

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: WIC Western International Communications Ltd. (“WIC”)
Vancouver, BC
Represented by: Geoffrey J. Litherland

Intervenor: Communications, Energy and Paperworkers Union of Canada
(CEP)
Vancouver, BC
Represented by: Daniel J. Rogers

Mis en Cause: Dan Strickland
Safety officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer

An oral hearing was held in Vancouver BC on December 15, 1999. Additional submissions were obtained from the parties following the hearing.

Background:

On February 13, 1999, Mr. Geoff Fisher, a microvan operator for BC TV was electrocuted when the telescopic antenna on his vehicle came into contact with an overhead power line. The accident was investigated by safety officer Dan Strickland, Human Resources Development Canada, amid some initial uncertainty with his provincial counterparts as to who between the federal and provincial government had jurisdiction in this matter. At the conclusion of his investigation, the safety officer issued directions to BC TV, a Division of WIC Television Ltd.¹. Those directions were not appealed by BC TV.

The safety officer then formed the opinion that WIC and all other Divisions of WIC were “ignorant” of the Canada Labour Code, Part II (the Code). In fact, the safety officer established that WIC believed that the Code did not apply to their business which was described by Mr. Litherland as being strictly a holding company not engaged in broadcasting and which, in WIC’s opinion, comes under provincial jurisdiction. The safety officer disagreed with this opinion and

¹ A reference to WIC Television Ltd. (“WIC TV”) is to be distinguished from a reference to WIC Western International Communications (“WIC”) which is the parent holding company of the former.

issued a lengthy direction (APPENDIX) to WIC which is the subject of this review under section 146 of the Code.

Preliminary issues: Standing of CEP and Role of safety officer

A. Standing of CEP

Arguments for the employees

The Communications, Energy and Paperworkers Union of Canada (CEP) requested standing before the Regional Safety Officer (RSO) in this case.

Mr. Rogers argued that the RSO had broad authority to grant standing to a party. He submitted that I should grant standing to any party that has a direct and material interest in the outcome of the appeals before me. His argument is supported by the decision of the British Columbia Industrial Relations Council No. C149/92 in *Vancouver General Hospital et al.* He explained that CEP represents the interests of many employees of companies which are owned directly or indirectly by WIC. The CEP can therefore, through that relationship, not only provide the RSO with information and observation but also has a material and direct interest in the outcome.

Mr. Rogers stated that the safety officer commenced his investigation as a result of a fatality to a BC TV employee. BC TV is one of a series of television stations owned and operated by a legal entity known as WIC TV. This latter entity i.e. WIC TV, is one hundred percent owned by WIC, the parent company in this matter. He explained that WIC owns nine (9) television stations and twelve (12) radio stations. It describes itself as a national broadcasting communications holding company. Of the nine (9) television stations, CEP represents approximately 300 to 400 employees at five (5) of those stations. The direction given to WIC therefore affects the employees of BC TV. As a consequence, CEP has a direct and material interest in the outcome of this case in ensuring that the health and safety of its members in the above five television stations is protected.

Mr. Rogers added that, since the safety officer is not a party in this case, there would only be one party i.e. WIC at these proceedings before the RSO. This would mean that the RSO would not be in a position to hear all of the evidence and hear opposing points of view and opposing arguments. Fairness, said

Mr. Rogers dictates that the CEP be granted the standing.

Arguments for the employer

Mr. Litherland submitted that this union (i.e. CEP) is certified to BC TV which is a Division of WIC TV. It is not certified to WIC TV as a whole or to its parent holding company WIC. WIC TV has a number of broadcasting Divisions. WIC itself is a holding company which owns the shares of WIC TV and its business is to strategically manage its investments of which WIC TV is just one. WIC is not engaged in broadcasting. It does not negotiate with this union in collective bargaining. None of WIC employees are certified as members of this union or are members of this union.

According to Mr. Litherland, it would be inappropriate to involve this union in these proceedings involving an entirely different company. The direction given by the safety officer involved BC TV and its broadcasting activities as a Division of WIC TV. This was made clear in the direction to BC TV. That direction was not appealed and was implemented as a whole. The issues before the RSO are the legal issues of, firstly, who is the true employer of the broadcasting employees engaged in BC TV activities. The second issue is whether WIC comes under the authority of the Code as an undertaking or business that is integrally related to a federal undertaking or business, broadcasting being a federal activity. The question is whether the activity of WIC, as a holding company, render it a broadcaster or a company integrally related to broadcasting.

