Occupational Health and Safety Tribunal Canada

Date: 2016-09-16
Case No. : 2015-04

Between:

Termont Montréal Inc., Appellant

and

Syndicat des débardeurs, Canadian Union of Public Employees (CUPE), Local 375

and

Syndicat des vérificateurs (International Longshoremen's Association (ILA), Local 1657), Respondents

Indexed as : *Termont Montréal Inc.* v. *Syndicat des débardeurs and Syndicat des vérificateurs*

Matter:	Appeal filed under subsection 146(1) of the *Canada Labour Code* against a direction issued by an official delegated by the Minister of Labour.
Decision:	The direction is varied.
Decision rendered by:	Mr. Pierre Hamel, Appeals Officer
Language of decision:	French
For the appellant:	Ms. Mélanie Sauriol and Ms. Laurence Bourgeois-Hatto, Counsel, Langlois lawyers, LLP
For the respondents:	Mr. Daniel Tremblay, Health and Safety Representative, Syndicat des débardeurs, CUPE, Local 375 Mr. Edward Doyle, Syndicat des vérificateurs (International Longshoremen's Association (ILA), Local 1657)
Citation:	2016 OHSTC 15

REASONS

[1] These reasons apply to an appeal filed by Termont Montréal Inc. ("Termont" or the "employer") under subsection 146(1) of the *Canada Labour Code* (Code) and forwarded to the Occupational Health and Safety Tribunal Canada (Tribunal) on February 19, 2015 of a direction issued by Mario Thibault in his capacity as the official delegated by the Minister of Labour (ministerial delegate).

[2] The direction, issued under subsection 145(1) of the Code, is dated January 20, 2015 and reads as follows:

> IN THE MATTER OF THE *CANADA LABOUR CODE*
> PART II - OCCUPATIONAL HEALTH AND SAFETY
>
> INSTRUCTION TO THE EMPLOYER PURSUANT TO SUBSECTION 145(1)
>
> On April 10, 2014, the undersigned Labour Affairs Officer, Occupational Health and Safety, in the capacity of an official delegated by the Minister of Labour, carried out an inspection in the workplace operated by Termont Montréal Inc., an employer subject to Part II of the *Canada Labour Code.* Said workplace is located at Section 68, Port of Montreal, P.O. Box 36, Section K, Montreal, Quebec, H1N 3K9, and is sometimes referred to by the name of Termont Montréal Inc.
>
> The official delegated by the Minister of Labour considers that the following provisions of Part II of the *Canada Labour Code* are being contravened.
>
> **No. / No: 1**
>
> 125.(1)(n) - Part II of the Canada Labour Code, 6.5 - Canada Occupational Health and Safety Regulations.
> The average level of lighting observed between rows C and D of the terminal is below the value of 30 lx, as is required for areas in which goods are stored in bulk or where goods in storage are all of one kind.
>
> **No. / No: 2**
>
> 125.(1)(n) - Part II of the Canada Labour Code, 6.11(1) - Canada Occupational Health and Safety Regulations.
>
> Fifty-three (53) readings that were taken between rows C and D of the terminal indicated levels of lighting that were less than one third of that prescribed.
>
> Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(*a*) of Part II of the *Canada Labour Code*, to terminate any contravention no later than February 3, 2014. [*NOTE: The date given, February 3, 2014, as the*

date on which to terminate the contravention is clearly incorrect, given that the direction was issued at a later date, i.e. on January 20, 2015. The evidence indicates that the ministerial delegate intended to give February 3, 2015 as the deadline for terminating the contravention.]

Furthermore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(*b*) of Part II of the *Canada Labour Code*, to take the steps prescribed by the Labour Affairs Officer, Occupational Health and Safety, acting in the capacity of an official delegated by the Minister of Labour, to ensure that the contravention does not continue or re-occur, within the time limits specified by him.

Issued at Montreal this 20th day of January, 2015.

[signed]
Mario Thibault
Labour Affairs Officer,
Occupational Health and Safety,
Official delegated by the Minister of Labour
[…]

To: Mr. Julien Dubreuil, Terminal Director
Termont Montréal Inc.
Section 68, Port of Montreal, P.O. Box 36, Section K, Montreal, Quebec, H1N 3K9

[3] In its application to appeal, the appellant also requested that the direction be stayed. The undersigned granted the stay for the reasons set out in *Termont Montréal Inc.* v. *Syndicat des Débardeurs, SCFP, section locale 375 and Syndicat des Vérificateurs, ILA Local 1657*, 2015 OHSTC 7.

Background

[4] The facts pertinent to this appeal arise from the ministerial delegate's investigation report, and the evidence introduced during the hearing. Essentially, these facts are unchallenged.

[5] Termont is a company located at the Port of Montreal offering the services of stevedoring and terminal handling of containers. The total square metrage of the terminal is 200,000 square metres, and that of the storage area is 160,000 square metres. The square metrage of the area to which the direction specifically pertains (block C-D) is 53,000 square metres. Rows C and D are approximately 2,300 feet long each.

[6] Termont uses the services of longshoremen, who are responsible for loading and unloading the ships. Termont uses a variety of types of equipment in its operations, including *transtainers* (travelling cranes on rubber wheels designed to

hold containers), front end loaders/top loaders and other forklifts, gantry cranes that place containers in the ships, and yard trucks.

[7] The containers at the terminal are stacked to various heights, as shown by the photos produced in evidence. At some locations, a maximum of two (2) containers are stacked, while, at others, they are stacked five (5) high. In this sector of the terminal, lighting is provided by lighting towers approximately 30 metres high; each tower has 12 luminaires set at various angles so as to light the terminal. The luminaires are 1000-watt, high-pressure sodium floodlights.

[8] Termont also uses the services of checkers; their main function is to control the inventory of containers and coordinate the activities of the longshoremen assigned to moving the containers. Checking is done using laptops or radio units installed on the gantry cranes. These checkers move about the terminal using Toyota Echo or Yaris cars, which are adapted to their job requirements. The checkers are generally expected to move through the terminal by car, although they may be called upon to get out of the car to locate the number of a container if it is not visible from within the car. The frequency at which they leave their vehicle varies, according to witnesses: Mr. Doyle, Syndicat des vérificateurs representative and a checker himself, estimates that they leave their vehicle at least 15 times and sometimes up to 100 times per shift, while Mr. Dubreuil, Termont General Manager puts the figure much lower and thinks they only do so rarely. In my opinion, is not necessary to settle this issue, as the frequency at which checkers leave their vehicles is of only very secondary importance in this matter.

