

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

M. Melanson / S. Richard and  
C. Purchase  
*applicants*

and

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

---

Decision No.: 05-023  
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 made under subsection 129 (7) of the *Canada Labour Code*, Part II, by Mr. Clayton McGougan of the Union of Canadian Correctional Officers – CSN (UCCO-SACC). His appeal was made on December 24, 2003, on behalf of correctional officers (CO<sub>s</sub>) M. Melanson, S. Richard and C. Purchase, employed by Correctional Service of Canada at Dorchester Institution, located in Dorchester, New Brunswick.
- [2] On December 12, 2003 at approximately 16h50, CO<sub>s</sub> Melanson, Richard and Purchase refused to escort (i.e. Escorted Temporary Absence (ETA)) an inmate from the Shepody Healing Centre of Dorchester Penitentiary to the Moncton City Hospital. They stated that a danger existed for their personal safety and the safety of the public because:
- the inmate was a dangerous offender (posed a great security risk) and, at the time of the escort, he was demanding and agitated; and
  - the escort had been established to be done unarmed with two correctional officers and one driver, based on the inmate risk assessment.
- [3] Following the employer's unsuccessful effort to resolve the matter, health and safety officer (HSO) Daniel St-Onge investigated on December 12, 2003 into CO<sub>s</sub> Melanson's, Richard's and Purchase's continued refusals to work.

- [4] HSO St-Onge decided that a danger did not exist for CO<sub>s</sub> Melanson, Richard and Purchase because:
- an inmate risk assessment for the escort was conducted and, at the time of this evaluation, management was aware of the risk posed by the agitated inmate;
  - three correctional officers were assigned to the escort;
  - the correctional officers were provided with chemical agents (pepper spray) to use as protection;
  - the Warden required that the inmate be in full restraints and ordered that the inmate be maintained within sight and sound at all times;
  - there was no evidence that the inmate was planning to escape or that the inmate was violent; and
  - the correctional officers were trained in escorting inmates and they had conducted numerous escorts before.
- [5] HSO St-Onge confirmed his decision in writing on December 13, 2003.
- [6] On April 18, 2005, Mr. Clayton McGougan, of the Union of Canadian Correctional Officers – CSN (UCCO-SACC) and the representative for the above-mentioned appellants, wrote to withdraw their appeals. Mr. McGougan indicated that they considered the appeals 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.:** 05-023

**Applicant:** Marc Melanson, Steven Richard, Craig Purchase

**Employer:** Correctional Service of Canada

**Key Words:** Decision, refusal to work, escort of an inmate from the Shepody Healing Centre at the Dorchester Penitentiary (N.B.) to the Moncton City Hospital, two correctional officers and one driver unarmed assigned for the escort, inmate demanding and agitated

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

### Summary:

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