

File No.: \_\_\_\_\_

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

B E T W E E N:

**CANADA POST CORPORATION**

APPLICANT  
(Appellant)

- and -

**CANADIAN UNION OF POSTAL WORKERS**

RESPONDENT  
(Respondent)

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**APPLICATION FOR LEAVE TO APPEAL  
(CANADA POST CORPORATION, APPLICANT)  
(Pursuant to s. 40(1) of the *Supreme Court Act*, R.S.C., 1985, c. S-26)**

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## PART I – OVERVIEW AND STATEMENT OF FACTS

### Overview

1. This case provides the Court with the opportunity to consider questions of national and public importance relating to a core federal labour and employment statute. It has expansive implications for all federally regulated employers and employees.<sup>1</sup> It also raises important questions about key principles of statutory interpretation: the presumption against absurdity and whether “ainsi que,” like “and,” can be read disjunctively. Finally, it affords this Court the opportunity to remedy conflicting approaches on how to apply the reasonableness standard of review to questions of statutory interpretation.

2. The case turns on the interpretation of s. 125(1) of the *Canada Labour Code* (the “Code”), which contains 45 duties that 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.” In 2014, an Appeals Officer held that some of the duties in s. 125(1), including the duty to conduct annual inspections, could only be fulfilled where the employer controls the work place. An application for judicial review was dismissed by the Federal Court, but allowed by the Federal Court of Appeal. Canada Post seeks leave to appeal the Federal Court of Appeal’s decision.

3. The Federal Court of Appeal held that all the duties listed in s. 125(1) of the Code either always or sometimes apply regardless of employer control over a work place, so long as the employer controls the work activity. The Court issued three separate sets of reasons containing different and potentially conflicting interpretations of s. 125(1). Justice Near held that the Appeals Officer’s decision was reasonable. Justice Nadon held that it was not, and that every duty listed in s. 125(1) applies to the entire work place if the employer has any control over the

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<sup>1</sup> Affidavit of Sean Griffin, sworn 11 September 2017 (“Griffin Affidavit”), **Tab 4A**; Affidavit of Sanjaya Paliwal, sworn 15 September 2017 (“Paliwal Affidavit”), **Tab 4B**; Affidavit of Kevin Daniels, sworn 26 September 2017 (“Daniels Affidavit”), **Tab 4C**; Affidavit of Candace DiCresce, sworn 26 September 2017 (“DiCresce Affidavit”), **Tab 4D**; Affidavit of Joseph Bajzath, sworn 27 September 2017 (“Bajzath Affidavit”), **Tab 4E**; Affidavit of Kirk Newhook, sworn 27 September 2017 (“Newhook Affidavit”), **Tab 4F**; Affidavit of Margaret Riding, sworn 27 September 2017 (“Riding Affidavit”), **Tab 4G**; Affidavit of Daniel Gagné, sworn 28 September 2017 (“Gagné Affidavit”), **Tab 4H**; Affidavit of Derrick Hynes, sworn 28 September 2017 (“Hynes Affidavit”), **Tab 4I**.

work activity. Justice Rennie held that while every duty presumptively applies, the extent of each duty must be informed by the extent of employer control over work activity, assessed on a contextual, case-by-case basis.

4. The Code is a cornerstone of Canadian labour and employment law. It applies to the work places of 900,000 employees. These work places are vast and constantly changing, and include millions of living rooms, bedrooms, commercial and government buildings, highways, railways, sidewalks, and rooftops in Canada. They also include a virtually limitless number of locations in foreign jurisdictions, ranging from American airports to Chinese nuclear reactor facilities.

5. The decision generates significant uncertainty regarding the scope of obligations throughout the work place. The majority reasons provide different and possibly conflicting guidance as to whether and when s. 125(1)(z.12) applies to areas outside employer control. Justice Rennie's reasons create further uncertainty about how to apply his contextual approach. Both sets of reasons also generate confusion regarding the other duties set out in s. 125(1).

6. The decision creates compliance problems for every federally regulated work place and workforce. Total compliance is impossible. Employers have no authority to access or modify private, public, or foreign property. Telecommunications companies cannot inspect every living room that has a phone, modem, or television installed by their employees. Media companies cannot ensure National Building Code compliance in every hotel and consulate building in which they conduct interviews. Airlines cannot inspect every taxi that their flight crews take to and from airports. In some instances, the decision may lead to increased risks by requiring employees to inspect hazardous locations they would not otherwise visit, and conflict with other employer statutory obligations.

7. The decision also raises two important issues of statutory interpretation. First, it adds to already conflicting jurisprudence regarding the presumption that Parliament does not intend to produce absurd results. Justice Nadon's reasons in particular call into question the circumstances in which courts can depart from a plain reading of a statute to avoid absurd results. Second, the reasons provide conflicting guidance as to whether "ainsi que," like "and," can be disjunctive. Hundreds of statutes contain the term "ainsi que," and their meanings are now unclear.