[9] This first documented intervention by a health and safety officer, as the Code then called them, dates back to October 2013. Mr. Thibault visited Termont after a complaint was filed regarding the visibility of the Echo cars used by the checkers. There had been a few instances of checkers' cars being bumped into by container top loaders between rows C and D of the Termont terminal. At that time, Mr. Thibault issued a direction, dated October 7, 2013, after which Termont undertook to modify nine (9) checker vehicles by replacing the cars' emergency rotating light with a different type.

[10] Under the circumstances, Mr. Thibault thought it appropriate to take a closer look at the lighting level in the area between rows C and D of the terminal operated by Termont, suspecting it did not comply with the applicable prescribed standard. In his report, Mr. Thibault notes that he took technical readings on October 1, 2013 which showed that several readings were below 10 lux, and that the average of 30 lux did not seem to be met between rows C and D of the terminal. An employer representative then told him that the luminaires in the refrigerated container row were not on and that this could have affected the readings. This representative also asked for some time before the measurements were repeated, as several luminaires were burnt out and had to be replaced.

[11] On January 9, 2014, Mr. Thibault took further technical readings, with the employer and union representatives in attendance, and the results were the same as on October 1. To make sure the readings were correct, he asked a colleague, Ms. France de Repentigny, Industrial Hygiene Technologist, who also works for the Labour Program, to go over them.

[12] Ms. de Repentigny testified at the hearing, at my request. She filed a document that briefly stated her area of expertise as an industrial hygiene technologist. She has been working in this capacity for the Labour Program since 1987. Her role within the program is essentially to provide her specialized expertise as needed to ministerial delegates, to support them in their duties. She has a diploma of collegial studies in air and environmental pollution control. Since 1985, she has held the professional certification awarded by the U.S. *Board of Certified Safety Professionals*. Her area of expertise involves assessing employee exposure to stressors (physical, chemical or biological agents) in the work place, and understanding their impacts on the health of exposed workers. She performs quantitative evaluations of the stressor agents using specific, standardized measurement techniques, to then characterize and manage the risk. She does more than 25 technical readings and audits of occupational hygiene reports per year. She has been an expert witness before the courts on several occasions, has provided training in her area of expertise and, among other things, wrote the *Guide to the management [of] hazardous substances* published by Employment and Social Development Canada.

[13] On March 4, 2014, Ms. de Repentigny and Mr. Thibault discussed the January 9, 2014 readings; she mentioned that his readings did not seem to have been performed in compliance with *IPG 928-1-IPG-039, Measurement of Lighting Levels in the Work Place* (IPG-039), and suggested that he repeat them. On April 10, 2014, Mr. Thibault visited Termont again, this time accompanied by Ms. de Repentigny. She took light level readings at several locations between rows C and D of the terminal. Mr. Thibault mentioned that there was a lot of traffic and handling that night between rows C and D. He stated that, overall, the average of 30 lux was not met and several readings were below 10 lux.

[14] After that visit, Ms. de Repentigny completed her analysis report on September 17, 2014. In that report, she concluded that the lighting levels of terminal sectors C and D, where containers are stored, were below the prescribed standards. To properly assess the appellant's arguments for rescinding the direction, it is useful to review the methodology Ms. De Repentigny used in arriving at her findings.

[15] The lighting level measurements were taken using an Optikon Hagner Luxmeter, which is accurate to plus or minus 5%. This device converts light energy into an electrical signal, which is then magnified to provide a reading on the lux scale. That luxmeter had been calibrated in September 2013 at the laboratory of the Institut de recherche Robert-Sauvé en santé et sécurité du travail, in Montréal.

[16] Ms. de Repentigny referred to section 6.3 of the *Canada Occupational Health and Safety Regulations* (Regulations), which stipulates that the average level of lighting at a task position or in an area shall be determined by making four (4) measurements at different places representative of the level of lighting at the task position or, in an area, representative of the level of lighting 1 m above the floor of the area, and by dividing the aggregate of the results of those measurements by four (4). Ms. de Repentigny explained that she took a reading approximately every 20 feet per row (C and D). The series of reading locations included the darkest and brightest zones.

[17] In her report and testimony, she specified that she was unable to follow the "complete" methodology suggested in IPG-039 for the outside areas, because of the vastness of the terminal, and the risk of being struck by container handling vehicles, which were very active that evening. Nonetheless, she took her readings based on an employee (checker) who would have to inspect containers at the terminal and where he would have to travel, by car or on foot, along the containers in the context of handling device traffic. The readings were taken close to the containers, at locations where checkers are likely to be when checking the information displayed on the containers.

[18] The evidence shows that a total of 81 readings were taken the evening of April 10, 2014, in the alley between rows C and D of the terminal operated by Termont. The exact readings for each measurement are set out in a table appended to Ms. de Repentigny's report. Briefly, the light readings showed levels ranging from 0 to 113 lux. The highest levels were recorded due to direct light from light sources placed on a transtainer positioned in row C at the time of the reading. These vehicles are not there permanently, so we can conclude that, if they were absent, the reading would have yielded a much lower lighting level. The lighting levels measured close to the refrigerator towers indicated values ranging from 8 to 26 lux. In the table of readings, several show very low numbers. The observation noted by Ms. de Repentigny reports that the light source was blocked by a 5-container stack. The average reading in row C was 16 lux; for the row D readings, the average was 13 lux. Lastly, 53 out of 81 readings, or 65%, show results below 10 lux.

[19] In Ms. de Repentigny's opinion, the lighting standard applicable to the container storage area in the terminal (C and D) was the one stipulated in section 6.5, Schedule II, item 3(*e*), i.e. 30 lux. She also referred to subsection 6.11(1) of the Regulations which states that no lighting level measurement must be less than one third of the applicable lighting level, i.e. 10 lux.

[20] In her testimony, she mentioned that she consulted a document on ports produced by the International Labour Office, with reference to lighting. She specifically cited section 3.1.3 of that document, stressing the following:

> 3.1.3 Lighting

> (…)
> 4. In operational areas where people and vehicles or plant work together, the minimum level of illumination should not be less than 50 lux.
> (…)
> 6. Light measurements should normally be taken in the horizontal plane 1 m above the ground or other working surface. Measurements at a lower level may be necessary where there are obstructions that might conceal a tripping hazard. The meter should not be oriented towards a light source.
> 7. Records should be kept of all lighting measurements. These should include the date, time, weather conditions, location and details of the lighting and light meter.

[21] Mr. Thibault gave the employer Ms. de Repentigny's report when he issued his direction on January 20, 2015.

