Occupational Health and Safety Tribunal Canada

Date : 2015-08-28
Dossier : 2012-42 & 2013-37

Between:

Montréal Gateway Terminals Partnership, Appellant

and

CUPE Longshoremen’s Union, Local 375, Respondent

and

International Association of Longshoremen, Local 1657, Respondent

Indexed as : *Montreal Gateway Terminals Partnership* v. *CUPE Longshoremen's Union, Local 375, and the International Longshoremen's Association*

Matter :	Appeal under subsection 146(1) of the *Canada Labour Code* of two directions issued by a health and safety officer.
Decision :	The first direction is varied. The second direction is varied.
Decision rendered by:	M. Jean Arteau, Appeals Officer
Language of decision:	French
For the appellant :	Mr. Nicola Di Iorio, Counsel and Ms. Geneviève Beaudin, Counsel Langlois Kronström Desjardins S.E.N.C.R.L.
For the respondents :	Ms. Isabelle Leblanc, Counsel, Lamoureux Morin Lamoureux, Longueuil, QC, for CUPE Montréal Longshoremen, Local 375 Mr. Christian Parent, Representative, International Longshoremen’s Association, Local 1657
Citation :	2015 OHSTC 16

REASONS

[1] This decision concerns two appeals by Montreal Gateway Terminals Partnership (MGTP) brought under subsection 146(1) of the *Canada Labour Code* (the Code) of directions issued by Health and Safety Officer (HSO) Alain Testulat, the first on June 18, 2012, and the second on June 12, 2013.

[2] The CUPE Longshoremen's Union, Local 375 (hereafter CUPE), which represents approximately 850 longshoremen at the Port of Montréal, and the International Longshoremen's Association, Local 1657 (hereafter ILA), which represents approximately 120 checkers, are the respondents in this case.

Background

The First Direction

[3] On May 16, 2012, following two complaints on April 20 and 23, 2012, HSO Testulat met with Messrs. Érick Paré (health and safety specialist with MGTP), Christian Parent (employee member of the health and safety committee for the International Longshoremen's Association), Alexandre Gagnon (health and safety director for the Maritime Employers Association, or MEA), Steve Desjardins (Co-chair of the HSC and stevedore), and Érick Collin (union health and safety representative for CUPE Longshoremen's Union). Messrs. Parent and Desjardins alleged that the work place committee has not been included in hazardous occurrence investigations for over one year at that time.

[4] According to Mr. Paré, the employer only involves the HSC in a hazardous occurrence investigation when an employee is injured and not when the occurrence is strictly material in nature or related to property damage alone. When the HSO asked specifically about situations involving property damage, such as falling shipping containers or those involving machinery or equipment, Mr. Paré stated that the work place committee is not involved in the investigations of such issues. Mr. Collin gave the HSO a 2008 document that outlined MGTP's procedures for an investigation into a hazardous occurrence, but Mr. Paré said that it has not been followed for a long time. Mr. Paré asked for a legal definition of "hazardous occurrence." The HSO provided Mr. Paré with a proposed assurance of voluntary compliance (AVC), however, the employer refused to sign it because he did not agree with the HSO's interpretation of "hazardous occurrence" and the obligation of the employer to involve the work place committee in all investigations.

[5] Following the employer's refusal to sign the AVC, the HSO met with Messrs. Paré, Parent, Gagnon, Desjardins, and Collin again. Mr. Paré maintained his position, so HSO Testulat issued the following direction on June 18, 2012:

IN THE MATTER OF THE *CANADA LABOUR CODE*

PART II - OCCUPATIONAL HEATH AND SAFETY

DIRECTION TO EMPLOYER PURSUANT TO PARAGRAPH 145.1(*a*)

On May 16, 2012, the undersigned health and safety officer conducted an investigation at the work place operated by Montreal Gateway Terminals Partnership, an employer subject to the *Canada Labour Code*, Part II, at Terminals 62 and 77 of the Port of Montréal in Montréal, Quebec (PO Box 360, Station K, Montréal, QC).

The said health and safety officer believes that the following provisions of Part II of the *Canada Labour Code* were violated

125. (1)(*c*) - Part II of the *Canada Labour Code*.
15.4 (1) - *Canada Occupational Health and Safety Regulations*.

The employer failed to inform the employee members of the work place health and safety committee so that they could fully participate in hazardous occurrence investigations in the event of containers falling on terminals or of work place accidents involving machinery or equipment and with no disabling injuries.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(*a)* of Part II of the *Canada Labour Code*, to terminate the contraventions no later than July 3, 2012.

Issued at Montréal, this 18th day of June, 2012.

[signed]
Alain Testulat
[…]

To: Mr. Éric Paré
Montreal Gateway Terminals Partnership […]
[…]

[6] On June 29, 2012, Mr. Paré filed a notice of appeal of the First Direction with the Tribunal. On July 23, 2012, Mr. Paré applied for a stay of the direction. The Appeals Officer did not grant the application, *Montreal Gateway Terminals Partnership v CUPE Longshoremen's Union, Local 375 and International Longshoremen's Association, Local 1657*, 2012 OHSTC 31.

The Second Direction

[7] On April 8, 2013, HSO Testulat had a telephone discussion with Érick Paré regarding his upcoming visit to MGTP's at the Port of Montreal. Mr. Paré advised that he would not be able to speak frankly in the presence of employees due to the ongoing proceedings regarding the First Direction. He also informed the HSO that the work place committee would neither be informed of HSO's inspection, nor would it be able to participate. The HSO informed that this practice is not in compliance with the Code.

[8] On April 10 at the appellant's work place, HSO Testulat met with Messrs. Par, Pratt, Lavoie, Collin, and Parent. Messrs. Collin and Parent confirmed that it is neither MGTP policy to inform the HSC nor for it to participate in investigations of hazardous occurrences. Mr. Paré mentioned that health and safety delegates are called to execute investigations, to which the HSO responded that the Appellant's policy and practice are not in compliance with the Code.

[9] After receiving correspondence from Mr. Paré in an attempt to complete an AVC, HSO Testulat determined that the appellant remained in violation of the Code. In a June 11, 2013, phone conversation, Mr. Paré maintained that MGTP would not change its practices in light of the pending appeal of the First Direction. The HSO additionally informed Mr. Paré that collective agreements with the unions cannot allow or cause contraventions of the Code.

[10] The next day, HSO Testulat met with Messrs. Paré, Gagnon, Lavoie, Provost, Lapierre, Desjardins, and Parent at the appellant's office. Mr. Lavoie explained that when a hazardous occurrence investigation is required, the work place superintendent calls the work place committee to see if a member is present at the work place and available to participate. If one is not available, an employer-appointed health and safety delegate (hereafter, delegate) takes their place. The HSO stated this practice does not meet the Code's requirements, which require a member of the work place committee to be called regardless of where they might be; if no one is available, the proxy representative must be one delegated by the work place committee and not the employer.

[11] In light of this meeting, HSO Testulat issued the following direction on June 12, 2013:

IN THE MATTER OF THE *CANADA LABOUR CODE*
PART II - OCCUPATIONAL HEALTH AND SAFETY

DIRECTION TO EMPLOYER PURSUANT TO PARAGRAPH 145.1(*a*)

> On June 12, 2013, the undersigned health and safety officer conducted an investigation in the work place operated by Montreal Gateway Terminals Partnership, an employer subject to the *Canada Labour Code*, Part II, at Terminals 62 and 77 of the Port of Montréal in Montréal, Quebec.
>
> The said health and safety officer believes that the following provisions of Part II of the *Canada Labour Code* were violated
>
> 135. (7)(*e*) - Part II of the *Canada Labour Code*
> 15.4(1) - *Canada Occupational Health and Safety Regulations*.
>
> **The employer did not promptly notify the employee members of the work place health and safety committee so that they could fully participate in the investigations of hazardous occurrences in work place accidents involving one or more disabling injuries and minor injuries to one or more employee.**
>
> Accordingly, you are HEREBY DIRECTED, pursuant to paragraph 145. (1)(*a*) of Part II of the *Canada Labour Code*, to terminate the contraventions no later than June 21, 2013.
>
> Issued at Montréal this 12th day of June, 2013.
>
> [signed]
> Alain Testulat
> […]
>
> To: Mr. Éric Paré
> Montreal Gateway Terminals Partnership […]
> […]

[12] Following receipt of the direction, Mr. Paré again insisted that the appellant would not change its hazardous occurrence investigations practices. The HSO informed Mr. Paré that an employer must comply with a direction unless an Appeals Officer of the Tribunal determines otherwise. Mr. Paré again stated that the appellant would continue current practices, which the HSO again said were non-compliant with the Code.

[13] On July 8, 2013, Mr. Paré filed a notice of appeal for the Second Direction, which the Appeals Officer subsequently joined to file for the First Direction.

Issues

[14] I must determine whether HSO Testulat was well founded in issuing the first direction under paragraphs 125(1)(c) of the Code and subsection 15.4(1) of the *Occupational Health and Safety Regulations* (the Regulations).

[15] I must also determine whether the HSO was well founded in issuing the Second Direction under paragraph 135(7)(e) of the Code and subsection 15.4(1) of the Regulations.

Submissions of the parties

A) Appellant's submissions

[16] MGTP presented the following witnesses: Jean-Nicolas Lavoie, Nicolas Dolbec, Daniel Beaubien, Alexandre Gagnon and Érick Paré.

[17] Jean-Nicolas Lavoie, Operational Manager, testified in regard to MGTP operations at the Port of Montréal. He described the environment in which the longshoremen and checkers must work. He said that the superintendent conducts investigations on incidents and must choose an onsite representative to investigate. He also mentioned that the superintendent ensures that a representative is present during investigations but that the committee does not generally participate.

