# Paying Overtime



**SITUATION**

Every day, Mo Beale commutes from her small hometown in Ontario to the federal office complex in Québec, where she works for a travel agency. Mo's agency plans official trips for the federal government departments in the building as well as personal vacations for the individual employees who work in those departments. Her busiest month is January when she sells winter get-away packages to sun destinations like Cuba and the Dominican Republic. But while she puts in extra hours during January, she's paid strictly by commission on the travel packages she books. Mo thinks she's being cheated out of January overtime hours and wants to file an employment standards complaint against her employer. But she's not sure who to file it with.

**QUESTION**

**Which government body has jurisdiction over Mo's claim?**

**A.** The Québec *Commission des normes du travail* (CNT) since her employment is in Québec.

**B.** The federal Department of Labour since she works in a federally owned office complex.

**C.** The Ontario Ministry of Labour since she's an Ontario resident.

**D.** No agency since commissioned sales people aren't entitled to overtime.

**ANSWER**

**A. The Québec CNT is the body with jurisdiction over Mo's overtime claim.**

**EXPLANATION**

Because each jurisdiction has its own employment standards law, things can get confusing 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 deemed "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, Mo's overtime case is a matter of provincial law. And since the employment is physically done in Québec, Mo must bring her case to the CNT.

**WHY WRONG ANSWERS ARE WRONG**

**B 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 U.S.

**C 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 for commissioned salespeople under Québec employment standards law.