[22] It was mainly on the basis of that report, which confirmed his own lighting level measurements, taken several months earlier, that Mr. Thibault issued the January 20, 2015 direction to which the appeal pertains. Several months elapsed between the taking of the readings, finalization of the report, and the direction being issued. I was informed that the nature of the file required consultation with Labour Program headquarters, as the standard applicable to the work area involved was "not clear," in Mr. Thibault and Ms. de Repentigny's opinion, as the Regulations do not specify a specific light level for operations at a container terminal. They also had to consult Tribunal jurisprudence to find a precedent they could use as guidance in this matter, as shown by Ms. de Repentigny's final report, which cites the following decisions: *Maritime Employers' Association* and *Syndicat des débardeurs du port de Montréal* (Decision 92-003) (*Maritime Employers' Association)*; and *David Dosen and International Longshore and Warehouse Union, Local 500* and *TSI Terminal Systems Inc.* and *British Columbia Maritime Employers Association* (Decision No.: CAO-07-012) (*Dosen*).

[23] Mr. Thibault's report also shows that, before issuing a direction that would likely have a national impact on all of the country's port operations, he had to consult headquarters and submit a briefing note setting out the issues, risks and potential consequences of such an action.

[24] The evidence also dealt with the measures Termont took to ensure that the checkers' work area was as safe as possible. Vincent Bégin testified at the hearing. He has been Termont's health and safety officer since October 2012. In this capacity, he runs the local occupational health and safety committee, and is in charge of inspections and prevention. He provided a detailed explanation of the changes made to the checkers' cars since the October 7, 2013 direction, i.e.: fluorescent paint was added, rotating warning lights with LED bulbs were installed on the roof, headlights and taillights were equipped with flashing lights, and

reflective strips were installed. Mr. Bégin also explained that some Dodge Journey model vehicles, bigger than the other cars, were now provided to the checkers.

[25] Mr. Bégin emphasized that the modifications were made to the vehicles in conjunction with the workplace occupational health and safety committee, whose members include Messrs. Tremblay and Doyle, who represent their respective unions in this matter. Mr. Bégin testified that the matter was fast-tracked. There were no further accidents after the changes were made to the checkers' vehicles. The motorized equipment operators said they were satisfied, and acknowledged that they could see the vehicles better since the improvements were implemented. The local committee was satisfied with the vehicle modifications.

[26] Mr. Bégin explained that tests were done after the January 20, 2015 direction was issued, in collaboration with the members of the workplace occupational health and safety committee; more specifically, testing was conducted with diesel towers. However, as they are very powerful and 15 feet high, motorized equipment operators were exposed to hundreds of lux (about 600 lux) when they approached the diesel towers, causing glare: instead of solving the problem, this measure presented an even greater risk of accident. All the parties involved agree with this assertion. Moreover, it would have taken a great many towers to light the entire surface. Termont therefore concluded that the risk of frequent collision and glare was too important an issue to install such lighting towers.

[27] Julien Dubreuil also testified at the hearing. He has been General Manager at Termont since July 1, 2014. Mr. Dubreuil has been with Termont since 2006, holding the positions of superintendent and project manager. He confirmed that Termont leases the premises where it conducts its operations, and the land is owned by the Montreal Port Authority. Therefore, if improvements must be made to the terminal, Termont must enter into an agreement with the Port Authority. More specifically, the Port Authority awards the contracts but would have to have an agreement with the tenant, because that is who would have to reimburse the cost of the improvements. Termont would therefore be paying to install additional lampposts in the terminal.

[28] Mr. Dubreuil also asserted that there was limited space to place the containers otherwise and that Termont could not take the containers out of the terminal due to Customs issues, for example. Mr. Dubreuil also raised the issue of the impact of adding lampposts in the terminal, explaining that this would create additional obstacles between rows C and D, increasing the risk of collision.

[29] The cost of adding permanent lampposts is estimated at $200,000 per lamppost. Moreover, adding lampposts would require in-depth studies of electrical capacity, and substantial work, including excavation, installation of pipes, paving, cabling, protective bollards, and changes to the terminal's drainage.

[30] According to Mr. Dubreuil, reducing the height of the container stacks is not an option, as it would lead to lost contracts and threaten the company's viability. Customers could choose to do business with competitors (the ports of New York, Boston, Halifax or Philadelphia). In fact, according to Mr. Dubreuil, decreasing the stacks from five to three containers would cut the terminal's capacity by more than 25%.

[31] Lastly, Mr. Dubreuil stated that he thought the area between rows C and D is safe given the measures implemented.

Issue

[32] Is the lighting level in the general container storage areas in the terminal operated by the appellant within the Port of Montreal port facilities subject to sections 6.5 - Schedule II, item 3(*e*) - and 6.11 of the Regulations and is the direction to that effect well founded?

Arguments of the parties

Arguments of the appellant

[33] Counsel for the appellant, Mélanie Sauriol, raised several points in support of rescinding the direction in her arguments, which I summarize in the following paragraphs.

[34] Firstly, the appellant claims that the prescribed standard on which the direction is based does not apply. Indeed, the container terminal where Termont conducts its operations is not covered by the work areas listed in section 6.4, 6.5 or 6.6, or by Schedules I to III of the Regulations, which stipulate the lighting levels that apply depending on the work area.

[35] The Termont container terminal is clearly not an office area, as provided in the Regulations' section 6.4 and Schedule I. Moreover, although the Termont container terminal may be considered an industrial space, as stipulated in section 6.5 and Schedule II of the Regulations, none of the sub-categories in Schedule II apply to Termont. Contrary to the analysis that led to the issuing of the direction, the container terminal cannot be considered covered in item 3 of Schedule II in the "loading platforms, storage rooms and warehouses" category. The nature of the terminal does not coincide with any of these designations which, according to the appellant, imply the existence of a building, not an open air container terminal.

[36] The appellant cites the *Dosen* decision for the definition of the words "loading platform," to argue that the terminal is not one. Counsel also refers to the definition of the words "magasin" and "entrepôt" in the *Petit Larousse illustré,* in support of her claim that the terminal is neither.

[37] The appellant also refers to the English text of item 3*(e)* and the definitions in the *Merriam-Webster Dictionary* and *Canadian Oxford Dictionary*, which define the word "warehouse" as "*a large building used for storing goods; a structure or room for the storage of merchandise or commodities"* and "*a building in which esp. retail goods are stored and from which they are distributed to retailers, etc.: a repository; a wholesale or large retail store (…)*.

[38] Counsel for the appellant maintains that these common definitions of the words used by lawmakers to describe the work areas so as to identify the applicable standard all imply the presence of a building. She also cites the Quebec Court of Appeal decision in *Transport de conteneurs Garfield inc.* c. *Montréal (Ville de)*, 2015 QCCA 120 (*Garfield*).

[39] The appellant further argues that the Termont container terminal cannot be considered a general area within the meaning of section 6.6 and Schedule III of the Regulations, as the appeals officers decided in the above-mentioned decisions. The appellant emphasizes that Ms. de Repentigny herself acknowledged that no standard applied specifically to a container terminal, with the result that the standard applicable here was unclear, and that the Regulations had a defect of vagueness (Patrice GARANT, *Droit administratif*, 6th ed., Cowansville, Éditions Yvon Blais, 2010, p. 308 et seq.).

