Occupational Health and Safety Tribunal Canada

Tribunal de santé et sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Bell Canada, 2011 OHSTC 21

Date: 2011-08-22
Case Nos.: 2010-36 and 2011-04
Rendered at: Ottawa

Between:

Bell Canada, Appellant

and

Communications, Energy and Paperworkers Union of Canada, Intervenor

Matter:	Appeal under subsection 146(1) of the *Canada Labour Code* against two directions issued by a health and safety officer.
Decision:	The directions are rescinded.
Decision rendered by:	Mr. Jean-Pierre Aubre, Appeals Officer
Language of decision:	English
For the appellant:	Ms. Maryse Tremblay, Counsel, Heenan Blaikie LLP

REASONS

[1] This decision concerns appeals filed by appellant Bell Canada against two directions issued to the appellant by Health and Safety Officer Jimmy Ammoun (HSO) respectively on August 24, 2010, and December 9, 2010, after conducting a work place inspection on and around June 7, 2010, at the appellant's place of business situated at 725 Colborne Street, London, Ontario, that address being a place where employees of the appellant were and are employed and one of nine such addresses or locations that make up a territory or district for which an umbrella workplace health and safety committee (Ontario West - Committee 6005) had been constituted through application of subsection 135(6) of the *Canada Labour Code,* Part II (the Code). The first direction (August 24, 2010) resulted from a finding by the HSO that the appellant had contravened paragraph 125(1)(z.12) of the Code by failing to ensure that each of the nine work locations that make up the appellant's Ontario West District had been wholly or partially inspected monthly, as required by the Code, in order that every part of each such separate work location have been wholly inspected at least once a year. The HSO thus directed the appellant to conduct on a monthly/yearly basis complete or partial inspections of all work locations taken as individual work places so as to satisfy the requirements of paragraph 125(1)(z.12) of the Code. The second direction (December 9, 2010) resulted from a finding by the HSO, following the inspection mentioned above, that the size of the operations conducted by the appellant in the Ontario West District (9 locations) for which a single "umbrella" work place health and safety committee had been established by the appellant and the Communications, Energy and Paperworkers Union of Canada (CEP) (Committee 6005) and approved through application of subsection 135(6) of the Code, precluded the effective functioning of that single committee for those locations or work places. The HSO directed the appellant to establish individual work place health and safety committees for every location or work place that made up the appellant's Ontario West District, thereby basically ordering the dismantling of said Committee 6005 as it stood, or at least ordering that its functions and obligations, including workplace inspections, be carried out through individual workplace or local committees constituted for each of the nine locations that made up the appellant's Ontario West District.

[2] It should be pointed out at this stage that while there existed nine locations covered by the committee at the outset of the HSO intervention, one such location (Sarnia), where there apparently was only one employee, has seen that employee position eliminated and thus Committee 6005 would now cover only eight locations. Furthermore, at the relevant time, following a reorganization of the appellant's operations, a total of 496 employees worked at these locations/buildings with the bulk of those (approximately 79%) being employed at one location situated at 100 Dundas Street-Talbot Square, London, contrary to the finding by HSO Ammoun that there were more than one thousand employees involved. Noteworthy also is the fact that almost all of these employees perform clerical duties, using a computer at a designated desk. These employees are unionized and represented by CEP. At the time of the issuance of those two directions, the employees were covered by a collective agreement which came into effect on January 19, 2010, with an expiry date of May 31, 2013. This last information is important because there is no respondent to this appeal as the union representing these employees (CEP) has indicated

that it shares the positions taken by the appellant relative to both directions since the employees it represents have expressed their satisfaction with the current structure of the committee and how it functions. As such, CEP has joined the appellant in seeking that the two directions be rescinded. These appeals are thus unopposed and not contested.

[3] While the appeals that make up this case were originally filed separately, with the appellant of the first direction having agreed to proceed through written submissions, the later issuance of the second direction to the same appellant, with obvious elements common to the first, brought about a decision to consolidate both appeals for the purpose of hearing and determination. As such then, the decision that follows relative to the first direction mentioned above is based on the written submissions already filed prior to the *viva voce* hearing into the second direction, with supplementary comments that counsel may have seen fit to make in light of the evidence submitted at the actual hearing.

Background

[4] As both directions concern in some way the actual structure and working of umbrella workplace or local Committee 6005, it is important first to understand how this committee of the employer, as well as similar if not identical others, came about. On the subject of local or workplace health and safety committees, the basic requirement under the legislation, that of general application to every federal employer, is found at subsection 135(1) of the Code which requires every employer, for the purposes of addressing health and safety matters that apply to individual work places the latter controls, this being defined at subsection 122(1) of the Code as "any place where an employee is engaged in work for" his or her employer, establish a work place health and safety committee where the work place comprises twenty or more employees, and select and appoint its members according to the rules established at section 135.1 of the Code. The legislation however provides for exceptions to the general requirement. As such, the appellant Bell has been exempted from the requirements of subsection 135 (1) of the Code since at least 1999. Such exemption, granted pursuant to subsection 135(6) of the Code, would indicate that the HRSDC/Labour Program, of which HSO Ammoun is part, has formally approved and continued to approve the existing local or workplace health and safety committee structure for Committee 6005 as well as eight such other workplace health and safety committees (4 in Québec and 4 in Ontario) and through that exemption has recognized that such structure "has a responsibility for matters relating to health and safety in that work place to such an extent that a work place committee under subsection 135(1) (of the Code) is not necessary." The end meaning or result of such an exemption, according to the appellant, a result agreed to by CEP, is that each of those committees, such as Committee 6005, is attached to a territory rather than to specific buildings or locations within the territory.

