SCC File No. 37787

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

CANADA POST CORPORATION

APPELLANT
(Respondent)

- and -

CANADIAN UNION OF POSTAL WORKERS

RESPONDENT
(Appellant)

FACTUM OF THE APPELLANT,
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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW AND STATEMENT OF FACTS

Overview

1. The *Canada Labour Code* ("Code") places a number of work place safety obligations on federally-regulated employers. One of those obligations, set out in s. 125(1)(z.12), concerns annual work place inspections conducted by work place health and safety committees. In this case, an experienced appeals officer of the Occupational Health and Safety Tribunal of Canada held that this obligation applies only to work places an employer controls. He thus concluded that the Code does not oblige Canada Post to annually inspect the millions of kilometres that delivery employees, including letter carriers, travel and the millions of Canadian mail delivery addresses located on private property.

2. Using established principles of statutory interpretation to interpret his home statute, the appeals officer determined that s. 125(1) draws a distinction between obligations that apply in respect of employer-controlled *work places*, and those that apply in respect of employer-controlled *activities*. The appeals officer found that, like other enumerated obligations, the inspection duty under s. 125(1)(z.12) applies only where the employer controls the work place, rather than just the work activity. Without control, an employer cannot complete the comprehensive annual health and safety inspections required by s. 125(1)(z.12).

3. The appeals officer's interpretation was informed by the evidence before him of the consequences of interpreting the provision as applying to Canada Post's work place, including the fact that many of Canada Post's delivery addresses are on private property and not under Canada Post's control, and the work places of other employers. In arriving at this interpretation, the appeals officer recognized that Canada Post has already implemented exemplary policies, programs, and assessment tools that achieve the Code's objectives and promote its employees' health and safety in all aspects of their work.

4. The Canadian Union of Postal Workers ("CUPW") applied for judicial review of the appeals officer's decision. The application judge dismissed the application, but, in three conflicting judgments, a 2-1 majority of the Federal Court of Appeal overturned the application judge. Despite purporting to apply reasonableness review, the majority judges conducted *de novo* interpretations of s. 125(1)(z.12) and failed to engage with the appeals officer's reasoning. In so

doing, the Federal Court of Appeal majority judges not only misapplied reasonableness review, but also reached interpretations without following the accepted principles of statutory interpretation.

5. This Court steps into the shoes of the first reviewing court and, in reviewing the appeals officer's interpretation, must defer to his interpretation if it is reasonable. As this Court has recognized, the appeals officer "holds the interpretative upper hand." The application judge and dissenting judge in the court below rightfully concluded that the appeals officer's decision was reasonable. The appeals officer interpreted the text of the provision in light of the Code's other employer obligations and the purpose of the enactment. His decision was amply supported by the evidence and submissions before him. He recognized that Canada Post's work place policies are exemplary and meet the Code's underlying safety objectives. This Court should therefore allow this appeal and restore the appeals officer's decision.

Statutory framework: *Canada Labour Code*

6. Part II of the Code sets out the health and safety obligations of federally-regulated employers and the role of appeals officers in resolving grievances relating to those obligations.[1]

Employer's duties

7. Section 124 of the Code prescribes the general duty of every employer to "ensure that the health and safety at work of every person employed by the employer is protected."[2]

8. The Code then lists 45 specific duties on employers. This list is preceded by the following language, which applies to each of these duties:

125 (1) 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,	125 (1) Dans le cadre de l'obligation générale définie à l'article 124, l'employeur est tenu, en ce qui concerne tout lieu de travail placé sous son entière autorité ainsi que toute tâche accomplie par un employé dans un lieu de

[1] *Canada Labour Code*, R.S.C. 1985, c. L-2 [Code].
[2] Code, s. 124.

to the extent that the employer controls the activity, ….	travail ne relevant pas de son autorité, dans la mesure où cette tâche, elle, en relève :

9. One of the 45 duties is at issue in this appeal – the duty set out at s. 125(1)(z.12):

(z.12) 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 once each year.	z.12) de veiller à ce que le comité local ou le représentant inspecte chaque mois tout ou partie du lieu de travail, de façon que celui-ci soit inspecté au complet au moins une fois par année;

10. Section 125(1)(z.12) not only requires that the entire work place be inspected at least once each year, but also designates who must conduct the inspection: the work place committee or the health and safety representative.[3] It is thus no substitute under this provision to have other employees conduct these inspections.

11. The other 44 obligations deal with a wide range of subjects, including:

- complying with building standards, such as installing guards, guard-rails, barricades, and fences (s. 125(1)(a), (b) and (m));
- investigating accidents (s. 125(1)(c));
- providing first aid, sanitary facilities, and potable water (s. 125(1)(h), (i) and (j));
- complying with prescribed vehicle standards (s. 125(1)(k));
- complying with prescribed ventilation and lighting standards (s. 125(1)(n));
- complying with prescribed standards for safe entry to and exit from the work place (s. 125(1)(p));
- complying with prescribed health, safety and ergonomic standards for equipment and tools (s. 125(1)(t));
- adopting and implementing prescribed safety codes and standards (s. 125(1)(v));

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[3] See also Code, at ss. 135-137.

- ensuring adequate employee health and safety training (s. 125(1)(z));
- protecting against violence in the work place (s. 125(1)(z.16)); and
- posting names and contact information for health and safety representatives (s. 125(1)(z.17)).

12. "Work place" is defined to mean "any place where an employee is engaged in work for the employee's employer." The legislation does not define the term "controlled."[4]

Appeals officers' broad jurisdiction

13. The Code provides for an appeal to an appeals officer by an employer, employee, or trade union that feels aggrieved by a direction issued by the Minister – in practice, by a health and safety officer – under the occupational health and safety provisions of the Code.[5] The Code contains two privative clauses protecting the decisions of appeals officers from judicial review:

(a) "An appeals officer's decision is final and shall not be questioned or reviewed in any court" (s. 146.3);[6] and

(b) "No order may be made, process entered or proceeding taken in any court … to question, review, prohibit or restrain an appeals officer in any proceeding under this Part" (s. 146.4).[7]

14. In 2000, Parliament introduced new provisions setting out expansive powers for appeals officers. Once an appeal is brought, the appeals officer must inquire into the circumstances and can "vary, rescind or confirm the decision or direction" and may "issue any direction that the appeals officer considers appropriate."[8] The appeals officer conducts an appeal *de novo*.[9] The

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[4] Code, s. 122.
[5] Code, s. 146(1).
[6] Code, s. 146.3.
[7] Code, s. 146.4.
[8] Code, s. 146.1.
[9] *Martin v. Canada (Attorney General)*, 2005 FCA 156, at para. 28.

appeals officer may summon and compel testimony under oath, compel the production of documents, receive evidence, make inquiries, and determine the procedure to be followed.[10]

Canada Post's delivery network and policies

15. Canada Post is a Crown corporation with exclusive jurisdiction over the mailing of letters in Canada. It provides mail delivery services to more than 14 million addresses across the country, and its objects include the establishment and operation of a "postal service for the collection, transmission and delivery of messages, information, funds and goods both within Canada and between Canada and places outside Canada."[11]

16. Canada Post's delivery obligations are set out in the *Canada Post Corporation Act* (the "CPCA") and the *Universal Postal Convention* (the "UPC"). The CPCA requires Canada Post to provide a "basic customary postal service" at "fair and reasonable" rates, and to "conduct its operations on a self-sustaining financial basis while providing a standard of service that will meet the needs of the people of Canada."[12] The UPC, an international treaty ratified by Canada, requires Canada to ensure that all users "enjoy the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices."[13]

