Decision No.: 97-014

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: Serge Doyon

Respondent: Union of Solicitor General Employees
(Public Service Alliance of Canada)
Represented by: Pierre Blouin

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 July 22, 1997 in Laval, Quebec.

Background

On April 24, 1997, Mr. Mario Lavoie, a correctional officer at Leclerc Institution, refused to perform work which he considered dangerous. The form entitled Refusal to Work Registration, duly signed by Mr. Lavoie, indicates that the reason he gave is:

> [Translation]
> "I refuse to handle detention cases in my range because I feel that we do not have the safety equipment, the personnel and/or the physical space to manage these cases."

The cases to which the correctional officer refers and which led him to exercise his right of refusal are those of two inmates (whom I will call "inmate C" and "inmate H"). The two inmates in question were transferred from detention to administrative segregation in cells in a regular cell block because of overcrowding in the detention area.

The two inmates had been placed in administrative segregation in the detention area for disciplinary reasons. Inmate C was segregated for being in cell 1-D-14, where "brew"[1] was being made, and for associating with the inmates housed there and, according to a second offence report, for making threats against a correctional officer. Inmate H was segregated because a working still was discovered in his cell, along with 3 gallons of "brew", electrical wires, corks, bottles and a filter.

Safety officer Pierre Morin conducted an investigation the same day. He made various observations, particularly with regard to the fact that inmates moved freely in the administrative segregation area of the regular cell block and therefore in the same detention area as inmates C and H and the fact that offence reports were missing from the two inmates' files. Mr. Morin submitted that [Translation] "inmates who are considered to represent a higher risk than inmates in the general population are in an area designed for inmates in the general population, who represent normal risks, and not for inmates considered more dangerous."

At the hearing, the safety officer stated that, in his opinion and contrary to what Mr. Doyon claimed, there was no specific procedure for handling administrative segregation cases in a regular cell block when these cases came from detention. He said that, unlike the general inmate population which could move about freely, these inmates were locked in the same type of cell 23 hours a day (in "deadlock"). The correctional officers had to open the cell door in order for inmates in administrative segregation to receive their meals. The meals could not be served without contact because there was no opening in the cell doors, as is the case in detention. The danger, stated the safety officer, was the inmate in relation to the non-secure physical location.

The safety officer stated that if there had been three correctional officers to open the two inmates' doors, he would not have upheld the refusal. However, there were only two correctional officers to perform the task, one who opened the inmate's door and another who was positioned at the end of the corridor in the range, as this was the control point for that area. Based on the considerations reported in his investigation report, the safety officer decided that it was dangerous for Mr. Lavoie to work in that place and issued a direction to the employer (see Appendix A) under paragraph 145(2)(a) of the Canada Labour Code, Part II (hereinafter "the Code").

An important factor behind the safety officer's decision was that, if the employer considers administrative segregation in a regular cell block as an extension of detention, then the physical equipment and the work procedure should reflect what is in place in detention.

Employer's argument

The applicant's brief, which was initially submitted by Mr. Michel Deslauriers, Director, Leclerc Institution, has been placed on file. According to the brief, there are essentially two questions at issue:

1. Were the security profiles of inmates C and H sufficiently assessed by an expert?
2. Are appropriate safety measures in place in the case of inmates in administrative segregation who are moved to cells in regular cell blocks?

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1 "Brew" means distilled alcohol.

In his oral submission, Mr. Doyon took up the employer's case and answered the two questions at issue in the affirmative. Mr. Jean-Yves Blais, deputy director of the institution, testified for the employer. He gave a detailed description of the different types of controls used at Leclerc Institution.

Mr. Blais explained that, in administrative segregation in detention, inmates received services even though they were in their cells 23 hours a day. He confirmed that there were three correctional officers on the day shift in detention but that there was only one on the evening and night shifts. During the day, there were two officers in the range and one officer at the end of the range, controlling the area. Unlike in a maximum-security facility, the correctional officer controlling the area was unarmed. In detention, each of the doors has an opening, so that there is no physical contact, because the door is not opened to serve meals. When an inmate leaves his cell, two correctional officers are present to let him out, and they accompany the inmate to the visitors' room or the exercise area, in other words, whenever the inmate moves.

