



Canada Labour Code,
Part II

Before the Public Service
Staff Relations Board

BETWEEN

PAUL DOIRON AND OTHERS

Applicants

and

**TREASURY BOARD
(Solicitor General Canada - Correctional Service)**

Employer

RE: References under subsection 129(5) of the Canada Labour Code

Before: [P. Chodos, Deputy Chairperson](#)

For the Applicants: Gary Bannister, Public Service Alliance of Canada

For the Employer: [André Garneau, Counsel](#)

Heard at Bathurst, New Brunswick,
December 17 and 18, 1996.

DECISION

This decision is in respect of a referral of a safety officer's report to the Board, pursuant to Part II, subsection 129(5), of the Canada Labour Code, which provides as follows:

129.(5) Where a safety officer decides that the use or operation of a machine or thing does not constitute a danger to an employee or that a condition does not exist in a place that constitutes a danger to an employee, an employee is not entitled under section 128 or this section to continue to refuse to use or operate the machine or thing or to work in that place, but the employee may, by notice in writing given within seven days of receiving notice of the decision of a safety officer, require the safety officer to refer his decision to the Board, and thereupon the safety officer shall refer the decision to the Board.

The applicants, who are listed in the Appendix to this decision, invoked their right to refuse to work, pursuant to subsection 128(1) of the Code, on November 7, 1996. Their reasons for so doing were outlined in the "Refusal to Work Registration" form which was completed by each of the applicants; while each applicant submitted his or her own form, the reasons given therein are common to all of them and are reproduced below:

Because the management of Atlantic Institution has issued bleach to the inmates of Atlantic Institution, I am exercising my right under Part II of the Canada Labour Code, which states that the worker has the right to refuse to do a job if he or she believe (sic) that:

- 1. There is a condition at work that is a danger to himself or herself.*
- 2. The use of a machine or thing at work presents a danger to himself/herself or co-worker.*

I feel that the issuing of Bleach falls under the above two (2) conditions because for some (not all) examples:

- 1. Inmates are allowed to obtain as much bleach as they wish (ie condom) in privacy and it can be used as a weapon by throwing it in my eyes.*
- 2. It can be obtained by inmates and put in our food/drink in the kitchen that can poison us.*

3. *A Gallon of bleach mixed with potassium chloride (which is sold as a salt substitute at Health and Nutrition Stores) and a few other ingredients, then you have a bomb of plastic explosives.*
4. *M.S. Datasheet states that bleach has incompatibilities to other substances - ie - heavy metals, reducing agents, acids, ammonia, glycos, alcohols, and most other solvents or materials.*
5. *According to M.S. Datasheet, if bleach is mixed with ammonia, it will give off dangerous fumes.*
6. *Enclosed is a M.S. Datasheet that has numerous pieces of information that makes bleach a dangerous substance.*
7. *On the bottom of the M.S. Datasheet, the company states that it is up to the user to experiment with bleach as there are many tests that they have not done. Has CSC done any tests to see how dangerous bleach really is?*
8. *Because of the environment we work in, we feel that this bleach becomes a very dangerous tool to put in the hands of offenders.*

The relevant facts are for the most part not in dispute. In late 1994, following a recommendation by the Expert Committee on AIDS and Prisons (ECAP), a pilot-project was initiated at Matsqui Institution in British Columbia to allow freer access by inmates to household bleach for the sterilization of needles. The objective of this program was to reduce the transmission of HIV/AIDS, as well as Hepatitis C, which had become a very serious problem throughout prison institutions worldwide, including Canada.

Dr. Robert Climie, a doctor of public health and currently Corporate Adviser for Health Services for the Correctional Service of Canada, testified that the prevalence of Hepatitis is between 22 and 40 percent of the entire inmate population and the reported rate of HIV is about one percent, which is ten times higher than the general population. Approximately 90% of intravenous drug users have been found to be positive for the Hepatitis C virus; it is also known that there is a disproportionately large number of intravenous drug users among the inmate population. Dr. Climie noted that in 1993 the World Health Organization published guidelines concerning the management of HIV in prisons; both that organization and the Center for Disease Control in Atlanta recommended that bleach be utilized for cleaning needles used by

intravenous drug users. It has been concluded that household bleach is a highly effective means of sterilizing needles against HIV, and is also effective, although less so, in reducing the spread of Hepatitis.