[5] More specific to Committee 6005, the documentary evidence shows that the most recent exemption was granted on November 24, 2009, following a joint agreement filed with a Labour Program official by appellant Bell and the CEP in respect of the committee structure as a revalidation request under subsection 135(6) of the Code. Evidence is to the effect that this agreement led to the November 24, 2009, exemption. That

agreement/revalidation request, signed by both employer and union representatives, reads as follows:

> Following the merging of the two unions at Bell Canada and a reorganization that created another company (Bell-Aliant in Quebec and Ontario), Bell Canada and the Communications, Energy and Paperworkers Union of Canada (CEP) are hereby applying for revalidation of the **Joint Bell Canada/CEP Health and Safety Committee structure.**
>
> It should be noted that the Corporate Health and Safety Committee (Bell Canada's Policy Committee) remains the same.
>
> Enclosed for your information is an updated list of the Bell Canada/CEP-Sales and Clerical Employees Local Health and Safety Committees and the building locations covered by each of the Committees. (Nota: Attached was the list of 9 Committees and their building locations, including specifically that of Committee 6005)
>
> Request for validation:
>
> 1. Considering that these proposed Committees will have the power and functions found in Part II of the Canada Labour Code;
> 2. Considering that these proposed committees were created and put in place following an agreement between Bell Canada and its duly authorized employees' Representatives;
> 3. Considering that the employees affected by this request have been so informed through their Representatives;
>
> We hereby request that HRSDC revalidate the Health and Safety Committees structure as per subsection 135 of Part II of the Canada Labour Code.

[6] An exemption order pursuant to paragraph 135(6)(a) of the Code followed the above cited request and agreement. That exemption order is dated November 24, 2009, and therefore precedes in time the inspection by HSO Ammoun as well as the two directions that are the subject of the present appeals. This particular exemption concerns all five Ontario umbrella committees, including Committee 6005, and bears the signature of the Regional Health and Safety Officer, HRSDC-Labour Program, Ontario Region. Once again, it is important to reproduce at length the text of that exemption order because it bears directly on the outcome of these two appeals. It reads as follows:

> By Bell Canada herein called the employer
>
> IN RESPECT OF:
> (...)
> Committee 6005 - Ontario West
> (...)
> being a committee at a work place controlled by the employer
>
> WHEREAS, pursuant to an agreement between the employer and his employees, represented by the Communications, Energy and Paperworkers Union of Canada, Sales and Clerical Employees, the above

committee of persons has been established in respect of the workplace addresses as noted in the application and,

WHEREAS, I am of the opinion that the above committee has a responsibility for matters relating to health and safety in that work place to such an extent that a work place committee under subsection (1)is not necessary;

NOW THEREFORE, pursuant to paragraph 135(6)(a) of Part II of the Canada Labour Code, I exempt the employer from the requirements of subsection (1) in respect of the above work place on the following terms and conditions:

1. that this exemption will remain in effect until the expiry date of the agreement (including any period during which the agreement continues in force during negotiations for a new agreement);

2. should the agreement not contain an expiry date, this exemption will remain in force for five years.

Clearly from the wording of these terms and conditions, the intent was that there would be no interruption in applicability of such an exemption, short of the parties opting for no longer having such an agreement. Furthermore, the said agreement presented no expiry date, and thus would last until November 24, 2014.

[7] On the basis of the preceding cited document, as well as the applicable IPG and OPD, Bell Canada and CEP considered and have considered the Ontario West district as a single work place so that monthly inspections of parts thereof would at the end of the year result in a complete inspection of the district locations/work place. The HSO on the other hand was of the view that the exemption was not in force at the time of his inspection and directions since in his opinion, it had expired with the coming into force of the new collective agreement between Bell Canada and CPE on January 19, 2010, and that as such no agreement could be seen as existing between the parties in relation to the actual mandate and functioning of the health and safety committee or committees. Furthermore, HSO Ammoun held the opinion that whether or not an exemption was in place, all of the nine locations of the Ontario West district were to be considered as separate/individual work places, each requiring a monthly total or partial inspection so as to ensure a complete inspection at the end of the year. Even with an exemption in place, the HSO was of the view that this only affected the composition (membership) of the actual committee and had no effect on the separate or distinct nine work places from the stand point of the required inspections. That would explain his conclusion that only part of what he felt were the required 108 potential inspections (9 locations/monthly partial inspections) to be conducted over the year had been conducted by Committee 6005.

[8] As stated above, at the time of the inspection by HSO Ammoun in this case, there were also in place 907-1-IPG-051 (Interpretations Policies and Guidelines) and OPD 907-1 (Operational Program Directives). Those documents represent operational directives and interpretation guidelines put forth by HRSDC/Labour Program to assist and guide HSOs in the application and enforcement of the Code. Those two documents

all serve to illustrate in what manner and on the basis of what criteria ministerial exemptions pursuant to subsection 135(3), or other exemptions pursuant to subsections 135(6) and section 137 relative to multi work place employers, can be achieved and while it is not necessary at this stage to examine those in detail, it is useful for the understanding of what follows to briefly quote certain excerpts. As such then, OPD 907-1, under title Umbrella Work Place Committee, article 8.5 (b), states as follows under heading "several work places":

> Where there are several work places falling under the jurisdiction of one employer in one geographical area and where both the employer and the involved employees/trade union are in agreement, the health and safety officer may accept the establishment of one work place committee for these work places having the legislated powers provided by the Act. In these cases the health and safety officer could agree to an appropriate number of members on a work place committee taking into consideration the total number of employees, work places, trade unions, etc. The employee members must comprise at least fifty percent (50%) of the total number of committee members. If applicable, these committees may request validation pursuant to paragraph 136(6)(a) and section 137 (...).