17. To meet Canada Post's obligations, Canada Post's letter carriers travel 72 million kilometres across the country to deliver mail to 8.7 million individual Canadian addresses. This includes 32 million walkway steps, 1.1 million gates and doors, and 48,000 relay boxes. Letter carriers generally spend between four and six hours per day in delivery functions. As part of their work, they sometimes travel to their routes by bus and taxi, and have paid lunches at places of

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[10] Code, s. 146.2.
[11] Canada Post's Written Submissions, at para. 47, Appellant's Record ("AR"), Vol. III, Tab 19, p. 80; *Canada Post Corporation Act*, R.S.C. 1985, c. C-10, ss. 5(1), 14(1) [CPCA].
[12] CPCA, ss. 5(2), 19(2).
[13] Universal Postal Union, *Convention Manual* [*Universal Postal Convention* as revised by the 2016 Istanbul Congress, those of the Regulations as revised by the Postal Operations Council at both of its sessions in 2017, and the commentary made by the International Bureau] (Berne: Universal Postal Union, 2018) at art. 3.1 <online: http://www.upu.int/uploads/tx_sbdownloader/actInThreeVolumesManualOfConventionEn.pdf>.

their own choosing. In addition, Canada Post's rural and suburban mail couriers provide service to 740,000 rural mail boxes, involving over 106 million kilometres of travel.[14]

18. Canada Post has many policies, programs, and assessment tools that evaluate and ensure the health and safety of its employees. Canada Post provides training to its employees on hazard identification and reporting, as well as on issues such as dog bites and slip and fall situations. Under corporate procedures, Canada Post can also suspend delivery at an address where there is a hazard, either until the hazard is corrected or, if necessary, indefinitely.[15] Route audits occur in certain areas under these policies, and work place committees may participate in those audits.[16]

19. However, many Canadian address locations are private property. While Canada Post has statutory authority to deliver mail to these locations, it does not have authority, statutory or otherwise, to undertake inspections on private property.[17]

Complaint and initial decision

20. In 2012, CUPW representatives on a Local Joint Health and Safety Committee in Burlington, Ontario submitted a complaint to Human Resources and Skills Development Canada. They argued that Canada Post was required to inspect not just its physical building, but also letter carrier routes for hazards, and that Canada Post was not meeting this requirement. An Employment and Social Development Canada Health and Safety Officer ("HSO") investigated the complaint. The HSO issued a direction stating, among other conclusions, that letter carrier routes are "work places" for the purposes of s. 125(1)(z.12) of the Code, and required at minimum an annual inspection by the Local Joint Health and Safety Committee.[18] The HSO's direction regarding this complaint was limited to the following:

> 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

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[14] *Canada Post Corporation v. Canadian Union of Postal Workers*, 2014 OHSTC 22 ("Appeals Officer Decision"), at paras. 16-17, AR, Vol. I, Tab A, p. 6; Canada Post's Written Submissions, at paras. 47-52, AR, Vol. III, Tab 19, pp. 80-83.
[15] Appeals Officer Decision, at para. 31, AR, Vol. I, Tab A, p. 9; Canada Post's Written Submissions, at para. 97, AR, Vol. III, Tab 19, p. 109.
[16] Appeals Officer Decision, at paras. 35, 59, AR, Vol. I, Tab A, pp. 9, 13.
[17] Appeals Officer Decision, at paras. 25, 30, 98-99, AR, Vol. I, Tab A, pp. 7-8, 20.
[18] Appeals Officer Decision, at paras. 5-6, AR, Vol. I, Tab A, p. 2.

> 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.[19]

Appeals officer allows Canada Post's appeal

21. Canada Post appealed the HSO's direction. An appeals officer heard the appeal over two days, and six witnesses gave evidence.[20] The hearing before the appeals officer was focused on whether the Code's definition of "work place" includes work locations that an employer does not control. Canada Post submitted that a location should be considered a "work place" only if the employer controls that work location.[21] Canada Post presented evidence demonstrating its lack of control over address locations and letter carrier routes.

22. To illustrate the necessity of control, Canada Post pointed to 28 duties under s. 125(1) of the Code, such as installing guard-rails and fences, that it could not fulfill without control over a work location.[22] Canada Post also provided practical examples showing that other federally regulated employers would have difficulty complying with an expansive interpretation of "work place". It presented evidence from a former employee of three other federally regulated enterprises about the implications of applying s. 125(1)(z.12) to his former employers.[23]

23. The appeals officer allowed Canada Post's appeal and varied the HSO's decision. He held that while the meaning of "work place" was broader than the definition proposed by Canada Post, s. 125(1)(z.12) does not apply to delivery addresses and letter carrier routes because Canada Post does not have the requisite control over that portion of the work place. The appeals

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[19] Appeals Officer Decision, at para. 7, AR, Vol. I, Tab A, p. 2.
[20] Correspondence of Stephen Bird to the Canada Occupational Health and Safety Tribunal, dated March 1, 2013, AR, Vol. III, Tab 11, pp. 1-2; Correspondence of David Bloom to the Canada Occupational Health and Safety Tribunal, dated March 5, 2013, AR, Vol. III, Tab 12, pp. 3-4.
[21] Canada Post's Written Submissions, at paras. 7-16, 66, AR, Vol. III, Tab 19, pp. 65-66, 99.
[22] Canada Post's Written Submissions, at paras. 58-63, AR, Vol. III, Tab 19, pp. 91-98.
[23] Canada Post's Written Submissions, at paras. 53-54, AR, Vol. III, Tab 19, pp. 84-89; Correspondence of Stephen Bird to the Canada Occupational Health and Safety Tribunal, dated March 1, 2013, AR, Vol. III, Tab 11, pp. 1-2; Correspondence of Stephen Bird to David Bloom, dated March 7, 2013, AR, Vol. III, Tab 13, pp. 5-7.

officer's decision was informed by his 25 years of experience with the employer obligations under s. 125(1), and his knowledge of their scope and application.[24]

24. The appeals officer's analysis proceeded on the following basis:

(a) ***"Work place" is a broad definition that includes letter carriers' routes and Canadian address locations:*** The appeals officer determined that the work place of Canada Post letter carriers includes their routes and the locations of Canadian addresses. He accepted the broad definition of "work place" proposed by CUPW, which he held was consistent with the definition of "work place" in s. 122(1) of the Code and the purposes of the Code.[25] He referred to the requirement in s. 12 of the *Interpretation Act* that "[e]very enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."[26] Relying on this provision, he held that "work place" must be interpreted broadly to account for all the areas in which an employee may be engaged in work in order to meet the legislative objective of preventing accidents and injuries.

(b) ***Section 125(1) addresses two situations:*** Turning to the text of s. 125(1), the appeals officer recognized that the opening wording "centres around control" and contemplates two situations: (i) where the work place is under the control of the employer, and (ii) where the work place is not under control of the employer, but the work activity is. He noted that s. 125(1) was drafted this way to ensure that the employer is bound to the fullest extent possible by the obligations under the Code and its regulations.[27]

(c) ***Some obligations under s. 125(1) relate to employer-controlled work places and others to employer-controlled work activities:*** Examining the obligations under s. 125(1), the appeals officer held that it was clear that some require the employer to

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[24] Appeals Officer Decision, at para. 94, AR, Vol. I, Tab A, p. 19.
[25] Appeals Officer Decision, at paras. 91-92, AR, Vol. I, Tab A, pp. 18-19.
[26] *Interpretation Act*, R.S.C. 1985, c. I-21, s. 12.
[27] Appeals Officer Decision, at paras. 93, 95, AR, Vol. I, Tab A, pp. 18-19.

have control of the work place, whereas others apply when the employer controls the work activity, irrespective of work place control. He referred to the s. 125(1)(a) obligation requiring compliance with prescribed buildings standards as an example of an obligation that an employer can comply with only if it has control over the work place. In contrast, he cited the duty imposed by s. 125(1)(t) to "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" as an obligation with which the employer can comply only if it has control over the activity.[28]

