Court 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)

- and -

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

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PART I – OVERVIEW

1. The Workers' Health and Safety Legal Clinic ("the Clinic") represents non-unionised workers in the Province of Ontario. Its clients come from both federal and provincial jurisdictions who have been reprised against for exercising their rights under the relevant occupational health and safety legislation.

2. The *Canada Labour Code*[1] ("the Code") applies to federally regulated employers, no matter the size. While some employers may have the ability to address occupational health and safety issues with internal policies, not all employers have such capabilities. The Code serves as the legislated minimum that all workers can count upon for their protection.

3. In the non-unionised workplace, individual workers do not have the benefits of a union to provide the protection of collective bargaining and/or a grievance procedure when wronged. The Code serves as the legislated resource that all workers can refer to for their protection.

4. It is the Code that mandates the formation of a health and safety committee or the selection of a health and safety representative to address the occupational health and safety concerns of workers. Responsibilities under the Code should not cease because of the nature of the work. Workers should have the protections available to them whatever constitutes their work place. The corollary being less protections is counter to the purpose of the legislation.

5. The Clinic makes no submissions on the facts in this appeal.

PART II – INTERVENER'S POSITION ON THE QUESTIONS IN ISSUE

6. The Clinic submits that:

   a. The Code deserves a broad and liberal interpretation;

   b. Non-unionised workers deserve particular consideration; and

   c. The concept of "work place" must be consistent.

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[1] RSC 1985, c L-2 [*Code*].

PART III – STATEMENT OF ARGUMENT

A. The Code Deserves a Broad and Liberal Interpretation

7. The Code is drafted to prioritise the protection of workers and should be interpreted in a way that focuses on that goal.

8. The purpose of Part II of the Code is to "prevent accidents and injury to health arising out of, linked with or occurring in the course of employment."[2] As the Code is preventative in nature, the Occupational Health and Safety Tribunal Canada has afforded the broadest interpretation in order to fulfill the purpose of Part II.[3] In addition, the Code makes it clear that the goal of any preventative measures is protecting the wellbeing of employees.[4]

9. The Code imposes a duty on every employer to ensure "that the health and safety at work of every person employed by the employer is protected."[5]

10. These general provisions are in addition to the specific duties imposed on employers.

11. With multiple sections emphasising the need to protect workers from accidents and the focus on preventative measures, it is clear that health and safety is the driving force of the Code. The Code focuses not on where workers are performing work but how workers are protected.

12. Workers can operate at the direction of their employers beyond the premises of their employer. Given the expression of protection for workers, the Code's purpose does not stop when the worker leaves an employer's office space. That the employer has the worker employed in situations off site from a traditional work place is not a reason to limit the application of the Code. The purpose of the Code is just as applicable to those workers. Workers need protection wherever they work.

13. For example, a (federally regulated) worker injured in an accident. Notwithstanding their work being outside the premises of their employer, if injured by an accident arising out of and in

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[2] *Ibid*, s 122.1.
[3] *Canadian Freightways Ltd. and Teamsters Local 31*, [2001] CLCAOD No 26 (D. Malanka) at para 26. **[Book of Authorities of the Intervener, Tab 1]**
[4] *Code*, *supra* note 1 at s 122.2.
[5] *Code*, *supra* note 1 at s 124.

the course of employment, that employee is entitled to workers' compensation benefits.[6] There is no dispute that having been injured in the course of their employment outside of the employer's premises that compensation benefits should follow.

14. A broad and liberal interpretation of the Code is consistent with this Honourable Court's decision in *Rizzo & Rizzo Shoes Ltd. (Re)*.[7] The Code can be described as "benefit conferring legislation" and thus should be given maximum effect when it has such a clear purpose.

15. An annual inspection of the work place by the work place health committee or representative[8] is a benefit to workers. It is this "benefit" that should be given maximum effect. The purpose of the Code being enunciated in multiple sections, the protection of workers, the realisation of "maximum effect" would result in the inspection of any place a worker is in the course of their employment to the extent possible.

