The Court of Appeal Has Spoken: Safety Must Come First at the Port of Montréal's Terminals

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On September 12, 2019, the Québec Court of Appeal rendered its ruling in the case of *Singh* c. *Montreal Gateway Terminals Partnerships*[1], upholding the decision rendered in first instance by the Honourable Justice André Prévost of the Superior Court. This case opposed the right to freedom of religion and the requirements of health and safety in locations like marine terminals, where safety is a major issue.

The appellants, three truck-drivers of the Sikh faith who wore turbans, first sought a declaratory judgment from the Superior Court to exempt them from the application of a policy adopted by the respondents, marine terminal operators in the Port of Montréal. The policy required anyone moving in and around those terminals to wear protective helmets (hard hats). Although the appellants were not employees of the respondents, they nevertheless had to go to the terminals as part of their work, to deliver or pick up merchandise, and thus were subject to the impugned policy when they were on the terminals and out of their trucks.

In a unanimous decision, the Court of Appeal confirmed that despite the fact that the policy as drafted interfered with the appellants' right to freedom of religion and was *prima facie* discriminatory towards them, it was valid, being justified under sections 9.1 and 20 of the *Charter of Human Rights and Freedoms*. The Court found that the evidence adduced in first instance showed that a number of head injuries had been sustained on the premises of the terminals, which demonstrated a rational connection between the impugned measure (the policy) and the intended objective, namely, the health and safety of individuals moving in and around the site of the terminals.

On that same subject, the Court of Appeal laid down an important principle. The Court held that even if the terminal operators had been unable to show evidence of any actual head injuries (which was not the case here), adopting this policy as a preventive measure would nevertheless most probably have been considered to be rationally connected with the respondents' objectives (ensuring safety of the terminal premises and safeguarding the health of the individuals operating there).

Basing itself on the holdings of the Supreme Court in the *Multani*[2] case, the Court, in its analysis, then recalled the need to take into account the special context in which the parties were obliged to work as part of its analysis. The Court of Appeal explained that

such principle applied not only to the many risk factors specific to the marine terminal environment (described by one of the ergonomics experts who testified in first instance as a *"fourmilière dans un monde de titans"*), but also to the legal framework in which the parties operate[3].

Indeed, the Court appeared to give significant weight to the fact that the respondents were governed by the legal regime of the *Canada Labour Code* and its regulations, which imposed on them a certain number of health and safety-related obligations. The *Code* and its regulations require the wearing of protective helmets and enact sanctions up to and including criminal liability for the respondents or their representatives in certain circumstances, and even prohibit workers from exposing themselves voluntarily to the risk of head injuries by deciding not to wear their hard hats. The Court of Appeal further dismissed the evidence adduced by the appellants, which, in any event, was partial and incomplete, about legal systems outside Québec permitting exemptions from the wearing of helmets under certain circumstances.

The Court of Appeal also found that the interference with the appellants' rights was minimal, particularly since the evidence adduced in first instance showed that the appellants spent only brief periods of time out of their trucks on the premises of the marine terminals, and that the respondents did not require them to remove their turbans.

Under such circumstances, the Court of Appeal stated its opinion that the first instance judge had correctly concluded that the policy, relating as it did to health and safety objectives deemed essential in society, prevailed over its temporary prejudicial effects on the appellants' religious freedom, and was therefore not discriminatory.

In this important decision, the Court of Appeal has reiterated not only certain key principles of interpretation relating to the protection of rights guaranteed by the *Charter of Human Rights and Freedoms*, but it has also laid down some new principles. This ruling will no doubt also assist employers and third-party enterprises to comply with their health and safety obligations, while respecting the fundamental rights of all individuals concerned, and to better grasp the limits of any measures that they may implement in that regard.

For further information concerning this decision or any other question dealing with human rights and freedoms in your business organization, do not hesitate to contact our labour and employment law specialists in Montréal.

[1] 2019 QCCA 1494

[2] *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 SCR 256.

[3] Para 38. Translations: "an anthill in a world of titans" and "the legal environment toward which the parties' relationship gravitates".

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