(d) ***Work place control necessary for s. 125(1)(z.12) to apply:*** Regarding the s. 125(1)(z.12) inspection obligation, the appeals officer held that it fell into the category of obligations that could be carried out only if the employer controlled the work place. He identified the purpose of the work place inspection obligation as to permit the identification of hazards and the opportunity to fix them. He concluded that, without control of a work place, an employer cannot effectively ensure that an annual inspection be carried out in accordance with s. 125(1)(z.12).[29]

(e) ***Canada Post does not have control over its letter carrier routes and the locations of Canadian delivery addresses, so s. 125(1)(z.12) does not apply.*** It was not disputed before the appeals officer that Canada Post has no physical control over letter carrier routes and the locations of delivery addresses. The parties agreed that many address locations are private property. The appeals officer found as fact that Canada Post did not have the capacity to undertake the annual inspections contemplated by s. 125(1)(z.12) without control of the work place. Thus, he held that s. 125(1)(z.12) did not apply to Canada Post in Burlington outside of its physical building.[30]

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[28] Appeals Officer Decision, at paras. 93-97, AR, Vol. I, Tab A, pp. 19-20.
[29] Appeals Officer Decision, at para. 96, AR, Vol. I, Tab A, p. 19.
[30] Appeals Officer Decision, at paras. 98-99, AR, Vol. I, Tab A, p. 20.

25. The appeals officer also observed that Canada Post already has in place comprehensive programs that fulfil the public safety objectives of the Code. He pointed to Canada Post's "many policies, programs and assessment tools that evaluate and promote the health and safety of their employees," such as its work place hazard prevention program. He lauded those initiatives, which he identified as "an excellent example of how the Code and its Regulations are implemented to protect the health and safety of employees … in all kinds of work places."[31]

Federal Court upholds the appeals officer

26. The parties agreed before the application judge that reasonableness was the applicable standard of review.[32]

27. In determining that the appeals officer's decision was reasonable and dismissing the application for judicial review, the application judge analyzed the appeals officer's approach in light of accepted principles of statutory interpretation. He noted that the appeals officer had closely examined s. 125(1) of the Code in reaching his conclusion that some of the obligations it enumerates, including the obligation set out in s. 125(1)(z.12), apply only where the employer has control over the work place, while others apply where the employer controls the work activity.

28. This interpretation, the application judge concluded, reflected a harmonious reading of the words of the statute in their context. It was driven not by an impracticality assessment, but by a determination that the underlying purpose of the s. 125(1)(z.12) inspection obligation can be achieved only where the employer controls the work place. The application judge noted that the appeals officer relied on the decision of the Ontario Court of Appeal in *Blue Mountain Resorts Ltd. v. Ontario (Labour)*[33] in reasoning that a generous approach to the interpretation of public welfare statutes does not justify extending its reach beyond the intent of the legislator.[34]

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[31] Appeals Officer Decision, at para. 100, AR, Vol. I, Tab A, p. 20.
[32] *Canadian Union of Postal Workers v. Canada Post Corporation*, 2016 FC 252 ("Federal Court Decision"), at para. 43, AR, Vol. I, Tab B, p. 41.
[33] *Blue Mountain Resorts Ltd. v. Ontario (Labour)*, 2013 ONCA 75.
[34] Federal Court Decision, at paras. 50-53, AR, Vol. I, Tab B, pp. 44-46.

29. The application judge also held that the appeals officer had adopted a reasonable interpretation of "control" in the context of s. 125(1)(z.12). There was no dispute between the parties that Canada Post does not exercise control over delivery addresses and letter carrier routes, and no dispute that many addresses are private property. He noted that the practical consequences of the various interpretations of s. 125(1)(z.12), which Canada Post put before the appeals officer, supported the appeals officer's ultimate interpretation.[35]

30. Before the application judge, CUPW argued that the appeals officer's decision was internally inconsistent and unreasonable because he found that Canada Post exercises substantial control over the work *activity*. The application judge rejected this submission, noting that the appeals officer recognized the "clear distinction" between control over the work place and control over the work activity. Since control over the work place was the determinative factor in the application of s. 125(1)(z.12), there was no need to address employer control over work activity.[36]

31. The application judge recognized that to be reasonable, the appeals officer's interpretation could not run counter to or defeat the purpose of the Code. He was satisfied that it did not do so, but instead reflected a contextual consideration of s. 125(1) within the broader scheme of the Code – one that both recognized and promoted its underlying principle. The appeals officer's decision demonstrated "sensitivity to preserving the broad nature of the employer's obligations to ensure the health and safety of its employees without placing obligations upon the employer that the latter would be unable to fulfill," and that Parliament did not intend to impose.[37]

Federal Court of Appeal issues three separate decisions

32. The Court of Appeal unanimously agreed that reasonableness is the appropriate standard of review, but the Court diverged on whether the application judge correctly applied this standard. Justice Near would have upheld the lower court's decision. Justice Nadon and Justice

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[35] Federal Court Decision, at para. 54, AR, Vol. I, Tab B, pp. 46-47.
[36] Federal Court Decision, at para. 55, AR, Vol. I, Tab B, p. 47.
[37] Federal Court Decision, at paras. 56-58, AR, Vol. I, Tab B, pp. 47-49.

Rennie found the appeals officer's interpretation of s. 125(1)(z.12) unreasonable, but for different reasons.

Justice Near's Judgment

33. Justice Near reviewed the appeals officer's reasons and held that he had adopted a reasonable interpretation of s. 125(1)(z.12). Rather than conduct his own interpretation of the Code, Justice Near started with the appeals officer's interpretation and reasoning to determine if they were justified and reasonable.

34. Justice Near observed that s. 125(1) contemplates two situations: (i) where the employer controls the work place (and the activity), and (ii) where the employer controls the work activity but not the work place.[38] The appeals officer reasonably concluded that, when read in context, some of the obligations outlined in s. 125(1) can only apply to the first category, but not the second.

35. Given this reading of the provision, Justice Near held that it was reasonable for the appeals officer to find that s. 125(1)(z.12) only applies to employers who control their employees' work place. This conclusion recognizes that if an employer does not control the work place, it is not possible for the employer to ensure that the work place is inspected in a manner that achieves the purpose of s. 125(1)(z.12). As Justice Near observed, no amount of control over a work activity could assist the employer in this regard.[39]

36. In Justice Near's view, the fact that Canada Post already aims to identify and resolve hazards for its employees does not render the appeals officer's decision unreasonable. Canada Post's proactive policies do not mean that it has the capacity to conduct the comprehensive annual inspections of all of its work places that would be required if s. 125(1)(z.12) applied to letter carrier routes and address locations.[40]

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[38] *Canadian Union of Postal Workers v. Canada Post Corporation*, 2017 FCA 153 ("Federal Court of Appeal Decision"), at para. 16, AR, Vol. I, Tab C, p. 76.
[39] Federal Court of Appeal Decision, at para. 19, AR, Vol. I, Tab C, p. 78.
[40] Federal Court of Appeal Decision, at para. 20, AR, Vol. I, Tab C, p. 78.

