

CANADA LABOUR CODE
PART II
OCCUPATIONAL SAFETY AND HEALTH

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

Applicant: Trevor Mills, District Manager
Human Resources Development Canada
Represented by: Robert Jaworski
Counsel

Respondent: Public Service Alliance of Canada
Represented by: Mr. Tom Hamilton
Grievance and Adjudication Officer

Mis-en-cause: Rod Noel
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

An oral hearing was held on April 11, 2000 in London, Ontario.

Background:

In January 1999, safety officer Rod Noel was assigned to investigate a complaint from an employee of Cogeco Cable Inc. (“Cogeco”), Ms. Joan Ellis. Having determined that Ms. Ellis’ complaint was justified, safety officer Noel carried out an inspection of her work place at Cogeco. The safety officer concluded his investigation by issuing a lengthy direction (the January 19, 1999 direction) to Cogeco which identified eighteen (18) violations to the Canada Labour Code, Part II (the “Code”) and the pursuant Canada Occupational Safety and Health Regulations (the “Regulations”). That direction is not the subject of this review.

However, following the safety officer’s investigation, the Regional Director of HRDC and the Minister of Labour received formal complaints from Cogeco against the safety officer alleging abusive and unprofessional conduct. As a result of the ministerial complaint, the safety officer’s manager, Mr. Trevor Mills, temporarily suspended the safety officer from the Cogeco file while he inquired into the complaints. Having satisfied himself that Cogeco was working towards compliance with the January 19, 1999 direction, Mr. Mills closed the Cogeco file. He subsequently permanently suspended the safety officer from the Cogeco file. The safety officer

reacted by issuing a direction (APPENDIX) to his manager for a contravention to section 143 of the Code. The safety officer cited Mr. Mills with obstruction and hindrance of a safety officer engaged in carrying out his duties under the Code. That direction was appealed by Mr. Mills.

Chronology of events:

Safety officer Rod Noel explained that he arrived at Cogeco's work place on January 8, 1999 around 10:00 a.m. He was met by the employer's Call Centre acting manager, Ms. Kelly Bird, who had to leave an important meeting when the safety officer arrived. The safety officer stated that Ms. Bird was upset with the fact that he had not made an appointment to inspect Cogeco's work place and requested that he come back another day. The safety officer informed Ms. Bird that it is their policy not to call ahead of time when doing a health and safety inspection. He then explained to her the purpose of his visit and requested the presence of a safety and health representative to accompany him during the inspection. Mr. Noel felt that Ms. Bird was not being co-operative at that point given the numerous delays that were imposed on him. He advised her of her duty to co-operate under section 142 of the Code. He then proceeded with inspecting the work place in the presence of Ms. Bird and Mr. Paul Padbury, the safety and health representative. The safety officer reported that Mr. Padbury co-operated with him during the inspection whereas Ms. Bird was impatient and generally uncooperative with him.

Around noon, Ms. Bird advised the safety officer that she had called his manager, Mr. Trevor Mills who, she said, would be calling him. Mr. Mills called the safety officer shortly after and explained that Ms. Bird had complained about the safety officer's unannounced inspection of Cogeco. He said that she had threatened to call the police to have the safety officer evicted from Cogeco's premises. Mr. Mills explained to Ms. Bird that the safety officer was carrying out his duties under the Code and that he had a right to be there. Ms. Bird then complained that the safety officer was taking too much of her time and requested that Mr. Mills instruct the safety officer to cease his inspection. Mr. Mills informed Ms. Bird that he would not do that and that the safety officer would continue his inspection, which he did for the remainder of the day.

The inspection resumed at 10:00 a.m. on the following Tuesday, January 12, 1999. Officer Noel was accompanied and assisted by Mr. Mark Kohli, a fire engineer with HRDC. The safety officer carried out a detailed inspection of the work place, noting several infractions, particularly in regards to fire safety issues such as the absence of a fire safety plan and evacuation procedures. On January 19, 1999, officer Noel attended the work place of Cogeco accompanied with safety officer Peggy Wright, also from HRDC, to issue directions to the employer.

