

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

BETWEEN:

CANADA POST CORPORATION

APPELLANT

– and –

CANADIAN UNION OF POSTAL WORKERS

RESPONDENT

– and –

**ATTORNEY GENERAL OF CANADA,
FETCO INC. (FEDERALLY REGULATED EMPLOYERS
– TRANSPORTATION AND COMMUNICATIONS),
DHL EXPRESS (CANADA), LTD., FEDERAL EXPRESS CANADA
CORPORATION, PUROLATOR INC., TFI INTERNATIONAL INC.
AND UNITED PARCEL SERVICE CANADA LTD.,
CANADIAN UNION OF PUBLIC EMPLOYEES AND
PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA,
WORKERS' HEALTH AND SAFETY LEGAL CLINIC,
ROGERS COMMUNICATIONS INC.,
CANADIAN BROADCASTING CORPORATION, BELL CANADA,
BELL TECHNICAL SOLUTIONS INC. AND BELL MEDIA INC.,
MARITIME EMPLOYERS ASSOCIATION, THE HALIFAX EMPLOYERS
ASSOCIATION AND THE BRITISH COLUMBIA MARITIME EMPLOYERS
ASSOCIATION, and
INTERNATIONAL LONGSHORE AND WAREHOUSE UNION CANADA;
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 269,
LOCAL 1341, LOCAL 1657, LOCAL 1825; AND
CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 375**

INTERVENERS

**FACTUM OF THE INTERVENERS,
CANADIAN UNION OF PUBLIC EMPLOYEES and
PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA**
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

GOLDBLATT PARTNERS LLP

500 - 30 Metcalfe Street
Ottawa, ON K1P 5L4

Peter Engelmann

Colleen Bauman

Tel: 613-482-2452

Fax: 613- 235-3041

pengelmann@goldblattpartners.com

Counsel for the Interveners

**Canadian Union of Public Employees and
the Professional Institute of the Public
Service of Canada**

GOLDBLATT PARTNERS LLP

500 - 30 Metcalfe Street
Ottawa, ON K1P 5L4

Colleen Bauman

Tel: 613-482-2463

Fax: 613-235-3041

cbauman@goldblattpartners.com

Agent for the Interveners

**Canadian Union of Public Employees and the
Professional Institute of the Public Service of
Canada**

TO: THE REGISTRAR

Supreme Court of Canada Building 301 Wellington Street
Ottawa, ON K1A 0J1

AND TO:

TORYS LLP

79 Wellington Street West, Suite 3000 Box
270, TD Centre
Toronto, ON M5K 1N2

Sheila Block

Tel: 416-865-7319

Fax: 416-865-7380

sblock@torys.com

John Terry

Tel: 416-865-8245

jterry@torys.com

Jonathan Silver

Tel: 416-865-8198

jsilver@torys.com

**Counsel for the Appellant,
Canada Post Corporation**

GOWLING WLG (CANADA) LLP

160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Jeffrey W. Beedell

Tel: 613-786-0171

Fax: 613-788-3587

jeff.beedell@gowlingwlg.com

**Agent for Counsel for the Appellant,
Canada Post Corporation**

**CAVALLUZZO SHILTON MCINTYRE
CORNISH LLP**

474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

Paul J.J. Cavalluzzo

Tel: 416-964-1115
Fax: 416-964-5895
pcavalluzzo@cavalluzzo.com

**Counsel for the Respondent,
Canadian Union of Postal Workers**

CONWAY BAXTER WILSON LLP/s.r.l.

