

## PENITENTIARIES

Judicial review applications challenging regime for payment of inmates in penitentiaries — Specifically, applicants challenging *Corrections and Conditional Release Regulations*, SOR/92-620, Commissioner's Directive No. 730 "Offender Program Assignments and Inmate Payments", Commissioner's Directive 860 "Offender's Money" — Prior to 1981, pay system in place considered a "reward for good conduct and general participation in programs" — New inmate pay system created in 1981 to pay inmates for their work, but also to pay inmates participating in education and vocational programs — That system most generous, since subsequent revisions never raising pay under that system — Applicants complaining their pay, which had long been decreased, was significantly reduced (i.e. by 30 percent) in October 2013 by measures implemented through modification of *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (Act), Commissioner's Directives — Specifically, Regulations, s. 101.1(2) amended to add telephone system costs to deductions for accommodation, food, and work clothing already permitted under Regulations, s. 104.1; Commissioner's Directive 860 amended to set deduction at 22% of pay for accommodation, food; to add deduction of 8% for telephone service costs; Commissioner's Directive 730 amended to eliminate performance bonuses — Applicants submitting these deductions *ultra vires* enabling statute (Act, s. 78), unconstitutional or in violation of *Canada Labour Code*, R.S.C., 1985, c. L-2 — Whether Regulations, Commissioner's Directives consistent with enabling statute ; whether Regulations, Commissioner's Directives contrary to *Canadian Charter of Rights and Freedoms*, ss. 7, 12 ; whether inmates performing their work under employer-employee relationship so as to trigger application of *Canada Labour Code* — Here, action taken by administration permitted by Act, s. 78 — Essentially, applicants submitting that Parliament erred in enacting Act, s. 78 because exercise of power granted inconsistent with purposes of correctional system set out in Act, s. 3 — While enactment such as s. 3 can be useful in interpreting another section that is otherwise ambiguous, not possible to disregard clear, specific enactment such as Act, s. 78 — Act, s. 78 far from vague — Parliament expressly provided that deductions of up to 30 percent could be made — No actual or potential conflict between power conferred by s. 78, objectives of correctional system — Applicants not discharging burden of establishing subordinate legislation *ultra vires* Act, s. 78 — With respect to Charter, s. 12, applicants submitting that payments they receive, including deductions of 30 percent now in place, constituting cruel, unusual treatment — However, applicants ignoring wording of Act, s. 78 — Payment herein not to compensate for work performed, but rather to encourage participation in programs, including work-based programs — Difficult to see how treatment provided for by Act that not constitutionally challenged unconstitutional based on sole fact that Commissioner exercised power granted to reduce payment to level allowed by Parliament — Applicants in fact seeking ruling on wisdom of Commissioner's decision to use discretion granted by Act, on Treasury Board's decision to set payment rate — Applicants failing to discharge burden of showing that payment made so inadequate as to impose positive obligation on government because treatment outrages standards of decency Applicants also failing to discharge burden under Charter, s. 7 — Applicants arguing that their refusal to work because their payment was reduced could lead to further restriction of their freedom of movement in institution — However, when inmates who are not participating in any such activity required to remain in their cells during this period, difficult to see this as significant infringement of liberty — Physical restraint inherent in imprisonment — Applicants' claim that their psychological integrity harmed also dismissed — Evidence on file not supporting serious, profound effect on person's psychological integrity caused by state interference — Finally, total absence of arguments concerning infringement of principles of fundamental justice fatal to applicants' Charter, s. 7 claim — Applicants invoking United Nations Standard Minimum Rules for the Treatment of Prisoners, but power of that instrument very limited, not binding [98-99] —International instruments cited by applicants not rising to level required to establish principles of fundamental justice — Also not having desired precision "to yield a manageable standard against which to measure deprivations of life, liberty or security of the person" — As to whether *Canada Labour Code* triggered herein,

applicants' argument based on Code, s. 167, which provides cases in which Part III of Code can be applied — Code, s.167(1)(d) excluding departments as defined in *Financial Administration Act*, R.S.C., 1985, c F-11 — Correctional Service of Canada (CSC) such a department — Code, Part III therefore not applying to CSC — Inmates working in institution also not employees of CSC within meaning of *Public Service Employment Act*, S.C. 2003, c. 22, **ss. 12, 13** or under Part I of Code — Applicants also alleging employer-employee relationship existing outside federal statutory framework , i.e. relationship proceeding from common law — However, relationship, whatever its nature, having to give way to statute law specifically governing offender's relationship that allows a form of payment — Unless Act, s. 78 unconstitutional, law governs inmates' circumstances — Payments herein not for work performed but to encourage participation in institutional programs, social reintegration — Participation in programs not constituting employer–employee relationship under current law — Application dismissed.

GUÉRIN V. CANADA (ATTORNEY GENERAL) (T-1892-14, T-756-14, T-2101-14, T-2137-14, T-2222-14, T-144-16, 2018 FC 94, Roy J., judgment dated January 29, 2018, 83 pp.)