



File No. 03-003  
03-004  
Decision No.

**IN THE MATTER OF PRELIMINARY MATTERS**

**BETWEEN:**

**PUBLIC SERVICE ALLIANCE OF CANADA**

**APPLICANT**

**AND:**

**CANADIAN CORPS OF COMMISSIONAIRES,  
NEW BRUNSWICK AND PEI DIVISION INC.**

**RESPONDENT**

**COUNSEL FOR THE APPLICANT  
COUNSEL FOR THE RESPONDENT**

**J. Gordon MacKay, QC.  
Karen A. Campbell and  
P. Alana Taylor**

**DECISION**

**Background**

An Application for Certification, Form 1, was filed on March 19, 2003, pursuant to Subsections 12 and 13 of the *Labour Act*, R.S.P.E.I. 1988 Cap. L-1, and Section 3 of the *Labour Act Regulations* as amended, requesting that the Board certify the Applicant as bargaining agent of the employees in the unit set forth as appropriate for collective bargaining. The Applicant, in paragraph 6 of its application, describes the unit as: "*All commissionaires employed by the Canadian Corps of Commissionaires NB/PEI Division Inc. in the province of Prince Edward Island.*"

A document entitled "Intervention Filed by the Respondent", over the signatures of Karen A. Campbell and P. Alanna Taylor, Solicitors for the Respondent, was dated and filed with the Board on the 11<sup>th</sup> day of April, 2003, pursuant to Section 9 of *Labour Act Regulations* as amended, cited four grounds for the "Application" as per paragraph 2 thereof. In Paragraph 3 of this document, the Respondent asks that "*the Board and its staff use extra care in scrutinizing the membership evidence to ensure that there has been compliance with the PEI Labour Act and (sic) hearing in relation to this application, the issue of irregularities in membership evidence as raised herein, and in the Unfair Labour practice complaint filed on this date be determined.*" The Respondent requested, at paragraph 4 of this document, a hearing on the grounds for the filing of this intervention and further requested that:

... the jurisdictional issues (paragraphs 2(i), (ii) and (iv) above) be fully determined by the Board prior to engaging the parties in the detailed hearing into the issue of the appropriateness of any remaining employee groups within this application, as the decision(s) rendered on these jurisdictional questions may render the issue of the appropriate bargaining units moot, either in whole or in part.

In two volumes, Book 1 and Book 2, the Respondent filed its Reply to Application for Certification on the 11<sup>th</sup> day of April, 2003.

The document entitled Unfair Labour Practice Complaint, was filed by the Respondent, Canadian Corps of Commissionaires NB/PEI Division Inc., simultaneously with the two volumes referred to above on April 11, 2003. The Public Service Alliance of Canada filed the document entitled Reply to Unfair Labour Practice Complaint on the 22<sup>nd</sup> day of April, 2003.

On June 4, 2003, Counsel for the Applicant, delivered and faxed correspondence to the Board to the effect that his client wished to take issue with eight (8) names included in the Respondent's list of employees at Tab B, Volume 1, of the Respondent's Reply to the Application for Certification.

There was a Pre-hearing Conference held by conference call June 10, 2003, wherein the Respondent abandoned the ground set out in paragraph 2(I) of its intervention that the Applicant is not a Union., and matters of remaining issues and witnesses to be called were discussed.

The hearing of these matters was convened on the 11<sup>th</sup> and 12<sup>th</sup> days of June, and re-convened on the 16<sup>th</sup> and 17<sup>th</sup> days of September 2003. The Motion to consolidate the matters was granted by consent on the 16<sup>th</sup> day of June, 2003.

Written submissions were received from the Respondent on October 15, 2003, and from the Applicant on October 28, 2003. The Rebuttal submissions from the Respondent were filed on November 12, 2003.

### **Cases Considered**

1. ***Grant Development Corporation and/or The Ojibways of Pic River, First Nation***, [1993] O.L.R.D. No. 301;
2. ***Point-Claire (City) v. Quebec (Labour Court)***, [1997] 1 S.C.R. 1015;
3. ***Nichirin Inc.***, [1991] OLRB Rep. January 78;
4. ***Dare Personnel Inc.***, [1995] OLRB Rep. July 935;
5. ***Reference re Validity of Industrial Relations and Disputes Investigation Act (Can.), and Applicability in Respect of Certain Employees of Eastern Canada Stevedoring Co. Ltd.***, [1955] 3 D.L.R. 721 [1955] S.C.R. 529 (QL Version) (the "Stevedore's Case");
6. ***Letter Carriers' Union of Canada v. Canadian Union of Postal Workers***, [1975] 1 S.C.R. 178 (QL Version);