[18] Nicolas Dolbec, Assistant Manager of Maritime Operations for MEA, described the role and responsibilities of the Maritime Employers Association in regard to the deployment and classification of the Port of Montréal staff. In cross examination, Mr. Dolbec stated that the classification "representative" is not a criterion used when assigning employees. He also confirmed that there is no certainty that a member of the work place committee or a representative will be present during all shifts.

[19] Daniel Beaubien, Superintendent of Operations for MGTP, described the role and responsibilities of superintendents. He indicated that when there is an accident, he asks the walking boss to find a representative to take part in the investigation. He also said that before issuing the first direction, if no one was hurt or there was no property damage, the investigation is limited to taking photos and notes, without a representative on hand.

[20] Alexandre Gagnon, OHS Director at MEA, said that the port has the following categories of incidents: 1) property damage, 2) near misses or "oopses" or close calls, 3) incidents involving a minor injury without any lost time, 4) incidents involving a disabling injury, and 5) occupational illnesses. He said that for accidents or illnesses without injuries ("oopses" or close calls), no investigation is conducted and no representative is summoned.

[21] Mr. Érick Paré, OHS Specialist at MGTP, explained the investigation process used by MGTP for accidents, occupational illnesses and other hazardous occurrences. He clarified that a representative is not always called upon when there is an accident, especially if no one is injured. If there is a disabling injury, the superintendent and a representative investigate it. He stated that the time spent waiting for a member of the work place committee could have repercussions on customers.

The Directions are Vague and Ambiguous

[22] The employer challenges both directions first on the grounds that they are issued under paragraph 145.1 (a) of the Code, which does not exist. It argues that the directions should have been issued under paragraph 145(1)(a) of the Code and the HSO's failure to correctly state the authority under which he issued his directions is foundationally fatal to the directions.

[23] The appellant also that the two directions are vague and ambiguous, citing the Federal Court's decision in *Maritime Employers Association v Harvey*, [1991] FCJ No 325, and this Tribunal's decision in *Sky Harbour Aircraft Refinishing v Chambers*, 2006 OHSTC 32. The appellant states that these cases stand for the principle that an HSO may only issue a direction that clearly and precisely states how the employer failed to meet the standards of the Code and/or Regulations and what results would be considered compliance. In this case, the appellant states that it does not know of any specific event based upon which the HSO issued his direction. In addition, the appellant also states that it does not know how to comply with the direction since the described contravention is vague unto itself.

[24] The appellant submitted that the wording of the two directions is vague and ambiguous; preventing the appellant from knowing exactly what is alleged against him, and what needs to be done to comply. These elements are fundamental to the very validity of a direction, and, in their absence, the direction should be nullified.

[25] MGTP states that incidents of minor injuries or property damage alone do not warrant investigation under the Code or Regulations, and to so require without the express obligation in the Code or Regulations is an error in law by the HSO.

Operations of the Appellant at the Port of Montreal and the Work Place Committee

[26] The appellant submits that the deployment of stevedores between the seven terminals that comprise the Port of Montreal is the responsibility of the MEA—of which the appellant is a member—based on the each terminal's needs for the three daily work shifts. Stevedores, each of whom is assigned a primary competence and at least two secondary competences, are then deployed to their assigned terminal for the day. A stevedore should have the vast majority of their

assignments within their primary competence, but there is no guarantee of assignment location.

[27] By example, Mr. Dolbec testified that work place committee member Benoit Gareau was at MGTP's Racine terminal for 60% of his shifts, while Steve Desjardins, who was the co-chair of the committee in May 2013, was at MGTP's Cast terminal for 75% of his shifts. The appellant states that there is at least one delegate on each shift.

[28] With respect to the work place committee, the appellant submitted that at the time of the hearing, CUPE had only two of a possible three positions filled and the ILA only one. The collective agreement provides for non-members on either the employee or employer side to participate as advisors or invitees.

[29] The appellant states that the employer and each other unions is entitled to three representatives on the work place committee. CUPE has two permanent representatives and the ILA has one. MGTP cites the testimonies of Mr. Parent and Mr. Beaubien as stating that many union-side committee positions are filled based on the availabilities of their union colleagues. Anyone who sits as an employee-side member of the work place committee is also a delegate.

[30] Logistically, given the limited number of committee members and that committee members may be deployed to terminals other than those of MGTP or may be off-duty, the use of delegates allows for the time-sensitive operations of the MEA terminals to continue and prevents encroachment on committee members' lives outside of work.

[31] MGTP submitted that the work place committee, for each of its nine meetings in a year, may access witness statements and pictures taken at the time of an investigation, as well as any implicated person's disposition.

[32] The union designates a selection of its members to be delegates and selects its work place committee representatives from amongst that group. The appellant also submits that in situations of accidents and work refusals, the delegates are the mutually agreed-upon alternates to work place committee members in an investigation. MGTP asserts that delegates under the collective agreements are alternates as provided under subsection 135.1(6) of the Code, as delegates are selected by the union and not the employers.

[33] MGTP states that there are currently 90 stevedores, or one in eight CUPE longshoremen, designated as delegates, approximately 20 of which are primarily assigned to MGTP terminals. There is no maximum number of delegates.

[34] Witnesses from both the employer and the respondent testified that the MEA provides training to all delegates on how to conduct investigations, how to interview witnesses, preventative measures, and Part II of the *Canada Labour Code* in general. They also receive training from their respective union.

[35] The employer states that it maintains a log of all incidents that occur at the work place, which it has categorized as disabling injuries, minor injuries, "other hazardous occurrences," "oopses," (*sic*) and quasi-incidents (*sic*). This log is made available to the committee at each of its meetings and upon request.

Falling Shipping Containers

[36] The appellant states that empty containers are not normally placed with full containers and are marked distinctly from full ones. In the event an empty container is found with full ones, the area is secured.

[37] To avoid containers falling in high winds, MGTP has established a directive concerning excessive winds, which was developed taking into account the risks involved in high winds based on a study by an engineering firm.

[38] When winds reach 72km/hour, the employer has sections of the terminals closed and stops the loading and unloading of containers by crane. Special forklift operation rules take effect and even a stop to all operations may take place. Employees are informed via radio.

[39] Superintendent Daniel Beaubien testified that he had no knowledge of a situation in which a container would fall without MGTP having enough time to secure the area and confirm that all persons had evacuated.

[40] When a shipping container falls during a high wind scenario, it falls to the side of the stack of containers and the superintendent writes a report without a delegate's presence because it is strictly a matter of property damage.

[41] Alexandre Gagnon from MEA explained that this type of thing happens three or four times a year at MGTP, but no one has ever been hurt as a result of a container falling, but that this has never happened at the appellant's terminals

Minor injuries

[42] The appellant contends that section 15.7 of the Regulations is the complete scope of obligations surrounding incidents that result in minor injuries as defined in section 15.1. That is, the injury must be logged in a register of minor injuries and no requires no further investigation.
The appellant highlighted that the obligation to investigate under section 15.4 of the Regulations does not cover minor injuries.

Definition of "Accident"

[43] The appellant argues that there are three distinct classes of incident that require investigation based on subsection 15.4(1) of the Regulations: accidents,

occupational diseases, and “other hazardous occurrences.” With respect to “accidents,” the appellant suggested two possible definitions. The first comes from the Labour Program’s online Hazard Prevention Program Guide: “

> It is generally agreed that a work place accident is an unpleasant and unwanted event attributable to any cause, happening to any person due to or during work and causing death, physical injury or acute poisoning when there is exposure to a toxic product over a very short period of time.”

[44] The second definition of “accident” is from the Province of Quebec’s *An Act Respecting Industrial Accidents and Occupational Diseases*, CQLR c A-3.001, which defines « industrial accident » as being “…a sudden and unforeseen event, attributable to any cause, which happens to a person, arising out of or in the course of his work and resulting in an employment injury to him.”

“Other Hazardous Occurrences”

[45] The appellant also argues that the phrase “other hazardous occurrences” in subsection 15.4(1) of the Regulations is interpretively distinct from the term “hazardous occurrence.” In support of this, it cites the Labour Program’s online document, “Employer's Annual Hazardous Occurrence Report: Frequently Asked Questions,” which pertains to the form required under section 15.10 of the Regulations. The appellant submits that “other hazardous occurrences” is restricted to the following situations: an explosion; damage to a boiler or pressure vessel that results in fire or the rupture of the boiler or pressure vessel; damage to an elevating device that renders it unusable, or a free fall of an elevating device; an electric shock, toxic atmosphere or oxygen deficient atmosphere that caused an employee to lose consciousness; the implementation of rescue, revival or other similar emergency procedures; or a fire.

[46] Mr. Paré submitted that, in communications with federally regulated employers, the Labour Program has insisted on this definition of “other hazardous occurrences” as being distinct from “hazardous occurrences” generally. There must be one of the above-enumerated outcomes in order for an event to be considered an “other hazardous occurrence.”

[47] The appellant argues that such an approach by the regulator warrants deference and that it is not for the Tribunal to discard the government’s approach to regulating employers under federal jurisdiction.

Procedure for Investigations

[48] Investigations occur in the event of a disabling injury, when an employee is unable to finish his or her shift and consults a doctor, in the event of an

occupational disease, or an “other hazardous occurrence.” They do not occur for property damage alone, nor events resulting in minor injuries.

[49] During an investigation, the superintendent first follows emergency procedures to ensure that any injured person receives the appropriate medical care, including calling an ambulance if needed. He or she also assesses the work place for the presence of a danger. He or she then proceeds to collect facts, evaluate the information with a delegate, ensure no equipment is out of place, takes photographs, identify the locations and sequence of the occurrences, and note any damage. He or she may also interview any witnesses. Operations resume unless someone is injured. The superintendent then evaluates how to prevent such an event from recurring.

