Occupational Health and Safety Tribunal Canada

Tribunal de santé et sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Campbell Brothers Movers Ltd., 2011 OHSTC 26

Date: 2011-10-31
Case No.: 2011-20
Rendered at: Ottawa

Between:

Campbell Brothers Movers Ltd., Appellant

Matter:	Appeal under subsection 146(1) of the *Canada Labour Code* of a direction issued by a health and safety officer
Decision:	The direction is confirmed
Decision rendered by:	Mr Michael Wiwchar, Appeals Officer
Language of decision:	English
For the appellant:	Mr Donald Campbell, President

REASONS

[1] This case concerns an appeal brought on March 15, 2011, by Campbell Brothers Movers Ltd. (Campbell Bros.), under ss. 146(1) of the *Canada Labour Code* (the Code), against a direction issued on February 15, 2011, by Mr Corey Lessard, Health and Safety Officer (HSO).

Background

[2] Campbell Bros. is a federally regulated company that is subject to the Code and that is involved in the transportation of goods and services. Its operations extend beyond Ontario, with both a national and international presence.

[3] On December 1, 2010, HSO Lessard and another HSO paid a surprise visit to the Campbell Bros. premises. They asked to meet with the co-chairpersons of the work place health and safety committee to ask them questions relating to occupational health and safety. Ms Robinson, the employer co-chairperson, was present, but Mr Loffelholz, the employee co-chairperson, was absent. As a result, Mr Hunt, a truck driver, was appointed to act as the replacement.

[4] During the visit, HSO Lessard questioned Mr Hunt and Ms Robinson about the health and safety training they had received in relation to the Code and both responded that they had not received any training.

[5] On that same date, HSO Lessard identified 21 contraventions of the Code, and had Campbell Bros. sign an assurance of voluntary compliance (AVC) to correct the situation.

[6] On December 17, 2010, the two HSOs returned to the Campbell Bros. premises to discuss the AVC. Mr Donald Campbell, President of the company, Mr Cushman, Vice President of Operations, Mr Loffelholz and Ms Robinson were all present. In the end, HSO Lessard determined that only three of the 21 contraventions remained to be corrected.

[7] The following is the direction that was later issued which refers to the three outstanding items:

> IN THE MATTER OF THE CANADA LABOUR CODE
> PART II – OCCUPATIONAL HEALTH AND SAFETY
>
> DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)
>
> On December 1, 2010, the undersigned health and safety officer conducted an inspection in the work place operated by CAMPBELL BROS. MOVERS LIMITED, being an employer subject to the *Canada Labour Code*, Part II, at 55 Midpark Cres., London, Ontario, N6N 1A9, the said work place being sometimes known as CAMPBELL BROS. MOVERS LIMITED (H) – LONDON.

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

No./No : 1

Canada Labour Code, Part II – 125(1)(*z*)

Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity, ensure that employees who have supervisory or managerial responsibilities are adequately trained in health and safety and are informed of the responsibilities they have under this Part where they act on behalf of their employer

The employer has failed to provide health and safety training, to persons exercising managerial and/or supervisory responsibilities, in Part II of the Canada Labour Code.

No./No : 2

Canada Labour Code, Part II – 125(1)(*z.01*)

Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity ensure that members of policy and work place committees and health and safety representatives receive the prescribed training in health and safety and are informed of their responsibilities under this Part

The employer has failed to train and inform Health and Safety Committee members regarding their responsibilities under Part II of the Canada Labour Code.

No./No : 3

Canada Labour Code, Part II – 125(1)(*z.03*) and Canada Occupational Health & Safety Regulation – 19.1(1).

The employer shall, in consultation with and with the participation of the policy committee, or, if there is no policy committee, the work place committee or the health and safety representative, develop, implement and monitor a program for the prevention of hazards and that includes the following components: an implementation plan, a hazard identification and assessment methodology, hazard identification and assessment, preventative maintenance, employee education and a program evaluation.

The employer has failed to establish a Hazard Prevention Program with each of the components prescribed by Regulation XIX.

> Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contraventions no later than April 12, 2011.
>
> 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.
>
> Issued at London, this 15th day of February, 2011.

[8] At the meeting on December 17, 2010, mentioned above, the HSOs questioned the people present. With regard to the first item, the HSOs asked Mr Campbell whether he had received health and safety training, and he replied that he had taken one week of Workplace Safety and Insurance Board (WSIB) courses but that he was not sure if those courses met the requirements of the Code. The HSOs posed the same question to Mr Cushman, who admitted that he had never received training.

[9] With regard to the second item, the HSOs asked the employer and employee co-chairpersons whether they had received training. Mr Loffelholz replied that he had learned on his own, while Ms Robinson refused to answer.

[10] With regard to the third item, Mr Loffelholz explained to the HSOs that the hazard prevention program was perhaps partially in place but that Mr Campbell would need to become better informed to have a clearer picture of the situation.

[11] Following that meeting, the employer gave HSO Lessard a box containing records to prove that the company was in compliance with the Code and that the three outstanding items were in fact not issues at all. On February 15, 2011, after having analyzed the situation and the relevant records, HSO Lessard issued the above direction requesting the employer to correct the three contraventions of the Code identified at the meeting.

[12] The appellant filed its appeal on March 15, 2011, in the form of a detailed letter that contained submissions. The Tribunal received further submissions from Mr Campbell on July 5, 2011. After receiving the appellant's documents I decided to proceed by way of a written hearing and I sought additional submissions from the appellant.

[13] On August 10, 2011, I held a teleconference with Mr Campbell, Mr Cushman, Ms Robinson and HSO Lessard in order to obtain further clarifications and to give an additional opportunity to the appellant for submissions.

Issue

[14] Did HSO Lessard err in issuing the direction that included the three items being appealed?

Appellant's arguments

[15] Before discussing the appellant's arguments regarding each item of the direction, it should be noted that it placed a great deal of importance on the context in which the direction was issued.

[16] According to the appellant, a conflict of interest taints HSO Lessard's decision to issue the direction. This conflict of interest apparently stems from the fact that HSO Lessard worked for Campbell Bros. in 2006, and that he never mentioned this during the investigation or during the meetings held with company representatives. It was only because he was recognized by the Campbell Bros. vice president of operations that Mr Campbell became aware of that fact.

[17] According to the appellant, the appearance of a conflict of interest is demonstrated by the large number of contraventions (21) of the Code identified by the HSO, whereas only three of those contraventions are now included in the direction.

[18] Furthermore, the appellant claimed that it had received a call from a company trying to sell it health and safety training, referring to the monthly health and safety meetings that Campbell Bros. holds for its employees.

[19] The appellant's other point concerning the context in which the direction was issued called into question the importance that the HSO actually placed on health and safety. The appellant contended that the HSO was more interested in the administrative red tape than in the actual safety of the employees, and that he disregarded the safety of an employee by asking that the employee be called while he was driving.

Item no. 1

[20] With regard to this item of the direction, the appellant submitted that the company is in compliance with para. 125(1)(*z*) of the Code. The appellant claimed that all employees who have supervisory or managerial responsibilities have a great deal of experience and that they are familiar with their responsibilities and with the rights and responsibilities of the other employees.

[21] In addition, it is submitted that the employees who have supervisory or managerial responsibilities receive the company's policies, procedures, plans and programs, and in a number of cases, they even take part in developing them.

[22] Lastly, the appellant stated that the employees who have supervisory or managerial responsibilities have taken a number of safety and WSIB courses, and that those courses have given them the training required by the Code.

Item no. 2

[23] With regard to this item of the direction, the appellant again argued that the company is in compliance with para. 125(1)(*z.01*) of the Code. According to the appellant, the employee health and safety co-chairperson has considerable experience, knows his responsibilities, and knows the ins and outs of health and safety. In addition, the company's managers ensure that he knows the rules and regulations, as well as his responsibilities under the Code by providing him with documentation and training. Lastly, the appellant stated that the employee co-chairperson had received the required training to operate a forklift.