7. *Re Communications Workers of Canada et al. and Northern Telecom Canada Ltd.*, 123 D.L.R. (3d) 483;
8. *Northern Telecom Canada Ltd. et al v. Communication Workers of Canada et al*, (1983) 147 D.L.R. (3d) 1;
9. *United Transportation Union v. Central Western Railway Corp.*, [1990] 3 S.C.R. 1112;
10. *Construction Montcalm Inc. v. Minimum Wage Commission*, [1979] 1 S.C.R. 754;
11. *Re Johnston Terminals & Storage Ltd. and Vancouver Harbour Employees' Association Local 517*, [1981] 122 D.L.R. (3d) 391;
12. *Saskatoon (City) (Re)*, [1997] C.L.R.B.D. No. 24;
13. *British Columbia Corps of Commissionaires (Re)* [2001] B.C.L.R.B.D. No. 277;
14. *York Condominium Corp.* [1977] O.L.R.B. Rep. Oct. 645;
15. *Sutton Place Hotel*, [1980] O.L.R.B. Rep. Oct. 1538;
16. *Public Service Alliance of Canada (Applicant) v. Canadian Corps of Commissionaires - Ottawa Division (Responding Party)*, [2001] O.L.R.D.No. 3909;
17. *Labourers International Union of North America, Local 837 (Applicant) v. Canadian Corps of Commissionaires (Hamilton) (Responding Party)*, [1994] O.L.R.D. No. 2920;
18. *International Union, United Plant Guard Workers of America, Local 1956 (Applicant) v. The Canadian Corps of Commissionaires (Responding Party)*, [1994] O.L.R.D. No. 7;
19. *The Canadian Corps of Commissionaires (Victoria, The Island and Yukon) (the "Employer") and Public Service Alliance of Canada, Local No. 05\2050 (the "Union")*, [2001] B.C.L.R.B.D. No. 115;
20. *Canadian Union of Public Employees, Local 38, Canadian Corps of Commissionaires and The Corporation of the City of Calgary*, Alberta Labour Relations Board decision - Board File No. GE-03636, April 30, 2002;
21. *Burns International Security Services Ltd.*, (1989), 3 C.L.R.B.R. (2d) 264 (C.L.R.B.); and
22. *Canadian Corps of Commissionaires, Union des agent de sécurité du Quebec, Centra de prévention de l'Immigration*, Canada Labour Code, Part II Review of a direction of a security officer, Decision No. 01-003, February 23, 2001.

#### Statutes Considered

1. *Labour Act*, R.S.P.E.I. 1988 Cap. L-1, sections 3, 7, 12, and 13.

2. *An Act Respecting the Canadian Corps of Commissionaires N.B. & P.E.I. Division Inc.*, S.N.B. 2000 C-5.

### **Texts Considered**

1. *Black's Law Dictionary (4<sup>th</sup> Ed.)*, (West Publishing Co. St. Paul. Minn., U.S.A., 1968), p.788.

### **Evidence**

Over the course of the four days of hearings the Respondent presented evidence in the form of oral testimony from three witnesses being Mr. Derek Wayne Hunter, Commandant and Chief Executive Officer of the Canadian Corps of Commissionaires, New Brunswick and P.E.I. Division Inc., Mr. David Garfield Holmes, PEI Area Manager, and Mr. John Michael "Jack" Smith, Payroll Administrator for the corporation. Through those witnesses there were thirteen exhibits tendered in support of the Respondent's position.

In making its case the Applicant, the Public Service Alliance of Canada, called one witnesses, Mr. Wayne David Crossman, Team Organizer for the Applicant, and through the witnesses for both parties tendered into evidence a total of nine exhibits in regards to its address to these preliminary matters.

### **Issues**

There are two issues raised by the Respondent as preliminary matters. The Board has been asked for rulings on whether:

1. the Respondent is an employer within the meaning of the *Prince Edward Island Labour Act*, R.S.P.E.I. 1988, Cap. L-1; and
2. the Federal Government job sites/details, come under the jurisdiction of the Prince Edward Island Labour Relations Board, or are those job sites/details under the jurisdiction of the Canada Labour Relations Board pursuant to Section 4 of the Canada Labour Code.

### **Decision**

The Respondent and Applicant have exerted commendable effort in advancing their cases in regards to these preliminary matters. Careful consideration has been given to the evidence presented and the submissions advanced by the respective Parties in relation to their respective positions on these preliminary matters.

The Respondent has established that the Canadian Corps of Commissionaires is a not-for-profit fraternal organization originally formed in England in 1859. The National office was formed in Canada in 1926 to find and facilitate employment for Veterans, ex-Military, and ex-RCMP members. There are 17 autonomous Divisions in Canada of which the NB/PEI Division is one. The Canadian Corps of Commissionaires N.B. & P. E. I. Division Inc, was incorporated pursuant to the New Brunswick *Companies Act* on June 28, 1972 as a body corporate without share capital, and continued as a body corporate by virtue of *An Act Respecting the Canadian Corps of Commissionaires N.B. & P.E.I. Division Inc.*

The current application is third in a series of Applications for Certification filed by the Public Service Alliance of Canada. The first Application was filed in July, 2001 and the second Application was filed in June, 2002 and was subsequently withdrawn in September, 2002, and pursuant to an undertaking between the parties, a three month time bar was imposed. This third Application was filed in March, 2003, and the Reply was filed on April 11, 2003, with four days of hearings conducted as set out above.

