Federal Court of Appeal | Cour d'appel fédérale

Date: 20111104

Docket: A-471-10

Citation: 2011 FCA 302

CORAM: **NOËL J.A.**
TRUDEL J.A.
MAINVILLE J.A.

BETWEEN:

SYNDICAT DES AGENTS DE SÉCURITÉ GARDA, SECTION CPI-CSN

Applicant

and

GARDA CANADA SECURITY CORPORATION

and

UNION DES AGENTS DE SÉCURITÉ DU QUÉBEC – UNITED STEELWORKERS, LOCAL 8922

Respondents

and

ATTORNEY GENERAL OF CANADA

Interested Party

Heard at Montréal, Quebec, on October 19, 2011.

Judgment delivered at Ottawa, Ontario, on November 4, 2011.

REASONS FOR JUDGMENT BY: MAINVILLE J.A.

CONCURRED IN BY: NOËL J.A.
TRUDEL J.A.

Federal Court of Appeal | Cour d'appel fédérale

Date: 20111104

Docket: A-471-10

Citation: 2011 FCA 302

CORAM: **NOËL J.A.**
TRUDEL J.A.
MAINVILLE J.A.

BETWEEN:

SYNDICAT DES AGENTS DE SÉCURITÉ GARDA, SECTION CPI-CSN

Applicant

and

GARDA CANADA SECURITY CORPORATION

and

UNION DES AGENTS DE SÉCURITÉ DU QUÉBEC – UNITED STEELWORKERS, LOCAL 8922

Respondents

and

ATTORNEY GENERAL OF CANADA

Interested Party

REASONS FOR JUDGMENT

MAINVILLE J.A.

[1] This is an application for judicial review in which the Court must consider the jurisdiction of the Canada Industrial Relations Board (the "Board") over the labour relations of the security guards who ensure the detention of foreign nationals at the Montréal area Immigration Prevention Centre. Do those labour relations fall within federal jurisdiction, and are they consequently governed by the *Canada Labour Code*, R.S.C., 1985, c. L-2?

[2] In a decision dated October 18, 2009 (*Garda Canada Security Corporation,* [2009] CIRB 477, the "original decision"), the Board dismissed the application for certification in respect of these security guards filed by the Syndicat des agents de sécurité Garda, Section CPI-CSN (the "CSN") on the principal ground that the Board did not have jurisdiction. In a decision dated November 12, 2010 (*Garda Security Corporation Canada*, [2010] CIRB 549, the "reconsideration decision"), the majority of the Board's reconsideration panel also dismissed the application for reconsideration of the original decision. The CSN is asking the Court to set aside this reconsideration decision on judicial review.

[3] For the reasons that follow, I would allow the application for judicial review. The detention of foreign nationals under the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27, falls within federal jurisdiction, and the labour relations of the security guards tasked with ensuring such detention in a federal facility also fall within federal jurisdiction and are governed by the *Canada Labour Code*.

Background

[4] The Canada Border Services Agency ("CBSA"), established under the *Canada Border Services Agency Act*, S.C. 2005, c. 38, reports to the Minister of Public Safety and Emergency Preparedness. This agency is responsible for the security of Canada and for this purpose, among other things, controls the access of individuals to Canada. For that purpose, the *Immigration and Refugee Protection Act* empowers CBSA officers to arrest and detain foreign nationals if they are a danger to the public, if there is doubt as to their identity or if there are reasonable grounds to believe that they are unlikely to appear for an examination, an admissibility hearing or removal from Canada under the Act.

[5] As part of its mandate under the *Immigration and Refugee Protection Act*, the CBSA operates several detention centres in Canada, one of these being the Immigration Prevention Centre in the Montréal area, which includes a centre located at 200 Montée St-François, Laval, and two satellite facilities: the Guy Favreau Complex detention area at 200 René-Lévesque Boulevard West, Montréal, and the detention area at 1010 Saint-Antoine Street West, Montréal.

[6] Until very recently, the detention of foreign nationals at this centre and these detention areas was ensured by the Canadian Corps of Commissionaires. However, following a call for tenders, Garda was awarded a contract by Public Works and Government Services Canada in order to provide these services to the CBSA from April 1, 2007, to March 31, 2009. The contract was extended until March 31, 2010. Although the record does not disclose whether the contract

was renewed, counsel confirmed at the hearing before this Court that Garda was still providing the services in question.

[7] The background to and the general description of the services provided by Garda are set out as follows in the contract (Exhibit R-4 of the affidavit of Bruno Héroux, pages 168 to 169 of the Applicant's Record):

> [TRANSLATION]
>
> 1. BACKGROUND
>
> The primary role of the Immigration Prevention Centre (IPC) is to transport, house and ensure the safety of detainees under the IRPA [*Immigration and Refugee Protection Act*] and other related memoranda of understanding. Our objective is to support the operations of the CBSA by taking custody of all detainees in compliance with national standards and departmental policies on detention. Thus the IPC team's role is to ensure the safety of the various persons involved in enforcing the Act (detention component), for both detainees and our partners in the field.
>
> 1. General description
>
> Security guard services
>
> 1.1 For the provision of an unarmed uniformed security guard service at the Canada Border Services Agency (CBSA) for the supervision and transportation of detainees in compliance with the *Immigration and Refugee Protection Act* (IRPA) and with CBSA guidelines. The security guard services will be provided at the following locations:
>
> -Canada Border Services Agency
> Prevention Centre (IPC)
> 200 Montée St-François
> Laval, Quebec
>
> -Canada Border Services Agency
> Guy Favreau Complex (detention area)
> 200 René-Lévesque Blvd West

> Montréal, Quebec
>
> -Canada Border Services Agency
> Investigations and Removals (detention area)
> 1010 Saint-Antoine Street West
> Montreal, Quebec
>
> . . .
>
> The Project Manager or his or her replacement shall inform the company's coordinator of the work shifts that will be established on the basis of CBSA requirements, in the various detention areas, such as the IPC, the Guy Favreau Complex and 1010 St-Antoine Street West. Security guards may be moved from one location to another depending on CBSA operational requirements.
>
> Services are required 365 days a year, 24 hours a day, except at the Guy Favreau Complex and 1010 St-Antoine Street West, where services are required only on working days.
>
> At least 40% of security guard staff must be female, on every work shift and at all locations where services are provided.
>
> 1.2 For the supply of uniformed security guard services, for driving vehicles and guarding detainees who need to be transported, primarily within the Montréal metropolitan area, but also occasionally to other parts of the province of Quebec, Ontario and the Maritimes.
>
> 1.3 Using CBSA vehicles, provide transportation services for moving detainees and baggage, picking up or delivering prescriptions or any other task in accordance with instructions from the Project Manager or his or her replacement.
>
> 1.4 Services shall be provided in compliance with this document and with the various guidelines issued by the CBSA. The IPC operations manual will be given to the contractor when the contract is issued. The IPC operations manual is a document that cannot be given to bidders, for security reasons.
>
> . . .