Mr. Litherland submitted that the union cannot assist the RSO in this regard nor does it have a direct interest because, if the direction was to stand, WIC would be left with the very difficult task of implementing the direction with respect to its staff who consist of its office employees on Burrard Street who are not engaged in broadcasting. Therefore it is not this union's members who would be affected by the implementation of the safety officer's directions to WIC.

Mr. Litherland stated that he did not approve of the principles established by the decision of the British Columbia Industrial Relations Council, Decision No. C149/92 in *Vancouver General Hospital et al.* Rather he referred me to a number of decisions which tend to restrict the intervention of other parties where their intervention would cause "*injustice to the immediate parties*". Mr. Litherland submitted that the union rights are not directly affected by the outcome of this case because they do not represent the employees of WIC.

Ruling re: Standing

There is no common law right to be an intervenor. However, intervenors are added at the discretion of the tribunal. In this case, I am of the view that the CEP has a direct interest in the outcome of this case and that it can have a positive impact on the review of the direction process.

I believe that my decision to accept CEP as an intervenor in these proceedings is in line with the current jurisprudence and particularly the decision of Mr. Justice Esson of the B.C. Court of Appeal rendered on February 19, 1985 in *MacMillan Bloedel Limited v. Mullin et al.*; *Martin v. R. in Right of British Columbia and MacMillan Bloedel Limited* in which he wrote:

In each case, it will be necessary to consider the nature of the issue and the degree of likelihood that interveners (sic) will be able to make a useful contribution to the resolution of the issue, without injustice to the immediate parties.

Also, while Mr. Litherland may disagree with the principles established by the decision of the British Columbia Industrial Relations Council, Decision No. C149/92 in *Vancouver General Hospital et al.*, I believe those principles are widely regarded sound principles. In that decision, Vice-Chairman Longpre referred to *Sandbar Construction Limited*, IRC No. C300/88 in which the test for interested party was phrased as follows:

The test for interested party status requires the applicant to show that its interests are affected in a direct and legally material way (and in more than a legally incidental manner) by the outcome of the proceedings.

CEP can contribute significantly to the review process by providing information and evidence that will help establish whether WIC is an employer under federal jurisdiction as well as the extent of control that WIC has over the employees of BC TV, if any. Obviously, if CEP can show that WIC is the ultimate employer of BC TV employees which it represents, then its interest in this case is evident. It is to ensure that the employer will take all the necessary precautions to protect the safety and health of its members at work. It would be impossible for CEP to show this interest if they were not given standing in this case.

Also, WIC has provided no evidence that the participation of CEP in these proceedings would cause injustice to WIC in any way. I am convinced that the involvement of CEP in these proceedings will not prejudice WIC whereas the exclusion of the CEP would cause injustice to the employees represented by CEP by not giving them a fair opportunity to be heard. The decision that I will render in this case could have a significant impact on the safety and health of employees represented by CEP particularly if it is found that WIC is, ultimately, the employer of BC TV employees and that they did not receive the full protection of the Code due to WIC's interference in the compliance efforts of BC TV.

Finally, administrative tribunals are master of their procedure. As such, I can accept intervenors as long as my decision is reached in a manner that is procedurally fair to both parties which I believe it is. For all these reasons, the CEP is granted intervenor status in these proceedings. Its intervention will include presenting evidence, cross-examining on the evidence and making oral and written submissions.

B. Role of safety officer in proceedings

As a preliminary matter, Mr. Litherland expressed concern that a lower tribunal (a reference to the safety officer) speaks to a fresh appeal to his own decision, something he should not be allowed to do. The role of that tribunal, if any, should be limited to speaking to his jurisdiction to make the initial ruling against WIC. Mr. Litherland referred to the decision of Justice Finch of the BC Supreme Court in *Quintette Coal Ltd. v. Assessment Appeal Board et al.*, in which he wrote:

At common law, a statutory decision-maker has the right to be represented in court for the purpose of defending its jurisdiction but not for the purpose of arguing the merits of the case.