The Board turns its attention to the first issue raised as a preliminary matter as to whether the Respondent is an "employer" under Prince Edward Island legislation. An employer, pursuant to the *P.E.I. Labour Act* R.S.P.E.I. 1998, Cap. L-1, s. 7(1)(i), is defined as:

*"... a person, firm or corporation employing more than one employee but does not include Her Majesty or any person, corporation, board, department or commission acting for or on behalf or as an agent of Her Majesty; except that the Lieutenant Governor in Council may by order-in-council declare any person, corporation, board, department or commission acting for or on behalf of or as an agent of Her Majesty to be an employer within the meaning of this Part with respect to any group of employees designated in the order-in-council, whereupon with respect to the group so designated, the person, corporation, board, department or commission, as the case may be, shall be an employer until the order-in-council is rescinded."*

The authorities filed by both parties very clearly establish that in considering the issue raised in this matter the Board is to consider a number of factors to reach its conclusion. The factors to be considered are as follows:

- (1) the party exercising direction and control over the Employees performing the work;
- (2) the party bearing the burden of remuneration;
- (3) the party imposing the discipline;
- (4) the party hiring the employees;
- (5) the party with the authority to dismiss the employees;
- (6) the party who is perceived to be the employer by the employee;
- (7) the existence of intention to create the relationship of employer and employees.

There was extensive documentation filed and argument advanced by both parties with respect to the first factor on this list of factors. The evidence establishes that the Corps negotiates a contract with the Client and that contract may or may not be committed to writing. It is rightly pointed out by the Applicant that individual Commissionaires are not involved in the negotiation process nor are they signatories to these contracts. At each job site/detail there is a document, most often referred to as Post Orders, setting out duties and responsibilities of the Commissionaires on duty. There are varying amounts of input from the Corps, the Commissionaires, and the Clients with respect to the make up of those directions. There is a variance as well, on a site to site basis, as to supervisory control exercised by the Corps and Client. On most job sites/details there is a member Commissionaire in a supervisory role, and, as pointed out by the Applicant, regardlessly, in these instances or in instances where there is no member in a supervisory role, members are answerable to the Commandant and Executive Committee of the Corps.

The documentation indicates that there is input from the Corps, its members and its client with respect to direction and control over employees performing the work. One of the more telling of such documents, filed as Exhibit A-3, Canadian Corps of Commissionaires NB/PEI Division, Terms of Employment, as emphasized by the Applicant, at page 1, states:

*Commissionaires are employed by the NB/PEI Division Canadian Corps of Commissionaires. The Corps is an independent contractor who provides a service to its clients. The client has no legal responsibility as an employer to the Corps' members. The Corps is responsible for the supervision, discipline and administration of all its members. That includes pay, promotions. The client may recommend to Corps' Headquarters the promotion of a Member, but it must be approved by Headquarters.*

*In the event of a client reducing the rank structure at a detail as a result of economic conditions, or any other condition beyond the control of the client, every effort will be made by the Corps to negotiate with the client an effective date that causes the least hardship to our Corps Members.*

As the Applicant's submission goes on to cite, the document continues, at page 2, under the caption "Employer-Employee Relations":

*Members are posted to Corps positions to provide services under conditions agreed between Division Headquarters and the client. Any comments or complaints that a Member may wish to make regarding the conditions of their service must be made to Division Headquarters through the officer or NCO i/c of their Detail. Members must not discuss conditions or service with the client nor any person other than Officers or NCO's i/c of Details of the Corps.*

*It is the responsibility of Division Headquarters to negotiate pay rates, duties, privileges and to investigate and resolve grievances or other problems with the client regarding Commissionaire services.*

The weight of evidence, considered in its totality, in this regard favours the finding that the Respondent is the employer.

