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

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Canada Labour Code
Part II
Occupational Health and Safety

Don Boucher and James Stupor
applicants

and

Correctional Service Canada
e*mployer*

Decision No. 02-022
October 21, 2002

This case was heard by appeals officer Douglas Malanka on February 20, 2002 in Kingston Ontario. Chris Mattson, Health and Safety Officer was not present at the hearing.

Appearances

Mr. D. Lee, President, Collins Bay Institution Local, UCCO-SACC- CSN, Mr. D. Boucher, and Mr. Michel Bouchard, Correctional Officer.
Mr. John Jaworski, Counsel, Treasury Board and Ms. Julie Blasko, Assistant Warden, Management Services.

[1] On August 20, 2001, correctional officers Mr. Don Boucher and Mr. James Stupor continued to refuse to work pursuant to section 128 of the Canada Labour Code, Part II (hereto referred to as Part II or the Code. The two officers complained respectively that conditions in the south east and south west towers at Collins Bay Institution (CBI) constituted a danger under the Code.

[2] Health and safety officer Chris Mattson investigated the refusals to work and, following his investigation, advised parties that a danger did not exist for either officer. He confirmed his decision of no danger in writing that day.

[3] Health and safety officer Mattson was not available for the hearing and so did not testify. His written report provided in advance of the hearing will not be repeated here, but forms part of the file.

[4] Mr. Boucher testified at the hearing and I retain the following from his documents and testimony.

[5] On the morning of August 20, 2001, Mr. Boucher proceeded to his assignment in the South East Tower of the CBI. He testified that, when he arrived at the south east tower, he could smell what he described as noxious fumes. To reach his post located at the top of the tower, he stated that it was necessary to climb a set of stairs and then a ladder which the employer compared to a ship's ladder. Access to the top of the tower was accomplished by climbing the ship's ladder through a narrow hatch door at the top of the ships ladder. A climbing pole and rail in the tower post assisted in climbing through the hatch door into the tower post.

[6] Half way up the ladder to the top of the tower, at approximately 30 feet, Mr. Boucher slipped on the stair. He was startled by the event but not physically injured. The slip, however, caused the weapon he was carrying to strike the wall of the tower. When Mr. Boucher proceeded to the hatch, he struck his head on the raised hatch cover and the muzzle of his rifle also struck the hatch cover. Mr. Boucher further testified that he had slipped on the same set of stairs on January 14, 2000 and injured himself. He said that he was off work for 10 months with the injury and found when he returned that the steps were loose, dirty and slippery and that nothing had been done since his injury to address the hazards there. He stated that there had been other injuries related to the steps and, on the morning of August 20, 2000, he concluded that a danger existed relative to the stairs up to the first landing and the ladder and hatch door leading up to the post at the top of the Tower. He testified that he refused to work out of frustration so that the matter could be resolved.

[7] Following his refusal to work, correctional officer Boucher completed an Officer Statement[1] on August 20, 2001. The following extracts are taken from his report.

- there is a noxious odour in the south east tower;
- pipe wrapping is peeling off and mold is present throughout the tower;
- the writer has breathing problems after lengthy time in the tower;
- all stairs ascending to the top of the tower are wet, dry rotted, moldy and cracked;
- plaster and cement from the walls is cracking and falling on the stairs;
- some stairs in the middle of the tower feel loose;
- tower is not up to the National Building Code;
- the stair railing is too short;
- there are exposed power lines and electrical boxes and sockets;
- access hatch to the top is too small;
- there are bird droppings and evidence of other vermin; and,
- cleanliness of the tower, toilet leaks, suitability and cleanliness of the furniture.

[8] Mr. Stupor did not testify at the hearing, however, he indicated in an attachment to his Refusal to Work Registration[2] form his reasons for refusing to work. They included:

- tower is extremely dirty and smells unsanitary;
- stairs are unsafe;
- live exposed wires:

[1] Correctional Service Canada form designated therein as CSC/SCC 875 (R-94-07)
[2] A form indicated as being an Human Resources Development Canada form, designated as LAB 1069 (10-94) B

- narrow hatch;
- hit weapon going through the narrow hatch and was not sure if weapon was safe; and,
- hit my head going through the narrow hatch.

