Court File No.: 37787

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,
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**
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

VICTORY SQUARE LAW OFFICE LLP
710 – 777 Hornby Street
Vancouver, BC V6Z 1S4
Craig Bavis
Tel: (604) 684-8421
Fax: (604) 684-8427
Email: cbavis@vslo.bc.ca

PINK LARKIN
Suite 201 – 1463 South Park Street
P.O. Box 36036
Halifax, NS B3J 3S9
Ronald Pink, Q.C / Bettina Quistgaard
Tel: (902) 423-7777
Fax: (902) 423-9588
Email: rpink@pinklarkin.com

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

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

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

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

Agent for 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 KIP 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.

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
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

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

Sophie Arseneault
Tel: 613-696-6904
Fax: 613-230-6423
sarsenault@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.

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

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

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

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

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

Table of Contents

PART I -- OVERVIEW AND STATEMENT OF FACTS

1. The International Longshore and Warehouse Union, Canada ("ILWU") and its locals, the International Longshoremen's Association ("ILA") Locals 269, 1341, 1657, and 1825, and the Canadian Union of Public Employees ("CUPE"), Local 375 (collectively the "Canadian Maritime Workers Council" or "CMWC") are trade unions representing longshore workers at the major Canadian Ports including Halifax, Montreal, Vancouver and Prince Rupert.

2. The longshore workers represented by CMWC are employed by member companies of the Maritime Employers Association ("MEA"), the British Columbia Maritime Employers Association ("BMCEA") and the Halifax Employers Association ("HEA"), (collectively the "Port Employers") who have also been granted intervenor status in this Appeal.

3. The issue raised in this Appeal is the scope of workplace inspections required to be completed by Work Place Health and Safety Committees ("Work Place Inspections") under s. 125(1)(z.12) of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (the "*Code*"). This is an important issue for the CMWC because of the unique nature of longshoring which is regulated by the *Code*.

4. While longshore workers are dispatched and assigned work by the Port Employers, a significant amount of longshore work is performed on vessels which are not owned or operated by the Port Employers. The vast majority of vessels are owned and crewed by foreign shipping companies. However, every aspect of longshore work is controlled and directed by the Port Employers, including cargo operations on the vessels. Vessels are longshore workplaces under the *Code*, even though they are not physically controlled by the Port Employers

5. In order to work safely and in accordance with Canadian health and safety regulations such as the *Code*, longshore workers and Port Employers conduct joint vessel inspections before longshore workers operate the cranes and machinery onboard vessels which load and unload cargo in Canadian ports. Such inspections ensure that work is performed safely and in compliance with both the *Code* and other regulations in place to identify and correct immediate hazards. Although the Port Employers do not control the vessels, the vessel owners cooperate with the Port Employers to correct hazards so that vessels can be unloaded.

6. Work Place Inspections serve a similar function to the regular vessel inspections and play an important role in ensuring that vessel owners permanently fix safety hazards on vessels that regularly visit Canadian waters. Without the mechanism of annual inspections and follow up, the industry would be left with individual visit specific inspections that address immediate hazards, but do not provide a history of the workplace.

7. The interpretation of the Work Place Inspections urged by the Appellant would pose a serious risk to the safety of workers in the longshoring industry if accepted as it would reduce the present inspection regimes.

PART II -- STATEMENT OF QUESTIONS IN ISSUE

8. Was the Canada Occupational Health and Safety Tribunal decision of *Canada Post Corp. v. CUPW*, 2014 OHSTC 22 (CanLII) (the "COHST Decision"), reasonable in concluding that Work Place Inspections must be limited to those locations where an employer has physical control over the work place?