As to who bears the burden of remuneration, as stated above, the Corps negotiates the contracts with the Clients and the rates negotiated therein are in consideration of hourly rate paid it members and also to offset the Corp's administrative costs. The usual incidents of the payroll functions are summarized in the Applicant's submissions as follows:

46. *As Jack Smith indicates, the burden of remuneration is clearly that of the Corps with respect to its employed Commissionaire Members. It issues the pay cheques, it makes all at-source deductions and remits them on behalf of its employees, it pays the Workers' Compensation on behalf of its employees, and when necessary, the Corps issues the records of employment in its capacity as an employer on the official documents of the Government of Canada duly declared by Mr. Smith on behalf of the Corps to be accurate in all respects.*
47. *Mr. Smith testified that he was aware of occasions where the Commissionaire Members were paid for the time worked notwithstanding that the client had not paid the Corps. He further testified that to the best of his knowledge, in*

*ten years, he was never aware of a situation where the Corps Members were not paid on time, even though there were instances when payroll records were not submitted by the time payroll cheques were issued.*

48. *Jack Smith, with his extensive knowledge of the payroll of the Corps testified that there may have been times where the client hadn't paid and the Corps did not ask the Commissionaire Member to reimburse the Corps for pay received by the Member from the Corps.*
49. *Jack Smith confirmed that the designation "Security Guard" is used for all Commissionaire Members and that he or his colleagues generate approximately 150 records of employment annually whereon the Corps confirms its status as employer of its Commissionaire Members.*
50. *Jack Smith confirmed that each Commissionaire Member was assigned an employee number upon being granted membership in the Corps and that the Member's employee number was on all pay cheques and other documents forwarded to the Government of Canada with respect to that Employee's employment by the Corps.*
51. *Jack Smith further testified that any official inquiries concerning the employment of the Commissionaire Member with regard to employment insurance was directed from the Government Department to the Corps and not to the Client. He confirmed that the Corps' pay sheets were their source documents with respect to the entitlement to remuneration by the Corps of the Commissionaire Member. These documents were maintained by representatives of the Corps at each detail and submitted by said representatives - not by the client.*

The inescapable conclusion on the factor of who bears the burden of remuneration is that the Respondent bears that burden and for this aspect of the test must be considered the employer.

As to the factor of who imposes discipline, the Board notes the submissions of the Respondent to the effect that:

21. *Discipline is usually imposed at each site; however, if the Employer/Client wants a Commissionaire to be terminated, the Employer/Client determines this and simply informs the Corps that the Commissionaire is termination. The Employer controls its Employees at its job sites but the Corps determines ongoing Membership in the Corps. That Commissionaire will not necessarily be fired from the Corps, but will be removed from that site at the Employer's/Client's direction.*
22. *As Derek Hunter stated in his testimony of June 12, 2003, the Corps provides a service to the Employers/Clients in dealing with discipline issues. The Corps also tries to be fair to the individual Employee/Commissionaires. The Corps will intervene on behalf of its Members who are having difficulties with their Employers. The Corps, like a Union, wants to ensure that its members are treated fairly, but **ultimately** if the Employer/Client wants an individual Commissionaire terminated, the Commissionaire is terminated. The real Employer - the Employer/Client- is completely in control of the employment relationship. The Corps facilitates and is a contact for its Members but it is not in control of the work performed or the duration of the work period (Exhibit "R-10").*

23. *Mr. David Holmes also reiterated Mr. Hunter's testimony and stated that the discipline process is as follows: Mr. Holmes is advised by the Employer/Client if there is a discipline problem at a job site. Mr. Holmes speaks to the Employer/Client to determine what has occurred and what remedy the Employer/Client seeks. If the Employer/Client wants the Commissionaire removed, Mr. Holmes has little choice but to remove the Commissionaire from that posting.*

There is testimony before the Board to the effect that if a member is removed from a particular job site/detail they are not necessarily dismissed from the Corps and may or may not be assigned to another tasking.

In its submissions the Applicant, on the matter of discipline, argues:

52. *At paragraph 21 of the Respondent's Factum, the Respondent states that discipline is usually imposed at each site. What the Respondent does not concede is that discipline of the Commissionaire Member at a detail is solely a matter between the Corps and the Commissionaire Member to the exclusion of the client.*
53. *As we have seen from Exhibit A-3 in the section entitled "Employer-Employee Relations" at p. 2, members must not discuss conditions of service with the client or any person other than officers or NCO's i/c of the details of the Corps.*
54. *The new Policy and Procedures Manual, Exhibit R-11, is even more explicit with respect to the imposition of discipline as can be seen in Section 16 at p. 12.*
55. *Section 16.03 provides that disciplinary action will be administered in four stages. At none of the four stages is the client directly involved. In all of the four stages, representatives of the Corps are involved and mete out discipline they determine necessary. The fact that a complaint may originate with the client is of no consequence in determining who is the Commissionaire's employer. Any employee of any entity that is performing work at the direction of its employer at a third party's location is not subject to discipline by the third party, which has contracted for the services of that employee through the employee's employer, but instead the employee is subject to discipline only by its own employer in exactly the same way as Commissionaires are subject to discipline only by the Corps and not by the clients.*
56. *Any clients purchasing any service can request that the employer of the individual providing that service remove the individual, but unless there is a contractual provisions which allows the client to require the employer to remove the individual, then the client can only request and not require. Such is the case in the relationship of the Corps with its clients. The fact that the Corps usually follows the request of the client may be good business practice. That does not change the fact that the Corps has the final say. (See Exhibit R-11, S. 16.03 (e))*

While the Client may have great influence in disciplinary matters, the ultimate powers to impose discipline lie with the Corps. This factor as well indicates that the Corps is the employer.

