



Human Resources  
Development Canada

Développement des  
ressources humaines Canada

Canada Appeals Office on Occupational Health and Safety • Bureau d'appel canadien en santé et sécurité au travail

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Decision No. 01-009  
April 4, 2001

*CANADA LABOUR CODE*  
PART II  
OCCUPATIONAL HEALTH AND SAFETY

Fisheries and Oceans Canada  
*applicant*

and

Union of Canadian Transport Employees  
*union*

and

Bill Gallant  
*safety officer*

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This case was heard by Michèle Beauchamp, regional safety officer, in Port Hawkesbury, Nova Scotia, on January 24, 2001.

Appearances:

For the applicant:

Seward Benoit, Officer in Charge, Canso Canal, Fisheries and Oceans Canada (DFO)  
John Fox, Occupational Safety and Health Advisor, DFO

For the employees:

Greg Castle, Canal Person, Union of Canadian Transport Employee, Local 80824, Canso Canal,  
DFO Rory Dempsey, Co-Chair, Safety and Health Committee, Canadian Auto Workers (CAW),  
St. Lawrence Seaway Management Corporation, St. Catherines

[1] This case concerns a request made pursuant to subsection 146(1) of the *Canada Labour Code*, Part II, by Seward Benoit, Officer in Charge, Canadian Coast Guard, on behalf of Fisheries and Oceans Canada, for a review of a direction (in appendix) issued on September 20, 2000 by Bill Gallant, safety officer, Labour Program, Human Resources Development Canada.

[2] This request was made on September 26, 2000, before the coming into force of the *Canada Labour Code*, Part II (the Code), as amended, on September 30, 2000. It will consequently be dealt with pursuant to the Code in application before September 30.

[3] Following three visits made to Canso Canal, located on the northern end of the Canso Causeway, in Nova Scotia, safety officer Gallant issued to Fisheries and Oceans, on September 22, 2000, the following direction under subsection 145(1):

The said officer is of the opinion that the following provision of the Canada Labour Code, Part II, is being contravened:

1. Section 124 of the Canada Labour Code, Part II

Employees working near the edge of the canal walls were not protected from hazards associated with working at the edge of an unguarded structure.

[4] In his report sent to the parties for the purposes of the hearing, safety officer Gallant gave the following description of the work place:

Canso Canal is approximately 75 feet wide and 45 feet deep. The canal walls are vertical concrete structures that extend several hundred feet. Two pairs of gates form a lock to control water levels as vessels pass through the canal. The distance from the top of the canal wall to the top of the water varies with the tides. It ranges between 8 to 12 feet. There are no guardrails along the length of the canal except for the guarding on the lock gates.”

[5] Safety officer Gallant also noted that, during previous discussions with the employer and employees representatives and with members of the work place safety and health committee, “it was agreed that fall-protection should be used by employees performing maintenance near the edge of the canal wall ... and to provide and use personal flotation devices when working at the edge of the canal wall.” An Emergency Control Plan for Canso Canal was prepared to reflect this.

[6] He further reported that “there was no agreement on the need for fall-protection for employees performing operational activities at the edge of the canal. The employees believed that operational employees could work at the edge of the canal without fall-protection ... it was the practice to do so since the canal began operation, approximately 45 years ago.”

[7] Mr. Gallant was afraid that there was a drowning hazard for employees working at the edge of the canal wall, where there is a drop of 8 to 12 feet to the water surface, or that, if they fell, they could be hurt by the wall or by a vessel. When Mr. Seward Benoit confirmed to him, on September 22, 2000, that the procedures still required operational employees to work at the edge of the canal wall without a fall-protection system, he decided to issue a direction. Mr. Gallant pointed out during the hearing that although requiring that employees be protected against the hazards of working near the edge of an unguarded structure, the direction he issued did not specifically direct the employer to provide fall-arresting devices to the employees.

[8] In his written submission to the regional safety officer and during the hearing, Mr. Seward Benoit declared that following the discussions held during the summer, the department had done a thorough task analysis and revised its operations policy.

[9] Mr. Benoit observed that the lock canal employees and the line handlers are the only employees who are not required to wear fall-protection. This is warranted by the nature of their work. Line handlers have to catch and carry ships' mooring lines and are often required to walk the vessel through the canal while carrying these lines. They are sometimes required to go from bollard to bollard while holding these lines. They must be prepared to quickly secure the vessel should there be a mechanical malfunction or the vessel be unable to stop due to the wind or sea conditions, and they have to be able to quickly get out of the way should mooring lines break under pressure. Wearing fall-protection would create a greater risk for them because it would restrict their movement and their ability to react quickly.

