

CANADA LABOUR CODE  
PART II  
OCCUPATIONAL SAFETY AND HEALTH

Review under section 146  
of the Canada Labour Code, Part II  
of a direction issued by a safety officer

Applicant: United Grain Growers  
Markinch, Saskatchewan  
Represented by: Mr. Glen Black, Manager  
Health, Safety and Loss Control

Mis en Cause: Mr. Les Lye  
Safety Officer  
Labour Canada

Before: Mr. Serge Cadieux  
Regional Safety Officer  
Labour Canada

In this case, evidence was presented by way of written submissions. Because no one represented the employees working at the United Grain Growers Elevator, A3, at Markinch, Saskatchewan, I visited the work site where the pressure vessel is located.

Background

On August 26, 1992, safety officer Les Lye conducted a follow-up inspection at the above described work site. The safety officer established that the pressure vessel located in the basement of the elevator had not been inspected in accordance with the provisions of the Canada Labour Code, Part II and the pursuant Canada Occupational Safety and Health Regulations (hereafter referred to as Regulations).

The initial inspection was carried out by Mr. Lye on May 30, 1991 and culminated in the issuance of the direction under review on August 31, 1992. After several telephone conversations and exchange of correspondence with managers of the Elevator and the United Grain Growers, after consulting with Labour Canada experts and advisors on this matter, the safety officer concluded, more than a year later, that the United Grain Growers was in violation of the Code and the Regulations.

Partly in support of the direction, the safety officer stated, in the summary report prepared for this case, that

"I have spoken with the Saskatchewan Provincial Boiler and Pressure Vessels Inspection

Authorities who have informed me that pressure vessels are required to be registered with the Provincial Boiler and Pressure Vessel Branch. When an employer registers a pressure vessel, it is inspected and a certificate is issued. With respect, according to the manager, the pressure vessel at the United Grain Growers country elevator located at Markinch, Saskatchewan, had not been registered."

The safety officer attempted, unsuccessfully, on a number of occasions to ensure that the pressure vessel would be inspected in accordance with the requirements of the Regulations. The direction, issued under subsection 145(1) of the Code, stipulates that the United Grain Growers is in violation of subsection 5.13(1)<sup>1</sup> and section 5.17<sup>2</sup> of Part V (Boilers and Pressure Vessels) of the Regulations. Furthermore, the direction orders United Grain Growers "to terminate the contraventions no later than the 30th day of September 1992."

### Arguments of United Grain Growers

Mr. Black's first argument is that the direction does not specify who is the qualified person who must inspect the pressure vessel in accordance with subsection 5.13(1) of the Regulations. This could be construed as merely arranging to have the vessel inspected with no emphasis on who is to carry out the inspection.

---

<sup>1</sup> 5-13 (1) Every pressure vessel in use in a work place, other than a pressure vessel that is buried, shall be inspected

- (a) externally, at least once each year; and
- (b) subject to subsections (2) and (3), internally, at least once every two years.

<sup>2</sup> 5.17 (1) A record of each inspection carried out under sections 5.7 and 5.12 to 5.16 shall be completed by the person who carried out the inspection

- (2) Every record referred to in subsection (1)
  - (a) shall be signed by the person who carried out the inspection; and
  - (b) shall include
    - (i) the date of the inspection
    - (ii) the identification and location of the boiler, pressure vessel or piping system that was inspected,
    - (iii) the maximum allowable working pressure and the maximum temperature at which the boiler or pressure vessel may be operated.
    - (iv) a declaration as to whether the boiler, pressure vessel or piping system meets the standards prescribed by this Part,
    - (v) a declaration as to whether, in the opinion of the person carrying out the inspection, the boiler, pressure vessel or piping system is safe for its intended use, and
    - (vi) any other observation that the person considers relevant to the safety of employees.
- (3) The employer shall keep every record referred to in subsection (1) for a period of 10 years after the inspection is made at the work place in which the boiler, pressure vessel or piping system is located.

The second argument relates to the frequency of inspection of the pressure vessel. The Regulations imposes a different and more stringent criteria in this respect as opposed to provincial requirements. For example, the certificate issued by provincial inspectors is valid for two years in some cases whereas paragraph 5.13(1)(a) of the Regulations requires an external inspection every year.

Another concern expressed by Mr. Black relates to the lack of control they have over who and when will an inspection be carried out. Mr Black also wonders what will happen the following year, when a new pressure vessel is installed in replacement of the current one which, after an inspection by a provincial inspector, was declared to be in an unsatisfactory condition.

### Decision

The issue to be decided in this case is whether the United Grain Growers is effectively in contravention of the inspection requirements found in Part V (Boilers and Pressure Vessels) of the Regulations as stipulated in the direction. In my view, the United Grain Growers is in contravention of those provisions for the following reasons.

First I should say that many of the arguments submitted by Mr. Glen Black are in themselves grievances. They express the frustration of the United Grain Growers trying to comply with a federal legislation that has devolved the authority to inspect pressure vessels upon provincial agencies without maintaining any control mechanism.