With respect to who hires the employees, the Board finds it must favour the position taken by the Applicant in this case. When all of the evidence is considered it must be concluded that the



Corps has determination over who is qualified to become a member Commissionaire and thereby eligible to take up work at any of the job sites/details. The Corps carries out the administrative and training functions with respect to individuals accepted by the Corps for membership in its ranks. There may be instances where the Client will want to interview the member Commissionaires eligible for the positions at their workplace, however this is insufficient involvement to displace the hiring functions performed by the Corps. The Board finds that, for purposes of the factor of who hires the employees, the Respondent is the employer.

In regards to determining who is the employer as it relates to the factor of who has the authority to dismiss the employees, as did the Alberta Labour Relations Board in the *The Corporation of the City of Calgary* case, the Board looks to identify who has the authority to terminate an employee's job such that they would no longer have a job. The evidence before the Board on this point quite clearly establishes that it is the practice of the Corps to mediate in instances where the Client is dissatisfied with the services of an individual member Commissionaire. If mediation is unsuccessful and the client insists that the member be "terminated", then the member's employ at that particular site is "terminated". However, the Commissionaire's membership in the Corps is not "terminated", and they will most likely be simply assigned to another workplace. In terms of who has the authority to dismiss the employee so that they would no longer have a job, that authority lies with the Respondent. Therefore, in relation to this factor, the Respondent is the employer.

The next factor to be considered is who is perceived to be the employer of the employees. It is stating the obvious to say that the evidence of the Respondent's witnesses and the stated perception of the Corps is that the Client is the employer. Equally obvious is that it is the perception of the Applicant that the Corps is the employer. The Applicant further argues that, since it claims a majority of support, that it is implicit that the majority of the employees affected by this matter perceive the Corps as the employer. In its submissions on rebuttal, the Respondent states:

21. *Even if it is the Commissionaire's belief that the Corps is the "Employer", the Board should review paragraph 47 of the Sutton Place Hotel case (Applicant's Book of Authorities – Tab 3) which states:*

*"Where all other indicia of employer status point to a different entity as employer than that perceived by the employees to be the employer the weight to be given to that single factor must naturally diminish."*

In the circumstances of this case the Board concludes that this factor is neutral in determination of the overall question of who is the employer.

The final factor the Board must consider is the existence of an intention to create the relationship of employer and employees. The constituting legislation, the contracts between the Corps and its clients, and the terms of employment documentation placed before the Board are outward written representations of the intention of the parties to the documentation that the client is not to be employer and that the Corps is to be the employer of member Commissionaires. The

belief of the Respondent that their true intent was not to become an employer is overcome in the light of that written evidence to the contrary. This factor as well points to the conclusion that the Respondent is the employer.

In summary, having considered all seven factors relevant to the determination of who is the employer, the Board finds that in all the circumstances of this case the Respondent, Canadian Corps of Commissionaires NB/PEI Division Inc., is the employer of the employees in question.

Turning now to the second issue of whether all or any employees in question come under Federal jurisdiction to the exclusion of the jurisdiction of this Board, the Board must apply the test as set out in the Respondent's factum as follows:

67. *In the case of United Transportation Union v. Central Western Railway Corp., [1990] 3 S.C.R. 1112 (Book of Authorities - TAB 10) the court reviewed the relevant case law and devised a test for the determination of whether a group of employees falls within federal or provincial jurisdiction. The test involved looking for a practical or functional integration between the core federal work or undertaking and the employees in question. The guiding principles were summarized from the decision of Beetz, J. in *Construction Montcalm Inc. v. Minimum Wage Commission*, [1979] 1 S.C.R. 754 (Book of Authorities - Tab 11), and set out as follows:*

***“(1) Parliament has no authority over labour relations as such nor over the terms of a contract of employment; exclusive provincial competence is the rule.***

***(2) By way of exception, however, Parliament may assert exclusive jurisdiction over these matters if it is shown that such jurisdiction is an integral part of its primary competence over some other single federal subject.***

***(3) Primary federal competence over a given subject can prevent the application of provincial law relating to labour relations and the conditions of employment but only if it is demonstrated that federal authority over these matters is an integral element of such federal competence.***

***(4) Thus, the regulation of wages to be paid by an undertaking, service or business, and the regulation of its labour relations, being related to an integral part of the operation of the undertaking, service or business, are removed from provincial jurisdiction and immune from the effect of provincial law if the undertaking, service or business is a federal one.***

***(5) The question whether an undertaking, service or business is a federal one depends on the nature of its operation.***

***(6) In order to determine the nature of the operation, one must look at the normal or habitual activities of the business as those of a “going concern”, without regard for exceptional or casual factors; otherwise, the Constitution could not be applied with any degree of continuity and regularity.”***

