Occupational Health and Safety Tribunal Canada

Date: 2014-11-27
Case No.: 2012-62

Between:

Canada Post Corporation, Appellant

and

Canadian Union of Postal Workers, Respondent

Indexed as: *Canada Post Corporation* v. *Canadian Union of Postal Workers*

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 varied.
Decision rendered by:	Mr Michael Wiwchar, Appeals Officer
Language of decision:	English
For the appellant:	Mr Stephen Bird, Counsel, Bird Richard
For the respondent:	Mr David Bloom, Counsel, Cavalluzzo Shilton McIntyre Cornish LLP
Citation:	2014 OHSTC 22

REASONS

[1] This decision concerns an appeal brought under subsection 146(1) of the *Canada Labour Code* (the Code) by the Canada Post Corporation (Canada Post), of a direction issued by Ms Amy Campbell, Health and Safety Officer (HSO), on September 21, 2012, citing contraventions of paragraphs 125(1)(*z*.11), 125(1)(*z*.12), 125(1)(*z*.19) and paragraph 135(7)(*e*) of the Code.

Background

[2] The appellant, Canada Post, is an agent of Her Majesty in Right of Canada. Canada Post has exclusive jurisdiction over the establishment and operation of postal services in Canada.

[3] The respondent, Canadian Union of Postal Workers (CUPW), is the certified bargaining agent for a group of employees that includes letter carriers across Canada. The employee members of the local joint health and safety committee (LJHSC) are represented by CUPW.

[4] As part of a policy program, Canada Post implemented the National Depot Management Program - On Street Activities and Safe Work Observations (NDMP). One of the goals of the NDMP was the promotion of safety on letter carrier routes. In this regard, supervisors used an on street activities and safe work observations checklist on which they recorded safety observations related to delivery.

[5] On July 31, 2012, CUPW LJHSC representatives, Ms Ruys and Ms Jazwiec, proposed at a committee meeting that inspections of the individual letter carrier routes be included as part of the Workplace Hazard Prevention Program (WHPP). They felt that the work place included public areas while a letter carrier is on delivery. However, they were advised that within the WHPP presently in place, delivery agents reported hazards to their supervisors. HSO Campbell was advised of the matter, and informed Ms Ruys that if she was not satisfied with the WHPP, she should proceed via the internal complaint resolution process.

[6] On August 28, 2012, what was then Human Resources and Skills Development Canada (HRSDC) received a complaint from Ms Ruys stating that only part of the work place was being inspected, namely only the physical building, whereas the letter carrier routes should also be inspected for hazards. HSO Campbell attended the facility, located in Burlington, Ontario, to investigate the complaint.

[7] On September 21, 2012, the HSO issued the following direction citing four contraventions:

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145.(1)

On September 11, 2012, the undersigned health and safety officer conducted a complaint investigation in the work place operated by CANADA POST CORPORATION, being an employer subject to the *Canada Labour Code*, Part II, at 688 Brant St, Burlington, Ontario, L7R 2H0, the said work place being sometimes known as Canada Post Corp. – Burlington.

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

Paragraph 125(1)(z.12) - Canada Labour Code Part II
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 the work place committee or the health and safety representative inspects each month all or part of the work place, so that ever part of the work place is inspected at least once each year.

The employer has failed to ensure that the work place health and safety committee inspects each month all or part of the workplace, such that every part of the work place is inspected at least once per year. The work place health and safety committee's current inspection activity is restricted to the building located at 688 Brant St Burlington, Ontario.

No. / No : 2

Paragraph 135.(7)(e) - Canada Labour Code Part II
A work place committee, in respect of the work place for which it is established, shall participate in all of the inquiries, investigations, studies, and inspections pertaining to the health and safety of the employees, including any consultations that may be necessary with persons who are professionally or technically qualified to advise the committee on those matters.

As part of National Depot Management, the employer's inspection program requires supervisors to conduct inspections of letter carriers work activity called "On-Street Activities and Safe Work Observations". The employer refuses to allow the workplace health and safety committee any participation in this inspection activity which pertains to the occupational health and safety of employees.

No. / No : 3

Paragraph 125.(1)(z.11) - Canada Labour Code Part II

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 employer controls the

activity, provide to the policy committee, if any, and to the work place committee of the health and safety representative, a copy of any report on hazards in the work place, including an assessment of those hazards,

As part of the National Depot Management On-Street Activities & Safe Work Observations inspection program, the employer completes a Report Form following each "Safe Work Observation". The employer failed to provide the records of inspection generated by these on-street inspections to the health and safety committee, as required. The employer also failed to provide "Mail Problem Delivery Reports", identifying health and safety hazards reported by employees, to the health and safety committee.

No. / No: 4

Paragraph 125.(1)(z. 19) - Canada Labour Code Part II

Without restricting the generality of section 124, every employer shall, in respect of ever 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, consult with the work place committee or the health and safety representative on the implementation and monitoring of programs developed in consultation with the policy committee.

By failing to provide the National Depot Management On-Street Activities & Safe Work Observations document, identified as "Confidential", and the reports referred to in Item #3 above, the employer failed to consult the workplace health and safety committee, as required, on the implementation and monitoring of the National Depot Management On-Street Activities & Safe Work Observations inspection program.

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 November 7, 2012.

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 contraventions do not continue or reoccur.

Issued at Burlington, this 21st day of September, 2012.

[signed]
Amy Campbell
Health and Safety Officer
[…]

To: CANADA POST CORPORATION
688 Brant St
Burlington, ON L7R 2H0

[8] Canada Post sought a stay of contraventions 1 and 2 of the direction, which were denied on November 28, 2012.

[9] Following the issuance of the direction, Canada Post supervisors continued to perform on route safety inspections without including the LJHSC.

[10] On April 29, 2013, the HSO conducted interviews with Canada Post management for the Burlington Depot and with the employer and employee members of the LJHSC to determine if Canada Post had complied with the direction. In correspondence dated May 3, 2013, the HSO concluded that Canada Post had failed to comply with contraventions 1, 2 and 4 of the direction.

The issue

[11] The issue to determine in this matter is whether the HSO was justified in finding that Canada Post contravened paragraphs 125(1)(*z*.12), 137(7)(*e*), 125(1)(*z*.11) and 125(1)(*z*.19) of the Code.

Submissions of the parties

A) Appellant's submissions

[12] Canada Post is appealing all four contraventions of the direction, claiming that the HSO erred when she issued the direction. Counsel for the appellant included submissions for each of the four contraventions[1].

