

CANADA LABOUR CODE
PART II*
OCCUPATIONAL SAFETY AND HEALTH

Review under section 146 of Part II of the *Canada Labour Code*
of a direction from a safety officer

Employer: Canadian Corps of Commissionaires
Represented by: Luc Giroux

Union: Union des agents de sécurité du Québec
Represented by: Denis Lavoie

Mis-en-cause: Pierre Morin
Safety Officer
Labour Program
Human Resources Development Canada

Before: Michèle Beauchamp
Regional Safety Officer
Human Resources Development Canada

Background:

On November 10, 1999, safety officer Pierre Morin conducted an investigation at the Centre de prévention de l'Immigration (CPI) located in Laval, Quebec, further to a complaint made to him by an employee of the Canadian Corps of Commissionaires (CCC) who was assigned to the CPI. The complaint alleged that there was no safety and health committee for CCC employees working at the CPI as security guards.

On November 30, 1999, following his investigation, safety officer Morin issued a direction to the Canadian Corps of Commissionaires pursuant to subsection 145(1) of Part II of the *Canada Labour Code* (Appendix A), ordering the CCC to establish, by December 15, 1999, an occupational safety and health committee [translation] "to represent the employees working at the Centre de Prévention de l'Immigration in Laval".

The employer received the direction in writing on December 3, 1999. On December 15, the employer requested a review of the direction, alleging that the Canadian Corps of Commissionaires, including its employees working at the CPI, are under provincial jurisdiction.

* The amendments to Part II of the *Canada Labour Code* came into force on September 30, 2000. However, all requests for review of a direction that were received prior to this date are processed under the "old" Part II of the Code.

The Union des agents de sécurité du Québec, United Steelworkers of America, local 8922, which represents all CCC employees, also argues that the Canadian Corps of Commissionaires is under provincial jurisdiction, including its employees who work at the CPI.

Testimony of the safety officer:

At the hearing on December 19, 2000, safety officer Morin read the report of event dated January 11, 2000, which he sent to the parties and the regional safety officer to explain the circumstances that led him to issue the disputed direction.

In the report, he described the complaint he received on September 13, 1999 from Patricia Magda, a Canadian Corps of Commissionaires employee assigned to the Centre de prévention de l'Immigration in Laval. The complaint alleged that there was no safety and health committee to represent the CCC employees working at the centre.

During his investigation, conducted on November 10, 1999, the safety officer met with two employer representatives, Jean-Paul Thériault, Director of Human Resources, and Robert Dion, Assistant General Manager, who informed him that some 75 CCC employees were assigned to the CPI.

Following a discussion, safety officer Morin told them that he considered the CCC employees working at the CPI to be under federal jurisdiction. The CCC had therefore to establish an occupational safety and health committee pursuant to subsection 135(1) of the Code for these employees. Consequently, he asked the employer representatives to sign a promise of voluntary compliance whereby the CCC agreed to establish a committee by November 26, 1999.

Safety officer Morin based his position on an opinion that a Departmental Legal Services lawyer had issued in August 1998 concerning another CCC employee assigned to the Laval CPI. In her opinion, the lawyer stated that it could be argued, based on the information she had received in this case, that CCC employees assigned to the CPI were under federal jurisdiction.

Since the employer maintained its position, on November 30, 1999, safety officer Morin issued it a direction pursuant to subsection 145(1) of the Code ordering it to establish a safety and health committee for its commissionaires at the CPI by December 15, 1999.

Preliminary objection:

Mr. Luc Giroux, representing the employer, raised a preliminary objection, arguing that there was no longer any basis for the direction issued by safety officer Morin and the subsequent proceedings initiated with the regional safety officer because employee Patricia Magda had announced, in a letter dated November 1, 2000, that she no longer [translation] “was interested in seeing or wanted to see [her] employer, the Canadian Corps of Commissionaires, establish a safety and health committee under the Canada Labour Code”.

Employer's position on the matter at issue:

According to Mr. Giroux, the issue here is the jurisdiction applicable to the Canadian Corps of Commissionaires and its employees assigned to the Centre de prévention de l'Immigration, and this jurisdiction is provincial, not federal.

