

**CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY**

St. Lawrence Seaway Management
Authority

applicants

and

Canadian Auto Workers Union

employee representatives

and

Paul Danton

health & safety officer

Decision No.: 03-008

April 4, 2003

This inquiry involved an appeal brought under section 146 of the Canada Labour Code (hereto referred to as the Code or Part II) of a direction issued by a health and safety officer pursuant to section 145.(1) of the Code.

Appearances:

Mr. Patrick Essiminy, Legal Council, St. Lawrence Seaway Management Authority (SLSMA)

Ms. Valérie Biron, Legal Council, for SLSMA

Mr. Michel Drolet, Vice President Operations, Niagara Region, SLSMA

Mr. André Latour, SLSMA

Ms. Yvette Hoffman, SLSMA

Dr. John W. Osterman, MD,CM,MOH,Sc D, FRCPC,CSPQ for SLSMA

Mr. Vince Hearn, Canadian Auto Workers Union

Health and safety officer Mr. Paul Danton, Human Resources Development Canada

- [1] On July 7, 2000, the St. Lawrence Seaway Management Authority (SLSMA) advised all SLSMA employees by letter that the three-person procedure for tying up and releasing vessels would be generally replaced by a two-person procedure.
- [2] Two SLSMA employees subsequently refused to work on October 16, 2000 and participated in a validation test of the proposed two-person procedure organized by the SLSMA. The SLSMA investigated the refusals to work jointly with its health and safety committee and later submitted unresolved health and safety issues to Human Resources Development Canada (HRCD) for an interpretation or ruling.
- [3] Health and safety officer Paul Danton from HRDC's South Western Region, and health and safety officer Alain Messier from HRDC's Quebec Region, conducted a joint investigation into the matter. As part of their investigation, they observed SLSMA lock operations at Montreal, Quebec, and at St. Catherines, Ontario on April 27, 2001 and May 10, 2001 respectively. Following their joint investigation, health and safety officer Danton issued a direction to the SLSMA on July 18, 2001 pursuant to section 145.(1) of the *Canada Labour Code*, Part II (hereto referred to as Part II or the Code). His direction applied uniquely to lock operations at St. Catherines, Ontario, and cited four (4) contraventions.
- [4] On August 10, 2001, the SLSMA appealed the direction to an appeals officer pursuant to 146.(1) of the Code and requested that items 2 and 4 of the direction be rescinded pursuant to subsection 146.1(1) of the Code. To expedite matters, the SLSMA asked that a hearing be held as soon as possible to review item 4 of the direction and that the review of item 2 occur later. [Note: Appeals officer Douglas Malanka issued his written decision on October 10, 2002, regarding item four (4) of the direction, and confirmed therein that he reminded seized of the appeal relative to item 2 of the direction.]
- [5] A hearing was held in Ottawa on March 2003, to review item 2 of the direction which read:

2. Paragraphs 125.(1)(v) of the *Canada Labour Code* Part II, and subsection 12.11(3) of the *Occupational Safety and Health Regulation*

The employer has failed to provide ladders that are capable of extending at least two rungs below the water level, which are affixed to the face of the locks, and are located every 60m along its length.

- [6] Health and safety officer Danton provided a copy of his investigation report prior to the hearing and testified at the hearing. His report will not be repeated here but forms part of the file. I retain the following from his report and testimony.
- [7] Health and safety officer Danton reiterated that he and officer Messier had conducted a joint inspection of lock operations at Montreal, Quebec, and at St. Catherines, Ontario, in connection with two employee refusals to work. He recalled noting during their investigations that fixed ladders were not installed along the lock walls in accordance with subsection 12.11(3) of the *Canada*

Occupational Safety and Health Regulations (hereto referred to as the COSH Regulations or Regulations). Consequently, he cited this contravention in his direction to the SLSMA. Subsection 12.11(3) of the Regulations reads:

12.11(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.

