



# INFORMATION UPDATE

April 2010

## OC Spray

# UCCO-SACC-CSN wins major OHS ruling on essential safety tool

Federal correctional officers are a big step closer to finally being able to routinely carry an important safety tool on their person after UCCO-SACC-CSN won a major Occupational Health and Safety ruling in Pacific region last week.

The OHS tribunal upheld an appeal brought by correctional officers at Kent Institution over a July 2004 decision by a Health and Safety Officer, who had ruled against their refusal to work after the employer's decision to remove OC spray canisters from the duty belt.

In a period marked by numerous stabbings, violent uprisings and lock-down searches, the warden at Kent had authorized the wearing of OC spray in May 2004. But he rescinded the permission on July 26, 2004. In response, 16 correctional officers refused to work, citing unsafe working conditions. The investigating Health and Safety Officer ruled that the danger the officers faced was a normal condition of their work and that therefore the employer was justified in limiting their access to OC spray canisters.

Last March 29, however, following years of unsuccessful attempts to settle the issue with the employer and after hearings held in April and July 2009, an OHS tribunal finally sided with the union in ruling that the danger did exist and that routine issuance of OC spray to correctional officers could reduce the danger. The employer was ordered to rectify the situation immediately and to inform the HRSDC no later than April 30.

UCCO-SACC-CSN union advisor Corinne Blanchette based the union's winning arguments on the fact that OC spray carried on a CO's duty belt is an essential safety tool. She presented evidence demonstrating that OC spray deters assaults, helps quickly quell incidents when they do arise and assists COs in regaining and retaining control of a situation.

Representatives for Correctional Service Canada (CSC) had stated that this was one of the employer's most important cases. CSC backed that up by paying an expert witness \$25,000 to testify that OC spray could lead to an

institutional climate that is overly coercive. Dr. Thomas Gabor of the University of Ottawa also testified that OC spray is only about 75 per cent effective, and worried that issuing it to all officers could lead to an «arms race» with inmates.

In a key part of the ruling, Dr. Gabor's contention that there are few serious injuries to correctional officers due to inmate assaults was categorically rejected. Appeals Officer Douglas Malanka observed that the CSC statistics introduced by this expert witness were unreliable and "did not include information regarding the injury, its severity or days of loss-time. In some cases, injuries reported as non-serious bodily injuries were in fact major injuries."

The finding confirms UCCO-SACC-CSN's longstanding contention that CSC is systematically underreporting and minimizing serious injuries to staff due to assaults by inmates.

The OHS ruling is the latest in a series of decisions that support the union's efforts to provide essential safety tools for its members. Interestingly, this decision relates to Kent Institution, the same penitentiary where a refusal to work in 2001 resulted in the landmark Verville decision by the Federal Court in 2004. This ruling opened the door for the wearing of handcuffs on the duty belt.

Appeals Officer Malanka cited the Verville decision in regard to the definition of danger as one "in which a potential hazard or condition or future activity could be expected to cause injury and to establish that such circumstances will occur in the future as a reasonable possibility." This definition established new jurisprudence that benefited every worker, in the private or public sectors, whose job is governed by the Canadian Labour Code.

And, as in Verville, the Appeals Officer declared the testimony by our members to be highly credible: "For the record," he wrote, "I find the COs who testified to be experienced, trained, leaders in terms of training other officers and in terms of heading up special units. I found them to be thinking, rational and disciplined professionals."



***Correctional officers may soon have an OC spray canister to go along with their handcuffs on the duty belt***