Following the successful introduction of a bleach program in Matsqui, the Correctional Service decided to implement it throughout all prison institutions under its jurisdiction. A communiqué was issued to staff on April 15, 1996 directing that the bleach program be introduced at each institution; the program called for providing each inmate with a bleach kit consisting of a one ounce plastic bottle of bleach and a one ounce plastic bottle with rinse water. In addition, dispensers of bleach were to be set up at various locations within each institution, in such a way as to allow inmates free and private access to fill up the one ounce bottles with bleach, as needed. It should be noted that prior to the introduction of this program, household bleach was available to inmates, however, access was controlled by staff. The policy on bleach distribution also called for the appointment of a coordinator within each institution “with credibility with both staff and inmates”. This aspect of the policy, which was outlined in some detail in a memorandum from the Commissioner dated April 16, 1996, states that the coordinator should be “someone with extensive networking capability and ongoing contacts with a broad cross-section of staff and inmates...”.

Mr. Doug Robichaud is a correctional officer at the Atlantic Institution and is president of the union local; in that capacity he regularly attends the labour-management committee meetings. He testified that there was only one occasion at these meetings, approximately four or five months ago, when he was informed that the bleach program was to be implemented. Mr. Richard Price is also a correctional officer and has been since September 23, 1996 co-chair of the Occupational Health and Safety Committee; prior to that he was the union representative on that committee for about a year. He stated that the only discussion concerning the bleach program was on May 21, 1996. Mr. Price did not attend that meeting; however, he noted that the minutes state only, under the subheading of “Eye Wash Bottles”, that “there was some discussion about the possibility of distribution of bleach packets to inmates sometime in the future. Roy MacLean stated there would then be a requirement for eye wash bottles on the units” (Exhibit C-4). Mr. Price stated that

there was no further discussion on this matter from May to September 23rd when he became the co-chair.

When Mr. Robichaud was informed of the imminent implementation of the bleach program a couple of days prior to November 7, 1996, he approached Mr. Luc Sarrazin, a Labour Affairs Officer from Labour Services, Human Resources Development Canada, who had been visiting the Institution on another matter. Mr. Robichaud explained that he had received complaints from a number of correctional officers concerning the implementation of the bleach program and he indicated to Mr. Sarrazin that in their view this program posed a danger to the staff. Mr. Sarrazin advised him of their right to refuse to work under the provisions of Part II of the Labour Code. On November 7, Mr. Robichaud was informed by senior management at the Institution that the program would be instituted that day; as a result, he and a number of other correctional officers invoked their right to refuse to work because of their perception that the program constituted a danger to their health and safety. Mr. Robichaud noted that he had no advance notice of the memorandum from the Commissioner (Exhibit C-3), nor was he part of the working group involved in the implementation of the bleach program. He observed as well that Ms. Linda Quann, a nurse under contract who was named as the institutional coordinator for the program, was not known to him or many of the other staff and he thought this would pose a problem in terms of her fulfilling her role of coordinator, as set out in the memorandum. However, Mr. Robichaud stated that "this was not a big issue".