400-411 Roosevelt Avenue
Ottawa, ON K2A 3X9
Fax: 613.688.0271

David Taylor

Tel: 613-691-0368
Fax: 613-688-0271
dtaylor@conway.pro

**Agent for the Respondent,
Canadian Union of Postal Workers**

FASKEN MARTINEAU DUMOULIN LLP

Bay Adelaide Centre
333 Bay Street, Suite 2400 Toronto,
ON M5H 2T6

Brian Smeenk

Tel: 416-868-3438
Fax: 416-364-7813
bsmeenk@fasken.com

**Counsel for the Intervener,
Rogers Communications Inc.**

FASKEN MARTINEAU DUMOULIN LLP

Bay Adelaide Centre
333 Bay Street, Suite 2400 Toronto,
ON M5H 2T6

Christopher D. Pigott

Tel: 416-865-5475
Fax: 416-364-7813
cpigott@fasken.com

Rachel Younan

Tel: 416-865-5475
ryounan@fasken.com

**Counsel for the Intervener,
FETCO Inc. (Federally Regulated Employers
- Transportation and Communications)**

FASKEN MARTINEAU DUMOULIN LLP

55 Metcalfe Street, Suite 1300
Ottawa, ON K1P 6L5

Sophie Arseneault

Tel: 613-696-6904
Fax: 613-230-6423
sarseneault@fasken.com

**Agent for Intervener,
Rogers Communications Inc.**

FASKEN MARTINEAU DUMOULIN LLP

55 Metcalfe Street, Suite 1300
Ottawa, ON K1P 615

Sophie Arseneault

Tel: 613-696-6904
Fax: 613-230-6423
sarseneault@fasken.com

**Agent for the Intervener,
FETCO Inc. (Federally Regulated
Employers - Transportation and
Communications)**

BORDEN LADNER GERVAIS LLP
1000 De La Gauchetiere Street West, Suite 900
Montreal QC H3B 5114

Maryse Tremblay
Tel: 514-954-2648
Fax: 514-954-1905
mtremblay@blg.com

Mark Phillips
Tel: 514-954-3198
mphillips@blg.com

Soudeh Alikhani
Tel: 514-954-2519
salikhani@blg.com

**Counsel for Interveners,
Canadian Broadcasting Corporation, Bell
Canada, Bell Technical Solutions Inc. and Bell
Media Inc.**

FASKEN MARTINAEU DUMOULIN LLP
800 Victoria Square, Suite 3700
Montréal, QC H4Z 1E9

Stéphane Fillion
Tel: 514-397-4309
Fax: 514-397-7600
sfillion@fasken.com

Michael Adams
Tel: 514-397-4323
madams@fasken.com

**Counsel for Interveners,
Maritime Employers Association, Halifax
Employers Association, and the British
Columbia Maritime Employers Association**

BORDEN LADNER GERVAIS LLP
World Exchange Plaza
100 Queen Street, Suite 1300
Ottawa ON K1P 1J9

Nadia Effendi
Tel: 613-237-5160
Fax: 613-230-8842
neffendi@blg.com

**Agent for Interveners,
Canadian Broadcasting Corporation, Bell
Canada, Bell Technical Solutions Inc. and
Bell Media Inc.**

FASKEN MARTINAEU DUMOULIN LLP
55 Metcalfe Street, Suite 1300
Ottawa, ON K1P 6L5

Sophie Arseneault
Tel: 613-696-6904
Fax: 613-230-6423
sarseneault@fasken.com

**Agent for Interveners, Maritime
Employers Association, Halifax
Employers Association, and the British
Columbia Maritime Employers**

**HICKS MORLEY HAMILTON STEWART
STORIE LLP**

77 King Street West, 39th Floor
Box 371, TD Centre Toronto,
ON M5K 1K8

Michael A. Hines

Tel: 416-864-7248
Fax: 416-362-9680
michael-hines@hicksmorley.com

Lauri A. Reesor

Tel: 416-864-7288
lauri-reesor@hicksmorley.com

Gregory J. Power

Tel: 416-864-7240
gregory-power@hicksmorley.com

**Counsel for the Interveners,
DHL Express (Canada), Ltd., Federal Express
Canada Corporation, Purolator Inc., TFI
International Inc. and United Parcel Service
Canada Ltd.**