[9] Mr. David Lee, a correctional officer at CBI and currently Union President of the Local at CBI testified regarding previous hazardous occurrences in the south east tower involving the stairs where an employee was injured. Mr. Lee said that he was competent to discuss the reports as he had assisted the injured employees with their compensation claims. Mr. Lee referred to the following occurrences (only initials of injured employee included here):

- **A.H. - July 11, 1993:** "Fell down a flight of stairs, chipped tooth and hurt back." According to Mr. Lee, the accident occurred in the south east tower when the officer was descending the stairs."
- **D.B. - January 14, 2000:** "…Fell going up the stairs in the south east tower." According to the Hazardous Occurrence Investigation Report (HOIR) the uncleanliness of the steps was a contributing cause of the accident and to remedy the situation. The accident investigator recommended that the stairs be inspected and cleaned.
- **B.H. - January 9, 2002:** "While coming down the stairs of the South East Tower I lost my footing and slipped on the stairs while carrying the rifle hurting my back." It was noted in the HOIR that, previously, material had been put on the stairs to prevent slipping and there had been a sign cautioning that the steps were steep.
- **G.W.W. - January 24, 2002:** "While going up steel stairs I slipped with wet shoes on stairs. I grabbed weapon to prevent from falling and held onto the railing with left arm." The author of the HOIR indicated the stairs to be inspected and cleaned.

[10] Mr. Bouchard submitted the two documents. The first was a report entitled,

CBIIJOHS INVESTIGATION
RE: STAIRWAYS,
Conducted 17 Jul 01.
(Reference: Ontario Building Code (1997), Section 3.4.6.4. Handrails.)

In the report, the Committee reported that a number of hand rails at CBI were outside current (height) levels (34" – 38") including the handrails on the second ladders located in the south east and south west towers, and the hand rail associated with the first set of stairs in the south west tower. The Committee recommended that all handrails at CBI be modified, as needed to bring them into compliance with the referenced Ontario Building Code.

[11] The second document was an extract from the Treasury Board of Canada health and safety directive entitled, "Use and occupancy of buildings". Mr. Bouchard referred to the definition for a floor opening and to sections 17.1, 17.7 and 17.12.1. The sections read:

- "Floor opening means an opening measuring 300 mm of more in its smallest dimension in a floor, platform, pavement or yard."

- 17.1.1 "The design and construction of every building shall meet the standards set out in Parts 3 - 9 of the National Building Code of Canada, 1985, to the extent that is essential for the safety and health of employees."
- 17.7 "Where an employee has access to a wall opening from which there is a drop of more than 1.2 m., or to a floor opening, guard rails shall be fitted around the wall opening of floor opening or it shall be covered with material capable of supporting all loads that may be imposed on it."
- 17.12.1 "Where there is a hazard that tools or other objects may fall fom a platform or other raised area onto an employee:

(a) a toe board that extends from the floor of the platform of other raised area to a height of not less than 125 mm shall be installed; or"

[12] Ms. J. Blasko, Assistant Warden, Management Services at CBI and co-chair of the joint CBI health and safety committee testified at the hearing. She participated in the investigation of the refusals to work by correctional officers Boucher and Stupor. For the investigations, she prepared a list of the complaints by officers Boucher and Stupor relative to their respective refusals to work and, during her investigation, recorded her observations and comments beside each complaint. Following the investigation, she concluded that a danger did not exist for either employee.

