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NATIONAL

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REINFORCED BY THE VERVILLE DECISION

DEFINITION OF DANGER SOLIDIFIED

The decision of Mister Justice Barnes of the Federal Court confirmed our victory in the decision of the Occupational Health and Safety Tribunal Canada (2017 OHSTC 21).

In short, the decision of the OHSTC Appeals Officer was reasonable. When a lethal item is lost in the inmates population, Correctional Officers (CO) have the right to refuse to work and CSC must take all possible measures to reduce or eliminate the danger. It should be remembered that the CSC had refused to carry out an exceptional search of the institution, which led to the work refusals of the CO. The union argument was that CSC did not take all possible steps to eliminate the danger as it refused the institution's exceptional search.

The Federal Court confirms at paragraph 4 that: **"The Adjudicator's assessment of the risk appropriately focused on the question of whether the disappearance of a lethal object from the upholstery shop represented a 'serious threat to the life or health' of the correctional staff which warranted a full search of the institution."**

The Federal Court adds at paragraph 9 that: "It was not an unreasonable interpretation of the current definition of 'danger' to conclude that the disappearance of a razor-sharp lethal object from the upholstery shop, possibly into the general prison population, would represent 'a serious threat to the life or health' of correctional officers working there. The removal of the previous reference to a 'potential hazard or condition' does not meaningfully alter the importance of the current provision. Both are concerned with prospective risks to the life or health of employees exposed to a dangerous condition."

In similar situations, CSC will have no choice but to order the exceptional search of the institution. The Federal Court Judge goes so far as to say at paragraph 13 that: "If the loss of a lethal object, possibly into the general prison population, does not justify taking full mitigation measures, one is left to wonder when such measures will ever be required going forward."

CSC's argument about the new definition of danger has therefore not passed the test of the courts. In the future, if the CSC refuses an exceptional search of an institution in similar circumstances, we invite the CO to refuse to work together and to immediately notify their regional president. We have won a significant precedent in court and will not hesitate to use it in the future to defend the health and safety of UCCO-SACC-CSN members.

To read the decision: https://www.canlii.org/en/ca/fct/doc/2018/2018fc750/2018fc750.html

Canada (Attorney General) v. Laycock, 2018 FC 750

Correctional Service of Canada v. Laycock, 2017 OHSTC 21

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