

**Canada Labour Code**  
**Part II**  
**Occupational Health and Safety**

1260269 Ontario Inc.  
(Sky Harbour Aircraft Refinishing)  
*applicant*

and

Tracy Chambers  
*respondent*

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Decision No.: 06-032  
October 4, 2006

This case was decided by Katia Néron, Appeals Officer, based on the written submissions provided by the parties and the documents supplied by the health and safety officer.

**For the Applicant**

D. E. (Sandy) Wellman, President, 1260269 Ontario Inc. (Sky Harbour Aircraft Refinishing)

**For the Respondent**

Tracy Chambers, employees' representative, workplace health and safety committee

**Health and Safety Officer**

Darlene Tunney, Labour Program, Human Resources and Skills Development Canada (HRSDC), London, Ontario

- [1] Following an inspection conducted on September 25 and 27, 2005, in the work place operated by 1260269 Ontario Inc. at Goderich, Ontario, also known as Sky Harbour Aircraft Refinishing (SHAR), health and safety officer (HSO) Darlene Tunney issued, on October 11, 2005, two directions to SHAR under subsection 145(1) of the *Canada Labour Code*, Part II (the *Code*). On October 21, 2005, SHAR's President, D. E. Wellman, appealed both directions pursuant to subsection 146(1) of the *Code*.
- [2] I retain the following from HSO Tunney's inspection report.

- [3] The work place inspected by HSO Tunney comprises the following three departments:
- the maintenance department, where mechanics take apart and put back together the mechanical elements of aircrafts;
  - the “Interior” department, where employees remove aircraft interiors and install new ones;
  - the refinishing department, where cleaners and painters clean and paint aircrafts.
- [4] During her inspection, HSO Tunney observed that a fall-protection system was not provided to SHAR’s employees when they were using 10 to 12 foot ladders to work on larger aircraft or working on an aircraft at a height of more than 2.4 m.
- [5] HSO Tunney also asked to see the work place job hazard analysis. She was informed that this analysis was not available.
- [6] When HSO Tunney inquired as to what method SHAR could put in place until a full fall-protection system could be installed, Bruce Tanner, Facility Manager and employer co-chair of the work place health and safety committee, suggested that all employees be verbally trained on the danger of falling and that posters be put up in the hangar warning of the danger. D. E. Wellman also informed her that, in his opinion, it was impossible to provide employees with a fall-protection system in such work environment.
- [7] HSO Tunney disagreed with these positions. Consequently, she directed SHAR, in the initial item of her first direction, to ensure that an appropriate fall-protection system be provided to employees when working on an aircraft above a height of more than 2.4 m. In the second item of her first direction, she also directed SHAR to perform a job hazard analysis of all duties related to the plant.
- [8] HSO Tunney’s first direction reads as follows:

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

**DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)**

On September 27, 2005, the undersigned health and safety officer conducted an inspection in the workplace operated by 1260269 Ontario Inc., being an employer subject to the *Canada Labour Code*, at P.O. BOX 536, GODERICH, Ontario, N7A 4G7, the said work place being sometimes known as SKY HARBOUR AIRCRAFT REFINISHING (1260269 ONTARIO).

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

1. 125(1)(l) and *Canada Occupational Health and Safety Regulations*, Section 12.10(1)(a). The employer is to ensure no work is performed on a plane by any employee above 2.4 metres without appropriate fall protection.

Section 124:

The employer in conjunction with the health and safety committee will perform a job hazard analysis on all duties related to the plant.

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

Further, you are **HEREBY DIRECTED**, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue or reoccur.

[9] HSO Tunney also noted the following during her inspection:

- SHAR's employees frequently worked with toluene, methyl ethyl ketone and paint stripper;
- there was a 300- page inventory list of chemicals at the work place;
- different kind of respirators and respiratory cartridges as well as a fresh air hose supply system were available to the employees against the hazard of being exposed to the hazardous chemical substances that they used in the work place.