37. Finally, Justice Near held that the appeals officer's reading of the statute is consistent with the Code's objective of promoting the health and safety of employees. Interpreting s. 125(1)(z.12) as applying only to employers who are in control of their employee's work place promotes the Code's public welfare objectives without over-extending the inspection obligation beyond what is reasonable and logical. As Justice Near noted, and the appeals officer recognized in his reasons, the Code's regulations already require Canada Post to implement hazard prevention programs.[41]

Justice Nadon's Judgment

38. Justice Nadon found the appeals officer's interpretation of s. 125(1)(z.12) unreasonable and contrary to what Justice Nadon held was the "clear and unambiguous" plain grammatical reading of s. 125(1).[42]

39. In his view, the appeals officer "made no real attempt" to interpret s. 125(1).[43] According to Justice Nadon, all of the obligations outlined in the paragraphs of s. 125(1) apply both to employers who control their employee's work place *and* to employers who merely control the work activity taking place. [44] The meaning of the subsection, in Justice Nadon's view, was made even more obvious by the French version's use of "ainsi que." Justice Nadon held that this term can only be read conjunctively.[45]

40. Based on his textual reading of s. 125(1), Justice Nadon concluded that "the only reasonable interpretation open to the Appeals Officer" was that the inspection obligation applied to Canada Post because it controlled the activities of the letter carriers.[46] That this interpretation poses difficulties for Canada Post was not a legitimate reason, in Justice Nadon's view, for departing from Parliament's intention.[47]

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[41] Federal Court of Appeal Decision, at para. 21, AR, Vol. I, Tab C, p. 79.
[42] Federal Court of Appeal Decision, at para. 48, AR, Vol. I, Tab C, p. 88.
[43] Federal Court of Appeal Decision, at para. 49, AR, Vol. I, Tab C, p. 88.
[44] Federal Court of Appeal Decision, at para. 48, AR, Vol. I, Tab C, p. 88.
[45] Federal Court of Appeal Decision, at para. 53, AR, Vol. I, Tab C, p. 90.
[46] Federal Court of Appeal Decision, at para. 57, AR, Vol. I, Tab C, p. 91.
[47] Federal Court of Appeal Decision, at para. 52, AR, Vol. I, Tab C, p. 89.

41. On the evidence, Justice Nadon also held unreasonable the appeals officer's finding that Canada Post could not perform the inspection obligation. Canada Post has existing policies in place for identifying and attempting to address hazards encountered by letter carriers on their routes and at address locations.[48] Even though the hazards encountered by Canada Post employees may occur on private property that Canada Post has no access to, Justice Nadon interpreted these policies as evidence that Canada Post could identify and resolve hazards without exerting direct control over the work place.[49]

Justice Rennie's Judgment

42. Like Justice Nadon, Justice Rennie conducted his own interpretation of s. 125(1)(z.12) and came to "a different understanding of the scope" of the provision. In his view, Parliament used the words "to the extent that the employer controls the activity" because it intended the scope of an employer's obligations under s. 125(1) to be informed by the extent of an employer's control over a given work activity.[50] Each case therefore requires a fact-specific analysis to determine the extent of an employer's obligations. Justice Rennie did not explain, however, how the scope of the obligations would vary or be modified by the extent of the employer's control of the activity.

43. On the facts in this case, the appeals officer found that Canada Post exercised a significant degree of control over letter carrier work activity.[51] "For this reason alone," Justice Rennie concurred with Justice Nadon and found the inspection obligation applicable.[52]

PART II – QUESTION IN ISSUE

44. There is one question in issue on this appeal: did the appeals officer reasonably conclude that the inspection obligation under s. 125(1)(z.12) applies only where the employer has physical control over the work place?

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[48] Federal Court of Appeal Decision, at para. 63, AR, Vol. I, Tab C, p. 93.
[49] Federal Court of Appeal Decision, at para. 64, AR, Vol. I, Tab C, p. 93.
[50] Federal Court of Appeal Decision, at para. 77, AR, Vol. I, Tab C, pp. 97-98.
[51] Federal Court of Appeal Decision, at para. 81, AR, Vol. I, Tab C, p. 99.
[52] Federal Court of Appeal Decision, at para. 81, AR, Vol. I, Tab C, p. 99.

45. Canada Post submits that the appeals officer's decision was reasonable. It therefore asks this Court to overturn the decision of the Federal Court of Appeal and reinstate the appeals officer's decision, with costs in this Court and in the courts below.

PART III – STATEMENT OF ARGUMENT

Standard of review is reasonableness

46. In an appeal from the decision of a lower court in an application for judicial review, this Court "step[s] into the shoes" of the reviewing court.[53] This Court must determine the standard of review and apply it to the administrative decision rather than the decision under appeal. In this case, the appropriate standard of review is reasonableness.

47. Throughout these proceedings, the parties and the courts below have agreed that reasonableness is the proper standard of review. Reasonableness is the standard that presumptively applies to an administrative decision-maker's interpretation of his or her home statute, which is the central issue in this case.[54] Courts have noted that in reviewing appeals officers' decisions under the Code, "[t]he thoroughness of the statutory scheme embodied by Part II of the Code… indicate[s] that a high level of deference to decisions or directions under this Part is appropriate."[55]

48. Reasonableness takes its "colour from the context" and reasonableness must "be assessed in the context of the particular type of decision making involved and all relevant factors."[56] In this case, the following three factors inform the reasonableness review.

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[53] *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, at paras. 45-46.
[54] *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, at para. 27; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, at para. 8.
[55] *P&O Ports Inc. v. International Longshoremen's and Warehousemen's Union, Local 500*, 2008 FC 846, at para. 16; *Cupe v. Air Canada*, 2010 FC 103, at para. 25.
[56] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, at para. 53; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, at para. 18. See also *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, at para. 29.

49. First, appeals officers are "specialized decision makers" that have expertise working with the subject matter of the appeals and within the Code's complex statutory scheme.[57] They are appointed based on their qualifications to perform their duties.[58] As this Court has consistently recognized, reasonableness "recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime."[59] Because appeals officers have such experience and expertise, their interpretations should not be lightly disturbed.

50. Second, Parliament has granted appeals officers broad powers and protected their decisions with two privative clauses: an "appeals officer's decision is final and shall not be questioned or reviewed in any court" and "[n]o order may be made… to question, review, prohibit or restrain an appeals officer in any proceeding under this Part."[60] Rothstein J.A., as he then was, recognized that "[w]here Parliament has expressed itself in the strong terms it has in the *Canada Labour Code*, I think it would be inconsistent for the courts to arrogate to themselves the power to establish precedence for a tribunal to follow in respect of the interpretation of its home statute."[61]

51. Third, deferring to an appeals officers' interpretation of his or her home statute also reflects that "the comprehensive statutory scheme [of the Code] is designed, in part, to facilitate the resolution of health and safety matters expeditiously."[62] As the Honourable John M. Evans has recognized, writing extra-judicially, "[g]iving weight to the tribunal's reasons… is a judicial recognition that the legislature has entrusted to the tribunal primary responsibility for interpreting

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[57] *Cupe v. Air Canada*, 2010 FC 103, at para. 24.
[58] *Cupe v. Air Canada*, 2010 FC 103, at para. 24.
[59] *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 49; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, at para. 9.
[60] Code, ss. 146.3, 146.4.
[61] *Martin v. Canada (Attorney General)*, 2005 FCA 156, at para. 17.
[62] *Canadian Union of Postal Workers v. Canada Post Corporation*, 2011 FCA 24, at para. 18.

its enabling legislation, whether for reasons of relative expertise, cost, or speed of decision-making, or all three."[63]

If the appeals officer reached a reasonable interpretation, the reviewing court must defer and not impose its own interpretation

52. In conducting reasonableness review, a reviewing court must "stay close to the reasons given by the [T]ribunal" and pay them "respectful attention."[64] In other words, "[t]he reviewing court must start from the Tribunal's decision and ask whether it is justified based on the authorities."[65] The reviewing court may look to the record for the purpose of assessing reasonableness[66] and supplement the reasons of the tribunal, within limits – "[a]dditional reasons must supplement and not supplant the analysis of the administrative body."[67] Ultimately, "[u]nder reasonableness review, the reviewing court's task is to supervise the tribunal's approach in the context of the decision as a whole. Its role is not to impose an approach of its own choosing."[68]