As stated above, a request for validation (or revalidation) was indeed made on June 1, 2008, pursuant to section 135 of the Code. Furthermore, establishing a single work place committee for multiple work sites is clearly possible under section 137 of the Code. In the case of 907-1- IPG-051 which serves to interpret and clarify OPD 907-1, it states under heading "Scenario 2-Multiple Work Places":

> If an employer controls more than one work place, but for logistical or administrative reasons wants to establish a single OHS Committee/Representative for these work places, s. 137 allows the employer to do this, but only with the approval of a HSO. (For the purposes of this IPG, these will be called Multi-Work Place Committees/Representatives (MWPC/R).
>
> Background
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> Section 137 is important because s.122 (1) of the Code defines "work place" as "...any place where an employee is engaged in work for the employee's employer." Since this definition is not based on geography or other specific criteria, there is a great deal of flexibility in determining what constitutes a work place, (for example, a work place could be several buildings in different locations of a city, or even in different cities).
>
> Section 137 allows the HSO to use performance based criteria to determine if the requirements of an OHS Committee/Representative have been met. This approach reinforces the importance of the Internal Responsibility System (IRS) by allowing the HSO to make a determination based on the ability of the OHS Committee/Representative structure to fulfill its role, and to require changes if the structure is not effective.

It is important to note that this IPG bears the signature of the Director General, Program Development and Guidance Directorate, Labour Program, and serves to demonstrate the general orientation to be given to the Code and in particular sections 135 and 137. Furthermore, while much of what precedes could be seen as being more properly part of the rationale for my decision in this matter, I have opted to insert those elements at the outset of this decision to illustrate the background against which the intervention of HSO Ammoun in investigating a complaint is to be viewed.

[9] HSO Ammoun first became involved in this matter in May 2010 as a result of receiving a complaint regarding a lighting issue formulated by a Bell employee at one of district 6005 locations, more specifically 725 Colborne St., London Ontario. On the day he received the complaint, HSO Ammoun had been assigned as duty officer. As stated above, the bulk of the district employees was located at the 100 Dundas Street, Talbot square location (79%), thus not the Colborne St. location, and, as established in evidence, the number of employees of the appellant in the district amounted to 496, and not approximately 1026 as put forth by the HSO in his report.

[10] It needs to be pointed out here, again for a better understanding of what will follow, that shortly prior to HSO Ammoun's involvement in this matter, more precisely on August 20, 2009, an Evaluation Report or "audit" relative to the same health and safety committee had been completed by another Health and Safety Officer, Marjorie L. Roelofsen, using the various performance evaluation criteria put forth by the Labour Program for that purpose. Towards that end, the HSO was invited and accepted to take part in a meeting of Committee 6005 where the roles of the Committee, the manner in which reporting forms such as forms 499, 9911 and 976 were to be properly completed, were discussed. According to the employer co-chair of the Committee, K. Gilroy, the HSO took a very active part in the meeting where a complete meeting agenda was covered with the officer. The report clearly indicated that the HSO was aware of the fact that this committee was an HSO approved work place health and safety umbrella committee and also of the locations it covered. As well, it indicated that the names of the committee members were printed in the minutes of the committee meetings, posted on boards as well as on the Bell intranet. The report also indicated that the Code was posted and available to the employees on Bell's intranet, and that the Regulations made under the Code were readily available to employees, posted and available on the employer's intranet. The concluding comment by the auditing HSO was that committee 6005 "appears to be a very active and well functioning WHSC". Where the audit report is concerned, HSO Ammoun testified that although he is aware of HSO Roelofsen, he was not familiar with the auditing action she had taken, and was not aware nor did he inquire or try to find out about the audit report.

[11] In the course of his initial (lighting) complaint investigation/inspection, HSO Ammoun identified two additional contraventions to the Code at the Colborne street location, specifically failure to post the Code and failure to post the names of committee members. It needs to be pointed out here that in the case of the two posting contraventions, the evidence presented was that for the great majority of the employees, this information, while not posted on a bulletin board at the work location at that time,

remained available to them individually through the Bell intranet to which they had access through their individual computer at their work station, explaining why those may have been described by counsel for the appellant as very minor contraventions. Again one should point out that on the day these contraventions were identified, they were the subject of an Assurance of Voluntary Compliance (AVC) which the employer agreed to sign and the contraventions were quickly remedied by Bell as per the proposed corrective action plan. In the course of that investigation, HSO Ammoun was made aware of the fact that the appellant had established "umbrella" health and safety committees in Ontario, that such structure allows for one committee to manage numerous work places or locations and that these local health and safety committees were broken up into local union jurisdictions. As such, Committees 6004, 6005, 6006, 6007 and 6008 would handle all health and safety matters for Bell Canada Communications, Energy and Paperworkers Union of Canada (CEP) sales and clerical employees in Ontario, and Committee 6005 was the committee responsible for the work location where the aforementioned lighting complaint had originated. In the course of that initial investigation/inspection, the HSO was informed by the employer's Associate Director of Occupational Health and Safety (Nancy Charlton) and by the employer and employee co-chairs of Committee 6005 (Kali Gilroy and Martin Bloor) that monthly work place inspections were being conducted on a one district/one work place basis. According to Ms. Charlton, all through these years, the employer had interpreted the Code, and the exemption(s) obtained pursuant to the legislation, to mean that part of each territory or district (union jurisdiction) could be inspected monthly, allowing for the entire territory/district to be inspected annually. As stated earlier, HSO Ammoun did not share that understanding and was of the view that each location in the district constituted a separate and individual work place such that inspections under the Code had to be conducted on that basis and therefore a partial or total inspection of each location had to be effectuated monthly so as to ensure a complete inspection of each location/work place annually. According to the employee co-chair of the committee, who testified at the hearing, with the number of people making up the membership of the committee (two management representatives, including the employer co-chair, and three employee representatives including the employee co-chair), this would have been difficult to achieve due to the distances between the sites and the potential for 108 inspections yearly if each location was considered an individual work place. Having concluded that the contraventions identified at the Colborne street location were founded, particularly the one relative to lighting, HSO Ammoun concluded that had monthly inspections been performed at that particular location and a work place health and safety committee established on a location/work place basis to carry out the required inspections, the contravention respecting the lighting issue would have been identified earlier. As HSO Ammoun testified at the hearing, this constituted the basis for his first direction to conduct monthly inspections on a location/individual work place basis. This also marked the initiation point of the HSO's investigation into the effectiveness of the existing committee structure.