[10] He noted that there are several measures in place to protect the employees. For example, personal flotation devices must be worn whenever employees are working or traveling within 2 meters of the canal walls. Fall-protection is required for maintenance employees and contractors who work on the walls themselves or the gates. No personnel, except operations employees and line handlers, are permitted beyond a painted line along the walkway. All employees are informed and trained in the work procedures. They also know about the presence of safety blocks that can prevent being trapped between the walls and a vessel should someone fall into the water. He added that the experienced private fall-arrest specialist who was consulted to discuss available options about fall-protection did a thorough investigation of restraints systems but could not ascertain that these systems would provide adequate protection.

[11] Mr. John Fox, Occupational Safety and Health Advisor, declared that there are common and different hazards attached to the work done by both employee groups. All maintenance employees must use fall-protection when they are within 6 feet of the canal face. Only lock masters, canal persons or line handlers are permitted within the restricted area along the walkway. Recognizing that there are inherent dangers related to the weather and line handling, the employer provides ongoing training to its employees and regularly reviews his procedures with the safety and health committee. Furthermore, no incidents related to falls have been reported since the opening of the canal in 1959.

[12] He noted that a detailed emergency plan was developed in consultation with Human Resources Development Canada in 1999. Cameras have been set up on the site to monitor the employees. There are fixed ladders every 75 feet on both sides of the canal walls. Life saving equipment is available should it be needed. A rescue boat also stands by at the east end of the canal.

[13] Mr. Fox referred to Decision 89-6 made by regional safety officer Pierre Rousseau in 1989, regarding Parks Canada's Chambly Lock. He stated that all the requirements mentioned in that decision have been met by Fisheries and Oceans. For example, mooring lines do not obstruct the traveled surfaces. Definite safe working procedures have been developed and there are emergency equipment and procedures in place. He added that there are no guardrail because, as in the case of Parks Canada's Chambly Lock, they also consider the Canso Canal locks as marine docks.

[14] Mr. Fox also provided a letter sent to Mr. P. Vincelli, Chief Operational Services, St. Lawrence Seaway Authority, in November 1991, by Labour Canada (as known then) District Manager Harold Monteith, regarding the need for employees of the St. Lawrence Seaway in St. Catherines to wear fall-protection when working lock walls. Attached to that letter was a memorandum written in October 1991 by Dick Acton, Acting Director of Labour Canada Technical Services, to Wayne Page, Occupational Safety and Health (OSH) Technical Advisor for Labour Canada Great Lakes Region.

[15] It was recognized in both these documents that the use of fall-protection systems would introduce additional hazards for employees. Furthermore, in his memorandum, Mr. Acton “strongly recommended that Labour Canada not require linehandlers to use fall arresting devices when working on lock walls.”

[16] Mr. Monteith’s letter was in response to a document that Mr. Vincelli had previously submitted for review to Labour Canada. The document, entitled “Proposed Modifications and Procedures in lieu of Fall Arrest/Guard System at Locks”, detailed as follows the additional hazards attached to using fall-protection in mooring procedures:

- a) Should a handline or mooring wire break, the lock personnel will not be as free to quickly move away. In addition, the mooring cable may strike the fall arrest cable. The sudden jerk would cause the fall arrest unit to lock up to prevent a fall and the linehandler would be thrown by the impact and potentially injured, where under normal circumstances, the flying cable would miss him. The line from the fall arrest system provides a larger target.
- b) While the linehandlers are focusing their attention on the mooring process, they will also have to be conscious about pulling their lanyard along. Diverting their concentration between the two operations is not safe.
- c) The lock crew personnel will have to attach and detach their belts from the line a number of times as they move along the wall during the mooring process. If the cable is located next to the coping, the procedure of bending over to attach/ detach is unsafe and definitely a worse hazard than the procedures presently in place.

If the safety belt is secured to a line behind the row of bollards, the linehandlers would be required to drag about 15 feet of safety line along. This again is not an acceptable solution because the line could be easily tangled with mooring wires or handlines or wrapped around a bollard or capstan.

[17] Both Mr. Benoit and Mr. Fox fully agree with Mr. Vincelli’s explanation of the hazards of using fall-arrest protection and with the opinions expressed in the two documents written by Labour Canada. They further believe that to require the use of fall arresting systems at Canso

Canal would have an important impact on all canals and locks operated not only by their department but also by Parks Canada across the country.

[4] Mr. Greg Castle, respondent for the union and canal person at Canso Canal, wrote in his submission to the regional safety officer that “after due consideration, the operations staff at the Canso Canal do not feel secure with the decision to use a system to restrain members of the operations staff working on the walls of the canal.”

[5] During the hearing, Mr. Castle stated that the safety and health committee and the employees had closely examined the issue of fall-protection. The employees believe that the main hazard in their work place comes from the wind and they are concerned and agree with the employer that using a fall-arresting system would create more risk than it would protect the employees. He is satisfied that all employees know of and have been trained in the safe working procedures and safety equipment put in place.