Mr. Robichaud elaborated on the concerns he and his colleagues had with respect to the bleach program which he said were outlined in the report provided by the correctional officers to Mr. Sarrazin. He observed that the bleach dispensers are in a private room beside the Correctional Officer 2 station; nearby are condom machines. He noted that inmates are supposed to have privacy and accordingly an inmate could take a condom, fill it with bleach, and then throw it in the correctional officer's face. He also noted that inmates often work in the kitchen. While they are watched by guards from the gallery, it would nevertheless be easy for inmates to put bleach in the soup and other foods. While he is not aware of whether the bleach would make them sick, he was concerned that it might be poisonous. He also noted their concern that the inmates might use the bleach with other substances to make a bomb; one of the

correctional officers obtained information off the internet which outlined how the chief ingredient in bleach, sodium hypochlorite, could be mixed with other substances to create a bomb (reference: "Making Plastic Explosives from Bleach", by the Jolly Roger, Exhibit C-8). He also referred generally to the possible incompatibility of bleach with other substances; he noted as well the corrosive properties of bleach. In this respect, he observed that the padlocks used on the bleach dispensers had corroded within a month because of exposure to the bleach. Mr. Robichaud also stated that the employer had provided no information about the possible hazardous nature of bleach; the staff had obtained a "Material Safety Data Sheet" (Exhibit C-1) which outlines some of the hazardous aspects of bleach. He is not aware of any tests that have been done by the employer, notwithstanding he had asked for information about these hazards.

Mr. Robichaud acknowledged that his primary concerns about bleach arise out of the possibility that larger quantities than one ounce might be accumulated. He agreed that many things can be put in food by inmates, and that incidents happen in the kitchen all the time. He does not know if bleach would cause blinding if it were thrown in his eyes, nor has he ever become aware of a bomb being made from bleach.

Mr. Price testified that it was his belief that the introduction of the uncontrolled access by inmates of bleach constituted a danger to the health and safety of correctional officers, for the reasons noted on the "Refusal to Work Registration" form. He felt that the bleach could be easily accumulated and then thrown at him or injected in him by inmates. Mr. Keith Sonmor, who was also a correctional officer at the Institution, encountered the "Material Safety Data Sheet" near his workstation two weeks prior to the exercise of their refusal to work. He referred to the number of hazards identified in this document, including that it was "extremely corrosive" to eyes, that a coma could result from the release of chlorine gas if the bleach was set on fire. He noted that when he worked at Drumheller Institution the entire prison was set on fire by the inmates; he was concerned that the inmates might set fire to the bleach in order to create fumes which, according to data sheet, could cause irritation to the membranes. He had received no information from the employer to counter these concerns.

Mr. Brian Mullin is a correctional officer level 2 at the Institution. He testified that he had been subjected to an assault on a couple of occasions and had had things thrown at him, as well as being punched in the eye by an inmate. He considered the availability of bleach to be another tool which the inmates could use against him. He noted that in the past inmates have converted several different kinds of objects into weapons to be used against guards. He observed that he spends 80 to 90 percent of his time working with the inmate population; part of his duties involve searching cells. While the normal objective is to search approximately five cells a day, at times it is not possible to reach this target because of staffing constraints. Mr. Mullin stated that there is an eye wash station beside his desk, which consists of a bottle on the wall containing about one litre of water. He acknowledged in cross-examination that he is not aware of bleach having been used as a weapon in other institutions.

Mr. Luc Sarrazin, the Labour Affairs Officer who responded to the refusal to work at Atlantic Institution, testified as to his investigation and the reasons behind his conclusion that “the possession of 4% bleach by the inmates is not a situation of danger as per the Canada Labour Code Part II” (page 5 of the report of the Safety Officer). The reasons for Mr. Sarrazin’s conclusion are the following:

...

- a) *A bottle of bleach by itself does not constitute a dangerous situation.*
- b) *The same bottle of bleach in a dispenser does not constitute a dangerous situation.*
- c) *Inmates using the dispenser for acquiring bleach to disinfect personal items does not constitute a dangerous situation.*
- d) *An inmate in possession of bleach does not constitute a dangerous situation.*

The possibility of injury or potential for danger is not sufficient to be a dangerous situation.

Inmates with bleach with the intent of committing a crime with the substance, however, could present a security and safety concern to the staff. As such, it is treated as contraband when volumes exceeding those which would

normally be considered sufficient for its primary intent, are procured.

A review of the reasons why the employees have evoked their right to refuse has confirmed that indeed if all substances needed are available to inmates, toxic gas and bombs could be created. However, for an inmate with dangerous substances to present a dangerous situation, it would have to be clearly established that the intent of that person was to cause harm to an employee.