[8] Prior to the hearing to review item 2 of the direction (ladders), Mr. Essiminy submitted a joint representation signed by the SLSMA and the Canadian Auto Workers representing SLSMA employees. The joint submission requested that item 2 of the direction be rescinded for the following reasons:

1. Subsection 12.11(3) of the COSH Regulations does not apply in respect of a “lock” because it only refers to a “wharf”, “dock”, “pier”, “quay” or “other similar structure” which does not include a “lock”.
2. Subsection 12.11(3) does not apply in respect of SLSMA lock operations because the SLSMA has, in accordance with paragraph 12.1(a) of the Regulations, adopted health and safety measures to eliminate or control within safe limits. Paragraph 12.1(a) reads;

12.1 Where

(a) it is not reasonably practicable to eliminate or control a health or safety hazard in a workplace within safe limits;

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

[My underline]

3. Subsection 12.11(3) does not apply because fixed ladders installed on the lock faces operated by the SLSMA would, themselves, create a hazard in contravention of paragraph 12.2(b) of the Regulations. Paragraph 12.2(b) reads:

12.2 All protection equipment referred to in section 12.1

(b) shall not itself create a hazard.

[9] In support of their initial position that subsection 12.11(3) does not apply in respect of a “lock”, Mr. Essiminy provided a wide survey of dictionary definitions for the terms “wharf”, “dock,” “pier” and “quay.” He held that the significant common denominator established by the terms “wharf”, “dock,” “pier” and “quay,” is that these structures are all used for loading and unloading persons and materials from ships and not for raising or lowering ships in a waterway.

[10] Mr. Essiminy further provided the following citations regarding the “*ejusdem* generic rule,” (or “limited class rule) for interpreting the meaning of the term “other similar structure” in section 12.11(3). He held that the application of this rule confirms that the term, “other similar structure,” does not include a “lock”. The citations included:

P.A. Cote, *The Interpretation of Legislation in Canada*, Carswell, Toronto (3rd Ed.). G.H.L. Fridman, *The Law of Contract*, Carswell, Toronto,(4th Ed.) 1999.
E. A. Driedger, *Construction of Statutes*, Butterworths, Toronto, (2nd Ed.) 1983.
R. Sullivan, *Driedger on the Construction of Statutes*, Butterworths,Toronto, (3rd) 1994.
Consumers' Association of Canada v. Canada (Postmaster General), [1975] F.C 11 (Fed. CA.).
The Canadian Imperial Bank of Commerce v. Smith Estate, [1976] 1 SoCR. 341.
Francouerv. Prince Albert Community Clinic, [1986] S.J. No. 771 (S.Q.B.).
National Bank of Greece (Canada) v. Kntsikonouris, (1990) 74 D.L.R. (4th) 197.

[11] According to the first citation noted above entitled, “The Interpretation of Legislation in Canada”:

The *ejusdem* generic rule means that a generic or collective term that completes an enumeration of terms should be restricted to the same genus as those words, even though the generic or collective term may ordinarily have a much broader meaning. For example, an airplane is not a “vehicle” in the context of enumeration “automobile, van, truck or other vehicle” because it is not part of the class of vehicles enumerated.

[12] On pages 316 and 317, the citations goes on to state that the following must apply for the limited class rule to be relevant:

- an enumeration of terms should be restricted to the same genius as those words, even though the generic or collective term may ordinarily have a much broader meaning;
- the general expression must be preceded by several terms;
- the general term must follow, rather than precede, the specific one;
- the specific terms must have a significant common denominator to be considered within one given category.

[13] Mr. Essiminy reiterated that the significant common denominator established by the terms “wharf”, “dock,” “pier” and “quay,” is that these structures are used for loading and unloading persons and materials from ships. He submitted that item 2 of the direction is not founded in fact and in law and must be rescinded.