[12] HSO Ammoun initiated the investigation into the effectiveness of the existing health and safety committee structure by contacting the employer co-chairs of the other umbrella committees in Ontario. This served to confirm that the said committees all operate in the same manner as Committee 6005, and a review of their inspection records

for the year 2009 established that all such committees conduct their inspections on the basis of one district/one work place, thus, in the opinion of the HSO, not in the manner required by the Code. HSO Ammoun's investigation led him also to review "some of the employer's compliance history", which led him to conclude that the Internal Responsibility System (IRS) in general, within the noted Bell Canada locations, was not functioning well enough to allow for work place inspections as required by the legislation. The evidence at the hearing did however establish that a considerable part of that so-called compliance history did not concern the Committee 6005 jurisdiction. He further concluded that the existing "umbrella" committee structure utilized by the employer was not appropriate, as a deficient IRS coupled with the size and nature of the employer's operations precluded its effective functioning. In explaining his rationale for arriving at his conclusion that the existing committee structure was not appropriate, which led to his issuing a second direction, HSO Ammoun indicated in his report as well as in his testimony at the hearing that his conclusion was based on his evaluation of the criteria set out in the IPG mentioned above (907-1-IPG-051) and a Memorandum issued by HRSDC on October 3, 2003. In the case of the IPG, the elements he took into account were:

- Size of the Committee and its employee composition;
- Overall number of employees that the Committee represents;
- Physical size of the work place and geographical location of buildings;
- Monthly inspection routine, ability of Committee to effectively conduct regular inspections and participate in hazardous occurrence investigations;
- Spirit of the Code and the purpose of having a representative health and safety committee;
- Labour Program's position on committee representation;

Having applied these criteria, the HSO determined that Committee 6005 had insufficient employee representation in being responsible for the number of employees of the employer working in 9 locations spread across Southwestern Ontario in 6 different cities and thus had failed to ensure that all employees were adequately represented. He thus concluded that the existing committee structure precluded an effectively functioning committee and found his conclusion reinforced by his finding that the employer failed to conduct the required inspection activity. At the hearing, K. Gilroy, who is the employer co-chair of Committee 6005, explained that while at some time, the committee may have represented a total of 1026 employees effectively spread through 9 locations in 6 different cities, and that the committee had only two employer members and three employee members, in each case including the co-chairs, a downsizing of the employer organization had seen the total employee component brought down to approximately 500+ spread over 8 locations in 5 cities, with the composition of the committee having been brought to four members for each side, the majority of those being located at the 100 Dundas, London location due to the fact that the vast majority of the employees, +70%, has been historically employed at that location.

[13] HSO Ammoun was examined at length by counsel for the appellant at the hearing. The actual substance of the answers he provided to counsel, and thus to the undersigned Appeals Officer, would normally be used by counsel, among other information, in

formulating counsel's submissions in support of the latter's position at appeal. However, in this case, what can be derived from the answers obtained through this examination could be best characterized as what the HSO did not do or consider in arriving at his conclusions, particularly as regards the second direction on the effectiveness of the Committee structure. As such I have opted to describe those at this stage of my decision as those numerous elements serve as background to this Appeals Officer formulating his findings as regards the second direction. The following are elements derived from his testimony:

- HSO Ammoun attended none of the meetings held by Committee 6005. He does not remember whether he was invited or not, but even if invited, he would not have attended because in his opinion, this would not have helped understand how the committee functioned. He felt it was sufficient to simply examine the committee reports.

- The HSO did not attend any of the Committee's review of the various reports/complaints filed by employees within the jurisdiction of the Committee nor did the HSO attend any other activities performed by members of the Committee in the exercise of their mandate.

- He did not enquire as to how many employees were then working at each of the locations coming within the jurisdiction of the Committee.

- While the HSO did enquire generally about the training received by Committee members, and found out there was ongoing training, he did not consider relevant to enquire about the full extent of the training attended by each member.

- Aside from the minutes of one Committee meeting (May 20, 2010), Mr. Ammoun did not consider relevant to review the minutes of other Committee meetings in the preparation of his directions.

- The HSO did not consider as relevant the number of meetings the Committee may have had in the year preceding his intervention.

- HSO Ammoun attended none of the inspections performed by members of Committee 6005, even if invited.

- He did not enquire about the kind of non-compliant issues typically found during inspections (serious or minor), nor how those issues are addressed by Committee members with management or how quickly they are resolved.

- He did not enquire as to the typical employee complaints or concerns that Committee members would come across or be faced with.

- He did not enquire about the level of Committee participation in investigations conducted by the employer.

- The HSO did not review the kind of injuries that are typically reported by employees coming within the jurisdiction of Committee 6005, nor was there any inquiry on his part about how expeditiously the Committee disposes of health issues and complaints raised by the employees. Furthermore, there was no enquiry about the Committee's participation in the implementation and monitoring of health and safety programs.

- Similarly, HSO Ammoun made no enquiries into the HRSDC database to determine whether Committee 6005 had been audited or evaluated for conformity with the Code, and similarly, he did not consider or review the audit findings by HSO M.L. Roelofsen dated August 20, 2009, which essentially dealt with most if not all the items not considered by HSO Ammoun, as he considered that those findings had no bearing on the matter he was considering to wit, the effectiveness of the Committee 6005 structure.

- He did not consider relevant the fact that the Union representing the employees (CEP) was satisfied with the existing structure of Committee 6005.

Issue(s)

[14] As stated at the outset, two directions are being appealed and as such, the issues raised are specific to each direction. In the case of the first direction, which orders the employer to ensure that each of the nine buildings/locations that make up Bell's Ontario West district be inspected in total or in part monthly as individual work places, the issue is whether Bell was in contravention of paragraph 125(1) (z.12) of the Code in allowing Committee 6005 to consider the locations that make up the district as a single work place and thus inspect part of the buildings/locations each month so that every part of all the buildings/locations be completely inspected over the course of the year.

