

Canada Labour Code
Part II
Occupational Health and Safety

C. McGougan
applicant

and

Correctional Service of Canada
Dorchester Penitentiary (N.B.)
respondant

Decision No.: 05-022
May 16, 2005

This appeal made pursuant to subsection 129 (7) of the *Canada Labour Code* was decided by Katia Néron, Appeals Officer.

- [1] This case concerns an appeal that Correctional Officer (CO) C. McGougan made under subsection 129 (7) of the *Canada Labour Code*, Part II, on November 7, 2003. CO McGougan is an employee of Correctional Service of Canada (CSC) at the Dorchester Institution, located in Dorchester, New Brunswick. He is also a member of the Union of Canadian Correctional Officers – CSN (UCCO-SACC).
- [2] On October 16, 2003, at approximately 18h50, CO McGougan refused to begin his shift at the Long-Term Unit of the Shepody Healing Centre. At the time, fourteen inmates were in confinement in their cells at this unit. CO McGougan stated that his personal safety and the safety of the two nurses on staff were at risk because:
- he was ordered to release the inmates in the range; and
 - he was the only correctional officer present in the unit until 22h00, even though the Shepody Healing Centre had a higher rate of assaults than from the rest of the Dorchester Institution.
- [3] Following the employer's unsuccessful effort to resolve the matter, health and safety officer (HSO) Daniel St-Onge investigated on October 29, 2003, into CO McGougan's continued refusal to work.

- [4] HSO St-Onge decided that a danger did not exist for CO McGougan because:
- a post analysis conducted in 1999 by the New Brunswick Region of the CSC established that staffing at the Treatment Centre of the Shepody Healing Centre was to be one correctional officer accompanied by nurses during the day and the evening shifts;
 - the CO McGougan was accompanied in the unit by two nurses;
 - the inmates in this unit were evaluated daily;
 - no issues were reported concerning the inmates' behaviours during the day of the CO McGougan's refusal of work;
 - no direct inmate threats had been directed to an officer or medical staff during this day or at the beginning of the McGougan's shift;
 - the officer was responsible during the shift to constantly evaluate and note changes to inmate behaviours;
 - CO McGougan and personnel staff were provided with personal and fixed alarms;
 - CO McGougan was trained to implement emergency procedures at all times as needed; and
 - the two nurses received training for non-correctional officers from CSC.
- [5] HSO St-Onge confirmed his decision of no danger in writing on October 31, 2003.
- [6] On April 18, 2005, Mr. McGougan wrote to withdraw the appeal. Mr. McGougan indicated that they considered the appeal resolved following a written agreement and a number of procedural changes within Dorchester Penitentiary.
- [7] At the end of April, 2005, our office contacted on two occasions Mr. McGougan to receive a copy of the written agreement and to know more about the procedural changes within Dorchester Penitentiary. Mr. McGougan did not return our call and e-mails.
- [8] As a consequence, based on written submissions by the parties and HSO St-Onge's investigation report in the file, I hereby accept the employee's withdrawal, and confirm that the file is closed.

Katia Néron
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: 05-022

Applicant: Clayton McGougan

Employer: Correctional Service of Canada

Key Words: Decision, refusal to work, order to release the inmates in the range at the unit Long-Term Unit of the Shepody Healing Centre at the Dorchester Penitentiary (N.B.), only one correctional officer present in the unit

Provisions: *Canada Labour Code* 129(7)
Regulation

Summary:

The applicant appealed a decision of no danger issued by a health and safety officer following a refusal to work. The applicant further withdrew his appeal and the appeal officer closed the file.