[24] The employer health and safety co-chairperson apparently also has experience and is aware of her responsibilities. The appellant also stated that the employer co-chairperson is involved in the development of the health and safety policy. According to the appellant, the employer co-chairperson took a university course on health and safety.

Item no. 3

[25] Lastly, the appellant argued that the company is not in contravention of para. 125(1)(*z.03*) of the Code and that, therefore, HSO Lessard erred in including the third item in the direction. According to the appellant, the company has a hazard prevention program. As part of that program, the company identifies hazards on the basis of the accident history and is thus able to prevent future accidents to the extent possible.

[26] It is further submitted that monthly meetings are held to make employees aware of hazards and of the ways to minimize them. All employees receive hazard prevention training and the meetings act as a complement to that training. At the meetings, open discussions are held where employees can air any complaints and bring any new hazards to the employer's attention.

[27] The appellant concluded by stating that the company is in compliance with the three sections of the Code referred to in the direction, and that the HSO erred in issuing the direction.

Analysis

[28] Before analyzing the facts in this case, it should be noted that, according to the Federal Court of Appeal an appeal before an appeals officer is a *de novo* proceeding.[1]

[29] Therefore, my task is to reconduct the investigation carried out by HSO Lessard and to determine whether he should have issued the direction. In other words, I must analyze whether Campbell Bros. is in contravention of the Code, as indicated in the direction. To do so, I must consider the factual evidence that will enable me to arrive at an informed decision.

[1] *Martin* v. *Canada (Attorney General)*, [2005] 334 F.C.J. No. 752, 2005 FCA 156 at para. 28.

[30] When hearing an appeal, the appeals officer has all the powers of the HSO and can remedy any errors the HSO may have made in the investigation. Therefore, a finding of bias becomes irrelevant. My investigation, which is independent of the one conducted by the HSO, will thus enable me to remedy any potential errors made by HSO Lessard by substituting my findings for his. This reasoning was upheld by the Federal Court in *Schmidt* v. *Canada (Attorney General)*. In that decision, Captain Schmidt alleged that the decision of Major-General Gosselin to remove him from his position was tainted by procedural unfairness. The Court had the following to say regarding the *de novo* hearing in that case:

> In my view these considerations are not sufficiently compelling to justify a finding on judicial review that Captain Schmidt is entitled to a fresh first level decision. He has had the benefit of a full, fair and independent *de novo* review of the case by the CDS that is sufficient in these circumstances to remedy the deficiencies that arose at the time of Major-General Gosselin's decision.[2] (Emphasis added)

[31] The special nature of the *de novo* hearing, namely, the fact that it makes it possible to remedy any deficiencies in fairness at the first hearing, is also discussed in the following excerpt from a New Brunswick Court of Appeal decision:

> As Professor Mullan aptly states in his text Administrative Law (Toronto: Irwin Law, 2001) at p. 488: "... the frailty of the proceedings at first instance may be cured by a full rehearing by an unbiased, independent body according procedural fairness in the context of a statutory appeal or review." Thus, a de novo hearing before another independent administrative body so qualifies…[3]

[32] At this point, I will take certain factual elements from the HSO's report that will assist me in my analysis of the situation. It is to be noted that HSO Lessard's factual report was not contested by the appellant.

a) No: 1; *Canada Labour Code*, Part II – 125(1)(*z*);The employer has failed to provide health and safety training, to persons exercising managerial and/or supervisory responsibilities, in Part II of the *Canada Labour Code*.

[33] I will now analyze the three items of the direction issued by HSO Lessard. Paragraph 125(1)(*z*), of which Campbell Bros. is in contravention according to HSO Lessard and which is the basis of the first item, reads as follows:

> 125(1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,

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[2] *Schmidt* v. *Canada (Attorney General)*, [2011] F.C.J No. 463, 2001 FC 356 at para. 31.
[3] *Violette* v. *New Brunswick Dental Society*, [2004] N.B.J. No. 5, 2004 NBCA 1 at para. 23.