**WORKERS' HEALTH AND SAFETY
LEGAL CLINIC**

200 - 180 Dundas Street West
Toronto, ON M5G 1Z8

John Bartolomeo/Jennifer Chan/Doug Letto

Tel: 416-971-8832, Ext. 202
Fax: 416-971-8834
bartolj@lao.on.ca

**Counsel for the Intervener,
Workers' Health and Safety Legal Clinic**

**HICKS MORLEY HAMILTON STEWART
STORIE LLP**

150 rue Metcalfe St., Suite 2000
Ottawa, ON K2P 1P1

George G. Vuicic

Tel: 613-234-0386
Fax: 613-234-0418
george-vuicic@hicksmorley.com

**Agent for Counsel for the Interveners,
DHL Express (Canada), Ltd., Federal Express
Canada Corporation, Purolator Inc., TFI
International Inc. and United Parcel Service
Canada Ltd**

SUPREME ADVOCACY LLP

100 - 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major

Tel: 613-695-8855, Ext. 102
Fax: 613-695-8580
mfmajor@supremeadvocacy.ca

**Agent for the Intervener,
Workers' Health and Safety Legal Clinic**

DEPARTMENT OF JUSTICE CANADA
500 — 50 O'Connor Street
Ottawa, ON K1A 0H8

Catherine Lawrence/Zoe Oxaal
Tel: 613-670-6258
catherine.lawrence@justice.gc.ca

**Counsel for the Intervener,
Attorney General of Canada
VICTORY SQUARE LAW OFFICE**
710 – 777 Hornby Street
Vancouver, BC V6Z 1S4

Craig Bavis
Ronald Pink, Q.C.
Bettina Quistgaard
Tel: 604-602-7988
Fax: 604-684-8427
cbavis@vslo.ca

**Counsel for the Interveners,
International Longshore and Warehouse Union
Canada, the International Longshoremen's
Association, Local 269, Local 1341, Local 1657,
Local 1825 and the Canadian Union of Public
Employees, Local 375**

DEPARTMENT OF JUSTICE CANADA
500 — 50 O'Connor Street
Ottawa, ON K1A 0H8

Christopher Rupar
Tel: 613-670-6290
Fax: 613-954-1920
christoper.rupar@justice.gc.ca

**Agent for the Intervener,
Attorney General of Canada
GOLDBLATT PARTNERS LLP**
500 - 30 Metcalfe Street
Ottawa, ON K1P 5L4

Colleen Bauman
Tel: 613-482-2463
Fax 613-235-3041
cbauman@goldblattpartners.com

**Agent for the Interveners,
International Longshore and Warehouse
Union Canada, the International
Longshoremen's Association, Local 269, Local
1341, Local 1657, Local 1825 and the
Canadian Union of Public Employees, Local
375**

TABLE OF CONTENTS

	PAGE
PARTS I AND II: OVERVIEW, FACTS AND POSITION ON THE ISSUES	1
PART III: ARGUMENT	2
PART IV: COSTS	10
PART V: ORDER REQUESTED	10
PART VI: TABLE OF AUTHORITIES	11

PARTS I AND II: OVERVIEW, FACTS, AND POSITION ON THE ISSUES

1. The modern approach to statutory interpretation assesses a legislative provision in context and in light of a statute's purpose. In the present case, an important part of understanding both the purpose and context of s. 125 (1)(z.12) of Part II of the *Canada Labour Code*¹, is recognizing the important role of jointly run worker and employer work place health and safety Committees ("Joint Committees") and/or Health and Safety Representatives ("Representatives") in carrying out inspections under the statute. The Canadian Union of Public Employees ("CUPE") and the Professional Institute of the Public Service of Canada (the "Institute") submit that the interpretation of s. 125(1)(z.12) given by the majority of the Federal Court of Appeal, which requires inspections of work places where the employer controls the work activity but not the work place, is entirely consistent with both the purpose and broader context of the provision, particularly when seen in light of the role of Joint Committees and Representatives under the *Code*, and should be preferred over the unduly narrow and restrictive interpretation given to it by the Appeals Officer.