[8] Garda is a large corporation operating in the security services sector. It employs approximately 40,000 individuals in several provinces and countries. About 4,000 of its staff are

employed in Quebec, and the labour relations of most of these employees are under provincial jurisdiction. The Union des agents de sécurité du Québec, Local 8922 of the United Steelworkers of America (the “Steelworkers”), is certified under Quebec’s *Labour Code*, R.S.Q., c. C-27, to represent employees of Garda working as security guards. A collective agreement governed by the provisions of Quebec’s *Labour Code* applies to these employees, who are also subject to the *Decree respecting security guards*, R.Q., c. D-2, r.1, enacted under the A*ct respecting collective agreement decrees*, R.S.Q., c. D-2 (the “provincial Decree”).

[9] However, not all Garda employees working in Quebec are governed by Quebec’s *Labour Code*. In fact, the record reveals that Garda is also bound by certifications under the *Canada Labour Code* affecting, for example, its employees responsible for carrying out searches at the Montréal-Trudeau Airport, who therefore are not governed by the provincial Decree, have a separate collective agreement and receive a higher salary than that provided under the provincial Decree (see the original decision at paragraph 41). Likewise, the Steelworkers also hold various certifications under the *Canada Labour Code* for employees assigned to airport security (see the original decision at paragraph 57).

[10] In order to perform its service contract pertaining to the Montréal area Immigration Prevention Centre, Garda hired many of the commissionaires who formerly worked there. Garda also assigned several members of its own security personnel to the Centre. Garda pays all the security guards working under this contract according to the provincial Decree.

[11] A few months after the beginning of the contract, on February 22, 2008, the CSN filed an application for certification under the *Canada Labour Code* for a bargaining unit consisting of Garda security guards assigned to the CBSA in Quebec. This application was challenged by both Garda and the Steelworkers on three grounds: (1) the Board's jurisdiction; (2) the description of the proposed unit; and (3) the timeliness of the application for certification under the *Canada Labour Code*.

The original decision

[12] Claude Roy, Vice-Chairperson of the Board, sitting alone, made the original decision dated October 28, 2009, in which he dismissed the CSN's application for certification.

[13] At the hearing before the Board, Garda and the CSN agreed on the description of the bargaining unit, which covers security guards employed by Garda and assigned to the CBSA at the Immigration Prevention Centre. The issue before the Board therefore primarily concerned the Board's jurisdiction and, incidentally, the timeliness of the application.

[14] The evidence before the Board demonstrated that the security guards assigned to the Immigration Prevention Centre are principally involved in transporting, monitoring and detaining foreign nationals who have an irregular status and who are awaiting a decision from the CBSA. For these purposes, they may handcuff, search and detain these foreign nationals, but they act under the orders and instructions of CBSA officers, who alone have the powers to investigate, arrest and detain. The security guards must obtain a security clearance from the

Royal Canadian Mounted Police, and some of them must also obtain an airport pass to access the restricted areas of the Montréal-Trudeau airport. The guards must also follow and comply with the CBSA Operational Procedures Manual.

[15] After reviewing the case law and the applicable principles, the Board found that the main issue before it was to "determine whether Garda's activities are an essential part of the operation of the IPC [Immigration Prevention Centre] by the CBSA, that is, whether those activities are intrinsically linked with this federal undertaking and whether the work of the security guards is an integral part of the federal activity in question" (original decision, at paragraph 115). Relying on certain evidence, the Board found that these activities were not essential to the CBSA:

> [124] The testimony of Ms. Marilyne Paradis, CBSA's head of operations at the IPC, clearly showed that the building in which the IPC is located is used to hold non-violent individuals and that the IPC's purpose is to keep family members together. Violent individuals are transferred to the Rivière-des-Prairies Detention Centre and decisions in this regard are always made by the CBSA officers.
>
> [125] That witness stated that the IPC is a medium-security holding centre, that it is not identified as a Correctional Service of Canada facility and its operation is not subject to directives of that agency. Garda security guards have no power to decide whether to place or keep detainees in custody or to investigate, arrest, interrogate or release individuals. They do not have access to detainees' files and are not required to identify detainees. Moreover, Ms. Paradis clearly indicated that the guards do not engage in interprovincial transportation even though the collective agreement makes provision for it.
>
> [126] The Board must determine the application for certification according to the analysis of Garda's activities at the IPC. Based on that analysis, the Board finds that those activities are not severable from its other guard and transportation activities. Although they are necessary, they are not vital or essential to the federal undertaking. They are not essential security activities like those in an airport, and no other evidence was presented to the Board in support of their being a first line of security.

[16] The Board also found the application for certification to be untimely on the basis that it had been filed outside the time frame prescribed at paragraph 24(2)(*d*) of the *Canada Labour Code*.

The reconsideration decision—the majority

[17] The CSN relied on section 18 of the *Canada Labour Code*, which allows the Board to review, rescind, amend, alter or vary its decisions. The application for reconsideration was heard and determined by a panel of three members of the Board. Two of the panel members (Louise Fecteau and William G. McMurray) dismissed the application, while a dissenting member (Graham J. Clarke) would have rather ruled that the Board had jurisdiction.

[18] The majority of the reconsideration panel therefore found that the Board had been right to decline jurisdiction. For this purpose, the majority distinguished previous decisions of the Board relating to airport security services, on the ground that Garda's circumstances were different: reconsideration decision, at paragraphs 44 to 47 and 50 to 58.