[10] In addition, after questioning some SHAR's employees on what the Material Safety Data Sheets (MSDSs) require concerning the hazardous chemical substances used in the work place, such as glue, and seeing that they were unable to answer, HSO Tunney wrote in her inspection report that she had concerns about the employees' knowledge on those substances.

[11] During her inspection, HSO Tunney was also informed that an indoor air quality assessment of the work place had been conducted. She requested a copy of the assessment report but was told that it was not available.

[12] D. E. Wellman further advised HSO Tunney that he had previously given a copy of the assessment report to the Labour Program London District Office. As he told her that he could not find his own copy, HSO Tunney asked the district office for its copy, but it could not be found.

[13] Since SHAR did not produce a copy of the assessment report, HSO Tunney issued a second direction to SHAR stating that the employer had failed to produce a copy of the hazard investigation report required under the *Code*.

[14] The second direction issued by HSO Tunney reads as follows:

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

**DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)**

On September 27, 2005, the undersigned health and safety officer conducted an inspection in the workplace operated by 1260269 Ontario Inc., being an employer subject to the *Canada Labour Code*, at P.O. BOX 536, GODERICH, Ontario, N7A 4G7, the said work place being sometimes known as SKY HARBOUR AIRCRAFT REFINISHING (1260269 ONTARIO).

The said health and safety officer is of the opinion that the following provision of the *Canada Labour Code* Part II, has been contravened:

1. *Canada Labour Code* paragraph 125(1)(g) and *Canada Occupational Health and Safety Regulations*, Section 10.6

Health and Safety Officer was advised that a hazard investigation had been conducted, however the employer failed to produce a copy of the report upon the Health Safety Officer's request. A report referred to in section 10.5 shall be kept by the employer for a period of thirty years after the date on which the qualified person signed the report.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contravention no later than October 20, 2005.

Further, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue or reoccur.

**Applicant's Arguments**

[15] I retain the following from the written submissions provided by the applicant's president, D. E. Wellman.

[16] With regard to the first direction, D. E. Wellman stated that SHAR was not in contravention of paragraph 125(1)(l) and section 124 of the *Code*.

- [17] D. E. Wellman argued that in the initial item of her first direction, HSO Tunney used her own wording instead of using the wording of paragraph 12.10(1)(a) of the *Canada Occupational Health and Safety Regulations* (COHSR).
- [18] D. E. Wellman's main argument relatively to the impracticability of installing a universal mandatory fall-protection system in the work place was that SHAR dealt with continuously changing aircrafts of varying sizes and shapes. As a consequence, aircrafts were constantly being repositioned in the hangars during the different distinctive stages of the refurbishment process.
- [19] D. E. Wellman also submitted a report on a job safety analysis conducted in the work place, which was sent to HSO Tunney on October 19, 2005, after her inspection and directions.
- [20] D. E. Wellman stated that the report was discussed, amended and accepted by the members of the work place health and safety committee during their meeting of October 19, 2005.
- [21] In addition, D. E. Wellman referred to a SHAR's training guideline entitled "Training on elevated surfaces". It was also sent to HSO Tunney on October 19, 2005 after her inspection and directions. It reads in part:

### **Training on Elevated Surfaces**

[...]

If above 8 feet you must have one hand holding the ladder at all times.

[...]

You may climb onto the aircraft with no fall restraint if no other practical method exists provided you have training and instruction on the safe method of climbing onto and working on the aircraft. The following items are specific to working above 8 feet on the surface of the aircraft with no fall restraint and are to be used concurrently with the above mentioned points:

- ensure good housekeeping and be aware of other personnel in the potential fall area

[...]

- ensure work area is in a safe condition to minimize the fall risk

[...]

- ensure safe methods of moving yourself/equipment/supplies while on surface of aircraft
- ensure safe methods of transferring yourself/equipment/supplies onto and off surface of aircraft (i.e. no throwing of items)

- advise supervisor, before or during shift, if you feel unable to safely work on aircraft surface
- no one will be on the surface of an aircraft while it is in motion
- appropriate use of PPE and attire (i.e. loose clothing and long hair to be kept confined) especially important while on surface of aircraft

[22] In addition, D. E. Wellman referred to another SHAR's guideline pertaining to ladders, which he sent on May 2, 2006 to the *Canada Appeals Office on Occupational Health and Safety* along with his submission. It reads:

### **Ladders**

A ladder is defined as a device with three or more steps.