Mr. Rogers explained that the RSO is not a court of judicial review proceedings. This is a review under the Code which has no statutory restriction around the process nor the scope of the review which is very different from a judicial review process. The only restriction of the review process is quasi-judicial fairness. The safety officer can appear before the RSO to explain the circumstances of the direction. That, according to Mr. Rogers, is an acceptable explanatory role for the RSO to be involved in as long as he adheres to the rules of procedural fairness.

Ruling re: Role of Safety Officer in Proceedings

Parliament did not envisage that administrative tribunals would act in a manner that a court of law would do. Hence, an administrative tribunal should not be treated as a court of law and, for this reason, the rules that apply to administrative tribunals must be flexible. Also, administrative tribunals are creatures of statutes. Unless the statute restrict the powers of the tribunal then the tribunal is said to be master of its procedure. Therefore, the tribunal can and should take all the necessary steps to ensure that everyone is treated fairly.

As the Regional Safety Officer charged with the responsibility to review the direction in an informal manner, I have asked Mr. Strickland to intervene in these proceedings to assist me in my inquiry. It is the practice of this tribunal to ask the safety officer to testify at RSO hearings to describe the circumstances that led to the issuance of the direction under review. As an administrative tribunal adhering to the rules of natural justice and procedural fairness, it is, in my opinion, acceptable for the tribunal to seek the assistance of the investigating safety officer to explain the circumstances that led to the issuance of the direction under review.

However, I do recognize that the safety officer is not a party to these proceedings and cannot argue in support of or against his/her direction. That responsibility rests with the parties. The safety officer is therefore permitted to participate in these proceedings.

Investigation by safety officer

Mr. Strickland testified that he was the primary investigator of the fatality of February 13, 1999 of Mr. Geoff Fisher of BC TV. The safety officer was assisted by another safety officer during the investigation i.e. Ms. Betty Ryan.

The safety officer explained that he had prior conversations with the original investigator of the Workmen Compensation Board (WCB), Mr. David Ross, because the WCB had been called out on the day of the fatality, not the Labour Program of Human Resources Development Canada. Mr. Strickland informed Mr. Ross that BC TV was a federal jurisdiction company and that he would be assuming responsibility for the investigation. After consulting with WCB officials, Mr. Ross confirmed to the safety officer that WIC is covered under the WCB for audit purposes but as far as occupational safety and health is concerned, it is likely under federal jurisdiction. On this basis, the safety officer contacted WIC officials on a number of occasions informing them that he would be issuing a direction to them. A meeting was arranged for April 23, 1999 at which time the safety officer gave the direction under appeal to WIC.

The safety officer acknowledged that before issuing his direction to WIC, he did not ask them for a copy of any broadcasting license they held, whether they engaged in collective bargaining on behalf of BC TV or whether they owned broadcasting equipment. The safety officer stated that because money flows between corporate entities, that makes WIC involved in broadcasting. The safety officer recognized that, other than consulting with the WCB regarding their activities towards WIC, he did not apply any test to determine whether WIC came under federal jurisdiction other than finding that federal jurisdiction applies by omission since the WCB did not feel they came under their jurisdiction for health and safety purposes. The safety officer clarified that the

direction he issued was given specifically to BC TV which is owned by WIC TV which, he realizes, is a corporate entity. He was also aware that WIC TV has its own board of directors which oversees the management of BC TV.

In answer to the question from Mr. Rogers of why he felt after issuing a direction to BC TV he had to go further and issue a direction to WIC, Mr. Strickland replied that after conducting several interviews with BC TV employees, he realized they were completely “ignorant” of the Canada Labour Code and that WIC was making the decisions affecting BC TV. When asked what evidence he had regarding what control did WIC have over BC TV decisions, the safety officer replied that following his conversations with various people in the telecommunications industry at BC TV and other related industries, he was told that WIC, the holding company, was the one deciding everything, even in occupational safety and health.