> (*z*) ensure that employees who have supervisory or managerial responsibilities are adequately trained in health and safety and are informed of the responsibilities they have under this Part where they act on behalf of their employer; [my emphasis]

[34] As specified in the direction, the heart of the matter is the training of employees who have supervisory or managerial responsibilities. Undeniably, the direction makes no mention of the duty to inform them. Therefore, I only need to address the issue of whether the employees referred to in this paragraph are, as required by that paragraph, "adequately trained".

[35] The terms "adequately trained" are not defined in the Code. It would seem that Parliament wanted to give employers some latitude in this area. However, that latitude does not mean that nothing specific must be done. To properly understand the obligations imposed on the employer, it is essential to dissect para. 125(1)(*z*).

[36] The definition of the word "training" must be analyzed so I will use the following dictionary definition: "The act or process of teaching or learning a skill, discipline, etc."[4] As one can see, the word presupposes the transfer of knowledge from one person to another. As such, training must be given by someone or perhaps by something, such as a computer program. The words "are trained", as found in para. 125(1)(*z*), also imply the transfer of knowledge.

[37] Another important word is the verb "ensure", which implies some involvement by the employer. In fact, the employer must ensure that the employees referred to in para. 125(1)(*z*) are adequately trained. The employer must ensure that they learn what the Code requires them to learn. The employer's duty to provide training requires a commitment from the employer, and the subtitle of ss. 125(1)—"specific duties of employer"—confirms this.

[38] Therefore, in light of these two elements, I cannot accept the appellant's argument that the fact that managers and directors are provided with (and take part in the development of) the company's policies, procedures, plans and programs can be considered training. The same is true for the arguments concerning the extensive experience of the directors and managers. In fact, it is essential that the employer take charge of their training in order to comply with the Code, and that the employer ensure that the training is adequate and that the company fulfills all of its duties. Thus, experience and the simple unguided reading (and development of) documents cannot be considered training. This type of training is not provided by a trainer, or the like, and there is nothing to indicate that it meets all the criteria of the Code. While some knowledge can be acquired through experience and practice, one cannot say that it is training, and certainly not adequate training under the Code. The employer must be assured that training materials are read and properly understood, for example, by conducting some sort of testing along with recorded results.

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[4] *Canadian Oxford Dictionary*, Second Edition (Don Mills, Ontario: Oxford University Press, 2004) at 1651.

[39] In consideration of this conclusion, only the allegation that employees who have supervisory or managerial responsibilities received safety and WSIB training remains to be analyzed.

[40] With regard to this issue, it is important to note that no material evidence was submitted to me in support of the claim that courses were taken. The appellant did not provided me with any authentication in relation to those courses. Furthermore, Mr Cushman admitted that he had never received training.

[41] In addition, even if I were to accept that the employees who have supervisory or managerial responsibilities took courses, the appellant did not demonstrate to me that those courses met the requirements of para. 125(1)(*z*) of the Code.

[42] As I mentioned earlier, although the Code gives employers some latitude, it is not to say that there are no requirements. For example, I will refer to the Human Resources and Skills Development Canada (HRSDC), Labour Program, departmental policy named Interpretations, Policies and Guidelines (IPG), specifically; *104-2-IPG-061: Instruction and Training of Employees Who Have Supervisory or Managerial Responsibilities in Health and Safety.* This policy, which is available to employers and the public and, is referred to by HSOs in the course of their duties, states that the employees referred to in para. 125(1)(*z*) must receive training on:

> the duties of the employer, the duties of the employees, the three basic rights of employees, and procedures required by the Code i.e. the proper steps to follow in cases of refusal to work, the internal complaint resolution procedure, etc. Additionally, those requirements prescribed by the Code i.e.,…

[43] Clearly, certain basic requirements must be covered in the training. I was not given any evidence those requirements were covered by the courses that Campbell Bros. managers and supervisors took. Furthermore, Mr Campbell admitted that he did not know whether the courses he took met the requirements of the Code.