68. The court also stated that:

***“A recent decision of the British Columbia Labour Relations Board, Arrow Transfer Co. Ltd., provided a useful statement of the method adopted by the courts in determining constitutional jurisdiction in labour matters. First one must begin with the operation which is at the core of the federal undertaking. Then the courts look at the particular subsidiary operation engaged in by the employees in question. The court must then arrive at a judgment as to the relationship of that operation to the core federal undertaking, the necessary relationship being variously characterized as “vital”, “essential” or “integral”.”***

In relation to the Parks Canada there are two sites within the province that are in question. There is the National Historic Site at Province House in Charlottetown, and the National Park on the North Shore of Prince Edward Island. The operations which are at the core of the Federal undertakings in relation to Province House would be characterized by this Board as being the restoration, preservation, interpretation, and presentation of the site, the building, and its contents for their historical significance, and the housing of the Provincial Legislature chamber. Those operations in respect to the National Park are characterized by the Board as the preservation, interpretation and presentation of the natural significance of the sand dune systems with their inherent flora and fauna, and the operation of camping grounds within the park. The “subsidiary operation” engaged in by the employees in question is described in the Respondent’s as follows:

74. *The Province House, which is a national historic site, and the location of the Prince Edward Island legislature, employs two Commissionaires. As Mr. Holmes stated in his testimony of September 16, 2003, these Commissionaires open up the building, do an initial inspection of the premises and then assume their posts in the main foyer. They do periodic patrols inside and outside the building; they meet and greet visitors, check the cameras and alarms throughout the building and keep records, etc. These individuals allow the historic site to function and their services are integral to the national historic site and certainly to the protection of the members of the legislature.*
75. *The Commissionaires working at the National Parks perform many duties and have many responsibilities. They must have valid First Aid and CPR training and a valid drivers license. They have to patrol the campgrounds, direct individuals to sites, control the ingress and egress to the park, keep radio contact with the other National Parks wardens and write reports to the Wardens of their activities so that proper follow up can occur.*
76. *The work performed by the individuals who work at the National Park allow the National Park Wardens, who are employed by the Federal Government, to spend most of their time patrolling the National Parks. The Wardens leave the security of the campgrounds to the Commissionaires so that the Wardens can perform their duties and keep the National Parks safe. It is submitted that their work is integral to the overall operation of the Employer/Client.*

The Board must take particular note of the evidence of the certain procedures, as emphasized in the Applicant’s factum, that are to be taken in the event of criminal activities at these or other Federal sites. The procedures require the Commissionaire to defer to internal security forces or report the incident to the responsible police authority.

With the greatest respect to the member Commissionaires and the Corps in general, while the operations engaged in by the employees in question is an important operation, their relationship to the core Federal undertakings cannot be characterized as “vital”, “essential” or “integral”.

In regards to the Federal Court of Canada, the operations which are at the core of the Federal undertakings are characterized by this Board as being the conduct of trials and appeals on legal matters and legal issues brought before the Honourable Court and rendering decisions in those matters. The Respondent summarizes the operations engaged in by the employees in question in relation to the Federal Court of Canada as follows:

77. *The Federal Court of Canada employs Commissionaires to work at the Court (Exhibit “R-13” – Tab 2). The Commissionaires protect the Federal Court Judge, who is appointed by the Federal Government. The Commissionaires who work at the Federal Court must have heightened levels of security clearance. Their duties include opening and closing the courtroom and doing visual checks of all individuals who enter the courtroom. They are the security for the Judge and all other employees of the Federal Court. The Commissionaires who work at the Federal Court participate integrally in the overall business of providing public court services to Canadians. The Corps submits that the Commissionaires that work at the Federal Court are vital, essential and integral to the workings of the Federal Court.*

As was emphasized in the Applicant’s factum there is evidence before the Board to the effect that “... witness Holmes stated that there are times when the judges of the Federal Court of Canada do not wish to have a Commissionaire provide security for the Court...” This leads the Board to conclude that the security operations of the employees in question at this job site/detail, although being meaningful, do not meet the test as set out above.