- L1) Any substitute for a ladder is dangerous. Barrels, boxes or chairs are not designed to take the place of ladders.
- L2) Never stand on the top step of a ladder.
- L3) NOTHING is to be left on a ladder if no one is on the ladder. If you take it up you bring it down. NO EXCEPTIONS!
- L4) All ladders are marked in red above the 8 foot level. Anyone going above this 8-foot level is required to:
  - A) The 3-point stance. 3-point stance is having 2 feet firmly planted on the step of the ladder, plus one hand firmly holding the ladder.

OR

- B) Use the appropriate fall arrest equipment. You must be properly certified to use this equipment.

If it is not possible to carry out your assigned task while complying with the above rule, speak to your supervisor for direction.

[23] With regard to the above guideline, D. E. Wellman stated that his employees could go over 2.4 m above the nearest permanent safe level on a ladder when they were able to use at least one hand to hold onto the ladder. Based on this, he argued that paragraph 12.10(1)(c) of the COHSR did not apply to his employees.

[24] For reference, paragraph 12.10(1)(c) of the COHSR reads:

## **Fall-Protection Systems**

12.10(1) Subject to subsection (1.1), every employer shall provide a fall-protection system to any person, other than an employee who is installing or removing a fall-protection system in accordance with the instructions referred to in subsection (5), who works

(c) from a ladder at a height of more than 2.4 m above the nearest permanent safe level where, because of the nature of the work, that person is unable to use at least one hand to hold onto the ladder.

[25] With regard to the second direction, D. E. Wellman contented that in 2000, SHAR hired a London (Ont.) company to conduct an air quality survey. He noted that the equipment broke down during the survey. Moreover, he was so shocked by the quality of the report that he did not even retain a copy. He nevertheless added that he would reluctantly offer the said company to buy another copy of its report.

[26] However, D. E. Wellman maintained that a copy of the air quality survey report had been sent at the time to Bob Fortner, another HSO from the Labour Program London District Office. He assumed that upon receiving the report, HSO Fortner would have contacted him if problems had been identified.

[27] Finally, since he never received any feedback from B. Fortner on the report, D. E. Wellman believed that the personal respiratory protective equipment provided to the employees was appropriate.

## **Respondent's Arguments**

[28] Tracy Chambers responded on behalf of the workplace health and safety committee. She stated that she had no rebuttal or arguments to submit with regard to the applicant's written submissions.

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## **Analysis and Decision**

[29] The issue to be addressed in this case is whether or not HSO Tunney's directions were justified and appropriate at the time of her inspection.

[30] For deciding these matters, I have to consider the factual evidence submitted and the circumstances of the case, as well as the relevant legislation.

[31] With regard to the first direction, the evidence shows that, at the time of HSO Tunney's inspection, SHAR's employees were not being provided with a fall-protection system when working on an aircraft at a height of more than 2.4 m.

[32] Paragraph 12.10(1)(a) of the COHSR requires every employer to provide a fall-protection system to any person working on a vehicle when they are higher than 2.4 m from the nearest permanent safe level or above any moving parts of machinery or any other surface that could cause injury to a person on contact. The provision reads:

### **Fall-Protection Systems**

12.10(1) Subject to subsection (1.1), every employer shall provide a fall-protection system to any person, other than an employee who is installing or removing a fall-protection system in accordance with the instructions referred to in subsection (5), who works

(a) from an unguarded structure or **on a vehicle, at a height of more than 2.4 m above the nearest permanent safe level** or above any moving parts of machinery or any other surface or thing that could cause injury to a person on contact[.] [My underline]