The CCC is a non-profit organization that provides employment to former members of the military and RCMP officers. Its principal and core activity consists in providing security services to various clients. Because of the specific nature of this activity, the CCC is subject to provincial occupational safety and health legislation, and under this legislation, it is not required to establish a safety and health committee.

Like the security guards who work for Quebec's largest security agencies, whose provincial certification covers their entire contract, the CCC's security guards are likewise certified provincially in respect of their entire contract, as follows [translation]: "All security guards holding a permit from the Department of Justice who are employees within the meaning of the Labour Code, excluding office employees and employees who work for the Montreal Division." The CCC's Montreal Division is itself a non-profit corporation that has contracts in places that are some distance from Montreal, like Rigaud and Sherbrooke.

Because all the CCC's contracts are covered by a single provincial certification, the CCC's security guards assigned to the Centre de prévention de l'Immigration in Laval have always been considered to be subject to provincial legislation, i.e., the Quebec *Labour Code*, the *Act respecting Labour Standards*, and other provincial occupational safety and health legislation.

All the CCC's guards, including those assigned to the CPI, are also protected by a collective agreement between the CCC and the Union des agents de sécurité du Québec, United Steelworkers of America, local 8922, concluded pursuant to the Quebec *Labour Code*.

The CCC's guards are also governed by a provincial decree respecting security agencies and by a parity committee which oversees the application of uniform, industry-wide working conditions. The CCC holds a number of contracts throughout Quebec and its commissionaires have complete freedom of movement between the contracts that the CCC holds.

Mr. Claude Gauthier, Director of Operations, Montreal Division, testified at the hearing that the Montreal Division has between 850 and 875 permanent employees and that it manages 65 to 70 different contracts. The term of the CCC's contract with the Centre de prévention de l'Immigration in Laval is three years. Between 90 and 96 employees are assigned to the CPI, which is treated like any other CCC client. These employees are not assigned permanently to the CPI and could be assigned to other contracts. The collective agreement contains a mobility clause that applies to all commissionaires and all contracts, including the CPI contract.

The CCC decides which employees will work at the CPI, following consultation with Immigration Canada, as it does with any of its other clients. The employees assigned to the CPI receive the same training as the CCC gives all its other employees. They do not require special training in order to work at the CPI and the duties they perform there are duties that all commissionaires are

fully accustomed to performing. The CCC also has exclusive authority over the employees in matters such as discipline and mobility.

According to Mr. Giroux, the question of who has jurisdiction over the CCC security guards who work at the Laval CPI is of great importance to all of Quebec's security agencies, and the certification granted under the Quebec *Labour Code*, to individual employers throughout Quebec, guarantee to the employees very secure employment and considerable labour peace.

According to Mr. Giroux, there is ample case law holding that security is a provincial matter. In 1991, for example, the Quebec Labour Court quashed the decision of a labour commissioner who held that National Protective Service Cie Ltée, a security and surveillance enterprise, was under federal jurisdiction because it worked almost exclusively for federal departments and agencies. The Labour Court said:

[translation]

There is general agreement that the purpose of federal departments is not to provide security for their buildings and to monitor the movement of people in these buildings and the property located there. The purpose of the federal government is to administer public affairs, and security is merely peripheral and incidental to this activity and is strictly an ancillary activity.

...

It is true that the practice normally followed in performing any security contract is to assign the same guards to the same positions. However, that practice is merely a convenient means whereby the security agency performs the contract, and not an objective necessity, let alone a legal obligation. My review of the facts further reveals, with regard to the Quebec part of the appellant's activities, which is the only part at issue here, that only in the case of the Canadian Security Intelligence Service is there a greater need for some stability in the security personnel assigned to this agency, and these security guards must first take an oath of loyalty. I noted earlier in this regard that a majority of the judges in *Groupe Admari* held that this situation did not warrant the exercise of federal jurisdiction over maintenance employees, part of whose job consisted in providing security for National Defence at Valcartier. I would add that, in the exceptional case where the distinction is so subtle that the decision could go either way, one could easily rely on the more flexible approach of *BEETZ J. in Northern Telecom 2*, namely, that in a nicely balanced case, what should tip the balance is the general rule of provincial competence.