PART III -- STATEMENT OF ARGUMENT

A. THE APPEALS OFFICER'S INTERPRETATION WAS UNREASONABLE

i. Overview

9. The CMWC submits that the interpretation of s. 125(1)(z.12) rendered by the Appeals Officer is unreasonable. The interpretation which restricted the Work Place Inspection requirement to those locations controlled by the Employer indicates a deeply flawed reasoning process. The Appeals Officer improperly applied a narrow, textual approach to construing the *Code*, based on his personal experience instead of the broad, purposive, contextual approach required for the interpretation of benefits-conferring legislation.[1]

10. In paragraphs 95 and 96 of the COHST Decision, the Appeals Officer interpreted s. 125(1) as setting out two types of obligations on employers: (1) obligations that apply only when an employer owns or has physical control over a work place, and (2) obligations that apply when

[1] *Rizzo & Rizzo Shoes Ltd.*, (Re), 1998 SCC 837, [1998] 1 SCR 27, Respondent's Book of Authorities ["RBOA"], Tab 1; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal*), 2018 SCC 22, 2018 CarswellBC 1234, RBOA, Tab 2.

an employer has control over the activities of the employees, regardless of whether the employer owns or has physical control over the work place. He found that the obligation in s. 125(1)(z.12) falls into the first category, because the purpose of s. 125(1)(z.12) is "…to permit the identification of hazards and the opportunity to fix them or have them fixed", and because ownership of or physical control over the work place is necessary to fulfill this obligation. This conclusion was based on the Appeals Officer's personal experience in implementing employer obligations (COHST Decision, para 94), and his apparent difficulties in accessing locations not controlled by employers.

11. This unduly narrow interpretation of how Work Place Committees operate may have a profound impact on longshore workers if Port Employers argue that they are no longer required to conduct Work Place Inspections or perform other duties under the *Code* if they do not control the workplace. Further, other duties in s. 125(1), as well as in s. 125.1 and 125.2 of the *Code*, (which set out specific duties of employers with respect to hazardous substances in the work place), would not apply to work on vessels, rail lines and rail cars which Port Employers may not physically control. The effect of the COHST Decision, if permitted to stand, would be to increase risk to the health and safety of workers assigned to work at locations owned by other persons.

ii. <u>The Appeals Officer's flawed reasoning process</u>

12. The Appeals Officer began his interpretation of s. 125(1)(z.12) by considering the meaning of "work place" in the introductory words of s. 125(1). He found at para. 91 of the COHST Decision that "work place" must be interpreted broadly to include all areas in which an employee may be engaged in work. This is a reasonable finding supported by the text and purpose of the *Code*.

13. The Appeals Officer considered the purpose of Work Place Inspections in s. 125(1)(z.12), which he found is "…to permit the identification of hazards and the opportunity to fix them or have them fixed" (COHST Decision, para. 96). The Appeals Officer found that "control" over the work place by an employer is necessary to fulfill this purpose. In turn, he determined that Work Place Inspections are only required for work places controlled by an employer. For the Appeals Officer, employer "control" over the work place meant both "physical

control", so as to be able to alter or fix the hazard, and "exclusive access" or ownership control, so as to be able to access the work place to conduct an inspection.

14. The CMWC submits that two aspects of the Appeals Officer's reasoning process are so flawed that they render his decision unreasonable: (1) his finding that the purpose of Work Place Inspections includes "fixing" hazards identified in the course of an inspection, and (2) his interpretation of "control" in the introductory words of s. 125(1) as requiring an employer to own or have physical control over a work place.

iii. The purpose of s. 125(1)(z.12)

15. In the absence of any analysis by the Appeals Officer, it is unclear how he concluded that the purpose of the Work Place Inspections is two-fold, that is to both identify hazards *and* fix them or have them fixed. There is clearly a basis in the *Code* to support his finding that the identification of hazards is a purpose of Work Place Inspections. However, the inclusion of fixing hazards in the purpose of paragraph (z.12) is inconsistent with the *Code* and unreasonable, and it led the Appeals Officer to adopt an unduly narrow interpretation of employer "control" of the work place for the purpose of all of s. 125(1).