Letters of Complaints:

On January 22, 1999, the lawyers of Cogeco wrote to Mr. Bob Howsam, Regional Director, HRDC, to request a review of the direction issued by safety officer Noel to Cogeco. The letter sets out the position taken by the company in regards to the directions issued by the safety officer and advises Mr. Howsam that the company would not be posting the directions as ordered by the safety officer. The letter also alleges that safety officer Noel had been unduly confrontational and unfair during his investigation and requested that another safety officer take responsibility for Cogeco.

On September 23, 1999, another formal written complaint was lodged, this time by a different legal firm representing Cogeco, to the Minister of Labour against safety officer Noel. The complaint alleged that the company had “*very serious concerns respecting the entirely inappropriate and unprofessional conduct...*” of officer Noel who, it said, had been very rude and abusive, to use only those two epithets, with Ms. Bird during his investigation. The letter also mentioned that the company “*was also extremely concerned to learn of the manner in which District Manager Trevor Mills handled Ms. Bird’s concerns.*”, a reference to the support that Mr. Mills gave to the safety officer following Ms. Bird’s telephone call to him on January 8, 1999. The letter describes the alleged belligerent behaviour of the safety officer towards Ms. Bird during his inspections on January 8 and 12, 1999. It also describes Mr. Noel’s alleged confrontational attitude towards Mr. Bill Williams, Cogeco’s Director of Call Centre Operations when he returned to Cogeco on August 5, 1999 to do a follow-up inspection while accompanied by safety officer Paul Danton from HRDC. The company insisted that safety officer Noel not ever be permitted to return to Cogeco’s premises in the future. Also, the company was asking that the safety officer write a formal letter of apology to Cogeco and to Ms. Bird for his alleged inappropriate and unprofessional behaviour.

Internal Investigation into Complaints :

Mr. Trevor Mills is the immediate supervisor of safety officer Rod Noel and the District Manager for the Southwest District, Ontario Region of HRDC. As noted above, Mr. Mills was also identified in the complaint by Cogeco which alleged that he had also harassed Ms. Bird during officer Noel’s investigation. Mr. Mills denied the allegation and referred this matter to his Director, Mr. Bob Howsam, for investigation. Until he received a copy of the complaint from Cogeco to the Minister of Labour, Mr. Mills supported and permitted the safety officer to pursue his investigation at Cogeco.

Mr. Mills forwarded a copy of the ministerial complaint to the safety officer to give him the opportunity to review it. He arranged to meet with the safety officer on October 15, 1999 to discuss the content of the complaint. Mr. Mills divided the complaint into 21 points which he reviewed in detail with the safety officer. The safety officer denied all wrongdoing in this case and refuted all the allegations made by Cogeco. Mr. Mills nonetheless decided to temporarily suspend the safety officer from the investigation while he conducted his own inquiry into the allegations of Cogeco. He believed that it was in the best interest of the Labour Program to act in this manner given the concerns expressed around the behaviour of the safety officer and the likelihood that a personality conflict existed in this case.

Mr. Mills then interviewed separately safety officers Paul Danton and Peggy Wright and fire engineer Mark Kohli since all three had accompanied safety officer Noel at various times during the inspections and had knowledge of the behaviour of the safety officer in this case. Officer Danton acknowledged that he observed some aggressive behaviour from officer Noel during the follow-up investigation of August 9, 1999 but that the situation improved as the day progressed. Officer Wright and Mr. Kohli acknowledged that the events referred to in the written complaints took place although “*the situations were different than the way they were presented by Cogeco.*” Both were supportive of Mr. Noel and felt that it was Cogeco that was uncooperative in this matter.

On November 15, 1999, Mr. Mills submitted a report to his Director, Mr. Bob Howsam, in which he reported his findings from the interviews. He explained that he limited his inquiry to the interviews referred to above because he was also named in the complaint of Cogeco. He concluded by stating that his findings were inconclusive as to whether the allegations could be confirmed or not.