[44] In addition, that same IPG advises employers to offer the following:

> <u>on-going</u> programs of instruction and training sessions whereby the employer provides instruction and training to supervisors and managers of the Code requirements, and work practices and procedures specific to the particular work place…

It appears to me that the few courses referred to by the appellant were offered sporadically and are insufficient to meet the requirements of the Code. This observation is even more evident when one considers that the work done by Campbell Bros. employees involves a number of hazards. The industry of transportation of goods and services across provincial and international boundaries is considered a “high risk” industry as per HRSDC-Labour Program priority ranking. In high-risk workplaces, even more stringent training is required under the Code.

[45] In conclusion, the appellant was unable to support its allegations with concrete evidence, and all indications are that the appellant's employees who have supervisory or managerial responsibilities have not received training that meets the requirements of para. 125(1)(*z*) of the Code. Consequently, for the reasons given above, I conclude that HSO Lessard was justified in issuing the first item of his direction because the appellant is in contravention of para. 125(1)(*z*) of the Code.

b) No: 2; *Canada Labour Code,* Part II – 125(1)(*z.01*): The employer has failed to train and inform health and safety committee members regarding their responsibilities under Part II of the *Canada Labour Code*.

[46] I must now determine whether the second item of the direction issued by HSO Lessard to Campbell Bros. is warranted. Based on the wording of this part of the direction, it is the training and information regarding the responsibilities of health and safety committee members that is lacking according to the HSO. Para. 125(1)(*z.01*) reads as follows:

> 125(1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,
>
> (*z.01*) ensure that members of policy and work place committees and health and safety representatives receive the prescribed training in health and safety and are informed of their responsibilities under this Part;

[47] The first thing to mention with regard to the second item of the direction is that Mr Loffelholz and Ms Robinson, the employee and employer co-chairpersons, stated that they had not received training that met the requirements of the Code (December 1, 2010, for Ms Robinson, and December 17, 2010, for Mr Loffelholz). That information is important because if the employees referred to in the item at issue have themselves admitted that the requirements have not been met, it would seem logical to conclude that that is indeed the case. However, because the appellant disputes the information given by the employee and employer co-chairpersons, I will also examine the appellant's point of view.

[48] The second item of the direction must be analyzed in the same way as the first. It must again be determined whether Campbell Bros. employees received training. I will explain my analysis in less detail since part of the analysis was conducted earlier.

[49] Similar to my earlier analysis, here the words "receive" and "training" presuppose involvement by the employer and a transfer of knowledge between a trainer and a learner. The words "are informed", to which the second item of the direction refers (in contrast to the first item), confirm this conclusion because they also necessarily imply that someone must give information to the committee member. Therefore, self-training is not compliant with the Code. It should also be noted that the word "ensure" implies that the employer must make certain that the training is comprehensive and in compliance with the Code.

[50] Consequently, the appellant's arguments that the experience, knowledge and competency of the committee members can be considered training cannot be accepted. Those arguments do not take into account the definition of training that implies a transfer of knowledge, that can further be assessed, and none of those examples are supervised or managed by the employer.

[51] It must now be determined whether the follow-up by managers and the training they provided to the employee co-chairperson mean that the appellant is in compliance with the Code. The same goes for the forklift training that Mr Loffelholz apparently took and for Ms Robinson's university courses.

[52] I will begin with Ms Robinson's university courses. First, it must be noted that I did not receive any evidence regarding the nature and content of those courses. In fact, I did not receive any information on the program taken. As a result, it is very difficult for me to examine the situation critically.

[53] I will now examine the forklift training that Mr Loffelholz received. First, I did not receive any evidence showing that Mr Loffelholz received such training. Second, forklift training has only a slight link to the requirement to "train and inform health and safety committee members regarding their responsibilities", which is the basis of the second item of the direction issued. At the most, that training could be part of an overall training package, but because the existence of such training was not established, there is no point in considering forklift training in this analysis.