[19] The majority of the reconsideration panel was of the view that the services provided by Garda to the CBSA are not severable from the services Garda provides to its other clients (reconsideration decision, at paragraph 49):

> [TRANSLATION]
>
> [49] . . . The evidence considered by the Board did not show that the contract under which Garda provided security services at the IPC was severable from its other contracts, under which it provides security guard services. The evidence shows that Garda employee assignments to the IPC are not exclusive; Garda provides security and transportation services for a number of other undertakings in Quebec, and can assign its security guards to them to enable them to complete their weekly hours of work. In addition, the security guards are not given specialized training when assigned to the IPC. The evidence also shows that the operations of taking charge of and transporting detainees and handcuffing, searching and holding them in detention are performed under the authority of a CBSA officer, and that Garda guards therefore have no decision-making power in this regard. The basic security services provided by Garda to its other clients include guarding, monitoring, and providing safety and protection for premises, assets and people. Garda security guards also conduct searches and, when authorized to do so, issue violation notices. In short, there is nothing to show that the services provided by Garda at the IPC are severable from its other operations.

[20] The majority of the reconsideration panel also distinguished the Ontario Labour Relations Board's decision in *Bhagat Ram Mehmi*, [2004] OLRB Rep. January/February 16; [2004] O.L.R.D. No. 3399 (QL), which ruled that the labour relations of security guards in an immigration detention centre in Ontario fell within federal jurisdiction. For the majority of the reconsideration panel, since the guards of the Montréal area Immigration Prevention Centre were assigned to watch non-violent detainees, this distinguished them from the security guards working at the immigration detention centre in Ontario (reconsideration decision, at paragraph 59):

> [TRANSLATION]
>
> . . . the security guards in [*Bhagat Ram Mehmi*] were performing a role similar to that of the correctional services officers. The detention centre in question was used to detain individuals who had violated the IRPA and consequently had been arrested or detained by Immigration Canada because there was reason to believe that they would not appear when summoned or even that they were a danger to

> the public. In contrast, according to the evidence filed, the security guards in the instant matter work in a building in Laval, Quebec, that houses non-violent detainees, to keep family members together, a circumstance that requires much less stringent security measures that those in *Bhagat Ram Mehmi*, *supra*.

[21] The majority of the reconsideration panel did, however, conclude that the Board had made an error in law on the issue of the time frame to submit the application for certification. The majority of the reconsideration panel therefore ruled that, had it had jurisdiction, it would have allowed that part of the application for reconsideration dealing with this issue of timeliness.

The reconsideration decision—dissenting opinion

[22] In contrast, the Vice-Chairperson of the Board, Graham G. Clarke concluded that the Board did have jurisdiction over the matter.

[23] He first explained that a number of the factors considered in the Board's original decision were not relevant to the constitutional analysis, including the scope of the provincial Decree, the recruitment and mobility of personnel, the duration of the Garda contract and the fact that the security guards do not have the same powers as CBSA officers (at paragraphs 103 to 110 and 114 of the reconsideration decision).

[24] For the dissenting member, ease of recruitment and a high level of turnover have never been relevant to a constitutional determination, no matter how critical they may be to the operation of a business. Moreover, even though Garda had signed a term contract, this had no impact on the constitutional analysis, since the CBSA continually contracted with security

agencies for the services in question, which remain the same over the years regardless of the contractor retained. Similarly, the existence of the provincial Decree governing security guards under provincial jurisdiction was not relevant when determining whether guards fall under federal jurisdiction, since the issue was precisely to determine whether this provincial Decree constitutionally applied. Finally, the dissenting member noted that the original decision did not explain how the fact that the guards did not exercise the same powers as CBSA officers impacted the constitutional determination.

[25] Following these observations, and after a careful review of the facts, the dissenting member found that the security guards are doing a great deal more than monitoring a building; they are rather providing for the detention of foreign nationals who have been arrested by the CBSA under a federal statute. The dissenting member was therefore of the opinion that the duties of the Garda security guards were vital and essential to the Immigration Prevention Centre's operations:

> [TRANSLATION]
>
> [115] The facts in [the original decision] demonstrate that Garda's services to CBSA, through its Guards, are an integral part of the IPC. The Guards are not merely providing general building security at the IPC. Rather, their security functions relate explicitly to how the IPC carries out its mandate over detainees under its care and control.
>
> [116] The very concept of a "detainee" includes that fact they are not free to come and go as they please. The Contract foresees that the Guards will personify the coercion that is inherent in the daily operations of any IPC.
>
> [117] In this role, the Guards transport detainees to different locations. They occasionally handcuff detainees. They search detainees. They place detainees in cells. The work is carried out in a medium-security facility as opposed to in a public building. If a detainee is violent, the Guards may transport that individual to a higher-security detention centre.

> [118] The Guards' functions in this regard are vital and essential to an IPC's daily operations. It does not matter to what extent the Guards are involved in all aspects of Canada's immigration system. The focus must be on their functions at the specific IPCs in question.
>
> [119] Because of the normal and habitual activities of its Guards, a portion of Garda's otherwise provincial business is severable and becomes subject to the [*Canada Labour*] *Code.*

[26] Finally, on the issue of the timeliness of the application for certification, the dissenting member found that the reasons on which the original decision was based were vague. Consequently, he would have returned this issue to the original panel for redetermination.

Issue and applicable standard of review

[27] Neither Garda nor the Steelworkers are challenging the conclusion of the majority of the reconsideration panel that the Board made an error in law on the matter of timeliness. Moreover, the description of the bargaining unit is not at issue. Consequently, the only issue before this Court is the Board's jurisdiction to deal with the application for certification.

[28] The Board's jurisdiction is an issue which may be reviewed by this Court pursuant to subsection 22(1) of the *Canada Labour Code* and paragraphs 28(1)(*h*) and 18.1(4)(*a*) of the *Federal Courts Act*, R.S.C., 1985, c. F-7.