Contravention no. 1

[13] The first contravention concerns the obligation under paragraph 125(1)(*z*.12) of the Code to ensure that the work place health and safety committee inspects each month all or part of the work place, such that every part of the work place is inspected at least once per year. The appellant argues that this inspection does not apply to each and every letter carrier point of call because an individual letter carrier point of call is not a "work place" within the meaning of this section.

[14] Counsel for the appellant acknowledges that the definition of "work place" under subsection 122(1) of the Code is a broad one and argues in favour of a restrictive interpretation of the term work place to avoid absurdity.

<u>Absurd Interpretation</u>

[15] Counsel for the appellant submits that a broad interpretation of "work place" to include each individual point of call for letter carriers would create an absurd result.

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[1] In their submissions, both parties refer to each contravention as a direction.

Rather, a purposive and contextual approach should be taken by considering the provision in its entirety. To that point the appellant reiterates that the general principle of statutory interpretation is to take the whole statute together, giving the words their ordinary meaning, unless doing so produces an inconsistency, absurdity or inconvenience so great as to lead to the conclusion that the intention could not have been to use them in their ordinary meaning. In support of this argument the appellant refers to: *Grey* v. *Pearson* (1857), 29 LTOS 67; *River Wear Commissioners* v. *Adamson* (1877), 2 App. Cas. 743; *Amos* v. *Canada (Attorney General)*, 2011 FCA 38, *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 and *Canada Post Corporation* v. *George Stout*, 2013 OHSTC 39.

[16] It is the appellant's position that interpreting "work place" to include all points of call and every street and highway would create an impossible and impractical obligation for the employer. In support of this argument, Canada Post indicates some statistics which were provided to me at the hearing by the HSO relative to the activities of letter carriers. There are:

- 8.7 million letter carrier points of call
- 72 million kilometers of linear travel
- 32 million walkway steps
- 1.1 million gates/doors
- 48,000 relay boxes
- 25,000 street letter boxes
- 740,000 rural mail boxes, with over 106 million kilometers of travel

[17] Further, the appellant explains that a letter carrier's daily routine is divided into indoor sortation and outdoor delivery functions. As testified by Ms Jazwiec, a letter carrier generally spends between four and six hours per day in delivery. If each letter carrier point of call must be inspected, the appellant claims that, based on evidence heard regarding the letter carrier route measurement system, and the time values associated to delivery at each point of call, the time to perform a "work place audit" would far exceed those time values.

[18] It is the appellant's view that letter carriers simply deliver mail; an annual inspection by the LJHSC would require a more careful scrutiny of the environment and the time required to inspect would be considerably longer than the time of delivery.

[19] Canada Post maintains that if "work place" referred to every place that an employee is required to perform work, this would result in an overbroad definition for many other federally regulated employees who are covered by the Code and whose functions involve mobility and travel. The appellant cited as examples: RCMP officers, pilots, inter-provincial trucking and bus lines, NRC employees, NAV Canada technicians, and Parks Canada employees. The appellant argues that if every place that these employees visited to perform work were considered a work place, the annual inspection obligation would have to extend to all of those places, including for example, airports around the world, remote locations such as ice flows, and communication towers. The

same implications would also apply for many provincially regulated employees such as firefighters, hydro linemen, municipal garbage collectors etc.

[20] Counsel for the appellant claims that to apply the direction to both points of call, and the “line of route” would be absurd because inspections would then need to be conducted in such places as the transportation route (taxis taken by employees, public transit, etc.); for meals on route; in public areas (airports, shopping malls or retail post offices), and gas stations.

[21] The appellant further alleges that to interpret “work place” so broadly would mean that the annual inspection obligation would apply to mail service couriers (MSCs) and rural and suburban mail couriers (RSMCs). MSCs operate postal vehicles on highways. Their responsibilities include clearing street letter boxes and delivering parcels and priority courier items to customers. MSCs deliver mail on virtually every street and point of call in all of urban Canada. Evidence shows that Canada Post vehicles logged in excess of 72 million kilometers in 2011.

[22] RSMCs provide services in rural Canada to 740 000 rural mail boxes and approximately four million points of call in community mail boxes. The appellant explains that RSMCs also have to go to customers’ doors with personal contact items. Since this could occur at any location on any given day, an approximate 740 000 private laneways would presumably have to be inspected on an annual basis. The appellant submits that such a result is impossible and impractical.

[23] Furthermore, the appellant believes that if a work place is every place that an employee performs work, then that interpretation should extend to other obligations under the Code. The appellant illustrates the absurdity of such an application with an example: Under paragraph 125(1)(*a*) where an employer is expected to ensure that all structures in a work place meet prescribed standards, the employer would then have to ensure enforcement in respect of structures it neither owns nor has a right to alter. Furthermore, there would be ambiguity as to whether a provincial or federal prescribed standard applied. The appellant also highlights that jurisdictional issues would arise since Canada Post is federally regulated but the locations are predominantly provincially located. The appellant provides several other examples of absurd interpretations in its submissions.

[24] To avoid an absurdity, counsel for the appellant submits that the definition of work place should be contextualized within the meaning of subsection 125(1) and should be tempered by two factors: (i) the nature of the locations themselves and (ii) the ability of the employer to control the location or any hazardous activity at the location.

<u>Delivery locations</u>

[25] The appellant states that the points of call are private property and therefore Canada Post’s statutory authority to deliver mail does not extend to the authority to

conduct work place inspections on that property. The appellant submits that the Code cannot authorize it to do so since private property is exclusively provincial jurisdiction.

[26] The appellant's counsel refers to the matter of *Blue Mountain Resorts Ltd.* v. *Ontario (Labour),* 2013 ONCA 75, 20130207, where the employer claimed that the resort where a fatal injury had occurred was not a "work place" as defined by the Ontario Occupational Health and Safety Act (OHSA). The Court of Appeal held that the reporting obligations under section 51(1) the OHSA were not engaged without a reasonable nexus between the hazard giving rise to the injury and the realistic risk to worker safety at the work place. A literal interpretation of the provision would lead to absurd results and did not fall within a range of possible acceptable outcomes which are defensible in respect of the facts and the law. Thus, the Court opted for a restrictive interpretation that was consistent with the provisions of the Act when read as a whole.

[27] In *Blue Mountain Ltd.*, the Court of Appeal fashioned an interpretation of work place to include a place where "(i) a worker is carrying out his or her employment duties at the time the incident occurs, or, (ii) where a worker might reasonably be expected to be carrying out such duties in the ordinary course of his or her work".