16. Conducting Work Place Inspections to identify hazards is consistent with the purpose of Part II of the *Code* as stated in s. 122.1, namely to prevent accidents and injury in the course of employment. It is also consistent with other provisions of Part II, including the following:

- s. 125(1)(s), which requires the employer to "ensure that each employee is made aware of every known or foreseeable health or safety hazard in the area where the employee works";

- s. 125(1)(z.03), which requires the employer to "develop, implement and monitor, in consultation with the policy committee or, if there is no policy committee, with the work place committee or the health and safety representative, a prescribed program for the prevention of hazards in the work place appropriate to its size and the nature of the hazards in that it also provides for the education of employees in health and safety matters"; and

- 125.1(c), which requires the employer to "ensure that all hazardous substances in the work place, other than hazardous products, are identified in the manner prescribed; and.

17. By including "fixing" hazards in the purpose of paragraph (z.12), the Appeals Officer narrowed the purpose of Work Place Inspections. In essence, he found that there is no purpose to inspecting work places for hazards if the employer cannot also fix or eliminate any hazards found. This is entirely inconsistent with the purpose and scheme of the *Code*. It is certainly inconsistent with s. 125(1)(s), which requires the employer to "ensure that each employee is made aware of every known or foreseeable health or safety hazard in the area where the employee works".

18. The Appeals Officer's interpretation is also inconsistent with the hazard prevention measures set out in s. 122.2 of the *Code*. Section 122.2 of the *Code* states as follows: "Preventive measures should consist first in the elimination of hazards, then the reduction of hazards and finally, the provision of personal protective equipment." Thus, "fixing" or eliminating hazards is not the only way to address or remedy hazards under the *Code*. Indeed, it may be that a particular hazard cannot be fixed or eliminated, in which case other preventive measures must be considered or the work place avoided entirely.

19. This was the basis under which another Appeals Officer found that longshore workers reasonably refused to perform dangerous work of loading grain vessels in the rain and ordered a Port Employer to correct hazards on a vessel which the Employer did not own or control.

> I believe that before an employer can say that a danger is a normal condition of work, he has to identify each and every hazard, existing or potential, and he must, in accordance with the Code, implement safety measures to eliminate the hazard, condition, or activity; if it cannot be eliminated, he must develop measures to reduce and control the hazard, condition or activity within safe limits; and, finally, if the existing or potential hazard still remains, he must make sure that employees are provided with the necessary personal protective equipment, clothing, devices and materials against the hazard, condition or activity. This of course, applies, in the present case, to the risk of falling as well as to the risk of tripping and slipping on the hatch covers.
>
> *P&O Ports Inc. and ILWU, Local 500*, R2007 CarswellNat 6789, [2007] C.L.C.A.O.D. No. 32

20. This decision was upheld by the Federal Court which agreed that the Employer had a requirement under the Code and regulations to eliminate hazards even when they do not control the work place.

> The Appeals Officer also held that the Employers failed to eliminate the hazard, control the hazard, or by way of last resort, to provide the necessary protective equipment, clothing or devices and materials to employees. Thus, the hazard that continues to exist cannot be deemed a normal and regular hazard of longshore work, since the Employers failed to eliminate or control the hazard.
>
> *P&O Ports Inc. v. International Longshoremen's and Warehousemen's Union, Local 500*, 2008 FC 846 (CanLII), para 47

iv. <u>The meaning of "control" of the work place</u>

21. The Appeals Officer interpreted "control" in the introductory words of s. 125(1) as requiring an employer to own or have physical control over a work place. Underlying the Appeals Officer's interpretation are two considerations: the need to be able to fix or alter a hazard, which is discussed above, and the need to access a work place. The issue of access arises when a work place is on the private property of a customer or other third party.

22. The Appeals Officer's interpretation of "control" is unreasonably narrow. While control is a question of fact in each case, more than mere physical control or ownership should be considered in the determination. Indeed, the Appeals Officer alluded to a broader meaning of "control" when he initially stated the purpose of paragraph (z.12) as being, "…to permit the identification of hazards and the opportunity to fix them **or have them fixed**" [emphasis added]. The ability of an employer to have a hazard fixed, even if the hazard is on the private property of a third party, suggests that there may be other ways in which an employer can control a work place for the purposes of the *Code*. For example, access to premises and authority to require hazards to be fixed may be provided for in an employer's contractual arrangements with its customers, or may be implied in the nature of the service provided by an employer to a customer when employees work on a customer's property.