2. With respect to purpose, Part II of the *Code* is remedial public-welfare legislation, the goal of which is to "prevent accidents and injury to health arising out of, linked with or occurring in the course of employment"² through the guarantee of a minimum level of health and safety protection for workers by giving employers and workers a joint role in protecting health and safety. Consistent with this broad legislative purpose, the specific purpose of s. 125(1)(z.12) is to pre-emptively identify health and safety hazards in the work place as part of a systematic accident prevention program carried out jointly by the employer and workers.

3. This purpose finds support in the legislative history of the provision. As set out in detail below, s. 125(1)(z.12) was introduced into Part II of the *Code* as part of a series of reforms that emerged from the consensus recommendations of employers and labour, that were based on the "Internal Responsibility System," and were intended to strengthen the role of Joint Committees in work places.

4. The Internal Responsibility System is also part of the broader context in which s.

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

² *Ibid.* s. 122.1.

125(1)(z.12) must be understood. This system forms the philosophical basis underlying much of health and safety legislation in Canada at present. It empowers both workers and employers through joint committees to take mutual responsibility for reducing hazards and injuries in the work place, including through regular work place inspections. The broad and purposive interpretation of s. 125(1)(z.12) given to it by the majority of the Federal Court of Appeal will prevent more work place accidents and injuries by requiring that inspections be conducted in a wide array of work place settings. This is consistent with the underlying internal responsibility philosophy of Part II of the *Code* and the role of Joint Committees in putting that philosophy into practice.

5. Another important part of the context is that, as is apparent in the statutory scheme itself, Joint Committees have a great deal of leeway in determining how the statutorily mandated inspections are to be carried out. This allows committees the scope to find practical and workable solutions to ensure that inspections are completed and work place accidents are prevented. Contrary to the Appellant's argument at paragraph 73 of its factum, requiring inspections of work places where the work activity, but not the physical work space, is in the employer's control does not "impos[e] obligations on employers that they cannot meet," nor does it "hamstring" the Joint Committee. Rather, the Court of Appeal's broad interpretation of s. 125(1)(z.12) is entirely consistent with the role and practical functioning of Joint Committees in the conduct of inspections.

PART III: ARGUMENT

A. The Remedial Purpose of Section 125(1)(z.12) of the *Code*: Preventing Work Place Accidents and Injuries through Joint Inspections

6. It is widely accepted that the modern contextual approach to statutory interpretation requires that a statutory provision be read in its entire context in light of the purpose of the Act and the intention of Parliament.³

³ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42, at para. 26. Ruth Sullivan, *Sullivan on the Construction of Statutes* (6th ed.) (Toronto: LexisNexis Canada, 2014) at pp. 1-2.

7. This approach was adopted by the Ontario Court of Appeal in a similar context as the present one when it was called upon to interpret a provision of the Ontario *Occupational Health and Safety Act*⁴ that required the establishment of a Joint Health and Safety Committee in certain circumstances. The Court summarized the modern approach to statutory interpretation as follows:⁵

[I]t requires a contextual analysis. Thus, a proper interpretation assesses the legislative provision in context, given the statute's purpose. Insofar as the language of the provision permits, interpretations that are consistent with or promote the legislative purpose should be adopted while interpretations that defeat or undermine legislative purpose should be avoided.

8. In that case, the Court of Appeal went on to describe the purpose of the OHSA as follows:⁶

[It] is a remedial public-welfare statute whose purpose is to guarantee a minimum level of health and safety protection for workers in Ontario. This broad purpose must inform the interpretation of s. 9(2)(a), which requires the establishment of a [Joint Health and Safety Commission) an important mechanism in achieving the legislative objective of enhanced worker safety.

9. The purpose of Part II of the *Code* as set out in s. 122.1, is to “prevent accidents and injury to health arising out of, linked with or occurring in the course of employment”.⁷ As with the Ontario statute, its aim is to guarantee a minimum standard of health and safety in order to protect workers and enhancing safety, including through their involvement in Joint Committees.