Testimony of Mr. Alex Farac

Mr. Farac is vice-president of law and corporate secretary of WIC. He explained that WIC basically owns shares in broadcasting and communications companies and that it does not have any involvement in the day to day operations of the companies it owns. Those, he said, are all in the hands of WIC TV personnel. Mr. Farac stated that for WIC itself, the workforce in British Columbia consist of 13 senior executives and administrative staff who work in downtown Vancouver. WIC has its own board of directors separate from WIC TV.

A chart describing the holdings of WIC was entered as Document D-27. With a few exceptions, the chart was confirmed as accurate. It shows the various Divisions under WIC under the headings of Television, Pay Television, Radio and Satellite Network. Under each heading there is a number of entities related to the heading. For example, under the heading “Television” there are television stations, such as BC TV, which are managed by a corporate entity identified as WIC TV. In this latter example, WIC TV holds the broadcasting license for BC TV’s operations, not WIC. The President of WIC TV is different from the President of WIC.

Mr. Farac testified that WIC does not provide directions or orders to WIC TV or any other subsidiaries. He stated that WIC’s board of directors receive monthly financial numbers. WIC boards meets quarterly and the presidents of the companies below give reports to the WIC board of directors.

Mr. Farac acknowledged that WIC does provide some administrative services to its subsidiary companies, most of which are federal undertakings. For example WIC administers their bank balances and coordinates certain benefits such as long term disability, health care and dental plans, pension plans etc. Mr. Farac testified that WIC does set some policies for its subsidiary companies such as a policy for Sexual Harassment and Non Discrimination, a policy for Standards of Business Conduct and a policy for Journalistic Objectives and Guidelines. He indicated those policies were not for the operations of WIC’s subsidiary companies but for proper citizenship and good corporate governance.

Mr. Farac testified that while the major business that WIC does deals with sending corporate policy and corporate governance, there would never be a direction in the WIC corporate board resolution regarding any operations of BC TV. WIC TV brings its budget to the board. The budget is approved and then WIC TV runs its own affairs.

Submission by WIC

Mr. Litherland argued that the directions against WIC should be rescinded for two reasons. First, he submitted that WIC is not the true employer of the operations persons to whom the directions apply. Second, Mr. Litherland argued that the safety officer had no jurisdiction to impose directions against WIC because WIC is not a federal, “work, undertaking or business” and is not governed by the provisions of the *Canada Labour Code*.

Mr. Litherland agrees that the primary function of BCTV is broadcasting, which falls within federal jurisdiction. However, he submits that the core activity of WIC’s operations is the ownership and strategic management of its investments, which does not fall within federal jurisdiction. Moreover, Mr. Litherland argues that the relationship between WIC and BCTV is not such that it would bring WIC within federal jurisdiction.

Submission by the CEP

On behalf of the Communications, Energy and Paperworkers Union (the CEP), Mr. Rogers argued that WIC is within the federal jurisdiction because its “habitual and normal activity” is to be responsible for a series of federal operations. In other words, looking past the corporate veil, their job is to be senior management and the policy maker for a number of radio, television and pay television broadcasters. The CEP relies on the policies that have been developed for the WIC corporations and the reference in the sexual harassment policy to the *Canadian Human Rights Act*.

Decision:

There are two issues to be determined in this case. The first issue is whether WIC is the true employer of BC TV employees as specified by the direction. The second issue is whether WIC comes under federal jurisdiction for the purpose of the Canada Labour Code, Part II (hereafter the Code).

Is WIC the true employer of BC TV employees?

“Employer” is defined broadly in section 122(1) of the Code:

““employer” means a person who employs one or more employees and includes an employer’s organization and any person who acts on behalf of an employer.”

Clearly WIC is an employer within this definition (subject to the issue of whether it is in federal jurisdiction). The more important question here is whether it is an employer within the meaning of subsection 145(1) of the Code, given that the direction is issued under that authority, that provides as follows:

“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.” (emphasis added)

The language of subsection 145(1) refers to the employer “concerned”. In other words, the legislation contemplates that the employer must have some direct relationship to the work place in which the contravention took place. The question then becomes whether “employer” in this context just means the entity which deals with the day to day managerial functions in the company and who has the bargaining relationship with the union (in this case BC TV) or whether it also includes a company such as WIC that is not involved in day to day issues in the work place and, at most, deals with senior management functions.