23. A broader meaning of "control" is illustrated by the longshoring industry. In an industry-wide arbitration, an arbitrator ordered that Port Employers were required to have guardrails installed on grain vessels if certain loading procedures occurred with a drop of more than 1.2

meters. The BCMEA in that case did not challenge the ability of an arbitrator to make that order or assert that they could not implement it as they did not control the vessels. [2]

24. Furthermore, the loading or unloading of a vessel or a rail car is a continuous operation involving the movement of a container or cargo from the pier to the vessel or rail car and *vice versa*. A hazard or an accident may involve equipment or activities on the pier and on the vessel or rail car. An effective investigation and hazard prevention protocol cannot be accomplished if only part of the operation is said to be "controlled" by the employer and subject to the requirements of the *Code*.

25. Having regard to the foregoing, the CMWC submits that the nature of the "control" over the work place referred to in s. 125(1) is not limited to physical control or ownership by the employer. Rather, "control" refers to the employer's exercise of authority over the work place, and such authority may arise from ownership, physical control, contract, or some other source as determined on the facts. The Appeals Officer unreasonably ignored this.

B. THE *CODE* MUST BE INTERPRETED CONSISTENT WITH OTHER SAFETY REGULATION

26. In interpreting the *Code*, it must be understood the *Code* is a central part of an integrated regulatory framework for occupational health and safety. In Canada's Ports, the *Code* is supplemented by the *Maritime Occupational Health and Safety Regulations (SOR/2010-120)* ("*MOHS Regs*") which places obligations on Port Employers to ensure worker health and safety.

27. The obligations in the *MOHS Regs* apply to Port Employers without regard to whether they have physical control of the workplace or vessels. The *MOHS Regs* do not set different standards for employers based on whether they control the worksite. If a Port Employer requires employees to perform a task covered under the *MOHS Regs*, the Port Employer has the responsibility to ensure worker health and safety:

> 7(1) Every employer must

---

[2] *British Columbia Maritime Employers Assn. and ILWU, Local 500*, Re 2018 CarswellBC 1106, 135 C.L.A.S. 239

> (a) arrange that work in a working area is carried out in a manner that does not endanger the health or safety of any person who is engaged or working in that area or in connection with the work; and
>
> (b) adopt and carry out appropriate procedures and techniques designed or intended to prevent or reduce the risk of employment injury in the operation or carrying out of the work.
>
> *MOHS Regs*, s.7

28. The particular and unique aspects of longshoring is that Port Employers direct their workers to board a vessel owned by another party and take control of areas of the vessel and the vessel's equipment to load and unload the vessel. During this work, the Port Employer must identify and correct hazards in a workplace they do not control. Section 120 of the *MOHS Regs* requires the employer to develop a hazard prevention program and s. 124 requires the employer to reduce those hazards, in cooperation with the Work Place Committee

> 124(1) The employer must, in order to address identified and assessed hazards, including ergonomics-related hazards, take preventive measures to address the assessed hazard in the following order of priority:
>
> (a) the elimination of the hazard ...
>
> (b) the reduction of the hazard, including isolating it;
>
> (c) the provision of personal protection equipment, clothing, devices or materials; and
>
> (d) administrative procedures respecting.… management of hazard exposure.
>
> *MOHS Regs*, s. 124

29. The longshoring industry uses Work Place Inspections to assist in the hazard prevention requirements placed on Port Employers under the *MOHS Regs* and the *Code*. Although a Port Employer does not permanently control or physically control a vessel, a Port Employer can request the vessel owner to correct deficiencies and track vessel conditions through Work Place Inspections

30. Eliminating Work Place Inspections requirements for vessels due to narrowing the definition of work place under the *Code* would make compliance with the *MOHS Regs* more difficult and would reduce worker safety and the effectiveness of the *MOHS Regs* required hazard prevention programs.

