger has been analyzed at length by the various courts that have had to consider its meaning. The case law submitted by Ms Beaulieu indicates that the danger should be immediate, and, with regard to the decision in *Bonfa (Minister of Employment and Immigration v. Vincent Bonfa)*, it must be present at the time of the safety officer's investigation. I share the opinion expressed in the case law, and I will use the principles set out above to make a decision in this matter.

I find that there is an apparent contradiction between the direction that was issued and the decision made in the case of Ms Boudreau that no danger existed. In fact, Mr Morin testified that he found danger to be non-existent when he investigated Ms Boudreau's refusal to work

...because there was no inmate in the inner yard of the penitentiary and considering that the presence of danger invoked by Boudreau was not present at the time of the investigation, I must therefore find that danger is non-existent. When we say that no danger was present at the time of the refusal, it was present at other times and it was on these that I based my decision to prevent that at other times there would be no dangerous situation. (my emphasis)

The contradiction comes from the fact that Ms Boudreau is a corrections officer and that as such she must, as part of her duties,<sup>1</sup> escort inmates at various times during her work. I believe that the safety officer was right in finding danger to be non-existent in the case of Ms Boudreau for the reason that there were no inmates present during the investigation into her refusal. For the sake of consistency, I also believe that the safety officer could not find that danger existed when he investigated the Escort procedure since he did not observe nor was present during the performance of such an Escort. I find that at the time he issued the contested direction, the safety officer had not observed that an Escort was to take place at a specific moment in his presence, which would have allowed him, if necessary, to intervene to protect the employee from danger. The safety officer therefore attempted to correct a work procedure for the avowed purpose of solving potential dangers, a situation which goes counter to the principles stated above.

It follows that the concept of a real danger, present at the time of the safety officer's investigation, could be found to exist if a corrections officer had to escort an inmate in specific circumstances presenting potential risks of injury and the safety officer was present to observe the risks in question. In such circumstances the safety officer would be justified in issuing a direction under section 145(2) of the Canada Labour Code, Part II (hereinafter the Code) to protect the employee from the danger. Under paragraph 145(2) of the Code:

**145. (2)** Where a safety officer considers that the use or operation of a machine or thing or a condition in any place constitutes a danger to an employee while at work,

*a)* the safety officer shall notify the employer of the danger and issue directions in writing to the employer directing the employer immediately or within such period of time as the officer specifies

(i) to take measures for guarding the source of danger, or

(ii) to protect any person from the danger; and

*b)* the safety officer may, if the officer considers that the danger cannot otherwise be guarded or protected against immediately, issue a direction in writing to the employer directing that the place, machine or thing in respect of which the direction is made shall not be used or operated until the officer's directions are complied with, but nothing in this paragraph prevents the doing of anything necessary for the proper compliance with the direction.

(my emphasis)

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<sup>1</sup> Mr Blais, Assistant Warden of Leclerc Institution, testified that Ms Boudreau at that time was on a multiple-tasking assignment. This means that the corrections officer will do just about anything during the day. He is made available to the Office of corrections supervisors, and the corrections supervisor assigns the officer who is on a multi-tasking assignment to the various tasks to be performed. An escort between 2AB and the administrative block, for example, is a task that is part of the multi-tasking assignment.

*[Here the regional safety officer explained that the phrase in the French version of the first sentence in 145(2), “situation existant dans un lieu,” which corresponds to the underlined phrase above, is not defined in the Code, and accordingly he sought a dictionary reference, in the Petit Robert, 1996, for the words “situation” and “existant.”*

*He concluded that the phrase in question had to refer to a set of circumstances actually existing in a place and in which a person was currently, presently working—TR]*

However, the circumstances to which the safety officer referred were neither existing nor present at the time of his investigation. Consequently, the direction issued under paragraph 145(2) of the Code was not justified in the circumstances.

In cases where a safety officer conducts an investigation but is unable to personally observe the danger, he would be justified in issuing a direction, if he believes that the Code has been contravened, under paragraph 145(1) of the Code, which states:

**145. (1)** Where a safety officer is of the opinion that any provision of this Part is being contravened, the officer may direct the employer or employee concerned to terminate the contravention within such time as the officer may specify and the officer shall, if requested by the employer or employee concerned, confirm the direction in writing if the direction was given orally.