The employer has introduced bleach to the population as a means of controlling the spread of "HIV"/AIDS and other infectious diseases in the prisons.

Upon being advised of the employees' exercise of the right to refuse to work under Part II of the Labour Code, Mr. Sarrazin spoke with the employees concerned, who indicated that the introduction of the bleach program giving free access to bleach was the basis for their refusal to work. He took note of their specific reasons for that refusal, as outlined in the "Refusal to Work Registration" form. It was agreed that he could take a few days to gather information for his investigation; on Friday, November 15, he issued his report. In the course of his investigation he examined the concerns as outlined by the employees. He spoke with a number of officials, including Mr. Bob Reid, an industrial hygienist with Labour Affairs; Mr. Grant Mitton, a senior technical adviser for the region with Labour Services; Mr. Jacques Morin, program consultant for Labour Affairs; as well as Dr. O'Brien, a medical adviser with Labour Services, and Mr. Pierre Delorme, a lab technician. He noted that Mr. Price was with him when he did a preventive maintenance inspection. In addition, he also spoke with Mr. Robichaud and Mr. Bannister, the Alliance health and safety representative, as well as other employees. He then consulted with a number of representatives of the employer, including Dr. Robert Climie, Charlene Sutherland, the Acting Assistant Warden, Management Services, Ms. Linda Quann, the health promotion nurse at the Institution, and Sandra Barrieau, Chief, Health Services, Atlantic Institution. He also spoke with members of the Health and Safety Committee and two regional health nurses at Kingston and Kent Institutions. He reviewed the documentation concerning the bleach program, in particular a manual entitled "Education Package - National Bleach Kit Distribution Program, April 1996" (Exhibit E-1).

In light of this information, Mr. Sarrazin came to a number of conclusions concerning the bleach program. Mr. Sarrazin concluded that unless the inmates actually used the bleach as feared by the correctional officers, it constitutes only a potential danger; he believes that the Institution has the means to prevent the potential harm identified by the staff. For example, the staff can remove the bleach from the possession of the inmate, or whatever the inmate may be producing with the bleach, if there is a possibility of turning that bleach into a harmful substance. He noted that if an inmate is suspected of having more than one ounce of bleach, the bleach would be seized and the inmate would be subject to disciplinary measures.

Mr. Sarrazin acknowledged that he had referred to the former definition of “imminent danger” in his report, which definition is no longer found in Part II of the Labour Code. He noted that he used that term in order to distinguish between danger and “imminent danger”. He stated that given the current jurisprudence, that distinction is still relevant in the view of Labour Services. Mr. Sarrazin observed that at the time of his investigation “La Parisienne” Javex was in use at the Institution, which had a concentration of only 4 percent sodium hypochlorite; however, other brands have a higher concentration. He agreed that the employer had indicated that it is possible that in the future these other brands might be used. With respect to first aid measures, he stated that correctional officers have access to showers and bathrooms throughout the Institution where skin and eyes can be flushed out; he noted that there are eye wash bottles located next to the bleach dispensers where eyes could be rinsed pending medical assistance. Mr. Sarrazin identified Exhibit C-2, a directive dated November 19, 1996, issued by him pursuant to subsection 145(1) of the Canada Labour Code. The directive in effect noted the breaches of several paragraphs of section 125 of the Code and issued a number of directions to the employer, including “that all employees that may be exposed to bleach be given information on the handling and exposure...; provide eye wash station to area where employees may be faced with risk of being exposed to bleach...; an eye wash prevention program shall be introduced in the work place...; the safety committee shall be involved and/or informed on the introduction of safety/health program in the work place.”