According to Mr. Blais, it is the policy of the institution that, when the number of spaces in detention is exceeded, inmates must be placed in administrative segregation in the regular cell block. The two inmates chosen were the best candidates for administrative segregation. According to Mr. Blais' description of the two inmates, they were not high-risk inmates by nature, because of the type of offences they had committed and the fact that they were not physically violent. The unit managers had determined that these two inmates would be the best cases for administrative segregation. One of them was to be released in a few months and the other was well known to the Correctional Service. The two inmates were to be separated from the inmate population until an independent judge had ruled on their status. Following Mr. Lavoie's refusal to work and a reorganization of the space in detention, the two inmates were returned to the segregation area in detention.

Regarding the first question, the Correctional Service submitted that being in possession of contraband and behaving disrespectfully or outrageously were not in themselves sufficient grounds for increasing or re-evaluating the security classification of the two inmates in question. Moreover, only the director and deputy director of the institution had the authority to approve any amendment of a security classification, on the recommendation of the case management team. Leclerc Institution is a medium-security custodial facility. Inmates held there are assigned a security classification based on specific criteria set out in sections 17 and 18 of the Corrections and Conditional Release Regulations and CD (Commissioner's Directive) 505. Inmates C and H had the same security classification as the institution and this classification was not revised upward. Inmates who are assigned a maximum security classification are transferred to a maximum-security facility.

Regarding the second question, Mr. Doyon submitted that the Code did not indicate that a person could constitute a danger as defined in the Code and that the safety officer therefore could not conclude that inmates constituted a danger per se. Several decisions were entered as precedents which applied in the present case. In addition, Mr. Doyon submitted that, even if a danger existed at the time of the refusal, the danger was inherent in the duties of a correctional officer and was a normal condition of employment.

Argument for the employees

Mr. Blouin took almost no part in the discussions. In his closing argument, Mr. Blouin explained that, before Mr. Lavoie refused to work, there was no established procedure at the institution. He stated that, at the time, things were done on a case-by-case basis. There was no officer to provide security. There was no procedure for handling detention cases, and regular inmates moved freely in the range and could provide them with weapons or materials that could be used for assaults. In detention, there is no physical contact. Without providing any details, Mr. Blouin stated that, since the safety officer's visit, there had been no more detention cases in the regular cell block.

Decision

The question at issue in this case is as follows: At the time of the investigation by the safety officer, did opening the door to a cell for inmates in administrative segregation in the regular cell block constitute a danger to the correctional officer, Mr. Lavoie?

Mr. Doyon submitted abundant case law which tends to prove that, in a prison setting, the danger alleged by the correctional officers is inherent in their work. Consequently, the correctional officer would be deprived of the right to refuse to work under paragraph 128(2)(b) of the Code, which stipulates:

> ***128. (1)*** *Subject to this section, where an employee while at work has reasonable cause to believe that*
> *a) the use or operation of a machine or thing constitutes a danger to the employee or to another employee, or*
> *b) a condition exists in any place that constitutes a danger to the employee,*
> *the employee may refuse to use or operate the machine or thing or to work in that place.*
>
> ***(2)*** *An employee may not pursuant to this section refuse to use or operate a machine or thing or to work in a place where*
> *a) the refusal puts the life, health or safety of another person directly in danger; or*
> *b) the danger referred to in subsection (1) is inherent in the employee's work or is a normal condition of employment.*

The danger in a prison setting is the risk of violence, which can take place at any time and does occur often. Needless to say, any refusal to work in this environment will be directed related to this notion because, by its very nature, working with inmates means working with individuals who are known for being delinquent and often dangerous and whose behaviour is unpredictable.

It would appear at first glance that, under the Code, a certain class of employees is deprived of the right to refuse to perform dangerous work, because of the very nature of the work they must do. To determine the extent to which correctional officers can perform dangerous work, I must examine two specific points raised by Mr. Doyon:

1. Can a person constitute a danger under the Code? and
2. What is an inherent danger and how does it affect the employer's responsibility in this setting?

Can a person constitute a danger under the Code?

