

PENITENTIARIES

Appeal from Federal Court (F.C.) decision dismissing appellants' applications for judicial review challenging legality, constitutionality of *Correctional Service of Canada Commissioner's Directive 730*, *Correctional Service of Canada Commissioner's Directive 860* (Directives), amendments to *Corrections and Conditional Release Regulations*, SOR/92-620 (Regulations) — Until 1981, remunerations received by inmates for work considered reward for good behaviour — With passage of *Corrections and Conditional Release Act*, S.C. 1992, c. 20 (Act), Parliament choosing to change philosophy relative to payment of offenders — Payment of inmates incentive to encourage offenders to meet objectives of correctional plan — Act, s. 78(2) providing that Correctional Service of Canada (Service) may make deductions, require payments — Regulations, s. 104.1(2) setting out potential uses of those deductions — Directives setting out details of inmates' remuneration regime — Amendments to Regulations, Directives reducing payments available to inmates — Appellants arguing Regulations, Directives *ultra vires* Act, contrary to *Canadian Charter of Rights and Freedoms* (Charter), ss. 7, 12 — Also arguing employer-employee relationship existing between inmates, Service, therefore reduction in payment "constructive dismissal" within meaning of *Canada Labour Code*, R.S.C., 1985, c. L-2 (Code) — F.C. concluding regulatory instruments adopted "in strict accordance" with Act, s. 78 not *ultra vires*, that payments in issue, reductions, not cruel, unusual treatment within meaning of Charter, s. 12 — Not satisfied impugned measures engaging interest protected by Charter, s. 7 — Whether amendments to Regulations, Directives violating Charter, s. 7; whether amendments invalid because contrary to UN *Standard Minimum Rules for the Treatment of Prisoners*, Art. 76, International Labour Organization's *Forced Labour Convention*, 1930 (No. 29); whether employer-employee relationship existing between appellants, Service — F.C. correctly finding that appellants failing to show how impugned measures breaching principles of fundamental justice — Appellants not seeking invalidation of state action infringing exercise of Charter right, rather arguing right to security imposing positive economic obligations on state — Canadian courts never going so far, systematically refusing to impose such economic obligations on state — Supreme Court in *Gosselin v. Québec (Attorney General)*, 2002 SCC 84, [2002] 4 S.C.R. 429 rather appearing to militate against positive state obligation to protect life, liberty, security of person through economic measures — Appellants' situation not sufficiently different from recipients of social assistance in *Gosselin* to justify making other finding — F.C. correctly dismissing appellants' claims based on public international law — Minimum Rules at most providing for "equitable" remuneration of prisoners' work without further elaboration, not imposing obligation on signatory countries, not containing any binding mechanism — Convention on Forced Labour excluding "any work or service exacted from any person as a consequence of a conviction in a court of law" — Act, s. 78(2) not ambiguous, international instruments therefore of no assistance in clarifying meaning, even less so in changing scope — F.C. not erring in finding appellants failing to establish employer-employee relationship resulting from participation in programs made available by Service — Should have declined ruling on issue of applying Code, given appellants not having exhausted administrative remedies — Even supposing Code applying, appellants should have proceeded by way of wage recovery complaint — Appellants, even to extent considered employees, excluded from Part III of Code — As to whether appellants considered as having employer-employee relationship under common law, appellants should have proceeded by way of action under *Federal Courts Act*, R.S.C., 1985, c. F-7, s. 17 — Contract law governing Crown's relationship with employees — Accordingly, F.C. not having jurisdiction to deal with issue in application for judicial review — Actual purpose of programs offered by Service rehabilitation, not employment — Act, s. 78(1) only authorizing Commissioner to pay inmates to encourage participation in programs offered by Service or provide specific financial assistance — No mention of compensation for work performed — Differing criteria used for determining inmates' payment level, salary normally paid to

workers — Appeal dismissed.

GUÉRIN V. CANADA (ATTORNEY GENERAL) (A-75-18, 2019 FCA 272, de Montigny J.A., reasons for judgment dated November 4, 2019, 32 pp.)