Mr. Sarrazin acknowledged that bleach is a corrosive material; to his knowledge no tests were done by the employer concerning the interaction of bleach with other

substances. In his conversation with Mr. Reid, Mr. Sarrazin was told that in the right environment it would be possible to manufacture a bomb using bleach and other substances. Mr. Sarrazin stated that, had household bleach been available with greater concentrations than “La Parisienne”, it would not affect his conclusions. He agreed with the employer’s counsel that the manual (Exhibit E-1) provides that the bleach would not be available to inmates who might cause injury to other persons through misuse; as well it may be precluded to inmates in Special Handling Units. It was noted as well that under the employer's policy bleach in quantities of more than one ounce is considered as contraband and would be seized by staff.

Mr. Sarrazin responded to several specific concerns identified by the employees. He observed that in his opinion the making of a bomb was very unlikely as the other ingredients were not available. According to his information, no permanent damage would result to normal eyes if bleach were thrown at them. Also, one ounce of bleach would not be an effective poison and if placed in a large container of food would not likely make anyone sick. According to his understanding of the Code, the danger must be immediate for the Code to apply. He observed that in his view employees did not have the policy information available at the time and consequently this was part of his direction to the employer pursuant to Exhibit C-2. However, it was his view that this lack of information did not create a danger to employees as that term is understood in the Code. Mr. Sarrazin explained that his direction with respect to the eye wash stations was in response to the fact that there was no program for maintaining and inspecting eye wash stations at the time. Again, he did not view this as a “danger”. Mr. Sarrazin also observed that in British Columbia the provincial institutions have had a similar program in place for several years and he was not aware of any incidents arising therefrom, nor have there been any incidents in the other federal institutions that have had the policy in place for approximately six months.

Dr. Climie also gave testimony concerning the specific concerns identified by the employees as a danger to their health or safety. He noted that the “Material Safety Data Sheet” is provided by the manufacturer and outlines a worse case scenario, even if the concern is only a one in a million possibility. He observed that, while bleach would be extremely irritating if thrown in the eyes, it is not known to cause damage even if not immediately flushed. With respect to the concern about adulterating food

or drink, if the bleach was put in sufficient quantities to cause harm it would not be edible or drinkable and its presence would be readily apparent to anyone. With respect to the possible reactions of bleach with other substances, he has been advised by chemists at the Occupational Health and Safety Unit of the Medical Services Branch that in rare instances bleach can be used with other substances to produce chlorine gas which would only be of a significant danger if released in confined spaces. He had no information or knowledge of reproduction of bombs with bleach. It was his conclusion that bleach could be an irritant, but was not a danger to health or safety of staff particularly when used as outlined in the bleach program. It was also his view that the use of bleach would reduce the rate of infection of HIV and Hepatitis and thereby provide greater protection to staff as well as to inmates and the general public.

Dr. Climie was questioned by the applicants' representative concerning a July 1988 article in the medical journal "The Lancet" which refers to several disinfecting agents, including sodium hypochlorite (i.e. bleach). Dr. Climie maintained that the other substitutes either have the same properties as bleach or can be considered in fact more dangerous than bleach. He also cautioned that the article is considered out of date and preceded the Center for Disease Control recommendation with respect to the use of bleach in 1994.

Dr. Climie also responded to questions concerning an information document on bleach prepared by the Canadian Centre for Occupational Health and Safety. With respect to the human health hazards noted in this document, Dr. Climie observed that the possibility of lung damage from chlorine gas could only arise if gas is released in a confined space; he also noted that the gas has a highly nauseous smell which would serve as a warning. He maintained that even a large spill of bleach would not pose a hazard with respect to inhalation or contact although it would be unpleasant. He noted that while bleach is an irritant to eyes, it would not cause damage. He questioned the data on animal toxicity; in his view, one cannot extrapolate from rabbits to human eyes as rabbits are known to be particularly sensitive to chemicals, and their eyes are immobilized when subjected to these chemicals. He also cautioned that the information contained in this document referred to industrial bleach which has a higher concentration than the household bleach used in the prisons. He agreed that chlorine gas can be produced from bleach and this gas can affect the trachea and

bronchia, but again noted that there would have to be high concentrations of chlorine released in confined spaces. Dr. Climie agreed that the staff at Atlantic Institution should have been provided with information about the program, including the hazards. However, he maintained that not knowing of the hazards would not create a danger to health or safety in light of the small amounts being used and the low concentrations.