8. Finally, the decision highlights the uncertainty surrounding the application of a reasonableness standard of review to questions of statutory interpretation. Justice Near began his review by considering the reasons for the Appeals Officer’s interpretation, finding them to be intelligible and defensible. In contrast, Justices Rennie and Nadon began their reviews by determining the proper construction of the statute and then applying it to the Appeals Officer’s interpretation, finding the inconsistency to be unreasonable. The divergence in these approaches reflects the broader confusion and conflict in the courts regarding the application of the reasonableness standard to questions of statutory interpretation.

### **Background and Procedural History**

#### *Statutory Framework: Sections 124 and 125 of the Canada Labour Code*

9. Section 124 of the Code sets out the general duty of every employer to “ensure that the health and safety at work of every person employed by the employer is protected.” Section 125(1) then sets out 45 specific employer duties “[w]ithout restricting the generality of section 124.”<sup>2</sup> Employers remain bound by the general duty in s. 124 at all times, such that an employer may be convicted of violating s. 124 even absent a breach of any of the duties listed in s. 125(1).<sup>3</sup>

10. The specific duties listed in s. 125(1) 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.” “Work place” is defined to mean “any place where an employee is engaged in work for the employee’s employer.”<sup>4</sup> The Code does not define the term “controlled.”

11. The duties set out in s. 125(1) deal with a wide range of subjects. Some relate to the physical standards of the work place, such as the obligation to “install guards, guard-rails, barricades and fences in accordance with prescribed standards.” Others concern the employer’s relationship with its employees and their work activities, such as the obligation to “ensure that each employee is made aware of every known or foreseeable health or safety hazard.” Section 125(1)(z.12), the provision directly at issue in these proceedings, requires employers to “ensure

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<sup>2</sup> *Canada Labour Code*, R.S.C. 1985, c. L-2, ss. 124, 125(1).

<sup>3</sup> *R. v. Saskatchewan Wheat Pool*, [2000 SKCA 73](#) at paras. 11-13.

<sup>4</sup> *Canada Labour Code*, *supra* note 2, ss. 122(1), 125(1).

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.”<sup>5</sup>

12. Under the Code’s “internal complaint resolution process,” employees can report suspected Code contraventions to their supervisors. If a complaint cannot be resolved, it is escalated to a work place committee and, if still unresolved, to a Health and Safety Officer (HSO). HSOs may issue directions, and those directions may be appealed to an Appeals Officer.<sup>6</sup>

### *Canada Post’s Delivery System and Health and Safety Infrastructure*

13. Canada Post is a Crown corporation with exclusive jurisdiction over the mailing of letters in Canada. It provides mail delivery services to more than 16 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.”<sup>7</sup>

14. 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.”<sup>8</sup> 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.”<sup>9</sup> The only express legislative authority that Canada Post possesses to suspend

<sup>5</sup> *Ibid.*, ss. 125(1)(b), (s), (z.12).

<sup>6</sup> *Ibid.*, ss. 127.1(1), 127.1(8), 127.1(10)(a), 140(1), 146(1).

<sup>7</sup> *Canada Post Corporation Act*, R.S.C. 1985, c. C-10, ss. 5(1), 14(1) [CPCA]; Paliwal Affidavit, para. 7, **Tab 4B**. The content in Mr. Paliwal’s affidavit regarding Canada Post’s delivery operations and health and safety infrastructure is largely already included in the pre-existing record. It is set out in his affidavit for the convenience of the Court.

<sup>8</sup> *Ibid.*, ss. 5(2), 19(2).

<sup>9</sup> Universal Postal Union, *Letter Post Manual*, 4th ed. [*Universal Postal Convention* as revised by the Universal Postal Union at Doha on 11 October 2012 and annotated by the International Bureau] (Berne: Universal Postal Union, 2014) <online: [http://www.upu.int/uploads/tx\\_sbdownloader/actInFourVolumesLetterPostManual7En.pdf](http://www.upu.int/uploads/tx_sbdownloader/actInFourVolumesLetterPostManual7En.pdf)>.

mail delivery is pursuant to s. 43(1) of the CPCA, which provides for the issuance of a Ministerial “prohibitory order” in situations where the mail is being used to commit an offence.<sup>10</sup>

15. Pursuant to these obligations, Canada Post is required to deliver mail to every address in Canada. The number of individual locations or “points of call” to which Canada Post delivers mail has increased since the Appeals Officer rendered his decision in 2014. Mail delivery is primarily carried out by Canada Post’s 13,000 letter carriers and 7,500 rural and suburban mail carriers (“RSMCs”). Letter carriers currently deliver mail to 9.6 million points of call in urban areas, while RSMCs deliver mail to 4.7 million points of call in rural and suburban areas. Collectively, letter carriers travel routes totaling more than 95,000 kilometres per day, while RSMCs travel routes totaling more than 450,000 kilometres per day.<sup>11</sup>