[28] The appellant admits that following this interpretation, a letter carrier point of call could be thought to be a location "where a worker might reasonably be expected to be carrying out such duties in the ordinary course of his or her work". However, the appellant argues that this definition should not apply to the present appeal and distinguishes between the requirement to notify the Minister in the event of a serious accident, as was the case in *Blue Mountain Ltd.*, and the requirement for an annual inspection in every location of the country, as is the case for Canada Post. The appellant submits that under such an interpretation of "work place" the latter requirement is far more onerous than the former and thus should not be maintained.

[29] The appellant agrees with the Court of Appeal's statement in *Boma Manufacturing Ltd.* v. *Canadian Imperial Bank of Commerce*, [1996] 3 S.C.R. 727, which reiterates that a statute must be read as a whole to ensure consistency and conformity to its overall purpose. However, counsel for the appellant submits that it is nevertheless possible to have different interpretations of the same word when they appear in different sections of the same statute. In this case, the appellant submits that the purpose of the Code can be maintained if the definition of "work place" is read down.

<u>Control over location and hazardous activities</u>

[30] The appellant submits that it does not have control over the actual delivery locations nor the hazards that may arise thereupon. According to the appellant, whether an employer has control over work activities is a central factor in order to determine what constitutes a work place. In support of this point, the appellant refers to several case law examples where the issue was whether or not the employer controlled the location or the activity that gave rise to the hazardous incident: *R.* v. *Port Colborne (City),* [1992] O.J. No. 2555 (C.J.); *Canada (Revenue) and Public Service Alliance of Canad*a, [1999]

C.L.C.R.S.O.D. No. 15 (Decision no. 99-015); *Canada (PWGSC) and Public Service Alliance Canad*a [1999] C.L.C.R.S.O.C. No. 15 (99-015)*, Seair Seaplanes Ltd.* v. *Bhangal* (Decision no.: OHSTC-09-024); *Bell Canada (Re),* 2011 LNOHSTC 21; *Pearce* v. *Jazz Air Ltd. Partnership,* 2011 OHSTC 14, *Canada Post Corporation* v. *George Stout*, 2013 OHSTC 39, *Saumier* v. *Canada,* 2009 FCA 51. Having synthesized the various case law, the appellant submits that control over the work location is necessary in order for that location to be considered a work place within the meaning of subsection 125(1) of the Code.

[31] Counsel for the appellant also points out that CUPW provides training on hazard identification and reporting and specifically trains carriers on dog bites and slip and fall situations. Furthermore, corporate procedures are in place whereby delivery can be suspended to any point of call considered to be a potential safety hazard indefinitely or until such time as a potential hazard is corrected.

[32] The appellant argues that the HSO's interpretation of "work place" within the meaning of subsection 125(1) the Code would effectively hamstring the LJHSC and make it unable to deal with health and safety issues that may arise during the employees' normal course of employment. It therefore requests that contravention no. 1 be quashed.

Contravention no. 2

[33] The second contravention relates to a contravention of paragraph 135(7)(*e*) of the Code which requires a work place committee to participate in all of the inquiries, investigations, studies and inspections pertaining to the health and safety of the employees. The work place committee for Canada Post is the LJHSC. The HSO found certain safety concerns which were flagged for supervisory observation during the NDMP and therefore the LJHSC was required to participate in the supervision. The appellant appeals this direction on the basis that paragraph 135(7)(*e*) does not apply to supervisors of letter carriers and therefore the LJHSC is not required to participate.

[34] First, Canada Post submits that, in her direction the HSO gave the phrase "inquiries, investigations, studies and inspections pertaining to the health and safety of employees" an overly broad interpretation, which, if applied, would lead to absurdity.

[35] The appellant relies on the evidence presented by Ms Mann and Ms Gould to the effect that a letter-carrier supervisor is tasked with supervisory responsibilities, both inside and outside of a letter carrier facility. Supervisors also have many other functions to perform during their on-street audits. The appellant states that the requirement for the LJHSC to participate would lead to many absurdities, such as:

1- the LJHSC would be present during activities wholly unrelated to worker health and safety;

2- in the alternative, the supervisor would have to separate any health and safety observations from other supervisory activities, leading to additional costs and operational inefficiencies;

3- Such an interpretation would mean that a supervisor cannot perform any observations of an employee in which an unsafe work practice might be observed without the participation of the LJHSC; and,

4- The LJHSC would be a witness to any activity (safety-related or operational) that might attract a disciplinary response from the employer.

[36] The appellant clarifies that while the NDMP does include one component of safety observation, the observation relates only to employees during the course of their duties and not to known or anticipated hazards. In fact, it is submitted that the observational component of the NDMP is not designed to look for known hazards at all but rather designed to correct unsafe behaviour. Furthermore, the appellant specifies that when required, supervisors would bring hazard reports to the attention of the LJHSC and it would appropriately play its consultative role in that instance.

[37] Secondly, the appellant argues that the participation required under the Code is for "inquiries, investigations, studies and inspections", which equates to more than a mere supervisory observation. To this point, the appellant illustrates that the ordinary meaning of the words "investigation, inquiry and inspection" designate a more detailed and exact process, whereas an "observation" is simply noticing or monitoring a set of events. The appellant submits that, based on their literal meanings, the nature of supervisory observations are less than inquiries, investigations, studies and inspections. The activities in question are, according to the appellant, mere supervisory observations and therefore do not require participation of the LJHSC. In support of this explanation the appellant refers to *United Parcel Service Canada and Smith,* [2000] C.L.C.R.S.O.D. No. 15; *Reid* v. *Rushton,* [2002] N.S.J. No. 92 (Nova Scotia Supreme Ct); *R* v. *Skedden,* [2000] O.J. No. 4113 (Ont. Sup. Ct. Jus.); *The Canadian Oxford Dictionary*; *Haltrem Ltd. and Halifax International Longshoring Assn.,* [1992] C.L.C.R.S.O.D. No.1; *B & R Enterprises Ltd. (Re)* [2008] N.L.L.R.B.D. No. 11; *Canadian Union of Postal Workers* v. *Canada Post Corporation,* 2013 OHSTC 23; *Order H2004-004*; *Goldie (Re),* [2004] A.I.P.C.D. No. 14 (Alberta Freedom of Information & Protection of Privacy).

[38] Third, is it the appellant's position that the concept of "participation" under paragraph 137(7)(*e*) does not require the physical presence of the LJHSC at the listed activities. In support of that argument, the appellant suggests that the interpretation of participation should follow HRSDC's interpretations policies and guidelines (IPG) which, does not explicitly or implicitly require the committee to agree to conduct the investigation or inquiry, nor does it refer to the methodology to do so.