[13] She testified that the complaints relative to mould, flaking plaster and cement, bird droppings and the overall cleanliness of the south east tower were attended to forthwith. She disagreed that the wooden stairs steps were dry rotted, mouldy or unsecured. She testified that the "exposed" power line was in fact a speaker wire and while complaints relative to electrical boxes and sockets were corrected forthwith, they did not pose a danger to correctional officers. She added that officers are not required to use the basement steps and, while those issues were not relevant, they were addressed.

[14] With regard to the design of the stair railings and steps, she said that they did not have to comply with the National Building Code (NBC) since the building was constructed in 1938 and the tower was not in the process of being renovated. She testified that the hatch opening was small and could see how care would have to be exercised when climbing through it. However, she held that it was not a danger

[15] Ms. Blasko further testified that each tower is equipped with a tube-like device called a proving chamber. The proving chamber can be used by correctional officers to test fire their weapon if they wish to verify whether or not there is a live round in the chamber of the weapon or to confirm whether or not the weapon, or parts thereof, is damaged or defective. If they are not satisfied with the condition of their weapon, they can request a new weapon from the main gate via the radio or telephone found in each tower.

[16] Mr. Boucher held that a danger existed for correctional officers Boucher and Stupor and requested that I rescind the decision by health and safety officer Mattson to the contrary.

[17] He argued that a danger existed because there are no guardrails to protect the hatch opening as require under subsections 2.5(1) of the Canada Occupational Safety and Health Regulations found in Part II entitled, "Permanent Structures. Subsection 2.5(1) reads:

> 2.5(1) Where an employee has access to a wall opening from which there is a visible drop of more than 1.2 m, or to a floor opening, highly visible guardrails shall be fitted around the wall or floor opening or it shall be covered with material capable of supporting all loads that may be brought to bear on it.

[18] He added that the hatch cover does not comply with subsection 2.9(3) of the above subject regulations as there is no toe board. Subsection 2.9(3) reads:

> 2.13 Where there is a hazard that tools or other objects may fall onto a person from a platform or other raised area, or through a floor opening or floor hole
>
> (a) a toe board that extends from the floor of the platform or other raised area to a height of not less than 125 mm shall be installed…

[19] He further held that the dimension of the hatch openings in the towers are too small for correctional officers to comply with paragraph 2.9(3) of the above noted regulations when accessing the hatch. Paragraph 2.9(3) reads:

> 2.9.(3) No employee shall carry tools or materials while climbing a fixed ladder unless the tools or materials are carried in a safe manner.

[20] Mr. Boucher argued that the spiral stair cases in the towers do not conform with item 3.4.7.4 of the National Building Code because the steps are not perpendicular to the person, the dimensions of front edge and back end of the steps do not confirm, and the rise and run are not uniform.

[21] Finally, he held numerous occupational health and safety hazards existed as outlined by correctional officers Boucher and Stupor in their refusals to work.

[22] Mr. Jaworski argued that the facts in the case failed to establish that a danger under the Code existed and cited the case of Welbourne and Canadian Pacific Railway Co., Decision No. 01-008 heard by appeals officer Serge Cadieux for interpreting the definition of "danger." He requested that I confirm the decision of no danger made by health and safety officer Mattson following his investigation of the refusals to work by correctional officers Boucher and Stupor.

[23] He held that while the definition of danger in the Code now applies to potential or existing hazards or conditions, the Welbourne and Canadian Pacific Railway Co. decision correctly established that the hazards must reasonably be expected to cause injury or illness before it can be corrected to constitute a danger. He stated that CBI was constructed in 1938 and older buildings may not be as comfortable and clean as the more modern ones. He held that most of the hazards and conditions that correctional officers Boucher and Stupor cited in their refusals to work related to comfort and cleanliness issues, and not to danger.

[24] With regards to Mr. Bouchard's contention that Part II of the Canada Occupational Health and Safety Regulations, Permanent Structures, require that the hatch hole be guarded by a guard rail and toe board, Mr. Jaworski argued that the hatch door is closed during a shift and is only opened to permit correctional officers to enter or leave the post at the top of the tower. Therefore, the requirements for a guard rail and toe board do not apply to the hatch holes in the towers at CBI.