[50] The superintendent takes statements from any employees affected by the incident. All steps take place in the presence of a delegate or member of the work place committee. The superintendent submits his or her report to MGTP’s Specialist in Occupational Health and Safety and other personnel as necessary. The specialist then enters the information into a register as required under the Code and the report is forwarded to the Labour Program, the work place committee, and the union of the affected employee. For each investigation, MGTP uses the Hazardous Occurrence Report Form appended to Part XV of the Regulations.

[51] In the event an employee informs his or her superior of a potential work place hazard, either in writing or verbally, there will be a follow up. The work place committee employees may request a copy of the complaint and evaluations and make recommendations. In the event an employee is unsatisfied with the employer’s efforts, further recourse exists through the Code.

[52] In the event of an incident that is not an accident, occupational disease, or “other hazardous occurrence,” particularly one of property damage alone, the employer logs a “Declaration of Incident” in a register and uses this information to aid managing future risk and is shared with different departments with MGTP and the MEA. There may be additional measures taken, such as photographs or a report. The work place committee may access the register and make recommendations based on its study of it.

[53] The appellant argues that to require an employer to investigate instances of “oopses,” (*sic*) and quasi-incidents (*sic*) and property damage with the participation of a delegate as in an event involving a disabling injury or “other hazardous occurrence” would greatly restrain its operations. The current framework is satisfactory for the purposes of the Code, prevention, and ensuring those using the Port and its facilities are able to do so within their allocated timeframes. A delay in one client’s use of the terminals delays the entire schedule, which is both a financial and reputational strain on MGTP. The appellant submits that such a risk is only warranted in the event of an injury and not property damage alone.

Who Must Participate in an Investigation?

[54] According to the appellant, nothing in the Code states that the committee's participation must be done by an employee representative. The duty to inform applies to the employer with respect to the committee and not any specific class of committee member. In support of this position, the appellant cites *CUPE v Air Canada*, 2010 FC 103 paragraph 44:

> There is no requirement in the Code for a joint investigation. The obligation is the participation of the WPC [work place committee]. As I discussed above, words such as "joint" appear to have been adopted by people who work in this area. However, the adoption of such terms cannot oust the clear language of the statute nor give rise to substantive rights.

[55] MGTP states that when a superintendent is made aware of a situation warranting investigation, he or she is also informed of which committee member or delegate is available to participate. Following the issuance of the first direction, if a committee member is on the shift, then he or she must be called first. Otherwise, a delegate may be used. The delegate or committee member chosen should impact the Port's operations as little as possible. The member or delegate is present for the whole investigation unless the member or delegate refuses to participate, which only happens in the event of minor incidents.

[56] The appellant insists that employee members of the committee and delegates are well equipped to communicate with each other before, during, and after an investigation, particularly by radio as each union operates on its own frequency. While Mr. Parent admitted to being overall satisfied with investigations conducted with delegates, he still wishes to be able to participate if he wishes. The appellant believes that delegates could simply inform a committee member via radio if an investigation is taking place and there is nothing that would then prevent a work place committee member from participating. The appellant submitted that the fact that Mr. Parent said the employer has never prevented him from participating in an investigation is a very significant judicial admission.

[57] The appellant submits that the unions did not present any evidence establishing that the partnership would have omitted to inform a committee member or delegate of a workplace accident.

[58] Given the facts in evidence, the legislation and the regulations, the appellant requested that the two directions issued by OHS Officer Testulat be revoked.

B) Respondent's submissions

CUPE's submissions

[59] CUPE presented the following witnesses: Christian Parent and Érick Collin

[60] Christian Parent is a union representative for the International Longshoremen's Association, Local 1657, and member of the work place committee at MGT. He remembers a former employer policy aimed at informing him of all incidents, following which he could decide whether or not to conduct an investigation. The employer sent him all documents related to the incident within hours of it happening. Later, the practice changed and it took weeks after the incident before information was sent to the committee. He confirmed that representatives very rarely participated in investigations and that they simply signed the reports. He cited the example of a collision that resulted in broken glass and minor cuts to employees. The committee was not informed and the delegate just signed the report.

[61] Mr. Érick Collin was the OHS representative at CUPE when the first direction was issued. He resigned from his position in June 2013 and returned to his duties as a longshoreman on the dock. He stated that the employer does not comply with the requirements of the Code and gave examples in which no investigation was performed. He said that the employer does not involve the committee members and that the delegate only comes to sign papers. He told about an incident where no representative was called because the employee involved had not asked for one.

Vagueness and Ambiguity of the Directions

[62] With respect to the appellant's argument that the HSO failed to cite the correct provision for his authority, CUPE points out that while the *title* of the directions incorrectly references the non-existent paragraph 145.1(a), the contents of the directions cite the correct provision, paragraph 145(1)(a), as the authority under which the HSO issued the directions. It submits that the noted contraventions in the directions are entirely reflective of the HSO's intent and authority, and to focus on the title is to mislead the Tribunal.

[63] CUPE does not disagree with the appellant's submission that *Sky Harbour* imposes a requirement of specificity for direction issued either under subsection 145(1) or 145(2). However, it asserts that the differences between subsections 145(1) and 145(2) make it clear that the former may apply generally so long as a provision of the Code or Regulations is cited, and the latter envisions a direction following a specific event. It reproduced the relevant sections of the Code to point out that only subsection 145(2) focuses on a *specific* event:

> **145.** (1) A health and safety officer who is of the opinion that a provision of this Part is being contravened or has recently been contravened may direct the employer or employee concerned, or both, to
>
> (*a*) terminate the contravention within the time that the officer may specify; and
>
> (*b*) take steps, as specified by the officer and within the time that the officer may specify, to ensure that the contravention does not continue or re-occur.
>
> […]
>
> (2) If a health and safety officer considers that the use or operation of a machine or thing, a condition in a place or the performance of an activity constitutes a danger to an employee while at work,
>
> (*a*) the officer shall notify the employer of the danger and issue directions in writing to the employer directing the employer, immediately or within the period that the officer specifies, to take measures to
>
> (i) correct **the** hazard or condition or alter **the** activity that constitutes the danger, or
>
> (ii) protect any person from **the** danger [*Emphasis by CUPE*]

[64] As a result, CUPE submits that an HSO is not obliged to note a specific event, time, place, or other such questions beyond the citation of specific provisions of the Code and Regulations and the associated explanation for a direction issued under paragraph 145(1)(a).

[65] CUPE states that the two directions as written are entirely clear as to what the desired end-state of the employer's operations in order to be in compliance with the Code. *Maritime Employers Association v Harvey* supports a general obligation on an employer to cease contravening the Code or Regulations as opposed to requiring the HSO to define exact measures an employer must take in order to be in compliance.

[66] CUPE submits entries from the employer's register that show no participation of the work place committee member or even a delegate in the events of minor injuries. There were incidents where the delegate present was not a member of the work place committee as well as a disabling injury of which the work place committee was not informed. According to CUPE, such instances make it very difficult for the employee-side members of the work place committee to speak to hazardous occurrences at meetings and otherwise.

Collective agreements

[67] CUPE argues that MGTP is not the employer for the purposes of the collective agreement. It submits that the employer is the MEA and that MGTP is entirely bound by the Code. In any event, the Code is the minimum standard that any employer must meet and the Tribunal is competent to intervene if there is not

compliance with the Code even if the agreement does apply. It cites this Tribunal's decision in *Brinks Canada Ltd. v. Prince*, [1998] DARSCCT no 14, in which the Appeals Officer stated that any collaboration between the employer and employees is always subject to the minimum standards set by Part II of the Code.

[68] CUPE submits that the only section of Part II of the Code that references collective agreements is subsection 135(6):

> **135** (6) If, under a collective agreement or any other agreement between an employer and the employer's employees, a committee of persons has been appointed and the committee has, in the opinion of a health and safety officer, a responsibility for matters relating to health and safety in the work place to such an extent that a work place committee established under subsection (1) for that work place would not be necessary,
>
> (*a*) the health and safety officer may, by order, exempt the employer from the requirements of subsection (1) in respect of that work place;
>
> (*b*) the committee of persons that has been appointed for the work place has, in addition to any rights, functions, powers, privileges and obligations under the agreement, the same rights, functions, powers, privileges and obligations as a work place committee under this Part; and
>
> (*c*) the committee of persons so appointed is, for the purposes of this Part, deemed to be a work place committee established under subsection (1) and all rights and obligations of employers and employees under this Part and the provisions of this Part respecting a work place committee apply, with any modifications that the circumstances require, to the committee of persons so appointed.

[69] CUPE submits that the parties have not met the above requirements to allow their collective agreements to replace the provisions of the Code pertaining to the work place committee.

[70] Prior to the arrival of Mr. Paré, CUPE claims the delegate system worked well. Delegates intervened when necessary, union representatives were considered alternates, and they were systematically informed of all incidents with minimal delay. It states now that the only information made available is the incidents register, and that, too, only a few days before the work place committee's meeting.

What Must be Investigated

[71] CUPE submits that a large and liberal interpretation of the Code is required under section 122.2 of the Code. To that end, paragraph 125(1)(c) of the

Code calls for an employer to investigate three types of situations: accidents, occupational diseases, and other hazardous occurrences.

[72] With respect to accidents, CUPE submitted the same definition under Quebec's *An Act Respecting Industrial Accidents and Occupational Diseases* as MGTP. It also submitted the definition MEA uses in its delegate training manual:

> (Translation) « However, we could define an accident as an unexpected event (unwanted) that impedes the accomplishment of an activity, whether it results in injury or property damage or not."

[73] Given MEA's expansive internal approach to accidents, CUPE submits that it cannot be reasonable for MGTP to take such a restrictive approach relating to property damage.