On November 19, 1999, safety officer Noel sent an e-mail to Mr. Mills in which he emphasised the continuing concerns that he had with the non-compliance attitude of Cogeco in regards to several violations identified in the January 19, 1999 direction and particularly the violations related to fire safety. He asked that he, or another safety officer, be reassigned to the case to verify compliance with his direction and, if need be, to begin the process for a possible prosecution of Cogeco. Mr. Mills met subsequently with safety officer Noel to discuss these issues.

In consultation with Mr. Noel, Mr. Mills assigned Paul Danton, an experienced safety officer, to verify whether Cogeco was complying with the January 19, 1999 direction and particularly with the two most pressing fire safety issues identified by officer Noel in his meeting with Mr. Mills. Safety officer Danton visited Cogeco around December 3, 1999. He confirmed and reported to Mr. Mills that the safety issues that he was assigned to verify, as well as some WHMIS¹ related issues, were in compliance with the direction. Officer Danton then closed his assignment with Cogeco.

At another meeting with safety officer Noel, Mr. Mills explained to the safety officer that, for reasons of conflict and perception, it was preferable if he did not return to the site. The safety officer expressed his dissatisfaction with the overall resolution of this matter, particularly as it concerned the fire safety issues. He also felt that time was running out on the possibility of initiating a prosecution against Cogeco. Mr. Mills permitted the safety officer to submit a brief regarding a possible prosecution of Cogeco for the non-compliance issues. As it turned out, the time to initiate a prosecution had elapsed and the recommendation to prosecute was rejected. Mr. Mills then informed the safety officer that he was satisfied that Cogeco was working towards compliance with the direction and, on this basis, he was closing the Cogeco file .

During the course of his inquiry, Mr. Mills formed the opinion that the situation between Cogeco and the safety officer “*was turning into a relationship issue, a he said, she said situation*”, as opposed to a safety related issue. As a result of this, Mr. Mills permanently suspended the safety officer from the current Cogeco file. Safety officer Noel insisted that he should be reassigned to the file given that numerous safety issues were outstanding and because, in his opinion, Cogeco was not in compliance with many of the violations identified in his direction. The safety officer felt that, given the circumstances and his suspension from the case, he had a duty to take some decisive action under the Code to protect the safety and health of the employees of Cogeco and pursue this matter further. The safety officer advised Mr. Mills that his suspension constituted obstruction and hindrance of a safety officer in the performance of his duties. He issued a direction (APPENDIX) to Mr. Mills which is the subject of this review.

¹ WHMIS stands for Workplace Hazardous Materials Information System.

Arguments for the employer:

Mr. Jaworski submitted three arguments in support of his request to have the direction rescinded.

He first argued that this case “is a labour relations matter and not a *Labour Code* issue.” The Code, he said, does not provide for directions by a safety officer against his own manager. Mr. Jaworski argued that section 143 of the Code never contemplated the situation where a safety officer would issue a direction to his manager for obstruction. Mr. Jaworski further held that the Department is not estopped from appealing Mr. Noel’s direction simply because the Department has not appealed a previous direction issued by a safety officer to his manager in British Columbia.

Next, Mr. Jaworski submitted that there is no evidence that Mr. Mills hindered or obstructed an investigation of Cogeco. According to Mr. Jaworski, the evidence shows that Mr. Mills

- exercised discretion before removing officer Noel from the investigation,
- supported Mr. Noel during the investigation and only suspended him after receipt of the ministerial complaint,
- gave Mr. Noel the opportunity to respond to all the allegations and met with his colleagues who accompanied him during the Cogeco investigation to obtain their views on the allegations,
- assigned another safety officer, Mr. Paul Danton, to investigate the most pressing safety violations, and
- made the decision to close the file based on the evidence that Cogeco is attempting to comply and on the report and expertise of Mr. Danton, all of which indicates that Cogeco was working towards compliance.