In relation to the meaning of “employer”, Mr. Litherland referred me to the decision of the Canada Labour Relations Board (now Canadian Industrial Relations Board) in *Northern Television Systems Limited* (1975), 14 di 136. That case concerned an application by a union. While this case does not deal with health and safety, it is a case which was decided under the Canada Labour Code, Part I, which uses similar language to Part II of the Code. After the certification application was filed, the employer, Northern Television Systems entered into a contract with Mr. Uttley to perform the work previously carried out by the members of the proposed bargaining unit. The employees were fired by Northern Television Systems but subsequently rehired by Mr. Uttley to perform the same work. A question then arose at the hearing as to whether the employer was Northern Television Systems or Mr. Uttley. In considering this issue, the Board set out the following test for determining the identity of the employer:

- 1) Who hires the employees?
- 2) Who controls the employees’ work?
- 3) Who effectively establishes wages and working conditions?
- 4) Who controls any negotiations with respect to item 3?

In *Canadian Airline Flight Attendants’ Association*, the Board outlined the way it interprets the test. In evaluating the first branch of the test, the Board stated that it is not as critical who hires the employees as opposed to who controls the *selection*. The Board also noted that the third and fourth branch of the test are to be determined by who has control over the source of funds.

Mr. Litherland also relied on the case of *Syndicat des travailleurs de Murray Hill v. Murray Hill Limousine Service Ltd.* (1998), 74 di 127 for the proposition that the definition of “employer” relates to the concept of the “operator” of the business.

I will apply the test above in interpreting the definition of employer under subsection 145(1) to the circumstances of this case on the basis of the evidence which is before me. I will use the same principles applied in the certification context since in the health and safety context, it is of primary importance to determine who controls the terms and conditions of employment.

The following summarizes the evidence before me.

- WIC is a federally incorporated company. It is described in its own documents and literature variously as an “integrated broadcasting and entertainment company” and as a national broadcasting and communications holding company;
- One of WIC’s wholly owned subsidiaries is WIC Television Ltd. (“WIC TV”), which, in turn, owns BC TV and several other television stations in B.C. and Alberta. WIC also owns other corporations which own or have shares in radio stations, pay televisions stations etc.;
- For WIC itself, the workforce in British Columbia consist of 13 senior executives and administrative staff who work in downtown Vancouver. WIC has its own board of directors separate from WIC TV.
- WIC does not have a broadcasting license from the CRTC, does not own any broadcasting equipment and does not engage in any broadcasting itself. Mr. Farac described WIC’s primary function as “strategically managing its investments;
- The Union (the CEP) representing BC TV employees is certified to BC TV and not WIC or WIC TV;
- There is very little evidence regarding the day to day relationship between WIC and BC TV. Mr. Litherland asserts that BC TV and not WIC pays BC TV employees and that they are managed in their day to day functions by BC TV. This includes the assignment of work, hiring, firing and discipline.
- There are some policies that have been developed by WIC and apply to the various companies under the WIC corporate umbrella, including BC TV. The policies that are identified in the evidence are a sexual harassment and non-discrimination policy, standards of business conduct and journalistic objectives and guidelines.
- There is one group insurance contract that provides extended health care benefits to the employees of the companies under the WIC corporate umbrella, including BC TV. However, the companies deal individually with pension plan arrangements for their employees;

Having regard to the facts set out above, I am of the view that BC TV and not WIC is responsible for hiring employees, controlling their work and setting their wages and working conditions. I am also satisfied that BC TV is the operator of the television business in question. The only uncertain issue is whether BC TV has control over the source of the funds. It is possible but not certain that WIC may have some control over the source of the funds. However, there is no evidence before me that BC TV cannot make the appropriate changes to the work place because of lack of funds. Therefore, I am of the opinion that the evidence indicates that BC TV is the employer for the purposes of section 145(1) of the Code. Also supportive of this conclusion is the evidence that the union is certified to BC TV, since similar considerations are relevant in determining who the employer should be for the purpose of certification and occupational health and safety purposes.