[74] CUPE submits that "accident" generally connotes a consequence of some sort, which in the context of the Code should be a minor or disabling injury. There is no indication in either the Code or the Regulations that a distinction between the two classes of injury is relevant to whether an investigation should occur. However, the employer has admitted to making this distinction by neither informing the committee nor conducting any investigation into incidents of minor injuries.

[75] CUPE agrees that there should be a degree of proportionality between the incident and injuries suffered and the extent of investigation. An investigation in the context of an accident with a minor injury will not have the same extent as one following the death of a worker. The Code imposes a minimum standard: the employer must investigate and inform the workplace committee.

Hazardous Occurrences and "Other Hazardous Occurrences"

[76] CUPE Longshoremen submit that the online Frequently Asked Questions referenced by the appellant are neither legally binding nor conducive to a broad interpretation of the protections required by the Code.

[77] Nonetheless, CUPE highlights that the appellant's evidence, the "Hazard Prevention Program Guide," published in 2010 by the Labour Program, defines "Hazards related to the safe occupancy of the work place" in almost the same way as "other hazardous occurrences" in the Frequently Asked Questions. The Hazard Prevention Program Guide also states in relation to other hazardous situations, "Where a particular work place hazard is not specifically addressed in the Regulations, the *Hazard Prevention Program Regulation* is designed to provide the framework to effectively address that hazard to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment." This supports the respondents' position that "other hazardous occurrences" is not a category limited to the specific events the appellant stated.

[78] CUPE also referred to appellant's own evidence of its internal incident reporting form that maintains a residual "other" category for hazardous events. There is a similar hazardous occurrence report form by the MEA that also has a residual "other" category for hazardous occurrences, as well as a category for property damage.

[79] CUPE also highlighted that in the Maritime Employers Association delegate training manual, which is prepared by MEA, there is a passage that emphasizes the need to investigate incidents that do not result in injuries so that the association risks may be eliminated.

[80] Relying on the Labour Program's Operations Program Directive 935-1, CUPE submits that the definition of "hazardous occurrence" should be:

> « An accident, an occupational disease or other occurrence arising in the course of or in connection with the employee's work that has caused or is likely to cause injury to the employee or any other person."

[81] CUPE argues that, based on this definition, accidents and occupational diseases are forms of hazardous occurrences, and "other hazardous occurrences" are "occurrences arising in the course of or in connection with the employee's work that has caused or is likely to cause injury to the employee or any other person." This also conforms to the usual understandings of the words in the legislation.

[82] CUPE submits that even though a falling shipping container has yet to take the life of a worker, it remains a hazardous occurrence under the Code. In circumstances of high winds, the work place is not shut down *before* winds reach dangerous speeds, but *once* the dangerous speeds are reached. A disabling injury or worse is inevitable with falling shipping containers under the current framework at MGTP.

Who Must Participate in an Investigation

[83] CUPE asserts that paragraph 135(7)(e) of the Code is entirely clear that the work place committee's participation in all investigations is obligatory. It is therefore essential that the committee be advised in order to be able to participate. Upon being advised, the committee will designate the person who will participate.

[84] CUPE cites the Tribunal's decision in *Re Halterm Limited*, [1992] DARSCCT no 1, for the proposition that a member of the work place committee must be present during the investigation. CUPE v Air Canada, 2010 FC 103, expands the *Halterm* decision to account for modern communicative realities that may make physical presence unnecessary for a committee member. CUPE states that it is up to the committee members to decide who will participate and whether

it will be a physical or remote participation. It argues that because neither a superintendent nor the vast majority of delegates are committee members, the employer is entirely in contravention of the Code. At the very least, the committee must be informed of incidents in order to fulfil its legal role.

[85] CUPE argued that, contrary to MGTP's assertions, the onus is not on the employer to decide on who will act as alternates for the employee members. According to section 135.1(6), it is the responsibility of the employees to appoint alternate members and MGTP cannot assume that the representatives are alternate members as defined in the Code.

[86] The committee must at least be informed of an investigation so that it can perform its role. The committee then has to decide on the level of its participation as was ruled by the appeals officer in *Public Works and Government Services Canada and Mark Hawkins,* Decision No. 05-003 (January 7, 2005).

[87] CUPE asserted that, in the case at hand, the evidence indicates that the superintendent investigated alone or notified the representative but did not notify the work place committee. There is no evidence that the superintendent was part of the committee and the deployment rules do not guarantee the presence of a representative. Furthermore, the superintendent is not instructed to notify the work place committee so that it can decide if it will participate physically or remotely in the investigation.

ILA's submissions

Vague and ambiguous nature of the directions

[88] ILA did not present any witnesses. The ILA representative, Christian Parent, was called to testify by CUPE.

[89] The ILA asserted that the specificity of circumstances leading up to a direction by an HSO is limited to situations of a danger direction under subsection 145(2) of the Code and not for contraventions of the Code under 145(1).

[90] Specifically regarding the HSO's reference to "work place accidents involving machinery or equipment," and the employer's claim that "machinery or equipment" is too vague, the ILA stated that the employer has used "*equipment*" to designate machinery. Traditionally, "machinery" is used. Equipment has referred to materials used with machinery to move cargo. Therefore, the ILA submits that the employer has no basis on which to claim ambiguity in the HSO's direction.

[91] The employee complaint that triggered the second investigation and subsequent direction followed oral testimony by the employer that it was not in compliance with the first direction pending appeal. The ILA submits that the register showed 26 hazardous occurrences the large majority of which were not

made known to the work place committee, including an incident of a fallen shipping container.

Investigations

[92] Regarding investigations in general, the ILA does not believe that the Code gives employers the right to choose what incidents will be investigated, the methods used in an investigation, and who will participate in an investigation. It is the role of the work place committee members to determine how its investigations will take place.

[93] With respect to who may participate in an investigations, the ILA asserts that alternate members—or delegates in this case—under subsection 135.1(6) are only acceptable as substitutes when there is such a situation that prevents committee members from conducting their investigation participation functions. It believes that it is illogical that the committee members would be replaced by a different delegate for every investigation.

[94] The ILA states that the foundation of its complaint against the use of delegates is that delegates are not answerable to the committee after having fulfilled the role of alternate under subsection 135.1(6). This prevents the committee from conducting its role in maintaining the safety of the work place. Moreover, representatives of both the employer and the unions on the committee are responsible for relaying information between the committee and their respective constituents. The exclusion of actual committee members in favour of delegates prevents the proper functioning of the system and the protection of workers' rights.

[95] The ILA submits that while Mr. Paré did not believe in prioritizing informing work place committee members, Mr. Lavoie stated that delegates should only advised instead of a committee member when it is impossible to advise the committee member first.

[96] The ILA submitted evidence that the employer has been unilaterally conducting functions of the committee, despite subsection 135.1(8) of the Code expressly reserving default committee functions to employee members of the committee. Moreover, the register is often not more than a recount of the superintendent's perspective without a real investigation, which prevents the committee from fulfilling its duties arising out of a review of reports.

[97] While the ILA cites the collective agreement as entailing the demands of the Code and Regulations made under the Code, it insists that the agreement is not to evade the Code's requirements. In addition, the ILA cites the employer's own witness, Mr. Dolbec, as confirming that the collective agreement does not guarantee that an employee's designated as a delegate or work place committee member will be deployed to a shift at one of the six employers at the Port of

Montreal. Indeed, in 2012, the employer's chosen example employees, Mr. Gareau and Mr. Desjardins, were only at MGTP work places 72% and 77% of their shifts, respectively. This includes leaves of absences from the work place and the reduced number of shifts in 2012.

[98] ILA alleges that the employer's current practices are designed to keep the unions' members in the dark about work place safety issues, and to attack their right to know of and participate in investigations. It seems to the ILA that the employer's goal is to use delegates instead of actual committee members for the majority of investigations.

[99] The employer stated that the committee reviews investigation reports to see that they were conducted properly, and they may access testimonies and photographs taken at the time. Moreover, the employee members of the committee are open to invite delegates to work place committee meetings for their updates. The ILA counters stating that often the committee learns of incidents months after they have occurred and that reports are not readily available to them.

[100] The ILA finally asserts that the employee representatives on the committee have a certain expertise regarding the functioning of the committee under the Code, recurring accidents, workplace procedures, workers' rights, and employers'' obligations, all of which might intimidate certain superintendents who are not as well versed with the Code.

Hazardous Occurrences and "Other Hazardous Occurrences"

[101] With respect to the question of *what* the employer must investigate, the ILA submitted that the employer's attempt to introduce "other hazardous occurrences" as a concept distinct from "hazard occurrences" is simply with the goal of reducing its obligations under the Code and lacks a legal basis. The examples of incidents that, according to the employer, define "other hazardous occurrences" are merely those listed in section 15.5 and subsection 15.8(1) of the Regulations and trigger distinct reporting obligations on the employer. The overall principle of Part XV is that an employer must investigate all hazardous occurrences, some of which come with additional time-sensitive reporting obligations as noted in specific sections of Part XV. There is no indication that "other hazardous occurrences" under subsection 15.4(1) has been reduced to specific circumstances.

[102] Like CUPE, the ILA also relies on the definition of "hazardous occurrence" provided in OPD 935-1 of the Labour Program. Moreover, it asserts that the word "other" denotes a non-exhaustive list, and encompasses words used prior to it. This case of paragraph 125(1)(c) of the Code and subsection 15.4(1) of the Regulations, that would mean that accidents and occupational diseases are generally examples of "hazardous occurrences."

Falling Shipping Containers

[103] There have been incidences of containers, either empty or full, that have fallen. In addition to malfunctioning anemometers that were fixed in 2013, there has been no investigation into whether a fallen container did or could pose a risk to an employee.