I will answer this question by analysing the following passage of the decision, submitted by Mr. Doyon, made by regional safety officer Pierre Rousseau in *Agriculture Canada v. Damien Hébert* (hereinafter "the Hébert decision"), in which the chief veterinarian at an abattoir was receiving death threats and other threats from the superintendent of the abattoir. Mr. Rousseau writes:

> *The Code does not refer precisely to a person, but its effect leads us to conclude that a person in a place or operating a machine may, by his physical condition or lack of experience, make such place or machine dangerous. Nonetheless, when the issue is threats of violence by one individual against another, as in the present case, the case falls under the Criminal Code and not the Canada Labour Code Part II.*

I share the opinion of regional safety officer Rousseau with regard to the first part of the passage. In my view, the hazard or condition that results from work with inmates, who are notoriously delinquent and even dangerous individuals, supports the notion of danger. To disregard this condition would amount to excluding a class of employees who perform work involving enormous risks from the Code, which I feel was never Parliament's intention. Moreover, the provisions of the Code do not support this argument. As well, the Code deals specifically with this notion in paragraph 128(2)(a) when it specifies that an employee may not refuse to work in a place where

> *a) the refusal puts the life, health or safety of another person directly in danger;*

We must recognize that the Code allows for the prospect that action taken by one person can constitute a danger to another person. This situation exists in the prison setting. I conclude that a person or, in actual fact, the action of a person, can constitute a danger to another person under the Code.

However, I must admit that, with respect, I differ in opinion with Mr. Rousseau regarding the second part of the passage cited above, to the effect that threats of violence come solely under the Criminal Code. The two Codes can co-exist perfectly well, just as the Code co-exists with other legislation. In my opinion, the situation to which the Hébert decision applies in no way diminishes the employer's responsibility to protect its employees' safety, given that they must work with criminal elements. Correctional officers are entitled to the full protection offered by the Code.

In *Canada (Attorney General) v. Bonfa,* cited by Mr. Doyon, in which an immigration officer refused to escort a person detained under the Immigration Act from prison to a hospital because he was afraid the person was infected with a contagious disease, Pratte J. focussed on the notion of the existence of danger at the time the safety officer conducted the investigation. In this case, the person who was to be escorted by the immigration officer was no longer present when the safety officer did his investigation and the alleged danger therefore no longer existed. It should be noted

that although Pratt J. indicated that the immigration officer's workplace presented no danger when the safety officer did his investigation, he never ruled that a person could not constitute a danger under the Code. Ironically, the Bonfa case concerns the risk which one person, a prisoner possibly infected with a virus, presents to another person, the immigration officer. I conclude that the hazard or condition that results from the presence of a person in a place can represent a danger to another person in that place.

Regarding the second question, which is:

What is an inherent danger and how does it affect the employer's responsibility in this setting?

"danger" is defined in subsection 122(1) of the Code and means:

> *"Any hazard or condition that could reasonably be expected to cause injury or illness to a person exposed thereto before the hazard or condition can be corrected."*

The term "inherent" is not defined by the Code. Consequently, the standard dictionary definition applies. According to Le Petit Robert 1, 1991 Edition, the term "inherent" means [Translation] "Existing as a basic quality of a being or thing, as an inseparable part thereof. Cf. Essential, immanent, inseparable, intrinsic."

It can be concluded that a danger inherent in employment is a danger intrinsic to the work and that such danger is ongoing and therefore cannot be eliminated at its source.

This means that, because inmates are predisposed to unpredictable behaviour including violence, a correctional officer's work involves an ongoing, intrinsic and inseparable hazard that can reasonably be expected to cause injury before the hazard can be corrected. The direct consequence of performing work of the type described above is that the danger is omnipresent in the workplace and cannot be eliminated at its source. Any employee who performs this work can almost certainly expect to be seriously injured unless the employer takes the measures provided for by the Code, such as the necessary training, equipment and action, to protect that employee.

The purpose of the Code is to "prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies" (s. 122.1). It follows that the various provisions of the Code cannot be interpreted in isolation and so as to contradict one another. The Code forms a unit that includes all the provisions. Thus, any employment to which the Code applies must be understood to mean employment governed by its provisions.

Moreover, the notion of "inherent danger" is devoid of practical meaning when used out of context. In this case, the context is the application of the Code to employment governed by its provisions. In this context, reference should be made to the expression "danger inherent in the employee's work", as used in paragraph 128(2)(b), rather than to "inherent danger". It follows that "danger inherent in the employee's work" necessarily implies that:

1. the danger inherent in an employee's work must be understood to mean an ongoing danger that is intrinsic to an employee's specific work and cannot be eliminated at its source;

2. the employee to which paragraph 128(2)(b) applies must be understood to mean a person who is qualified to do the specific work because he or she has the knowledge, training and experience to perform the work properly, for example, in a prison setting, the correctional officer; and
3. the work to which paragraph 128(2)(b) applies must be understood to mean work governed by the provisions of the Code which stipulate, inter alia, that the employer must protect the employees by providing them with the equipment, environment, measures and procedures they need to perform their work properly (sections 124 and 125).