[25] Mr. Jaworski conceded that the opening of the hatch hole is small and can make it difficult for an officer of large stature to climb through it with a weapon and duffle bag. However, he reminded me that CBI has been in operation since 1938 and the hazard related to this are not new. He held that there was no evidence in the case to establish that a weapon was damaged and thereby constituted a danger. He added that, if correctional officers Boucher or Stupor believed that their weapon had been damaged at any time they could use the radio or telephone in the tower and request the main gate to deliver another weapon. The officers could also test the weapon in a test firing chamber located in each of the towers. The evidence in the case is that neither officer requested another weapon or tested their weapon in the test firing chamber.

[26] While he conceded that there may have been mould present in the tower, Mr. Jaworski pointed out that there was no evidence confirming this or that there was an link between the mould cited by correctional officer Boucher and his complaint that there was a foul smell in the tower and he had breathing problems after lengthy times in the south east tower. In this regard he cited the appeals officer decision in the case of Employees and Amalgamated Transit Union and Laidlaw Transit Ltd. Para Transpo Division identified as decision No. 12-018 and dated August 7, 7001.

[27] Mr. Jaworski disagreed with Mr. Bouchard's contention that the spiral stair cases in the towers do not conform to National Building Code or Treasury Board directive. He argued that the standards apply in respect of the design and construction of new buildings and the renovations of buildings. Since the towers in question were constructed in 1938 and there was no renovations undertaken to the towers, the aforementioned standards do not apply.

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[28] The issue to be decided in this case is whether a danger under the Code existed for either correctional officer Boucher or Stupor relative to any of their respective complaints regarding the south east and west end towers.

[29] For interpreting the definition of danger under the Code, I refer to the Welbourne and Canadian Pacific Railway Co. case wherein appeals officer Cadieux stated in paragraphs 19 and 20 that the existing or potential hazard or condition or the current or future activity referred to in the definition, must be one that can reasonably be expected to cause injury or illness to the person exposed thereto before the hazard, condition or activity can be corrected or altered. With regard to the phrase "before the hazard, condition or activity can be corrected or altered" he added that there must be a reasonable degree of certainty that an injury or illness is likely to occur right then and there upon exposure to the hazard, condition or activity unless it is corrected or altered. That is, one cannot wait for an

accident to occur and one must act immediately. I agree with his interpretation and will apply it in this case. For information, the following reproduces paragraphs 19 through to 21:

> [14] In this case, the issue to be decided is whether Mr. Welbourne was in a situation of danger, as defined in the Code, as a result of the blow pipe coming apart at the clamp position. Given that the Code was amended very recently i.e. September 30, 2000, there is a need to look closely at the meaning of danger under the "new" Code in order to apply the proper criteria in determining whether danger, as provided by the Code, exists.
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> [15] "Danger" is defined at subsection 122(1) of the Code as follows:
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> *"danger" means any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system.*
>
> *"danger" Situation, tâche ou risque - existant ou éventuel - susceptible de causer des blessures à une personne qui y est exposée, ou de la rendre malade - même si ses effets sur l'intégrité physique ou la santé ne sont pas immédiats -, avant que, selon le cas, le risque soit écarté, la situation corrigée ou la tâche modifiée. Est notamment visée toute exposition à une substance dangereuse susceptible d'avoir des effets à long terme sur la santé ou le système reproducteur.*
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> [16] This new definition of danger is similar to the previous definition of danger that existed in the pre-amended Code, which read:
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> *"danger" means any hazard or condition that could reasonably be expected to cause injury or illness to a person exposed thereto before the hazard or condition can be corrected.*
>
> [17] The current definition of "danger" sets out to improve the definition of "danger" found in the pre-amended Code, which was believed to be too restrictive to protect the health and safety of employees. According to the jurisprudence developed around the previous concept of danger, the danger had to be immediate and present at the time of the safety officer's investigation. The new definition broadens the concept of danger to allow for potential hazards or conditions or future activities to be taken into account. This approach better reflects the purpose of the Code stated at subsection 122.1, which provides:
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> *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.*
>
> [18] Under the current definition of danger, the hazard, condition or activity need no longer only exist at the time of the health and safety officer's investigation but can also be potential or future. The New Shorter Oxford Dictionary, 1993 Edition, defines "*potential*" to mean "possible as opposed to actual; capable of coming into being or action; latent." Black's Law Dictionary, Seventh Edition, defines "*potential*" to mean "capable of coming into being; possible." The expression "*future activity*" is indicative that the activity is not actually taking place [while the health and safety officer is present] but it is something to be done by a person in the future. Therefore, under the Code, the danger can also be prospective to the extent that the hazard, condition or activity is capable of coming into being or action and is reasonably expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected or the activity altered.