[14] With regard to position of the Parties that subsection 12.11(3) does not apply in respect of SLSMA lock operations because the hazard of drowning has been eliminated or controlled within safe limits, Mr. Essiminy referred me to the following decisions of Regional Safety Officer S. Cadieux. According to Mr. Essiminy, Regional Safety Officer Cadieux confirmed in the decisions that protective equipment prescribed in Part 12 of the COSH Regulations is only

required to be used where it is not reasonably practicable to eliminate or control within safe limits a hazard in a work place within safe limits. The cases cited were:

- Mowatt Express and Communications, Energy and Paper Workers Union, [1994] RSO No. 4, Decision No. 94-004; and ,
- Manitoba Pool Elevators, [1996], RSO No. 4, Decision No. 96-004

[15] In this regard, the joint representation document signed by Parties enumerated the safety equipment and procedures currently in place to eliminate or control within safe limits the hazard of a person falling into a lock and drowning. They include:

- In accordance with sub-section 12.11 (1) *a*), the Corporation adopted and enforces a Lifejacket Policy. The Policy applies to all employees of the Corporation and contractors' personnel rendering services to the Corporation who may expose themselves to the risk of drowning while at the Corporation's work place.
- All operations personnel have a personal inflatable life jacket/PFD (*Mustang Model MD3019*) which has a brass tag with the employee's number stamped on it.
- Supervisors have the responsibility to inform employees of the hazards of drowning, ensure all employees are provided with the designated life jackets, provide clear instructions about the use and care of life jackets, ensure employees wear life jackets as required and conduct periodic audits to ensure that personnel under their control are inspecting and maintaining their personal life jacket.
- In 1991, the Corporation was exonerated from the application of sub-section 12.11(1)*b*). Accordingly, the area within one-meter of the lock wall has been declared a hazard area and is clearly identified by a yellow line painted the entire length of the lock wall.
- Furthermore, the walls of each lock are topped off with a one-foot high cast iron coping guard which runs the length of the lock. Toe holds are present at closely spaced intervals along the entire length of the coping guard.
- In addition, the Corporation complies fully and exceeds the requirements set out in sub-section 12.11 (2) (Protection Against Drowning).
- Indeed, life-saving equipment is available at each lock and includes:
 - Two (2) fire blankets;
 - 80' throw bag which is kept on electric cart at each lock for kick deployment. There is long enough line on this bag to allow deployment across the lock as an extra throwing assist;
 - Two (2) rigid ladders which are located at each end of the lock. They are made of solid light metal and have specially designed brackets attached that allow them to be hooked securely to the coping guard;
 - Two (2) life vests; One (1) reach pole;
 - Safety blocks which, until rescue operations can be carried out, are to be used to hold a vessel off the lock wall in the event that a person falls into the water between the vessel and the wall;
 - Two (2) fire extinguishers; One (1) portable loud speaker;

- 30" life rings located at designated stations on lock walls;
 - Each lock is also equipped with a Blue Safety Box containing a safety blanket, a First Aid kit, throw bag, flashlight, fire extinguisher, First Aid booklet and report forms; and,
 - Personnel carriers.
- In addition, mobile safety equipment is present on all the Corporation's operations vehicles including Jacob's Ladder, two (2) flashlights, radios, fire extinguishers, additional life jackets and a throw bag.
 - The lock workers on each shift at all eight locks carry out two (2) practice deployments of all their rescue equipment during the navigation season. Practice rescue operations involving local fire and emergency services are also conducted during health and safety week each May and on other specific occasions.
 - Emergency life-saving and rescue response remain under the jurisdiction and responsibility of professionals from the local municipal emergency nits.
 - Lock crew response procedures have been developed for different scenarios including falls into water in the presence or absence of vessels in the lock or falls onto the vessel deck. These procedures emphasize situation assessment, radio communications, notification of Traffic Control Centre, call for rescue assistance, communication with the victim and the appropriate use and deployment of on-site safety equipment. If a fall occurs onto a vessel deck, assistance is sought from the vessel crew and the ship is brought up to coping level to allow emergency personnel to board.
 - All personnel is equipped with portable radios capable of communicating with the Traffic Control Centre, vessel crew and lock crew as required by the procedures in place. These radios are capable of scanning multi-channels in order to ensure situational awareness.
 - Finally, well equipped, professional emergency response personnel are available and can be on site within less than 10 minutes.