10. Consistent with this broad legislative purpose, the specific purpose of s. 125(1)(z.12), which requires an employer to ensure that the Joint Committee or Representative inspects monthly all or part of a work place, is to prevent work place accidents and injuries through a program of regular joint employer-worker inspections aimed at identifying and addressing health and safety issues before they become problems.

⁴ *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 [“OHSA”].

⁵ *Ontario (Labour) v. United Independent Operators Limited*, [2011 ONCA 33 \(CanLII\)](#) at para. 31 [“UIOL”]

⁶ *Ibid.* at para. 63.

⁷ *Code, supra* at s. 122.1.

11. The interpretation given to s. 125(1)(z.12) by the majority of the Federal Court of Appeal requiring inspections 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”⁸ is entirely consistent with both the broader purpose of Part II of the *Code* and the specific purpose of the provision, since further inspections can only serve to prevent more work place accidents and injuries thereby advancing the health and safety of workers more broadly.

B. The Legislative History of the Provision: Shared Responsibility and An Expanded Role for Workers

12. The remedial and preventative purpose of s. 125(1)(z.12) finds further support in the legislative history of the provision. This provision was introduced into Part II of the *Code* in 2000 as part of a series of reforms which were aimed at strengthening the role of Joint Committees in work places as part of the “internal responsibility” model for health and safety legislation.

13. These reforms were the result of a tripartite review of federal health and safety laws that took place under both the Conservative and Liberal governments in the 1990s, from which emerged “a set of consensus recommendations..., centred around support for a strengthened internal responsibility system.”⁹ The internal responsibility model of health and safety centres around “plac[ing] primary responsibility for preventing work place accidents and occupational disease on cooperative action by workers’ representatives and local managers.”¹⁰

14. The recommendations that emerged from this process included enlarging the role of local health and safety committees “to include monthly work place inspections and involvement in

⁸ *Code, supra*, s. 125(1).

⁹ Eric Tucker, “Diverging Trends in Worker Health and Safety Protection and Participation in Canada, 1985-2000,” *Industrial Relations*, 2003, Vol. 58, No. 3, pp. 395 – 426 at p. 413 [“Diverging Trends”].

¹⁰ John O’Grady, “Joint Health and Safety Committees: Finding a Balance,” *Injury and the New World of Work*, ed. Terrence Sullivan, Chapter Eight, pp 162-97, (Vancouver: UBC Press, 2000) at p. 162 [“Finding a Balance”].

planning work place changes affecting OHS.”¹¹ These recommendations in turn formed the basis for statutory changes that were found in Bill C-12, including the introduction of s. 125(1)(z.12), which was enacted by Parliament in 2000.

15. This internal responsibility system referred to above first emerged in the unionized mining and manufacturing sectors in the 1950s and 1960s. Key to this system is the establishment of joint health and safety committees with the power to inspect and investigate work places in the interests of health and safety. Internal responsibility principles now inform health and safety legislation in all jurisdictions throughout Canada.¹²

16. This move towards an internal responsibility system as part of the changes in Bill C-12 can be seen in the government’s speech at second reading, which stated that “the time had come for a new approach to the regulation of workplace health and safety” and that Bill C-12 was “based on the philosophy that the proper role of the Government of Canada is to empower workers and employers to assume responsibility for the regulation of their own workplace.”¹³

17. In practical terms, this meant increased inspection powers for joint committees (such as those found in s. 125(1)(z.12) so that they could resolve health and safety issues pre-emptively and quickly. As explained by the Parliamentary Secretary to the Ministry of Labour at that time:

[A]s a result of this bill, *local health and safety committees will be mandated to conduct regular workplace inspections* and will be given increased powers in dealing with complaints. This will *permit the parties to identify and solve problems swiftly* as they arise. This will be done with government guidance and it *will enhance the role of health and safety committees*.¹⁴

18. Thus, this legislative history reveals that work place inspections were a key part of the expanded role for Joint Committees and the empowering of both work place parties to take responsibility for the health and safety of workers under the *Code*. A restrictive reading of s. 125(1)(z.12), which limits or reduces the role of the Joint Committee in performing inspections,

¹¹ Diverging Trends, *supra* at p. 413; See also *House of Commons Debates*, 36th Parliament, 2nd Sess., No. 71 (24 March 2000) at 1220 (Judi Longfield) [“24 March 2000 Hansard”].