In my opinion, these are the guiding principles for interpreting and applying paragraph 128(2)(b) of the Code.

The hazard or danger is eliminated from the right to refuse to perform dangerous work only when the employer has provided the employee with the training, equipment, procedures and measures needed to protect him. The hazard that can reasonably be expected to cause injury to the employee who persists despite the measures taken by the employer to protect the employee is the danger inherent in the work, a danger which has then been reduced to an acceptable minimum for a qualified employee. When the employer has not discharged its responsibilities under the Code, it is dangerous for the employee to work under these conditions and paragraph 128(2)(b) of the Code does not apply to this danger.

I will decide on the case before me in light of these principles.

In a prison setting, correctional officers run the risk of assault, attack, escape and generally speaking, violence. A correctional officer therefore cannot exercise his right of refusal when the refusal is based <u>solely</u> on inmates' violent nature[2]. This risk is an integral part of his work.

To do their work, which involves hazards likely to injure them, correctional officers at Leclerc Institution must have the training, experience and knowledge they need to do the work properly. However, under the principles outlined above, a correctional officer could refuse to work with an inmate if the measures taken by his employer to protect him were inadequate or insufficient. Needless to say, the wording of the refusal to work by an employee exercising his right would include the notion of the hazard or danger inherent in the employee's work, a notion which would have no practical meaning if the employer's responsibilities to provide protection for the employee were not taken into consideration. In this setting, one cannot exist without the other.

There are tasks which involve a particularly high risk. In a prison setting, the higher the inmates' security classification, the higher the risk and the more the protective measures have to be commensurate with the risk. Simply being in constant contact with notoriously delinquent or dangerous people makes a correctional officer's day-to-day work especially risky. The fact that inmates have a medium or maximum security classification does not in itself give correctional

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2 The decision in *JohnMcKenzie v. Treasury Board (Solicitor General- Correctional Service Canada)*, [1990], P.S.S.R.B. No. 163, concerns the principles stated in this decision because it pertains to safety measures in place and the fact that the risk of escape is inherent in a correctional officer's work. However, the decision in *Harold Bliss v. Treasury Board (Public Works Canada)*, [1987], P.S.S.R.B. file No. 165-2-18 deals with human relations, i.e. stress, between two individuals, a situation which has no application in the present case.

officers more right to refuse to work with these inmates, because this danger is an integral part of their work. Conversely, I would say that this condition in no way lessens correctional officers' right to exercise their right to refuse dangerous work if the measures taken to protect their safety and health are insufficient or inadequate.

The protective measures taken by the employer must be commensurate with the level of risk to which correctional officers are exposed. There is a specific procedure for inmates in detention. In sections 19 to 25, Post Order 8.57 provides for a series of safety measures that, on the whole, are designed to ensure the safety of correctional officers on duty in detention. These measures constitute the employer's policy on this aspect of a correctional officer's work. Every correctional officer must comply rigorously with these measures. I note that section 23 of the Post Order provides that:

> [Translation] "No cell door is opened unless two (2) correctional officers are present."

The wording of this Order does not give the correctional officer any discretion. It is clear and unequivocal. In detention, no cell door is opened unless two (2) correctional officers are present. Consequently, there is physical contact with an inmate only when two correctional officers are present.

The two inmates concerned in this case were in detention when, for space reasons, they were transferred to administrative segregation in the regular cell block. The procedure that applied to these two inmates was and would have remained the procedure for detention, had there not been a need for space in detention. They were transferred to administrative segregation in the regular cell block because they were *the least dangerous* or, as Mr. Doyon stated at the hearing, because they were the most "assumable" cases. However, the safety officer testified that he considered their stay in the regular cell block as an "extension of detention". The employer did not contest this statement. I share the safety officer's conclusion because, when they were being held in the regular cell block, the two inmates were isolated from the other inmates and placed "in deadlock" 23 hours a day, as in detention. After the safety officer's investigation, they were returned to detention.