[33] Furthermore, subsection 12.10(1.1) of the COHSR also deals with fall-protection for employees working on top of a vehicle. It requires a job safety analysis where an employee climbs above 2.4 m onto a vehicle on which it is not reasonably practicable to provide a fall-protection system. The purpose of this job safety analysis is to eliminate or minimize the need to have employees climb onto such vehicle without a fall-protection system and to provide them with specific instructions and training on safe methods to do so, such as other types of safety systems that can protect them from falling. Subsections 12.10(1.1) and (1.2) read:

12.10(1.1) Where an employee is required to work on a vehicle on which it is not reasonably practicable to provide a fall-protection system, the employer shall

(a) in consultation with the policy committee or, if there is no policy committee, the work place committee or the health and safety representative,

- (i) **perform a job safety analysis** to eliminate or minimize the need for the employee to climb onto the vehicle or its load, and
- (ii) provide every employee who is likely to climb onto the vehicle or its load with training and instruction on the safe method of climbing onto and working on the vehicle or its load;

(b) make a report in writing to the regional health and safety officer setting out the reasons why it is not reasonably practicable to provide a fall-protection system and include the job safety analysis and a description of the training and instruction referred to in paragraph (a); and

(c) provide a copy of the report referred to in paragraph (b) to the policy committee or, if there is no policy committee, the work place committee or the health and safety representative.

(1.2) The job safety analysis, training and instruction referred to in paragraph (1.1)(a) shall be reviewed every two years in consultation with the policy committee or, if there is no policy committee, the work place committee or the health and safety representative.

[My underline]

[34] In addition, in his *Maritime Employers Association c. Harvey et al.*<sup>1</sup> decision, Federal Court Justice Pratte set out in paragraph 13 principles on the level of specificity that should be found in a direction. He wrote:

[13] Though the Act does not say so expressly, it is clear that the directions given under s. 145(2) must be specific enough for it to be determined whether the employer has complied with them. However, for the directions to be specific enough they do not have to specify what action the employer must take to deal with the danger encountered by its employees; it will suffice if they indicate what result the employer must attain by clearly identifying the danger encountered by employees and imposing on the employer a duty to take the necessary action to deal with it.

[35] I believe that the principle expressed by Justice Pratte in this decision equally applies *vis-à-vis* a direction issued pursuant to subsection 145(1) of the *Code*. As such, a direction should be specific enough for the employer to understand how he did not comply with the *Code* or its regulations and what results need to be attained in order to comply.

[36] Since HSO Tunney did not specify in the second item of her first direction whether the “job hazard analysis” to be performed dealt with the requirement of subsection 12.10(1.1) or another requirement of the COHSR, I find that this item of the first direction is vague and ambiguous.

[37] However, there is no evidence before me that, prior to HSO Tunney’s inspection, SHAR did provide a written report to the regional health and safety officer, as required by paragraph 12.10(1.1)(b).

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<sup>1</sup> *Maritime Employers Association c. Harvey et al.*, FC, A-553-90, April 22, 1991.

[38] In addition, since I have evidence that SHAR's job safety analysis as well as its training guideline entitled "Training on elevated surfaces" were provided to HSO Tunney after her inspection and directions, I will not comment on these two documents.

[39] Given the above provisions and the evidence submitted and since an aircraft is considered a vehicle, I am of the opinion that SHAR was not in compliance with paragraph 12.10(1)(a) of the COHSR at the time of HSO Tunney's inspection, for the following reasons:

- a fall-protection system was not provided to the employees when working on aircrafts at a height of more than 2.4 m;
- SHAR's employees had not been instructed and trained, following a job safety analysis conducted on this matter, on other safety systems to be used to prevent them from falling when climbing onto and working on aircrafts at a height of more than 2.4 m.

[40] I will add that even though I find that the initial item of the first direction lacks in specificity and clarity with respect to paragraph 12.10(1)(a) of the *Code*, I believe that its meaning was clear when read in the context of the *Code* and the COSHR.