[29] The jurisdictional question at issue requires a constitutional analysis. This analysis is subject to a standard of correctness; however, "[w]here it is possible to treat the constitutional analysis separately from the factual findings that underlie it, curial deference is owed to the

initial findings of fact": *Consolidated Fastfrate v. Western Canada Council of Teamsters*, 2009 SCC 53, [2009] 3 S.C.R. 407, at paragraph 26 ("*Consolidated Fastfrate*"); see also *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraphs 58 and 59; *CHC Global Operations (2008) Inc. v. Global Helicopter Pilots Association*, 2010 FCA 89, at paragraph 22; *Syndicat des débardeurs du port de Québec v. Société des arrimeurs de Québec Inc.*, 2011 FCA 17, at paragraph 45.

Analysis

[30] To properly understand the nature of the issue before this Court, it is useful to refer to the provisions of the *Canada Labour Code* that confer certification jurisdiction on the Board. Part I of the *Canada Labour Code* is entitled "Industrial Relations", and section 4 thereof reads as follows:

4. This Part applies in respect of employees who are employed on or in connection with the operation of any federal work, undertaking or business, in respect of the employers of all such employees in their relations with those employees and in respect of trade unions and employers' organizations composed of those employees or employers.	**4.** La présente partie s'applique aux employés dans le cadre d'une entreprise fédérale et à leurs syndicats, ainsi qu'à leurs employeurs et aux organisations patronales regroupant ceux-ci.

[31] "Federal work, undertaking or business" is defined at section 2 of the *Canada Labour Code*, the relevant provisions of which read as follows:

2. In this Act,	**2.** Les définitions qui suivent s'appliquent à la présente loi.

"federal work, undertaking or business" means any work, undertaking or business that is within the legislative authority of Parliament, including, without restricting the generality of the foregoing,	« entreprises fédérales » Les installations, ouvrages, entreprises ou secteurs d'activité qui relèvent de la compétence législative du Parlement, notamment :
. . .	[…]
(*i*) a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces,	*i*) les installations, ouvrages, entreprises ou secteurs d'activité ne ressortissant pas au pouvoir législatif exclusif des législatures provinciales;
. . .	[…]

[32] The issue to be determined here is whether the jurisdiction that Parliament conferred on the Board pursuant to section 4 of the *Canada Labour Code* extends to the labour relations of the security guards working at the Immigration Prevention Centre under the service contract between Garda and the Government of Canada. The answer to this question turns on the principles governing the constitutional division of powers in the area of labour relations.

Analytical framework

[33] The basic rule governing the division of powers over labour relations is that the provinces have jurisdiction over enterprises that fall within provincial legislative authority and the federal government has jurisdiction over enterprises that fall within federal legislative authority. Given that provincial jurisdiction over "Property and Civil Rights" under subsection 92(13) of the *Constitution Act, 1867* extends to labour relations, provincial jurisdiction is the rule, and Parliament can only assert jurisdiction over labour relations if it is shown that such jurisdiction is

an integral part of its primary competence over some other single federal subject: *Consolidated Fastfrate*, at paragraphs 27 and 28.

[34] The labour relations of an enterprise therefore fall under the *Canada Labour Code* only if the enterprise in question is a federal work, undertaking or business or if its activities, which *a priori* fall under provincial authority, are nonetheless integral to a federal work, undertaking or business: *Consolidated Fastfrate*, at paragraph 28.

[35] In this respect, Justice Dickson summarized as follows the applicable principles and the analytical method to use in *Northern Telecom v. Communications Workers*, [1980] 1 S.C.R. 115 ("*Northern Telecom*"), at pages 132 to 133:

> (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.
>
> A recent decision of the British Columbia Labour Relations Board, *Arrow Transfer Co. Ltd.* [[1974] 1 Can. L.R.B.R. 29], provides 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". As the Chairman of the Board phrased it, at pp. 34-35:
>
> > In each case the judgment is a functional, practical one about the factual character of the ongoing undertaking and does not turn on technical, legal niceties of the corporate structure or the employment relationship.
>
> In the case at bar, the first step is to determine whether a core federal undertaking is present and the extent of that core undertaking. Once that is settled, it is necessary to look at the particular subsidiary operation, i.e., the installation department of Telecom, to look at the "normal or habitual activities" of that department as "a going concern", and the practical and functional relationship of those activities to the core federal undertaking.
>
> [Emphasis added]

[36] In that decision, at page 135, Justice Dickson also identified certain relevant factors for determining whether an enterprise providing a federal undertaking with services or equipment forms an integral part of the federal undertaking:

a. the general nature of the service provider's operation as a going concern and, in particular, the role of the services within that operation;

b. the nature of the corporate relationship between the service provider and the other companies that it serves, notably the federal undertaking at issue;
c. the importance of the work done for the federal undertaking at issue as compared with other customers of the service provider; and
d. the physical and operational connection between the services provided and the federal undertaking at issue and, in particular, the extent of these services in the operation of the federal undertaking as a whole.

[37] The principles and factors set out in *Northern Telecom* are not intended to be applied in a strict or rigid manner; instead, the test should be flexible and attentive to the facts of each particular case: *United Transportation Union v. Central Western Railway Corp.*, [1990] 3 S.C.R. 1112, at pages 1139-1140.

[38] Therefore, I propose to first examine the federal undertaking in question and then the services provided by Garda, in order to finally reach a conclusion as to whether there is a “vital”, “essential” or “integral” link between the operations of the concerned federal undertaking and these services.

The operations of the federal undertaking

[39] The Immigration Prevention Centre is a detention centre of the Government of Canada managed by a federal agency, the CBSA. It is therefore a “federal undertaking” which forms an integral part of the federal government. Parliament is constitutionally responsible for the Centre

under its power to make laws for the peace, order, and good government of Canada pursuant to the introductory paragraph to section 91 of the *Constitution Act, 1867*, under its exclusive legislative authority over naturalization and aliens (foreign nationals) pursuant to subsection 91(25) thereof, and under its power to make laws in relation to immigration pursuant to section 95 of the *Constitution Act, 1867*.