¹² Finding a Balance, *supra* at p. 163.

¹³ 24 March 2000 Hansard, *supra* at 1225.

¹⁴ *Ibid.* (emphasis added).

is entirely inconsistent with the purpose of the statute as illustrated by the legislative history.

C. Section 125(1)(z.12) in Context: The Role of Joint Committees and the Internal Responsibility System

19. Joint Committees and the Internal Responsibility System also form an important part of the external context in which s. 125(1)(z.12) must be interpreted. As with the statutory purpose, this context supports a broad and remedial interpretation of s. 125(1)(z.12), such as that given to it by the majority of the Federal Court of Appeal.

20. With respect to the statutory scheme, s. 135(1) of the *Code* requires that a work place health and safety committee be established for work places of twenty or more employees. The responsibilities of this Joint Committee include, amongst others, participating in all of the inquiries, investigations, studies and inspections pertaining to the health and safety of employees (s. 135(7)(e)) and inspecting each month all or part of the work place (s. 135(7)(k)). For work places with fewer than 20 employees, the employer need only appoint a Health and Safety Representative (s. 136(1)) instead of establishing a Joint Committee. Under s. 136(5), the Representative has similar responsibilities as the Committee, including inspection obligations.

21. The employer also has obligations with respect to the Joint Committee, and or Health and Safety Representative, including but not limited to, ensuring committee members receive appropriate training (s. 125(1)(z.01)), responding to the Joint Committee's recommendations within 30 days (s. 125(1)(z.10)), and ensuring that the Joint Committee inspects all or part of the work place every month (s. 125 (1)(z.12), the provision at issue in this case).

22. Thus, all of these provisions with respect to the Joint Committee and its obligations, including its inspection obligations, work in concert and are part of the Committee's broader statutory role in preventing health and safety accidents and injuries.

23. Academic commentary has recognized that Joint Committees are essential to the successful functioning of the internal responsibility system, which in turn is "rooted in the assumption that labour and management have a common interest in and thus should share

primary responsibility for work place health”¹⁵ and take mutual responsibility for reducing hazards and injuries in the work place.

24. Similarly, the Ontario Court of Appeal, has found that Joint Health and Safety Committees (“JHSC”) “are intended to play a central role in achieving the objective of safe and healthy work places [and] form an integral part of the internal responsibility system.”¹⁶

25. The Ontario Court of Appeal has also accepted the important role played by the “internal responsibility” model in our occupational health and safety regimes:¹⁷

‘Fundamental to the [OHSA] is the concept that employers and workers must share responsibility for occupational health and safety and that both must actively seek to identify hazards and develop responses to protect workers. *This internal responsibility system assumes assessment of the system itself by employers and workers through the appointment of health and safety committees and representatives and through regular inspections of the workplace.*’

The OHSA is built on the notion of the internal responsibility system. It is clear that *JHSCs play a critical role in that system. JHSCs assist by increasing the ability of workers and employers to prevent and respond to dangerous and changing conditions.* Interpreting s. 9(2)(a) as requiring JHSCs only in workplaces in which employers and workers stand in a traditional employment relationship would seriously curtail the scope of s. 9(2)(a) and run contrary to the purpose of the OHSA.

26. Thus, Joint Committees, including through their role in conducting work place inspections, are one of the key means by which the preventative health and safety goals of Part II of the *Code* are met. As stated by the Ontario Court of Appeal, these Committees “increase the ability of workers and employers to prevent and respond to dangerous and changing conditions.”