Mr. Giroux argued that, contrary to the information provided for purposes of the legal opinion given by the departmental counsel, no special selection criterion applies to employees assigned to the CPI. The employees do not require special knowledge to work at the CPI. Moreover, they are not assigned permanently to the CPI and retain their mobility. In short, the Canadian Corps of Commissionaires regards the Centre de prévention de l'Immigration as just another client and its commissioners who work there as no different from its other employees.

According to Mr. Giroux, a finding that the employees assigned to the CPI are under federal jurisdiction would isolate these employees and deny them some of their rights granted by the collective agreement concluded under the Quebec *Labour Code*, including mobility and seniority rights.

In his opinion, the issue is clear on the question of jurisdiction. The business is under provincial jurisdiction because of the nature of its activities: it is a security agency offering, by contract, security and surveillance services to clients irrespective of jurisdiction; it carries on its activities under a provincial permit and it is subject to a collective agreement concluded under provincial law and to the provincial decree respecting security guards.

Union's position:

Mr. Lavoie fully agrees with the employer's position. There is unanimous agreement among security agencies that, because of the particular nature of their activities, these agencies fall under provincial jurisdiction.

According to Mr. Lavoie, declaring employees of the Canadian Corps of Commissionaires working at the Centre de prévention de l'Immigration in Laval to be under federal jurisdiction because they are assigned to a federal agency would be tantamount to creating, within one and the same undertaking, two entities, each falling under a different jurisdiction. This would cause labour unrest and lead to total chaos, both in the business itself and industrywide.

Mr. Lavoie argued that the decision on the constitutional question must not have chaotic and impractical consequences. The opinion given by the departmental counsel implies that there could be two separate groups of employees, under two different jurisdictions, within a single CCC, but this opinion is based on faulty premises. CCC's employees assigned to the CPI are not selected by the CPI, they do not work there permanently and they do not need knowledge specific to the CPI.

Mr. Lavoie stated that the question of the employees working under the contract with the CPI should not be viewed in isolation. The three decisions that Mr. Giroux relied on at the hearing to support his position clearly establish that the courts consider labour relations to be under provincial jurisdiction, even where employees of provincial businesses perform certain activities for the federal government.

Decision:

1. Preliminary objection

I understand that safety officer Morin's investigation resulted from the complaint brought by an employee who subsequently withdrew her complaint.

On the one hand, the action taken by the safety officer following this complaint, i.e., conducting an investigation and then issuing the employer a direction ordering it to terminate a contravention, is fully consistent with the powers conferred on a safety officer under Part II of the *Canada Labour Code* when he determines there has been a contravention in an employer's workplace, regardless

of the nature of this contravention and the reason – investigation, inspection, etc. – for the safety officer's visit to the workplace.

On the other hand, the regional safety officer who receives a request from an employer to review a direction pursuant to section 146 of the *Canada Labour Code* retains jurisdiction in the matter so long as the employer does not withdraw its request.

In the present case, it is clear that the employer did not withdraw its request for a review, even though the employee herself indicated that she was no longer interested in having a safety and health committee established.

I dismiss Mr. Giroux's preliminary objection because, in the present case, the employer did not withdraw his request for a review of the direction issued by safety officer Morin.

2. Matter at issue

The matter at issue in this case is the following: safety officer Morin issued a direction to the Canadian Corps of Commissionaires pursuant to Part II of the *Canada Labour Code*, ordering it to establish a safety and health committee for its employees working at the Centre de prévention de l'Immigration in Laval. The CCC requested a review of the direction, alleging that it is not covered by the *Canada Labour Code*.

When a regional safety officer receives a request for review under section 146 of the Code, the officer has the power to vary, confirm or rescind the direction issued to an employer by a safety officer.

However, in order to have jurisdiction, the regional safety officer must first determine whether the employer is a federal work, undertaking or business within the meaning of section 2 of the Code. Consequently, even before deciding the "fate" of the direction issued by safety officer Morin, I must first determine whether the employer is under federal jurisdiction.

