

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

D. Robichaud  
*applicant*

and

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

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Decision No. 05-024  
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 November 7, 2003, on behalf of correctional officer (CO) D. Robichaud, employed of the Correctional Service of Canada at Dorchester Institution, located in Dorchester, New Brunswick.
- [2] On October 23, 2003 at approximately 07h50, CO Robichaud refused to escort (i.e. Escorted Temporary Absence (ETA)) an inmate to a funeral home situated in the Miramichi area. CO Robichaud stated that his personal safety was at risk because:
- the funeral home was in the same area where the inmate high media attention trial was held in the Fall of 2002; and
  - the Warden had instructed that the escort was to be done with only one correctional officer plus one driver instead of two correctional officers (plus one driver).
- [3] Following the employer's unsuccessful effort to resolve the matter, health and safety officer (HSO) Daniel St-Onge investigated on October 27, 2003, into Mr. Robichaud's continued refusal to work.

[4] HSO St-Onge decided that a danger did not exist for Mr. Robichaud at the time of his investigation, despite the fact that the case had received high media attention during his trial, because:

- an inmate risk assessment for his escort was conducted on 20 October, 2003, and recommendations were issued by the Case Management Team. The required procedures to take place during the escort were established as follows:

One Correctional Officer and one driver; restraining gear must be worn at all times. The private visitation at Davidson's Funeral Home is restricted to one (1) hour; given the publicity to the respective crimes, the escorting party shall not have lunch or stop for any reason on the greater Miramichi area.

- Mr. Robichaud stated that, the day before the escort was to take place, the inmate was calm and not agitated;
- there was no evidence of direct threats coming from the victims or the public; and
- Mr. Robichaud had done numerous escorts before and he knew how to implement emergency procedures as needed.

[5] HSO St-Onge confirmed his decision of no danger in writing on October 28, 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 appellant, wrote to withdraw the appeal. Mr. McGougan indicated that they considered the appeal 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.

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Katia Néron  
Appeals Officer

## **Summary of Appeals Officer's Decision**

**Decision No.:** 05-024

**Applicant:** Denis Robichaud

**Employer:** Correctional Service of Canada

**Key Words:** Decision, refusal to work, escort of an inmate from the Dorchester Institution (N.B.) to a funeral home situated in Miramichi area, only one correctional officer plus one driver assigned for the escort, funeral home situated in the same area where the inmate high media attention trial was held in 2002

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

### **Summary:**

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