Mr. Jaworski added that the evidence submitted at the hearing by Mr. Kohli, a fire engineer with HRDC who analysed the fire plans provided to him by officer Danton, was submitted after the fact. Since Mr. Noel did not rely on this information to issue his direction, it should be disregarded.

Finally, Mr. Jaworski argued that the safety officer is a mis-en-cause in these proceedings and should not be given the rights of a party. Therefore, the evidence presented by his representative, Mr. Hamilton, should be received with care, if not discarded.

Submission for the employee:

The complete submission of Mr. Hamilton, including the testimony of Mr. Mills, is on file and will not be repeated here. Mr. Hamilton submitted that “Mr. Mills’ actions are a clear indication of a reaction to a political situation. The Financial Administration Act (FAA) does not give Mr. Mills authority to intervene or set aside directions of a duly appointed safety officer. Had Mr. Mills assigned the complete file to another officer, safety officer Noel would have had no reason to issue the direction he did.” Mr. Hamilton emphasised that the role of Mr. Mills is only to assign cases and support safety officers. It is not to involve himself in Code matters and interfere in directions issued. Mr. Hamilton is adamant that section 143 of the Code prohibits anyone, including managers, from interfering in an investigation. In the end, said Mr. Hamilton, “*Mr. Mills’s (sic) actions allowed Cogeco to achieve politically what it could not do legally.*” Mr. Hamilton is

also asking the Regional Safety Officer to draw a negative inference from the absence of Mr. Danton in the proceedings.

Decision:

The issue to be decided in this case is whether the direction given by safety officer Noel to his manager, Mr. Trevor Mills, is justified in the circumstances of this case. I have decided that the best way of deciding this case, in accordance with my mandate under subsection 146(3) of the Code, is to address myself to the direction (APPENDIX) issued, which refers specifically to a contravention of section 143 of the Canada Labour Code, Part II (hereafter the Code). To achieve this, I need to answer the following questions:

1. Does section 143 of the Code apply to Mr. Mills?, and, if so
2. Did Mr. Mills contravene section 143 of the Code?

1. Does section 143 of the Code apply to Mr. Mills?

Mr. Jaworski has argued that this case is a labour relations matter and that I should rescind the direction since section 143 of the Code has no application. Evidently, the relationship of a safety officer, as an employee of HRDC, with his manager clearly falls, as a general rule, within the realm of labour relations. However, the Code provides that, when a safety officer is carrying out his duties under the Code, any obstruction or hindrance of a safety officer will be dealt with under section 143 of the Code. The direct consequence of the existence of section 143 is that I cannot rule that this case is a labour relations matter without first giving consideration to the application of section 143 of the Code.

Section 143 reads as follows:

143. No person shall obstruct or hinder, or make a false or misleading statement either orally or in writing to a safety officer engaged in carrying out his duties under this Part. (emphasis added)

The use of the expression “*no person*” in section 143 captures, in my opinion, every individual without making any distinction as to the nature of the occupation of the person obstructing or hindering a safety officer. The only limitation in this provision is that the obstruction or hindrance must occur while the safety officer is engaged in carrying out his duties under the Code. Therefore, section 143 could apply to the manager of a safety officer when the safety officer is engaged in carrying out his duties under the Code. This is important because, regardless of the outcome of this case, this provision appears to moderate the authority of a manager of safety officers to manage in accordance with his authority under the FAA.

Notwithstanding my finding that section 143 of the Code applies to the manager of a safety officer, a determination of hindrance or obstruction would have to take into consideration the manager’s right to manage safety officers and ensure that this right is in harmony with the duties of safety officers under the Code. The question is therefore, specifically with regards to the direction issued: Did Mr. Mills contravene section 143 of the Code?

2. Did Mr. Mills contravene section 143 of the Code?

To determine whether Mr. Mills contravened section 143, I must consider two issues arising from this provision. The first issue is whether safety officer Noel was engaged in carrying out his duties under the Code when he was allegedly hindered or obstructed by his manager. The second issue to be considered is whether Mr. Mills' actions as a manager constituted a hindrance or obstruction of safety officer Noel relative to section 143. These two issues are interrelated and will be addressed concurrently.