[39] The appellant also refers to *Haltrem Ltd.*, where the RSO concluded, *inter alia*, that the term "participate" means "to take part in" and that the safety and health committee must be physically present. However, the appellant notes that in *CUPE* v. *Air*

Canada, 2010 FC 103, the Court determined that the Code did not require a committee to be physically present nor did it require a joint investigation with the committee.

[40] Finally, the appellant refers *to CUPW* v. *CPC,* 2013 OHSTC 23 (TSAT decision) where it was concluded that LJHSCs have an obligation to participate in all inspections and investigations pertaining to the health and safety of employees. The appellant argues that this decision should not be adopted in this case and in fact this matter is to be the subject of judicial review[2].

[41] Therefore, the appellant submits that the NDMP does not apply to letter carrier points of call, because they are not a work place, and that supervisory obligations are not "inquiries, investigations, studies and inspections", and "participation" does not require the physical presence of an LJHSC member during these supervisory observations.

Contravention no. 3

[42] The contravention is under paragraph 125(1)(*z.11*), which requires the employer to provide any report on hazards in the work place, including an assessment of those hazards. The direction noted that the employer failed to provide to the LJHSC the report forms which are completed under the NDMP (i.e. the safe work observation checklist), and the Mail Problem Delivery Reports, which are hazard reports. The appellant appeals this item of the direction on the basis that the NDMP checklists are not reports on hazards in the work place within the meaning of paragraph 125(1)(*z. 11*) of the Code; and that the Mail Problem Delivery Reports are in fact being provided to the committee.

[43] The appellant submits that the NDMP checklist is not focused on hazardous occurrences but rather records general observations of a letter carrier at work. In fact, all of the observable criteria listed on the form are completely unrelated to any health and safety issue and instead pertain specifically to the delivery functions of a letter carrier.

[44] Furthermore, the appellant submits that the evidence presented shows only recorded observations of letter carriers who did not perform work according to procedure. Although there are safety implications related to the observed conduct, the appellant insists that it falls within the normal supervisory observation. If there are safety impediments, the appellant clarifies that the proper course of conduct by the supervisor is to prepare a Mail Delivery Problem Report.

[45] Contrary to the statement of the HSO, the appellant asserts that it did and does provide the LJHSC with the actual reports on hazards, namely the Mail Delivery Problem Reports and Hazard Reports, as per the evidence of Ms Mann.

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[2]The judicial review was heard on September 4th, 2014.

Contravention no. 4

[46] This contravention of paragraph 125(1)(*z.19*) requires the employer to consult with the LJHSC on the implementation and monitoring of the NDMP. The appellant appeals this direction on the basis that the section only applies to programs developed in consultation with the Policy Committee. According to the appellant, the NDMP is not a health and safety program and was not developed in consultation with the policy committee, the national joint health and safety committee (NJHSC).

[47] From the evidence presented by CUPW, the appellant submits that the NJHSC was not involved in the NDMP development but was only raised as a courtesy to consider whether involving the NJHSC was appropriate. The appellant submits that they only committed to review LJHSC involvement and provide feedback and did not agree that LJHSC had an actual role.

[48] The appellant therefore requests that all four contraventions be rescinded.

B) Respondent's submissions

[49] The respondent claims that the appeal should be dismissed and all four contraventions of the direction should be maintained for the reasons that follow.

Contravention no. 1

[50] The respondent submits that the appellant should be required to abide by contravention 1. According to the respondent, the term "work place", as it appears in subsection 125(1) is to be interpreted broadly and doing so is consistent with the objectives of Part II of the Code, which is to prevent accidents and to protect the health and safety of employees. In support of this argument the respondent refers to several decisions including: *Mowat Express* v. *Communications, Energy and Paper Workers Union of Canada* (QFL-CLC*),* June 1, 1993, Decision No. 94-004 (Cadieux); *Port Colborne (City),*[1992] O.J. No. 2555; *Blue Mountain Resorts Limited* v. *Ontario (Labour),* 2013 ONCA 75, 20130207, Docket C54427 (MacPherson, Armstrong and Blair JJ.A.); *Bell Canada* v. *Communications, Energy and Paperworkers Union of Canada,* 2011-08-22, 2011 OHSTC 21 (Aubre); *R* v. *Timminco Ltd*. [2001] O.J. No. 1443; *Ontario (Ministry of Labour)* v. *Hamilton (City),* [2002] O.J. No. 283; *Canada (Public Works and Government Services) and Public Service Alliance of Canada,* [1999] C.L.C.R.S.O.D. No.18.

[51] The respondent also points out that many tribunal decisions recognize that a "work place" is not necessarily a single location, an interior location or a stationary location. Rather a work place can include multiple outside locations and may indeed be moveable.

[52] The respondent also points to the HRSDC Guide to Violence Prevention for Part XX of the *Canada Occupational Health and Safety Regulations* (COHSR), which

indicates that the Code definition of "work place" includes any area where an employee is making a delivery for the employer.

[53] Furthermore, the respondent asserts that the appellant controls delivery activity on letter carrier routes so as to render delivery locations part of the work place subject to the duties set out under subsection 125(1).

[54] To illustrate this point, the respondent points to each part of a letter carrier's work day that is measured by the employer: under the Letter Carrier Route Measurement System, the routes are structured and letter carriers are required to walk their route in a specified sequence and pattern and deliver in a particular order. The employer also directs what clothing will be worn, how quickly a letter carrier walks, how the satchel is fitted and loaded, the size of the bundles of mail in the satchel and how mail is removed from the satchel.

[55] With respect to the appellant's submission that it does not have authority in respect of private property and therefore no control over the delivery location, the respondent believes that this is ill founded and misleading because the appellant does in fact exercise functional control over the delivery activities carried out by letter carriers.

[56] Regarding the appellant's submission that the respondent's interpretation of work place is absurd, the respondent indicates that a finding of absurdity is only appropriate where the consequences of the interpretation can be characterized as obviously inconsistent with the objects of the statute, or if they are ridiculous or inequitable as per *Rizzo & Rizzo Shoes Ltd. (Re),* cited previously.

[57] The respondent submits that the evidence demonstrates that the interpretation of "work place" adduced by CUPW is consistent with the language of section 122 and subsection 125(1) and the purpose of Part II of the Code.

[58] The respondent further submits that the parties have recognized the lines of routes as part of the work place for the purposes of Part XIX of the COHSR and thus "work place" should have the same meaning under section 125 of the Code, in accordance with the *Interpretation Act* which specifies that expressions in Regulations, in the absence of a specific definition, have the same meaning as in the enacting statute.