D) Reply

Who Must Investigate

[104] The appellant submits that while CUPE stated that only members of the work place committee may participate in investigations and not delegates, the union's own evidence supports the use of alternates in an investigation. The IPG-935-004 clearly states that the committee may consider delegating its investigative duties to another person who may not be a member.

[105] The appellant submits that contrary to CUPE submissions subsection 135(6) of the Code does not apply here, as it has always been clear to all parties that the work place committee was indeed established under subsection 135(1) and in compliance with section 135.1 of the Code. The collective agreements do not seek to create a committee other than the work place committee, but to establish its alternates under 135.1(6). Delegates being alternates under the Code have all of the same rights and responsibilities as committee members for the accident investigations in which they participate.

[106] MGTP submits that there is a wide variety of ways through which the work place committee may obtain information from delegates involved in investigations. The fear of a chaotic committee meeting in which each delegate is invited to make submissions is unfounded because there are not enough incidents to make such a concern realistic.

[107] MGTP reminds the Tribunal that the ILA submitted that the unions have always considered informing their representative of incidents as a complete discharge of the duty to inform the work place committee under paragraph 15.4(1)(b), as the unions consider representatives to be alternates under the Code. This directly contradicts CUPE's submission that the notification must be to the committee itself and it is the committee that must participate. MGTP submits that delegates are also alternates under the Code and therefore the same considerations apply to their participation in investigations.

[108] MGTP submits that CUPE's admission that the system set in place by the collective agreement previously worked to the satisfaction of the unions is an agreement that the employer respects the collective agreement and that informing a delegate satisfies the requirements under subsection 15.4(1) of the Regulations.

Accidents

[109] The appellant submitted that the claim of the two unions that any physical damage requires an investigation has no legal basis and is contrary to the wording of subsection 15.4(1), which indicates that an investigation must be carried out in the case of an "accident […] <u>affecting any of his [the employer's] employees in the course of employment</u>." To interpret the Code as requiring an investigation on property damage would run contrary to the legislative objective.

[110] It also argues that MEA's 2008 delegate training manual takes an expansive approach to accidents for the purposes of risk management that is beyond the minimal requirements of the Code and cannot be binding on MGTP. This is especially true if, as per CUPE's submissions, MGTP is not the employer for the purposes of the collective agreement.

[111] The appellant submits that, in any event, CUPE has agreed that the "accident" does require at the very least an injury as consequence. Section 15.7 of the Regulations is the entire obligation of an employer with respect to minor injuries. The section itself refers to such events as "occurrences" and not "accidents." MGTP argues that CUPE is calling for the absurd regime that would see minor injuries receiving subsection 15.4(1) investigations and their own register, while disabling injuries would only receive investigations. Accordingly, MGTP states that any evidence of a failure to investigate or inform the committee of a minor injury or property damage alone is immaterial to the case at hand.

[112] The appellant submits that while the employer may take measures to investigate and prevent incidents falling short of disabling injuries or enumerated incidents in the Regulations, subsection 15.4(1) does not call for the employer to take such preventative measures as an obligation. MGTP cites this as a central distinction in this case.

[113] The minor injuries register is available for the work place committee to review, analyse, and provide recommendations, but these are preventative measures, which are not contemplated as obligations under the Regulations.

Hazardous Occurrences and « Other Hazardous Occurences »

[114] MGTP contended that it is inappropriate for unions to refer to excerpts from non-specialized dictionaries in attempting to define "other hazardous occurrences," because they are trying to define an expression used by the legislator in referring to a general definition of each of the terms taken in isolation.

[115] Furthermore, according to MGTP, the two unions confuse the concepts of "hazardous occurrence" and "other hazardous occurrences" in their written submissions.

[116] MGTP contended that the concept of “other hazardous occurrences” found in subsection 15.4(1) and in section 15.10 of the Regulations is the same and that therefore this concept must be given a similar interpretation considering the rule of statutory interpretation that Parliament is presumed to have created a coherent statutory scheme.

Analysis

[117] At the outset, I would like to address the appellant's argument that the directions are not based on any event in particular, are too general in nature, and therefore the employer is not in a position to know what to do in order to comply with the directions.

[118] Jurisprudence cited by the employer in support of this argument indeed mentions that it is incumbent on the HSO to issue clear and specific directions to allow the employer to understand what is expected of him or her. This jurisprudence, however, pertains to appeals of directions issued under subsection 145(2) of the Code, called "danger" directions. These directions are intended to describe a condition considered as dangerous in the workplace and to direct the employer to immediately take measures to protect the employee or employees. Specific identification of the danger is therefore essential to enable the employer to adequately address the situation.

[119] In the case at hand, the directions were issued under subsection 145(1) of the Code. These are called “contravention” directions. These directions identify contraventions of the Code or its Regulations that are taking place or have recently taken place. The statutory or regulatory provision on which the contravention is founded is clearly identified, therefore constituting the basis for the recipient’s obligation.

[120] An HSO does not need to wait for the occurrence of a specific event to issue a direction when he or she possesses enough information to conclude that the employer is generally in violation of the Code or Regulations, and thus, act to prevent the recurrence or continuation of the contravention.

[121] The directions issued raise two questions that I must consider. First, I must examine the scope of the obligation to investigate hazardous occurrences, and then I must address the right of the work place committee to be notified of, and participate in, investigations carried out by the employer.

[122] Paragraph 125(1)(*c*) reads as follows:

> 125(1)(*c*) investigate, record and report in the manner and to the authorities as prescribed all accidents, occupational diseases and other hazardous occurrences known to the employer.

[123] Subsection 15.4(1) of the Regulations specifies how the obligation to investigate must be met:

> **15.4** (1) Where an employer becomes aware of an accident, occupational disease or other hazardous occurrence affecting any of his employees in the course of employment, the employer shall, without delay:
> *a*) appoint a qualified person to carry out an investigation of the hazardous occurrence;
> *b*) notify the work place committee or the health and safety representative of the hazardous occurrence and of the name of the person appointed to investigate it; and
> *c*) take necessary measures to prevent a recurrence of the hazardous occurrence.

[124] The evidence submitted to me in the employer's files shows that the employer is to investigate in two specific situations: when an employee sustains a disabling injury and must see a doctor, and when an employee has an occupational illness. No investigation is conducted on incidents involving only property damage or minor injuries. MGTP claimed that this practice is consistent with the obligations under the Code and the Regulations because the Code imposes no requirement to investigate minor injuries or incidents causing only property damage.

[125] Both of the defending unions and OHS Officer Testulat are of the opinion that this employer practice is not consistent with the obligations under the Code because all hazardous occurrences at the work place must be investigated, regardless of whether there are injuries. OHS Officer Testulat also identified, in the two directions under appeal, occurrences that he believed should be investigated by the employer. Those occurrences include falling containers at the terminal and any other accidents involving machinery.

[126] To resolve the matter, I must first decide whether MGTP's investigation practice adheres to the requirements of the Code and Regulations. In order to do so, I must first assess the scope of paragraph 125(1)(*c*) of the Code and 15.4(1)(*a*) of the Regulations to determine the types of situations that trigger an employer's obligation to investigate.

[127] After having determined the scope of the obligation to investigate under paragraph 125(1)(*c*) of the Code and 15.4(1)(*a*) of the Regulations, I must address the issue of whether the employer complied with its obligation to notify the health and safety work place committee in accordance with paragraph 15.4(*b*) so that the work place committee could participate in investigations as set out in paragraph 135(7)(*e*) of the Code.

1) What is subject to an investigation under paragraph 125(1)(*c*) of the Code and 15.4(1)(*a*) of the Regulations?

[128] I find it important to note that the purpose laid out in section 122.1 of Part II of the Code, which is to "prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies," guides interpretation. As this Tribunal has previously noted, "Part II of the Code and the Regulations enacted under it are remedial in nature and have the objective of promoting work place health and safety and should be interpreted broadly," *Bell Canada v. Communications, Energy and Paperworkers Union of Canada*, 2014 OHSTC 17, paragraph 75.

[129] Accordingly, the Code and Regulations are a preventative statutory scheme, and their provisions are afforded a large and liberal interpretation. It is therefore reasonable to interpret the purpose of the statutory duty to investigate as being to find the cause of a hazardous occurrence and, more importantly, to prevent the hazardous occurrence from reoccurring.

[130] The parties have different interpretations of the phrases "hazardous occurrence," "other hazardous occurrence," and "accident." The interpretation of these phrases will assist in finding the types of events requiring an investigation under the Code and the Regulations.

Hazardous Occurrences

[131] The Appellant questions the intents behind the phrases "hazardous occurrence," and "other hazardous occurrence." Neither the Code nor the Regulations defines any of these phrases.

[132] MGTP did not submit a definition of "hazardous occurrence," as it maintained throughout its submissions that the key phrase to consider is "other hazardous occurrence" and that it is a concept distinct from "hazardous occurrence."

[133] CUPE submitted the 2012 Operations Programs Directive 935-1 on Hazardous Occurrence Investigations by HSOs from the Labour Program within what was Human Resources and Skills Development Canada.

[134] While such directives do not have the force of law, they are persuasive because of they are reflective of the regulator's intent behind enforcing the regulation. However, the definition must withstand scrutiny against the legislation itself.

[135] In order to ascertain the employer's obligations and the corresponding triggers, I must determine the legislator's intent behind the term "hazardous occurrence."

[136] Part XV of the Regulations covers employer responsibilities relating to investigations, record keeping, and reporting to the Labour Program in the event there is a "hazardous occurrence." It also covers the employee's responsibility to report such situations to the employer. The obligations in Part XV acknowledge that while not all hazardous occurrences are avoidable, investigations of all such occurrences and reporting to the Labour program hold employers accountable to ensure they are doing all they can to prevent recurrences of such situations. The reporting and accountability measures are proportionate to the gravity of a given situation, and the legislator has contemplated the widest possible spectrum of situations that could be "hazardous occurrences".

