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LEGAL

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New Definition of Danger

UCCO-SACC-CSN SETS ANOTHER GREAT PRECEDENT

On October 31, 2017, the Occupational health and safety Tribunal issued its decision regarding CSC's appeal of a finding of danger at Mountain Institution following a work refusal three years ago.

After a pair of thread snips used by inmates in the Corcan Upholstery shop could not be found despite searching the shop, the Warden refused to order an exceptional search of living units. At the time, the officers at Mountain seized their highest number of weapons in a month, there were a number of security incidents including an attempted murder on an inmate in plain sight and the segregation unit was at full capacity.

Confronted with this situation, officers at Mountain stood up and exercised their right to refuse dangerous work. The provision of danger had changed on this very same day. EDSC found that there was a danger as the restricted tool could have made its way to the living units. In its ruling of October 31, 2017, the Appeal Officer confirms this decision.

This is a major victory for all of us. Through this decision, UCCO-SACC-CSN has established that future and potential hazards are not excluded from the new definition of danger. The decision also recognizes that injuries due to the unpredictable inmate behavior is indeed covered by the new definition of danger. The Appeals Officer also found that, the absence of intelligence information that staff members may not be at risk, was not determinative. He agrees with our argument that assaults against correctional officers have occurred spontaneously and without warning.

In his decision, the Appeals Officer refers to the Verville (handcuffs decision) and says that "before a danger can be considered a normal condition of employment, the employer has to take all steps reasonable to eliminate, mitigate or reduce to acceptable level". To that effect, the Appeals Officers ruling supports previous decisions that question the effectiveness of the Commissioner's directives and different institutional policies to address those specific hazards.

Local management attempted to argue that the Canada Labour Code could not supersede the CCRA. The tribunal rejected this argument referencing jurisprudence in a previous case on armed escorts (Johnstone).

The Appeals Officer also writes that he gave significant weight to the testimony of the correctional officers who testified at the hearing recognizing their experience in the matter. **To the officers at Mountain Institution who initiated, participated and investigated the work refusal, a huge thank you for your commitment to a safer workplace for your Correctional Officer colleagues.**

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