

**Canada Labour Code**  
**Part II**  
**Occupational Health and Safety**

Correctional Service Canada  
*applicant*

*and*

H. Page  
UCCO-SACC-CSN  
*respondent*

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Decision No. 05-045 (S)  
Date: October 31, 2005

This request for a stay was heard by Appeals Officer Richard Lafrance, on October 27, 2005.

**For the applicant**

Richard Fader  
Counsel for Correctional Service

**For the respondent**

Michael Bouchard  
UCCO-SACC-CSN

- [1] This decision concerns the request for a stay of a direction issued to Correctional Service Canada (CSC) under Paragraph 145(2)(a) of the *Canada Labour Code*, Part II by health and safety officer (HSO) Chris Mattson.
- [2] In addition to a written submission from the applicant, a teleconference was held on October 27, 2005 with both parties in attendance.
- [3] The direction states that the HSO is of the opinion that Correctional Service of Canada (Millhaven Institution) is in contravention with the following provisions of Part II of the *Canada Labour Code*

**125.(1)** Without restricting the generality of Section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,

- w) ensure that every person granted access to the work place by the employer is familiar with and uses in the prescribed circumstances and manner all prescribed safety materials, equipment, devices and clothing; and the *Canada Occupational Health and Safety Regulations*:

### 12.1 Where

- (a) it is not reasonably practicable to eliminate or control a health or safety hazard in a work place within safe limits, and
- (b) the use of protection equipment may prevent or reduce injury from that hazard,

every person granted access to the work place who is exposed to that hazard shall use the protection equipment prescribed by this Part.

[4] Having heard the arguments of the parties, I decided to grant a conditional stay of the direction to Correctional Service Canada, which will be explained later on in this decision.

[5] The reasons I granted the stay were:

- The question to be tried was certainly not frivolous or vexatious in the sense that when one deals with health and safety of people the question is always serious.
- With regard to irreparable harm, I am convinced that, as indicated by Mr. Fader, the use of breathing masks in a work place such as a penitentiary may impede on the interaction between correctional officers and inmates and therefore erode the dynamic security model. Furthermore, the implementation of a total smoke ban before all preparatory work is complete, is in my mind, asking for serious problems within the facility. Therefore, the safety and security of everyone inside the facility could be at risk, thus creating irreparable harm to Correctional Service Canada.
- On the balance of inconvenience; while being exposed to an unmeasured amount of second hand smoke for an average of approximately 100 minutes a day for a period of three months, give or take a few days, is an inconvenience if not a risk. However, the risk of perturbing the security of the institution with the proposed protection method, outweighs the risk of exposure to second hand smoke for such a short period of time. This is especially true since the employer proposed to modify the ventilation system to improve air quality in the said work place.

[6] Therefore, as I mentioned above, I am granting the stay until an Appeals Officer hears the appeal on its merit. However, this is conditional to CSC improving the ventilation system by November 10, 2005 to ensure adequate ventilation in the work place until the total smoking ban is in effect on January 31, 2006. That is, according to their submission;

- “ ...The CSC undertakes to make the necessary improvements in the system to have it operate in accordance with its design specifications. We are confident that these efforts will result in demonstrative improvement in the air quality.

Specifically the results will produce more fresh air exchanged in the cells with outside air, and will create a slight negative pressure that will, in effect, draw air from the corridors to the cells. The amount of air exchange can be set, monitored and adjusted with the existing unit. This is achievable at Millhaven Institution because the system has both supply and return fans.

As mentioned above, the CSC is committed to the total indoor smoking ban of January 31, 2006”.

[7] In the event that the condition is not met, I ask that one of the parties or the health and safety officer contact the Appeals Office for a review of the application for a stay.

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Richard Lafrance  
Appeals Officer