[6] Mr. Rory Dempsey, co-chair of the safety and health committee of the St. Lawrence Seaway Authority, in St. Catherines, Ontario, confirmed that the same issue of the use of fall-protection at the locks had come up ten years before.

[7] He explained that after having made a visit at the Iroquois Lock, both Dick Acton and Cindy Gagnon, OSH Technical Advisor for Labour Canada National Capital Region, considered, as mentioned in Mr. Acton’s memorandum of October 1991, that adequate and complete work procedures were in place and that “the use of fall arresting devices by linehandlers on the lock walls will introduce additional hazards to the workplace.”

[8] He stated that both Canso Canal and the St. Lawrence Seaway face the same issues and both adequately protect their employees by similar procedures. He agreed with Mr. Vincelli’s document explaining the hazards attached to using fall-protection in mooring procedures. He expressed his deep concern that a decision of the regional safety officer to require fall-arrest devices would in fact result in increasing risks faced by employees.

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[9] Pursuant to subsections 146(1) and 146(3) of the *Canada Labour Code*, Part II, in application before September 30, 2000, when an employer, an employee or a union request that a direction be reviewed, the regional safety officer conducts a summary inquiry into the circumstances of the direction and the need for this direction, and may vary, rescind or confirm that direction. A written decision is then provided to the parties.

[10] These provisions read:

146(1). Any employer, employee or trade union that considers himself or itself aggrieved by any direction issued by a safety officer under this Part may, within fourteen days of the date of the direction, request that the direction be reviewed by a regional safety officer for the region in which the place, machine or thing in respect of which the direction was issued is situated.

146(3). The regional safety officer shall in a summary way inquire into the circumstances of the direction to be reviewed and the need therefor and may vary, rescind or confirm the direction and thereupon shall in writing notify the employee, employer or trade union concerned of the decision taken.

[25] Mr. Gallant conducted three visits to Canso Canal in June, July and September 2000. During these visits, he discussed at length the work procedures at Canso Canal with the employer, the employees and the safety and health committee. It was agreed during these discussions that fall-protection would be used by employees performing maintenance work near the edge of the canal wall and that personal flotation devices would be provided and used. He was also provided with the Emergency Control Plan developed by the employer following these discussions.

[26] It was only when Mr. Seward Benoit confirmed to him that the procedures still required operational employees to work at the edge of the canal wall without a fall-protection system that safety officer Gallant decided to give a direction. Aside from that issue, he appeared satisfied of the different protective measures and work procedures discussed and implemented in the work place. Mr. Gallant can only be commended for his deep concern about the risk of drowning for employees working at the edge of the canal.

[27] The direction issued by Mr. Gallant is made pursuant to subsection 145(1) of the Code, for a contravention to section 124. Section 124 refers to the general duty of the employer to protect the safety and health at work of its employees and subsection 145(1) to a contravention to the Code. These provisions read:

124. Every employer shall ensure that the safety and health at work of every person employed by the employer is protected.

145(1). Where a safety officer is of the opinion that any provision of this Part is being contravened, the officer may direct the employer or employee concerned to terminate the contravention within such time as the officer may specify and the officer shall, if requested by the employer or employee concerned, confirm the direction in writing if the direction was given orally.

[28] Consequently, the issue that must be decided in the present case is whether, when safety officer Gallant issued this direction, the employer had failed to protect the safety and health at work of his employees, as required by section 124 of the Code.

[29] The applicable provisions of the *Canada Occupational Safety and Health Regulations* are as follows.

[30] Paragraph 12.10(1)(a) of Part XII, Safety Materials, Equipment, Devices and Clothing, reads:

12.10(1). Where a person, other than an employee who is installing or removing a fall-protection system in accordance with the instructions referred to in subsection (5), works from

(a) an unguarded structure that is

(i) more than 2.4 m above the nearest permanent safe level, or

(ii) above any moving parts of machinery or any other surface or thing that could cause injury to an employee upon contact,

the employer shall provide a fall-protection system.

[31] This provision requires that the employer provide a fall-protection system to any employee working from an unguarded structure that is more than 2.4 m above the nearest permanent level or above any surface that could injure an employee upon contact.

[32] However, this provision should be understood in conjunction with sections 12.1 and 12.2 of Part XII, which read:

12.1. Where

(a) it is not reasonably practicable to eliminate or control a safety or health hazard in a work place within safe limits, and

(b) the use of protection equipment may prevent or reduce injury from that hazard,

every person granted access to the work place who is exposed to that hazard shall use the protection equipment prescribed by this Part.

12.2 All protection equipment referred to in section 12.1

(a) shall be designed to protect the person from the hazard for which it is provided; and

(b) shall not in itself create a hazard.