[15] In the case of the second direction, Bell is ordered to establish an individual health and safety work place committee for each building/location (9) that makes up the employer's Ontario West district, because the "health and safety officer has determined that the size of the operations covered by the existing committee (Committee 6005) precludes the effective functioning of that single health and safety committee" established to cover all those buildings/locations. The issue in this case therefore is whether the evidence obtained by the HSO or adduced at the hearing supports the conclusion reached by the Health and Safety Officer.

Submissions of the appellant

[16] The submissions of the appellant were provided in writing and are thus part of the record. Given this as well as the lengthy background information that precedes, it is not necessary to reproduce at great length the submissions that are part of the record. Consequently, what follows is a short summary of the submissions by the appellant.

[17] Regarding the first direction, counsel essentially formulated the issue in the same manner as the undersigned. According to Ms. Tremblay, the central question to ask is whether the appellant, in complying through the health and safety committee with its inspection obligation pursuant to the Code, contravened said obligation enunciated at paragraph 125(1)(z.12) of the legislation by having committee 6005 inspect monthly part of the territory/buildings for which it was responsible so that at the end the year every part of the territory/buildings would have been inspected at least once. Should the answer to this question be in the negative, given existing circumstances at the time of the investigation, the consequence should be that the direction would have no foundation and would need to be rescinded. Stated differently, it would be difficult for the undersigned to find the appellant in contravention of the Code where the latter, at the time, would have been doing what it was required to do pursuant to the Code and in the manner it would have been authorized to do so by the enforcing authority. For counsel, answering this question raises the issue of whether the "work place" referred to in paragraph 125(1)(z.12) is the area over which Committee 6005 has jurisdiction, therefore a single work place, or whether each building within the area constitutes itself a distinct work place and thus base the requirement for monthly partial/yearly complete inspection in every case.

[18] On this, it is the appellant's submission that by approving Committee 6005's (and other Committees) structure through application and pursuant to subsection 135(6) and in accordance with section 137 of the Code, and by specifically finding Bell to be in compliance with paragraph 125(1)(z.12) of the Code, based on that approved structure and the existing inspection schedules, this constitutes confirmation by the Labour Program that the "work place" for which the Committee has been established is the area or territory over which it has jurisdiction or, in other words, that the jurisdiction of the Committee and the work place that attaches to the Committee are on all fours. This would be in harmony with both the spirit and provisions of the Code. In counsel's opinion, the necessary purposive interpretation of the definition of "work place" at subsection 122(1) of the Code, read in conjunction with the relevant provisions that are paragraphs 125(1)(z.12) and 135(7)(k) as well as subsection 135(6) and section 137 implies clearly that a work place committee is attached to a work place and that what is meant by "work place" in such purposive interpretation is that which corresponds to the committee's jurisdiction.

[19] In this regard, all the duties of the work place committee are defined having regard to the "work place for which it is established" (in French "pour ce qui concerne le lieu de travail pour lequel il est constitué") as stated at subsection 135(7), and therefore it flows that if a work place committee is responsible for multiple locations or buildings, the work place for which it is established would correspond to the area over which the committee has jurisdiction, or stated differently, to the grouping of locations or buildings for which the committee has been established.

[20] Similarly, counsel argues that the Code also provides that when a committee of persons is established under subsection 135(6), it is deemed to be a work place committee, and the rights and obligations of employers and employees under the Code as

well as the provisions therein must be applied "with any modifications that the circumstances require" or "avec les adaptations nécessaires" where one consults the French text of the provision. Along this line therefore, it is the appellant's submission that where a committee is established in the application of subsection 135(6) of the Code, the place for which the committee of persons was established to wit, the jurisdiction of the committee, is the work place under said provision of the Code.

[21] While this interpretation is clearly consistent with the wording of the legislation in the opinion of counsel, the appellant also contends that the administrative tools fashioned by the Labour Program to wit, the OPD and IPG cited above, serve to demonstrate that the enforcing authority that is the Labour Program of HRSDC agrees with the said interpretation.

[22] The conclusion that counsel would have me reach is that HSO Ammoun clearly erred in concluding that more than one inspection is required of every part of the work place, which is the result that the HSO would seek in concluding that every building in the territory represents a separate individual work place whilst it is the territory over which the Committee has jurisdiction that constitutes the work place. Counsel goes even further in her interpretation of the Code in stating that all the Code requires is that every part of the work place be inspected at least once a year (regardless of the identity of the work place, i.e. whether the "work place is comprised of one building or multiple buildings), and that as long as every part of the work place is inspected at least once per year, it is entirely up to the Committee to divide the parts of the work place as it considers appropriate for the purpose of scheduling its monthly inspections.

[23] Counsel concluded this first part of her submissions by stating that in the case of the first direction, the evidence has shown that Committee 6005 conducts monthly inspections of parts of the work place falling within its jurisdiction and that at the end of the year, it has completed the inspection of every part of the work place falling within its jurisdiction at least once. This being the case, it is the appellant's position that there has been no contravention of paragraph 125(1)(z.12) of the Code.

[24] Regarding the second direction, counsel for the appellant notes that HSO Ammoun's determination is based on the following two considerations: first, that he identified contraventions during his June 7, 2010, inspection/investigation and second, that he investigated and reviewed the activities of Committee 6005. In counsel's opinion, the findings of the HSO are inconsistent with first, the formal approval of the existing committee structure granted through the November 24, 2009, exemption and second, with the confirmation on August 20, 2009, that the committee structure is compliant as confirmed in an evaluation/audit performed of the Committee's activities. Counsel sees the conclusions of the HSO as based on a very limited review of the facts, on three minor contraventions immediately rectified by the employer and on an incomplete consideration of the criteria established by the Labour Program to evaluate such multi location committees.