[40] Therefore, because none of the categories set out in the Regulations apply, it is the employer's general health and safety duty as stipulated in section 124 of the Code that applies, and more specifically, paragraphs 125(1)(*z.03*) and 125(1)(*z.04*), which stipulate that it is the joint responsibility of the employer and workplace health and safety committee to find solutions so as to ensure workers' health and safety. The appellant also cites section 14.14 of the Regulations, which governs motorized materials handling equipment used at night or when the level of lighting is less than 10 lux. The appellant maintains that it has complied with these requirements.

[41] The appellant adds that other errors were made which justify rescinding the direction. Firstly, the applicable procedure set out in section 6.3 of the Regulations and in IPG-039 for measuring lighting levels was not followed, on Mr. Thibault and Ms. de Repentigny's own admission. This invalidates the analysis on which the direction is based, as well as the resulting direction.

[42] The appellant also notes that Ms. de Repentigny's report, dated September 17, 2014, was only given to the employer when the direction was issued, i.e. on January 20, 2015. The direction should therefore be rescinded based on the fact that the report was not given to the employer and Termont's workplace health and safety committee within ten (10) days of completion, as required by subsection 141(6) of the Code (Sylvain BEAUCHAMP, Nancy BÉLIVEAU and

Anthony PIZZINO, *Droit fédéral de la santé et de la sécurité au travail*, Montréal, Lexis Nexis, 2014, p. 2/15).

[43] Lastly, the appellant maintains that Mr. Thibault delegated his authority to interpret the Regulations and decide on the application of an applicable prescribed standard and a contravention thereof, which the Code does not allow him to do. Mr. Thibault is empowered by a delegation from the Minister of Labour, pursuant to section 140 of the Code. However, the ministerial delegate in turn delegated some of his authority to Ms. de Repentigny by allowing her to decide on the applicable standard, as reflected in the evidence in the case. According to the appellant, this approach constitutes an illegal sub-delegation of authority, and contravenes the rule of law "*delegatus non potest delegare*." The direction is therefore illegal and should be rescinded.

Arguments of the respondent Syndicat des débardeurs

[44] The representative of the Syndicat des débardeurs, Daniel Tremblay, produced a brief argument for the Tribunal which can be summarized as follows.

[45] Mr. Tremblay briefly reviewed the testimony presented at the hearing. He maintains that nothing in the evidence contradicts the testimony of Mr. Thibault and Ms. de Repentigny that the lighting in rows C and D of the terminal operated by Termont was inadequate and did not meet the applicable standard. He looks to the Labour Program officers to select the applicable prescribed standard, a choice made subsequent to consultations with program advisors.

[46] Moreover, the representative emphasizes that the evidence is not being challenged, except with respect to the number of times a checker may have to leave his vehicle when checking containers: while Mr. Bégin thinks they exit the vehicles infrequently during a shift, Mr. Doyle puts the number at 15 to 100 exits per shift.

[47] The representative closes in saying that he relies on the appeals officer's good judgement to render an informed decision that will allow the parties to provide a safe work place for Termont workers.

Arguments of the respondent Syndicat des vérificateurs

[48] The representative of the Syndicat des vérificateurs, Edward Doyle, did not present arguments, relying on the arguments of his colleague, Mr. Tremblay, and his brief testimony during the hearing.

Analysis

[49] This appeal challenges the application and interpretation of Part VI of the Regulations, more specifically sections 6.3 to 6.11. The relevant provisions of the Code and Regulations read as follows:

> **125** (1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,
>
> […]
>
> (*n*) ensure that the levels of ventilation, lighting, temperature, humidity, sound and vibration are in accordance with prescribed standards;
>
> **6.3** For the purposes of sections 6.4 to 6.10, the average level of lighting at a task position or in an area shall be determined
>
> (*a*) by making four measurements at different places representative of the level of lighting at the task position or, in an area, representative of the level of lighting 1 m above the floor of the area; and
>
> (*b*) by dividing the aggregate of the results of those measurements by four.
>
> **Lighting — Office Areas**
> **6.4** The average level of lighting at a task position or in an area set out in Column I of an item of Schedule I, other than a task position or area referred to in section 6.7 or 6.9, shall not be less than the level set out in Column II of that item.
>
> **Lighting — Industrial Areas**
> **6.5** The average level of lighting in an area set out in Column I of an item of Schedule II, other than an area referred to in section 6.7 or 6.9, shall not be less than the level set out in Column II of that item. (*NOTE: This Schedule is appended hereto.)*
>
> **Lighting — General Areas**
> **6.6** The average level of lighting in an area set out in Column I of an item of Schedule III, other than an area referred to in section 6.7 or 6.9, shall not be less than the level set out in Column II of that item.
>
> **Lighting — VDT**
> **6.7** (1) The average level of lighting at a task position or in an area set out in Column I of an item of Schedule IV shall not be more than the level set out in Column II of that item.

(2) Reflection glare on a VDT screen shall be reduced to the point where an employee at a task position is able to

> (a) read every portion of any text displayed on the screen; and
>
> (b) see every portion of the visual display on the screen.

(3) Where VDT work requires the reading of a document, supplementary lighting shall be provided where necessary to give a level of lighting of at least 500 lx on the document

Lighting — Aerodrome Aprons and Aircraft Stands

6.8 (1) Subject to subsection (2), the average level of lighting at a task position on an aerodrome apron shall not be less than 10 lx.

(2) The average level of lighting at a task position on an aircraft stand shall not be less than 20 lx.

Lighting — Artefactual Exhibits and Archival Materials

6.9 The average level of lighting in an area in which artefactual exhibits or archival materials are handled or stored shall not be less than 50 lx.

[…]

6.11 (1) Subject to subsections (2) to (4), the level of lighting at <u>any place at a task position or in an area that may be measured for the purposes of section 6.3</u> shall not be less than one third of the level of lighting prescribed by this Part for that task position or area.

[…]

145 (1) If the Minister is of the opinion that a provision of this Part is being contravened or has recently been contravened, the Minister 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.

146.1 (1) If an appeal is brought under subsection 129(7) or section 146, the appeals officer shall, in a summary way and without delay, inquire into the circumstances of the decision or direction, as the case may be, and the reasons for it and may

> (*a*) vary, rescind or confirm the decision or direction; and

(*b*) issue any direction that the appeals officer considers appropriate under subsection 145(2) or (2.1).

[Emphasis added]

[50] The underlying issue raised by this appeal is to determine the standard applicable to the work place lighting level covered by the direction. The establishment of the standard first requires a review of the relevant sections of Part VI of the Regulations, reproduced above.