53. On questions of statutory interpretation, a court must defer to the decision-maker's interpretation if it is reasonable. This Court has recognized that the administrative decision maker "holds the interpretative upper hand."[69] Thus, a court must "defer to any reasonable interpretation adopted by an administrative decision maker, even if other reasonable interpretations may exist."[70] Deference recognizes that "the delegated decision maker is better situated to understand the policy concerns and context needed to resolve any ambiguities in the

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[63] The Honourable John M Evans, "Triumph of Reasonableness: But How Much Does It Really Matter?" (2014) 27 Can J Admin & Prac 101 at p. 110 (WL).
[64] *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, at para. 36.
[65] *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, at para. 36.
[66] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, at para. 56.
[67] *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, at para. 24.
[68] *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, at para. 57.
[69] *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, at para. 40.
[70] *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, at para. 40.

statute."[71] Indeed, "[j]udicial deference in such instances is itself a principle of modern statutory interpretation."[72]

54. Thus, to succeed, CUPW must first demonstrate that the appeals officer's interpretation is *unreasonable*. If, and only if, this Court finds the appeals officer's interpretation unreasonable can the Court consider CUPW's preferred interpretation of s. 125(1)(z.12). In making this determination, the Court must recognize the appeals officer's expertise and Parliament's intent to have appeals officers conclusively make these interpretations.

Appeals officer applied the principles of statutory interpretation reasonably and reached a reasonable outcome

55. The appeals officer applied well-established principles of statutory interpretation to arrive at an interpretation of s. 125(1)(z.12) that falls within the range of reasonable outcomes. Indeed, as the Federal Court found, the appeals officer reached an interpretation that "both recognizes and promotes the underlying principle of the [Code]."[73]

56. The appeals officer's reasons meet the *Dunsmuir* standard of intelligibility, transparency, and justifiability.[74] He approached his interpretation in light of this Court's modern principle of statutory interpretation[75] by interpreting s. 125(1)(z.12) consistent with:

(a) the text of the provision in the context of the Code;

(b) the purpose of the provision and Parliament's intent; and

(c) the practical implications of his interpretation, as this Court's recent decisions require.[76]

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[71] *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, at para. 55.
[72] *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, at para. 40.
[73] Federal Court Decision, paras. 50-53, 56, AR, Vol. I, Tab B, pp. 44-48.
[74] *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, at para. 56.
[75] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21.
[76] *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, at para. 41.

Each of these aspects of the decision are addressed further below.

(a) Appeals officer reasonably interpreted the text in its context

57. The appeals officer had to interpret s. 125(1)(z.12), which states:

125 (1) 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, ….	125 (1) Dans le cadre de l'obligation générale définie à l'article 124, l'employeur est tenu, en ce qui concerne tout lieu de travail placé sous son entière autorité ainsi que toute tâche accomplie par un employé dans un lieu de travail ne relevant pas de son autorité, dans la mesure où cette tâche, elle, en relève :
(z.12) 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 once each year.	z.12) de veiller à ce que le comité local ou le représentant inspecte chaque mois tout ou partie du lieu de travail, de façon que celui-ci soit inspecté au complet au moins une fois par année;

58. The appeals officer explicitly addressed the words of the provision at issue and reasonably resolved the uncertainty arising from them. Having decided that "work place" under the Code means all places where an employee works, irrespective of control, he turned to the specific meaning of s. 125(1). Unlike the definition of "work place", the appeals officer noted that the "very precise wording of the introduction [to s. 125(1)] indicates that the obligations set out in subsection 125(1) centre around the notion of control." In his view, the provision makes a "clear distinction" between work places that are controlled by an employer and those that are not.[77]

59. Indeed, applying all 45 duties under s. 125(1) to all work places would render the word "control" meaningless. It is a well-established principle of statutory interpretation that a statute

[77] Appeals Officer Decision, at para. 93, AR, Vol. I, Tab A, p. 19.

must be read in a manner that assigns meaning to all of the words that Parliament has used.[78] Parliament qualified the duties that apply in respect of work places – they only apply "in respect of every work place controlled by the employer." Had Parliament intended the s. 125(1) obligations to apply in all work places, it could have said so.

60. Based on his recognition of control's significance, the appeals officer stated that "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."[79] The provision employs the term "in respect of" to demarcate two distinct situations: (i) when the employer has control of the work place, and (ii) when the employer controls the work activity, regardless of its control over the work place. The first situation refers to the physical location – the controlled work place – and the second refers to a work activity, regardless of where it is performed.

61. Next, the appeals officer observed that the wording of s. 125(1) "does not specify which obligation applies to which situation."[80] He therefore interpreted the text of s. 125(1)(z.12) in the context of the other obligations under s. 125(1). Comparing the obligations under s. 125(1)(a) and s. 125(1)(t), he determined that some obligations can be met only if the employer has control over a work place, whereas others only require control over the work activity. He observed that s. 125(1)(a), which relates to building standards, falls into the first category of obligation, since it can be met only if the employer owns or leases the building.[81] In contrast, the s. 125(1)(t) obligation to ensure the safety of employee tools and equipment falls into the other category as it is not dependent on location or the employer's control of the work place.[82]

62. In so observing, the appeals officer recognized that many of the obligations under s. 125(1) only concern work places under an employer's control.[83] For example, s. 125(1)(m) requires an employer to maintain and comply with prescribed standards related to boilers,

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[78] *R. v. G. (B.)*, [1999] 2 S.C.R. 475, at para. 69; *The Queen v. Golden et al*., [1986] 1 S.C.R. 209, at para. 4.
[79] Appeals Officer Decision, at para. 93, AR, Vol. I, Tab A, p. 19.
[80] Appeals Officer Decision, at para. 93, AR, Vol. I, Tab A, p. 19.
[81] Appeals Officer Decision, at para. 97, AR, Vol. I, Tab A, p. 20.
[82] Appeals Officer Decision, at para. 95, AR, Vol. I, Tab A, p. 19.
[83] Appeals Officer Decision, at para. 95, AR, Vol. I, Tab A, p. 19.

escalators, elevators, and heating and cooling systems. Like the building standards obligation, it is clear that the obligation is intended to be "in respect" of a controlled work place (a physical location), not "in respect of" a work activity.

63. In light of these examples, the appeals officer reasonably concluded that s. 125(1)(z.12) was similar to and fell into the category of duties where control of the work place is necessary. The text of s. 125(1)(z.12) specifically refers to "work place", which suggests that this obligation does not apply to activities. And as the appeals officer explained, an employer can meet the objective underlying the s. 125(1)(z.12) obligation only with control over the work place.[84] Without control, the employer has no capacity to undertake comprehensive annual inspections.

64. An examination of other duties under s. 125(1) supports the reasonableness of the appeals officer's interpretation of s. 125(1)(z.12). An employer needs control of the physical work place to: install guards, guard-rails, barricade and fences (s. 125(1)(b)); provide prescribed first-aid facilities (s. 125(1)(h)); provide prescribed sanitary and personal facilities (s. 125(1)(i)); comply with prescribed levels of ventilation (s. 125(1)(n)); and post and keep posted, in a conspicuous place, the names of all members of work place committees (s. 125(1)(z.17)).

65. In arriving at his interpretation, it was open to the appeals officer to interpret the word "and" in the opening phrase of s. 125(1) disjunctively (the obligations apply "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"). Under his interpretation, not all obligations automatically apply "in respect of" both controlled work places and controlled activities. Rather, some duties (including the s. 125(1)(z.12) inspection duty) apply only when the employer controls the work place.

