



RIAL WORKSHOP ON “STRATEGIES TO IMPROVE COMPLIANCE WITH LABOUR LEGISLATION” - December 6, 2018

PANEL 1 – STRENGTHENING LABOUR INSPECTION: INNOVATIVE APPROACHES AND ACTIONS FOR THE PROTECTION OF FUNDAMENTAL RIGHTS WITH EMPHASIS ON FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

CEATAL Presentation by John Craig, Canadian Employers Council

Chair and Distinguished Representatives,

I represent the Canadian Employers Council and the Business Technical Advisory Committee on Labour Issues (CEATAL). CEATAL represents the employer organizations of each OAS member state with the Inter American Conference of Ministers of Labour process of the Organization of American States. Through these organizations, CEATAL represents tens of thousands of small, medium and large employers across the Americas.

I bring greetings from Daniel Funes de Rioja, CEATAL’s President. On his behalf, I would like to thank you for the opportunity to make this presentation on the very important topic of labour inspection. I would also like to thank Maria Paz Anzorreguy, CEATAL Coordinator and Senior Adviser at the International Organization of Employers and Andrés Yuren, Senior Specialist for ILO Employers Activities , for their assistance in preparing this presentation.

In my presentation, I plan to focus on the following areas:

- (1) the importance of promoting a culture of compliance and self-assessment;
- (2) the need for the professionalization of labour inspection systems;
- (3) the need for efficient and effective review mechanisms in respect of inspection orders; and

(4) the importance of technology to improve access to information, transparency, efficiency/effectiveness and capacity building in inspection systems.

I will also address how inspection systems can be leveraged to protect fundamental rights such as freedom of association and collective bargaining.

1) The importance of promoting a compliance culture

At the heart of any successful society is respect for and enforcement of the rule of law. Legal compliance forms the bedrock for social development. In most instances, this compliance is largely self-regulated, but behind that stands effective, transparent, unbiased and efficient enforcement - be that by the police, the judiciary or by other government enforcement agencies such as labour inspectors. To be effective, all such enforcement needs to be situated within a wider social respect for the rule of law.

Legal compliance is an obligation on all actors in society, including business. Legal compliance helps ensure a level playing field in that all are required to respect the same rules and standards. Proper labour inspection can help companies benchmark this compliance. Rather than being purely a fine-imposing service, labour inspection can help educate and assist business in meeting these obligations.

Where informal economies operate, it is important for government - with the support and engagement of the social partners - to extend its functions to informal enterprises. This should be done in a way that encourages compliance. For this purpose, information and training are the best tools of engagement. To merely step in and start fining businesses for non-compliance will further exacerbate their reluctance to enter into the formal economy.

The most efficient and effective approach to achieve good labour standards is for enterprises to embrace a proactive culture focused on prevention that not only ensures compliance with national labour laws but also seeks to go beyond these standards. Many countries have relevant programmes in place alongside their inspection and enforcement regime.

Promotion of self-assessment, to be implemented within management systems, is an important preventive approach that is successful because it appeals to a sense of ownership and engages the competence of both employers and workers. Self-assessment can solve existing problems and make sanctions unnecessary.

Another effective way of achieving compliance with labour standards is to have targeted campaigns. These can be aimed at high risk sectors or specific processes, equipment, or groups. Such campaigns, particularly when they involve the social partners in their design and implementation, can provide enhanced results. This is because enterprises will know that they will be treated fairly with respect to their competitors and they will understand the standards expected and the possible actions that may ensue should such standards not be met.

The whole system of labour regulation works best if a preventive, risk management approach is embedded in the formal education and training system. In addition, to ensure that information and advice is balanced, fair and relevant, employer and worker representatives should work within the tripartite system for labour administration and inspection to assist in developing and disseminating guidance and toolkits. Traditional and social media systems can also be used to reinforce prevention and risk management knowledge.

2) The need for the professionalization of labour inspections

While employers support effective and professional inspection systems, there is concern within the employer community about the potential for inspectors to act arbitrarily or improperly including for political purposes.

Given the power that inspectors can assert - for example, issuing an order that effectively halts production in a workplace - employers must have confidence that those wielding such powers are knowledgeable about the applicable laws and their own legal obligations, are qualified to make important and often complex assessments about compliance with legal standards, and are free from any political influence and other biases.

Labour inspection systems must be built on the principles of professionalism and independence.

Professionalism

Professionalism is essential to ensure that competent decisions are made consistent with legal standards, and that the stakeholders - employers and workers - have confidence in the inspection system.

Achieving professionalism requires a system of recruitment focused on qualifications and training. Employers support certification systems, whereby individuals must take relevant courses and pass rigorous examinations administered by credible academic institutions before they can be hired and serve as inspectors. Newly engaged inspectors should also be closely supervised and mentored by experienced inspectors for a reasonable period of service. Tagging along and other such on-the-job training opportunities should be implemented for newly engaged inspectors.

Independence

De-politicization and independence of inspections are crucial to improving the conduct and outcomes of labour inspections.

An inspector's decision to issue an order (or not to issue an order) should be provided with actual legal justifications.

ILO Convention 81 is instructive on the issues of professionalism and independence.

- Article 6 stipulates that inspectors should be assured of stable employment that is independent of changes of government and improper external influences
- Article 7 stipulates that inspectors should be recruited with sole regard to their qualifications for the performance of their duties, that there should be a competent

authority for assessing qualifications, and that there should be adequate training provided to inspectors; and

- Article 9 requires ratifying states to ensure that qualified technical experts and specialists are available to support the work of inspectors in the field of health and safety - an acknowledgement that where an inspector lacks the specific expertise in a particular matter, the inspector should be able to get assistance from someone with that expertise.