[16] With regard to the opinion of Parties that subsection 12.11(3) does not apply because fixed ladders installed on the lock faces operated by the SLSMA would, themselves, create a hazard in contravention of paragraph 12.2(b), Mr. Essiminy submitted an expert report written by Dr. J.W. Osterman entitled, "*Expert Report on the Health and Safety Consequences of Ladder Installation on Locks of the Welland Canal.*" His Report will not be reproduced here in totality, but Dr. Osterman's conclusion is as follows:

The SLSMC has developed a variety of safety rules, regulations and procedures to ensure the safety of lock workers and other personnel. Given the potentially disastrous consequences of a fall into a lock, these procedures, appropriately concentrate on fall prevention. An array of on-site safety equipment is immediately and readily available. Additional mobile equipment is close by. Back up from professional, community based rescue and emergency personnel can be provided within 10 minutes. Communication and cooperation between all these resources is thoroughly provided.

Workers and other personnel are trained in safety procedures. Rules, particularly the yellow line rule, are respected and enforced. The use of personnel protective equipment including approved PFD is mandatory for lock workers. Other personnel must be equipped with an appropriate fall arrest system when working within the restricted area.

The risk of a lock worker falling into open water in a lock is, nevertheless, quite low. During most of the working day, lock workers do not work at the edge of the lock and are prohibited from approaching the yellow line restricted area unless required to do so. During mooring and casting off of vessels, however, lock workers must briefly enter this area to handle mooring lines. These activities are generally performed beside the vessel at high pool or above the vessel at low pool. At high pool, a fall into the lock from this location is unlikely due to the presence of the vessel. At low pool, a fall would result in a catastrophic impact onto the vessel deck or structures and not into the water.

For most vessels, a lock worker must enter the hazard zone between the yellow painted line and the coping guard above open water only once; that is when line one (1) is cast off at low pool. This activity lasts a few seconds during which he is instructed to use the toeholds in the coping wall. Occasionally, this situation also occurs when casting offline four (4), or when casting off or mooring smaller vessels which have drifted away from the lock wall at low pool. Nevertheless, lock workers spend little time in the restricted area and much less above open water at low pool.

A line handler also risks being severely injured and possibly swept into the lock should a mooring line snap. This is a dangerous but an infrequent event. At low pool, the chances of falling onto the vessel are much greater than falling into open water. In such an event, there is a great likelihood that injuries from the mooring line would incapacitate the worker rendering him unable to move and thus to climb any ladder.

The locks are at high pool approximately 50% of the time. Current safety equipment includes portable coping ladders, floatation and reaching devices, and is entirely adequate to respond successfully to a fall into open water at high pool and eliminate the risk of drowning. Fixed lock wall ladders would add no additional margin of safety in such an event.

The locks are at low pool approximately 50% of the time. A fall into open water at low pool would likely result in severe injury or possible death. The fallen worker would likely be unable to climb a fixed wall ladder. If an attempt to climb was made, there is a significant risk of a second fall. The fallen worker would also be encumbered with safety equipment including an inflated life jacket. With judgement impaired from the fall, an injured worker might be tempted to remove the PFD in order to climb the ladder, thereby creating a significant risk of death from drowning. There is no safety advantage to holding onto a ladder over floating freely in the lock. Thus, the presence of fixed ladders on the lock wall would add no additional margin of safety to a fallen worker at low pool. On the contrary, such ladders would create an additional hazard of a second fall or drowning. Worse still, the presence of fixed wall ladders might encourage other

workers, untrained in high angle rescue, to climb down to attempt a rescue thereby putting their own health and safety at risk. Finally, rescue by well-equipped and trained professionals is near at hand and would not be helped by fixed ladders.

The use of a fixed ladder after a fall into open water during lock filling would be dangerous due to water turbulence and the possibility of entanglement and drowning. Holding onto a ladder rung during dumping could cause an additional fall. The presence of fixed ladders in these situations would only result in significant additional safety hazards.