Ms. Teresa Garrahan is currently the Regional Infectious Diseases Coordinator with the Correctional Service and is based in Kingston, Ontario. As of June 1995, she participated in the National Working Group which developed guidelines in respect of the bleach program. As a participant in this Group, Ms. Garrahan authored Exhibit E-1, that is the "Education Package - National Bleach Kit Distribution Program". Ms. Garrahan noted that issues of health and safety were of concern to the Working Group and are addressed throughout the manual. It was noted, for example, that bleach in excess of one ounce is considered contraband, that screw type caps were used on the bleach bottles rather than the squirt variety, and a number of first aid measures were set out in paragraphs 18 to 21. Ms. Garrahan also referred to a memorandum which she sent to members of the Working Group which stated that: "It is imperative that institutional Bleach Coordinators...initiate consultation with their respective JOSH Committees and ensure that there is ongoing, informed participation. The support of the Health and Safety Committees is an essential component of the safe implementation of bleach kits in our institutions..." (Exhibit E-4). Ms. Garrahan also noted that Mr. Charles Moore, an industrial hygienist with the Occupational and Environmental Health Services Directorate, was consulted on the bleach program and his recommendation concerning eye wash (Exhibit E-2) was implemented.

Ms. Garrahan agreed that if the only consultations which occurred at Atlantic Institution are as reflected in the minutes of the May 21st meeting, that she did not consider this as adequate. She observed that in a national evaluation which took place in July information was requested as to whether there had been formal consultation at that time with Health and Safety Committees. On October 6, institutions were again asked if the eye stations were reviewed by Health and Safety Committees.

Ms. Sandra Barrieau, the Chief, Health Services, Atlantic Institution, testified that there were a number of meetings at the Atlantic Institution prior to November 1996 concerning the introduction of the bleach program. These meetings and discussions were outlined in a memorandum she prepared on November 14, 1996 (Exhibit E-5). Ms. Barrieau acknowledged that there were problems with the spring mechanisms in the bleach dispensers, which were corroded by the bleach soon after the dispensers were installed after November 7, 1996.

Mr. Dale Cross, the Warden of Atlantic Institution since March 4, 1996, also testified concerning the potential hazards of the bleach program as outlined by the applicants in this matter. He observed that there is always the potential for inmates throwing bleach at the staff, or any number of other substances. With respect to the potential for food poisoning, he noted that inmates are not allowed in the officers' mess and in his view the likelihood of this happening is not great. On the matter of building bombs with bleach, he considered that there is a greater risk of explosives being smuggled into the Institution. In general, he observed that there are inherent dangers at a penal institution, however, there are disciplinary processes in place for holding inmates accountable for their actions; inmates are monitored closely and there are a variety of counsellors and psychiatrists who are available to address violent behaviour. Furthermore, there is also in place programs for training staff in, for example, first aid and CPR training. He stated that he was present at staff meetings in April and July when the bleach distribution issue was addressed. He indicated, however, that he had reservations as to how the staff received information about the program.

Arguments

On behalf of the applicants, Mr. Bannister submitted that the uncontrolled dispensation of bleach at Atlantic Institution constituted a danger to employees at the Institution, as that term is defined in Part II of the Canada Labour Code. Mr. Bannister also referred to the definition of "hazardous substance" which refers to "...a chemical...that, by reason of a property that the agent possesses, is hazardous to the safety or health of a person exposed to it." Mr. Bannister maintained that bleach in such an environment constitutes a hazardous substance in that it gives off noxious fumes, is corrosive, and is also a skin irritant which can burn. In support of his

submissions, Mr. Bannister referred to the “Material Safety Data Sheet” (Exhibit C-1) which indicates that there are hazards associated with bleach; section VIII notes that a number of precautions are required when handling bleach. Yet, when this hazard was introduced into the workplace employees were given no training or education about how to address this hazard. Furthermore, the situation was exacerbated by the employer’s failure to provide proper safe guards, such as installing adequate eye wash stations, which led the Safety Officer to issue a directive pursuant to subsection 145(1) of the Code. In effect, the Safety Officer acknowledged that the employer had failed in its duty, as set out in section 124 of the Code, to protect its employees.

