

Tribunal de santé et
sécurité au travail Canada



Occupational Health
and Safety Tribunal Canada

Ottawa, Canada K1A 0J2

Citation: G. Martin-Ivie et. al v. Canada Border Services Agency, 2010 OHSTC 15

Date: 2010-10-12
Case No.: 2005-52
Rendered at: Ottawa

Between:

G. Martin-Ivie et. al, Appellants

and

Canada Border Services Agency, Respondent

Matter: Procedural order for an *in camera* hearing

Decision: The request is granted

Decision rendered by: Mr. Serge Cadieux, Appeals Officer

Language of decision: English

For the appellants: Ms. Mary Mackinnon, Counsel, Raven, Allen, Cameron, Ballantyne & Yazbeck LLP/s.r.l.

For the respondent: Mr. Richard Fader, Counsel, Treasury Board Legal Services

Canada

REASONS

WHEREAS G. Martin-Ivie et. al appealed the decision rendered by Health and Safety Officer Douglas A. Gould on November 22, 2005 following their refusal to work at the border crossing located at Port of Coutts, Coutts, Alberta;

AND WHEREAS the Respondent, through its counsel, Mr. Fader, seek an order from the Appeals Officer that the appeal be held completely *in camera* as it involves questions dealing with national security as well as the security of the officers at border crossings in Canada and that the comprehensive decision of the Appeals Officer be examined by the parties, prior to its release, for the purpose of vetting those portions considered too sensitive for public distribution;

AND WHEREAS the appellants submit that a public hearing is the norm for administrative tribunals, that it would not compromise national security or the security of the officers attending border crossings to the extent that the portions of the hearing where national security or the security of the officers are an issue could be identified and dealt with *in camera* and that vetting the decision of the Appeals Officer raises concern over the transparency of the decision;

AND WHEREAS the Appeals Officer recognizes that this case could disclose sensitive information dealing with issues of national security and the security of the officers at border crossings such as policies, procedures and security information contained in several databases that are not available to the public;

AND WHEREAS it is stated in paragraph 146.2(h) of the *Canada Labour Code*;

146.2 For the purposes of a proceeding under subsection
146.1(1), an appeals officer may

(h) determine the procedure to be followed, but the officer shall give an opportunity to the parties to present evidence and make submissions to the officer, and shall consider the information relating to the matter;

the Appeals Officer orders that:

1. The hearing will be held *in camera* in the present case.
2. Any evidence adduced *in camera* and any written submissions are expressly prohibited from disclosure by anyone participating and assisting in these proceedings. This includes evidence relating to Health and Safety Officer Gould's testimony.

With regards to the request that portions of the Appeals Officer's decision be vetted, I reserve my decision on this matter until the conclusion of the hearing.

Issued at Ottawa this 12th day of October, 2010.

Serge Cadieux
Appeals Officer