[51] At the outset, I would like to note that this part, adopted pursuant to paragraph 125(1)(*n*) of the Code, is intended to regulate lighting levels in work places subject to the Code. The terminal at which Termont conducts its operations is clearly such a location. In my opinion, in enacting Part VI of the Regulations, lawmakers wanted to regulate lighting levels for all types of activity involving the work of employees. As federal jurisdiction is highly diverse, lawmakers cannot specifically identify each and every work place to which the Code applies. Therefore, lawmakers opted to identify generic types of work places and activities likely to exist, and associate them with a specific standard. In my opinion, Part VI of the Regulations must be interpreted as a complete code that strives to prescribe lighting standards for all work places under federal jurisdiction, regardless of what they are. In other words, no federal work place can be exempt.

[52] To identify this standard, we must be proceed by comparing the various categories of work place set out in Part VI (e.g. offices, docks, warehouses, etc.), each of which corresponds to a prescribed standard, and then proceed by elimination. This means we must characterize the work place involved.

[53] At the outset, I will say that my job here has been made somewhat easier by the fact that two appeals officers have already ruled on the issue of the lighting standard applicable to port container storage terminals like the terminal run by Termont (*Dosen* and *Maritime Employers Association*).

[54] The *Dosen* case is particularly noteworthy. In this case, the appeals officer did a context analysis of Part VI, concluding that a container storage terminal had to meet the 30 lux standard stipulated in section 6.5, Schedule II, item 3(*e*) of the Regulations. It is useful to cite large excerpts from this decision, as, in my opinion, the analysis it includes is correct.

[55] However, before doing so, I must specify that an appeals officer is not bound by the conclusions reached by an appeals officer in another matter, even if the circumstances are identical. The *stare decisis* rule does not apply in this matter (*DP World (Canada) Inc.* v. *International Longshore and Warehouse Union, Local 500 et al.*, 2011 OHSTC 17). An appeals officer must conduct his own analysis of the circumstances discovered by his investigation under 146.1 (1), based on the principles of law applicable in that case. He must not feel bound by a prior decision

if he does not find it correct in light of his own analysis of the question at issue. It is, however, desirable for appeals officers to apply the Code and its Regulations consistently on the same issue, especially if it deals with a question of law affecting the interpretation of a Code provision. Such discipline is intended to provide the parties with certainty as to the meaning and scope of the legislative texts that apply to their activities, ensuring purpose and consistency in the administration of the Code's provisions.

[56] The work area in *Dosen* was identical to the area located between rows C and D of Termont's terminal at the Port of Montreal. The issue was the same, i.e. which prescribed standard applied to this type of facility. The appeal involved a direction based on section 6.6, Schedule III, item 1*(c)*(i) of the Regulations subsequent to a fatal accident in the container storage area at the Port of Vancouver. After describing the work areas involved, the appeals officer set out the following in paragraphs 71 and following:

> [71] The evidence shows that the accident occurred in the exterior storage container yard of the TSI-Vanterm container terminal within the port of Vancouver, at an intersection of two passageways or lanes delimited in that yard for motorized container handling equipment traffic. […]
>
> [72] The above mentioned area is obviously not an office area subject to section 6.4 of the COHSR, "Lighting – Office Areas," a task position where a visual display terminal (VDT) is used subject to section 6.7, "Lighting – VDT," an aerodrome apron or aircraft stand subject to section 6.8, "Lighting – Aerodrome Aprons and Aircraft Stands," an artefactual exhibit or archival material subject to section 6.9, "Lighting – Artefactual Exhibits and Archival Materials." Therefore, the question is whether the area falls under section 6.5, "Lighting – Industrial Areas", and its Schedule II, or under section 6.6, "Lighting – General Areas," and its Schedule III.
>
> [73] Because "industrial areas" are not defined in the Code or in the COHS Regulations, I will refer to the dictionary meanings to define this term and determine if section 6.5 of the COHSR applies.
>
> [74] The *Dictionary of Canadian Law*[9] defines "industrial undertaking" and
> "industrial occupancy" as follows:
>
> INDUSTRIAL UNDERTAKING. 1. Any establishment, work, or undertaking in or about any industry, business, trade, or occupation. 2. Includes (i) mines, quarries, and other works for the extraction of minerals from the earth, (ii) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale,

> broken up or demolished, or in which minerals are transformed, including shipbuilding, and the generation, transformation, and transmission of electricity and motive power of any kind, (iii) construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, waterwork, or work of construction, as well as the preparation for a laying the foundation of any such work or structure, and (iv) transport of passengers or goods by road or rail or inland waterways, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand.
>
> INDUSTRIAL OCCUPANCY. Occupancy for assembling, fabricating, manufacturing, processing, repairing or storing of goods or materials or for producing, converting, processing or storing of energy, waste or natural resources. Ontario statutes.
> [my underline]
> […]
>
> [75] Given these definitions, I conclude that, for the purposes of the application of section 6.5 of the COHSR, "Industrial Areas" include an exterior storage of goods or materials area where handling activities are performed.
>
> [76] Moreover, given the same definitions, I conclude that an exterior storage yard where handling activities are performed is not a "general area" and, for this reason, does not fall under section 6.6 of the COHSR.
>
> [Emphasis added]

[57] This first analysis is beyond reproach, in my opinion. There is no serious challenge to the fact that the Termont terminal falls into the "Industrial Areas" category referred to in section 6.5, which refers us to Schedule II, which states the lighting standards. I am therefore also of the opinion that Schedule II must be applied in this matter. It is now a matter of determining which items and paragraphs of the Schedule apply to the container storage terminal.

[58] The appeals officer's analysis continues in paragraph 77:

> [77] The location where the accident occurred is evidently not a garage, as referred to in item 1 of Schedule II, section 6.5 of the COHSR, a laboratory, as referred to in item 2, a machine or wordworking shop, as referred to in item 4, a manufacturing and processing area, as referred to in item 5, or a service area as referred to in item 6. Therefore, the other question to decide in the present case is whether or not the location falls under item 3 of

> Schedule II, "LOADING PLATFORMS, STORAGE ROOMS AND WAREHOUSES".
>
> [Emphasis added]

[59] Once again, this conclusion seems unassailable. I also consider that, by elimination, none of the items aside from item 3 are applicable. This item in turn sets out several types of activities (described in its paragraphs), and we must now identify the activity that best corresponds to Termont's operations with respect to the storage container area.