> [19] The existing or potential hazard or condition or the current or future activity referred to in the definition must be one that can reasonably be expected to cause injury or illness to the person exposed to it before the hazard or condition can be corrected or the activity altered. Therefore, the concept of reasonable expectation excludes hypothetical or speculative situations.
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> [20] The expression "*before the hazard or condition can be corrected*" has been interpreted to mean that injury or illness is likely to occur right there and then i.e. immediately[3]. However, in the current definition of danger, a reference to hazard, condition or activity must be read in conjunction to the existing or potential hazard or condition or the current or future activity, thus appearing to remove from the previous concept of danger the requisite that injury or illness will likely occur right there and then. In reality however, injury or illness can only occur upon actual exposure to the hazard, condition or activity. Therefore, given the gravity of the situation, there must be a reasonable degree of certainty that an injury or illness is likely to occur right there and then upon exposure to the hazard, condition or activity unless the hazard or condition is corrected or the activity altered. With this knowledge in hand, one cannot wait for an accident to happen, thus the need to act quickly and immediately in such situations.
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> [21] The expression "*whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity*" added to the new definition of danger is not germane to the circumstances of the present case and will not be addressed in any detail. However, for clarity and precision purposes, I refer the reader to the French version of this portion of the definition, which has the same force in law and reads "*même si ses effets sur l'intégrité physique ou la santé ne sont pas immédiats*". Literally translated, this expression suggests that an injury or an illness can occur upon exposure even if the effects on the physical integrity or the health of the exposed person are not immediate. Finally, I will not address the changes in the definition of danger that concern exposure to hazardous substances since it is not an issue in the instant case.

[30] In the case at hand, the health and safety officer considered the pertinent facts related to the refusals to work by Messrs. Boucher and Stupor and decided that a danger did not exist for either employee. I agree with his decision in each case for the following reasons.

[31] While the officers complained about the presence of odours and mould and the overall uncleanliness of the towers, they did not provide any evidence confirming the presence of mould, or that the odours, mould or uncleanliness could reasonably expect to cause injury or illness before the substances was removed or remedied. For a finding of danger, there must be some medical or scientific evidence linking the physical discomfort experienced by an employee and the hazardous substance to which the employee is exposed.

[32] In terms of the electrical issues, I was not provided any evidence that any of the anomalies cited by Mr. Boucher or Mr. Stupor constituted a danger to either of them. To the contrary, the evidence suggested that the electrical anomalies had already existed for months prior to the refusals to work. Moreover, Ms. Blasko testified that correctional officers are not required to do electrical work in the tower, suggesting that there was little risk for correctional officers.

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[3] *Brailsford v. Worldways Canada Ltd. (1992), 87 di 98 (Can. L.R.B.)*
Bell Canada v. Labour Canada (1984), 56 di 150 (Can. L.R.B.)