Section 143 specifies that certain actions are prohibited when the safety officer is "*engaged in carrying out his duties under this Part*". The question then becomes "What are the duties of a safety officer under Part II of the Code?" The word "duty" is not defined in the Code. Therefore, the rules of interpretation provide that if a word is not defined in the law, I must refer to the definition of the dictionaries. The New Shorter Oxford English Dictionary, 1993 Edition, defines duty as "5. (An) action required by one's business, occupation or function; the performance of or engagement in the activities required by one's business, occupation or function. The operative word in this definition, for the purpose of this case, is "required".

To determine what actions are required from a safety officer to discharge his duties or responsibilities under the Code, I would normally refer to the provisions of the Code. In this case, other than section 140 which provides that safety officers are appointed for the purpose of Part II of the Code, and section 129 which specifies the duties of a safety officer in a right to refuse work situation, the Code is unclear on what constitutes the duties of a safety officer. However, Parliament also established the Department of Human Resources Development Canada for the purpose of developing and establishing the various policies that are necessary to guide it in administering the Code via its Labour Program. To achieve this, the Department has assigned different duties or responsibilities to people at the various levels within its hierarchy system. Some of those duties or responsibilities can be found, for the purpose of this case, in the position descriptions of the managers and the safety officers.

According to the manager's position description and in relation to this case, Mr. Mills' duties include the following responsibilities:

Plans, controls, directs and co-ordinates investigation of complaints and the enforcement of Part II of the Canada Labour Code by

- managing the distribution of assignments to the officers in order to attain work plan objectives;
- supervising assignments in progress; ...
- discussing inspection and investigation reports with the Labour Affairs Officers (LAO's) ...;
- controlling the distribution of assignments, in light of the officers' experience, expertise and objectivity; and
- deciding appropriate measures to eliminate violations or areas of non-compliance including the recommendation of prosecution actions;

According to the safety officer's position description and in relation to this case, Mr. Noel's duties include the following responsibilities:

Reporting to the District Manager Duties

- issuing directions or Stop Work Orders in cases where an AVC cannot be obtained or the situation warrants (such as a situation of danger);
- monitoring the implementation of AVC's and Directions;
- recommending prosecution to the Regional Director in cases of non-compliance;
- gathering relevant information and preparing a synopsis of such cases to be reviewed by Legal Services;
- preparing a prosecution brief once ministerial authorization to prosecute has been obtained; and
- finalizing a report on each assignment.

It is evident from the above duties that the manager of the safety officers has full responsibility for planning, controlling, directing and co-ordinating the assignments, or re-assignments, of safety officers in respect of investigations and enforcement actions under the Code. Those responsibilities cover the full range of actions that must be taken by the manager to ensure a proper and effective administration of the legislation. If a manager deems it necessary to take specific actions to attain the objectives of the Code, he is authorised by policy to take those actions.

To find that a manager has hindered or obstructed a safety officer engaged in carrying out his duties under the Code would require proof that the manager has knowingly and, with ill intent or with blatant disregard for the safety of employees, interfered directly with a safety officer engaged in carrying out his duties under the Code. This situation could prove to be very difficult to establish. The reason for this is that, when a manager is carrying out his mandate as a manager to manage safety officers, he is operating within a legitimate framework that has been established by the Department for the effective and efficient administration of the legislation. Therefore, the actions taken, in good faith, by a manager within this framework cannot be interpreted as being obstruction or hindrance of a safety officer under section 143 of the Code. The manager is merely assuming his responsibility to manage as a consequence of the employer-employee relationship that exists between a safety officer and his manager.