[137] The framework of Part XV is such that, following a hazardous occurrence, the employer must fulfil the obligations under subsection 15.4(1). The qualified person appointed under paragraph 15.4(1)(a) then conducts their investigation with the participation of the work place committee or an alternate. Depending on the severity of injury suffered by the victim or the nature of the property damage, the employer fulfils additional reporting obligations under section 15.5, 15.6, 15.7, or 15.8 as appropriate in the circumstances. In all cases, actions taken under section 15.5, 15.6, 15.7, or 15.8 occur *after* fulfilling the obligations in subsection 15.4(1).

[138] Some of the most extreme or severe kinds of events on the spectrum of hazardous occurrences are those enumerated in sections 15.5, 15.6, and 15.8. The legislator, and by extension the regulator, take very seriously incidents of major bodily harm, death, and potentially fatal events property damage that do not result in casualties, such as explosions or ruptures of pressurized vessels. Section 15.5 obliges the employer to inform an HSO of a prescribed incident of severe gravity (paragraphs a-g). Section 15.6 is concerned with specifically the recording and reporting of investigations and corrective measures following a potentially fatal incident of property damage under paragraph 15.5(1)(f) or (g). Section 15.8 enumerates specific circumstances of significant gravity. The results of the subsequent investigations must be recorded on the prescribed form and reported to the work place committee and a local HSO.

[139] The Hazardous Occurrence Report form is part of Part XV. It is referenced in section 15.8 and forms an appendix to the text of Part XV. Forms that are appendices to legislation are instructive because they help clarify and understand the obligations in the legislation by serving as an illustration of an obligation. In the prescribed report, Instruction 5 of the "Instructions to the Employer on the Completion of the Hazardous Occurrence Report" states that the regulator has taken notice that hazardous occurrences take place as a result of various factors that combine to create the occurrence in question. Investigations and reports ideally provide ample information for employers and employees to improve conditions to prevent the recurrence of such situations. In section 15.8, a specific and required form shows that the regulator is especially interested in eliminating the root causes of situations that lead to major injuries and severe incidents (such as explosions) from federally regulated workplaces.

[140] From the foregoing, it is clear that the regulator is focused on being kept abreast of any hazardous occurrences that result in major or disabling injuries, or specific events of property damage. Moreover, sections 15.5, 15.6 and 15.8 of the Regulations make it clear that events that may result in property damage alone, such as a fire or explosion, may be severe enough to warrant heightened investigation and reporting.

[141] The Regulations require expedient investigations and reporting to the regulator for major injuries and hazardous events of property damage. This does not mean that other situations are excluded from the application of subsection 15.4(1). Sections 15.3 and 15.7 of Part XV indicate that an employer is equally obliged to investigate hazardous occurrences resulting in minor injuries or other instances of similar or less severity than enumerated in 15.5, 15.6, and 15.8.

[142] With respect to minor injuries, as defined in section 15.1, section 15.7 requires employers to log such incidences so that employers can use the records to prevent further incidences. Section 15.7 does not replace the obligations under subsection 15.4(1) when an employee suffers a minor injury. Section 15.7 merely requires a ledger and does not vacate the responsibility to investigate the occurrence to prevent its recurrence. This does not mean that such situations are not subject to the application of subsection 15.4(1). It would be highly illogical to limit an employer's investigative responsibilities after a potentially tragic event simply because the victim was fortunate to have only suffered a minor injury. Such an interpretation would completely depart from the Code's preventative purpose as expressed in section 122.1.

[143] Section 15.3 requires an employee to inform the employer of "accident or other occurrence arising in the course of or in connection with the employee's work that has caused or is likely to cause injury to that employee or to any other person." The requirement that a situation was, is, or could be the cause of an injury aligns well with the foregoing analysis into the range of circumstances and outcomes covered by the various reporting and record keeping obligations under Part XV.

[144] Section 15.3 informs the interpretation of "hazardous occurrence" in subsection 15.4(1) in that the kind of situations an employer must investigate are very broad and must include those that an employee would be required to report. The legislator has kept with the broadly preventative purpose of the statutory scheme by requiring employees to report any situation that is at least "likely to cause injury." I do not interpret section 15.3 as requiring an employee to be present or injured, or the exclusion of events of strictly property damage, at the time of such a situation reportable under section 15.3.

[145] Subsection 15.4(1) qualifies hazardous occurrence with the phrase "affecting [an] employee in the course of employment." The appellant argues that any obligation on the employer to launch an investigation must arise out of an

incident in which an employee was implicated. In the view of the appellant, there is no implication if there is only property damage.

[146] In *Re St. Lawrence Seaway Management Corporation*, 2012 OHSTC 42, at paragraphs 32 and 33, the Appeals Officer interpreted “affecting [an] employee in the course of employment” to mean that the hazard in question could directly or indirectly impact employees during their usual employment duties. I see no reason to deviate from this perspective that provides liberal protections and at the work place. To adopt the appellant’s narrow interpretation of “affecting [an] employee” would not serve to advance the preventative objectives of the Code as stated in section 122.1.

[147] In light of the foregoing analysis, I conclude that “hazardous occurrences” in the Regulations covers a very large spectrum of events that have caused or are likely to be the cause of an injury at work, including events of property damage alone. Therefore, I adopt the definition proposed by the respondents and employed by the Labour Program to its health and safety officers in Directive 935-1 and which reads as follows :

“Hazardous Occurrence” means an accident, occupational disease or other occurrence arising in the course of or in connection with the employee’s work that has caused or is likely to cause injury to the employee or any other person.	« situation comportant des risques » désigne un accident, une maladie professionnelle ou toute autre situation découlant du travail de l’employé qui a causé ou qui causera vraisemblablement une blessure à l’employé ou toute autre personne.

“Other Hazardous Occurrences”

[148] The appellant argues that the phrase “other hazardous occurrences,” as the phrase appears in paragraph 125(1)(c) of the Code and subsection 15.4(1) of the Regulations, is distinct from the common understanding—and in effect, the above interpretation—of “hazardous occurrence.”

[149] While I understand why the appellant has taken such a position, I cannot agree with its interpretation. It cites the Labour Program’s guide titled, “Employer's Annual Hazardous Occurrence Report: Additional Information and Resources” on how to fill in the annual report prescribed under subsection 15.10(1) of the Regulations. The Labour Program indeed states that for the purposes of filing the Annual Hazardous Occurrence Report, “other hazardous occurrence” are limited to: an explosion; damage to a boiler or pressure vessel that results in fire or the rupture of the boiler or pressure vessel; damage to an elevating device that renders it unusable, or a free fall of an elevating device; an electric shock, toxic atmosphere or oxygen deficient atmosphere that caused an

employee to lose consciousness; the implementation of rescue, revival or other similar emergency procedures; or a fire.

[150] The appellant sites section 15.5 and subsection 15.8(1) of the Regulations as being the provisions that inform the interpretation of subsection 15.4(1), based on the Labour Program's published guide on completing the Annual Hazardous Occurrence Report. However, the opposite is true: in both section 15.5 and subsection 15.8(1), the wordings are entirely clear that the provisions are only the kinds of *results* of a hazardous occurrence as determined in subsection 15.4(1) that require prescribed reporting. Subsection 15.4(1) therefore determines section 15.5 and subsection 15.8(1) and not the other way around.

[151] The annual reporting obligation and prescribed form under subsection 15.10(1) provides clear direction that "hazardous occurrence" encompasses a very broad range of possible events and outcomes, from only property damage to severe injuries or death. Section 15.10 reads:

> 15.10 (1) Every employer shall, not later than March 1 in each year, submit to the Minister a written report setting out the number of accidents, occupational diseases and other hazardous occurrences of which the employer is aware affecting any employee in the course of employment during the 12 month period ending on December 31 of the preceding year.
>
> (2) The report shall be in the form set out in Schedule II to this Part, contain the information required by that form and be accompanied by a copy of any report made in accordance with subsection 19.8(1).

[152] The prescribed annual report forms part of the Regulations by reference. It is informative as to the scope of "hazardous occurrence" under subsection 15.10(1) as well as subsection 15.4(1). Subsection 15.10(1) refers to the "number of accidents, occupational diseases and other hazardous occurrences." These situations are more specifically categorized by severity of outcome in the prescribed form, which has spaces for disabling injuries, deaths, minor injuries, and, again, "<u>other hazardous occurrences</u>," just like subsection 15.4(1) [emphasis added]. This supports the above analysis that a "hazardous occurrence" does not require an injury to have taken place, since there is a residual space in the form for all hazardous occurrences that did not result in an injury or death, but could likely have injured an employee. An incident of property damage alone could indeed fall into that category.

[153] Previously, the Tribunal has considered the breadth of "other hazardous occurrences." In *Re Royal Bank of Canada*, 2012 OHSTC 5, the Appeals Officer stated at paragraph 19,

> The term "hazardous occurrence" is not defined in the Code or Regulations. However, it clearly includes an

> accident or an occupational disease since, after specifying these two terms, the wording of the subsection goes on to refer to "**other** hazardous occurrences", (my emphasis). The additional wording would indicate that the drafters and legislators were not satisfied that the two preceding terms covered all possible hazardous occurrences and allowed for other unspecified circumstances to be determined as the legislation is applied.

[154] I endorse the appeals officer's approach in *Re Royal Bank of Canada*, which encompasses the respondents' submissions on the regular use and meaning of the word "other." The Appellant has not demonstrated through a reliance on the legislation and purpose of the Code that "other hazardous occurrence" has the restricted definition employed by the Labour Program for the purposes of submitting prescribed forms.