[25] On the question of the exemption under subsection 135(6), counsel argued that it was still in effect at the time of the investigation by HSO Ammoun and his issuance of either direction. This exemption allowed Committee 6005 to function as it had for more than ten years. Contrary to the HSO's belief, that exemption had not expired on January 9, 2010, which was the date of coming into effect of the most recent collective agreement applicable to Bell clerical employees. That date was not the date at which the exemption was set to expire, as could clearly be derived from the actual wording of the exemption and did not even correspond with the date at which the prior collective agreement expired, which was May 31, 2009, while the said exemption was granted on November 24, 2009, after the expiration of that prior collective agreement. The gist of counsel's argument on this point was that when the exemption speaks of an agreement between the parties, what is meant by the word "agreement" is not a collective agreement but rather a separate agreement entered into separate and apart from any collective agreement and concluded solely for the purpose of obtaining said exemption. This would bring into play the words "any other agreement between an employer and the employer's employees" at subsection 135(6) of the Code. Counsel's position is thus that the exemption will actually remain valid until November 24, 2014 (i.e. five years following its issuance), given that the June 1, 2008, agreement at the source of the exemption did not have an expiry date. Although it is not the position of the appellant that the determinative date for the expiry of the exemption is to be based on that of the collective agreement, were it the case the exemption would nevertheless remain valid, to refer to the actual wording of the exemption, until the expiry date of the collective agreement which is May 31, 2013. In simple terms then, regardless of the base of calculation, the exemption was in force at the time of HSO Ammoun's investigation and directions, and thus the latter was not justified in issuing his second direction.

[26] It is also argued by the appellant that none of the reasons stated by the HSO during his testimony justified the issuance of a ruling contradicting the validly issued exemption under paragraph 135(6)(a). It is counsel's position that on the contrary, the evidence presented at the hearing through testimony and in written form demonstrated that:

- the Committee structure had been very stable since at least 1999,
- Committee 6005 is very active and functions well,
- Committee 6005 performs its responsibilities in a proactive manner and, in many areas, exceeds the expectations of the Code,
- except for the two directions issued in 2010 by HSO Ammoun, there has never been any other direction issued relative to Committee 6005 and its functioning,
- employees as well as employee representatives are entirely satisfied with the current structure of Committee 6005,
- the only three contraventions identified by HSO Ammoun were minor in nature and rectified immediately by the employer.

On the more specific matter of the functioning of Committee 6005, the evidence presented shows that:

- the Committee is governed by rules and procedures that were jointly developed by Bell and the CEP in accordance with the Code. Those cover all relevant topics, including the committee's structure, the scheduling of meetings , the meeting procedure, the committee's responsibilities, access to information and other related topics in respect of both the Policy Committee and the Workplace Committees;

- upon joining the Committee, all employees and management members take part in a training session that covers various topics such as interpretation of the Code, the structure and meetings of the Committee, inspections and the filling out of various report forms. In addition they are provided with documentation to serve as reference material. Supplementary training is provided bi-monthly to all members to ensure they remain current in respect of the Committee's rights and obligations including work place inspections, internal complaint resolution process, accident investigation, etc. and additional documentation is provided as needed as part of the training;

- Committee 6005 generally meets once a month and twelve meetings per year are scheduled to ensure that members get to meet at least nine times per year (minimum Code requirement). Minutes of every meeting are prepared by one of the co-chairs and reviewed by members on the day of the meeting. The minutes deal with all the topics relevant to the activities of the Committee. Typically, the meetings last from two to three hours and are held in the morning, with the afternoons of the meeting days reserved for work place inspections, with special meetings held where called for by significant construction in a building;

- an inspection schedule for Committee 6005 is established at the beginning of each year to ensure that a portion of its territory is inspected each month so as to ensure that all areas of the territory have been inspected at the end of the year. Bell and the CEP and its predecessor have conducted work place inspections on this basis at least since 1999 without complaint. The Committee members are trained to conduct inspections as per the employer's Training module and once trained, all members are called to conduct monthly inspections in teams of two (one employee and one employer representative). The schedule of inspections is established on the basis of specific criteria and all inspections are recorded in inspection reports posted and archived on Bell's Intranet indefinitely. Any item identified as "non-compliant" at inspection is brought to the attention of the relevant manager by one of the inspecting members for corrective action;

- the Committee takes part in employer accident/incident investigations by typically assigning an employee-member to participate with the staff manager and the employee who has reported the injury. Between 2008 and 2010, there were 21 minor injuries and only two disabling injuries within the jurisdiction of Committee 6005;

- the Committee monitors safety programs, such as the accident prevention

process and the ergonomic program. It is also involved in the internal complaint resolution process (ICRP) through a system whereby the Committee co-chairs are immediately informed of the filing of a complaint (9911 form), maintain contact with the relevant manager and eventually involve the Committee where the manager cannot resolve the said complaint;

- the Committee members review all reports on injuries and accidents/incidents (976 forms) and complaints (9911 forms) as well as refusals to work, if any (none over the years 2008 to 2010) at every meeting;

- finally, Committee members cooperate with health and safety officers as required.

[27] Counsel is led by what precedes to describe HSO Ammoun's review of Committee 6005 activities as totally superficial. In counsel's opinion, the HSO utterly failed to properly assess the functioning of the Committee and even refused to attend one of the Committee's monthly meetings even when invited to do so by Committee members, and in assessing those activities, notably also admitted relying on a compliance history that did not even pertain to Committee's 6005 activities.