At the RCMP “L” Division Headquarters the operation which is at the core of the Federal undertaking is characterized best by the list of operations as set out in the Respondent’s factum as follows:

*a diverse group of people working in the building. These groups include: the administration of the RCMP Headquarters for the Atlantic region; the Audit Team; the Commercial Crime Division; the Drug Division; the Federal Enforcement Division; Records Management; Telecoms-911; the Criminal Investigation Branch; and the Special Investigative Unit.*

The Board also relies on the summary in the Respondent’s factum for a characterization of the operation engaged in by the employees in question to the effect that:

79. *The Commissionaire at the RCMP “L” Division, is employed at the RCMP premises and is supervised by the RCMP. This Commissionaire continually interacts with RCMP members and is responsible for security for the building. The Commissionaire must ensure that everyone entering headquarters is signed in and out and issued a security badge. This must be worn at all times. The Commissionaire also answers all inquiries from the public, i.e. complaints, accidents, security checks and firearm acquisition. He directs and signs for parcels, patrols the buildings and prepares visitors passes. If there is a problem with the security of the building, the Commissionaire is responsible for getting people out the building and*

*ensuring that no one is left in the building. No one gets into the building without the Commissionaires' approval. This is also a bilingual position. This Commissionaire is part of the "social structure" of the organization. In any type of activity that occurs, he is included.*

80. *Since September 11, 2001, security has increased and there are new orders for access to the building. The Commissionaire has a top level security clearance, which is not required with any other detail. All visitors must now be signed in and everyone who works in the building now has a picture ID pass.*

The Board has reached the same conclusion in respect to these operations as it did in the previous two instances.

With respect to the Department of Fisheries and Oceans ("DFO") and Coast Guard job site/detail, the Board characterizes the Federal undertaking as being the operation of regional headquarters for the departments charged with all aspects of the management of the fisheries resource and matters affecting navigable waters. The operation in which the employees in question is set out in the Respondent's factum in these words:

82. *At the Department of Fisheries and Oceans, Charlottetown Base, the Commissionaires are responsible for the following duties (Exhibit "R-4" - Tab 6):*
- (a) Security;*
  - (b) Fire prevention patrols;*
  - (c) Monitoring of parking regulations;*
  - (d) Control of vehicular and pedestrian traffic in and out of the DFO premises;*
  - (e) Prevention of vandalism and pilfering of government property;*  
*and*
  - (f) Any other related duties that may, from time to time, be identified by the base administrator and be familiar with:*
    - (i) Regulations and operations procedures established for the DFO base, Charlottetown, PEI;*
    - (ii) Charlottetown Harbour Contingency Plan;*  
*and*
    - (iii) The type and use of fire extinguishers installed at DFO base and their location.*
83. *The security of the Department of Fisheries and Oceans property is the prime objective of the Commissionaires employed in Charlottetown. There are two (2) primary positions: one of the Commissionaires works at the reception desk at the main entrance. He performs patrols, screens all people in and out of the building, signs in visitors and contractors, provides visitor passes; and reroutes all phone calls. Commissionaires perform integral, vital and essential duties in that they are responsible for all of the security on the DFO property. (These buildings contain all of the administrators for DFO and the Coast Guard for the Atlantic Region). This enables the employees with the Department of Fisheries and Oceans to perform their duties.*
84. *Another Commissionaire controls the gate and access to the Wharf facilities. The Commissionaire posted at the Coast Guard observes and views the waters of the Charlottetown Harbour. The Commissionaire ensures the building is secure, does a fire watch, and maintains the exterior cameras. The Commissionaire is also responsible for allowing fisheries officers into the building and supplying vehicles to the fisheries officers. If the officers need a vehicle they have to get one from the Commissionaire.*

This Board finds that the relationship between these two operations, i.e. the Federal undertakings and the security operations carried out by the employees in question, is that the operations of the Federal undertaking are being supported by the security operations of the member Commissionaires.

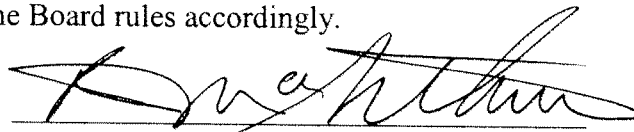
The operations of Veterans' Affairs Canada (VAC) relate to the administration of all legal, financial and matters regarding government programs, including eligibility for disability pensions, for veterans, and their dependants. The Respondent sets out its summary of the operations of the employees in question as follows:

89. *The Post Orders (Exhibit "R-4" - Tab 10), clause 101, states that the security services provided to VAC (Veterans Affairs Canada) are an integral part of the general administration support by VAC.*
90. *There are a number of Commissionaires working at the Department of Veterans Affairs ("DVA"). There are three (3) main buildings: 500 Queen Street, the Dominion Building and the Daniel J. MacDonald Building. At the Queen Street and Dominion Building locations, the Commissionaires primarily answer phones, do patrols and are responsible for the security of the buildings. At the Daniel J. MacDonald building, there are many different jobs performed by Commissionaires, these include: a guard commander, a shift supervisor, a personnel security officer, a patrolman, a freight supervisor, a phone receptionist, and an ID person. (Exhibit "R-4" - Tabs 10 and 11).*
91. *The guard commander is a senior Commissionaire, who organizes the Commissionaires. He reports to the security officers of the Department of Veterans Affairs and they have weekly meetings. He does the scheduling and ensures the time sheets are completed. He develops and co-ordinates training standards for the Commissionaires. The training involves: computer training, report writing, first aid, accessing coastal data stations training and developing partnerships with the information technology services of the Department of Veterans Affairs. The Corps submits that the guard commander's job is especially vital to the security of the DVA. The guard commander's job is to ensure the safety and security of all people working at DVA, which is quite similar to the BC Commissionaires jobs in the BC Commissionaires case.*
92. *The shift supervisor at DVA is responsible for the Commissionaires under him. He ensures that all incidents are logged, car park areas are checked; offices and public works areas are safe, etc. He maintains all cameras and alarms and he monitors all of the security access. He ensures that the security cameras (18) are checked and the tapes are changed as required. The Commissionaires under him address the alarms on the alarm computer, answer the telephone as a backup to the information desk, check the perimeter of the building, check the main fire alarm board, check the pass book, deal with all safety incidents, fire, bomb, flooding, and issues locks and lockers. The Corps submits that the shift supervisor job is also vital to the security of the DVA. Again, the Corps submits that this would be similar to the BC Commissionaires case as the shift supervisor performs important security work.*