In conclusion, fixed ladders on lock walls would provide no additional safety value to current safety equipment and practices should a worker fall into a lock. In my opinion, current safety procedures, practices and equipment in use by the SLSMC reasonably control and virtually eliminate the risk of drowning of a worker falling into a lock. The installation of fixed wall ladders would neither prevent nor reduce the risk of drowning or any other injury should a fall occur. **On the contrary, the presence of such ladders would create in itself a significant additional hazard.**

[My underline.]

- [17] The issue to be decided in this case is whether or not subsection 12.11(3) applies in respect of a lock and thereby to SLSMA work places. Should I decide in the affirmative, I must then decide whether the SLSMA is exempted from compliance with subsection 12.11(3) by section 12.1 or 12.2.
- [18] With regard to the first issue, whether or not subsection 12.11(3) applies in respect of a lock, I note that the terms “wharf”, “pier”, “dock” or “quay” are not defined in the Code or COSH Regulations. That being the case, it is necessary to refer to their dictionary meanings for deciding if the terms “wharf”, “pier”, “dock” or “quay” include a “lock” for the purposes of subsection 12.11(3) of the COSH Regulations.
- [19] According to documents submitted by Mr. Essiminy, the Merriam-Webster’s Collegiate Dictionary, Tenth Edition, defines the aforementioned terms as follows:

“wharf” “1: a structure built along or at an angle from the shore or navigable waters **so that ships may lie alongside to receive and discharge cargo and passengers.**”

“dock” “1: a usu. artificial basin or enclosure for the reception of ships that is equipped for controlling the water height 2: the waterway extending between the piers **for the reception of ships** 3: a place (as a wharf or platform) **for the loading or unloading of materials.**”

“pier” “2: a structure (as a breakwater) extending into navigable waters **for use as a landing place** of promenade or to protect or form a harbour 3: a vertical structural support: as a. the wall between two openings”

“quay” “a structure built parallel to the bank of a waterway **for use as a landing place.**”

“lock” “an enclosure (as in a canal) with gates at each end used for raising or lowering boats as they pass from level to level.”

[My underline.]

[20] It would appear from these definitions that the terms, “wharf”, “dock”, “pier”, and “quay” indicate that all of the structures are used as a landing place for ships, and, in the case of “wharf” and “dock”, additionally for the loading and unloading of cargo and passengers from ships.

[21] In this regard, I note that the French version of subsection 12.11(3) reads as follows:

12.11(3) Lorsque le lieu de travail est une embarcadère, un bassin, une jetée, un quai ou une autre structure similaire, une échelle ayant au moins deux échelons au-dessous de la surface de l'eau doit être installée sur le devant de la structure, a tous les 60 m.

[22] According to Le Nouveau Petit Robert, the terms « embarcadère » « bassin », « jetée » and « quai » are defined as follows:

« embarcadère » Emplacement aménagé dans un port, sur une rivière **pour permettre l'embarquement (et le débarquement) des voyageurs et des marchandises.**

« bassin » Enceinte, partie d'un port, fluvial or maritime, délimitée par des ouvrages (jetée, etc.) et dans laquelle les navires sont à flot.

« jetée » 1. Construction de bois, de pierre, de béton, etc., formant une chaussée qui s'avance dans l'eau, destinée à protéger un port, à limiter le chenal.

« quai » 1. levée de terre, ordinairement soutenue par un mur de maçonnerie, qui est faite le long d'un cours d'eau, d'un canal. 3. plateforme longeant **la voie dans une gare, pour l'embarquement et le débarquement des voyageurs, le chargement et le déchargement des marchandises.**

[My underline.]

[23] While the definition of « embarcadère » refers to a structure for receiving ships for loading and unloading cargo and passengers, and there is a vague reference to this in the definition of « quai », the terms « bassin » and « jetée » do not. Instead, the common significant denominator to the structures appears to their form and location relative to navigable water.