Mr. Bannister also submitted that the Safety Officer was in error when he quoted the definition of “imminent danger” in his report and concluded that the current definition of “danger” subsumes the defunct term “imminent danger”. Mr. Bannister maintained that Mr. Sarrazin’s conclusion that a danger had to be immediate under the Code in order to invoke the right to refuse is beyond the scope of that provision.

Mr. Bannister argued that the inadequacy of the information provided by the employer, as well as the failure to communicate the health hazards to the Health and Safety Committee, constituted a danger to employees. These employees felt that they were very vulnerable as a result of the introduction of this substance in an uncontrolled environment, which put their safety at risk.

On behalf of the employer, Mr. Garneau noted that the jurisprudence with respect to Part II of the Code supports the view that the definition of “danger” as found in the Code has an aspect of immediacy; that is, in order for there to be a danger as defined in the Code, there must be a dangerous situation present before it can be corrected. He noted, for example, the Canada Labour Relations Board decision in Scott C. Montani, 95 di 157. In that decision the CLRB concluded that there must be an “immediate danger” before the right to refuse work can be upheld. Counsel for the employer also referred to the CLRB decision in David Pratt 73 di 218; 1 CLRBR (2d) 310, where the Board reviewed the progression of legislation from imminent danger to the current definition; it concluded that the Code retained an “essence of

immediacy” and that the current definition has virtually the same meaning as it did before the amendments.

Mr. Garneau noted that there are inherent dangers in respect of the duties of a correctional officer; the Code recognizes that these inherent dangers are not grounds for invoking the right to refuse work, nor are potential hazards a legitimate basis for refusal. He cited the Federal Court of Appeal decision in Canada (Attorney General) v. Bonfa 73 D.L.R. (4th) 364, where the Court noted that a safety officer must examine the situation that exists at the time of the refusal; that is, the possibility of potential for danger in the future is not a sufficient basis for refusing to work.

Counsel for the employer pointed to Dr. Climie’s testimony that the perception of possible harm as noted in the “Material Substance Data Sheet” was unwarranted and highly exaggerated in view of the current scientific evidence. He also referred to Warden Cross’ testimony that the risks raised by employees were remote and no different than the risks that may arise from many other things and substances available at the Institution; that is, these risks are inherent in any environment in which there are inmates. Mr. Garneau also maintained that the dispensation of bleach under the policy was not uncontrolled; there are a number procedures in place to ensure that inmates did not have an inappropriate amount of bleach in their possession. Mr. Garneau argued that the concerns of the guards about potential hazards should be measured against the very clear and overwhelming evidence pointing to the need for bleach to reduce the spread of AIDS in prisons. This concern has been recognized by correctional officers themselves as noted in the PSSRB decision in Walton (Board file 165-2-21). In support of his submissions, Mr. Garneau also cited the Board decision in Brown (Board file 165-2-110) and Stephenson et al. (Board file 165-2-83).

Reasons for Decision

The Board’s mandate in respect of a review of a safety officer’s decision is set out in subsection 130(1), which states the following:

130.(1) Where a decision of a safety officer is referred to the Board pursuant to subsection 129(5), the Board shall, without delay and in a summary way inquire into the circumstances of the decision and the reasons therefor and may

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- (a) *confirm the decision; or*
- (b) *give any direction that it considers appropriate in respect of the machine, thing or place in respect of which the decision was made that a safety office is required or entitled to give under subsection 145(2).*