Section 2 of the *Canada Labour Code* defines a federal work, undertaking or business as follows:

"federal work, undertaking or business" means any work, undertaking or business that is within the legislative authority of Parliament, including, without restricting the generality of the foregoing,

...

(i) a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces,

...

The large body of court decisions dealing with labour relations always apply the following fundamental constitutional principle when examining the issue of jurisdiction: subsection 92(13) of the *Constitution Act, 1867* gives the provinces exclusive power to regulate labour relations, the exercise of federal jurisdiction being the exception, limited strictly to a work, undertaking or business that is within the legislative authority of Parliament.

To determine whether the business in question is a federal business, we must first analyse the nature of its normal and habitual activities, and in the case of a business “incidental” to the core federal activity, determine whether its “relationship” with the bona fide core federal undertaking, such as a department, is so vital and essential to the federal activity that this secondary business acquires a federal nature almost automatically.

Counsel for the employer and the union presented to me case law establishing the provincial nature of security or other undertakings doing business with the federal government. They also presented to me considerable information on the CCC concerning, for example, the knowledge required of the commissionaires assigned to the CCC’s various contracts, including the contract with the CPI, the work they perform at the CPI, the mobility they enjoy with respect to the CCC’s contracts, and the management “rights” that the CCC has in relation to them.

It is clear to me that the Canadian Corps of Commissionaires is a security agency. It is also clear that the CCC’s normal and habitual activities consist in providing, by contract, security and surveillance services to various clients, and that its clients include federal departments and agencies.

Is the relationship between the CCC and the CPI sufficient to declare that the employees assigned to work there are under federal jurisdiction, unlike their fellow commissionaires assigned to “provincial” contracts? The evidence in the record has not persuaded me that such is the case.

I am of the opinion that the CCC employees working at the Centre de prévention de l’Immigration do not have a status different from that of their fellow employees assigned to other businesses that are clearly under provincial jurisdiction, that these employees are not treated differently from their colleagues as regards the application of the Quebec *Labour Code* and the Decree respecting security guards signed by the CCC and the union, and that the management rights with respect to these employees, including matters relating to mobility and discipline, are exercised exclusively by the CCC, to the complete exclusion of the CPI. I am unable to establish any vital and essential relationship between the CCC’s activities and those of the CPI.

I therefore conclude, based on the information presented to me, that the Canadian Corps of Commissionaires is not governed by the *Canada Labour Code*.

Consequently, whereas the CCC employees working at the CPI are not under federal jurisdiction, but are under provincial jurisdiction, I RESCIND the direction issued by safety officer Pierre Morin on November 30, 1999 to the Canadian Corps of Commissionaires.

Decision rendered on February 23, 2001

Michèle Beauchamp
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 November 10, 1999, the undersigned safety officer conducted an investigation at the Centre de Prévention d'Immigration, which is located at 200 Montée St-François, Laval, Québec, and which employs personnel of the CANADIAN CORPS OF COMMISSIONAIRES who are subject to Part II of the Canada Labour Code.

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

Subsection 135(1) of Part II of the Canada Labour Code;

No occupational safety and health committee has been established to represent the employees working at the Centre de Prévention de l'Immigration in Laval.

Accordingly, you are HEREBY ORDERED, pursuant to subsection 145(1) of Part II of the Canada Labour Code, to terminate all contraventions by December 15, 1999.

Issued at Montreal, November 30, 1999.

Pierre Morin
Safety Officer

TO: CANADIAN CORPS OF COMMISSIONAIRES
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SUMMARY OF THE REGIONAL SAFETY OFFICER'S DECISION

Employer: Canadian Corps of Commissionaires

KEY WORDS

Federal employer, occupational safety and health committee

PROVISIONS

Code: 2; 135(1); 146

SUMMARY

A safety officer issued a direction to the Canadian Corps of Commissionaires (CCC) ordering it to establish an occupational safety and health committee to represent its employees assigned to the Centre de Prévention de l'Immigration in Laval. The employer and the union argued that the Canadian Corps of Commissionaires, including its employees who work at the CPI, are under provincial jurisdiction. The regional safety officer rescinded the direction, having concluded, from the information presented, that the CCC is not governed by the *Canada Labour Code*.