

CANADA LABOUR CODE  
PART II  
OCCUPATIONAL SAFETY AND HEALTH

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

Applicant: Richard Fréchette Inc  
Windsor, Quebec  
Represented by Louise Baillargeon, Counsel

Respondent: Occupational Safety and Health Committee  
Represented by Sylvain Bérard, employee member

Mis en cause: Mario Desrosiers  
Safety officer  
Human Resources Development

Before: Serge Cadieux  
Regional Safety Officer  
Human Resources Development

This case was heard by way of written submissions.

Objections and Preliminary Remarks

The Regional Safety Officer's review process in this case was much criticized by M<sup>e</sup> Baillargeon. Allowing safety officer Mario Desrosiers to intervene in the case to clarify certain points of his investigation report was viewed by M<sup>e</sup> Baillargeon as a flagrant infringement of the principles of natural justice. According to M<sup>e</sup> Baillargeon, both the safety officer and the investigation report that he submitted to the Regional Safety Officer should be disregarded, so that the Regional Safety Officer might conduct his inquiry independently.

M<sup>e</sup> Baillargeon alleges that the Regional Safety Officer is allowing the safety officer to intervene in this case as if he were a concerned party. She formally advised the Regional Safety Officer that she objected to any involvement of the safety officer in this case, including his filing an investigation report.

M<sup>e</sup> Baillargeon submits as follows regarding the safety officer's investigation report entitled "Request for review of the direction issued on 23 February 1996":

[Translation] As this evidence is illegal, we object to its remaining on the record; it must be promptly discarded. What is more, as you have already read it, you should disqualify yourself as having already been influenced, while my client has not had the opportunity to check the accuracy of the allegations contained in it.

The Public Service Staff Relations Board had to examine this issue in *Julie Hamel v The Treasury Board (Solicitor General of Canada, Correctional Service)*, File No 165-2-56, in which Deputy Chairman P. Chodos wrote:

The second matter that I wish to comment on is the question of providing a report to the Board and to the parties in respect of the safety officer's reasons for decision. Mr Robert stated that as a matter of policy, he does not issue his report concerning the reasons for his decision prior to an inquiry under subsection 87(1) [now 130(1)] in order to avoid unduly influencing the Board's conclusions. In my view, it is entirely desirable that both the parties and the Board be provided with a written report outlining the reasons for the safety officer's decision as soon as possible after the decision is rendered. Certainly, that report should be made available to all concerned prior to the Board's conducting an inquiry pursuant to subsection 87(1)." (my underlining)

I fully share the Board's opinion on this point. Further, as the Regional Safety Officer responsible with reviewing the direction issued in this case, I advised M<sup>e</sup> Baillargeon that, as an administrative tribunal with a quasi-judicial function, I was master of my procedure, and that, accordingly, I intended to proceed in this case as fairly as possible, ensuring that the process remained fully transparent. I consider the safety officer's involvement in any inquiry to review directions to be necessary, not to say indispensable in such circumstances. I liken the role of a safety officer in my inquiry to that of a police officer who comes to testify in court about offences that he observed and the reasons why he acted. It is clear at this time that the safety officer is not a party concerned in this case. His is a witness of the tribunal.

The safety officer's intervention in this case enables him to confirm that he did in fact observe and report offences, even if some of the situations that were the subject of his investigation no longer exist, as is clearly the case at present. This intervention is all the more important when no designated body or individual is intervening in the review of the directions to represent the employees' interests. In the present case, I tried to obtain the active participation of the employee member of the Safety and Health Committee, but in vain. I note, however, that M<sup>e</sup> Baillargeon substituted herself for the member representing the employees on the Safety and Health Committee by answering the letter that was sent under separate cover to Mr Bérard, which is a rather unusual situation.

I invited M<sup>e</sup> Baillargeon to submit her arguments to me in reply to the explanation supplied to me by the safety officer about a specific point in his investigation report. I also suggested that M<sup>e</sup> Baillargeon advise me if she thought that a hearing was necessary to clarify her client's position in this case. She informed me that it would be pointless, because she would only be repeating orally the same arguments that she submitted to me in writing. I therefore decided to proceed in this case by making a decision based on the written arguments submitted to me by M<sup>e</sup> Baillargeon and on the safety officer's investigation report.

## Background

The safety officer conducted a general inspection of the work place used by the employees of Richard Fréchette Inc on 6 February 1996. He was accompanied at the time by Mr Patrick Logan, a manager.

The safety officer reports to us that he "began the inspection with the dispatcher's officer, following the inside hallway leading to an adjacent warehouse which I crossed to reach the door leading through the inside to the adjoining premises, the garage (space for repair/maintenance, parts store, personal service area). I completed the tour with an inspection of the comptroller's office adjacent to the dispatcher's office and the office of the manager located on the floor below the office occupied by the dispatcher. Photographs were taken, and an oral direction was issued and confirmed in writing on 23 February 1996." (See Appendix.)