27. As well, their impact is not only theoretical but concrete. Consistent with the broader statutory purpose, worker participation in health and safety, such as through a Joint Committee, is “positively and consistently associated with lower injury rates, lower lost time accident rates, and lower injury reporting,” as well as improved health and safety problem-solving in work

¹⁵ Marcia Facey et al., “The everyday functioning of joint health and safety committees in unionized workplaces: a labour perspective,” *Policy and Practice in Health and Safety*, 2017, Vol. 15, No. 2, 160-173 at p. 160 [“Everyday Functioning”].

¹⁶ *UIOL*, *supra* at para. 54.

¹⁷ *Ibid.* at paras. 55-60.(Emphasis added).

places.¹⁸

28. The broad and liberal interpretation given s. 125(1)(z.12) by the majority of the Federal Court of Appeal, by allowing, within the meaning of the *Code*, a wide range of work places to be inspected by the Joint Committee or Health Safety Representative, will only serve to further this statutory purpose by contributing toward the future prevention of work place accidents and injuries.

D. Section 125(1)(z.12) in Context: Joint Committees and the Conduct of Inspections

29. At paragraphs 73 to 81 of its factum, the Appellant effectively argues that the Federal Court of Appeal’s interpretation of s. 125(1)(z.12) will cause the floodgates to open, causing it and countless other federal employers to face “logistical challenges,” “hamstring” work place committees, and “divert the attention of the employer and work place committees.”

30. Respectfully, CUPE and the Institute submit that the Appellant’s argument fundamentally misunderstands the role of joint committees in determining the conduct of inspections on the ground and also misrepresents the obligations imposed by statute on employers.

31. In fact, Part II of the *Code* is not at all proscriptive as to how inspections are to be carried out on the ground and in practice, Joint Committees have a great deal of scope to find practical and workable solutions to the conduct of inspections.

32. As set out in s. 125(1)(z.12) and s. 135(7)(k), the sole statutory requirements with respect to inspections are that inspections of at least part of the work place must be conducted monthly and that the entire work place must be inspected annually. As well, s. 135.1(14) allows the Joint Committee to establish its own rules of procedures for its operation. How, in practice, work place health and safety inspections are to be carried out is not set out in the *Code*, nor in the *Canada Occupational Health and Safety Regulations*.¹⁹

33. This lack of proscription in the statute and regulation is a signal that it was the intent of parliament to leave decisions as to the conduct of investigations largely up to Joint Committees

¹⁸ Everyday Functioning, *supra* at p. 162; Finding a Balance, *supra* at p. 182.

¹⁹ SOR/86-304

themselves, who being in the work places and trained in health and safety issues, are best placed to determine this question.

34. This approach of downloading a degree of control on these questions to Joint Committees is in fact entirely consistent with the internal responsibility system, which as noted makes the workers and employers jointly responsible for work place health and safety.

35. As well, the Appellant's suggestions that the obligations imposed by this interpretation are in any way onerous are erroneous. In fact, under the statutory regime, Joint Committees do not have decision-making powers and cannot order the employer to implement changes, but rather can only make recommendations to the employer.²⁰ When an employer receives a recommendation, its sole responsibility is to respond to it in writing within 30 days. Specifically, s. 125(1)(z.10) requires the employer to do the following:

respond in writing to recommendations made by the policy and work place committees or the health and safety representative within thirty days after receiving them, indicating what, if any, action will be taken and when it will be taken.

36. In conclusion, the Appellant's floodgate concerns are entirely misplaced. As noted, Joint Committees have the ability to work together to come up with practical solutions to ensure that all necessary work places inspections are conducted in a timely, efficient and practical manner.

37. As well, while conducting inspections pursuant to s. 125(1)(z.10) in work places where the employer only controls the work activity may very well result in recommendations that can improve employee health and safety. It will not result in onerous obligations on the employer that are outside of their control to meet. If an inspection does lead to an unreasonable recommendation, the employer is not bound to act upon it but, must explain why the recommendation is not being adopted.