[33] With regard to the guard rails and stair steps associated with the spiral staircase to the first landing, section 2.2 of the Canada Occupational Safety and Health Regulations requires that the design and construction of every building constructed following the coming into force of the "Permanent Structures" meet the requirements of the 1995 edition of the National Building Code. In respect of buildings constructed prior to the coming into force of the regulations such as the CBI, and renovations thereto, the design and construction need only comply with the NBC "to the extent reasonably practicable." In the decision, Alberta Wheat Pool and Stan Zahn, decision No. 92-002, dated February 18, 1992, appeals officer Serge Cadieux (then Regional Safety Officer) wrote:

> I have already stated in a previous decision, **The New Brunswick Telephone Company Limited v Gallant**, unreported, "Given that subsection 9.12(1) requires the employer to provide a toilet room "Where it is reasonably practicable...", in my view the legislator intended to allow for a determination to be made in each case of the necessity of providing a toilet room in relation to the effort required by him to achieve this."
>
> Also, it is interesting to note that the province of Saskatchewan specifies a statutory definition for this expression, with which I agree and, in which:
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> ""practicable" means physically possible in the light of current knowledge and invention"
>
> and
>
> ""reasonably practicable" means practicable unless the person on whom a duty is placed can show that there is a gross disproportion between the benefit of the duty and the cost, in time, trouble, and money, of the measures to secure the duty."
>
> Therefore, in light of the above information, the following are the important points that should be considered when assessing the "reasonably practicable" condition:
>
> **NOTE**: A reference to the duty in the following test is a reference to the duty to provide a toilet room as prescribed.
>
> 1.A determination should be made **in each case** where the duty applies, as to whether it is "reasonably practicable" to comply with the duty.
>
> 2.In this case, the onus to demonstrate that it is not "reasonably practicable" to comply with the duty **falls on the employer**, Alberta Wheat Pool, because the duty is specified under paragraph 125(g) of the *Canada Labour Code*, Part II and the Canada Occupational Safety and Health Regulations, Part IX (Sanitation).
>
> 3.The above determination should take into consideration the **benefit of the duty versus the cost**, in time, trouble, and money, of the measures to secure the duty.
>
> 4.A computation should be made as to whether there is a **gross disproportion between the benefit of the duty and the cost**. If such a disproportion exists, then a conclusion that it is not reasonably practicable should be reached.
>
> Consequently, the safety officer should have considered the above four point test, or similar factors, to determine whether the employer met the "reasonably practicable" condition. In this particular case, the safety officer admitted that he directed the employer to provide the said toilet room without considering the above points. The safety officer only considered that it was "practicable" to provide the toilet room i.e. that it could be done by today's standards, without considering the reasonableness of the requirement as specified by the Regulation.

[34] There was no evidence in this case that it was reasonably practible to modify the guard rail or stair steps or hand rails connected to the ship's ladder.

[35] Mr. Jaworski argued that the opening to the top of the tower is normally covered by a hatch door which is only opened to permit someone to enter or leave the top of the tower. Since the hatch door is normally closed, I agree with Mr. Jaworski that section 2.12 "guardrails" and 2.13 "toe boards" do not apply in respect of the hatch door in either tower.

[36] With regard to possible damage to the weapon shoulder by the two correctional officers when climbing through the hatch to the tower, I am satisfied that they had the means to test their weapon in the test firing chamber if they suspected that the weapon had been damaged during their assent or descent on the ladder. They could also have used the radio or telephone in the towers to request to the main gate that a new weapon be delivered to them. Therefore I cannot agree with them that the hazard related to the muzzle striking the wall or ceiling constituted a danger. In his testimony regarding the correct manner of carrying a weapon into the tower via the hatch, Mr. Boucher actually agreed that it is necessary to exercise care so as not to allow the weapon to strike the wall or ceiling. I conclude from this that it can be done if proper care and caution is exercised. Regardless, there were options available to correctional officers if they felt that the weapon has been damaged.