Mr. Rogers suggested that, should I find that WIC is not the employer of BC TV employees in this case, I should find that WIC TV is the employer and vary the direction to reflect this. However, there is no evidence before me to find that WIC TV is or is not the employer of BC TV employees. This was not a matter investigated by the safety officer. Also, the power to vary a direction under subsection 146(3) of the Code does not include identifying a different employer without a proper investigation by a safety officer. This would amount to issuing a new direction, a power that was not entrusted upon the Regional Safety Officer in the current legislation. I would therefore be exceeding my jurisdiction by identifying WIC TV as the employer in this case without a proper investigation by a safety officer and WIC TV's involvement in the investigation. For all these reasons, the matter of whether WIC TV is the employer of BC TV employees has not been and will not be addressed in this decision.

There is no doubt however that WIC is the employer of the employees located downtown Vancouver. Indeed, this has not been challenged by any of the parties. Consequently, as a minimum, all references to WIC as the employer of BC TV employees, or of any other "WIC Department", must be removed from the direction if WIC is found to be covered by the Code.

Does WIC come under federal jurisdiction for the purpose of the Code

Determining the jurisdiction of WIC presents a unique challenge since there are no cases dealing with the jurisdictional issue that arises in this case, namely, whether a parent company falls within federal jurisdiction when its subsidiary company operates in a federally regulated area. There are cases dealing with the reverse situation, whether a subsidiary company falls within federal jurisdiction where the parent company operates in a federally regulated area. WIC and the Union in their submissions canvassed most of the relevant cases in this area.

Essentially, these cases say that a company will fall within federal jurisdiction if its normal or habitual activities are of a federal nature or if its functions are "vital, essential or integral" to a core federal undertaking. The courts have stressed that in making this determination, it is important to look past the corporate structure and the "legal niceties".

In this case, I am of the view that WIC comes under federal jurisdiction for the purpose of the Code for the reasons that follow.

Firstly, in addition to owning shares in broadcasting and communication companies to the extent where some companies are wholly owned by it, WIC exists almost exclusively to manage and provide direction to companies involved in activities which are recognized as being subject to federal jurisdiction. One cannot focus only on the management function of WIC without considering that its core activity is almost exclusively the management of federal jurisdiction companies. In my opinion, this particular characteristic of WIC goes a long way to attract federal jurisdiction.

Secondly, the corporate search documents submitted by Mr. Litherland show that there are great many similarities between the directors and officers of WIC and the directors and officers of WIC TV. Therefore, I am of the view that the evidence tends to show that WIC has a great deal of involvement in BC TV since it is mostly the same people that run WIC and WIC TV. That being

the case, it is difficult to imagine WIC being under provincial jurisdiction and directing, as a single corporate entity, the activities of federal jurisdiction companies.

Thirdly, I do not accept the argument that WIC Board of Directors only receives financial data and reports from the various holding companies under it. The WIC Board clearly makes important decisions that have far reaching consequences for the holdings. For example, Mr. Farac indicated that WIC approves the budget of WIC TV once WIC TV has approved the budget of its subsidiary companies. Since WIC can decide not to approve the budget as submitted, WIC TV may have to make the necessary adjustments and re-submit the budget for approval. Therefore, while WIC may not have any involvement in the day to day operations of BC TV, it directly influences those operations by controlling the funds made available to BC TV. Evidently, those funds will determine which activities of BC TV will be given priority. The evidence therefore suggests that WIC is not simply managing passively and strategically the finances of its subsidiaries, it is actively involved in making decisions that directly impact on the financial and operational priorities of the subsidiary companies.

Fourthly, WIC is setting policies for all its subsidiaries which directly impact on the working conditions of the employees of those companies. They are not voluntary policies. All subsidiary companies are directed to establish and implement such policies. Failure to do so will result in disciplinary action taken against the non compliant individuals or companies. For example, the “Standards of Business Conduct” policy clearly states in its opening paragraph:

These Standards of Business Conduct have been adopted by WIC. Adherence to them is a condition of appointment or employment by WIC and all of its subsidiaries (individually or collectively “the Company”).