These two inmates may have been the least dangerous but, when he investigated, the safety officer found that there was information missing from their files which could have changed their security classification. As he was unable to obtain this information, the safety officer based his decision on the following consideration, among others:

> [Translation] "In the case of inmates H and C and as discussed with the case assessment officer, the files of these inmates would have warranted an increased level of protection. However, such files did not exist when correctional officer Lavoie's refusal to work was investigated."

This was contested by the employer. The safety officer maintained, however, that there was crucial information missing from the two inmates' files. In my opinion, when a safety officer is not satisfied that he is in possession of all the information he needs to assess the condition alleged when he conducted his investigation, he is fully justified in deciding that a danger exists. Under the Code, the safety officer must render a decision as to the reality of the danger. The employer

can state that the inmates' files did not warrant a higher level of security, but the safety officer does not have to go on faith and accept what he is told without checking the information, particularly in a situation where an employee has refused to work and one of the parties is contesting the employer's assessment.

When inmates are in detention, their security classification is under assessment. Inmates C and H had committed offences that were considered "minor" but were still serious enough to warrant detention. The two inmates were not taken out of detention because their assessment showed that they deserved a more relaxed system of administrative segregation in the regular cell block. On the contrary, they were transferred to administrative segregation in the regular cell block solely to free up space in detention. The fact that the director of the institution did not revise their security classifications upwards in no way changes the procedure that applies in detention and, by extension, in administrative segregation in the regular cell block.

The two inmates' personal files were submitted to me. Inmate C's file indicates that he will be placed in administrative segregation in detention for the following reason:

> [Translation] *Your association with the inmates in cell 1-D-14 connects you directly with the manufacture of distilled alcohol, which jeopardizes the security of the institution. Under the circumstances, you represent a risk to the institution and are no longer assumable in a medium-security environment.*

Inmate C was released from segregation on April 24, 1997, on the same day as but, I assume, after, the safety officer's investigation. The same conclusion is on inmate H's file and he was released from segregation on May 1, 1997.

Their assessment had to meet the criteria that would make them eligible for administrative segregation in the regular cell block, which was done, even though the safety officer was of the opinion that there was crucial information missing from their files and the case assessment officer also felt that [Translation] "their files would have warranted a higher level of protection." According to the files submitted, the two inmates were placed in detention because they were no longer "assumable" in a medium-security environment. They subsequently became the cases that were most "assumable" in order to create space. Finally, once the space problem in detention had been addressed, they were returned there, presumably because they were no longer "assumable" cases. I doubt that this procedure constitutes Correctional Service policy.

The fact that these two inmates were placed in administrative segregation proves that they had to be separated from the general inmate population. The fact that they were kept in segregation 23 hours a day proves that they were considered to be in detention and were to be subject to the same punitive treatment as in detention. The fact that they were returned to detention only confirms that they had always been under the detention system. In the absence of a specific procedure for handling detention cases in the regular cell block, the correctional officers who have to supervise such inmates are entitled to expect the same safety measures as if these people were in detention. Clearly, since the physical equipment (i.e. the cells) is different in the regular cell block, some measures have to be modified to adapt to the new circumstances. However, in my opinion, basic safety measures cannot be relaxed if the correctional officers are to be protected.

When correctional officer Lavoie refused to work, he indicated that he was refusing for the following reasons:

> "I refuse to handle detention cases in my range because I feel that we do not have the safety equipment, the personnel and/or the physical space to manage these cases." (my emphasis)

When he refused to work, the correctional officer did not refer specifically to the risk inherent in his work but to the deficiency of the equipment used and the lack of personnel who were needed so that he could do his work properly. Mr. Lavoie accepts the risk inherent in his job provided that the prison structures are adequate enough to protect him.

The pertinent facts from the safety officer's investigation are as follows:

- the cells in administrative segregation in the regular cell block were different from those in detention because they were regular cells without openings for serving meals, which meant that the doors had to be opened to provide certain services for the two inmates and consequently there was physical contact with them;
- inmates C and H were in "deadlock" 23 hours a day, the same procedure as in detention, unlike the other inmates in the regular cell block who moved about freely in the range;
- only one correctional officer was to open the door to the cell of each of these two inmates, who were subject to the same punitive system as in detention, contrary to the safety procedure in the detention area, which stipulates that the doors to cells in detention must not be opened unless two correctional officers are present;
- although the security classification of the two inmates in question remained medium, there was information missing from their files which the case officers felt could affect their security classification and the safety officer did not have this information, which would have helped him make an enlightened decision;
- he considered the two inmates' stay in administrative segregation in the regular cell block as an extension of detention, which the employer did not contest, and he felt that the same safety rules should apply; and
- the condition which the safety officer investigated was the same as when Mr. Lavoie refused to work, despite the fact that the inmates were subsequently returned to detention without incident.