38. In conclusion, CUPE and the Institute submit that the interpretation of s. 125(1)(z.12) given by the majority of the Federal Court of Appeal is entirely consistent with both the purpose and broader context of the provision, particularly when seen in light of the role of Joint Committees and Representatives under the *Code*, and should be preferred over the unduly

²⁰ Everyday Functioning, *supra* at p. 161;

narrow and restrictive interpretation given to it by the Appeals Officer.

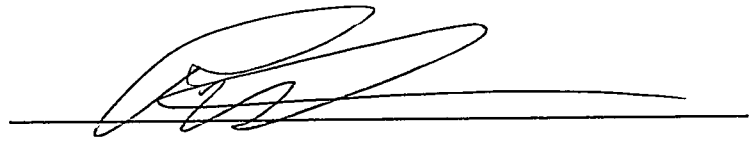
PART IV: COSTS

39. CUPE and the Institute do not ask for costs against any party and request that no costs be ordered against them.

PART V: ORDER REQUESTED

40. Consistent with Rule 42(3) of the *Rules of the Supreme Court*, CUPE and the Institute take no position on the order requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 12th DAY OF OCTOBER, 2018.

A handwritten signature in black ink, appearing to be 'PEB', is written over a solid horizontal line. The signature is stylized and cursive.

PETER ENGELMANN and COLLEEN BAUMAN

PART VI: TABLE OF AUTHORITIES

Authority	Paragraph in Factum Where Cited
<i>Bell ExpressVu Limited Partnership v. Rex</i> , [2002] 2 S.C.R. 559, 2002 SCC 42	6
<i>Ontario (Labour) v. United Independent Operators Limited</i> , 2011 ONCA 33 (CanLII)	7, 8, 24, 25
<i>Rizzo & Rizzo Shoes Ltd. (Re)</i> , [1998] 1 S.C.R. 27	6
Secondary Sources	
Eric Tucker, “Diverging Trends in Worker Health and Safety Protection and Participation in Canada, 1985-2000,” <i>Industrial Relations</i> , 2003, Vol. 58, No. 3, pp. 395 – 426	13, 14
<i>House of Commons Debates</i> , 36 th Parliament, 2 nd Sess., No. 71 (24 March 2000) at 1220 (Judi Longfield)	14, 16, 17
John O’Grady, “Joint Health and Safety Committees: Finding a Balance,” <i>Injury and the New World of Work</i> , ed. Terrence Sullivan, Chapter Eight, pp 162-97, (Vancouver: UBC Press, 2000)	13, 15, 27
Marcia Facey et al., “The everyday functioning of joint health and safety committees in unionized workplaces: a labour perspective,” <i>Policy and Practice in Health and Safety</i> , 2017, Vol. 15, No. 2, 160-173	23, 27, 35
Ruth Sullivan, <i>Sullivan on the Construction of Statutes</i> (6th ed.) (Toronto: LexisNexis Canada, 2014)	6

Legislation
Canada Labour Code , R.S.C., 1985, c. L-2, s. 122.1 , s. 125(1)(z.01) , s. 125(1)(z.10) , s.125(1)(z.12) , s. 135(1) , s. 135(7)(e) , s. 135(7)(k) , s. 135.1(14) , s. 136(1) , s. 136(5)
Code canadien du travail , L.R.C. (1985), ch. L-2, s. 122.1 , s. 125(1)(z.01) , s. 125(1)(z.10) , s. 125(1)(z.12) , s. 135(1) , s. 135(7)(e) , s. 135(7)(k) , s. 135.1(14) , s. 136(1) , s. 136(5)
Canada Occupational Health and Safety Regulations , SOR/86-304
Règlement canadien sur la santé et la sécurité au travail , DORS/86-304
Occupational Health and Safety Act , R.S.O. 1990, c. O.1
Santé et la sécurité au travail (Loi sur la) , L.R.O. 1990, chap. O.1