



Harper Gov't Asks Court to Rule It Powerless on Key Chinese Miner Issue

Feds cry helpless as company refuses to produce proof it adequately sought miners in BC.

By: By Jeremy J. Nuttall, 15 January 2013, TheTyee.ca

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Employers wishing to use temporary foreign workers could be spared the hassle of proving they are legitimately needed depending on a court ruling this week.

Last Wednesday lawyers representing two Canadian unions squared off in court against lawyers representing the Canadian government over who controls documents related to a mining company's application for Temporary Foreign Worker (TFW) permits.

To be granted such permits, companies must provide a Labour Market Opinion showing they attempted to find Canadians for the position without success.

In December, a Federal Court judge ordered the Ministry of Human Resources and Skills Development to hand over all documents related to the permits to the International Union of Operating Engineers Local 114 and the Construction and Specialized Workers Union Local 1611.

The unions contend they need to see the documents HD Mining used to determine there were no Canadians available to work in its mine as part of a case to have a judicial review of the permits conducted.

But some of the documents -- such a resumes of Canadian workers who applied to work at the project -- are still held by HD Mining and the company refuses to give them to the government.

Now the HRSDC Ministry is in court arguing it has no control over the documents, despite sending three letters to the company demanding they be released last month.

Outside of court last week, lawyer for the unions Charles Gordon said if the judge rules the government does not have control over the documents it will set a precedent that leaves HRSDC powerless to enforce its own regulations.

"The shocking part of the federal government's position is that if they don't have control over the documents it means that companies can say they've done things that are necessary for them to get their LMOs without having to show that they did so," said Gordon.

"It means that a company could come in and say, 'Hey, no qualified Canadians applied for this

job, but we're not going to show you the resumes that we got and you'll just have to accept that."

Gordon said according to regulations, to be granted permits for workers an employer must keep records detailing how it attempted to hire Canadians for two years in case the government has questions about the process.

He insists the government should be flexing its muscle to force the company to give up the documents, even if it means pulling the permits.

Three demands by feds rebuffed by HD Mining

In communications between HRSDC lawyer Lorne Lachance and Alex Stojicevic representing HD Mining, Lachance makes three requests for the documents, but instead elects to appeal the initial court ruling as per HD Mining's suggestion.

"The ministry hereby requests that your client, H.D. Mining International Ltd. Provide us with the following documents referred to in the Order, so that we may produce it to the applicants," wrote Lachance in his first letter on Dec. 11.

Five days later, Stojicevic sent an email to Lachance insisting the government has no right of control over the documents.

"I have been instructed to let you know that HD Mining does not intend to provide to the Minister any of the HD Mining documents that Justice Campbell is asking the Minister to produce, unless and to the extent you are able to provide some legal basis to compel those documents from the company," he wrote.

"The company's position is not intended to be difficult or uncooperative with the federal government, but rather is based on its profound concerns about the principle of third-party unions using the court process to obtain documents from a private company simply by filing a judicial review application. This is a matter that goes well beyond this present case and is of concern to the company for its long-term plans."

Stojicevic then writes the company "hopes" HRSDC Minister Diane Finley appeals the initial court decision.

After HD Mining's response, Lachance sent two more letters demanding the material.

"Further to our telephone call yesterday evening, I also confirm that my letters should be taken as a formal demand for these documents pursuant to any and all authority that the minister may have to either request or demand that HD Mining produce them to the minister," wrote Lachance on Dec. 20.

But HD Mining still refused and HRSDC decided to appeal the initial decision ordering the release of the documents.

Labour eyes contempt charge against Minister Finley

The judge's decision on who has control over the documents will be released this week.

If the ruling states the government has control over the documents, the unions could pursue a contempt of court charge against Minister Finley.

British Columbia has seen the use of temporary foreign workers skyrocket in the last decade to almost 70,000 such workers in the province at the end of 2011.

Unions and labour groups have alleged often the workers are paid far less than market wages, and employers can legally pay 15 per cent below average. ↗

Vancouver-based journalist Jeremy J. Nuttall spent three years in Beijing before returning to B.C. this year.

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