Section 5.7 of the Regulations establishes the parameters under which inspections of pressure vessels must be carried out. It states:

- "5.7 (1) In this section, "qualified person" means a person recognized under the laws of the province in which the boiler, pressure vessel or piping system is located as qualified to inspect boilers, pressure vessels or piping systems.
- (2) No person shall use a boiler, pressure vessel or piping system unless it has been inspected by a qualified person in accordance with subsection (3).
- (3) A qualified person shall
  - (a) inspect every boiler, pressure vessel and piping system
    - (i) after installation;
    - (ii) after any welding, alteration or repair is carried out on it, and
    - (iii) in accordance with sections 5.12 to 5.14 and 5.16; and
  - (b) make a record of each inspection in accordance with section 5.17

In reading the submissions presented by Mr. Black, I was impressed by his analysis and understanding of the intricacies of Part V of the Regulations. On this basis I am convinced that Mr. Black is well aware who is to inspect the pressure vessel in issue here.

The current wording of the Regulations have made it a federal employer's responsibility to obtain the services of **persons recognized under the laws of the province** where the pressure vessel is located, who are in most cases to the employ of the provincial inspectorate, to have boilers, pressure vessels and piping systems inspected. It should be noted that in Ontario and Quebec, the federal employer can address himself/herself to private agencies. As it relates to the case before me, subparagraph 5.7(3)(a)(iii) of the Regulations has effectively transferred the whole inspection scheme under Part V of the Regulations, to be administered, upon request from the United Grain Growers, by the Inspection Branch of the Saskatchewan Environment and Public Safety Division. The absence of any formal agreement with these provinces creates a difficult situation for both Labour Canada safety officers trying to enforce the legislation and employers under federal jurisdiction trying to comply with it.

Furthermore, there exists a misunderstanding respecting which legislation must apply during inspections by provincial authorities. I am of the opinion that the provincial Boiler and Pressure Vessel Inspector must inspect the pressure vessel located in a work place under federal jurisdiction in accordance with the provisions of the Code and the Regulations, not in accordance with the provisions of the provincial legislation. Part V of the Regulations has only delegated the authority to inspect pressure vessels in federal work places to provincial agencies because of their expertise in this field. This delegation of authority does not alter the specific requirements of Part V of the Regulations. Therefore, the frequency of inspection recommended and the type of certificate issued by a provincial inspector do not meet the specific requirements found in the federal legislation.

To complicate the matter, the provincial authorities have no legislated mandate, no commitment, no schedule and no resources to carry out those inspections. There is little recourse against an employer who accepts from a provincial inspector a certificate of inspection on the basis that it is valid under provincial laws for two or more years. Also, the certificate of inspection should not be construed as a valid substitute to the report specified under section 5.17 of the Regulations which indicates that a pressure vessel has been inspected and that it is safe.

Evidently, Mr.Black's concerns are most pertinent. Part V of the Regulations is clearly inadequate for its intended purpose. Nonetheless, my responsibility is to review the direction given to the United Grain Growers and determine if it is justified under the circumstances. As to whether this direction could stand scrutiny by the courts is not an issue that can be dealt with at this level.

No doubt that the procrastination of the United Grain Growers in complying with the repeated demands of the safety officer to have the pressure vessel inspected is partly responsible for the resulting direction. Inspection provisions are incorporated in the legislation in order to protect the safety and health of employees working with or in the vicinity of a pressure vessel. Those inspections are essential.

Furthermore, reference to registration in accordance with CSA Standard B51-M1981 entitled Code for the Construction and Inspection of Boilers and Pressure Vessels, as alluded to by the safety officer in his summary report, is quite relevant since section 5.3 of the Regulations references section 3.8 of the Standard. This latter section stipulates that the stamping on a pressure vessel shall include the Canadian Registration Number. This Number can only be obtained, in

accordance with section 3.3 of the Standard, from the authority having jurisdiction which in this case is the provincial authorities. Needless to say it is to the advantage of employers under federal jurisdiction to seek registration since provincial inspectors may refuse to inspect an unregistered vessel. It will also ensure the pressure vessel is inspected in accordance with subparagraph 5.7(3)(a)(i) of the Regulations.

On the basis of the evidence before me, I can only acknowledge the existence of the violations. The pressure vessel had not been inspected within the time frame set by the direction and a report of inspection had not been obtained as required. Consequently, the United Grain Growers is in contravention of the provisions referenced in the direction. In my view, the direction is justified.

I do not question the wisdom of the safety officer in issuing this direction. A subsequent inspection by a Saskatchewan boiler and pressure vessel inspector confirmed the safety officer's apprehension respecting this pressure vessel. The inspector advised Mr. Black that certain "items on the air receiver at U.G.G. Markinch Sask (sic) are not acceptable." The inspector also recommended that "In light of my findings I would urge the removal of these vessels from service as soon as possible." Hence, the safety officer was justified to take action in this case.

For all the above reasons, I hereby confirm the direction issued by safety officer Mr. Les Lye to the United Grain Growers on the 31st day of August 1992.

Decision rendered on December 16, 1992

Serge Cadieux  
Regional Safety Officer