When a safety officer believes that the employer is not ensuring the health and safety of its employees, either because the work procedure is inadequate or insufficient to protect its employees, he must notify the employer that it is contravening section 124 of the Code, or any other pertinent provision, and order him through directions, preferably in writing, to take measures to correct the contravention.

As far as I myself am concerned, I cannot issue a direction to the employer under paragraph 145(1) of the Code to correct the Escort procedure, should such a correction be necessary, since paragraph 146(3) of the Code does not provide for a regional safety officer to issue such a direction. Paragraph 146(3) states:

(3) The regional safety officer shall in a summary way inquire into the circumstances of the direction to be reviewed and the need therefor and may vary, rescind or confirm the direction and thereupon shall in writing notify the employee, employer or trade union concerned of the decision taken.

In short, the general Escort procedure considered by the safety officer does not consist in a danger per se for the corrections officers in general. Consequently I must rescind the direction. Nevertheless, this does not mean that in a particular case one might not arrive at the opposite finding. Since I find that the directions are not justified in light of the reason stated above, there is no point my considering the case law submitted.

For all the reasons stated above, **I RESCIND** the directions issued under subparagraph 145(2)(a) of the Code on August 26, 1997, by Safety Officer Pierre Morin to Correctional Service Canada, Leclerc Institution.

Decision made on December 10, 1997.

Serge Cadieux  
Regional safety officer

IN THE MATTER OF THE CANADA LABOUR CODE  
PART II - OCCUPATIONAL SAFETY AND HEALTH

DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 145(2)(a)

On August 12, 1997, the undersigned safety officer conducted an investigation in the work place operated by CORRECTIONAL SERVICE CANADA, being an employer subject to the Canada Labour Code, at 400, MONTÉE ST-FRANÇOIS, LAVAL, QUEBEC, the said work place being sometimes known as Leclerc Institution.

The said safety officer considers that a condition in this work place constitutes a danger to an employee while at work:

The officers who must escort inmates from Block 2AB (segregated inmates) to the Visits unit are exposed to confrontations between two groups of inmates since they must pass through an inner yard in which inmates from the regular population may be present, whereas at any other time there is no contact at all between the two types of population.

Therefore, you are HEREBY DIRECTED, under subparagraph 145(2)(a) of the Canada Labour Code, Part II, to take measures to protect these persons from the danger immediately.

Issued at Laval, this 26th day of August 1997.

PIERRE MORIN  
Safety officer  
# 1908

To: CORRECTIONAL SERVICE CANADA  
LECLERC INSTITUTION  
400, MONTÉE ST-FRANÇOIS  
LAVAL, QUEBEC  
H7C 1S7

SUMMARY OF REGIONAL SAFETY OFFICER'S DECISION

Applicant: Correctional Service Canada  
Leclerc Institution  
Laval, Quebec

Respondent: Union of Solicitor General Employees (USGE)

**KEY WORDS**

Escort, procedure, real danger, immediate, safety officer

**PROVISIONS**

145(1), 145(2), 146(3)

**SUMMARY**

A safety officer conducted an investigation following a refusal to work by a corrections officer. The reason for the refusal was that it was dangerous to escort an inmate from the segregation sector to the Visits unit by passing through the inner yard, where inmates from the general population might be present. There is never any contact between these two groups of inmates. The safety officer decided that there was no danger because during his investigation there were no inmates in the inner yard. However, the safety officer decided that the work procedure placed corrections officers in potential danger. The regional safety officer found that this situation was in contradiction with the initial decision of the safety officer since he had determined the non-existence of danger on the basis that he had not observed an escort in the presence of inmates. Since the procedure applies to all corrections officers, including the corrections officer who had initially exercised her refusal, the safety officer should have, as in the case of the refusal, observed the presence of risks during his investigation; this did not happen. The regional safety officer **RESCINDED** the direction.