[33] Both parties have established at the hearing that “it is not reasonably practicable to eliminate or control within safe limits” the hazard of working near the edge of the canal walls. It has also been recognized by the employer and the employees, and by the two Labour Canada officials previously mentioned, that the use of fall-protection could in fact introduce additional hazards for employees working at the edge of the canal walls.

[34] Given the statements and documents that were presented to me during the hearing, I believe that the use of fall-protection equipment for operational employees working at the edge of the canal walls could in itself create a hazard.

[35] In my opinion also, as said in Decision 89-6, “suitable facilities (physical protection) or procedures (administrative protection) have been put in place” by the employer, through the safe work procedures implemented by the employer and the safety equipment provided to ensure “physical and administrative protection” to the employees.

[36] Section 12.11 of Part XII, Safety Materials, Equipment, Devices and Clothing, reads:

12.12(1). Where, in a work place, there is a hazard of drowning, the employer shall provide every person granted access to the work place with

(a) a life jacket or buoyancy device that meets the standards set out in the Canadian General Standards Board Standard

(i) CAN-65.7-M80, *Life Jackets, Inherently Buoyant Type*, dated April, 1980, or

(ii) 65-GP-11, *Standard for: Personal Flotation Devices*, dated October, 1972; or

(b) a safety net or a fall-protection system

(2). Where in a work place, there is a hazard of drowning,

(a) emergency equipment shall be provided and held in readiness;

(b) a person who is qualified to operate all the emergency equipment provided shall be available;

(c) if appropriate, a powered boat shall be provided and held in readiness; and

(d) written emergency procedures shall be prepared by the employer containing

(i) a full description of the procedures to be followed and the responsibilities of all persons granted access in the work place, and

(ii) the location of the emergency equipment.

(3). Where a work place is a wharf, dock, pier, quay or other similar structure, a ladder that extends at least two rungs below water level shall be affixed to the face of the structure every 60 m along its length.

[37] The employer is in compliance with this requirement, as demonstrated by the provision of personal flotation devices to employees working within 6 feet of the canal wall, the readiness of emergency equipment and qualified persons to operate the equipment, the Emergency Control Plan for Canso Canal, the fixed ladders installed every 75 feet along the canal walls, the availability of a boat, plus the use of monitored cameras and the availability of other employees to assist one another.



[38] For all the above reasons, I believe that the employer was protecting the health and safety of its employees, as required by section 124 of the Code, at the time that safety officer Gallant issued his direction the employer.

[39] Therefore, I hereby rescind the direction issued to Fisheries and Oceans on September 22, 2000 by safety officer Bill Gallant.

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Michèle Beauchamp  
Regional Safety Officer

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

DIRECTION TO EMPLOYER UNDER SUBSECTION 145(1)

On September 15<sup>th</sup>, 2000, the undersigned safety officer conducted an inquiry in the work place operated by FISHERIES AND OCEANS CANADA being an employer subject to the Canada Labour Code, Part II, at Canso Canal, Port Hastings, Nova Scotia, the said work place being sometimes known as Canso Canal.

The said safety officer is of the opinion that the following provision of the Canada Labour Code, Part II, is being contravened:

1. Section 124 of the Canada Labour Code, Part II

Employees working near the edge of the canal walls were not protected from hazards associated with working at the edge of an unguarded structure.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contravention no later than January 30<sup>th</sup>, 2001.

Issued at Sydney, this 22<sup>nd</sup> day of September 2000.

Bill Gallant  
Safety Officer 1829

To: FISHERIES AND OCEANS CANADA  
CANSO CANAL  
Port Hastings, Nova Scotia  
B0E 2T0

SUMMARY OF THE REGIONAL SAFETY OFFICER'S DECISION

Applicant: Fisheries and Oceans Canada  
Represented by: Seward Benoit

Union: Union of Canadian Transport Employees  
Represented by: Greg Castle

Safety officer: Bill Gallant  
Labour Program  
Human Resources Development Canada

Before: Michèle Beauchamp  
Regional Safety Officer  
Human Resources Development Canada

**KEYWORDS**

Review, unguarded structure, drowning hazard

**PROVISIONS**

*Code:* 122, 145(1), 146(1), 146(3)

*Regulations:* 12.1, 12.2, 12.10(1)(a), 12.11

**SUMMARY**

Following visits made to Canso Canal, in Nova Scotia, the safety officer issued to Fisheries and Oceans a direction under subsection 145(1) for contravening section 124 of the Code by not protecting his employees working near the edge of the canal walls from hazards associated with working at the edge of an unguarded structure. The employer appealed the direction.

The regional safety officer rescinded the direction because the employer was protecting the health and safety of its employees, as required by section 124 of the Code, at the time that the direction was issued.