[59] The respondent submits that under the WHPP, pursuant to Part XIX of the COHSR, the respondent has authorized on route hazard inspections by LJHSCs. There was extensive evidence presented by Ms Gould and Mr Champoux to the effect that LJHSC members have performed route audits in the context of the WHPP to locate and correct hazards, and have walked routes, including rural routes serviced by RSMCs. They have also been involved in inspecting portions of letter carrier routes.

[60] The respondent also submits that the Canada Post Policy 1202.05 sets out a detailed protocol for letter carriers and supervisors with respect to delivery hazards, including the identification, investigation, and resolution with customers.

[61] The respondent further states that although the appellant claims that the obligation to inspect points of call on an annual basis would overwhelm the employer and exceed time values, these assertions are unsupported by evidence. In fact, from the evidence that was presented by J. Jazwiec, the respondent submits that it would be possible to inspect the 73 routes in Burlington in 18 days, or more quickly depending on the inspection protocol that would be put in place by LJHSC.

[62] The respondent also denies that their interpretation of "work place" would result in a requirement for transportation vehicles, meal locations or gas stations to be inspected. The respondent clarifies that neither they nor the HSO seek a direction that would be applicable to MSCs and RSMC. The respondent further asserts that the evidence presented by the appellant in respect of MSCs and RSMCs is not complete and therefore should not be the basis of a decision that will affect other groups of employees.

[63] The respondent further states that the appellant's submissions with respect to other federally regulated employees and provincial equivalents are speculative and are not supported by sufficient evidence. Furthermore, it is submitted that the evidence does not establish that any of those federal employers exercised control over work activities in remote locations .The determination of what constitutes a work place should be flexible and will depend on the particular circumstances.

[64] The respondent points out that there is a distinction in subsection 125(1) between work place locations controlled by the employer and work place locations not controlled by the employer. Therefore, according to the respondent it is possible for the requirements under section 125 to be interpreted according to whether or not the employer actually controls the location where the work activity is taking place.

[65] The respondent also submits that, were the appellant's restrictive interpretation of work place to be adopted, it would limit every health and safety obligation under the Code to locations owned by an employer, irrespective of what steps could be taken to identify hazards and ensure the health and safety of employees working in such locations. It is the respondent's submission that the appellant's interpretation would lead to absurdity as it would defeat the purpose of the legislation.

Contravention no. 2

[66] The respondent submits that the appellant should be required to allow the LJHSC to participate in the work place inspections of the NDMP.

[67] The respondent notes that under the NDMP, supervisors are mandated to go out on letter carrier routes to promote safety, and are directed to identify on route hazards and resolve them. Also, the respondent argues that the On Street Activities and Safe Work Observations form contemplates that hazards will be identified and recorded and be brought to the attention of the letter carrier and the LJHSC member. The respondent further asserts that even if safety inspections are part of a supervisory observation

program, it does not alter the fact that supervisors are inspecting the points of call in order to foster and ensure employee safety. Therefore, since the supervisors make observations which result in records being prepared and discussed with the LJHSC, it is the respondent's submission that subsection 135(7) clearly applies.

[68] According to the respondent, since the NDMP involves safety inspections, the LJHSC has a right to participate and it is not open to the appellant to prohibit or dictate the extent of that participation. Referring to *CUPW* v. *CPC* (TSAT decision) the respondent points out that the LJHSC is in the best position to decide the level of participation required. Moreover, if the LJHSC wants to participate, the managers cannot refuse to let it, given that it is fulfilling its duties under the Code.

[69] The respondent further submits that, contrary to counsel for the appellant's assertion, the observational component of the NDMP includes hazard identification and resolution and therefore Canada Post ought to consider how the LJHSC can be involved.

[70] The respondent submits that, contrary to the appellant's view, the role of a LJHSC is not restricted to a review of accident reports and that it is indeed entitled to "direct participation".

[71] The respondent also clarifies that in *CUPE* v. *Air Canada* the Federal Court expressly stated its agreement with the thrust of *Haltrem*, meaning that a member of the LJHSC must be physically present.

Contravention no. 3

[72] The respondent submits that the appellant should be required to produce the NDMP checklists and Mail Problem Delivery reports. The respondent asserts that the forms in question record observations of hazards and are therefore hazard reports.

Contravention no. 4

[73] The respondent alleges that the appellant failed to properly consult with respect to the implementation of the NDMP and therefore cannot rely on its own failure to properly consult in order to avoid its responsibility to consult with the LJHSC. It is submitted that the appellant was required to co-operate with the Burlington LJHSC in a way that enabled it to fulfill its duties under paragraph 125(1)(*z.08*). In the alternative the respondent requests that the direction be varied and the appellant be required to consult with the policy committee NJHSC under paragraph 125(1)(*z.03*) and with the LJHSC under paragraph 125(1)(*z.19*) and to co-operate with the LJHSC in accordance with paragraph 125(1)(*z.08*).

C) Reply

Contravention no. 1

[74] In his reply to the written submission of the respondent, counsel for the appellant submitted that hypotheticals are in fact appropriate to use as an analytical approach and cites as examples *George Stout* and *Blue Mountain Resort*.

[75] The appellant also clarifies that, contrary to the respondent's assertion, parties, by their past conduct, cannot influence the interpretation of a provision of the Code which has application to all federally regulated employers.

[76] The appellant also reiterates its position that the interpretation of work place must not be too broad, and argues that it would be too broad to interpret work place in accordance with the HRSDC Guide to Violence Prevention for Part XX of the Regulations as the respondent submits.

[77] The appellant also submits that, contrary to the respondent's assertion, there is evidence regarding what is a work place for MSCs and RSMCs. Further, the appellant believes that the respondent's submission with respect to the amount of time necessary to conduct inspections is speculative. Rather, according to the appellant, the evidence shows that the average route has an outdoor portion of approximately 6 hours and therefore any inspection would intuitively take more than that amount of time.

[78] The appellant also clarifies that the fact that a location is a place where work may be performed does not mean that the location is a "work place" for other purposes. Thus, the appellant alleges that what Canada Post does in respect to letter carrier points of call in other circumstances is neither determinative nor instructive in determining whether or not the location should be a work place.

[79] In further response to the respondent's submission, the appellant submits that the respondent implicitly accepts that the term "work place" must be interpreted in the context of the particular section of the Code in which it is found.

Contravention no. 2

[80] Regarding contravention 2, the appellant submits that the respondent has equated observing and recording to inspecting, when in fact the caselaw referred to in the appellant submission indicates that the terms are separate.