16. Although there is a caution against absurdity in the application of legislation, the case law is clear that the focus is not on the alleged absurdity but the test of whether there is sufficient nexus between the situation and the employment setting. In *Blue Mountain Resorts Limited v. Ontario (Ministry of Labour)*,[9] the Ontario Court of Appeal's opinion focused on the connection between the serious incident and the likelihood that similar circumstances were applicable in the employment setting. There had to be a reasonable nexus between the hazard and a risk to worker safety.[10]

17. Workers can be exposed to hazards beyond the employer's premises. It is the function of work place health and safety committees and/or representatives to review and make recommendations about addressing hazards. That alone is insufficient reason to deny workers the potential resource of a health and safety committee or representative. Legislation recognises that dangers for workers exist wherever they are in the course of employment.

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[6] *Government Employees Compensation Act*, RSC 1985, c G-5, s 4.
[7] [1998] 1 SCR 27 at para 36, 1998 CanLII 837 (SCC).
[8] *Code*, *supra* note 1 at s 125(1)(z.12)
[9] 2013 ONCA 75.
[10] *Ibid* at paras 5, 49, 54, and 66.

18. Workers in the course of their employment outside the premises of their employer can face dangerous conditions. Workers in those situations have the right to refuse to work. The employer still has obligations to investigate the refusal, subject to certain exceptions.[11]

19. The will of Parliament, as expressed in statute, may or may not be onerous. It is not for administrative bodies to supplant that authority by reading in an interpretation. [12] Legislation is to be read in the clear grammatical sense of the statute.[13]

20. The Code and other legislation obligates employers to take action no matter where the worker is working. There is no absurdity when the requirements at issue are directly tied to the nature of the employment. In a scenario where an employee is in the course of their employment and not at the employer's premises that worker would still have access to compensation benefits and the right to refuse to work in most circumstances. Similarly, it is for the benefit of the worker that there is a health and safety representative or committee to conduct an annual inspection of the entire work place.

21. The provisions of the Code should have a broad and liberal interpretation because its purpose calls for such an approach. With a focus on accident prevention and the preservation of workers' wellbeing, no goal can ever be seen as overly broad or too onerous.

B. Non-unionised Workers Deserve Particular Consideration

22. A non-unionised worker does not have the same level of resources as a union member. There is no collective agreement to codify the employment relationship, there is no collective bargaining to assist with wage negotiation, and there is no grievance procedure to address conflicts. There is an unequal bargaining position between employers and workers, especially for the non-unionised worker.[14]

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[11] *Code*, *supra* note 1 s 128(7.1).
[12] *Ljuboja v The Aim Group Inc.*, 2013 CanLII 76529 (ON LRB) at para 42.
[13] *City of Victoria v The Bishop of Vancouver Island*, [1921] 59 DLR 400 (PC) at 402-403, 1921 CanLII 568 (UK JCPC).
[14] *Machtinger v HOJ Industries Ltd.*, [1992] 1 SCR 986 at 1003, 1992 CanLII 102 (SCC) [*Machtinger*].

23. This is further exacerbated with respect to low income non-unionised workers. When this kind of imbalance exists, vulnerable groups, like these workers, require explicit statutory protection. [15]

24. There are qualitative differences between individual employees and those that have collective rights.[16] This is largely because unions play a role in the betterment of working conditions.[17] Unionised workers are also engaged in the running of the union, for example by electing the steward. In contrast, the only worker elected position in a non-union environment is the worker side members of the joint health and safety committee. [18]

25. Unionised workers have choices that non-unionised workers cannot access and that the Code recognises. Workers in a union who make work refusals under the Code have options. For example, a grievance procedure exists and unionised workers can exercise their right to refuse under that procedure.[19]

26. Unionised workers can rely on a representative to advocate for them within the work place, the union steward. Having a representative to raise health and issues in the interests of all workers insulates the individual worker from acting alone.

27. Lacking the ability to collectively bargain, non-unionised workers only have the legislated minimum for their protection. The Code should be interpreted in a way that extends its protections to as many employees as possible.[20] So as to protect workers to the fullest extent, non-unionised workers require an expansive reading of the Code.

28. For a non-unionised worker who may be unaware of their rights, the legislated minimums serve as the only guarantee that the work place outside of the employer's premises is inspected albeit on an annual basis.