[41] With regard to paragraph 12.10(1)(c) of the COHSR concerning the use of ladders, this paragraph states that if an employee needs his two hands to perform a task from a ladder above 2.4 m, the employer shall provide a fall-protection system. Again, paragraph 12.10(1)(c) reads:

### **Fall-Protection Systems**

12.10(1) Subject to subsection (1.1), every employer shall provide a fall-protection system to any person, other than an employee who is installing or removing a fall-protection system in accordance with the instructions referred to in subsection (5), who works

(c) from a ladder at a height of more than 2.4 m above the nearest permanent safe level where, because of the nature of the work, that person is unable to use at least one hand to hold onto the ladder.

[42] Since I have no factual evidence before me whether or not SHAR's employees were able to use at least one hand to hold onto the ladder that they were using to work at a height of more than 2.4 m and since there was nothing in HSO Tunney's direction with regard to paragraph 12.10(1)(c) of the COHSR, I will not comment on the document and argument that D. E. Wellman submitted on this matter.

[43] Therefore, as authorized by paragraph 146.1(1) of the *Code*, I confirm the first item of HSO Tunney's first direction. However, I rescind the second item of that direction concerning the job hazard analysis.

- [44] With regard to the second direction issued by HSO Tunney, the evidence shows that SHAR's employees were frequently exposed to hazardous chemical substances.
- [45] Pursuant to subsection 10.4(1) of the COHSR, every employer shall appoint a qualified person to carry out an investigation to eliminate and reduce the employees' exposure to the hazardous substances that they use. In addition, subsection 10.4(2) lists the criteria to be taken into consideration by the qualified person when carrying out the investigation.
- [46] In addition, section 10.5 of the COHSR states what the qualified person's report shall contain as well as what safety procedure the employer shall develop and maintain to control the concentration or level of the hazardous substances used in the work place.
- [47] For reference, sections 10.4 and 10.5 of the COHSR read as follows:

### **Hazard Investigation**

- 10.4(1) If there is a likelihood that the health or safety of an employee in a work place is or may be endangered by exposure to a hazardous substance, the employer shall, without delay,
- (a) appoint a qualified person to carry out an investigation in that regard; and
  - (b) for the purposes of providing for the participation of the work place committee or the health and safety representative in the investigation, notify either of the proposed investigation and of the name of the qualified person appointed to carry out that investigation.
- (2) In an investigation referred to in subsection (1), the following criteria shall be taken into consideration:
- (a) the chemical, biological and physical properties of the hazardous substance;
  - (b) the routes of exposure to the hazardous substance;
  - (c) the acute and chronic effects on health of exposure to the hazardous substance;
  - (d) the quantity of the hazardous substance to be handled;
  - (e) the manner in which the hazardous substance is stored, used, handled and disposed of;
  - (f) the control methods used to eliminate or reduce exposure of employees to the hazardous substance;
  - (g) the concentration or level of the hazardous substance to which an employee is likely to be exposed;

(h) whether the concentration of an airborne chemical agent or the level of ionizing or non ionizing radiation is likely to exceed 50 per cent of the values referred to in subsection 10.19(1) or the levels referred to in subsections 10.26(3) and (4); and

(i) whether the level referred to in paragraph (g) is likely to exceed or be less than that prescribed in Part VI.

10.5 On completion of an investigation referred to in subsection 10.4(1) and after consultation with the work place committee or the health and safety representative,

(a) the qualified person shall set out in a written report signed by the qualified person

- (i) the qualified person's observations respecting the criteria considered in accordance with subsection 10.4(2), and
- (ii) the qualified person's recommendations respecting the manner of compliance with sections 10.7 to 10.26, including recommendations respecting sampling and testing methods;

(b) the employer shall develop and maintain a written procedure for the control of the concentration or level of the hazardous substance in the work place.

[48] According to the evidence, an air quality survey had been conducted in 2000 in the work place.

[49] However, apart from D. E. Wellman's statement, there is actually no evidence of any other survey report issued on that subject.

[50] The evidence shows that D. E. Wellman did not keep a copy of the air quality survey report, contrary to the requirement of section 10.6 of the COHSR, which reads:

10.6 A report referred to in section 10.5 shall be kept by the employer for a period of thirty years after the date on which the qualified person signed the report.