[81] The appellant further alleges that the TSAT decision should not apply in the present appeal, because the appeals officer in that case did not consider any evidence of cooperation or participation. The appellant asserts that the Federal Court in *CUPE* v. *Air Canada* was specific about not requiring physical participation.

[82] With respect to the Canada Post Policy 1202.05, the appellant argues that it is only relevant to the degree of participation in the hazard prevention identification, namely that the LJHSC does a site inspection when delivery is to be recommenced in an area where it was suspended. The appellant believes this is consistent with the finding that physical participation is not required, as per *CUPE* v. *Air Canada*.

Contravention no. 3

[83] The appellant reiterates that NDMP documents should not be looked at in isolation. Contrary to the respondent's assertion, when the checklists are looked at as a whole, they cannot possibly be considered hazard reports. The appellant reiterates that the reports in question were in fact provided to the LJHSC.

Contravention no. 4

[84] The appellant submits that the policy committee wasn't involved in developing the policy because it did not need to be, and therefore the LJHSC did not need to be consulted. The appellant alleges that the obligation to cooperate to which the respondent refers is only triggered if there is an applicable policy under which to consult the LJHSC.

Analysis

[85] The issue raised by the present appeal is whether the appellant has contravened the obligations under paragraphs 125(1)(*z.11*), (*z.12*), (*z.19*) and paragraph 135(7)(*e*). At the onset, I note that counsel for both parties have extensively considered each contravention of the direction that was issued, and have provided very thorough submissions on each aspect. While being very mindful of the whole of the parties' submissions, I will analyze the integral aspects of the appeal and address each contravention separately.

Contravention no. 1

Paragraph 125(1)(*z.12*) *Canada Labour Code* Part II

The employer has failed to ensure that the work place health and safety committee inspects each month all or part of the workplace, such that every part of the work place is inspected at least once per year. The work place health and safety committee's current inspection activity is restricted to the building located at 688 Brant St., Burlington, ON.

<u>The term "work place"</u>

[86] The first contravention concerns the obligation under paragraph 125(1)(*z.12*) which requires the employer to ensure that the health and safety committee inspect annually every part of the work place. HSO Campbell, when issuing her direction, considered that the obligation for the LJHSC to inspect the work place ought to include

areas where work is performed outside of the physical building located at 688 Brant St. Burlington, Ontario. I must therefore determine whether this specific obligation does indeed apply to all places where letter carriers carry out their work. Although not specified in the direction, this would include, as the parties mention in their submissions, individual points of call and the lines of route.

[87] In order to make this determination I must examine the introductory wording of subsection 125(1) which sets the scope of the specific obligations imposed on the employer. Subsection 125(1) reads:

> 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.

[88] It is clear from this wording that, in order for any obligation under subsection 125(1) to apply to an employer, it must be in respect of a work place. The first question for my determination is therefore whether or not a work place can be any place other than the physical building where the letter carriers are employed. Subsection 122(1) states that:

> "work place" means any place where an employee is engaged in work for the employee's employer.

[89] Counsel for the appellant argues that the definition of work place should not extend to individual points of call for the purposes of the obligation under (*z.12*). Such a broad interpretation would render essentially every location a letter carrier visited a work place, and a requirement to inspect each of these locations would be absurd and inconsistent with the intention of Parliament.

[90] On the other hand, counsel for the respondent submits that the employer has already recognized that the term "work place" does include letter carrier points of call by virtue of their Work Place Hazard Prevention Program under which points of call are inspected.

[91] Having considered these submissions, I refer to a principle of statutory interpretation found at section 12 of the *Interpretation Act* which states that: "Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects." The objective of health and safety legislation is the prevention of accidents and injuries and I am therefore of the view that "work place" must be interpreted broadly to account for all the areas in which an employee may be engaged in work, and in this case, in light of the necessary mobility of a letter carrier.

[92] As the respondent points out, tribunal decisions and judicial authorities recognize that the work place is not necessarily a single or stationary location. I agree with the

appeals officer in *Mowat Express* who specified that the definition of work place in subsection 122(1) applies to all places where an employee works, whether or not they are under the employers' control. Therefore, I find that, for Canada Post letter carriers, work places include places outside of the physical building where they are engaged in work such as points of call and lines of route.

Scope of section 125

[93] I will turn now to the scope of the specific obligations arising from subsection 125(1). The very precise wording of the introduction indicates that the obligations set out in subsection 125(1) centre around the notion of control. There is a clear distinction between situations where work places are controlled by the employer and those where they are not. In other words, subsection 125(1) specifically accounts for the employer who controls both the work place and the activity, or solely the activity and not the work place. However, the wording does not specify which obligation applies to which situation. It becomes clear from a plain reading of the obligations that: (i) some obligations apply to any employer, whether or not they control the work place, as long as they control the work activity, and (ii) other obligations, in order to be executed, require that the employer have control of the physical work place.

[94] In my 25 years working as a HSO and technical advisor I have dealt with and implemented most, if not all, of the employer obligations under subsection 125(1). I therefore have extensive experience with the obligations, and knowledge of their scope and application, as well as with the prescribed requirements contained in the COHS Regulations.

[95] The wording at the beginning of subsection 125(1) indicates to me that the legislator drafted the section in this way in order to ensure that the employer be bound to the fullest extent possible by the obligations under the Code and its Regulations. Some paragraphs under subsection 125(1) refer to obligations which can only be carried out at a work place that is under the control of the employer. Conversely, other paragraphs confer an obligation on any employer whether or not they control the work place, as long as they control the work activity. One example of the latter is found at paragraph 125(1)(*t*) which states:

> (*t*) ensure that the machinery, equipment and tools used by the employees in the course of their employment meet prescribed health, safety and ergonomic standards and are safe under all conditions of their intended use;

[96] In my opinion, the obligation to inspect under *(z.12)* belongs to the former category because the purpose of the work place inspection obligation is to permit the identification of hazards and the opportunity to fix them or to have them fixed. Control over the work place is necessary to do so.

[97] Similarly, paragraph 125 (1)*(a)* is another example of an obligation that applies to an employer who has control over the workplace. It states that an employer must:

> (a) ensure that all permanent and temporary buildings and structures meet the prescribed standards;

In this regard, I agree with Mr. Bird's submission that it would be impractical for an employer to perform this obligation in respect of structures it neither owns nor has a right to alter. Such an obligation would only be possible where the employer has control over the physical work place.

[98] With respect to the present case, it is not disputed in either party's submissions that the employer does not have physical control over the individual points of call or lines of route of a letter carrier. Indeed both parties concede that many points of call are private property. Furthermore, the evidence provided by the witnesses at the hearing demonstrates that Canada Post does control the work activities carried out by the letter carriers, right down to the way they hold their satchels and how they walk the routes.