[40] Paragraph 4(2)(*b*) of the *Immigration and Refugee Protection Act* provides that the Minister of Public Safety and Emergency Preparedness is responsible for the administration of that Act as it relates to its enforcement, including for arrest, detention and removal. The principal powers of arrest and detention are set out in section 55 of the *Immigration and Refugee Protection Act*, and a detention under that section may be reviewed by the Immigration Division of the Immigration and Refugee Board pursuant to sections 54, 57 and 58 thereof:

54. The Immigration Division is the competent Division of the Board with respect to the review of reasons for detention under this Division.	**54.** La Section de l'immigration est la section de la Commission chargée du contrôle visé à la présente section.
55. (1) An officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.	**55.** (1) L'agent peut lancer un mandat pour l'arrestation et la détention du résident permanent ou de l'étranger dont il a des motifs raisonnables de croire qu'il est interdit de territoire et qu'il constitue un danger pour la sécurité publique ou se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi.
(2) An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,	(2) L'agent peut, sans mandat, arrêter et détenir l'étranger qui n'est pas une personne protégée dans les cas suivants :

(*a*) who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2); or

(*b*) if the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.

(3) A permanent resident or a foreign national may, on entry into Canada, be detained if an officer

(*a*) considers it necessary to do so in order for the examination to be completed; or

(*b*) has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security or for violating human or international rights.

(4) If a permanent resident or a foreign national is taken into detention, an officer shall without delay give notice to the Immigration Division.

57. (1) Within 48 hours after a permanent resident or a foreign national is taken into detention, or without delay afterward, the Immigration Division must review the reasons for the continued detention.

a) il a des motifs raisonnables de croire que celui-ci est interdit de territoire et constitue un danger pour la sécurité publique ou se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi, ou à la procédure pouvant mener à la prise par le ministre d'une mesure de renvoi en vertu du paragraphe 44(2);

b) l'identité de celui-ci ne lui a pas été prouvée dans le cadre d'une procédure prévue par la présente loi.

(3) L'agent peut détenir le résident permanent ou l'étranger, à son entrée au Canada, dans les cas suivants :

a) il l'estime nécessaire afin que soit complété le contrôle;

b) il a des motifs raisonnables de soupçonner que celui-ci est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux.

(4) L'agent avise sans délai la section de la mise en détention d'un résident permanent ou d'un étranger.

57. (1) La section contrôle les motifs justifiant le maintien en détention dans les quarante-huit heures suivant le début de celle-ci, ou dans les meilleurs délais par la suite.

(2) Par la suite, il y a un nouveau

(2) At least once during the seven days following the review under subsection (1), and at least once during each 30-day period following each previous review, the Immigration Division must review the reasons for the continued detention.

(3) In a review under subsection (1) or (2), an officer shall bring the permanent resident or the foreign national before the Immigration Division or to a place specified by it.

58. (1) The Immigration Division shall order the release of a permanent resident or a foreign national unless it is satisfied, taking into account prescribed factors, that

(*a*) they are a danger to the public;

(*b*) they are unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2);

(*c*) the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security or for violating human or international rights; or

(*d*) the Minister is of the opinion that the identity of the foreign national has not been, but may be, established and they have not

contrôle de ces motifs au moins une fois dans les sept jours suivant le premier contrôle, puis au moins tous les trente jours suivant le contrôle précédent.

(3) L'agent amène le résident permanent ou l'étranger devant la section ou au lieu précisé par celle-ci.

58. (1) La section prononce la mise en liberté du résident permanent ou de l'étranger, sauf sur preuve, compte tenu des critères réglementaires, de tel des faits suivants :

a) le résident permanent ou l'étranger constitue un danger pour la sécurité publique;

b) le résident permanent ou l'étranger se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi, ou à la procédure pouvant mener à la prise par le ministre d'une mesure de renvoi en vertu du paragraphe 44(2);

c) le ministre prend les mesures voulues pour enquêter sur les motifs raisonnables de soupçonner que le résident permanent ou l'étranger est interdit de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux;

d) dans le cas où le ministre estime que l'identité de l'étranger n'a pas

reasonably cooperated with the Minister by providing relevant information for the purpose of establishing their identity or the Minister is making reasonable efforts to establish their identity.	été prouvée mais peut l'être, soit l'étranger n'a pas raisonnablement coopéré en fournissant au ministre des renseignements utiles à cette fin, soit ce dernier fait des efforts valables pour établir l'identité de l'étranger.
(2) The Immigration Division may order the detention of a permanent resident or a foreign national if it is satisfied that the permanent resident or the foreign national is the subject of an examination or an admissibility hearing or is subject to a removal order and that the permanent resident or the foreign national is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada.	(2) La section peut ordonner la mise en détention du résident permanent ou de l'étranger sur preuve qu'il fait l'objet d'un contrôle, d'une enquête ou d'une mesure de renvoi et soit qu'il constitue un danger pour la sécurité publique, soit qu'il se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi.
(3) If the Immigration Division orders the release of a permanent resident or a foreign national, it may impose any conditions that it considers necessary, including the payment of a deposit or the posting of a guarantee for compliance with the conditions.	(3) Lorsqu'elle ordonne la mise en liberté d'un résident permanent ou d'un étranger, la section peut imposer les conditions qu'elle estime nécessaires, notamment la remise d'une garantie d'exécution.

[41] Section 142 of the *Immigration and Refugee Protection Act* provides that every person in immediate charge or control of an immigrant station shall, when so directed by an officer, execute any warrant or written order issued under the said Act for the arrest, detention or removal from Canada of any permanent resident or foreign national. Section 143 adds that an order to detain is, notwithstanding any other law, sufficient authority to the person to whom it is addressed or who may receive and execute it to arrest and detain the person with respect to whom the warrant or order was issued or made:

142. Every peace officer and every person in immediate charge or control of an immigrant station shall, when so directed by an officer, execute any warrant or written order issued under this Act for the arrest, detention or removal from Canada of any permanent resident or foreign national.	**142.** Les agents de la paix et les responsables immédiats d'un poste d'attente doivent, sur ordre de l'agent, exécuter les mesures — mandats et autres décisions écrites — prises au titre de la présente loi — en vue de l'arrestation, de la garde ou du renvoi.
143. A warrant issued or an order to detain made under this Act is, notwithstanding any other law, sufficient authority to the person to whom it is addressed or who may receive and execute it to arrest and detain the person with respect to whom the warrant or order was issued or made.	**143.** Par dérogation à toute autre règle de droit, les mandats ou mesures de mise en détention pris en vertu de la présente loi confèrent à leur destinataire ou à leur exécutant le pouvoir d'arrêter et de détenir la personne qui y est visée.

