

**Case No.:** 2009-18  
**Interlocutory decision**  
**Decision No.:** OHSTC-09-029

**CANADA LABOUR CODE**  
**PART II**  
**OCCUPATIONAL HEALTH AND SAFETY**

Nancy Morden and al.  
*appellant*

and

Garda Security Screening Inc.  
*respondent*

and

Canadian Air Transport Security  
Authority  
*respondent*

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August 7, 2009

This is an interlocutory decision on a request to add a party to the proceeding that has been rendered by Pierre Guénette, Appeals Officer.

**For the appellant**

Clayton Cook, Counsel for the appellant

**For the respondents**

Peter Shabada, Regional Health and Safety Manager for Garda Security Screening Inc.

Marc-André O'Rourke, Assistant General Counsel for Canadian Air Transport Security Authority.

- [1] This matter concerns an appeal made by Ms. Nancy Morden on May 11, 2009, pursuant to subsection 129(7) of the *Canada Labour Code*, Part II (the Code). The appeal was against a decision of absence of danger rendered by Health and Safety Officer Dereck Becker (HSO Becker) following his investigation of a group refusal to work on May 3, 2009.
- [2] Five Pre-Board Screening Officers employed by Garda Security Screening Inc. (Garda) at the Edmonton International Airport refused to work because their employer did not provided masks to protect them against contracting the H1N1 Flu virus (Human Swine Influenza).
- [3] On June 8, 2009, the Canadian Air Transport Security Authority (CATSA) presented a request to be made a party to the proceeding.
- [4] CATSA is a federal crown corporation responsible for aviation security. The section 6 of the *CATSA Act* sets out their mandate, as follows:
- 6(1) The mandate of the Authority is to take actions, either directly or through a screening contractor, for the effective and efficient screening, of persons who access aircraft or restricted areas through screening points, the property in their possession or control and the belongings or baggage that they give to an air carrier for transport. (...)
- 6(2) The Authority is responsible for enduring consistency in the delivery of screening across Canada and for any other air transport security function provided for in this Act. (...)
- [5] Mr. Marc-André O'Rourke, Assistant General Counsel for CATSA submitted that CATSA has substantially the same interest as the respondent and that they would be clearly affected by the decision of the Appeals Officer.
- [6] Counsel for the appellant and the respondent did not object to CATSA's request.
- [7] Subsection 146.2(g) provides the Appeals Officer with the following power to add a party to the proceeding:
- 146.2 For the purposes of a proceeding under subsection 146.1(1), an appeals officer may (...)
- (g) make a party to the proceeding, at any stage of the proceeding, any person who, or any group that, in the officer's opinion has substantially the same interest as one of the parties and could be affected by the decision; (...)
- [8] Mr. O'Rourke has submitted that CATSA oversees the work performed by screening officers across Canada. To do so, CATSA has established

service agreements with private sector screening contractors, which include Garda. In addition, screening officers have to follow the screening procedures that have been established by CATSA. It is also submitted that CATSA has an active and integral role to ensure the health and safety of screening officers.

[9] Therefore, I am convinced that CATSA has substantially the same interest as the respondent. The decision in this appeal could also have an impact on CATSA's national operations.

[10] For these reasons, I will make CATSA a party in this appeal. Consequently, Mr. O'Rourke will be authorized to present evidence, as well as witnesses. He will take part in the examination of all witnesses and makes representations in support of his position.

[11] The style of cause is therefore modified to read:

Nancy Morden and al.  
appellant

and

Garda Security Screening Inc.  
respondent

and

Canadian Air Transport Security Authority  
respondent.

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Pierre Guénette  
Appeals Officer