66. As Justice Near recognized, the word "and" does not have one uniform meaning. This Court has recognized that "and" and "or" may be read conjunctively or disjunctively, "where the

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[84] Appeals Officer Decision, at para. 96, AR, Vol. I, Tab A, p. 19.

legislative context so requires."[85] Consistent with that guidance, the appeals officer examined the context of s. 125(1) to reach his interpretation of the opening phrase. The appeals officer recognized that certain obligations concern only controlled work places and cannot be achieved without control, while others are directed at controlled activities. Interpreting "and" in s. 125(1) to mean that all of the duties apply to the employer in both situations would be incompatible with the content of many of the specified duties.

67. The French text of s. 125(1) also supports the reasonableness of the appeals officer's interpretation. The provision in French employs "ainsi que": "l'employeur est tenu, en ce qui concerne tout lieu de travail placé sous son entière autorité ainsi que toute tâche accomplie par un employé dans un lieu de travail ne relevant pas de son autorité." Justice Noël, as he then was, has explained that "ainsi que" can signify a relationship between terms that is "both cumulative and disjunctive."[86] Like "and" and "or", these words must be read in the context of the provision.

68. Indeed, other provisions of the Code use "ainsi que" disjunctively. The words "ainsi que" are translated as the disjunctive "or" in a provision of the Code that lists persons who are not required to give evidence in civil suits.[87] The Code also employs "ainsi que" disjunctively in another provision that refers to the topics the Minister may research.[88]

69. Finally, the appeals officer's interpretation is consistent with the overlapping obligations that the Code imposes on employers. Section 124 is general – it states that "[e]very employer shall ensure that the health and safety at work of every person employed by the employer is protected." The more specific duties under s. 125(1) supplement that general duty.[89] As the Federal Court noted, the appeals officer's interpretation of s. 125(1)(z.12) does not "limit the

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[85] *R. v. Wu*, [2003] 3 S.C.R. 530, at para. 62; *Clergue v. Vivian & Co*. (1909), 41 S.C.R. 607 at 617 (Anglin J.); See also *Seck v. Canada (Attorney General)*, 2012 FCA 314, at para. 47; *The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2016 BCCA 370, at para. 16.
[86] *Canada (Minister of Citizenship & Immigration) v. Dueck* (1998), 154 F.T.R. 241, at para. 28, n 5 (F.C.T.D.) (WL).
[87] Code, s. 119(1)
[88] Code, s. 138(4).
[89] Federal Court Decision, at para. 56, AR, Vol. I, Tab B, pp. 47-48; *Canada (Attorney General) v. Public Service Alliance of Canada*, 2015 FCA 273, at para. 17.

broader duty articulated at section 124."[90] Rather, the general obligation under s. 124 ensures that employers take steps to protect the health and safety of workers in all work places. Canada Post remains bound by this general duty and it must ensure that work activities it controls are carried out in a fashion that has due regard for public safety. The appeals officer recognized that Canada Post's "exemplary" internal policies – described in more detail at paragraphs 83 to 87 below – achieve these goals and promote worker health and safety.[91] The appeals officer's interpretation is thus congruent with the scheme and interaction between sections 124 and 125.

(b) Appeals officer's interpretation is reasonable in light of the purposes of the provision and Act

70. As his reference to the *Interpretation Act* made clear, the appeals officer was fully alive to the need to give the legislation an interpretation that furthered its purpose of protecting employee health and safety.

71. The appeals officer adopted a reasonable interpretation of the purpose of s. 125(1)(z.12). He held that s. 125(1)(z.12) aims to permit the identification of hazards and for the employer to have the capacity to fix them or have them fixed,[92] a purpose that is consistent with Part II of the Code's stated purpose, "to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment."[93] In the courts below, the parties accepted the appeals officer's interpretation of the purpose of s. 125(1)(z.12).[94]

72. The appeals officer then set out to interpret s. 125(1) in a manner that would best attain the provision's intent. He concluded that the purpose of s. 125(1) would not be advanced by interpreting it to impose duties that the employer cannot be expected to fulfil. In his view, the "obligation to inspect is one that can only apply to an employer who has control over the physical work place."[95] As Justice Near observed, the appeals officer concluded that Canada Post

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[90] Federal Court Decision, at para. 56, AR, Vol. I, Tab B, pp. 47-48.
[91] Appeals Officer Decision, at para. 100, AR, Vol. I, Tab A, p. 20.
[92] Appeals Officer Decision, at para. 96, AR, Vol. I, Tab A, p. 19.
[93] Code, s. 122.1.
[94] Federal Court of Appeal Decision, at para. 18, AR, Vol. I, Tab C, p. 77.
[95] Appeals Officer Decision, at para. 99, AR, Vol. I, Tab A, p. 20.

"does not have sufficient capacity or control outside of the physical Canada Post building in Burlington to achieve the purpose of paragraph (z.12)."[96]

73. This conclusion was reasonable. Without control, Canada Post cannot undertake comprehensive annual work place inspections. To interpret section 125(1)(z.12) as imposing an obligation on employers that they cannot meet would undermine the purposes of the Code and the provision. It would divert the attention of the employer and work place committees away from adopting practical and attainable health and safety standards, such as those Canada Post already has in place. As Canada Post argued before the appeals officer, such an interpretation would "effectively hamstring the [work place committee] and make it unable to deal with health and safety issues that may arise during the employees' normal course of employment."[97]

74. The appeals officer was also aware that public welfare statutes must be interpreted generously and broadly, but he understood that this does not call for a limitless interpretation. The Ontario Court of Appeal's decision in *Blue Mountain Resorts Limited*, which was raised before the appeals officer and cited in his decision, held that unbounded interpretations of public welfare statutes can expand them "beyond what is needed to give effect to the purposes of the legislation."[98] The legislature's intent must be the guide to the interpretation, and the appeals officer's interpretation faithfully fulfils the intent of s. 125(1)(z.12).

(c) Appeals officer's interpretation is reasonable given the scheme's operation on the ground

75. The appeals officer's interpretation accounts for the important practical implications of his interpretation. This Court recently emphasized that "[c]ourts reviewing administrative decisions are obliged to consider… the consequences of interpreting a provision one way or the other and the reality of how the statutory scheme operates on the ground."[99] In accounting for these consequences, decision-makers and courts should consider the "well-established principle

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[96] Federal Court of Appeal Decision, at para. 18, AR, Vol. I, Tab C, p. 77.
[97] Appeals Officer Decision, at para. 32, AR, Vol. I, Tab A, p. 9.
[98] *Blue Mountain Resorts Limited v. Ontario (Labour)*, 2013 ONCA 75, at para. 27.
[99] *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, at para. 41.

of statutory interpretation that the legislature does not intend to produce absurd consequences."[100]

76. The appeals officer was uniquely placed to interpret s. 125(1)(z.12) in light of the practical realities of the scheme. Only the appeals officer heard the evidence, which included testimony about the consequences of implementing the s. 125(1) duties in Canada Post's work place and other work places. The appeals officer also has expertise and experience in implementing the duties under the Code. While this Court has explained that expertise "inheres in the tribunal itself as an institution,"[101] the appeals officer's expertise arises from much more. The appeals officer in this case had worked as an HSO and technical adviser for 25 years and had dealt with and implemented "most, if not all" of the employer obligations under subsection 125(1).[102] His knowledge of the substantive regulatory issues under the Code and his familiarity with the design, detail, and operation of the statutory scheme informed his interpretation and "provided a perspective that courts generally will not have."[103]

77. After hearing directly from the witnesses, and given his expertise under the regime, the appeals officer approached his decision in light of the practical consequences of the interpretations placed before him. Canada Post made submissions on how his interpretation would apply to organizations and companies such as:

(a) Telecommunications companies (must the work place committee inspect the homes in which technicians install devices?)

(b) Interprovincial trucking lines (must the work place committee inspect every road, highway, and end-delivery destination?)

