



**GOVERNMENT OF PRINCE EDWARD ISLAND  
LABOUR RELATIONS BOARD**

M. Lynn Murray, B.B.A., LL.B.  
Chairman  
Roy J. Doucette  
Chief Executive Officer

DEPARTMENT OF LABOUR  
P.O. BOX 2000  
CHARLOTTETOWN  
PRINCE EDWARD ISLAND  
C1A 7N8

**RE: ONE EMPLOYER DECLARATION - SECTION 7(3) LABOUR ACT**

**BETWEEN:**

**CONSTRUCTION AND GENERAL LABOURERS' UNION LOCAL  
CONSTRUCTION, INDUSTRIAL AND COMMERCIAL  
LOCAL UNION 1079A**

**APPLICANT**

**AND:**

**051859 N. B. LTD.  
(Now referred to as: Maxim Construction Inc.)**

**RESPONDENT**

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**COUNSEL FOR THE APPLICANT:**

**J. GORDON MacKAY**

**COUNSEL FOR THE RESPONDENT:**

**DAVID H. JENKINS, Q.C.**

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**D E C I S I O N**

**BACKGROUND OF APPLICATION:**

1. On July 10, 1992, the Applicant (hereinafter referred to as the "Labourers' Union"), filed an application with the Labour

Relations Board (hereinafter referred to as the Board) by Statutory Declaration "for a declaration that the Respondent is one and the same employer (as defined by the Act) as Rocca Construction Ltd. (Now referred to as RCL Operators Ltd.), a body corporate, the employees of which the Applicant has been duly certified to represent as bargaining agent pursuant to the provisions of the Act."

2. Together with the application was filed:

- (a) a certified copy of the annual return for Rocca Construction Ltd. for the 1991 year as filed with the New Brunswick Director of Corporation; and
- (b) a certified copy of the Notice of Directors for 051859 N.B. Ltd. dated April 23, 1992.

3. The Application was served by the Board on the Respondent (hereinafter referred to as "Maxim") at the office of its registered agent, namely, Ross, Hooley, Douglas, Murphy on July 22, 1992 and on August 6, 1992 the Board was notified by David H. Jenkins, Q. C. that he would be representing the Respondent.

4. On August 13, 1992, the Board received correspondence from the Respondent's solicitor outlining the position of the Respondent which essentially stated in part as follows:

- (a) Maxim is not one and the same employer as Rocca Construction Ltd. or RCL Operators Ltd.;
- (b) there was no assignment of any construction contracts from Rocca Construction Ltd., RCL Operators Ltd. or Precision Management Ltd. to Maxim;
- (c) Maxim is not under the same control or direction as either Precision Management Ltd., Rocca Construction Ltd. or RCL Operators Ltd.;
- (d) Maxim's activities have not eroded the bargaining rights of the Labourers' Union;
- (e) there is not sufficient information before the Board to make such a declaration.

5. A hearing was held before the Board on October 6, 1992 at which time both parties were represented. The Labourers Union did not adduce any further evidence other than that attached to its

application.

6. At the conclusion of the case put forward by the Labourers Union, the Respondent moved for a non-suit and the Board took the matter under advisement.

**DECISION:**

7. The application was made pursuant to section 7(3) of the Labour Act, R.S.P.E.I. 1988, Cap. L-1 which states as follows:

" Where, in the opinion of the board, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, the board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Part."

8. The Board has previously dealt with Section 7(3) of the Labour Act, supra, in the case of the United Brotherhood of Carpenters and Joiners, Local 1338 and Laborers' International Union of North America, Local 1079A v. Prebilt Structures Ltd. and Williams, Murphy and MacLeod (1971) Ltd. [September 1, 1988]. There the Board held that Section 7(3) of the Labour Act "is contemplated to provide a mechanism which will preserve the integrity of bargaining relationships which might otherwise be compromised where contractual changes in corporate or business relationships develop or where organizational changes among various entities have taken effect."

9. In reviewing Section 7(3) of the Labour Act, it appears that three questions must be answered, namely:

- (a) Is there more than one corporation, firm or business entity in existence?
- (b) Are the entities under common control or direction?
- (c) Are the activities described in the application related or associated activities as contemplated by Section 7(3) of the Labour Act?

10. Dealing with whether or not there is more than one corporation, the answer is clearly in the affirmative. Those entities are RCL Operators Ltd. (formerly Rocca Construction Ltd.) and Maxim.

11. The next issue to be addressed is whether or not the entities are under common control and direction. The information before the Board can be summarized as follows:

- (a) Rocca Construction Ltd., now RCL Operators Ltd., lists on its annual return for the 1991 year, its directors as Pat Rocca, J. F. McQuinn and P. V. Hanlon;
- (b) Maxim indicates its directors are Patrick V. Hanlon and Lewis A. Tiller according to documents on file with the New Brunswick Corporations Division.

12. The information referred to above does indicate that in 1992, P. V. Hanlon was a director of Rocca Construction Ltd., now RCL Operators Ltd. and he is currently a director of Maxim.

13. The response of Maxim received by the Board on August 13, 1992, was verified by Statutory Declaration of Patrick V. Hanlon, sworn to and received by the Board on October 6, 1992. It indicates that Maxim was not under the control or direction of either Precision Management Ltd., Rocca Construction Ltd. or RCL Operators Ltd. Cross-examination was not taken in relation to the Statutory Declaration, and thus, the Statutory Declaration stands on its own.

14. The mere fact that an individual is a director of more than one company, without more, cannot be taken to mean the entities are under common control or direction. There are any number of companies where there are one or more directors in common, yet the companies could not be said to be controlled by the same individuals.

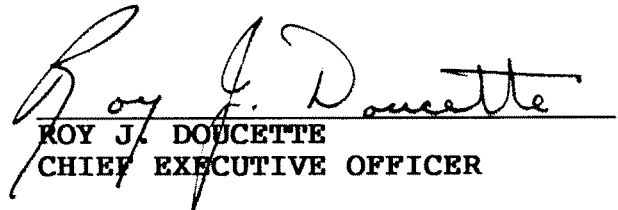
15. There was no evidence presented to the Board that could lead the Board to conclude that the two companies were under common control or direction and having stated this, the second prerequisite outlined in Section 7(3) of the Labour Act has not

been fulfilled.

16. In light of the foregoing, the Board upholds the non-suit motion as insufficient evidence was presented to the Board, that if believed, could have led the Board to conclude in favour of the Labourers Union. This is not to be taken as meaning the evidence was available as it may not have been.

17. As such, it is not necessary to evaluate the case further and accordingly, the Board dismisses the Application.

This decision of the Labour Relations Board was made this 23rd day of December, A.D. 1992 and issued under the hand of its Chief Executive Officer.

  
ROY J. DOUCETTE  
CHIEF EXECUTIVE OFFICER

**PANEL:**

M. Lynn Murray : Chair  
Ted Crockett : Member  
Gerald Doyle : Member