3) The need for an efficient and effective court or administrative review process in respect of inspections

Inspectors can have a great deal of power and discretion. In many cases, they are empowered to enter a workplace at any time, demand that an employer produce documents and information, interrogate the employer and witnesses, and issue binding orders requiring the employer to take steps to alter policies, practices or the physical workplace to comply with legal requirements. The employer may well have to suspend some or all of its operations until the inspector is satisfied that compliance has been achieved.

An effective and efficient inspection system requires inspectors to be empowered to take the necessary steps to achieve legal compliance, but the actions of an inspector can have far-reaching consequences for an employer. I will illustrate what I mean through an actual example.

Recently, we became aware of an employer who had been subject to an inspection. Technical violations of the law were identified, and the employer was ordered to make changes to ensure compliance. The impact of the inspector's order was that the employer could not resume full production until it passed a follow-up inspection and received a compliance certificate. The employer quickly complied, but there were significant delays in scheduling a follow-up inspection. The employer faced serious financial difficulties and even the possible layoff of employees. It had to apply to the courts for an order requiring a follow-up inspection to take place and a compliance certificate to be issued (we call this a *mandamus* order where the courts

step in to order a state actor to perform a public duty). Only after commencing proceedings in court was the employer able to get the follow-up inspection and the compliance certificate.

This example demonstrates why it is important for inspection systems to be efficient and responsive so that matters affecting an employer's production -- and the jobs of workers -- are resolved without any undue delay. It also demonstrates the potentially far-reaching consequences of the exercise of an inspector's power and discretion. The rule of law demands that such power and discretion should not go unchecked. When sanctions are applied there should always be a fair system of appeal available to the duty holder. It is essential that a competent and independent body – such as a court or administrative tribunal - be available on an expedited basis for the review or appeal of an inspector's order. This is especially important if a decision may have been motivated by bias, lack of impartiality, or political considerations.

Given that an inspector's order is likely to remain in effect pending an appeal, it is also very important for the appeal process to be efficient and for decisions to be issued in a timely manner.

4) Importance of technology to improve access to information, transparency, efficiency and capacity building

I would like to end this part of my presentation by making some comments on the potential use of technology in the inspection system to improve access to information, transparency, efficiency and also for education and capacity building.

Technology to educate and build capacity of stakeholders

First, employers and workers need to be aware of the obligations imposed under labour legislation and the processes used for conducting labour inspections and enforcing such laws. Such awareness is essential in promoting a culture of compliance with labour standards.

Today, technology has vastly improved the ability of labour ministries to disseminate information and provide educational opportunities. The Internet, online databases, videoconferencing and webinars can allow for advanced access to information for employers

who are subject to labour legislation and possible labour inspections. For example, lectures and seminars can be conducted on-line, allowing employers of all sizes and locations to participate. Social media can also be used to distribute information to employers and workers.

In addition, it is now straightforward to establish a system allowing employers and workers to access labour ministry officials through online means, so that they can ask questions and gain a better understanding of their rights and obligations under labour legislation. Several ministries in Canada already permit workers and employers to ask questions about employment standards through online messaging services. This is often preferable to speaking to someone on the phone, as a *written* communication can provide links to further online resources and other relevant information

Technology to improve the inspection system

Second, technology can be leveraged in the inspection system to improve access to information and enhance transparency. While inspections themselves generally require the physical presence of an inspector in a workplace, it may be possible for interviews and follow-up questions to be conducted through videoconferencing and other platforms like Skype or Facetime.

Moreover, it is possible to allow complaints, responses and other documents to be filed on-line. All documents relevant to a case can also be stored on a database that is available on-line to the parties so that they can track and review matters any time. In addition, orders and decisions of inspectors can (and in our view should always) be published on-line, making it easier to conduct research and gain a better understanding of the expectations of inspectors, and the current interpretations of the applicable legal standards.

The bottom line is that the creative use of technology can lead to many opportunities to improve the efficiency, effectiveness, transparency and capacity building of labour inspection systems.

5) Inspections and Fundamental Rights

It is also notable that robust inspection systems have been identified as a very important tool in identifying and combatting violations of fundamental rights, including the elimination of child labour and forced labour, discrimination, freedom of association and collective bargaining -- all of which are priority matters for governments, workers and employers.

Workplace rights related to freedom of association and collective bargaining are among the most important, so ensuring compliance with legal standards should be a priority. However, the specific role of inspection systems in compliance may depend on the nature of the collective labour system in place in a particular country. Where the labour system requires workers to unionize as a precondition to asserting statutory collective bargaining rights, one would expect a complaints-driven system where regulatory authorities are principally engaged when a union complains about an employer interference in its organizing and bargaining efforts. In other systems, particularly those where the state requires employers to consult or to deal with worker representatives regardless of the presence of a union (*e.g.* often the case in the field of health and safety), or requires employers to establish collective representation system (*e.g.* Works Councils), there may be a greater role for proactive inspections.

In any event, a wide range of tools should be made available to promote compliance with rights related to freedom of association and collective bargaining. These could include surveys undertaken by the regulatory authority of employers, workers and their organizations concerning compliance with freedom of association and collective bargaining laws. Results of such surveys can provide important evidence about the current state of compliance with collective rights, promote changes to legislation, and identify areas where educational initiatives and targeted campaigns may be necessary.

Concluding Remarks

I want to conclude by highlighting on behalf of Employers,

1. the importance of promoting a culture of compliance and self-assessment.
2. the need for the professionalization of labour inspection systems;



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3. the need for efficient and effective review mechanisms in respect of inspection orders;
4. the importance of technology to improve access to information, transparency, and efficiency/effectiveness and capacity building in inspection systems.
5. The importance of robust inspection systems as key tools in identifying and combatting violations of fundamental rights at work.

In closing, I would like to express my appreciation again for the opportunity to present on this important issue.

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