[99] Given that Canada Post does not have exclusive access to private properties, nor can it alter or fix the locations in the event of a hazard, it cannot be said that a point of call or line of route is controlled by the employer. I fail to see how an employer can effectively ensure that an inspection be carried out in accordance with (*z.12*) at a work place over which it has no control. The obligation to inspect is one that can only apply to an employer who has control over the physical work place. I therefore find that subsection 125(1)(*z.12*) does not apply to any place where a letter carrier is engaged in work outside of the physical building at 688 Brant St. Burlington, Ontario and would rescind the first contravention and vary the direction accordingly.

[100] In any event, the evidence has demonstrated that Canada Post has many policies, programs and assessment tools that evaluate and promote the health and safety of their employees in all the elements of their work. Notably, the WHPP developed by Canada Post is exemplary in its protocol for identifying and reporting hazards that are encountered at the points of call. In my opinion the program is an excellent example of how the Code and its Regulations are implemented to protect the health and safety of employees performing all kinds of activities in all kinds of work places.

Contravention no. 2

Paragraph 135(7)(*e*) *Canada Labour Code* Part II

As part of National Depot Management, the employer's inspection program requires supervisors to conduct inspections of letter carriers' work activity called "on street activities and safe work observations". The employer refuses to allow the work place health and safety committee any participation in this inspection activity which pertains to the occupational health and safety of employees.

[101] The second contravention concerns the failure of the LJHSC to participate in the inspections carried out in relation to the NDMP in accordance with section 135(7)(*e*). In her direction HSO Campbell considers that the NDMP contains an inspection that pertains to the health and safety of employees. In respect of this contravention I must first determine whether the NDMP is a health and safety inspection that triggers the obligation in paragraph 135(7)(*e*). If so, then the LJHSC is required to participate in the manner described. The section requires the work place committee to:

> […] participate in all of the inquiries, investigations, studies, and inspections pertaining to the health and safety of employees, including any consultations that may be necessary with persons who are professionally or technically qualified to advise the committee on those matters.

[102] Counsel for the appellant argues that the NDMP is not a health and safety inspection program. While it does include a safety observation component, the observation is of the employees and not the hazards. The letter carrier supervisors that carry out these observational tasks are doing so as part of their supervisory responsibility. To require the LJHSC to participate in this supervision would be absurd.

[103] The respondent submits that since the safety observation is a component to the NDMP, it changes the character of the entire program, making it a health and safety inspection and therefore subject to paragraph 135(7)(*e*).

[104] In my opinion, the crux of the issue in this contravention is what constitutes a health and safety inspection. Paragraph 135(7)(*e*) requires participation in <u>all</u> of the inquiries, investigations, studies and inspections pertaining to the health and safety of employees. The legislator drafted this provision broadly in order to capture all the things mentioned, provided that they pertain to the health and safety of the employees. In other words, if health and safety is the primary purpose of an inspection, then the requirement to participate is triggered. Therefore, the pertinent question is not whether the NDMP is an inspection or an investigation, but rather, whether it is a <u>health and safety</u> inspection or investigation.

[105] In order to make this determination, I find it useful to review the oral evidence presented by Ms Mann at the hearing about the nature and objectives of the NDMP. According to Ms Mann, the NDMP is a management program that focuses on operational monitoring and quality control of letter carrier activities. It features many components, of which the safety observation is only one small part. Predominantly, it is a tool to verify the quality of the letter carrier mail delivery. For example, supervisors are provided with a worksheet and checklist where they are required to verify a number of performance related details: including that ad mail is being included in deliveries when required, that the mail is meeting customers as it should, that the carriers are following their line of travel, that the bundle sizes are appropriate etc.

[106] Given this explanation, and the documents in support thereof, I am of the view that the NDMP is a "big picture" program, as opposed to other policies and programs at Canada Post which are more focused on health and safety assessments, such as the WHPP and Policy 1202.05. Whereas the latter two programs work to reduce risks, and to anticipate, report and resolve the hazards found at the points of call, the NDMP is meant to ensure a quality system of delivery at the depots; hence the observational role of the supervisors.

[107] From the documents submitted by the respondent, it is my view that the WHPP in place at Canada Post has features that pertain to the health and safety of employees such as: the identification, evaluation, reporting and resolution of hazards and the implementation of preventative initiatives. More specifically, it is intended to assess the work place for health and safety issues, to improve safety and reduce injuries and hazards. It seeks to identify hazards, their potential causes and determine preventative initiatives that will make the work place safer. Route audits also occur in certain areas under the WHPP, to further ensure the safety of the delivery locations and the routes themselves.

[108] Similarly, Policy 1202.05 outlines the necessary steps that employees, supervisors and superintendents must take to identify and correct hazards and impediments to delivery. The policy outlines roles and responsibilities of each employee, and steps to be taken in order to identify, report and resolve the hazards found on route.

[109] On the other hand, the NDMP promotes delivery quality and standardized approaches to increase efficiency. In substance it provides the supervisor with guidelines and tips on how to conduct observations of the letter carriers and how to engage in performance dialogue with the employees. Supervisors are given "On Street Kit forms", containing a number of forms on which they record their observations. Only one of these forms is a health and safety form, and it is for the purposes of reporting incidents, not for an inspection of the location.

[110] Comparing these three Canada Post programs, it is clear to me that the WHPP and Policy 1202.05 present a stark contrast to the NDMP. The latter does not predominately pertain to the health and safety of the employees.

[111] The character of the NDMP is also very different from the TSAT assessment which was evaluated in *CUPW* v. *CPC,* 2013 OHSTC 23, a decision from this Tribunal, to which both parties refer in their submissions. In that case, Appeals Officer Lafrance found that the TSAT was:

> [138] […] a systematic inspection that looks closely at the location of RMBs to assess whether a location meets or fails established criteria therefore, deciding on the safety of the location for deliveries by RSMCs. Those criteria are in essence, the presence or not of a road shoulder to stop the RSMC vehicle to do the delivery, the width of the road, the number of road lanes, the presence of a solid line at the centre of the road,

> the line of sight (time gap), the speed of traffic, and the number of vehicles in a given amount of time.
>
> [139] I therefore find that the TSAT assessment process falls within the definitions of "inspection" and pertains to the health and safety of the employees as understood in paragraphs 134.1(4)(*d*), 135(7)(*e*) and 136(5)(*g*) of the Code.