The safety officer's role on the other hand, which is subject to the authority of his manager, is far more specific and case oriented. When carrying out his duties under the Code, the safety officer is in control of the situation at the work place being investigated or inspected due to the extraordinary powers (s.141, s.145) entrusted upon him by legislation. Those powers are to be used in the application of the Code and directed, given a few exceptions, to work place parties in general. However, once a safety officer has carried out his investigation and has issued a direction, as safety officer Noel had in this case, his continued involvement in the case is subjected to the authority of his manager. For example, the safety officer can monitor compliance with the direction but cannot decide of his own authority to prosecute. The safety officer can only recommend prosecution to the Regional Director, who in this case is represented by the District Manager, Mr. Mills. Furthermore, the safety officer cannot decide of his own volition to re-investigate a case, that authority being also vested with the manager.

What officer Noel considered hindrance and obstruction was the fact that Mr. Mills did not assign him, or another safety officer, to return to Cogeco to address the alleged non-compliance safety issues and to take decisive corrective action for the outstanding infractions. It is Mr. Hamilton's submission that "Had Mr. Mills assigned the complete file to another officer, safety officer Noel would have had no reason to issue the direction [to Mr. Mills] he did." However, the Code does not provide for a safety officer to decide to do a follow-up investigation or to initiate a prosecution. As we have seen above, that responsibility, like many others, has been devolved upon the safety officers' manager or others within the Labour Program. It follows that safety officer Noel can assert no authority in respect of these responsibilities. If a manager decides to close the file, in good faith and after having satisfied himself, as Mr. Mills did, that compliance is being achieved, or to reassign the file to another safety officer, nothing in the Code prevents him from doing so.

In my opinion, Mr. Mills was only assuming his responsibilities as a manager when he gave an assignment to safety officer Noel, when he supervised the assignment in progress subsequent to the complaints, when he discussed with the safety officer the compliance efforts of Cogeco, and, most importantly, when he took control over the assignment because, in his opinion, the safety officer had lost his objectivity in this case. Mr. Mills was not related to Cogeco's work place nor involved in any way with the safety issues at Cogeco. He stood to gain no personal benefit from the outcome of Mr. Noel's investigation. He simply decided that it was time to bring closure to an investigation which had taken place and which, in his opinion, did not warrant further involvement. He believed that the safety officer had lost his objectivity when he realised that the situation between the safety officer and Cogeco was turning into a relationship issue. In my opinion, Mr. Mills reasonably satisfied himself that Cogeco was working towards compliance and legitimately closed the file.

Mr. Hamilton has offered his interpretation of the actions of Mr. Mills. However, Mr. Hamilton has never shown that the motives of Mr. Mills were ill-founded nor that he abused his authority. The bottom line in this case is that Mr. Noel was upset at being removed from the case and did not accept his manager's decision to suspend him permanently from the Cogeco file on the grounds that he had lost his objectivity. The safety officer misjudged his powers and the extent of his duties under the Code when he issued a direction to his manager for a situation that he believed to be hindrance or obstruction of a safety officer engaged in carrying out his duties under the Code. However, in light of the evidence presented in this case, it is my decision that Mr. Mills has not contravened section 143 of the Code. Therefore, there is no need for the direction.

For all these reasons, I HEREBY RESCIND the direction issued under subsection 145(1) of the Code on December 31, 1999 by safety officer Rod Noel to his manager, Mr. Trevor Mills.

Decision rendered on June 27, 2000

Serge Cadieux
Regional Safety Officer

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On December 30, 1999 the undersigned safety officer arrived at the work place operated by HUMAN RESOURCES DEVELOPMENT CANADA, LABOUR PROGRAM, being an employer subject to the Canada Labour Code, Part II, at 457 RICHMOND St., 5th FLOOR, LONDON, ONTARIO, for the purpose of exercising the powers granted by subsection 141(1) of the Canada Labour Code, Part II.

On October 15, 1999 the undersigned safety officer was ordered by his Manager, Trevor Mills, to temporarily suspend an active investigation into workplace health and safety complaints by employees of Cogeco Cable Systems Inc., Burlington, Ontario.