[60] The appeals officer in *Dosen* continued her examination of the provisions of item 3 as follows, and, like counsel for the appellant, focused on the title of the item:

> [78] Because the terms "loading platforms" or "warehouses" are not defined in the Code or the COHS Regulations, I will refer to their dictionary meaning to determine if item 3 of Schedule II, section 6.5 of the COHSR, applies.
>
> [79] The *Dictionary of Canadian Law, supra*, defines "loading space" and "warehouse" as follows:Z
>
> LOADING SPACE. A space (a) on the same lot with a building or contiguous to a group of buildings, (b) intended for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and (c) that abuts upon a street, lane or other means of access. Canada Regulations.
>
> WAREHOUSE. *n.* 1. "… (M)ay be for the purpose of receiving goods on bailment where they would be to the order of the bailer, or a repository for storing large quantities of whole-sale goods or a building holding large quantities of goods or materials and being ancillary to some wholesale or retail business ..." *Evans v. British Columbia Electric Railway* (1914), 7 W.W.R. 121 at 122 (B.C.S.C.), Schultz J. 2. Any place, whether house, shed, yard, dock, pond or other place in which goods imported may be lodged, kept and secured without payment of duty. 3. Land that is used as a repository, storehouse or shed for the storage of goods and includes any building or structure from which goods are distributed for sale off the premises, but does not include a building or structure, the primary purpose of which is the sale of goods to the public. *Commercial Concentration Tax Act.* R.S.O. 1990, c. C-16, s. 1, as am.
> [my underline]

> [80] In addition, according to documents submitted by D. Dosen, the *Merriam-Webster's Ninth New Collegiate Dictionary*, *supra*, define the term "to load" as follows:
>
> To load – 1. a: to put a load in or on (truck);
> 1. b: to place in or on a means of conveyance (freight);
> 2. to put a load on or in a carrier, device, or container.
>
> [81] Counsel Koshman also referred to the *Oxford Canadian Dictionary*, *supra*, in which "loading dock" is defined as follows:
>
> "loading dock"
> *Noun N. Amer.* A raised platform, e.g. at a warehouse etc., from which trucks or railway cars are loaded or unloaded.
>
> [82] Given the above definitions, the location where the fatality occurred cannot, in my opinion, be considered to be a "loading platform," especially when the evidence shows, as mentioned previously, that the activities performed in the container storage yard of TSI-Vanterm container terminal are not container loading or unloading activities, but rather container handling activities.
>
> [83] However, the definition of "warehouse" given above includes a land that is used as a repository for the storage of goods or any place, like a yard, in which goods maybe lodged or kept. Based on this, I conclude that the term "warehouses" found under section 6.5, Schedule II, item 3, includes an exterior storage container yard like the one where the fatality occurred.
>
> [The underlining in paragraphs 82 and 83 is added]

[61] Once again, I agree with this conclusion. Firstly, the terminal is not a "loading platform" since no goods are transferred (for example, from the ground to a ship, railway car or truck). The appellant does not disagree with this conclusion, because counsel specifically cites this excerpt from *Dosen* approvingly. Moreover, I agree that the word "warehouse" is not restricted to the presence of a building or closed structure, but includes an open area (land) used as a repository for goods, such as containers.

[62] I note, moreover, that a regulatory provision must be interpreted by attempting to give it a large and liberal construction whose scope ensures the attainment of the objects of the Act under which it was made, in this case, the purpose of accident prevention that drives the Code (*Interpretation Act*, R.S.C. 1985, c. I-21, section 12). As *E. Driedger* states in *The Construction of Statutes*, 2nd ed., Toronto, Butterworths, 1983, at page 87:

> The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[63] The appellant's primary argument is based on the meaning of the word "warehouse" in the title of the third category of areas listed in Schedule II (section 6.5). The Regulations do not define this term. According to the appellant, the term necessarily implies the presence of a building. Applying the principles described above, I fail to see why the generic nomenclature contained in item 3 of Schedule II would exclude the terminal's container storage area simply because it is outdoors, and does not have walls or a roof. The objective of the Regulations is to ensure proper visibility to employees in a storage area, so I do not see why we would exclude this storage site at which employees are required to work on the sole basis of the fact that it is outside. Including this type of facility in the term "warehouse" in the context of the Code does more to serve the Code's purpose, that is, to protect workers' health and safety in the context of their activities at that location.

[64] In my opinion, the *Garfield* decision cited by the appellant does not apply to the circumstances of this appeal. In that case, the issue was to decide whether containers stored in a vague field were "warehouses" in and of themselves, which zoning by-laws would have allowed, or rather a stack of containers (storage), which was prohibited by the by-law. The question at issue here is very different. Moreover, this decision makes clear that the by-law defined the term "warehouse" as [translation] "*any building or structure used to store effects,"* which explains the Court's finding that a warehouse excluded an area not contained by a building or structure of some kind.

[65] Taking her analysis further, the appeals officer in *Dosen* identifies which paragraphs of item 3 of Schedule II (section 6.5) best describe the container handling and storage operations. She words it as follows in paragraphs 84 et seq.:

> [84] Then the question arises as to under which area of section 6.5, Schedule II, item 3, does the location where the fatality occurred fall?
>
> [85] Looking at the description of the areas under item 3 of Schedule II, I find that "other locations where packages or containers are loaded or unloaded" referred to in item 3(*c*) do not include the location where the fatality occurred, because the activities performed at this specific location relate to container handling, not container loading or unloading.
>
> [86] In addition, I believe neither item 3(*a*), "Active areas in which packages are frequently checked and sorted", item 3(*b*), "Areas in which packages are infrequently checked and sorted", item 3(*d*), "Areas in which grain and

> granular material is loaded or unloaded in bulk", nor item 3(*f*), "Areas where goods in storage are of different kinds", apply to the location where the accident occurred because there were no packages, no grain and granular material or no goods of different kinds in storage. The fact is that only containers were stored in that area.
>
> [87] For this reason and because this item specifically refers to areas where stored goods are all of one kind and in large quantities, I believe that the location where the accident occurred falls under item 3(*e*) of Schedule II, section 6.5 of the COHSR, being "Areas in which goods are stored in bulk or where goods in storage are all of one kind".
>
> [Emphasis added]

[66] I agree with this analytical approach, and also think that item 3(*e*) of Schedule II (section 6.5) applies in this case, as the containers are where "goods are stored in bulk or where goods in storage are all of one kind" in the meaning of this item. Accordingly, the standard applicable to the area located between rows C and D of the terminal operated by Termont is the associated standard prescribed by this item, that is 30 lux. Also accordingly, the readings at the various points representative of the work area must not be lower than one third of this standard, i.e. 10 lux.

[67] The readings taken by Ms. de Repentigny demonstrate fairly clearly that the 30 lux standard is not being met. The detail on the individual readings also conclusively establishes that the 10 lux standard imposed by section 6.11 for each lighting level measurement in an area is not met either in nearly two thirds of the measurements taken.

The procedure applicable to measurement was not followed

[68] This brings me to the matter raised by the appellant regarding the procedure followed by Ms. de Repentigny in taking her lighting level readings.