[24] For interpreting the term “other similar structure” in section 12.11(3), Mr. Essiminy referred me to the “limited class rule” for interpreting generic or collective terms. However, it must be recalled that the Code is remedial in nature and, as such, any interpretation of the legislation, in whole or in part, must be sufficiently broad as to give credence to the purpose clause in section 122.1 of the Code. Section 122.1 of the Code reads:

122.1 The purpose of this Part is to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies.

[25] In this regard, I refer to the following citation provided by Mr. Essiminy entitled, “Construction of Statutes.” In paragraph 4, page 116, of the document Mr. Driedger wrote:

A fuller statement of the *ejusdem generic* doctrine is found in the decisions, namely that where general words are found, following an enumeration of persons, things all susceptible of being regarded as specimens of a single genus or category, but not exhaustive thereof, their construction should be restricted to things of that class or category, **unless it is reasonably clear from the context or the general scope and purview of the Act that Parliament intended that they should be given a broader sense.**

[My underline.]

[26] In my opinion, the application of the limited class rule for interpreting words and expressions in the Code must be done in conjunction with section 122.1, the purpose clause, of the Code. In this regard, I have already noted that the significant common denominator associated with the terms in both the English and French version of section 12.11(3) appears to their proximity to water. This is significant when one recalls that the hazard addressed in section 12.11(3) is a hazard of drowning.

[27] For the reasons discussed above, I am not persuaded that subsection 12.11(3) does not apply in respects of a “lock” because a “lock” is not used for loading and unloading cargo and passengers from ships. It is therefore my decision that a lock is to be assimilated to a wharf, dock, pier or quay. Consequently the first argument of SLSMA is dismissed.

[28] Having so decided, I must now turn to the alternate arguments cited by Parties and decide whether the SLSMA is exempted from compliance with subsection 12.11(3) by virtue of paragraphs 12.1(a) or 12.2(b).

[29] The second position of Parties was that subsection 12.11(3) does not apply in respect of the SLSMA locks because the SLSMA has eliminated or controlled within safe limits the hazard of drowning in accordance with paragraph 12.1(a) of the Regulations. In this regard, the SLSMA, in consultation with the CAW and SLSMA employees adopted and incorporated the measures described in the joint representation to control the hazard of drowning within safe limits. It appears that a

serendipitous result of the investigation of the initial refusals to work by employees who refused to participate in SLSMA trials to reduce crew sizes was that the exercise resulted in a comprehensive review of safety and health at SLSMA locks. Moreover, I was advised by Messrs. Essiminy and Hearn that the joint representation submitted in this case was in connection with a larger commitment by Parties to further review lock operation in the coming season towards modernizing operations and further eliminating or controlling occupational health and safety risks to its employees.

- [30] With regard to the third position of Parties that subsection 12.11(3) does not apply because fixed ladders installed on the lock faces operated by the SLSMA would, themselves, create a hazard in contravention of paragraph 12.2(b), I found Dr. Osterman's report and conclusions to be persuasive. Indeed, I was not provided with any evidence to doubt his conclusion, and further note from the joint representations from Parties that both confirmed Dr. Osterman's conclusion that the installation of fixed wall ladders would neither prevent nor reduce the risk of drowning and that such ladders would create a significant hazard.
- [31] When health and safety officer Danton issued his direction made pursuant to section 145.1 of the Code to the SLSMA on July 18, 2001, item 2 of his direction did not take into account that the installation of the ladders referred to in subsection 12.11(3) would themselves create a danger. However, in fairness, I note that the study and finding of Dr. Osterman came after his direction.
- [32] Since I am persuaded by the evidence that the installation of fixed ladders on the face of lock walls would themselves create a hazard, and in consideration of the measures taken by the SLSMA to control within safe limits the hazard of drowning at the locks, I hereby rescind item 2 of the direction that health and safety officer Danton issued to the SLSMA on July 18, 2001 pursuant to subsection 145.1 of the Code.