[51] Since no air quality survey report was submitted, there is no evidence before me that the said report constitutes the hazard investigation report required under section 10.5 of the COHSR.

[52] The evidence also shows that SHAR did not provide HSO Tunney with the air quality survey report that she requested at the time of her inspection.

[53] Based on the above, I find that, in her second direction, HSO Tunney should have used the power given her by paragraph 141(1)(h) of the *Code* to order SHAR to provide her with the required hazard investigation report. This paragraph reads:

141(1) Subject to section 143.2, a health and safety officer may, in carrying out the officer's duties and at any reasonable time, enter any work place controlled by an employer and, in respect of any work place, may

(h) direct the employer to produce documents and information relating to the health and safety of the employer's employees or the safety of the work place and to permit the officer to examine and make copies of or take extracts from those documents and that information[.]

[54] Therefore, as authorized by subsection 146.1(1) of the *Code*, I am varying the second direction issued by HSO Tunney, as indicated in the attached direction produced in appendix.

#### **Note**

[55] I hereby request that HSO Tunney or another health and safety officer ensure that SHAR complies with both directions.

[56] I hereby also request that HSO Tunney or another health and safety officer ensure that SHAR complies with paragraph 12.10(1)(c) of the COHSR.

[57] With regard to HSO Tunney's concerns about the employees' education and training with respect to hazard prevention and control of the hazardous substances used in the work place, I refer both parties to sections 10.14, 10.15 and 12.15 of the COHSR. These sections read:

#### **Employee Education**

10.14 (1) Every employer shall, in consultation with the work place committee or the health and safety representative, develop and implement an employee education program with respect to hazard prevention and control at the work place.

(2) The employee education program referred to in subsection (1) shall include

(a) the instruction of each employee who is likely to handle or be exposed to a hazardous substance with respect to

(i) the product identifier of the hazardous substance,

- (ii) all hazard information disclosed by the supplier or by the employer on a material safety data sheet or label,
  - (iii) all hazard information of which the employer is aware or ought reasonably to be aware,
  - (iv) the observations referred to in subparagraph 10.5(a)(i),
  - (v) the information disclosed on a material safety data sheet referred to in section 10.28 and the purpose and significance of that information, and
  - (vi) in respect of controlled products in the work place, the information required to be disclosed on a material safety data sheet and on a label under Division III and the purpose and significance of that information;
- (b) the instruction and training of each employee who installs, operates, maintains or repairs an assembly of pipes or any other equipment referred to in section 10.24, with respect to
- (i) every valve and other control and safety device connected to the assembly of pipes, and
  - (ii) the procedures to follow for the proper and safe use of the assembly of pipes;
- (c) the instruction and training of each employee referred to in paragraphs (a) and (b) with respect to
- (i) the procedures to follow to implement sections 10.8, 10.9 and 10.12, and
  - (ii) the procedures to follow for the safe storage, handling, use and disposal of hazardous substances, including procedures to be followed in an emergency involving a hazardous substance; and
- (d) where the employer keeps a computerized version of a material safety data sheet available in accordance with subsection 10.34(2), the instruction and training referred to in paragraph 10.34(2)(b) in accessing that material safety data sheet.
- (3) Every employer shall, in consultation with the work place committee or the health and safety representative, review the employee education program referred to in subsection (1) and if necessary, revise it
- (a) at least once a year;
  - (b) whenever there is a change in conditions in respect of the hazardous substances in the work place; and
  - (c) whenever new hazard information in respect of a hazardous substance in the work place becomes available to the employer.

- 10.15 The employer shall keep a written or computerized record of the instruction and training given to every employee and
- (a) make it readily available for examination by the employee; and
  - (b) keep it for a period of two years after the employee ceases
    - (i) to handle or be exposed to the hazardous substance, or
    - (ii) to install, operate, maintain or repair the assembly of pipes.