[42] Finally, paragraph 124(1)(*b*) of the *Immigration and Refugee Protection Act* provides that every person who escapes or attempts to escape from lawful custody or detention under that Act commits an offence:

124. (1) Every person commits an offence who . . . (*b*) escapes or attempts to escape from lawful custody or detention under this Act; . . .	**124.** (1) Commet une infraction quiconque : [...] *b*) échappe ou tente d'échapper à sa détention; [...]

[43] Foreign nationals who are detained pursuant to the *Immigration and Refugee Protection Act* are held either in a provincial correctional facility or in one of the minimum-security

detention centres managed by the CBSA in Montréal, Toronto and Vancouver: see Exhibit R-3 of the affidavit of Bruno Héroux, at page 111 of the Appeal Book.

[44] Consequently, foreign nationals are detained in these centres only if the CBSA officer in charge has reasonable grounds to believe that they (a) are a danger to the public; (b) are unlikely to appear for examination, an admissibility hearing or removal from Canada under the *Immigration and Refugee Protection Act*; (c) are inadmissible on grounds of security or for violating human or international rights; or (d) have not reasonably cooperated by providing relevant information for the purpose of establishing their identity. To extend the detention of such foreign nationals beyond 48 hours, the Immigration Division of the Immigration and Refugee Board must also, upon review, agree with the CBSA officer.

[45] The clear purpose of the minimum-security detention centres managed by the CBSA is to prevent foreign nationals held under the *Immigration and Refugee Protection Act* from escaping the control of the federal authorities. There can be no doubt that these detention centres are vital, essential and integral components of the Canadian immigration and border control systems.

The services provided by Garda

[46] Both the terms of the contract between the Government of Canada and Garda and the evidence adduced before the Board unequivocally demonstrate that the security guards take charge of the foreign nationals whose detention has been ordered by CBSA officers under the *Immigration and Refugee Protection Act*. These security guards handcuff, transport and escort

these foreign nationals from where they were arrested to a CBSA-managed detention centre in the Montréal area, and they ensure their detention at this centre. In addition, they transport, handcuff and escort the foreign nationals so detained in the Montréal area in order to facilitate investigations, hearings and removal orders under the *Immigration and Refugee Protection Act*.

[47] The Garda security guards must meet RCMP security requirements, and some must hold an airport pass for the restricted areas at the Montréal-Trudeau Airport. They must all perform their tasks under the authority of CBSA officers and comply with federal departmental policies and CBSA administrative guidelines regarding detention.

[48] Their primary function is to monitor detained foreign nationals in order to prevent them escaping or avoiding a detention imposed on them under the *Immigration and Refugee Protection Act*. Indeed, it is undisputed that the security services provided by the approximately 125 Garda security guards in the Montréal area ensure the effective detention of the foreign nationals held at the Immigration Prevention Centre.

The "vital", "essential" or "integral" link between the federal undertaking and the services provided by Garda

[49] The facts of this case are not in dispute. At issue, rather, are the differing conclusions to be drawn from these facts as to the vital, essential or integral nature of the services provided by Garda to the federal undertaking.

[50] The Board refers mainly to the following factors in support of its conclusion that the services provided by Garda are not a vital, essential or integral component of the CBSA's operation of the Montréal area's Immigration Prevention Centre (see paragraphs 124, 125 and 126 of the original decision and paragraphs 49 and 59 of the reconsideration decision; these paragraphs are reproduced above):

a. The detainees are not violent and are not under the responsibility of the correctional services of Canada;
b. The security guards in question have no power of arrest and do not themselves make decisions concerning the detention of foreign nationals;
c. The services in question are not severable from the other services provided by Garda to its other clients; and
d. The security guards may, on occasion, be assigned to other Garda contracts.

These factors must each be analyzed in turn.

[51] The fact that the Immigration Prevention Centre is used to detain non-violent foreign nationals who are not under the responsibility of the Correctional Service of Canada is not relevant to the analysis of the vital, essential or integral nature of the services at issue. Foreign nationals detained under the *Immigration and Refugee Protection Act* are generally not detained because they are violent, but because they present a flight risk in that they are unlikely to appear for examination, an admissibility hearing or removal from Canada under the Act. Although some foreign nationals may be detained because they are a danger to the public, this is certainly not the usual reason justifying detention under the *Immigration and Refugee Protection Act*.

[52] Foreign nationals whose detention is ordered by the CBSA and reviewed by the Immigration Division of the Immigration and Refugee Board are usually not violent individuals, but rather individuals who present a flight risk. The purpose of the *Immigration and Refugee Protection Act* is not to punish these individuals but to place them in custody pending the outcome of the immigration proceedings relating to their cases. Their detention is preventive, not punitive. The essential purpose of the services provided by the guards supplied by Garda at the Immigration Prevention Centre is to ensure that foreign nationals presenting a flight risk cannot evade the federal immigration authorities.

[53] By subsuming punitive detention with preventive detention, the Board neglected to consider the Immigration Prevention Centre's fundamental purpose and the vital and essential role played there by the security guards, without whom preventive detention under that Act would be impossible at the Centre.

[54] Moreover, the fact that the security guards do not make decisions regarding the detention of foreign nationals concerned is not relevant to the constitutional analysis. Ultimately, the Immigration and Refugee Board's Immigration Division controls the detention of foreign nationals under the *Immigration and Refugee Protection Act*. The fact that a CBSA officer and the Immigration and Refugee Board make the decisions regarding the detention of an individual — rather than the security guards — is irrelevant to the analysis of the vital and essential role played by these guards in the enforcement of such decisions. The issue here is whether

detentions under that Act could be effectively enforced at the Immigration Prevention Centre without the services of the approximately 125 security guards working there. The record clearly shows that detentions ordered under the *Immigration and Refugee Protection Act* could not be effectively maintained at this centre without these services.