Douglas Malanka
Appeals Officer

ANNEX

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

DIRECTION TO EMPLOYER UNDER PARAGRAPH 145(1)

On the 27th day of April 2001, the undersigned health & safety officer Paul G. Danton, accompanied by health & safety officer Alain Messier, conducted an inquiry in the work place operated by the THE ST.LAWRENCE SEAWAY MANAGEMENT CORPORATION, being an employer subject to the *Canada Labour Code*, Part II, at BOX 370, 508 GLENDALE AVENUE ST.CATHARINES ONTARIO, Ontario, L2R 6V8, the said work place being sometimes known as **THE ST. LAWRENCE SEAWAY**.

The said health and safety officer is of the opinion that the following provisions of the *Canada Labour Code*, Part II are being contravened:

1. Paragraph 125.(1)(p) of the *Canada Labour Code*, Part II, and subsection 2.14(3) of the *Occupational Safety & Health Regulation*

The employer has failed to maintain travelled areas at the edge of the locks which are not free of holes, unequal levels, and obstacles.

2. Paragraph 125.(1)(v) of the *Canada Labour Code*, Part II and subsection 12.11(3) of the *Occupational Safety & Health Regulation*

The employer has failed to provide ladders that are capable of extending at least two rungs below the water level, which are affixed to the face of the locks, and are located every 60 m along its length.

3. Paragraph 125.(1)(l)(v) of the *Canada Labour Code*, Part II and subsection 12.11(1) of the *Occupational Safety & Health Regulation*

The employer has failed to provide a life jacket or buoyancy device to dock workers, during the procedure of tying up and releasing a vessel, which is capable of protecting the worker from the hazard of drowning.

4. Paragraph 125.(1)(p)(q) of the *Canada Labour Code*, Part II and subsection 14.25 of the *Occupational Safety & Health Regulation*

The employer has failed to provide a signaller for the worker, who is operating materials handling equipment. During the procedure of tying up or releasing the mooring lines of a vessel, the worker, during a portion of this process, loses visual contact with both the vessel and mooring lines.

Therefore, you are **HEREBY DIRECTED**, pursuant to paragraph 145(1) of the *Canada Labour Code*, Part II, to terminate the contraventions no later than the 30th of July 2001.

Issued at London, this 18th day of July, 2001.

PAUL DANTON
Health & Safety Officer

To: THE ST.LAWRENCE SEAWAY AUTHORITY
BOX 370, 508 GLENDALE AVENUE
ST.CATHARINES, ONTARIO
L2R 6V8

SUMMARY OF APPEALS OFFICER'S DECISION

Decision No.: 03-008

Appellant: St. Lawrence Seaway Management Authority

Respondent: CAW

Provisions:

Canada Labour Code: 22(1), 124, 125, 145.(1)(b), 146.1(1)
Regulations: 12.1, 12.2, 12.11(3)

Keywords: wharf, dock, pier, quay, lock, fixed ladders, elimination of hazards, control of hazards within safe limits, personal floatation devices, tie up and release of vessels, locks, on board winches, upbound vessels, low pool, high pool.

Summary:

During an investigation connected with the refusal to work of two employees of the St. Lawrence Seaway Management Authority (SLSMA) on October 16, 2000, the health and safety officer noticed that that fixed ladders were not installed along the lock walls every 60 m. in accordance with subsection 12.11(3) of the *Canada Occupational Safety and Health Regulations*. He ordered the SLSMA to terminate the contravention.

The SLSMA appealed the direction and, in a joint submission, the SLSMA and the Canadian Auto Workers union, on behalf of SLSMA employees, held that compliance with subsection 12.11(3) should not be required because the installation of fixed ladders on the face of lock walls could, contrary to subsection 12.2(b), itself create a hazard.

The appeals officer agreed that fixed ladders, if installed, could create a hazard. He, therefore, rescinded item 2 of the direction that directed the SLSMA to comply with subsection 12.11(3) of the *Canada Occupational Safety and Health Regulations*.