93. *There is a Commissionaire who works at the reception desk. This Commissionaire must be bilingual. The Commissionaire must handle all French calls for the Prince Edward Island district office and direct calls from anywhere in the world. There is also an ID clerk. This person looks after in house inquiries, updates the phone book, inputs data into the computer, programs the main computer for access locks, parking cards, door codes, employee codes; issues ID and visitor cards and has the general security of the main door and access. This person also does clerical work, sends out notices to employees for their ID card renewals, contacts employees for appointments, files forms, contacts DVA offices throughout Canada, answers security questions, forwards blank cards as requested and keeps track of employees who are finished working at DVA and lists each employee and recover their ID cards and keys. The Commissionaire issues monthly stats of all ID cards issued and does the fingerprinting for DVA and other outside agencies.*
94. *The Corps again submits that office workers have been found to be part of the federal undertaking. The ID clerk has a very important job. This individual is aware of all of the people in the building and even takes fingerprints to ensure all employees of the DVA are safe to work at DVA. If this individual did not perform his/her duties, the security of the building would be compromised.*
95. *There is a Commissionaire responsible for the freight into and out of the Daniel J. MacDonald building. This Commissionaire issues passes for contractors, cleaners, and repairmen. This person also controls the parking area outside of the freight entrance. There are also patrolmen whose job is to patrol the building during the night shift. These Commissionaires ensure all doors are locked and file cabinets are secure. These Commissionaires also check and recheck all doors and windows, and opens offices in the morning.*

The Board again, with its sincerest expression of respect, must find that the provision of the security functions that are the nature of the operations being conducted by the employees in question, the member Commissionaires of the Corps, are in support of and are ancillary to the operations related to the core of the Federal undertaking. The employees have not been integrated into the department as part of its undertaking. The security functions are very important considerations, but in this Board's finding, the functions are not "vital" and "essential" in a nature that would displace the employees in question from this Board's jurisdiction.

In conclusion, the Board finds that the Respondent, the Canadian Corps of Commissionaires N.B. & P. E. I. Division Inc, for the purposes of the Application for Certification that is the subject of these matters, is an employer as defined in the *Prince Edward Island Labour Act*, R.S.P.E.I. 1988, Cap. L-1. The Board also finds that each of the Federal Government job sites/details, come under the jurisdiction of the Prince Edward Island Labour Relations Board, and that those job sites/details do not fall under the jurisdiction of the Canada Labour Relations Board pursuant to Section 4 of the Canada Labour Code. The Board rules accordingly.



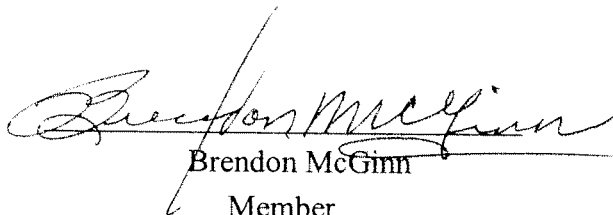
Robert R. MacArthur

Chair



Ray McBride

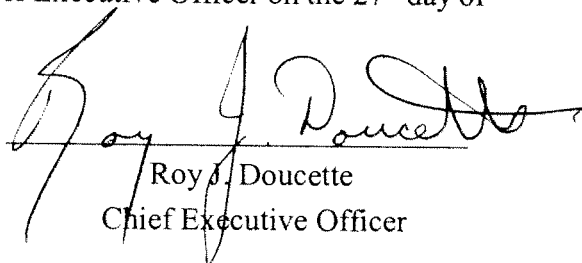
Member



Brendon McGinn

Member

This Decision made by the Prince Edward Island Labour Relations Board on the 25<sup>th</sup> day of November, A.D., 2003, and issued under the hand of its Chief Executive Officer on the 27<sup>th</sup> day of November, A.D., 2003.



Roy J. Doucette

Chief Executive Officer