# Health and safety trump religious freedom

**September 22, 2016**

On Sept. 21, 2016, the Honourable Mr. Justice André Prévost of the Superior Court rendered judgment in the case of *Singh et al.* v. *Montréal Gateways Terminals et al.* In this decision, the Court confirmed that the operator of a marine terminal may require persons of the Sikh religion to wear a protective helmet over their turbans, notwithstanding their religious beliefs prohibiting such a practice, where there is a real risk of an accident to justify such a requirement.

The plaintiffs were Sikh truck drivers whose work included transporting containers. When they reached the Port of Montréal, Montréal Gateways Terminals (MGT) the largest terminal operating company in the Port, obliged them to put on protective helmets over their turbans while they were circulating on the terminal outside their vehicles, in compliance with their legal obligations under the *Criminal Code* and the *Canada Labour Code*. The truckers complained that such a measure was discriminatory, violating their right of freedom of religion. They applied to be exempted from wearing the hard hats. Refusing that application, MGT first attempted to accommodate them, by developing an alternative container loading procedure. MGT eventually discontinued the measure, as it proved to be ineffective and constraining. For their part, the plaintiffs never cooperated in developing any alternative accommodation solution; they merely demanded an exemption from the rule on wearing the hard hats.

Mr. Justice Prévost analyzed the issue of discrimination under the *Canadian Charter of Rights and Freedoms* and the Québec *Charter of Human Rights and Freedoms*. He confirmed that there was substantial risk of head injuries for the truck drivers when they were required to circulate outside their vehicles on the premises of the marine terminals in the Port of Montréal, regardless of the number of head injuries reported among truckers over the years. He therefore concluded that there was no discrimination, since the wearing of the protective helmets was a measure that applied to all persons moving in and around the Port of Montréal's terminals, and it was the best way of eliminating the risks associated with head injuries. Those risks were the same for all persons circulating on the premises of the marine terminals, whether they were truck drivers, visitors or employees.

Although Justice Prévost did find that the policy was *prima facie* discriminatory as regards the plaintiffs, he nevertheless held that its adoption was fully justified. The policy was designed to comply with legal obligations, was adopted in good faith by MGT and was reasonably necessary for the work of the truck drivers concerned. Although

MGT had attempted to accommodate the plaintiffs, no other alternative measure could enable them to perform their work in safe working conditions. For those reasons, the policy was completely justified.

From the standpoint of its impact on the right to freedom of religion enshrined in the Québec *Charter of Human Rights and Freedoms*, Mr. Justice André Prévost held that the beneficial effects of MGT's policy outweighed whatever adverse effects it had on the plaintiffs' religious freedom. In consequence, although they had demonstrated that the policy did in fact infringe their religious liberty, such infringement was justified under the *Charter of Human Rights and Freedoms*.

This is a judgment of major importance for employers. It maintains that the obligation to care for the health and safety of all concerned, and not merely of one's employees, may be incompatible with the requirements of any one religion. The judgment does not, however, change the state of the law concerning the duty of accommodation. It does, nevertheless, remind us that the obligation of reasonable accommodation is one that requires the cooperation of each of the parties involved; in other words, that they must all be proactive in seeking alternative solutions.

Finally, this is one of the rare cases where a judge has applied the Québec *Charter of Human Rights and Freedoms* in the context of labour relations involving a federally-regulated business enterprise. This judgment suggests that such enterprises, going forward, may well have to comply not only with federal human rights legislation, but also with provincial human rights charters, depending on the circumstances of the case at bar.

Nearly ten years have passed by since the action was instituted. Justine Laurier of BLG's Labour and Employment Group represented MGT at trial, supported by Philippe Vachon (now retired), André Royer and Francesca Taddeo.

By

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Expertise

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