The said safety officer was advised by Trevor Mills that the suspension was necessary, while HRDC investigated complaints made to the Minister of Labour, Claudette Bradshaw, by Cogeco Cable Systems following the safety officer's inspection and subsequent issuing of directions to the employer on twenty (20) Code violations, between January and May, 1999.

On December 30, 1999 the said safety officer was further ordered by Trevor Mills to permanently cease his compliance efforts in the Cogeco investigation, and to have no future contact with this employer or any Cogeco workplace.

The said safety officer was further advised by Trevor Mills that, despite the fact that the employer, Cogeco, had:

initially appealed and then, on the day before the scheduled hearing, withdrawn their appeal of the directions;

had been critical of the Regional Safety Officer review process, which would have been a more appropriate forum for their complaints;

had clearly stated, in a letter to the Labour Program Regional Director, their intent to contravene the Code;

and had complained about the safety officer's actions that were conducted in accordance with published departmental policies and procedures;

that these facts would not alter his decision in the matter.

The said safety officer was further advised that a prosecution proposal submitted by him would be rejected by HRDC-Labour Program.

The said safety officer advised Trevor Mills that his suspending of the safety officer's activity in this file was unnecessary, and was obstructive and hindering of the safety officer in the performance of his duties.

Section 143 of the Code states: "No person shall obstruct or hinder, or make a false or misleading statement either orally or in writing to, a safety officer engaged in carrying out his duties under this part."

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to take measures immediately to ensure compliance with section 143 of the Canada Labour Code, Part II, by permitting the undersigned safety officer to carry out his duties as designated by the Minister of Labour.

Issued at London, Ontario this 31st day of December, 1999.

ROD NOEL
Safety Officer
No. 2010

To: HUMAN RESOURCES DEVELOPMENT CANADA
LABOUR PROGRAM
DOMINION PUBLIC BUILDING
457 RICHMOND ST., 5TH FLOOR
LONDON, ONTARIO
N6A 3E3

Attn: Trevor Mills, District Manager

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Trevor Mills, District Manager
Human Resources Development Canada

Respondent: Rod Noel
Safety officer
Human Resources Development Canada

KEYWORDS

Obstruction, hindrance, manager's right to manage, duties, job descriptions, labour relations matter, assignments, good faith, bad faith.

PROVISIONS

Code: Code: 122, 129, 141, 143, 145(1)

Regulations: N/A

SUMMARY

Following an investigation into the complaint of an employee at the work place of Cogeco, the company complained that the safety officer had abused his authority and was very rude during his investigation. The Company complained first to the safety officer's manager, who supported the safety officer, and then formally complained to the Minister of Labour. The manager temporarily suspended the safety officer following the ministerial complaint while he investigated the matter. The manager assigned another safety officer to verify whether the company was complying with the direction issued by the initial safety officer to the company. Having satisfied himself that the company was working towards compliance, the manager closed the file. The safety officer was insistent and felt he should be reassigned to the file to take action against the company for infractions that he felt were outstanding. During the course of his investigation into the matter, the manager formed the opinion that the situation between the company and the safety officer was turning into a relationship issue and permanently suspended the safety officer from the Cogeco file. The safety officer considered that his manager was hindering and obstructing him and issued a direction to the manager for a contravention to section 143 of the Code.

Upon review the RSO concluded that section 143 could apply in exceptional circumstances to the manager of a safety officer. However, the RSO felt that proof would be necessary to find that a manager contravened section 143. The RSO ruled that the actions taken by the manager to achieve the purpose of the Code cannot be interpreted to constitute hindrance or obstruction of a safety officer. The RSO also noted that the Code does not specify, other than in the right to refuse, what are the duties of safety officers. The RSO relied on the definition of the dictionaries and the position descriptions of the safety officer and his manager to determine what constituted the duties

of both. He observed that duties are assigned to a safety officer by a manager who has full control over the management of assignments. The RSO was satisfied that the manager had not contravened section 143 of the Code and RESCINDED the direction.