Compliance Alert: Safety Committee Inspection Rights Don’t Include Areas Employer Doesn’t Control

> ***Canada Labour Code*, Sec. 125(1)(z.12):** “Every employer shall, . . . **in respect of every work activity carried out by an employer 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 every part of the work place is inspected at least one each year” (emphasis added)

The meaning of the above language was the issue of this case which began when the JHSC of Canada Post’s Burlington site extend its monthly inspection to include letter carrier routes and points of call outside the facility. Management refused. Since we don’t control those routes, it would be pointless to inspect them, it reasoned.

The Lawsuit

The union filed a grievance setting off a ping-pong of litigation:

- **Ping:** The MOL began by finding CP in violation of Sec.

125(1)(z.12);

- **Pong:** The federal OHS tribunal reversed concluding that the inspection duty doesn't apply to places an employer doesn't control;
- **Ping:** The appeals court reversed the OHS tribunal and reinstated the original MOL inspector's ruling;
- **PONG:** Finally, after 7 years, the case reached the Canadian Supreme Court for ultimate resolution. The OHS tribunal's ruling was reasonable and the federal court should have let it stand, it ruled. True, the OHS laws should be read broadly to ensure the safety purpose is carried out. But the tribunal's finding that employers need not let the JHSC inspect places they don't control was reasonable and consistent with the purpose of the law. After all, the Court reasoned, "an interpretation which imposed on the employer a duty it could not fulfil would do nothing to further the aim of preventing accidents and injury" [*Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67 (CanLII), December 20, 2019].

What It Means

This isn't the first time that a court has resisted the call to overextend OHS "workplace" duties in the name of safety. The leading case is a 2013 ruling from Ontario in which a hotel guest drowned in an unguarded swimming pool. The OHS inspector claimed the death was a "workplace" fatality and cited the hotel for not reporting it to the MOL (under Sec. 51(1) of the Ontario *OHS Act*).

The Labour Board upheld the MOL but the hotel had the last laugh when the Ontario high court shot down the citation. Interpreting the pool as a "workplace" was unreasonable, said the Court of Appeal. By the Board's logic, employers would have to report "whenever a non-worker dies or is critically injured at or near a place where a worker is working, has

passed through or may at some other time work, regardless of the cause of the incident.” This goes way beyond what the legislature could have intended in enacting the reporting rule, the Court added [*Blue Mountain Resorts Limited v. Ontario (Labour),* 2013 ONCA 75 (CanLII), Feb 7, 2013].

The Bottom Line

While OHS laws are meant to be interpreted broadly to serve the health and safety objective, there are also limits on how far safety duties can be stretched. Specifically, the geographical scope of an employer’s OHS “workplace” duties is based on the employer’s control rather than the property lines of the workplace.