[155] I fail to see how the appellant's interpretation fits with the overall regime of Part XV of the Regulations. The Labour Program's policy decision on reporting is not a limitation on the day to day preventative duties the Regulations impose on employers. There is no legislative reason for restricting the interpretation "other hazardous occurrences" to those specific incidents listed above.

Accidents

[156] Paragraph 125(1)(c) of the Code states that the employer has the responsibility to investigate "all accidents, occupational diseases, and other hazardous occurrences[.]" Subsection 15.4(1) places an investigative onus on the employer for any "accident, occupational disease or other hazardous occurrence." Once again, the wording here is clear that accidents and occupational diseases are forms of hazardous occurrences; a hazardous occurrence that warrants investigation and is not sub-classified as an accident or occupational disease is generally labelled as "hazardous occurrence."

[157] While there appears to be no debate between the parties as to when an investigation is required for occupational disease, there is one with respect to an "accident." The Code does not define "accident." MGTP argues that incidents resulting in near-misses or property damage alone are not accidents, and that minor injuries are entirely covered by section 15.7 of the Regulations. It submits that only incidents resulting in disabling injuries are "accidents" that warrant investigation.

[158] CUPE argues that both paragraph 125(1)(c) of the Code and subsection 15.4(1) of the Regulations make no distinction between accidents based on the degree of injury an employee suffers, emphasizing that the Code requires an investigation of "<u>all accidents</u>" [CUPE's emphasis].

[159] CUPE and the ILA rely on the same definition of "industrial accident" as MGTP, taken from Quebec's provincial statute entitled *An Act Respecting Industrial Accidents and Occupational Diseases*, CQLR c A-3.001 :

> **"industrial accident"** means a sudden and unforeseen event, attributable to any cause, which happens to a person, arising out of or in the course of his work and resulting in an employment injury to him;

[160] CUPE argues that the usual sense of "accident" requires a consequence—specifically an injury of *any* degree—and the legislation does not provide for employer discretion as to which injuries warrant an accident investigation under subsection 15.4(1) of the Regulations; if the legislator intended to make a distinction between accidents resulting in minor injuries and disabling injuries, it would have explicitly done so. A large and liberal interpretation of the Code and Regulations does not have scope for the imposition of such a distinction.

[161] Moreover, it states that the duty to conduct an investigation is not dependant on the extent of injury, however the scope of the investigation itself may vary based on the injury.

[162] I find the position of the respondents to be nuanced and convincing. An "accident" is "a hazardous occurrence" of a sudden or unforeseen nature resulting in a work place injury for an employee. Neither the Code nor Regulations distinguish the investigative responsibilities of the employer for accidents based on the injury an employee sustains. An employer must investigate *all* accidents.

[163] With respect to the exhaustiveness of an investigation, there may be proportionality between the injury and the investigation. However, an employer is to use sound judgement when determining the scope of an investigation. A fortunately minor injury in the event of potentially catastrophic accident is no excuse for a compromised investigative effort.

[164] The evidence is very clear that, before the first direction was issued, the employer did not investigate all hazardous occurrences. In fact, the appellant's witnesses, Mr. Beaubien and Mr. Gagnon, confirmed that no investigations were carried out for incidents involving property damage, near misses or incidents involving minor injuries. Mr. Beaubien even confirmed that when containers fell the employer did not carry out any investigation and no representative was called upon. However, as mentioned earlier, section 15.4 is worded to include a very broad range of situations that could occur at a work place and potentially affect the health and safety of employees, including incidents that only cause property damage or minor injuries.

[165] In the first direction he issued, OHS Officer Testulat identified containers falling on terminals and accidents at the work site involving machinery or equipment as examples of occurrences requiring investigation by the employer.

Based on my analysis of all of Part XV of the Regulations, it is also my view that the employer must investigate those situations.

[166] For all these reasons, I find that the employer contravened paragraph 125(1)(*c*) of the Code and paragraph 15.4(1)(*a*) of the Regulations.

2) Did the employer inform the work place committee as set out in paragraph 15.4(1)(*b*)?

[167] In addition to its obligation to investigate hazardous occurrences, the employer must also, under paragraph 15.4(1)(*b*), notify the work place committee or, if applicable, the health and safety representative of the hazardous occurrence and of the name of the person appointed to investigate it. I already determined in the first part of this analysis that the employer breached its duty to investigate all hazardous occurrences. It remains to be determined whether, when carrying out an investigation, the employer complied with its obligation to notify the work place committee.

[168] MGTP argued that its investigation procedures meet the requirements of the Code and Regulations. When an investigation is necessary, the superintendent checks whether a member of the work place committee is present on the work site. If so, the committee member is notified to take part in the investigation. However, if there are no committee members present, a health and safety representative is appointed to participate in the investigation.

[169] The appellant thus alleged that, since health and safety representatives are alternate members of the work place committee and one of them is systematically notified and participates in investigations, the obligations under the Code and Regulations are being met.

[170] The appellant stated that because they knew of the difficulties in applying the requirements of the Code at the Port of Montréal work site, the employer and the two responding unions agreed in their respective collective agreements to have health and safety representatives whom the employer deemed to be alternate members as provided for in subsection 135.1(6) of the Code.

[171] The appellant is of the view that it is critical for MGTP to have access to representatives to take part in investigations because such a practice is not prohibited by the Code and takes into account the particularities of the Port of Montréal work place. The appellant submitted that two characteristics distinguish the work place in question from other traditional employers.

[172] First of all, MGTP's territory, which spans several kilometres on the north and south shores of the St. Lawrence River. Next, the allocation of workers at the Port of Montréal, which is accomplished through a deployment mechanism for which MEA is responsible. On a daily basis, the companies, including MGTP, provide the number of workers they will need for the upcoming shifts. Therefore,

the longshoremen and checkers working for MGTP can also work for six other stevedoring companies at the Port of Montréal, so the composition of the work place changes daily, if not every shift.

[173] The appellant claimed that, considering these two aspects, it is impossible for them to notify a member of the work place committee every time an investigation is needed, given the limited number of committee members. Moreover, when an accident occurs, members of the committee could be working at non-MGTP terminals, or they could be at home or on vacation. It is for those reasons that the parties expressly agreed, in their collective agreements, on a solution in introducing the concept of a "health and safety representative." The appellant referred to section 11.03 of the collective agreement between the MEA and the stevedores' union, which provides as follows:

> 11.03 [Translation] Health and safety representatives and composition of work place health and safety committees.
>
> a) Employees delegated to health and safety are appointed by the union. A health and safety representative may perform all the duties of the member of a committee representing employees, in the absence of said member, both during and outside work place committee meetings.
>
> The Maritime Employers Association and the companies agreed to notify a member of the work place committee or, in the absence of such a member, a health and safety representative, of any accidents or refusals to work that occur at a work site, as soon as the employer becomes aware of it, regardless of whether there is a work stoppage. In such situations, the employee representative assists the employee(s) concerned.
>
> Members of work place health and safety committees representing employees are appointed by the union from among the health and safety representatives. Employee representatives cannot act as such when assigned to a crane job. [Emphasis added]

[174] Section 135(1) of the Code requires that a work place health and safety committee be established in any work place with at least 20 employees. There is no question that a work place committee was established at Montreal Gateway. Section 135(1) reads as follows:

> 135(1) For the purposes of addressing health and safety matters that apply to individual work places, and subject to this section, every employer shall, for each work place controlled by the employer at which twenty or more employees are normally employed, establish a work place health and safety committee and, subject to section 135.1, select and appoint its members

[175] Moreover, subsection 135.1(6) of the Code allows for the appointment of alternate committee members as follows:

> 135.1(6) The employer and employees may select alternate members to serve as replacements for members selected by them who are unable to perform their functions. Alternate members for employee members shall meet the criteria set out in paragraphs (1)(*a*) and (*b*)

[176] In my view, subsection 135.1(6) must be viewed in the broad context of the role played by work place committees. The purpose of the work place committee is to provide a bipartisan, joint perspective on maintaining and promoting health and safety, independent of both the management and the unions. Health and safety committees and representatives are a crucial entity and one of the pillars in implementing the Code. They play a vital role in preventing work accidents and occupational illnesses.

[177] There are other sections of the Code that highlight the importance of work place committees. Among other things, subsection 135(4) lists the factors that the Minister must examine before exempting a work place from establishing a committee; work places must meet a very high safety threshold and show a history of compliance with the Code before the Minister can consider an exemption.

[178] Paragraph 135(7)(*e*) accords the work place committee an obligation to participate in employer investigations:

> 135(7) A work place committee, in respect of the work place for which it is established:
>
> *e*) shall participate <u>in all of the inquiries, investigations</u>, studies and inspections pertaining to the health and safety of employees, including any consultations that may be necessary with persons who are professionally or technically qualified to advise the committee on those matters;

[179] The legislator is completely clear on the fact that the work place committee's participation <u>in all investigations</u> is compulsory and not optional. It is clear that Parliament has accorded work place committees the obligation to participate in all health and safety investigations and has not given the employer the discretion to decide when the committee's involvement is appropriate.

[180] To facilitate compliance with this requirement of the Code, it is important that the committee be advised of any investigations. However, the Code does not provide rules for the participation of a work place committee in employer investigations. On the contrary, since the committee has this duty, it is the

responsibility of the committee, not the employer, to decide on the terms and conditions.