### **Instructions and Training**

- 12.15(1) Every person granted access to the work place who uses protection equipment shall be instructed by the employer in the use of the equipment.
- (2) Every employee who uses protection equipment shall be instructed and trained in the use, operation and maintenance of the equipment.
  - (3) Every person granted access to a work place shall be instructed in respect of the written emergency procedures referred to in paragraph 12.11(2)(d).
  - (4) The instructions referred to in subsections (2) and (3) shall be
    - (a) set out in writing; and
    - (b) kept by the employer readily available for examination by every person granted access to the work place.

[58] Finally, I request that HSO Tunney or another health and safety officer ensure that SHAR complies with the above mentioned provisions.

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Katia Néron  
Appeals Officer

**APPENDIX**

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

**DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 141(1)(h)**

Following an appeal brought under section 146, the undersigned Appeals Officer conducted an inquiry, pursuant to section 146.1 of the *Canada Labour Code*, Part II, into the direction concerning a hazard investigation report issued by health and safety officer Darlene Tunney, on October 11, 2005, following her inspection of the work place operated by employer 1260269 Ontario Inc., also known as Sky Harbour Aircraft Refinishing or SHAR, the said employer being an employer subject to the *Canada Labour Code* and represented by its president D. E. (Sandy) Wellman.

As a result of the Appeals Officer's inquiry made on the basis of the documents submitted by the parties and health and safety officer Darlene Tunney:

The employer is HEREBY DIRECTED, pursuant to paragraph 141(1)(h) of the *Canada Labour Code*, Part II, to provide to health and safety officer Darlene Tunney, no later than October 20, 2006, the report of a hazard investigation carried out by a qualified person with regard to the hazardous substances used by the employees in the work place, as required by section 10.5 of the *Canada Occupational Health and Safety Regulations*.

The employer is furthermore HEREBY DIRECTED, pursuant to subsection 145(5) of the *Canada Labour Code*, Part II, to post, without delay, a copy of this direction in a conspicuous place in the work place and to give a copy to the work place health and safety committee.

Issued in Ottawa, on October 3, 2006

Katia Néron  
Appeals Officer

To: 1260269 Ontario Inc., also known as SKY HARBOUR AIRCRAFT REFINISHING  
or SHAR  
P.O. BOX 536  
GODERICH, Ontario  
N7A 4G7

## Summary of Appeals Officer's Decision

**Decision No.:** 06-032

**Applicant:** D.E. Wellman

**Respondent:** Tracy Chambers

**Key Words:** Fall-protection system, job hazard analysis, Material Safety Data Sheets, Ladders, Employee education

**Provisions:** *Canada Labour Code, Canada Occupational Health and Safety Regulations*

### Summary:

Following an inspection, a health and safety officer issued two directions under subsection 145(1) of the *Canada Labour Code*, Part II, to 1260269 Ontario Inc., also known as Sky Harbour Aircraft Refinishing.

The first direction comprises two items. The initial item of the direction referred to a contravention to paragraph 125(1)(l) of the *Canada Labour Code*, Part II, and paragraph 12.10(1)(a) of the *Canada Occupational Health and Safety Regulations*, for failing to ensure that any employee performing work on a plane above 2.4 m is protected by an appropriate fall-protection system. The second item of the direction referred to a contravention under section 124 of the *Canada Labour Code*, Part II, for failing to ensure that a job hazard analysis had been performed on all duties related to the plant.

The second direction alleged that the requirements pursuant to paragraph 125(1)(g) of the *Canada Labour Code*, Part II, and section 10.6 of the *Canada Occupational Health and Safety Regulations* were not met since the employer failed to produce a copy of the report of the hazard investigation conducted in the work place.

Following her inquiry, the Appeals Officer confirmed the initial item of the first direction but rescinded the second item of the direction. With regard to the second direction, the Appeals Officer varies it by ordering the employer pursuant to paragraph 141(1)(h) of the *Canada Labour Code*, Part II, to provide to the health and safety officer, a copy of the hazard investigation report with regard to the hazardous substances used in the work place, as required by section 10.5 of the *Canada Occupational Health and Safety Regulations*.