

# Canada Labour Code Requirements for Annual Workplace Inspection Only Apply to Employer-Controlled Work Areas



## Factual Background

The Supreme Court of Canada, in its long-awaited decision rendered in *Canada Post Corp. v. Canadian Union of Postal Workers*<sup>1</sup>, has recently confirmed that specific provisions of the *Canada Labour Code* (“CLC”) regarding inspection of a workplace, for health and safety purposes, only extend to that part of the workplace over which an employer has physical control.

In this case, a complaint was filed with Human Resources and Skills Development Canada, by a representative of the union who sat on the Local Joint Health and Safety Committee (the “Committee”) at the Burlington Depot, in Ontario.

The complaint claimed that Canada Post Corp (“Canada Post”) failed to comply with its obligations under section 125(1)(z.12) of the CLC by limiting its annual workplace inspections to the Burlington Depot only. The complaint stated that such inspections should not be limited to the Burlington

Depot, but should also cover all letter carrier routes and locations where mail was being delivered.

## **Earlier Decisions**

A Health and Safety Officer (“HSO”) first found that Canada Post was in violation of its inspection obligations pursuant to the CLC, which provides that an employer must ensure that every part of a workplace must be inspected by the Committee at least once a year.

This decision was overturned by the Appeals Officer, the latter concluding that Canada Post only had the obligation to perform annual inspection of the workplaces over which it had physical control, thus excluding letter carrier routes and delivery locations.

The Federal Court confirmed the Appeals Officer’s decision in judicial review. However, the Federal Court of Appeal allowed the appeal of the decision and reinstated the HSO’s initial ruling that Canada Post was indeed in violation of its obligations under the CLC.

## **Supreme Court Decision**

A majority of the Supreme Court of Canada restored the Appeals Officer’s decision, which was deemed reasonable in the circumstances.

Applying its new standard of review, the Court found reasonable the Appeals Officer’s decision that in order to fulfill the inspection obligation under section 125(1)(z.12) of the CLC, control over the workplace is necessary because the purpose of such workplace inspection is to permit the identification of hazards and the opportunity to fix them or have them fixed.

Indeed, according to the Court, the Appeals Officer reasonably

agreed with Canada Post's submission that it would have been impractical for an employer to fulfill its inspection obligation under the CLC with respect to "structures it neither owns nor has a right to alter"<sup>2</sup>.

We note, however, as this was a part of the Appeals Officer's practical considerations, that in this case, Canada Post already had voluntarily implemented a Workplace Hazard Prevention Program ("WHPP"), which aimed at identifying and reporting hazards encountered by letter carriers.

## Conclusion

This decision remains crucial for federally regulated employers dealing with similar delivery structures and conditions, as the Supreme Court has clearly confirmed that annual health and safety inspection obligations apply only to workplaces over which the employer has effective control.

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### Footnotes

1. 2019 SCC 67.
2. *Ibid.*, para. 55.