[69] The appellant has not convinced me that the direction should be rescinded on the basis of the fact that the readings were not taken in accordance with section 6.3 of the Regulations. This section requires the average lighting level at a task position or in an area to be calculated by taking measurements at 4 places representative of the task position or area involved, and dividing the aggregate of the results of those measurements by 4. IPG-039 provides further technical details on the method, depending on the size or configuration of the space to be measured.

[70] The IPG is an internal directive for Labour Program officers designed to ensure some consistency nationwide in applying, interpreting and administering the provisions of Part II of the Code. These are not legislative or regulatory documents,

and have no mandatory force for appeals officers. It is clear in IPG-039 that the procedure for measuring a work area is not absolute and can vary given the multitude of work areas that are subject to the Code, ranging from offices to much bigger spaces, both indoors and outdoors. The goal of this IPG and of section 6.3 of the Regulations themselves is to take the readings in a manner that is most representative of the task position or area involved, and then average them, rather than basing a conclusion on a single reading, an approach that would be unlikely to yield a representative result.

[71] The evidence shows that Ms. de Repentigny in fact had that goal in mind in the method she used for taking her readings. Terminal rows C and D represent a very large area (53,000 square metres). The fact that Ms. de Repentigny took some 81 readings at various locations along rows C and D of the terminal is not disputed. She explained having taken a reading about every 20 feet per row. The series of reading locations included the darkest and brightest zones. She explained that she could not apply the methodology suggested in IPG-039 for outdoor areas to its fullest because of the risk of being struck by container handling vehicles.

[72] In her testimony, she also said that her 81 readings were representative of the terminal work area and that, in her opinion, the procedure suggested by the IPG would not have yielded different results. No evidence to the contrary has been presented, nor has any counter-expertise that would have shown that Ms. de Repentigny's readings were not reliable. I have no reason to question Ms. de Repentigny's assertion and, on the balance of probability, I conclude that, for the purpose of applying the Regulations, Ms. de Repentigny's readings yield a representative picture of the lighting level in the area located between terminal rows C and D on the evening of April 10, 2014, and that these results are not contradicted.

Failure to provide the report within 10 days

[73] I do not accept the argument that the fact that Ms. de Repentigny's report was not presented to the employer and workplace health and safety committee within 10 days voids the direction. Firstly, the report mentioned in subsection 141(6) of the Code is a report prepared by the Minister (or ministerial delegate) subsequent to an investigation he has performed. The report to which the appellant refers is that of Ms. de Repentigny, who was not acting as a ministerial delegate, but rather as an industrial hygiene technologist supporting Mr. Thibault, the ministerial delegate, as a technical expert. Her report is an expert report and therefore is not covered by subsection 141(6) of the Code, in my opinion.

[74] Secondly, I do not see anything in subsection 141(6) or elsewhere in the Code that makes it possible to tie a direction's legality to the submission of an investigation report. Even if Ms. de Repentigny's report were covered by subsection 141(6), the Code does not stipulate sanctions if a copy is not given to the employer. I accept that the employer may raise this fact in defending against an

accusation of not having acted on the Minister's findings in the report, if applicable, and getting some time to do so. However, I see no legal basis for concluding that any subsequent step, including the issuing of a direction noting a breach of the Code, would be void.

Illegal delegation of authority

[75] The appellant also argued that the direction was vitiated by the fact that Mr. Thibault delegated his authority to Ms. de Repentigny, which the Code does not allow him to do. I do not accept this claim.

[76] Note that under the amended provisions of the Code that came into effect October 31, 2014, it is incumbent upon the Minister of Labour to apply the Code's provisions. The powers the Code previously vested directly in health and safety officers are now vested in the Minister. The Minister acts through his officers, to whom he can delegate his powers, in particular the power to investigate and issue directions under subsections 145(1) and (2). The fact that Mr. Thibault enjoys this ministerial delegation has not been challenged.

[77] Nor has there been any challenge to the fact that it was Mr. Thibault who issued and signed the direction under appeal, not Ms. de Repentigny. This direction, issued under subsection 145(1) of the Code, states that Mr. Thibault considers that the employer has contravened the Code in not meeting the standard set out in section 6.5, Schedule II, item 3(*e*) of the Regulations. The fact that Mr. Thibault based this opinion on Ms. de Repentigny's report and consultations with advisors at headquarters is not inappropriate and does not equate with a sub-delegation of his powers. Rather, what we must understand is that, in believing the Code was being contravened and in issuing his direction, Mr. Thibault simply accepted Ms. de Repentigny's conclusions about the applicable standard, and the accuracy of her lighting level readings. In other words, he adopted Ms. de Repentigny's conclusions, just as a decision maker can agree with an argument presented by one party. The outcome is nonetheless his decision.

[78] Moreover, it is useful to reiterate the principle often stated in case law that an appeals proceeding is a *de novo* proceeding (SNYDER, Ronald M. *The 2015 Annotated Canada Labour Code*, Carswell, 2015, page 1023). The appeals officer's mandate is to inquire in a summary way into the circumstances of the direction and confirm, rescind or vary it. In other words, the only question at issue in this appeal is which lighting standard applies, and whether that standard was contravened at the time of the investigation performed by the ministerial delegate. The question must be answered in light of the evidence establishing the circumstances that gave rise to the issuing of the direction, whether or not they were presented to the ministerial delegate at the time of the investigation. The analysis is done independently of that performed by the ministerial delegate in reaching his conclusions. For example, the appellant could have presented a counter-expertise, even after the fact, to challenge the reliability of Ms. de Repentigny's readings. However, the legality of the

ministerial delegate's approach and quality of his investigation are questions that exceed the framework of the appeal, unless such irregularities directly affect the quality of the evidence required to uphold the direction. That is not the case here.

[79] For these reasons, it is my opinion that the ministerial delegate did not delegate his authority to Ms. de Repentigny and acted in accordance with subsection 145(1) of the Code in issuing the direction and that, in any case, an irregularity of this kind, or in the investigation process, would have been remedied by the *de novo* appeal proceeding that is this appeal.

Conclusion

[80] Before closing, I cannot overlook the efforts made by the employer's representatives, in consultation with union representatives and the workplace health and safety committee, to remedy the lighting situation and visibility of checkers working at night at the employer's terminal. The hearing showed that efforts were made in good faith and collaboratively by the people in charge in order to improve employee safety. All agreed that the employer's improvements to the visibility of its vehicles increased the safety of workers in rows C and D of the terminal.

[81] The evidence showed that one reason for the low light level between rows C and D was the five (5) container stack, as the existing tower lighting system was designed for stacks of just three (3) containers. Mr. Dubreuil's testimony also showed the economic implications for Termont of decreasing stacks to three (3) containers. He also attested to the logistical and legal challenges involved in adding light towers, and the very high costs of such operations. I am well aware that the corrections required to comply with the standard constitute a substantial challenge for the firm, and I saw nothing except goodwill from Mr. Dubreuil in his testimony and no intent to evade his obligations or minimize the importance of employee health and safety. However, these difficulties do not remove the employer's obligation to comply with the regulatory standard deemed to apply in this matter.