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[100] *Schnarr v. Blue Mountain Resorts Limited*, 2018 ONCA 313, at para. 72; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 27.
[101] *Edmonton (City) v. Edmonton East (Capilano) Shopping Centres Ltd*., 2016 SCC 47, at para. 33.
[102] Appeals Officer Decision, at para. 94, AR, Vol. I, Tab A, p. 19.
[103] The Honourable John M Evans, "Triumph of Reasonableness: But How Much Does it Really Matter?" (2014) 27 Can J Admin & Prac 101 at p. 110 (WL).

(c) Brinks and Securicor/GS4 (must the work place committee inspect every corner store with an ATM that Brinks and Securicor/GS4 service?)[104]

78. Like Canada Post employees, employees at these organizations and companies must enter private property for limited purposes as part of their everyday work responsibilities. For example, telecommunications technicians enter private homes and climb hydro poles and rooftops to install devices and conduct work on cable lines located on private property. But this does not mean that the work place safety committees at telecommunication companies have authority to conduct work place safety inspections at those sites.

79. Not only are such investigations unauthorized, they are impractical. Telecommunications employees may install devices at any home or be called to fix a cable box on any property. Those employers will rarely know in advance of a call from a customer where their employees will be required to work. In addition, work place committee members may not have the training necessary to safely inspect these sites. As this Court has stated, practical justifications and the avoidance of impacts that would undermine the objects of the statute may "close the door" to a particular interpretation that borders on the absurd or is openly, clearly, and evidently unreasonable.[105]

80. Similar to Canada Post, other federal employers have further logistical challenges: they require their employees to traverse hundreds of kilometers. For example, the appeals officer heard evidence about the potential implications of his interpretation on Parks Canada wardens. If he had accepted CUPW's interpretation, and held that inspections are required regardless of an employer's control over the work place, work place committees could be required to perform annual backcountry patrols of all of Canada's national parks. There are approximately 220,000 square kilometres of national parks.[106]

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[104] Canada Post's Written Submissions, paras. 53-54, AR, Vol. III, Tab 19, pp. 84-89.
[105] *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, at para. 41.
[106] Canada Post's Written Submissions, paras. 53-54, AR, Vol. III, Tab 19, pp. 84-89; Correspondence of Stephen Bird to the Canada Occupational Health and Safety Tribunal, dated March 1, 2013, AR, Vol. III, Tab 11, pp. 1-2; Correspondence of Stephen Bird to David Bloom, dated March 7, 2013, AR, Vol. III, Tab 13, pp. 5-7.

81. These consequences are unreasonable or, in statutory interpretation terms, absurd. They are not consequences that Parliament could have intended. These consequences fully support the reasonableness of the appeals officer's decision not to adopt an interpretation that would produce them. Under the appeals officer's approach, work place committees at employers such as telecommunications providers would still annually inspect work places that they control, including call centres and equipment storage facilities. Those employers also remain bound by both the activity-specific obligations of s. 125(1) and the more general duty to take proactive employee safety measures under s. 124. But work place committees would not be required to annually inspect the private homes of telecommunications subscribers.

82. The appeals officer's interpretation is reasonable because it acknowledges the real difference between inspecting the work places that an employer controls – such as buildings and offices – and the varied work places that federally-regulated employees traverse – such as national parks and roofs for satellite dish installations.[107]

Canada Post's policies demonstrate that if the appeals officer's interpretation is restored, the Code's safety objectives will continue to be met

83. Canada Post's safety policies, which aim to detect and attempt to resolve work place hazards, bolster the reasonableness of the appeals officer's interpretation. Instead of having members of work place committees inspect millions of kilometres of letter carrier routes, Canada Post has adopted a realistic approach to work place safety that empowers its employees with training and tools to identify hazards. These policies demonstrate that if the appeals officer's interpretation is restored, the Code's safety objectives will continue to be met. Put simply, there is no health and safety failure that requires this Court to deviate from the appeals officer's interpretation.

84. Under Canada Post's policies, mail delivery personnel are trained to identify hazards on routes. When a hazard is identified, mail delivery personnel report the hazard to a supervisor. That supervisor must complete a report and conduct a high-level assessment of the situation. If the supervisor confirms that there is a hazard, he or she has a number of options to attempt to

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[107] Canada Post's Written Submissions, paras. 53-54, AR, Vol. III, Tab 19, pp. 84-89.

resolve the issue – the supervisor can discuss a resolution with the customer (if the hazard is on that customer's property) or work with the relevant authority (such as a municipality) to remedy the situation. Delivery to the address may be suspended under the policy.[108]

85. These policies are practical, worker-driven, and recognize the reasonable limits of Canada Post's jurisdiction. Because Canada Post can enter private property only to deliver mail and cannot alter private property, it has put in place a procedure to identify and address hazards to the best of its ability. The appeals officer described these policies as "exemplary" in "identifying and reporting hazards" at delivery addresses.[109]

86. While the appeals officer recognized that these policies are effective, they are not the same as having work place safety committees inspect every carrier route and address location. Canada Post's proactive policies do not duplicate the obligation under s. 125(1)(z.12). As Justice Near observed, there is a clear difference between these policies and the Code's obligation:

> If the obligation to ensure an inspection applied to work places not under the employer's control, the respondent would not simply be expected to *attempt* to identify and fix hazards and carry out *some* route audits [as the policy contemplates]. Rather, the respondent would be legally obligated to ensure that any hazard on any letter carrier route, including on private property, was identified and fixed [emphasis in original].[110]

87. There is no need to stretch the more specific obligations under s. 125(1) beyond their purposes to achieve the Code's work place safety objectives. Under the s. 124 general duty, the Code already requires employers to adopt sophisticated and responsive work place safety policies to meet the spirit of the Code's underlying safety goals. Canada Post's policies meet those goals. As the appeals officer wrote, Canada Post's policies are "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."[111]

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[108] Book of Documents of Canada Post Corporation – CMS 1202.05, AR, Vol. II, Tab 3, pp. 15-32.
[109] Appeals Officer Decision, at para. 100, AR, Vol. I, Tab A, p. 20.
[110] Federal Court of Appeal Decision, at para. 20, AR, Vol. I, Tab C, pp. 78-79.
[111] Appeals Officer Decision, at para. 100, AR, Vol. I, Tab A, p. 20.

Problems with the approaches of Justices Nadon and Rennie

88. In contrast to the approach that this Court has directed in recent decisions,[112] both Justices Nadon and Rennie conducted a *de novo* interpretation of s. 125(1)(z.12). In doing so, they failed to show respect for the appeals officer's reasons. Justices Nadon and Rennie engaged in a cursory treatment of the appeals officer's reasons before setting out their own preferred interpretations.[113] The Honourable John M. Evans, writing extra-judicially, has explained the problem with this approach – "once the court embarks on its own interpretation of the statute to determine the reasonableness of the tribunal's decision, there seems often to be little room for deference."[114]

89. But even on the correctness standard that Justices Nadon and Rennie effectively adopted, their reasons are flawed in several respects.

90. First, each judgment rests its analysis solely on the text of the provision, without properly considering context or purpose. In one conclusory statement, Justice Nadon wrote "I see nothing in the context or the purpose of this legislation which supports the interpretation of subsection 125(1) reached by the Appeals Officer."[115] Justice Rennie does not mention the purpose or context of s. 125(1)(z.12). This Court has recently held that textual arguments "cannot be the sole basis for interpreting a statute."[116] As explained, reading the obligations under s. 125(1) in the context of the other duties is the reasonable and appropriate way to construe the provision. In fact, it is the approach that this Court has mandated since *Rizzo*.