[112] In comparison to the TSAT, it cannot be said that the NDMP has an equal emphasis on the health and safety of letter carriers. Rather it is a program that observes letter carrier work performance during delivery. The safety observation checklist is one small component of the program and much more general than the TSAT. Namely, the checklist only refers to adherence to safety procedures without the specificity contained in the TSAT inspection. This indicates to me that the essence of a supervisor's duties in their observation of letter carriers is not safety based. Furthermore, I note that many of the safety elements on the checklist do not apply to letter carriers, but rather to MSCs, given that they are the ones using vehicles for delivery.

[113] I therefore find that, in pith and substance, the NDMP On Street Activities and Safe Work Observations is not a health and safety inspection and therefore the LJHSC is not required to participate in the manner described in paragraph 135(7)(*e*).

[114] Having found that the NDMP is not an inspection that pertains to the health and safety of the letter carriers, it is therefore not necessary for me to address whether the LJHSC has participated within the meaning of the paragraph. I would rescind the second contravention and vary the direction accordingly.

Contravention no. 3

Paragraph 125(1)(*z.11*) *Canada Labour Code* Part II

As part of the National Depot Management on Street Activities and Safe Work Observations inspection program, the employer completes a Report Form following each "Safe Work Observation". The employer failed to provide the records of inspection generated by these on street inspections to the health and safety committee, as required. The employer also failed to provide "Mail Problem Delivery Reports", identifying health and safety hazards reported by employees, to the health and safety committee.

[115] The issue in dispute with respect to contravention no. 3 is whether the On-Street Activities and Safe Work Observations forms (checklists) are hazard reports within the meaning of paragraph 125(1)(*z.11*) of the Code.

[116] From the evidence, I note that the checklist in question contains 4 components of delivery performance on which supervisors are expected to report: route and ad mail info; quality check details and follow up; equipment check and seeding; and vehicle checks. There is no option on the checklist to report a hazard found at the location or on the route

and in any case, supervisors are required to complete a Mail Delivery Problem Report when a hazard is encountered. Given that reporting a hazard is done on entirely different reports (i.e. on the Mail Delivery Problem Report and the Hazard Report), it cannot be said that the checklists are hazard reports. I therefore find that NDMP forms do not need to be provided to the LJHSC.

[117] On the other hand, the Mail Delivery Problem Reports and Hazard Reports are in fact hazard reports, which the appellant does not contest and therefore should be provided to the LJHSC. At the hearing, during cross-examination, Ms Mann did not confirm that the Mail Delivery Problem Reports were consistently being provided to LJHSC. Based on this evidence, I am not convinced that at the time the direction was issued, both the Mail Delivery Problem Reports and the Hazard Reports were being provided to the LJHSC.

[118] I would therefore vary the third contravention by removing the portion that states that the NDMP forms are not being provided and maintain the portion that states that the Mail Delivery Problem Reports are not being provided.

Contravention no. 4

Paragraph 125(1) (*z. 19*) *Canada Labour Code* Part II

By failing to provide the National Depot Management- On Street Activities and Safe Work Observation document, identified as "confidential", and the reports referred to in Item number 3 above, the employer failed to consult the work place health and safety committee, as required, on the implementation and monitoring of the National Depot Management On Street Activities and Safe Work Observation inspection program.

[119] Regarding this contravention, the issue is whether the LJHSC should have been consulted on the implementation and monitoring of the NDMP in accordance with the obligation at paragraph 125(1) (*z.19*). The appellant rightly points out that the obligation to consult is only triggered if the program was developed in consultation with the policy committee, in this case the NJHSC. Therefore, I must determine whether the NDMP was developed in consultation with the NJHSC.

[120] The matter could be simply disposed of if the NJHSC minutes submitted in evidence indicated that the NJHSC had been consulted in the development of the NDMP. This is not the case. Having reviewed the evidence, I see only that the appellant had reported to the NJHSC at the annual meeting regarding the safety observation list and the WHPP. I therefore see no indication that the NDMP was developed in consultation with the NJHSC and in fact the respondent does not dispute that no consultation took place. Without this precondition, the obligation at paragraph (*z.19*) does not apply and therefore there cannot be a contravention.

[121] The respondent requests in the alternative, that I vary the direction and direct the appellant to consult with the NJHSC and the LJHSC in the development of the NDMP.

To decide this, I must address whether or not there was, in the first place, a duty to develop the NDMP in consultation with the policy committee or the health and safety committee. This duty is found at paragraph (*z.09*) which states:

> "develop health and safety policies and programs in consultation with the policy committee or, if there is no policy committee, with the work place committee or the health and safety representative;"

[122] In order for this provision to apply, the central question is thus, once again, whether or not the NDMP is a health and safety policy or program. For the reasons stated in my above analysis of contravention 2, I have quite clearly determined that the NDMP is not a program which pertains to the health and safety of employees. Therefore, there was no obligation under (*z.09*) to develop the NDMP in consultation with the NJHSC and I cannot direct the appellant to do so.

[123] The respondent also mentions that the appellant should be required to develop, implement and monitor in consultation with the policy committee under (*z.03*). However, that paragraph refers to the prescribed program for the prevention of hazards, which is the WHPP, not the NDMP. I therefore cannot grant the alternative request of the respondent and would rescind the contravention and vary the direction accordingly.

Decision

[124] For the reasons outlined above, I vary the direction by rescinding contraventions 1, 2 and 4 and would vary contravention 3 to read as follows:

The employer failed to provide "Mail Problem Delivery Reports", identifying health and safety hazards reported by employees, to the health and safety committee.

Michael Wiwchar
Appeals Officer

APPENDIX

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145.(1)
AS VARIED BY APPEALS OFFICER MICHAEL WIWCHAR

On September 11, 2012, Health and Safety Officer Amy Campbell conducted a complaint investigation in the work place operated by CANADA POST CORPORATION, being an employer subject to the *Canada Labour Code*, Part II, at 688 Brant St, Burlington, Ontario, L7R 2H0, the said work place being sometimes known as Canada Post Corp. – Burlington.

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. Paragraph 125 (1) (*z.11*) - Canada Labour Code Part II

   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 employer controls the activity, provide to the policy committee, if any, and to the work place committee of the health and safety representative, a copy of any report on hazards in the work place, including an assessment of those hazards,

   The employer failed to provide "Mail Problem Delivery Reports", identifying health and safety hazards reported by employees, to the health and safety committee.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(*a*) of the *Canada Labour Code*, Part II, to terminate the contravention no later than November 7, 2012.

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 Burlington, this 21st day of September, 2012.

[signed]
Amy Campbell
Health and Safety Officer
Certificate Number: ON3052

To: CANADA POST CORPORATION
688 Brant St
Burlington, ON L7R 2H0