

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: 974644 Ontario Ltd.  
Represented by: Ian S. Campbell  
Counsel

Respondent: None

Mis-en-cause: Paul Danton  
Safety Officer  
Human Resources Development Canada

Before: Douglas Malanka  
Regional Safety Officer  
Human Resources Development Canada (HRDC)

Background:

On October 19, 2000, health & safety officer Danton issued a direction to 974644 Ontario Ltd. pursuant to paragraph 141.(1)(i) of Part II of the Canada Labour Code (hereto referred to as Part II or the Code). The direction ordered the Company to produce documents specified therein by October 31, 2000 (see Appendix). The employer requested that the direction be rescinded or at least stayed until the Ontario Court of Justice ruled on whether 974644 Ontario Ltd. was subject to the federal jurisdiction. A hearing to consider the request for a stay was heard on November 15, 2000, in Kitchener, Ontario.

Safety Officer:

Health & Safety officer Danton submitted a report prior to the hearing. It will not be repeated here, but I retain the following:

On December 1, 1998, safety officers Jim Douglas and Paul Danton were assigned to investigate a hazardous occurrence involving 974644 Ontario Ltd. which resulted in a fatality to a private citizen. On November 30, 1999, charges were laid pursuant to the Code against the Company and two individual defendants.

During proceedings related to the charge, the defense counsel raised the defense that 974644 Ontario Ltd. was not a federally regulated company and that HRDC did not have the jurisdiction to proceed. In response, safety officer Danton issued his direction to secure the necessary documentation needed to confirm that the Company was subject to federal jurisdiction.

Applicant:

Mr. I. Campbell wrote to the Canada Appeals Office on Occupational Health and Safety and provided reasons for requesting that the direction be rescinded or stayed until the Ontario Court of Justice ruled on the jurisdiction of 974644 Ontario Ltd. The correspondence will not be reproduced here but forms part of the record.

At the hearing held on November 15, 2000, Mr. Campbell advised me that his client, 9746644 Ontario Ltd., had agreed to a plea bargain with the Crown and that a hearing in the Ontario Court of Justice to hear the guilty plea was scheduled for December 13, 2000. He requested the direction be stayed until December 14, 2000, and that it be rescinded once the Court had dealt with the matter. I agreed to hear his request that the direction be rescinded on or following that date.

Safety Officer Danton testified that he and HRDC agreed with Mr. Campbell that the direction should be stayed until December 13, 2000, when the guilty plea would be entered. He also agreed that there would be no need for the direction after the plea had been entered and dealt with by the Court.

Applicable Legislation:

Subsection 146.(2) of the Code reads:

*“Unless otherwise ordered by an appeals officer on application by the employer, employee or trade union, an appeal of a direction does not operate as a stay of the direction.”*

Decision:

In accordance with subsection 146.(2), I hereby order that the direction that safety officer Danton issued to 974644 Ontario Ltd., on October 19, 2000, pursuant to paragraph 141.(1)(i) of the Code be STAYED until December 14, 2000. The matter may be revisited at that time should circumstances warrant.

Decision rendered November 22, 2000.

Douglas Malanka  
Appeals Officer

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

DIRECTION TO EMPLOYER UNDER PARAGRAPH 141.(1)(i).

On the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> of December 1998 the undersigned health and safety officer conducted an investigation in the workplace operated by 974644 Ontario Limited being an employer subject to the Canada Labour Code, Part II, at 25 Groff Place Unit # 6 Kitchener, Ontario the said workplace being formerly known as Tippit-Richardson Moving and Storage.

Therefore you are HEREBY DIRECTED, pursuant to paragraph 141.(1)(i) of the Canada Labour Code, Part II, to make or provide, no later than 31 October 2000, specifically but not limited to the following:

Trip sheets, customer moving contracts, fuel tax documentation, company tax records, workplace safety and insurance board form 7, employee payroll documents, log books, bills of lading, for the period of November 30<sup>th</sup> 1997 to November 30<sup>th</sup> 1998 inclusively, and to permit the said health and safety officer to examine and make copies or take extracts of such documents.

Issued at London, this 19<sup>th</sup> day of October 2000.

Paul G. Danton Health & Safety Officer # 156

To: Mr. Ron Smith, President  
974644 Ontario Limited  
Tippit-Richardson Moving & Storage  
25 Groff Place  
Unit # 6  
Kitchener, Ontario  
N2E 2L6

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: 974644 Ontario Ltd.

Respondent: None

**KEY WORDS**

Accident; fatality; documents; jurisdiction; stay of direction.

**PROVISIONS**

*Code:* 141.(1)(i); 146.(2)

**SUMMARY**

On October 19, 2000, a safety officer issued a direction to 9746644 Ontario Ltd.. The direction ordered the Company to produce documents specified therein by October 31, 2000. The safety officer explained that on December 1, 1998, he and another safety officer were assigned to investigate a hazardous occurrence involving 974644 Ontario Ltd. which resulted in a fatality to a private citizen. On November 30, 1999, charges were laid pursuant to the Code against the Company and two individual defendants. During proceedings related to the charge, the defense counsel raised the defense that 974644 Ontario Ltd. was not a federally regulated company and that HRDC did not have the jurisdiction to proceed. In response, the safety officer issued a direction to secure the necessary documentation needed to confirm that the Company was subject to federal jurisdiction.

At the hearing held on November 15, 2000, the lawyer representing 974644 Ontario Ltd. advised the Appeals Officer that his client had agreed to a plea bargain with the Crown and that a hearing to hear the guilty plea in the Ontario Court of Justice was scheduled for December 13, 2000. A stay of the direction was requested until December 14, 2000. The Appeals Officer agreed to order the stay until December 14, 2000, and further agreed to hear the Company's request that the direction be rescinded on or following that date.