[54] Lastly, let us look at the appellant's argument that managers provide Mr Loffelholz with follow-up on his health and safety knowledge, and with training sessions. Unfortunately, once again, I was not provided with any evidence that there actually is a follow-up and training. No records supporting the appellant's version were given to me. However, with regard to prescribed training, ss. 19.6(4) of Part XIX of the *Canada Occupational Health and Safety Regulations* (Regulations) requires that "Each time education is provided to an employee, the employee shall acknowledge in writing that they received it, and the employer shall acknowledge in writing that they provided it." This means that the training sessions should have been recorded somewhere and been accessible as evidence, which is not the case here.

[55] In addition to not providing evidence regarding this matter, the appellant also failed to provide me with any records explaining in detail the content of the training sessions or explaining the process used by managers to follow up with Mr Loffelholz. It seems that the training and the follow-up are carried out randomly, with no formal structure. I find it difficult to understand how it is possible for Campbell Bros. to ensure that the training and information required under the Code are provided in such a manner. Lastly, I must mention that, in my analysis of the first item, I concluded that the training of managers was not acceptable under the Code. Yet it is those same managers who are supposed to train Mr Loffelholz.

[56] As a result, with regard to the second item, the information provided by the co-chairpersons and the appellant's allegations that the company was compliant with para. 125(1)(*z.01*) of the Code the arguments were not supported by any convincing evidence. This leads me to conclude that HSO Lessard was justified in issuing the second item of the direction.

c) No: 3; *Canada Labour Code,* Part II – 125(1)(*z.03*) and *Canada Occupational Health and Safety Regulations* – 19.1(1): The employer has failed to establish a hazard prevention program with each of the components prescribed by Regulation XIX.

[57] I will now look at the third and final item of the direction, relating to the hazard prevention program required under para. 125(1)(*z.03*) of the Code and Part XIX of the Regulations.

> 125(1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,
>
> (*z.03*) develop, implement and monitor, in consultation with the policy committee or, if there is no policy committee, with the work place committee or the health and safety representative, a prescribed program for the prevention of hazards in the work place appropriate to its size and the nature of the hazards in it that also provides for the education of employees in health and safety matters;
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> 19.1(1) The employer shall, in consultation with and with the participation of the policy committee, or, if there is no policy committee, the work place committee or the health and safety representative, develop, implement and monitor a program for the prevention of hazards, including ergonomics-related hazards, in the work place that is appropriate to the size of the work place and the nature of the hazards and that includes the following components:
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> (a) an implementation plan;
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> (b) a hazard identification and assessment methodology;
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> (c) hazard identification and assessment;
>
> (d) preventive measures;
>
> (e) employee education; and
>
> (f) a program evaluation.
>
> (2) [Repealed, SOR/2009-84, s. 2].
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> SOR/2005-401, s. 2; SOR/2007-271, s. 1; SOR/2009-84, s. 2.

[58] In reading the third item of the direction, one can see that it is the hazard prevention program in general that seems to pose the problem. Effectively, according to the HSO, none of the provisions of the relevant section of Part XIX of the Regulations have been satisfied.

[59] After conducting an analysis, I conclude that the appellant has not implemented a hazard prevention program as required under the Code. This conclusion is based on a number of factors.

[60] First, it must be taken into account that the appellant has no clear and properly established hazard prevention program. In fact, Campbell Bros. provided me with no comprehensive plan to analyze. Therefore, I had to be satisfied with analyzing the situation on the basis of the appellant's assertions and the few records provided to me. This lack of a comprehensive and coherent plan is an excellent indicator that the third item of the direction is justified. In effect, the hazard prevention program is supposed to be a coherent whole that makes it possible to properly incorporate all the requirements of the Code.

[61] I also took into account the fact that the HSOs questions regarding the hazard prevention program were not answered quickly. Clearly, since Mr Campbell and Mr Loffelholz were unable to describe and talk about the program is worrisome and leads me to believe that such a program does not exist or, at the very least, is not very clear.