[28] Counsel concluded her submissions on this point by noting that HSO Ammoun purposely limited his review to a few limited items, maintaining that he was justified to overlook multiple important aspects of the Committee's exercise of its responsibilities. As such, although the latter testified that he relied on the criteria set out in Labour's IPG-051 to arrive at his conclusion, he did not even consider all criteria developed by the Labour Program in the said IPG to formulate such conclusion. According to counsel, and in addition to those shortcomings listed at paragraph 13 above, the HSO failed to consider the range of tasks performed by the employees and the hazards associated with these tasks, the number and severity of hazardous occurrences, the physical size of the work place and the ability of Committee 6005 to effectively conduct regular inspections and participate in hazardous occurrence investigations, and the results of the Work Place Committee Evaluation Report (audit) on Committee 6005 prepared by HSO Roelofsen in August 2009, thus less than one year before. Instead, as noted by counsel, HSO admitted that his review was limited to the size of the Committee, the overall number of employees under the Committee (said number now greatly reduced following reorganization), the geographical location of the buildings and the monthly inspection schedule of the Committee.

[29] According to counsel, such a cursory review of the Committee's activities cannot be the proper basis of a direction overturning at least 10 years of history without any prior suggestion that the Committee structure raises any safety concerns. Counsel thus seeks from the undersigned Appeals Officer a recognition that the Committee functions well under the structure approved by the exemption and a finding that the appellant has complied with the Code.

Analysis

[30] As stated at the outset, these appeals are neither opposed nor contested and therefore the views expressed as well as the arguments presented to the undersigned at the actual *viva voce* hearing as well as in writing represent and have been received as representing the common approach and views of both the appellant/employer and the CEP as representative of the employees of the appellant/employer employed at the various locations coming within what has been described as the jurisdiction of Committee 6005. I am thus faced with a single position to the effect that both directions issued by HSO Ammoun were unfounded and are to be rescinded. In considering whether I should adhere to this position, I have to take into account, in addition to the evidence presented at the hearing, a number of provisions of the legislation, specifically subsection 122(1) of the Code where the term "work place" is defined, subsections 135(1) and (6) as well as paragraphs 135(6)(a) and (b) and 125(1)(z.12) and section 137. In considering those provisions, I have to be mindful of section 12 of the *Interpretation Act* (R.S., 1985, c. I-21), 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." Two other texts, described herein as administrative tools of the Labour Program destined to assist in the interpretation and application of the legislation, also have to be taken into account as they have a direct bearing on the present matters. Those are OPD-907-1 and 907-1-IPG-051, the relevant parts of which have been reproduced above. Interpretation of those various texts has to be done in a purposive manner taking into account the intended increase in the level of responsibility given to work place health and safety committees in administering health and safety in the work place in the year 2000 round of amendments to the Code. As such, I share the views expressed by counsel for the appellant that a purposive approach has to be adopted. Also, one should not be reluctant to consider that as an employer coming within the purview of the Code, short of serious differences, such employer can be justified in expecting consistency in application and enforcement of the legislation towards itself.

[31] I have paid great attention to the arguments formulated by the appellant in support of its position vis-à-vis both directions. Normally at this stage, I should formulate at some length the rationale for the conclusions I have arrived at, since under normal circumstances where more than one party supporting both sides of an issue or issues would have been heard, there would be a need to state and explain which of the views would have been retained to base my own conclusions. In this case however, as stated at the outset and is also evident all through what precedes, there is only one commonly held position put forth regarding those two directions as both the employer and the union representing the relevant employees have indicated they are of one mind in what, as stated earlier, constitute uncontested and unopposed appeals. As such then, I have an obligation to consider anew what has been previously decided by a Health and Safety Officer and to do so in light of the evidence gathered by said HSO as well as what has been submitted to the undersigned through a *viva voce* hearing, and weigh all those elements in arriving at my own conclusions. The fact remains that in circumstances such as the ones offered by this case, where there appears to be overwhelming support in evidence and argument for the position put forth by the appellant as expressed all through

what precedes, there appears to be very little need for the undersigned to describe at any length his rationale for decision, particularly as I share practically entirely the rationale and views put forth by the appellant regarding both directions. I will thus limit my comments to a minimum, confident that I am that a full comprehension can easily be derived from all that is formulated throughout.

[32] In the case of the first direction, the concept of "work place", which is central to the obligation put on any employer to establish work place health and safety committees, is defined at subsection 122(1) of the Code as meaning "any place where an employee is engaged in work for the employee's employer". Clearly, such definition, by the lack of restrictive terminology, makes it very clear that the concept is quite flexible and lends itself to a variety of interpretations as to its extent. As such, I am in complete agreement with the wording of IPG-051, fashioned by the Labour Program of HRSDC for the purpose of assisting enforcement officers such as HSOs in properly understanding and applying the legislation in a liberal manner, as required by the *Interpretation Act* so as to ensure that the purposes of the legislation be attained, that wording reading "since this definition is not based on geography or any other specific criteria, there is a great deal of flexibility in determining what constitutes a work place, (for example, a work place could be several buildings in different locations of a city, or even in different cities). Furthermore, subsection 135(1) stands for the basic general obligation, put on every employer as regards OHS matters that concern "individual work place(s)", to establish a health and safety committee for "each work place" it controls, thereby evidencing that the obligation covers two items or concepts that are indissociable, that of the actual composition of the committee as well as that of the jurisdiction or coverage of the committee. The mere fact that within the same provision and within another to wit, subsection 135(6) and section 137, the Code allows for exceptions to the general rule at subsection 135(1), based, in the present case, on "any other agreement (than a collective agreement) between an employer and the employer's employees", stands for the conclusion that a committee's jurisdiction can be extended to a jurisdiction that would go beyond the traditional one location/one work place jurisdiction. Digression from the general rule cannot however be achieved unilaterally, as evidenced by subsection 135(6) which requires that an exemption be obtained from a health and safety officer where, through the collective agreement or **any other agreement between an employer and the employer's employees** (in certain cases represented by a bargaining agent), those parties have agreed to a different format of committee with rights and obligations adapted to what may be required by circumstances.