The safety officer states that "at the time of the inspection all the employees affected by the items listed in the direction, including the dismissed "mechanics and/or handlers" were under federal jurisdiction, and all the items listed were valid and required that measures be taken to protect the employees of Richard Fréchette Inc."

## Submission for the employer

M<sup>e</sup> Baillargeon submits the following arguments in support of the request for review:

1. The employer, Richard Fréchette Inc, does not own or control the work place to which the directions refer, except for the offices.

In fact, the employer no longer has any mechanics and/or handlers in its employ, but has subcontracted the repair and maintenance of all motor vehicles to a company under provincial jurisdiction over which the safety officer has no jurisdiction. The directions contained in paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10 and 11 are therefore not applicable, because the employer no longer performs the work in question with its own employees, and because it does not control the work place in question, which is no longer under its authority and, moreover, has never been fully so because it is owned by a company under provincial jurisdiction (section 125.1).

2. Review of the direction appearing in paragraph 2 of the directions is requested by the employer because the reason the comptroller's and dispatcher's offices contained boxes, which in any case in no way interfered with normal traffic, was that the company's auditors are regularly on the premises at that time of year to prepare the company's financial statements.
3. Regarding paragraph 12 of the directions, the company will hold a monthly meeting beginning in March 1996; this is the only direction for which a review is not being requested.

## Decision

M<sup>e</sup> Baillargeon has identified the specific paragraphs that I must examine. I shall deal with the arguments made by M<sup>e</sup> Baillargeon in the order in which they were presented to me.

### 1. The directions in paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the Appendix

M<sup>e</sup> Baillargeon does not contest the validity of the directions listed above. She alleges, first, that the employer no longer performs the work in question with its own employees. In fact, it appears that, as a result of the directions, the work performed by the employees of Richard Fréchette Inc was subcontracted to a company under provincial jurisdiction, which action, according to her, renders the directions null and void. At the time of the safety officer's investigation, and when the directions were issued, the employees were in the employ of Richard Fréchette Inc, a company under federal jurisdiction. Accordingly, this first argument does not hold as it concerns the justification of the directions. I therefore reject this argument, although it does have a concrete effect on the subsequent enforcement of the directions. It is not the responsibility of the Regional Safety Officer to determine to what extent or in what way Richard Fréchette Inc will have to comply with the safety officer's directions, even if they have become inapplicable through a subsequent action of the company. M<sup>e</sup> Baillargeon will have to apply to the safety officer to resolve this issue.

M<sup>e</sup> Baillargeon's second argument is that Richard Fréchette Inc does not control the work place in question, because it is no longer under its authority and, moreover, was never fully so because it is owned by a company under provincial jurisdiction (my underlining). I note that M<sup>e</sup> Baillargeon is clearly not categorical in submitting this argument. The contention is that control of the work place is shared between a company under federal jurisdiction, to wit Richard Fréchette Inc, and a company under provincial jurisdiction, to wit H. Faucher Transport Inc. This is precisely the point that I asked the safety officer to clarify. I asked him to explain why he claimed that the employees were under federal jurisdiction at the time of his investigation.

In reply to my question the safety officer explained, to my satisfaction, that the management of the two companies was in the hands of a third company, a holding company called Gestion F.L. Logan Ltée, and that the majority shareholder and president in the case of all three companies was the same person, Marie-Anne Logan. The safety officer explains that

On 6 February Richard Fréchette Inc was using the garage for the purposes described in my report of 22 March 1996. The garage, owned, according to Mr Logan, by H. Faucher Transport Inc, was for the exclusive use of Richard Fréchette Inc and H. Faucher Transport Inc. Both have as their principal shareholder Gestion F.L. Logan Ltd and as their president Marie-Anne Logan.

The question that I have to ask myself in this proceeding is the following: who ultimately controlled the work place used by the employees of Richard Fréchette Inc at the time of the safety officer's investigation? This question has a bearing on the employer's duties to its employees as provided in section 125 of the Code. This provision reads as follows:

125. Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer,

In this case, the work place operated by Richard Fréchette Inc, for example, the garage, the offices, the personal service spaces and so on, were controlled exclusively by Marie-Anne Logan, the principal shareholder and president of Richard Fréchette Ind. It has not been demonstrated to me that any real distinction existed among the various companies named above as regards control of the work place in question, so that I conclude that the Richard Fréchette Inc fully controlled the work place that was the subject of the safety officer's investigation. Accordingly, the direction is in my opinion justified in the circumstances. As I do not have to deal with the validity of the directions in paragraphs 1, 3, 4, 5, 6, 7 8, 9, 10 and 11 of the Appendix, I hereby CONFIRM the directions in those paragraphs.

2. The direction in paragraph 2 of the Appendix

This direction reads as follows:

Subsection 125(p) of the Canada Labour Code, Part II, and subsection 2.12(2) of the COSHR

In the controller's and the dispatcher's offices there are boxes of forms or equipment lying about the floor and interfering with normal traffic.

