

Application No. 92-023



**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:**

**038219 N. B. LTD.  
(Now referred to as: Precision Management Ltd.)**

**RESPONDENT**

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**COUNSEL FOR THE APPLICANT:**

**J. GORDON MacKAY**

**THE RESPONDENT:**

**UNREPRESENTED AND  
NO ONE APPEARING**

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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

Declaration applying to the Board "for a declaration that the Respondent (referred to as "Precision Management Ltd.") 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. The Applicant submitted with the application:

- (a) a copy of the annual return for the 1991 year of Rocca Construction Ltd. showing its directors as Pat Rocca, J. F. McQuinn, and P. V. Hanlon;
- (b) a copy of the annual return of Precision Management Ltd. showing its directors as John Rocca and John Sherwood.

3. The Application was served on the Respondent at the office of its registered agent, namely, Ross, Hooley, Douglas, Murphy on July 22, 1992. On August 4, 1992 the Board received correspondence from John Rocca of RCL Operators Ltd. regarding this matter.

4. A hearing was commenced before the Board on October 6, 1992 and continued on October 7, 1992.

5. On October 6, 1992, the Respondent was named as 051859 N.B. Ltd.; however, it was amended, with leave of the Board, on that date to read 038219 N.B. Ltd.

6. The Applicant submitted the companies were one and the same based on the following:

- (a) the individuals controlling and directing Precision Management Ltd. and Rocca Construction Ltd. were the same;

- (b) Precision Management Ltd. contracted with the Government of Prince Edward Island to renovate Colonel Gray Senior High School and submitted a great deal of work;
- (c) Precision Management Ltd. encountered financial problems and its contract was assigned with the consent of the Government of Prince Edward Island to 051859 N.B. Ltd. (referred to as "Maxim");
- (d) activities of Precision Management Ltd. were related to the activities carried on by Rocca Construction Ltd.

7. The response received by the Board of RCL Operators Ltd. and signed by John Rocca indicated in part that:

- (a) RCL Operators Ltd. did not contract to assume the obligations of Precision Management Ltd.;
- (b) RCL Operators Ltd. and Precision Management Ltd. are controlled by different individuals;
- (c) Precision Management defaulted on its contract with the Province of Prince Edward Island and the Province cancelled the contract;
- (d) no officers, employees or shareholders of Precision Management Ltd. own any shares of Maxim, are employed with Maxim, or hold any elected position with Maxim.

8. Essentially, the same information as outlined in paragraph 7 hereof was also received by the Board from Precision Management Ltd. on August 4, 1992, and signed by John Rocca.

#### DECISION

9. 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."

10. 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."

11. In reviewing the legislation, it is apparent that before the Board can reach such a conclusion, three questions must be answered in the affirmative, 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?

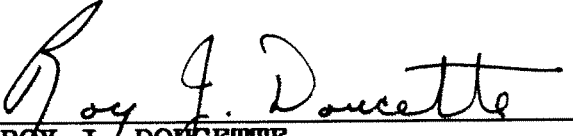
12. The annual returns filed by the Applicant show the directors of the two companies are not the same individuals and there was no evidence adduced that could lead the Board to conclude that there was common control and direction between the two companies, RCL Operators Ltd., formerly Rocca Construction Ltd. on the one hand and 038219 N.B. Ltd., now referred to as Precision

Management Ltd.

13. On a final note, Mr. George Gill testified for R. & G. Masonry Ltd., a company which submitted a bid for labour and material for masonry on the Colonel Gray Senior High School. The bid is not addressed to any particular company and thus, does not really assist the Board. However, Mr. Gill testified that his company had previously worked for Rocca Construction Ltd. and Precision Management Ltd. was in the same business. This point does not need to be addressed in light of the finding made by the Board.

14. 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