

Overtime Quiz



Overtime for Employees Who Live and Work in Different Provinces

SITUATION

Every day, Chris Cross commutes from the small Ontario town southwest of Ottawa where he lives with his family to the federal *Place du Portage* office complex in Gatineau, Québec, where he works for a travel agency. Chris's agency plans official trips for the federal government departments in the buildings as well as personal vacations for the individual employees who work in those departments. Chris's busiest month is January when he sells winter get-away packages to sun destinations like Cuba and the Dominican Republic. But while he puts in extra hours during January, he's paid strictly by commission on the travel packages he books. Chris feels like he's being cheated out of January overtime hours and wants to file an employment standards complaint against his employer. But he's not sure who to file it with.

QUESTION

Which government body has jurisdiction over Chris's overtime claim?

- A. The federal Department of Labour since Chris works in a federally owned office complex.
 - B. The Ontario Ministry of Labour since he's an Ontario resident.
 - C. The Québec *Commission des normes du travail* (CNT) since his employment is performed in Québec.
 - D. No agency since commissioned sales people aren't entitled to overtime.
- C. The Québec CNT has jurisdiction to adjudicate, i.e., legally rule on, Chris's overtime claim.**

EXPLANATION

In Canada, each jurisdiction has its own employment standards law. This can create confusion when employees reside in one jurisdiction and work in another and/or perform work of a potentially federal character. This scenario, which is purely hypothetical, illustrates the rules that determine jurisdiction over employment standards in such situations.

There's a 2-part test to determine jurisdiction over employment standards.

- **Part 1:** Federal law applies if the employment is deemed "federal work," as defined in the *Canada Labour Code*.
- **Part 2:** If employment is not in a "federal work," it's subject to the employment standards of the province or territory in which the employment takes place.

Travel agencies are not "federal works," even though regulation over international transportation is generally within the realm of federal jurisdiction. Thus, Chris's overtime case is a matter of provincial law. And since the employment is physically done in Québec, Chris must bring his case to the CNT.

WHY WRONG ANSWERS ARE WRONG

A is wrong because the federal government's ownership of the space where work is done is irrelevant to whether the work is deemed a "federal work" under the *Canada Labour Code*. Generally, "federal works" are specific industries, such as banking or broadcasting, or industries which cross provincial or international boundaries, such as railway companies whose lines cross between provinces or between Canada and the U.S.

B is wrong because jurisdiction over employment standards is determined by the place where work is performed not by where the person who performs it resides.

D is wrong because for commissioned sales employees, there is no exception to the overtime requirements under Québec employment standards.