[55] The Board's conclusion that the services provided by Garda to the Immigration Prevention Centre are not severable from the services Garda provides to its other clients also does not withstand careful analysis. This conclusion results from a mistaken appreciation of detention and of the State's role in detention.

[56] Even though there is no reason to doubt that the "basic security services provided by Garda to its other clients include guarding, monitoring, and providing safety and protection for premises, assets and people", as pointed out by the majority of the reconsideration panel at paragraph 49 of its decision, there is no evidence in the record that Garda's other clients use the services of that corporation to ensure the detention of individuals within a detention centre. Indeed, the State holds a monopoly over coercion, and only the State (acting, in Canada, through the Crown in right of Canada or in right of a province) may forcefully detain an individual and manage a detention centre for such a purpose. This function is at the heart of the very concept of the modern State, without which our contemporary society could not operate.

[57] We are not dealing here with monitoring public access to a building, or verifying the identity of visitors, or monitoring buildings to prevent theft or other wrongdoings. Rather,

Garda's services to the Immigration Prevention Centre ensure the detention of foreign nationals under a federal statute. None of Garda's other clients may operate a detention centre or enter into a contract with Garda to provide for the detention of individuals. It is therefore wrong to hold that the services provided by Garda for the Immigration Prevention Centre are similar to those services Garda provides to its other clients. Ensuring the detention of an individual is a service profoundly different and distinct from those provided to Garda's other clients, and this very specific detention service is moreover governed by federal government guidelines, standards and policies with which all the security guards must comply.

[58] As to the staff's limited mobility and the fixed term of Garda's contract, these factors are hardly relevant.

[59] Indeed, the contract between the Government of Canada and Garda expressly requires staff stability. Sections 7 and 8 of the contract are very clear in that regard (Exhibit R-4 to the affidavit of Bruno Héroux, at page 172 of the Applicant's Record):

> [TRANSLATION]
>
> 7. Assignment consistency. The Contractor should make every possible effort to assign the same full-time Security Guards to the same locations and shifts, and attempt to limit the work of these people to assignments under this contract. This will ensure that the staff become familiar with the work location in question and will reduce the need to train them and introduce them to new local requirements.
>
> With respect to specific duties previously established in the Project Manager's written instructions and to optimize performance and ensure the continuity and quality of service, the Contractor shall minimize its staff turnover. This will ensure appropriate and efficient use of equipment supplied to the Security Guards.

> 8. Turnover. The Contractor will ensure that hiring methods and guard selection standards enable it to put together a reliable and stable staff.

[60] Garda must therefore provide the CBSA with continuous service, 24 hours a day, 365 days a year, using reliable, stable staff, preferably assigned full-time. Even though some of the guards may, on occasion, be assigned to other contracts, this is certainly not the goal of the services offered to the CBSA.

[61] Concerning the length of the service contract, I note that many service contracts with federal undertakings have a fixed term, but this fact does not entail that the services provided under such contracts cannot be characterized as being a vital, essential or integral part of the federal undertaking concerned. Finding otherwise would lead to deciding constitutional issues on the basis of the duration of a contract rather than on the basis of the vital, essential or integral nature of the services provided under the contract.

[62] Garda's services for the Immigration Prevention Centre are easily severable from that corporation's other services, the evidence before the Board revealing no contrary impediment. Garda is, in fact, a multinational corporation that manages many service contracts in several provinces and countries. In the Montréal area, Garda manages employees certified under the *Canada Labour Code* as well as employees certified under Quebec's *Labour Code*.

[63] In light of the record taken as a whole and of the principles applicable to the constitutional analysis at hand, I can only conclude that the security guard services that Garda

provides for the Immigration Prevention Centre are a vital, essential or integral part of the operations of this centre.

[64] This conclusion is indeed consistent with the Board's decisions in analogous cases, and it follows the conclusion of the Ontario Labour Relations Board in *Bhaghat Ram Mehmi* concerning an immigration detention centre in Ontario.

[65] In *Securiguard Services Limited*, [2005] CIRB 342, the Board certified a union under the *Canada Labour Code* to represent a group of employees providing perimeter security at the Vancouver International Airport.

[66] The Vancouver International Airport Authority does not hire its own employees to enforce the security aspects of the federal regulations which apply to it, but contracts out this responsibility to private specialized service providers through a competitive tender process. One of the aspects of airport security is perimeter security. Perimeter security refers to the control of restricted areas that are not accessible by the general public. This security service is provided by Securiguard's employees and includes the control and monitoring of restricted area passes; surveillance camera operation; escort security for VIPs; and the checking or monitoring of access and entry of airport employees, airline crews and employees of service providers, as well as vehicle entry onto airport grounds, ramps and runways.

[67] In *Securiguard Services Limited*, the Board noted that these security services were required pursuant to the *Aeronautics Act*, R.S.C., 1985, c. A-2, and were therefore different from those services provided for by Securiguard to its other clients. These services could therefore be reasonably severed. Given that these activities were essential for ensuring airport security, they fell under federal jurisdiction:

> [28] Securiguard employees are permanently assigned to provide services to the airport and are trained specifically for these duties. Securiguard employees enforce on behalf of a federal undertaking, security measures developed in compliance with schedules to the *Aeronautics Act*, which is federal legislation. Securiguard employees must obtain valid restricted area passes issued by Transport Canada that are exclusive to the airport to be able to work there. Moreover, certification under the provincial *Private Investigators Act and the Security Agencies Act* (R.S.B.C., 1996, c. 374) is a general competence requirement of all persons who work as security guards within the province, but does not determine whether employees are governed by provincial labour legislation. As well, the services provided by Securiguard under contract to the Vancouver International Airport are separate from its contracts for services at other employers.
>
> . . .
>
> [34] In light of these answers, the Board is of the view that Securiguard's services at the airport are sufficiently connected to the operations of the Airport Authority to be severable from more routine security contracts. There is no evidence that the cleaning staff, booksellers, shopsellers, food vendors and other service providers must similarly comply with the *Aeronautics Act* or that their operations are essential to the airport's operation.
>
> [35] Consequently, the Board views the work of Securiguard's employees at Airport Authority as unique compared to the services it provides to other clients who operate under federal jurisdiction and distinct from its other contracts. The level and quality of work of Securiguard's employees is totally dependent on the standards set by the airport, and the standards of service that apply at the Vancouver International Airport.