[62] Based on the above analysis, the existence of a comprehensive hazard prevention program at Campbell Bros. must be called into question. However, the third item of the direction requires a more in-depth analysis because that item states that the appellant has failed to comply with <u>any</u> of the components of Part XIX of the Regulations. I will therefore briefly review each of those components to determine whether the appellant is in compliance. Obviously, finding only one breach in each component would be sufficient to conclude that this item of the direction is justified.

[63] To start, I can safely conclude that the appellant has failed to demonstrate compliance with sections 19.2 (Implementation Plan), 19.7 (Program Evaluation) and 19.8 (Reports) of the Regulations. I did not receive a plan, evaluation or report, which would lead me to believe that they do not exist. Furthermore, the appellant did not even address any of these topics in detail in its submissions or in the records provided to me.

[64] Campbell Bros. is not in compliance with s. 19.3 (Hazard Identification and Assessment Methodology) either. In fact, the appellant stated in its submissions that hazards are identified on the basis of the accident history and the recommendations received from employees. However, s. 19.3 clearly requires more than that. For example, para. 19.3(1)(*f*) requires the identification of hazards taking into account "any government or employer reports, studies and tests concerning the health and safety of employees". Essentially, nine factors must be taken into account for identification to be

[65] With regard to s. 19.4 (Hazard Identification and Assessment), the employer must use the methodology developed under s. 19.3, with which the appellant is not in compliance. Moreover, I did not receive any convincing records that would lead me to believe that the appellant is in compliance with all the criteria of this section. I do not doubt that the appellant attempts to identify the hazards present in the workplace. However, with the evidence before me, I cannot conclude that that attempt satisfies the requirements of s. 19.4.

[66] Campbell Bros. is not in compliance with s. 19.5 (Preventive Measures) either. To be compliant with that section, the employer must first use the identification carried out under sections 19.3 and 19.4. Because I have determined that the appellant is not in compliance with those sections, one can conclude that the appellant is not in compliance with s. 19.5 either. In addition, once again, there is nothing to indicate that the appellant follows all the elements required under s. 19.5. Actually, the appellant has submitted no convincing evidence to demonstrate that the company follows those elements, and the subject was not dealt with in-depth in the appellant's submissions or anywhere else. I do not doubt that Campbell Bros. has taken some measures, but there are no indications that those measures satisfy the requirements of s. 19.5.

[67] Lastly, let us look at s. 19.6 (Employee Education). As with the other sections of the Regulations, s. 19.6 is part of a whole (the plan) with which the appellant has not complied, as I have demonstrated a number of times. Clearly, para. 19.6(1)(*a*) states that the employer must educate its employees by explaining to them the hazard prevention program, which is practically non-existent in this case. Already we see that the appellant is not compliant with the requirements of s. 19.6. I would like to add that, once again, no convincing evidence was given to me regarding subsections 19.6(2) and (3). Therefore, I cannot conclude that the appellant is in compliance with those sections of the Regulations.

[68] For these reasons, I conclude that the appellant is not in compliance with the requirements of para. 125(1)(*z.03*) of the Code and Part XIX of the Regulations. In fact, as with the other items of the direction, the appellant lacks of evidence and records, and the procedures that it uses to satisfy the requirements of the Code are not used systematically and skirt a number of important components. Therefore, I agree with the HSO's determination in his direction that none of the components of Part XIX of the Regulations have been met. I find that he was justified in issuing the third item of the direction.

[69] The appellant had the opportunity to provide me with all the evidence and records it felt were necessary. This was a *de novo* appeal and the investigation was reconducted by the undersigned. Therefore, the appellant had the opportunity to demonstrate to me that it was in compliance with the Code, but failed to do so. The appellant contested HSO Lessard's decision and, for me to rescind it, the appellant needed to demonstrate

Decision

[70] For these reasons, the direction issued to Campbell Bros. by HSO Lessard on February 15, 2011, is confirmed.

Michael Wiwchar
Appeals Officer