Similar language is used for other policies. For example, WIC has established a Sexual Harassment and Non-Discrimination Policy. This is also a mandatory policy. The only discretion of the subsidiary companies in applying the policy is in the manner in which they will adapt the policy to the nature of their operations. For example, each company will decide on the details to handle sexual harassment complaints. Therefore, from a policy perspective, WIC controls the working conditions of the employees of its subsidiary companies.

In regards to the above, I am of the view that WIC is acting in the capacity of senior management for all entities under it. The senior management activity is vital and essential to the operation of the company known as WIC Western International Communications Ltd., a corporate structure that is made up mostly of federal jurisdiction companies. In my view, the proposition that the nature of the activities of WIC, which is a management function, should be considered without regard to the entities that it manages and the nature of their activities cannot stand. In looking past the corporate veil, I find that WIC and its subsidiaries constitute a whole which operates as a single corporate entity. In support of this finding, I note that the subsidiary companies can exist without WIC whereas WIC cannot exist without its subsidiary companies.

On the basis of this analysis, I am concluding, as the safety officer did before me, that WIC comes under federal jurisdiction for the purpose of the Code. Therefore, the direction will apply with the appropriate modifications to take into consideration that WIC is not the employer of BC TV employees.

For all the above reasons, I HEREBY VARY the direction issued under subsection 145(1) of the Code on April 23, 1999 by safety officer Dan Strickland to “WIC Western International Communication Ltd. and all it’s Departments” by limiting the application of the direction to WIC Western International Communication Ltd., the said work place being located on Burrard Street in Vancouver, BC. Any reference to BC TV or to other Departments of WIC are to be removed from the direction.

Since I received no arguments respecting the strict application of the direction as formulated by the safety officer, I suggest that the parties read the direction as an order to comply with the Code. Therefore, compliance with the Code will be achieved by applying the proper provisions to the location of Burrard Street which is an office setting, not an industrial establishment.

Decision rendered on May 4, 2000

Serge Cadieux
Regional Safety Officer

Human Resource Centre Surrey
7404 King George Hwy
Surrey, B.C. V3W 0L4

Friday, April 23, 1999

Mr. Peter R. Classon - President & C.E.O.
1960 - 505 Burrard Street
Vancouver, B.C. V7X 1M6

Dear Sir:

Compliance with the Canada Labour Code - Part II, for WIC WESTERN
INTERNATIONAL COMMUNICATIONS LTD. WIC and all it's Departments

As you are aware, by your attendance at the march 19, 1999, 1330 hours meeting within the BCTV board room, this office has issued verbal and written directions to BCTV concerning the February 13, 1999 electrocution death of BCTV employee, Mr. Geoff Fisher.

During the course of this investigation by our office through verbal and written statement's of employees and conversations with Senior Management, our office has been informed that they had to create their own "Training Manual", (performed after a November 1998 talk with Workers Compensation Board) because the Corporate Level of WIC Headquarters had not

- a) offered anything in the way of Training and Education, on the Canada Labour Code Part II, and
- b) had not advised BCTV Senior Management persons that their operation is required to comply with the Canada Labour Code Part II.

On interviews, with one singular exception (that they are to report accidents to workers compensation board and to send an annual report to Labour Programs,) they have repeatedly expressed and demonstrated, profound ignorance concerning matters related to the Canada Labour Code Part II.

BCTV has by past management practices and inaction's, up to Feb. 13, 1999, failed catastrophically to comply with the Internal Responsibility System intended from Senior Management by the Canada Labour Code Part II.

Please inform the undersigned, in writing, no later than May 24, 1999, of the Action Plan or measures taken to implement compliance with the attached Direction(s) and to terminate the immediate contravention's of the Canada Labour Code Part II.

Also, please be advised that, pursuant to subsection 145(5) of the Canada Labour Code, Part II, the employer shall cause a copy of this Direction to be posted and give a copy of it to the safety and health committee.

Finally, be also informed that, pursuant to subsection 146(1), you may request, within fourteen days of the date of the direction, a review by the regional safety officer. However, pursuant to subsection 146(4), the request does not relieve you from complying with the attached Direction.