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[15] *Slaight Communications Inc. v Davidson*, [1989] 1 SCR 1038 at 1051, 1989 CanLII 92 (SCC).
[16] *Dunmore v Ontario (Attorney General)*, [2001] 3 SCR 1016 at para 17, 2001 SCC 94.
[17] *Ibid* at para 37 citing *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 SCR 989.
[18] *Policy Committees, Work Place Committees and Health and Safety Representatives*, SOR/2015-164, s 3.
[19] *Code*, *supra* note 1, s 128(7).
[20] *Machtinger*, *supra* note 12 at 1003.

29. As a "code", the Code should operate as a complete system of law.[21] The purpose of the Code is to prevent accidents and injuries to health.[22] As a system, the Code requires first the elimination of hazards, then the reduction of hazards, and finally the provision of equipment with the goal of ensuring the health and safety of employees.[23] This order is explicit.

30. The annual inspection in s. 125(1)(z.12) reflects that proactive approach in the elimination and reduction of hazards. This approach serves the purposes of the Code rather than a reactive approach of waiting for a solitary worker to raise a concern to their potential detriment. The benefit of the annual review allows workers to not exacerbate the inherent power imbalance. Individual workers do not have to stand alone before the employer to ask for an inspection. Having the annual review of the work place mandated by the Code relieves a worker from making that request.

31. This shields vulnerable non-unionised workers. With limited negotiating leverage to encourage inspection, this responsibility should go to either the committee, who operates as a collective response, or the individual health and safety representative who volunteers to step into that role.

32. Having the work place health and safety committee or representative conduct annual inspections would address not only the need for protecting workers wherever in the course of employment but also act as a counterweight to the inherent power imbalance. Committees have a variety of duties to hold the employer accountable.[24] This accountability provides additional protection for individual workers who do not wish to raise issues with their employer.

33. There is no guarantee that individual workers will raise, or can be expected to raise, concerns about work places outside of the employer's premises. There may be a multitude of reasons individual workers choose not to raise a matter. If annual inspections are not mandatory it opens the possibility that some work places may never be inspected.

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[21] *Black's Law Dictionary*, 9th ed, *sub verbo* "code". **[Book of Authorities of the Intervener, Tab 2]**
[22] *Code*, *supra* note 1, s 122.1.
[23] *Ibid*, s 122.2.
[24] *Ibid*, s 135(7).

34. Taking that approach would negate worker involvement in health and safety processes at the work place. Which in turn would produce an absurd and contrary result since the Code requires that workers actively participate in health and safety measures at work. With less ability to participate in health and safety processes, individual workers may be forced to use the right to refuse provision as a tool to raise health and safety issues with their employer.

35. Exercising the right to refuse work provision is a reactionary measure, and should be the last step in identifying potential work place hazards, not the first. Instead, mandating a health and safety committee or representative to conduct annual inspections where workers must work, satisfies the preventative measures that the Code explicitly sets out

36. Non-unionised workers as a particularly vulnerable group warrant protection. That protection should not be incumbent on exacerbating the isolation of the individual employee versus employer power imbalance. Recognition of the power imbalance in the context of the broad interpretation of the Code should lead to an application wherein the benefits to workers are maximised.

C. The Concept of "Work Place" Must Be Consistent

37. There should be no ambiguity in the rights workers have under occupational health and safety legislation. The concept of the "work place" and where protections are applicable should be consistent for the benefit of all workers.

38. The protection of workers should be determined by the nature of the activity, not the location. There should be no dispute that employers bear the responsibility to address health and safety hazards outside of their premises should workers be in the course of their employment. Therefore, wherever the Code calls upon taking steps to protect workers, those sections should be interpreted in a similar fashion to ensure that accidents are prevented, no matter the location.

39. The protection of workers should not be determined by their location. If they are in the course of their employment, accident prevention should still be the primary goal.

40. Ambiguity in legislation leaves a gap in what is meant to be a complete suite of answers for workers and employers. The Code should serve as an example of what inclusive legislation is

meant to achieve for the wellbeing of workers. All of the provinces in Canada have varying but expansive definitions of "work place".