[68] The Board reached a similar decision with respect to the security guards of the Canadian Corps of Commissionaires providing similar services at the Halifax Airport: *Public Service Alliance of Canada v. Nova Scotia Division of Canadian Corps of Commissionaires*, CIRB Letter Decision 1647.

[69] Likewise, in *A.S.P. Incorporated*, [2006] CIRB 368, the Board recognized its certification jurisdiction with regard to security guards working for a security agency under contract with various clients and providing security services at the Toronto-Pearson Airport, including under a contract with SkyService for monitoring the doors to a hangar; a contract with TBI for customer service personnel at Toronto Terminal 3; *ad hoc* contracts with Aecon Construction and Torbear Construction for security services for the construction of Terminal 3; and various contracts with the Airport Authority for lost and found items at the airport, security at various airside locations at the airport and the monitoring of the Airport Authority building.

[70] In that case (at paragraph 45), "it [was] clear to the Board that the employees of ASP [the sub-contractor] perform[ed] duties essential to airport security and that, in accordance with its obligations under the *Aeronautics Act*, the GTAA [Greater Toronto Airport Authority] could not operate without security services being in place."

[71] The analogy between airport perimeter services and the services provided by the security guards at the Immigration Prevention Centre is clear. In this case, the security guards perform tasks that are essential to the effective detention of foreign nationals held under a federal statute,

the *Immigration and Refugee Protection Act*. These tasks are carried out in accordance with federal policies and directives. The CBSA could not effectively operate the Montréal area Immigration Prevention Centre without the services of the approximately125 security guards provided by Garda.

[72] Finally, I note that in *Bhagat Ram Mehni*, above, the Ontario Labour Relations Board held that federal jurisdiction extends to the labour relations of security guards working at an immigration detention centre in Ontario. The facts in *Bhagat Ram Mehni* are almost identical to those in the present case; even though the majority of the reconsideration panel did attempt to distinguish the facts of this case in its reconsideration decision, its arguments are not persuasive in light of the Ontario Labour Relations Board's description of the facts in its *Bhagat Ram Mehni* decision:

> 3. The applicant is a security officer for the intervenor which is a company which provides security services to various other companies. The responding party (the "UFCW" or the "Union") represents the applicant in his employment relations with the intervenor.
>
> 4. Throughout the relevant period the applicant worked as a security officer for the Canada Immigration Holding Center (the "CIHC"). The CIHC is a hotel converted into a minimum security detention centre, run by the immigration authorities of the federal government. The CIHC is used to detain persons who have violated the *Immigration Act* and who have been arrested or detained by Citizenship and Immigration Canada ('CIC") because CIC has grounds to believe they will not appear for proceedings or who pose a public danger.
>
> 5. There are approximately 140 security officers at the CIHC who serve in two primary functions. First, security officers are used to escort detainees to and from the CIHC and various ports of entry and immigration and hearing locations. Second, security officers act as guards within the CIHC to ensure that detainees remain in the CIHC and behave properly. In this regard security officers man posts and conduct patrols of the CIHC. In other words, they fulfill a similar role to that of correction officer in a correction institution.

[73] As in *Bhagat Ram Mehni*, the security guards of the Montréal area Immigration Prevention Centre provide for the detention of foreign nationals arrested under the *Immigration and Refugee Protection Act*, and the services they provide are essential to the Centre and integral to its operation. Given their duties, federal jurisdiction over their labour relations seems clear to me.

[74] I note finally that federal authorities must be in a position to keep the Centre operating in the event of a labour conflict, be that through the Board acting pursuant to section 87.4 of the *Canada Labour Code* or through Parliament pursuant to back-to-work legislation. It would in fact be incongruous if provincial authorities were called upon to make decisions regarding essential services at a Government of Canada detention centre, or if they were otherwise called upon to interfere in the management of the labour relations affecting the operations of such a centre.

Conclusions

[75] For all of these reasons, I would allow the application for judicial review, set aside the Board's reconsideration decision, and refer the matter back to the Board for redetermination of the reconsideration application with directions to allow the application and to consider the CSN's

application for certification under the *Canada Labour Code*. I would award costs to the CSN, and I would order Garda and the Steelworkers to bear these costs equally.

"Robert M. Mainville"
J.A.

"I agree.
Marc Noël J.A."

"I agree.
Johanne Trudel J.A."

Certified true translation
Michael Palles

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET:	A-471-10
JUDICIAL REVIEW OF A DECISION OF THE CANADA INDUSTRIAL RELATIONS BOARD DATED NOVEMBER 12, 2010.	
STYLE OF CAUSE:	**Syndicat des agents de sécurité Garda, Section CPI-CSN v. Garda Security Corporation Canada et al.**
PLACE OF HEARING:	Montréal
DATE OF HEARING:	October 19, 2011
REASONS FOR JUDGMENT BY:	MAINVILLE J.A.
CONCURRED IN BY:	NOËL J.A. TRUDEL J.A.
DATED:	November 4, 2011

APPEARANCES:

Marie Pépin	FOR THE APPLICANT
Jean Martel Stéphanie Dinel	FOR THE RESPONDENT GARDA CANADA SECURITY CORPORATION
Nicolas Charron	FOR THE RESPONDENT UNION DES AGENTS DE SÉCURITÉ DU QUÉBEC – UNITED STEELWORKERS, LOCAL 8922

SOLICITORS OF RECORD:

Ouellet, Nadon & Associés Montréal, Quebec	FOR THE APPLICANT
Seguin Racine, Advocate Laval, Quebec	FOR THE RESPONDENT GARDA CANADA SECURITY CORPORATION
Phillion, Leblanc, Beaudry Montréal, Quebec	FOR THE RESPONDENT UNION DES AGENTS DE SÉCURITÉ DU QUÉBEC – UNITED STEELWORKERS, LOCAL 8922
Miles J. Kirvan Deputy Attorney General of Canada	FOR THE INTERESTED PARTY