On the basis of the foregoing, it is my opinion that the safety officer rendered the correct decision in this case under the circumstances. Consequently, I am of the opinion that the direction was justified. The employer did not follow its own detention procedures when inmates C and H were temporarily transferred to administrative segregation in the regular cell block. I am also of the opinion that, when the safety officer conducted his investigation, there was no specific procedure for handling detention cases in the regular cell block, which created a condition that could be expected to cause injury to correctional officer Lavoie before the condition could be corrected. This is a danger which, in my opinion, is not covered by paragraph 128(2)(b) of the Code.

Consequently, when inmates are placed temporarily in administrative segregation in the regular cell block, as long as Correctional Service Canada has not developed a specific procedure for handling these cases, the detention procedure must apply, although consideration must be given to

any physical or other deficiencies that exist. As the safety officer before me stated, if the doors to the two inmates' cells were opened in the presence of two correctional officers, as is the procedure in detention, the refusal would not have been upheld.

However, the direction refers to the fact that the two inmates had not been sufficiently assessed by an *expert*. Although I accept the fact that there was information missing from the inmates' files, it was never proven that the inmates were to be assessed by an expert other than the existing one. Consequently, I will vary the direction by deleting that reference. In addition, I consider that it is not necessary to describe the danger as being a danger of violence because the lack of a specific procedure for handling detention cases in the regular cell block constitutes a danger not covered by paragraph 128(2)(b) of the Code. This reference will also be deleted from the direction.

For all these reasons, **I HEREBY VARY** the direction issued on 29 April 1997 under paragraph 145(2)(a) of the Code by safety officer Pierre Morin to Correctional Service Canada by deleting the following references: *"without sufficient assessment of their security profiles by an expert and"* and the word *"violence"*.

Issued on October 8, 1997.

Serge Cadieux
Regional Safety Officer

APPENDIX

PART II - OCCUPATIONAL SAFETY AND HEALTH

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

On 24 April 1997, the undersigned safety officer conducted an investigation following the refusal to work made by Mr. Mario Lavoie in the work place operated by CORRECTIONAL SERVICE CANADA, being an employer subject to the Canada Labour Code, Part II, at 400 MONTÉE ST-FRANÇOIS, LAVAL, QUEBEC, the said work place being sometimes known as the Leclerc Institution.

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

The transfer of two inmates in administrative segregation to cells in the regular cell block, without sufficient assessment of their security profiles by an expert and without the necessary or adequate additional safety measures, constitutes a danger of violence to correctional officers who have to work there.

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.

Issued at Montreal, Quebec, this 29th day of April 1997.

[signed]
PIERRE MORIN (MONTREAL)
Safety Officer
1901

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

Decision No.: 97-014

SUMMARY OF DECISION OF A REGIONAL SAFETY OFFICER

Applicant: Correctional Service Canada

Respondent: Union of Solicitor General Employees
(Public Service Alliance of Canada)

KEYWORDS

Detention, administrative segregation, specific procedure, inmates, medium-security institution, inherent danger, person, qualified person, risk.

PROVISIONS

122(1), 128(2)(a), 128(2)(b), 145(2)(a).

SUMMARY

A safety officer conducted an investigation at Leclerc Institution, a medium-security penitentiary, following a correctional officer's refusal to handle detention cases in another area of the facility, in this case administrative segregation in the regular cell block. The safety officer decided that it was dangerous for the correctional officer, when alone, to open the doors to the cells of two inmates from detention who were subject to the same punitive system as in detention. The detention procedure provides that no cell door is opened unless two correctional officers are present. The safety officer determined that the same procedure as in detention should be applied to these two inmates because their temporary placement in the regular cell block should be considered an extension of detention. These two inmates had been placed in the regular cell block only to free up space in detention because of a lack of space. The Regional Safety Officer agreed with the safety officer because, in his opinion, there was no specific procedure for handling detention cases in the regular cell block. The Regional Safety Officer also had to deal with the notion of danger inherent in a correctional officer's work and the employer's position that a person cannot constitute a danger under the Code.

The Regional Safety Officer **VARIED** the direction to correct certain references.