31. Work Place Inspections promote worker health and safety because Port Employers are often in the best position to inspect equipment and facilities used by their employees on vessels. Longshoring work frequently occurs on vessels registered in a foreign jurisdiction, but the equipment used for longshoring work on those vessels is operated by Canadian longshore workers and must comply with Canadian safety standards. Port employers are required by the *MOHS Regs* to ensure longshore work is performed safely and that foreign vessel equipment used by longshore workers meets the Canadian standards are set out in the *Cargo, Fumigation and Tackle Regulations (SOR/2007-128)* ("*CFT Regs*").

C. THE *CODE* COMPLIES WITH INTERNATIONAL LAW OBLIGATIONS

32. Finally, while not of direct relevance to the Appeal, it should be noted that Port Employer inspections of vessels for longshore worker safety is mandated by international law. If Port Employers are no longer required to conduct vessel inspections as part of the Work Place Inspections, the elimination of that longshore worker safety measure diminishes the international approach which Canada follows pursuant to ILO Convention No. 152: *Occupational Safety and Health (Dock Work) Convention*, 1979 and the *ILO Code of Practice for Safety and Health in Ports*. Canada follows the ILO Code, which the *MOHS Regs* comply with, and requires Port Employers to inspect all workplaces, including vessels.

33. It is inconsistent with international standards and the Canadian regulatory framework to remove the obligations on Port Employers to provide safe work places for employees, including through Work Place Inspections. The *Code*, *MOHS Regs* and *CFT Regs* are the national laws regulating dock work, consistent with the ILO Code of Practice.

PART IV -- SUBMISSIONS CONCERNING COSTS

34. The intervenors CMWC does not seek costs and asks no costs be awarded against it.

PART V -- ORDER SOUGHT

35. The intervenors CMWC support the Respondent and ask that the Appeal be dismissed.

All of which is respectfully submitted this 12th day of October, 2018

Craig Bavis and Ronald Pink, Q.C./Bettina Quistgaard,
Co-counsel for the Canadian Maritime Workers Council

PART VI -- TABLE OF AUTHORITIES

AUTHORITY CITED	PARA. REFERENCE
British Columbia Maritime Employers Assn. and ILWU, Local 500, Re 2018 CarswellBC 1106, 135 C.L.A.S. 239	23
Canada Post Corp. v. CUPW, 2014 OHSTC 22 (CanLII)	8, 10, 11, 12
P&O Ports Inc. and ILWU, Local 500, R2007 CarswellNat 6789, [2007] C.L.C.A.O.D. No. 32	19
P & O Ports Inc. and Western Stevedoring Co. Ltd. v. International Longshoremen's and Warehousemen's Union, Local 500, 2008 FC 846	20
Rizzo & Rizzo Shoes Ltd., (Re), 1998 SCC 837	9
West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal), 2018 SCC 22	9

PART VII -- TABLE OF STATUTES AND RULES

Canada Labour Code, R.S.C., 1985, c. L-2 s. 122.1, s. 122.2, s. 124, s. 125(1), s. 125(1)(c), s. 125(1)(s), s. 125(1)(z.03), s.125(1)(z.12), s. 125.1, s. 125.2 Code canadien du travail, L.R.C. (1985), ch. L-2, s. 122.1, s. 122.2, s. 124, s. 125(1), s. 125(1)(c), s. 125(1)(s), s. 125(1)(z.03), s.125(1)(z.12), s. 125.1, s. 125.2	3, 4, 5, 9, 11, 15, 16, 17, 18, 22, 24, 26, 29, 30, 33
Cargo, Fumigation and Tackle Regulations, (SOR/2007-128)	31, 33
ILO Convention No. 152: Occupational Safety and Health (Dock Work) Convention, 1979	32
ILO Code of Practice for Safety and Health in Ports	32
Maritime Occupational Health and Safety Regulations, (SOR/2010-120)	26, 27, 28, 29, 30, 31, 32, 33