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IMPORTANT DECISION OF THE COMMISSION DES LÉSIONS PROFESSIONNELLES (C.L.P) AUTHORIZES SOLO POLICE PATROLS AT NIGHT

By : *Suzy Chouinard*, lawyer

In a recent decision¹, the Commission des lésions professionnelles (hereinafter called “the Commission”, the highest authority in matters specifically related to occupational safety and security in the workplace, made a landmark decision regarding solo patrols for municipal police forces in Quebec. Until now, these disputes were settled by arbitration tribunals. They have now become the responsibility of the Commission. The Commission used this opportunity to highlight the fact that «danger and risk associated with police safety» are matters that fall under their jurisdiction under the terms of the applicable legislation

In this affair, Ville de Mont-Tremblant and the Régie intermunicipale de police de la Rivière-du-Nord joined forces to obtain the right to dispatch their police forces “solo” on patrol, according to different activities and requirements for coverage, particularly during the night shift from 11 p.m. to 7 a.m.

They made this attempt after a CSST inspector ordered both police services to dispatch two officers on each patrol, in spite of the lack of danger that had been identified. This requirement was part of a CSST administrative policy issued in May 2000. Under the policy, the CSST used five analytical criteria to harmonize their procedures and put forward a standardized intervention process for certain types of police patrols. The criteria were; appropriate training, adequate communications, backup, organized work schedules and the means and equipment to protect patrollers.

The proof submitted to the Commission showed that this policy was applied systematically, if not automatically, without regard to the specific conditions of the territories

served by the police forces involved. The CSST also declared that solo patrols on the night shift were impossible

under any circumstances, even if the collective agreements between the two services and their respective Brotherhoods recognized and planned for solo patrols during night shifts.

To come to their decision, the Commission used voluminous and detailed documentary proof that included data about the territories and populations involved, crime rates, police work accidents and an expert opinion whose role it was to explain technical and scientific questions specifically related to this field of activities.

The testimony of the expert, backed by many studies and research documents, allowed the Commission, after a rigorous process and with extensive justification, to reach the conclusion that the most important criteria to be retained under these circumstances was not whether interventions are ‘solo’ or ‘duo’, but the approach police officers use to manage the risk they face, i.e.: the capacity to evaluate situations to insure that risk does not become danger.

The Commission referred to precedential criteria as guidelines and raised the fact that the goal of *An Act Respecting Occupational Health and Safety* (L.S.S.T.) is to eliminate danger, but not risk, at the source.

Because these two expressions are often used indiscriminately, it is necessary to make a distinction between the two. Therefore, to show that danger exists, you must demonstrate the real and actual nature of the danger and its tangible existence (as opposed to its virtual existence), as well as the level of consequences with which it is associated. Fears, apprehensions and theories do not suffice in this regard.

In addition to these considerations, the Commission underlined the fact that the nature of police work itself

involves some risk exposure, and this is not enough to establish that there is a real danger to health and safety solely because police officers are doing their job.

Therefore the Commission accepted the arguments of the employers and concluded that there was no danger in carrying our 'solo' patrols instead of 'duo' patrols during the night shift, as long as there is always at least one 'duo' patrol vehicle also assigned on the night shift.

This precedent sets forth a method to analyze risk that includes the particularities of the territories covered, and prevents an automatic analysis of solo police intervention that disregards these specific factors.

The added benefit of this decision is that for the first time in occupational health and safety, parameters have been determined that will be used by those who are responsible for making sure that protective measures are applied during police interventions.

We want to end by noting, in particular, the many hours of work each police department carried out to prepare this file and we appreciate the confidence they demonstrated by allowing us to be partners in this success.

¹ *Régie intermunicipale de police de la Rivière-du-Nord vs. Fraternité des policiers de la Rivière-du-Nord*, C.L.P. 188012 64 0207 and *Ville de Mont-Tremblant c. Fraternité des policiers de Ville de Mont-Tremblant*, C.L.P. 221804 64 0311, September 12, 2007, Robert Daniel, commissaire.

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NEWS FROM OUR FIRM

- Our friends and clients were invited to join our lawyers and staff under the big tent on September 20th to celebrate the 70th anniversary of **Prévost Fortin D'Aoust**. Over 500 people accepted our invitation and we want to thank you, our clients and partners for your confidence. It is a privilege, an honor, and a great pleasure to have served you for many years and to have the opportunity to continue to serve you.
- **Me Patrick Choquette** will preside over the continued training of ACAIQ's Comité de discipline (Association des courtiers et agents immobiliers du Québec) in a seminar to be held on October 25 and 26 at Sheraton Laval.
- **Me Stéphane Sansfaçon** from our firm's environment and municipal law division will speak at the regional seminar of the Laurentian zone of l'Association des directeurs municipaux du Québec (ADMQ), to be held at Mont Gabriel on October 18th. **de Me Sansfaçon** will discuss various changes in municipal and environmental jurisprudence during past year and recent legislative developments.
- **Me Marc D'Aoust** and Mario Leclair from the Rotary Club are taking part in a project to reforest land belonging to Pallia-Vie. They will ask corporations and organizations in the region to sponsor one or several trees. We hope they get all the help they need for this worthy cause.



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