41. For example, in Ontario, "workplace" is defined as "any land, premises, location or thing at, upon, in or near which a worker works".[25]

42. A "worksite" in Saskatchewan means, "an area at a place of employment where a worker works or is required or permitted to be present."[26]

43. Newfoundland and Labrador legislation defines "workplace" as "a place where a worker or self-employed person is engaged in an occupation and includes a vehicle or mobile equipment used by a worker in an occupation."[27]

44. The definition "work site" in Alberta, means a location where a worker is, or is likely to be, engaged in any occupation and includes any vehicle or mobile equipment used by a worker in an occupation.[28] The legislation also obliges the employer to ensure the health and safety and welfare of workers engaged in the work of the employer.[29]

45. In Prince Edward Island, a workplace, "means a place where a worker is or is likely to be engaged in an occupation and includes a vehicle, fishing vessel or mobile equipment used or likely to be used by a worker in an occupation."[30]

46. Workers are in danger of injury whether or not they are at the employer's premises. Employers have responsibilities to protect the health and safety of their workers. The aforementioned power imbalance applies both federally and provincially.

47. The danger of a restricted approach to where and when workers can expect an inspection of their entire workplace is that the same limitation can be applied elsewhere. A narrow interpretation may lead to a domino effect at the provincial level. This is minimum standard

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[25] *Occupational Health and Safety Act*, RSO 1990, c O.1, s 1.
[26] *The Saskatchewan Employment Act*, SS 2013, c S-15.1, s 3-1(1)(hh).
[27] *Occupational Health and Safety Act*, RSNL 1990, c O-3, s 2(n).
[28] *Occupational Health and Safety Act*, SA 2017, c O-2.1, s 1(bbb).
[29] *Ibid*, s 3(1)(a)(i).
[30] *Occupational Health and Safety Act*, RSPEI 1988, c O-1.01, s 1(y).

legislation. The Code's interpretation should not be used to deny workers the full extent of their rights guaranteed by Parliament.

48. This appeal is an opportunity to provide uniform rights to all workers. If workers are placed in positions that are not under the direct purview of their employer, the relevant occupational health and safety legislation should apply. A consistent approach leaves no ambiguity that the work place, wherever it is, merits protection.

PART IV – COSTS

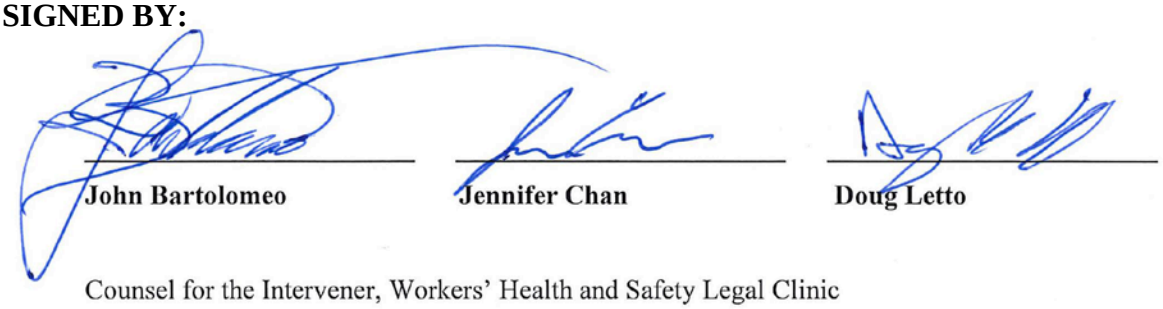
49. The Clinic seeks no order for costs and asks that none be made against it.

PART V - NATURE OF ORDER SOUGHT

50. The Clinic takes no position on the outcome of the Appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS, 12th day of October 2018

SIGNED BY:



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PART VI - TABLE OF AUTHORITIES

Authority		Paragraph(s)
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1.	*Canadian Freightways Ltd. And Teamsters Local 31* [2001] CLCAOD No. 26 (D. Malanka)	8
2.	*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC)	14
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10.	*Canada Labour Code*, RSC 1985, c L-2, ss 122.1, 122.2, 124, 125(1)(z.12), 128(7), 128(7.1), 135(7)	2, 8, 9, 15,18, 25, 29, 32
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PART VII – STATUTES AND REGULATION

Canada Labour Code, R.S.C. 1985, c. L-2 ss. 122.1, 122.2 , 124, 125(1), (z.12), 128(7), 128(7.1), 135(7)	*Code canadien du travail*, L.R.C. (1985), ch. L-2 ss. 122.1, 122.2 , 124, 125(1), (z.12), 128(7), 128(7.1), 135(7)
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