Sincerely yours,

Dan Strickland - Canada Safety Officer #2835
HRDC - Labour Program - B.C. & Yukon Region
7404 King George Highway, Surrey, B.C. V3W 0P1

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

DIRECTION TO EMPLOYER UNDER SUBSECTION 145(1)

1. Paragraph 125(c) of the Canada Labour Code, Part II...
2. Paragraph 125(d) of the Canada Labour Code, Part II...
3. Paragraph 125(e) of the Canada Labour Code, Part II...
4. Paragraph 125(f) of the Canada Labour Code, Part II...
5. Paragraph 125(i) of the Canada Labour Code, Part II...
6. Paragraph 125(j) of the Canada Labour Code, Part II...
7. Paragraph 125(n) of the Canada Labour Code, Part II...
8. Paragraph 125(o) of the Canada Labour Code, Part II...
9. Paragraph 125(p) of the Canada Labour Code, Part II...
10. Paragraph 125(q) of the Canada Labour Code, Part II...
11. Paragraph 125(s) of the Canada Labour Code, Part II...
12. Paragraph 125(t) of the Canada Labour Code, Part II...
13. Paragraph 125(u) of the Canada Labour Code, Part II...
14. Paragraph 125(v) of the Canada Labour Code, Part II...
15. Paragraph 125(w) of the Canada Labour Code, Part II...
16. Paragraph 125.1(a to e) of the Canada Labour Code, Part II...
17. Paragraph 126.(1)(a to h) and 126.(2) of the Canada Labour Code, Part II...
18. Paragraph 128.(1) of the Canada Labour Code, Part II requires the employer to utilize and make all employees aware of the Employees' Right to REFUSE
19. Section 135 of the Canada Labour Code, Part II requires the employer to establish a Safety and Health Committee (specifically 135.(1-5-6-7-8-9-10-11-12-13))

20. Section 136 of the Canada Labour Code, Part II requires the employer to establish a Safety and Health Representative
21. Section 141 of the Canada Labour Code, Part II...
22. Section 147 of the Canada Labour Code, Part II...

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: WIC Western International Communications Ltd. (“WIC”)
Respondent: Communications, Energy and Paperworkers Union of Canada (CEP)

KEYWORDS

Corporate structure, standing, role of safety officer, broadcasting, collective bargaining, certification, strategic management, BC TV, WIC TV, WIC, communication, holdings, subsidiary companies, federal jurisdiction, setting policies, budget approval.

PROVISIONS

Code: 125(c)(d)(e)(f)(i)(j)(n)(o)(p)(q)(s)(t)(u)(v)(w), 125.1(a to e), 126(1)(a to h), 126(2), 128(1), 135(1,5,6,7,8,9,10,11,12,13), 136, 141, 145(1), 147

SUMMARY

A safety officer investigated a fatality to a BCTV employee. The safety officer formed the opinion that the parent company of BCTV which is known as WIC Western International Communication Ltd (“WIC”) was involved in controlling financially the operation of BCTV and impeding the compliance efforts of this latter company. The safety officer gave a lengthy direction to WIC, the parent company, which essentially ordered the company to comply with the Canada Labour Code, Part II (the “Code”).

WIC appealed the direction on two grounds. It first argued that it was not the proper employer of BCTV employees and secondly, it argued it was not a company subject to the federal jurisdiction for the purpose of the Code because it was only involved in the strategic management of the investments of its holding companies.

On review, the RSO agreed with WIC that it was not the proper employer of the BCTV employees. To determine this the RSO applied a fourfold test that is used for the purpose of certification under Part I of the Code to determine who is the employer. The RSO concluded that BCTV was the more likely employer in this case. However, the RSO concluded that WIC was subject to federal jurisdiction for the purpose of the Code. This decision was reached after determining that WIC existed almost exclusively to manage and direct the activities of companies known to be under federal jurisdiction, that it was making decisions that directly impacted on the finances of its holdings, that its officers and directors were the same on the WIC Board as on the WIC TV Board, that it set policies which directly affected the working conditions of the employees of the subsidiary companies. In final analysis, the RSO concluded that WIC was acting as the senior management for the company known as WIC, a corporate structure made up almost exclusively of

federal jurisdiction companies. On this basis the RSO VARIED the direction to exclude all references to BCTV and other Departments but ensuring at the same time that it applied to WIC's workplace located downtown Vancouver which is made up of a few managers and employees.