The factual issue which the Safety Officer had to address in this case is whether the introduction of the bleach distribution program, which allowed inmates direct access, without the intervention of correctional staff, to one ounce of household bleach, constituted a danger to the health and safety of employees at the Institution, as that term is used in Part II of the Canada Labour Code. The Safety Officer examined in detail the reasons given by the employees for fearing that their health or safety was in jeopardy and concluded that there was no danger within the meaning of the Code. He came to that conclusion after interviewing a number of the complainants, including members of the Health and Safety Committee. He then reviewed the employer's policy in detail and spoke with a number of departmental officials who were responsible for the program, as well as officials of Labour Services, including several technical experts. He then concluded that there was no danger to the applicants' health or safety. In my view, the Safety Officer cannot be faulted either for his conclusion or for the means by which he came to that conclusion.

It should be understood that the Board's mandate in respect of this matter is limited; it is not within the purview of the Board, under subsection 130(1) of the Labour Code, to adjudge the adequacy or inadequacy of the employer's efforts to consult with staff about the introduction of the bleach distribution program, except to the extent that any failure to consult in itself created a danger to the health and safety of employees. It may well be that had more extensive consultations and information sessions taken place prior to the introduction of the bleach program on November 7, 1996, the employees' concerns would have been assuaged and the introduction of this program would have gone forward without incident, as apparently was the case in other prison institutions across the country. Having said this, I wish to make it clear that I do not question the sincerity of the employees' concerns about their health and safety. There is no doubt that correctional officers every day are faced with the prospect of being assaulted by inmates who can and have used every means at their disposal to carry out assaults on prison staff. However, I am not satisfied, based on the evidence before me, that the bleach distribution program as

introduced by Correctional Service Canada can be said to create anything more than the *possibility* of exacerbating the inherently dangerous work responsibilities of correctional officers. As noted by counsel for the employer, the jurisprudence consistently supports the view that the refusal to work can be upheld only where the danger to health or safety is of an immediate nature, in the sense of constituting an emergency (see the David Pratt and Scott Montani decisions, *supra*). It is important to note there are a number of safeguards in place - such as the restriction on the amount of bleach that inmates can have in their possession, as well as various first aid measures - which are designed to address, and would appear to meet concerns that could arise from providing inmates less restrictive access to bleach for the purpose of disinfecting needles.

Moreover the specific concerns raised by the applicants are not supported by the available scientific evidence. In this respect, the testimony of Dr. Climie is of particular interest; Dr. Climie explained in some detail why these concerns were not warranted. It was essentially his conclusion that while bleach is a corrosive substance it would not pose a real threat to the staff of the Institution, even if inmates used bleach to attempt to harm correctional staff. With respect to the possibility of making a bomb with bleach as one of the ingredients, in my view Mr. Cross' response that it would be far easier to smuggle in explosives directly into the Institution than to make a bomb from bleach, is a sufficient answer to that concern.. As the Warden noted, in any large institution such as a prison, where many people work and live together, there are a considerable number of substances available which could potentially be used to cause harm to staff. Household bleach does not appear to be any more dangerous; indeed, the introduction of bleach may well serve to reduce a potential hazard for correctional staff by reducing the spread of AIDS and Hepatitis.

Accordingly, for the reasons noted above, the Safety Officer's decision is confirmed.

**P. Chodos,
Deputy Chairperson**

OTTAWA, January 8, 1997.

APPENDIX

<u>Board File Number</u>	<u>Applicant</u>
165-2-114	Paul Doiron
165-2-115	Mike J. Doiron
165-2-116	Lisa Dutcher
165-2-117	J.W. Martin
165-2-118	Richard T. Matchett
165-2-119	Richard W. Price
165-2-120	Doug Robichaud
165-2-121	Keith Sonmor
165-2-122	Delphis Brideau
165-2-123	Lisa Johnson
165-2-124	Kevin F. Kavanagh
165-2-125	Kevin Savage
165-2-126	Jeff Simon
165-2-127	Jackie Tooker
165-2-128	Ronnie Vautour
165-2-129	Brent Johnstone
165-2-130	Kellie Matchett
165-2-131	Brian A. Mullin
165-2-132	Weldon T. McEvoy