[37] Mr. Boucher cited four accidents involving falls on the spiral tower stairs located in the south east and west Towers. Of the four accidents, one occurred in June of 1993, and the other three occurred in winter. Of the three that occurred in winter, one occurred in January of 2000 and two occurred in January of 2002. According to the hazardous occurrence reports proffered by Mr. Lee, all of the employees who fell in winter complained that their footwear was wet, or the stairs were soiled and slippery. These reports suggest that the hazard of tripping or falling on the stairs or ladder is greatest when the stairs are soiled and the footwear worn by correctional officers is wet.

[38] The refusals to work by correctional officers Boucher and Stupor occurred on August 20, 2001. Correctional officer Boucher complained in his refusal to work that the stairs in the south east corner were wet, loose and soiled with plaster and cement dust. Correctional officer Stupor complained of the height of the stair railing in the south west tower. However, Ms. Blasko reported that, when she investigated the refusal to work with the health and safety committee, the stairs were dry. Health and safety officer Mattson investigated the refusals to work later in the day and decided that a danger did not exist. A note in his report confirmed that house keeping was poor and the area needed cleaning, but did not confirm the presence of water on the stairs or ladders.

[39] There was no evidence in this case that it was reasonable to expect that the stairs or ladders in either tower would be wet, or that the employee's footwear would be wet, to persuade me that it would be reasonable to expect that the hazard of tripping or falling would manifest itself at the next use of the stairs or ladder, or that the hazard would cause injury to an employee before the hazard could be corrected. Ms. Blasko further testified that the stairs in both towers were cleaned the next day.

[40] While I conclude from the evidence that a danger did not exist with regard to the stairs and ladders, I am troubled by the facts surrounding the accidents that were cited during the hearing and the refusals to work by Messrs. Boucher and Stupor. First, there is no indication in two of the hazardous occurrence reports submitted that a member of the health and safety committee participated in the investigations of the accidents. Second, despite the fact that three or the hazardous occurrence reports identified wet boots and slippery stairs as causes and contributing factors to the accident, it does not appear that management established ongoing measures to ensure that the stairs and ladder were kept clean or to ensure that employees could dry their footwear before ascending the stairs and ladder. While it is laudable that Ms. Blasko addressed the hazards cited by the refusing employees almost immediately, it should not take an incident to provoke management into action.

[41] Mr. Boucher testified that he refused to work out of frustration that the long standing hazards were not being addresses by CBI. While his motivation is understandable, the right to refuse work provisions cannot, as in this case, be used to bring long standing occupational health and safety matters to a resolution. Whether or not all of the occupational health and safety hazards cited by correctional officers Boucher and Stupor constituted a contravention to Part II and pursuant regulations, a contravention, or number of contraventions of the Code, do not automatically equate to a danger.

[42] Health and safety officer Mattson's investigation of the refusals to work appeared to be thorough, and I agree with and confirm his finding of no danger in the case of both refusals to work.

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Douglas Malanka
Appeals Officer

Summary of Appeals Officer Decision

Decision No.: 02-022

Applicant: Don Boucher and James Stupor

Respondent: Correctional Service Canada

Key Words: Refusal to work, danger, guard towers, tower hatches, toe boards, stairs, stair railing and steps, noxious fumes, mould, exposed electrical lines, arms, ,,

Provisions: C.L.C: 128., 129., 146.(1), 146.1(1)
COSH Regulations: 2.5, 2.9(3), 2.12, 2.13

Summary:
On August 20, 2001, correctional officers Mr. Don Boucher and Mr. James Stupor continued to refuse to work pursuant to section 128 of the Canada Labour Code, Part II (hereto referred to as Part II or the Code. The two officers complained respectively that conditions in the south east and south west towers at Collins Bay Penitentiary constituted a danger under the Code.

Health and safety officer Chris Mattson investigated the refusals to work and, following his investigation, advised parties that a danger did not exist for either officer. He confirmed his decision of no danger in writing that day

Following his review, the appeals officer agreed with the health and safety officer and confirmed his decision that the hazards cited by the refusing employees did not constitute a danger under the Code.