[82] For these reasons, I find that the average lighting level obtained in this matter is below the prescribed level of 30 lux for areas in which "goods are stored in bulk or where goods in storage are all of one kind", thereby contravening item 3(*e*) of Schedule II (section 6.5) of the Regulations. The evidence also established that nearly two thirds of the readings taken showed a value less than one third the applicable lighting level, i.e. 10 lux, thereby contravening subsection 6.11(1) of the Regulations.

[83] The evidence therefore indicates a contravention of these provisions and paragraph 125(1)(*n*) of the Code, and that the direction is well founded.

[84] Given the time that has elapsed between the direction and this decision, and the stay of direction granted by the undersigned, I must look at a new date by which the employer must comply with the direction. Under the circumstances, it is

acknowledged that the lighting is still deficient and that the employer has still not dealt with it, nor did the employer have to do so until this decision was rendered.

[85] The testimony presented at the hearing established that there were numerous administrative, logistical and legal roadblocks to installing a lighting system that would ensure compliant lighting. Installing an adequate lighting system will take substantial work whose execution is partially weather-dependent.

[86] Moreover, I have taken note of the amendments made to the vehicle visibility situation since the contested direction was issued. According to the evidence, these changes have had the desired impacts and no accident has since occurred.

[87] For these reasons, in my opinion, a period of one (1) year from the date of this decision is a reasonable and appropriate period under the circumstances for the employer to comply with the direction and the prescribed standard.

Decision

[88] For these reasons, the direction is varied with respect to the time allotted for the employer to comply and cease the contravention of the prescribed standard on lighting. The varied direction is appended hereto.

Pierre Hamel
Appeals Officer

SCHEDULE II (section 6.5)
Levels of Lighting in Industrial Areas

Item	Column I	Column II
	Area	Level in lx
1	GARAGES	
	(a) Main repair and maintenance areas, other than those referred to in paragraph (b)	300
	(b) Main repair and maintenance areas used for repairing and maintaining cranes, bulldozers and other major equipment	150
	(c) General work areas adjacent to a main repair and maintenance area referred to in paragraph (b)	50
	(d) Fuelling areas	150
	(e) Battery rooms	100
	(f) Other areas in which there is	
	(i) a high or moderate level of activity	100
	(ii) a low level of activity	50
2	LABORATORIES	
	(a) Areas in which instruments are read and where errors in such reading may be hazardous to the health or safety of an employee	750
	(b) Areas in which a hazardous substance is handled	500
	(c) Areas in which laboratory work requiring close and prolonged attention is performed	500
	(d) Areas in which other laboratory work is performed	300
3	LOADING PLATFORMS, STORAGE ROOMS AND WAREHOUSES	
	(a) Areas in which packages are frequently checked or sorted	250
	(b) Areas in which packages are infrequently checked or sorted	75
	(c) Docks (indoor and outdoor), piers and other locations where packages or containers are loaded or unloaded	150
	(d) Areas in which grain or granular material is loaded or unloaded in bulk	30
	(e) Areas in which goods are stored in bulk or where goods in storage are all of one kind	30
	(f) Areas where goods in storage are of different kinds	75
	(g) Any other area	10
4	MACHINE AND WOODWORKING SHOPS	
	(a) Areas in which medium or fine bench or machine work is performed	500
	(b) Areas in which rough bench or machine work is performed	300

	(c) Any other area	200
5	MANUFACTURING AND PROCESSING AREAS	
	(a) Major control rooms or rooms with dial displays	500
	(b) Areas in which a hazardous substance is processed, manufactured or used	
	(i) in main work areas	500
	(ii) in surrounding areas	200
	(c) Areas in which substances that are not hazardous substances are processed, manufactured or used or where automatically controlled equipment operates	
	(i) in main work areas	100
	(ii) in surrounding areas	50
6	SERVICE AREAS	
	(a) Stairways and elevating devices that are	
	(i) used frequently	100
	(ii) used infrequently	50
	(b) Stairways that are used only in emergencies	30
	(c) Corridors and aisles that are used by persons and mobile equipment	
	(i) at main intersections	100
	(ii) at other locations	50
	(d) Corridors and aisles that are used by mobile equipment only	50
	(e) Corridors and aisles that are used by persons only and are	
	(i) used frequently by employees	50
	(ii) used infrequently by employees	30

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

INSTRUCTION TO THE EMPLOYER PURSUANT TO
SUBSECTION 145(1)
AS AMENDED BY APPEALS OFFICER PIERRE HAMEL
ON SEPTEMBER 16, 2016

On April 10, 2014, the undersigned Labour Affairs Officer, Occupational Health and Safety, in the capacity of an official delegated by the Minister of Labour, carried out an inspection in the workplace operated by Termont Montréal Inc., an employer subject to Part II of the *Canada Labour Code.* Said workplace is located at Section 68, Port of Montreal, P.O. Box 36, Section K, Montreal, Quebec, H1N 3K9, and is sometimes referred to by the name of Termont Montréal Inc.

The official delegated by the Minister of Labour considers that the following provisions of Part II of the *Canada Labour Code* are being contravened.

No. / No: 1

125.(1)(n) - Part II of the Canada Labour Code, 6.5 - Canada Occupational Health and Safety Regulations.
The average level of lighting observed between rows C and D of the terminal is below the value of 30 lx, as is required for areas in which goods are stored in bulk or where goods in storage are all of one kind.

No. / No: 2

125.(1)(n) - Part II of the Canada Labour Code, 6.11(1) - Canada Occupational Health and Safety Regulations.

Fifty-three (53) readings that were taken between rows C and D of the terminal indicated levels of lighting that were less than one third of that prescribed.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(*a*) of Part II of the *Canada Labour Code*, to terminate any contravention no later than **September 16, 2017**.

Furthermore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(*b*) of Part II of the *Canada Labour Code*, to take the steps prescribed by the Labour Affairs Officer, Occupational Health and Safety, acting in the capacity of an official delegated by the Minister of Labour, to ensure that the contravention does not continue or reoccur, within the time limits specified by him.

Issued at Montreal this 20th day of January, 2015.

[signed]
Mario Thibault
Labour Affairs Officer,
Occupational Health and Safety,
Official delegated by the Minister of Labour
Certificate number: ON3282

To: Mr. Julien Dubreuil, Terminal Director
Termont Montréal Inc.
Section 68, Port of Montreal, P.O. Box 36, Section K, Montreal, Quebec, H1N 3K9