[181] In the *Halterm* decision, the officer indicated the following with regard to the work place committee's participation in investigations:

> The expression "shall participate in all inquiries and investigations" means there is a mandatory requirement on the safety and health committee to take an active part in all aspects of an accident investigation. This interpretation is based on the following analysis of the provision.
>
> "Shall" is mandatory and in this case, because members of the safety and health committee are not liable, means that the committee need not question itself on whether it will participate in the activity mentioned above but will concern itself on how to achieve this participation. Hence, the rules of procedure for its operation will assist the committee in this endeavour. Also, because there is a mandatory requirement on the safety and health committee to participate in inquiries and investigations, any outside interference with this role of the committee is illegal and reprehensible.
>
> [Emphasis added]

[182] I agree with the similar interpretation adopted by the appeals officer in the decision *Canada Post Corporation* v. *Canadian Union of Postal Workers*, 2013 OHSTC 23, paragraph 149:

> As a consequence, I find that the LJHSCs and HSRs not only have the right but the duty to participate in the on-site inspections and investigations of the TSAT process. These LJHSCs and HSRs are composed of both employer and employee representatives who are in the best position to decide the level of participation required. I would like to clarify that if a LJHSC or HSR wants to participate in an assessment, the assessors or the managers cannot refuse given that they are fulfilling their duties as required by the Code.

[183] It is therefore well established in the Tribunal's jurisprudence that the onus is on the work place committee, using these operating rules, to establish the parameters of its investigative role, including the appointment of those who are to participate. Therefore, an employer cannot interfere in this role or unilaterally decide on who will participate in the investigations.

[184] In the case at hand, the evidence reveals that the employer alone chooses the individual who will participate in an investigation on behalf of the work place committee, and in many cases, without even notifying the committee members.

The appellant's witnesses explained that the practice consists of selecting a representative who is present on the shift and whose participation in the investigation will not adversely affect operations. There is no evidence before me showing that this approach was decided upon or agreed to by the work place committee.

[185] Furthermore, the evidence also shows that, in several cases, neither a member of the work place committee nor a representative was summoned to participate in the investigation. During his testimony, Mr. Lavoie confirmed that some situations had arisen where neither the superintendent, nor a representative, nor a member of the work place committee was contacted when accidents had occurred causing minor injuries but no disabling injuries. The respondents' witnesses also identified cases where the work place committee was not involved in the investigation, having not been notified.

[186] The employer's obligation under paragraph 15.4(1)(*b*) is limited to notifying the work place committee when it is investigating hazardous occurrences on its work site. It is left to the committee to ensure that it participates in the investigations. Once notified of an investigation, the onus is therefore on the work place committee to appoint the person who will investigate and to decide on all other aspects of its participation, including appointing the person to investigate on its behalf. Ideally, these aspects should be set out in the committee's operating rules so that it can act promptly when notified of an investigation.

[187] Although I agree with the appellant's argument that OHS representatives, appointed by the unions, may be considered alternate members within the meaning of subsection 135.1(6), since the collective agreements allow them to perform any of the committee duties, I do not believe that it means that the employer can then perform a role that was clearly given to the work place committee.

[188] I consider it important to specify that subsection 135.1(6) allows for the appointment of alternate members in cases where the committee is not able to perform one of its duties. The onus is not on the employer to decide when it is appropriate to use alternate members. In my view, that decision and the decision on the rules for participation are the responsibility of the work place committee. Furthermore, despite its claim that using representatives, who are alternate members within the meaning of the Code, when no work place committee members are present on a shift, is consistent with the Code, the evidence shows that the rules for deployment fail to ensure that either a member of the work place committee or a representative is present on the various shifts because it is not a criterion taken into consideration when assigning employees.

[189] Accordingly, I strongly suggest that the employer and work place committee collaborate in establishing specific rules governing the work place committee's participation in investigating hazardous occurrences.

[190] I must now address the appellant's argument on the wording of the directions issued by OHS Officer Testulat indicating that the employer must notify the member employees of the work place committee when it is conducting an investigation. The appellant submitted that section 15.4 of the Regulations does not specify that committee representatives who are employees must necessarily be advised of an investigation. The legislation provides only that the committee is to be notified.

[191] I agree with the appellant that, based on the wording of subsection 15.4(1)(*b*), the employer is responsible for notifying the work place committee and not specifically the employee representatives of the committee. The representatives of the employer and employee are equally responsible for the proper functioning of the health and safety committee and must exercise their duties independently of the entities that appoint them (i.e. management and the unions). Every committee member, regardless of the side he or she represents, must ensure that the committee is optimally performing its duties.

[192] It would be inappropriate and inaccurate to read these reasons in such a way as to diminish the value of the contribution of employees to the work place committee. Employee representation is an integral part of the committee, as confirmed by the Code. The Code provides that employee representatives are chosen by their peers and do not have management functions. Subsection 135.1(8) provides that employee representatives are involved in performing the functions of the committee pursuant to subsection 135(7).

[193] For all these reasons, I find that the employer's practice in investigating hazardous occurrences fails to guarantee adherence to the requirements under paragraph 15.4(1)(*b*) of the Regulations. When conducting an investigation into hazardous occurrences on its work site, the employer must notify the health and safety work place committee so that it can take part in the investigation of hazardous occurrences.

Conclusion

[194] It is clear from the testimony of witnesses, from the evidence submitted and from the analysis above that MGTP's practices do not comply with the Code and Regulations. OHS Officer Testulat issued the first direction after receiving a complaint and subsequent discussions with MGTP management. One year later, he issued a second direction following a visit to the work site, where he noticed the employer had not complied with the first direction, despite the rejection of its request to withdraw said direction.

[195] After thoroughly reviewing all the evidence and the parties' submissions, I am of the view that OHS Officer Testulat was right in issuing the directions identifying a contravention of paragraph 125(1)(*c*), and subsection 135(7), as well as subsection 15.4(1) of the Regulations. In order to facilitate the parties'

understanding of the employer's obligations, I nonetheless find it worthwhile to amend the two directions to better reflect the above interpretation of the employer's obligations in regard to the purpose of the investigation and to notifying the work place committee. An amendment will also be made to remove the words "employee members," as explained in paragraph 191 above.

[196] I also note that OHS Officer Testulat cited the proper authorities under which he exercised his authority to issue his directions, in the main body of his directions. However, he cited a provision that does not exist in the Code in the titles of the directions. The provisions identifying the contraventions are nonetheless cited in the two directions. The title may simply be interpreted as having a typographical error that I corrected in the schedules.

Decision

[197] For these reasons, the directions issued by OHS Officer Testulat to the employer on June 18, 2012 and June 12, 2013 are amended and attached to these reasons.

Jean Arteau
Appeals Officer

IN THE MATTER OF THE *CANADA LABOUR CODE*
PART II - OCCUPATIONAL HEALTH AND SAFETY

DIRECTION TO EMPLOYER PURSUANT TO SUBSECTION 145(1)(*a*)
AS AMENDED BY APPEALS OFFICER JEAN ARTEAU

On May 16, 2012, the undersigned health and safety officer conducted an investigation at the work place operated by Montreal Gateway Terminals Partnership, an employer subject to Part II of the *Canada Labour Code* and located at terminals 62 and 77 of the Port of Montréal in Montréal, Quebec (PO Box 360, Station K, Montréal, QC).

The said health and safety officer believes that the following provisions of Part II of the *Canada Labour Code* were violated

(125(1)(*c*) Part II of the *Canada Labour Code*
15.4(1) *Canada Occupational Health and Safety Regulations*

The employer did not conduct an investigation on all hazardous occurrences, that is, occurrences that caused or were likely to have caused injury at work, including occurrences that only resulted in property damage.

The employer failed, in particular, to investigate when containers fell on the terminals and when there were work place accidents involving machinery or equipment and with no disabling injuries.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(*a*) of Part II of the *Canada Labour Code*, to terminate the contraventions no later than July 3, 2012.

Issued at Montréal this 18th day of June, 2012.

[signed]
Alain Testulat
Health and Safety Officer #ON6872
Labour Program – ESDC
200 René-Lévesque Boulevard West, West Tower, 4th Floor
Montréal, QC, Canada, H2Z 1X4
Tel: 514-982-2553 (3095)
Alain.testulat@labour-travail.gc.ca

To: Mr. Éric Paré
Montreal Gateway Terminals Partnership, Terminals 62 and 77 of the Port of Montréal
PO Box 360, Station K, Montréal, QC

IN THE MATTER OF THE *CANADA LABOUR CODE*
PART II - OCCUPATIONAL HEALTH AND SAFETY

DIRECTION TO EMPLOYER PURSUANT TO SUBSECTION 145(1)(*a*)
AS AMENDED BY APPEALS OFFICER JEAN ARTEAU

On June 12, 2013, the undersigned health and safety officer conducted an investigation at the work site operated by Montreal Gateway Terminals Partnership, an employer subject to the *Canada Labour Code*, Part II, at Terminals 62 and 77 of the Port of Montréal in Montréal, Quebec.

The said health and safety officer believes that the following provisions of the *Canada Labour Code*, Part II, were violated

135(7)(*e*) Part II of the *Canada Labour Code*
15.4(1) Canada Occupational Health and Safety Regulations

The employer failed to notify the work place committee so that it could take part in the investigations of hazardous occurrences.

In particular, the employer failed to notify the work place committee so that the committee could fully participate in investigations of hazardous occurrences for onsite accidents involving one or more disabling injuries and minor injuries to one or more employees.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(*a*) of Part II of the *Canada Labour Code*, to terminate the contraventions no later than June 21, 2013.

Issued at Montréal this 12th day of June, 2013.

[signed]
Alain Testulat
Health and Safety Officer #ON6872
Labour Program – ESDC
200 René-Lévesque Boulevard West, West Tower, 4th Floor
Montréal, QC, Canada H2Z 1X4
Tel: 514-982-2553 (3095)
Alain.testulat@labour-travail.gc.ca

To: Mr. Éric Paré
Montreal Gateway Terminals Partnership, Terminals 62 and 77, Port of Montréal
PO Box 360, Station K, Montréal, QC