[33] In the case at hand, the evidence is to the effect that this employer and the employees' representative have functioned along those lines for more than 10 years without objection from the Labour Program. Indeed, in addition to this historical evidence, the evidence has shown that as recently as a few months before the intervention by HSO Ammoun, this had been observed, confirmed and approved by the Labour Program through another of its HSOs, as demonstrated by the result of an audit performed relative to Committee 6005. In view of what precedes, the remaining question is whether, at the time of the inspection or investigation and first direction by HSO, there was in place an exemption that allowed the appellant to proceed as it did and intended to

continue doing vis-à-vis inspecting the work place that constituted, in its opinion, the Ontario West district. HSO Ammoun indicated in his report and at the hearing that in his opinion, there was no exemption in force. The appellant on the other hand is of the contrary view.

[34] In my opinion, the exemption under subsection 135(6) of the Code was in full force at the time of the intervention by HSO Ammoun. While my finding on this point cannot ignore both the historical aspect of the situation, where the appellant and the CEP and its predecessor, and thus Committee 6005, have been functioning as they have, that is one committee/one territory, for more than 10 years, as well as the fact that a short time prior to HSO Ammoun's intervention, a proper audit of the Committee and its functioning was conducted by another HSO with no fault being directed at the Committee, my conclusion is essentially based on my preceding finding that an exemption awarded pursuant to subsection 135(6) is not restricted to the composition of the work place committee, but extends and affects also the make up of the work place so that there is maintained a logical link between the composition of the committee (number of members), the mandate of the committee (i.e. number of inspections) and the coverage of the committee (jurisdiction). Further, and essential to the issue, is the fact that in my opinion, given the introductory words to subsection 135(6) ("...any other agreement between an employer and the employer's employees...), the text and date of the agreement between the appellant and the CEP and the text of the exemption which calls for a duration of five years where the initiating agreement between these previously mentioned members bears no intended expiry date to their agreement, the continuation in force of the exemption must be seen as distinct, separate and independent of the collective agreement between the parties, be it in force, expired or being renewed. Were I to consider that there is a link between the two, in the particular circumstances of this case, I share the opinion expressed by counsel for the appellant that even in such circumstances, given the dates of the agreement and that of the renewal of the collective agreement, this would not affect the validity of the exemption.

[35] In view of this therefore, I find that since there was in force an exemption validly granted to Bell and CEP relative to Committee 6005 at the time of HSO Ammoun's intervention, the appellant Bell was not in contravention of paragraph 125(1)(z.12) of the Code nor would it be in contravention of said provision, were it to continue conducting work place inspections on a one committee/one territory basis where Committee 6005 and Ontario West district are concerned.

[36] This brings the undersigned to consideration of the second direction issued by HSO Ammoun on the effectiveness of the Committee 6005 structure. First, it is important to note that regardless of the situation that may have existed relative to that work place committee and the structure that governed its functioning prior to HSO Ammoun's intervention, there is no doubt in my mind that it is entirely within the authority of any health and safety officer, as it was for HSO Ammoun, to examine such structure/committee to ascertain whether it does or still does satisfy the requirements of the legislation and the purpose of the Code which is the protection of the health and safety of the employees that come within the purview of the committee, and consequently

whether it constitutes an effective and well functioning structure.

[37] This evaluation or assessment by an HSO, by its very nature, requires that it consider and be based on an array of factual data and circumstances as each such evaluation or assessment of any such committee must stand on the committee's own facts and circumstances. That being said, there may be, where some committees are concerned, other elements that need to be taken into account, such for example as historical, policy and legislative elements which, in my opinion, cannot be ignored. In the case at hand, there are such elements.

[38] First, it is clear from a reading of sections 135 and 137 of the Code that a committee structure such as the one in place for the appellant's Ontario West district, Committee 6005, is entirely possible and permissible under the Code. Furthermore, the applicable IPG (907-1-IPG-051) clearly demonstrates that the Labour Program, which is vested with the mandate to enforce the Code in the name of the Minister of Labour, views as possible the determination of a work place such as has been done in the case of Committee 6005. In addition, Labour's OPD 907-1, in recognition of the authority of a health and safety officer to assess and evaluate the functioning and effectiveness of a specific health and safety committee structure, has stipulated that this exercise must bring into play a number of performance criteria or indices, which in turn necessitates consideration of the factual circumstances of the committee and/or committee structure being assessed.

[39] In addition to the above, one cannot ignore that the Committee 6005 and its structure, and many others within the authority of the same employer, have been in place and functioning for more than 10 years without any noticeable fault, at least none that were brought to the attention of this Appeals Officer in the course of hearing these appeals. Also not to be ignored is the fact that through an audit conducted by another Labour Program HSO just a few month prior to HSO Ammoun's intervention, the appellant was informed that Committee 6005 functioned well, and thus, in my opinion, for such major changes to the health and safety committee as altering its structure to be ordered, a subsequent assessment would need to find major faults in the functioning of the committee, since I am of the opinion, as already stated previously, that the employer is justified in expecting consistency in the application and enforcement of the Code. In this respect, the appellant has noted that HSO Ammoun based his second direction, at least in part, on the fact that he identified three contraventions by the employer, two of which were qualified as minor by counsel. While I certainly would hesitate in describing any contravention of the legislation as "minor", I cannot avoid noting that in the case of two of those, dealing with the posting of the Code and that of the identity of the members of Committee 6005, their seriousness was certainly tempered by the fact that in the case of what appears from the evidence to have been the great majority of the employees coming within the jurisdiction of the Committee, the information required to be posted could be accessed on individual employees computers through Bell's Intranet.

[40] That being said, while HSO Ammoun indicated in testimony, as well as in his report, having based his conclusions vis-à-vis his second direction on a number of

Decision

[41] Considering all that precedes, I find that the Committee structure agreed to by the appellant and the CEP in the case of Committee 6005 complies with the requirements of the Code and that the appellant is in compliance with paragraph 125(1)(z.12) of the Code when ensuring that Committee 6005 inspects each month all or part of the work place identified as Ontario West district, so that every part of said work place is inspected at least once each year.

[42] Considering the above, both appeals are granted and both directions are rescinded.

Jean-Pierre Aubre
Appeals Officer