Subsection 2.12(2) of the Regulations provides as follows:

2.12(2) All dust, dirt, waste and scrap material in every work place in a building shall be removed as often as is necessary to protect the safety and health of employees and shall be disposed of in such a manner that the safety and health of employees is not endangered.

I am satisfied that the boxes of forms or equipment present in the work places of the comptroller and the dispatcher were not dust, dirt, waste or scrap material as provided in subsection 2.12(2) of the Regulations. These boxes were being used for professional activities, and, accordingly, I cannot claim on the basis of the information that has been submitted to me that they were placed in a manner that might \_obstruct or encroach upon passageways, traffic lanes or exits\_ [paragraph 14.19(2)(b) of the Regulations]. For these reasons, I RESCIND the direction appearing in paragraph 2 of the Appendix.

3. The direction in paragraph 12 of the Appendix

As the twelfth paragraph of the direction is not subject to a request for review, as specified by M<sup>c</sup> Baillargeon above, I shall not rule on this specific point.

In summary, I hereby CONFIRM the directions in paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the direction issued pursuant to subsection 145(1) of the Code on February 23, 1996 by safety officer Mario Desrosiers to Richard Fréchette Inc, and I hereby RESCIND the direction in paragraph 2 of the direction issued pursuant to subsection 145(1) of the Code on February 23, 1996 by safety officer Mario Desrosiers to Richard Fréchette Inc.

Decision delivered on June 17, 1996.

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 February 6, 1996 the undersigned safety officer conducted an inspection in the work place operated by Richard Fréchette Inc, being an employer subject to the Canada Labour Code, Part II, at 5 rue des Prés, Windsor, Quebec.

The said safety officer is of the opinion that the following provisions of the Canada Labour Code, Part II, are being contravened:

1. Subsection 125(p) of the Canada Labour Code, Part II, and subsection 2.12.(2) of the Canada Occupational Safety and Health Regulations (COSHR).

There was scrap material in the garage.

2. Subsection 125(p) of the Canada Labour Code, Part II, and subsection 2.12.(2) of the COSHR.

In the comptroller's and the dispatcher's offices there are boxes of forms or equipment lying about the floor and interfering with normal traffic.

3. Subsection 125(t) of the Canada Labour Code, Part II, and paragraph 3.11(2)(b) of the COSHR.

In the garage, the portable ladder is not secured to the roofs of the trailers.

4. Subsection 125(j) of the Canada Labour Code, Part II, and paragraph 12.10(1)(a) of the COSHR.

In the garage, work is performed on the roofs of trailers without a fall-protection system.

5. Subsection 125(g) of the Canada Labour Code, Part II, and subsection 9.2(1) of the COSHR

The personal service room used by the mechanics is not in a sanitary condition.

6. Subsection 125(g) of the Canada Labour Code, Part II, and section 9.4 of the COSHR.

The mechanics' personal service room is cleaned less frequently than prescribed by regulation.

7. Subsection 125(p) of the Canada Labour Code, Part II, and section 9.8 of the COSHR.

The material stored in the mechanics' personal service room is not kept in a closed cupboard.

8. Subsection 125.1(a) of the Canada Labour Code, Part II, and subsection 10.31(1) of the COSHR.

No supplier material safety data sheets for controlled products.

9. Subsection 125(q) of the Canada Labour Code, Part II, and section 10.27 of the COSHR.

No material safety data sheets for hazardous substances.

10. Subsection 125.1(c) of the Canada Labour Code, Part II, and section 10.26 of the COSHR.

The portable motor oil containers must be identified with a work place label.

11. Subsection 125(f) of the Canada Labour Code, Part II, and section 16.7 of the COSHR.

The first aid kit used in the garage is noncompliant because it is incomplete and unsanitary.

12. Subsection 135(8) of the Canada Labour Code, Part II.

Safety and health committee meetings are held less frequently than prescribed by the Act.

Therefore, you are **HEREBY DIRECTED**, pursuant to subsection 145(1) of the Canada Labour Code Part II, to terminate the contraventions no later than March 12, 1996.

Issued at Montreal, this 23rd day of February 1996.

Mario Desrosiers  
Safety Officer  
Id No 1845



SUMMARY OF THE REGIONAL SAFETY OFFICER'S DECISION

Requester: Richard Fréchette Inc

Interested Party: Occupational Safety and Health Committee

**KEYWORDS**

Criticism, control of work place, traffic, jurisdiction.

**PROVISIONS**

Code: 125, 125(p), 145(1)  
COSHR: 2.12(2), 14.49(2)(b)

**SUMMARY**

A safety officer noted a series of contraventions of the Code and the Regulations in the work place of the above-named employer. He issued a direction which was appealed on the grounds that the company no longer controlled the work place because the work was subcontracted to a company under provincial jurisdiction. The Regional Safety Officer is of the opinion that at the time of the contraventions the work place was in fact controlled by Richard Fréchette Inc, and accordingly CONFIRMS the directions. A single contravention was RESCINDED. It related to the presence of boxes being used for audit work, and it was not possible to conclude from the information on record that they interfered with traffic.