



UNION INFO–February 2010

UCCO-SACC-CSN successfully maintains its major Canadian precedent on section 128 of *Canada Labour Code* work refusals

On January 27, 2010, Federal Court Justice Michel Beaudry¹ upheld the validity of the Occupational Health and Safety Tribunal (OHST) finding of danger in an unarmed escort at Drummond Institution, Québec². Of major importance to all federal public and private sector 128 CLC work refusals, the OHST precedent is a scathing reversal of a policy³, supported by employers, aimed at eliminating 128 CLC work refusals.

In April and May 2007, Éric Vandal and three other correctional officers refused to proceed with an unarmed escort of a notorious high profile inmate known to have a contract on his life by an equally notorious criminal organisation.

In 2007, HRSDC high command had implemented a new policy designed to disallow 128 CLC work refusals on the basis of the work constituting a normal condition of employment. A clever little questionnaire, almost certain to conclude that the work being refused constituted a normal condition of employment, was implemented by HRSDC Health and Safety Officers across Canada. HRSDC would thus deny 128 CLC work refusals as a normal condition of employment and then inform correctional officers that they had no right to appeal to the OHST. The HRSDC scheme, which UCCO-SACC-CSN had reversed by the OHST ruling, held that because work being refused was a normal condition of employment, Health and Safety Officers were not to investigate on danger.

Step two of this half-baked theory was that because there was no negative finding on danger, there could not be an appeal. It is in this manner that employees under federal jurisdiction would receive notice from HRSDC, as did Vandal and others, that they had no right of appeal to the OHST and that their only recourse was judicial review by the Federal Court!

Correctional officer Vandal and the others directly challenged this HRSDC Policy by appealing to the OHST and they won, having the unarmed escort deemed a danger under 128 CLC and most importantly, having the above HRSDC Policy declared contrary the Canada Labour Code!

The Federal Court ruling upholds this decision and clearly sets aside the HRSDC and the employer's position discussed above.

¹ 2010 CF 87

² Decision OHSTC-09-009

³ Human Resources and Skills Development Canada (HRSDC)