91. Even on the text alone, Justice Nadon reads out the distinction in s. 125(1) between work places controlled by an employer and those that are not. In his view, "if one or the other circumstance is met [control of the work place or control of the activity], all of the obligations set

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[112] See *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31; *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4.
[113] Federal Court of Appeal Decision, paras. 48-49, 75, Vol. I, Tab C, pp. 88, 97.
[114] The Honourable John M Evans, "Triumph of Reasonableness: But How Much Does it Really Matter?" (2014) 27 Can J Admin & Prac 101 at p.109 (WL).
[115] Federal Court of Appeal Decision, at para. 57, AR, Vol. I, Tab C, p. 91.
[116] *Green v. Law Society of Manitoba*, 2017 SCC 20, at para. 37.

out in its paragraphs, including the obligation set out at paragraph 125(1)(z.12), must be performed by an employer."[117] The effect of his reading is that control of an activity is sufficient to trigger an obligation in respect of a physical work place (not just the activity), even where the employer does not control that work place. His interpretation fails to give meaning to Parliament's decision to specify that obligations in respect of a work place apply only if the employer controls the work place.

92. Second, both judgments fail to consider the practical consequences of their interpretations. By failing to consider anything but the text of the provision, Justices Nadon and Rennie ignored the evidence before the appeals officer of the absurd consequences that flow from their interpretations. As described in paragraphs 75 to 82 above, this Court has made it clear that decision-makers and reviewing courts must consider the consequences of interpreting a provision one way or the other and the reality of how the statutory scheme operates on the ground.

93. Justice Rennie's interpretation is also impractical for a different reason: it injects uncertainty into Part II of the Code. It requires "a fact specific analysis" and "a parsing of the risks" posed by each work activity to determine the extent to which a federal employer must comply with an obligation.[118] Justice Rennie provides no explanation of how an employer should conduct this assessment, or how the obligations may vary depending on the extent of the employer's control over the activity. Conducting this case-by-case analysis is thus imprecise and time-consuming. It would lead to unpredictable and piecemeal inspection obligations that may be ever-changing. Employers and workers must clearly understand the obligations that s. 125(1) imposes. Justice Rennie's approach fails to provide such certainty.

94. There are two further problems with Justice Nadon's reasons. First, Justice Nadon's interpretation of the phrase "ainsi que" in the French text of s. 125(1) is plainly wrong. He held that because the French version of the provision uses the words "ainsi que", the provision "clearly mean[s]" "and" and not "or".[119] But as discussed above, the meaning of "ainsi que"

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[117] Federal Court of Appeal Decision, at para. 48, AR, Vol. I, Tab C, p. 88.
[118] Federal Court of Appeal Decision, at para. 80, AR, Vol. I, Tab C, p. 99.
[119] Federal Court of Appeal Decision, at para. 53, AR, Vol. I, Tab C, p. 90.

depends on the context.[120] Because Justice Nadon failed to look at the context of the enactment, Justice Nadon's conclusion on the meaning of "ainsi que" is incorrect.

95. Second, Justice Nadon erred in reassessing and overturning the appeals officer's findings of fact. Justice Nadon agreed with the appeals officer's conclusion that Canada Post's policies successfully protect the health and safety of letter carriers in all aspects of their work. However, his reading of the policies goes one step further. Justice Nadon concluded from these policies that, contrary to the appeals officer's findings, Canada Post has the capacity to conduct the comprehensive annual inspections required by s. 125(1)(z.12).[121] He noted, though, that Canada Post "may have to change or modify its protocol because an annual inspection would have to be performed by the work place committee, rather than by the employees identifying hazards as they work."[122]

96. This observation demonstrates Justice Nadon's misunderstanding of the evidence before the appeals officer. As explained above, Canada Post's policies do not contemplate annual work place safety inspections of work places that Canada Post does not control. Rather, Canada Post's policies rely on letter carrier training and proactive reporting to fulfil the objectives of the Code. The appeals officer recognized that these policies are an "excellent example" of how the broad duties under the Code ensure worker safety, but they do not provide a basis to conclude that Canada Post has the capacity to conduct inspections on private property. It is not as simple as substituting work place committees into an inspection role that Canada Post does not and cannot perform. Justice Nadon should have "refrain[ed] from reweighing and reassessing the evidence considered by the decision maker," which is incompatible with reasonableness review.[123]

97. Because this Court "steps into the shoes" of the lower court to review the appeals officer's decision, it need not comment on the approaches of the judges of the Federal Court of

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[120] *Canada (Minister of Citizenship & Immigration) v. Dueck* (1998), 154 F.T.R. 241, at para. 22, n 5 (F.C.T.D.) (WL); *R. v. Wu*, [2003] 3 S.C.R. 53; Code, ss. 119(1), 138(4).
[121] Federal Court of Appeal Decision, at para. 64, AR, Vol. I, Tab C, p. 93.
[122] Federal Court of Appeal Decision, at para. 66, AR, Vol. I, Tab C, p. 94.
[123] *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, at para. 55.

Appeal. But to the extent that it does so, the Court should adopt the judgment of Justice Near, and reject those of Justices Nadon and Rennie.

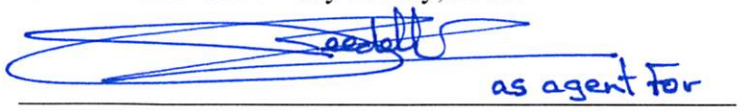
PART IV – COSTS

98. Canada Post submits that costs should follow the event, and if the appeal is successful, seeks its costs in this Court and in the proceedings below.

PART V – ORDER SOUGHT

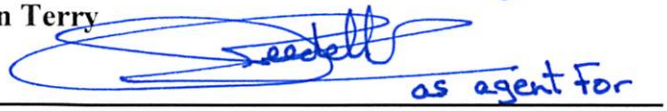
99. Canada Post requests an order allowing this appeal, setting aside the judgment of the Federal Court of Appeal, and granting Canada Post its costs of this appeal and the proceedings below.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of July, 2018.



Sheila Block

John Terry



Jonathan Silver

Counsel for the Appellant, Canada Post Corporation

PART VI – TABLE OF AUTHORITIES

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1.	*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36	46
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18.	*R. v. G. (B.)*, [1999] 2 S.C.R. 475	59

19.	*R. v. Wu*, [2003] 3 S.C.R. 530	66, 94
20.	*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27	56, 75, 90
21.	*Schnarr v. Blue Mountain Resorts Limited*, 2018 ONCA 313	75
22.	*Seck v. Canada (Attorney General)*, 2012 FCA 314	66
23.	*The Owners, Strata Plan KAS 3549 v. 0738039 B.C. Ltd.*, 2016 BCCA 370	66
24.	*The Queen v. Golden et al.*, [1986] 1 S.C.R. 209	59
25.	*West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22	49, 56, 75, 79
26.	*Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4	48, 52, 88
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27.	The Honourable John M Evans, "Triumph of Reasonableness: But How Much Does It Really Matter?" (2014) 27 Can J Admin & Prac 101 (Westlaw)	51, 76, 88
28.	Universal Postal Union, *Convention Manual*, [Universal Postal Convention as revised by the 2016 Istanbul Congress, those of the Regulations as revised by the Postal Operations Council at both of its sessions in 2017, and the commentary made by the International Bureau] (Berne: Universal Postal Union, 2018) <online: http://www.upu.int/uploads/tx_sbdownloader/actInThreeVolumesManualOfConventionEn.pdf>	16
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29.	*Canada Labour Code*, R.S.C. 1985, c. L-2., ss. 119(1), 122, 122.1, 124, 125(1), 135, 136, 137, 138(4), 146(1), 146.1, 146.2, 146.3, 146.4	1-14, 20-23, 27-40, 42, 44, 47, 49-51, 54-69, 71-74, 76, 81, 83, 86-95
30.	*Canada Post Corporation Act*, R.S.C. 1985, c. C-10, ss. 5(1), 5(2), 14(1), 19(2)	15, 16
31.	*Interpretation Act*, R.S.C. 1985, c. I-21, s. 12	24, 70