16. Canada Post mail delivery personnel spend the majority of their working days carrying out delivery activities outside of Canada Post facilities. The vast majority of points of call are located on public property or on private property not owned by Canada Post. These properties include private homes and businesses, government buildings, shopping malls, airports, and franchised retail post offices, among other locations. Mail delivery personnel use a variety of methods to travel to their points of call, including private vehicles, taxis, buses, and walking. They travel to their destinations on highways, city and rural roads, and sidewalks.<sup>12</sup>

17. Canada Post has extensive health and safety processes tailored to the risks associated with off-site work activities. For example, procedures are in place through which delivery can be suspended at any point of call where a hazard has been reported, either until the hazard is corrected or, if necessary, indefinitely. In addition, Canada Post provides extensive training on hazard identification and reporting, including on specific subjects such as dog bites.<sup>13</sup>

### **Complaint and Initial Decision**

18. In 2012, Canadian Union of Postal Workers (“CUPW”) representatives at a Canada Post depot in Burlington, Ontario, submitted a complaint to Employment and Social Development

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<sup>10</sup> Paliwal Affidavit, para. 30, **Tab 4B**; *CPCA*, *supra* note 7, s. 43(1).

<sup>11</sup> Paliwal Affidavit, paras. 11-13, **Tab 4B**.

<sup>12</sup> *Canada Post Corporation v. Canadian Union of Postal Workers*, [2014 OHSTC 22](#) at para. 98 [*Reasons of the Appeals Officer*], **Tab 2A**; Paliwal Affidavit, paras. 12-15, **Tab 4B**.

<sup>13</sup> Paliwal Affidavit, paras. 16-21, **Tab 4B**.

Canada. The complaint stated that only the physical building was being inspected, whereas letter carrier routes should also be inspected because they form part of the work place. The HSO issued a direction stating, among other things, that Canada Post was in contravention of s. 125(1)(z.12) of the Code because inspection was restricted to the physical building at the Burlington depot.<sup>14</sup>

19. The HSO's direction was varied on appeal. The Appeals Officer found that Canada Post had not contravened s. 125(1)(z.12). He held that, although points of call on letter carrier routes form part of the "work place" within the meaning of s. 122(1) of the Code, the inspection obligation does not apply to those portions of the work place because Canada Post lacks the requisite physical control over them.

20. The Appeals Officer considered the text, context, and purpose of the relevant provisions. He explained that his assessment of the provisions was informed by his 25 years of experience working as an HSO and technical advisor, during which time he had dealt with and implemented most, if not all, of the employer obligations under s. 125(1). The Appeals Officer began by noting that the text of s. 125(1) indicates that the employer should be bound "to the fullest extent possible" by the enumerated duties. He then considered the context of s. 125(1)(z.12), explaining that while some of the duties in s. 125(1) apply to situations in which the employer controlled either the work place or the work activity, others – such as the duty to "ensure that all permanent and temporary buildings and structures meet the prescribed standards" – could only be fulfilled if the employer controls the work place. He found that the purpose of s. 125(1)(z.12) was to enable the identification and fixing of hazards, and that this purpose could only be achieved if the employer physically controls the work place.<sup>15</sup> He also found that Canada Post could not "effectively" comply with s. 125(1)(z.12) in areas of the work place outside its control. As a result, he concluded that the inspection obligation in s. 125(1)(z.12) belongs to the category of duties which apply only to areas of the work place controlled by the employer.<sup>16</sup>

21. The Appeals Officer also found that, in any event, Canada Post was taking adequate steps to ensure the health and safety of its employees. He noted that it had "many policies, programs and assessment tools that evaluate and promote the health and safety of their employees." He

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<sup>14</sup> *Reasons of the Appeals Officer, supra* note 12 at paras. 6-7, **Tab 2A**.

<sup>15</sup> *Ibid.* at paras. 93-97.

<sup>16</sup> *Ibid.* at para. 99.

pointed in particular to Canada Post’s Workplace Hazard Prevention Program, calling it “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.”<sup>17</sup>

### **Federal Court’s Decision**

22. Justice Gleeson dismissed CUPW’s application for judicial review. He held that the Appeals Officer’s decision was based on a reasonable determination of the underlying purpose of s. 125(1)(z.12) and reflected a contextual consideration of s. 125(1) that was consistent with the Code’s scheme and underlying principle. Justice Gleeson explained that the specific duties set out in s. 125(1) supplement rather than limit the general duty set out in s. 124. Therefore, an interpretation limiting any of the specific duties in s. 125(1) does not necessarily undermine the Code’s purpose. He concluded that the Appeals Officer’s interpretation “demonstrates sensitivity to preserving the broad nature of the employer’s obligation to ensure the health and safety of its employees without placing obligations upon the employer that [it] would be unable to fulfill.”<sup>18</sup>

### **Federal Court of Appeal’s Decision**

23. The Federal Court of Appeal allowed the appeal and reinstated the HSO’s direction. Justices Nadon and Rennie agreed in the result but wrote separate reasons. Justice Near dissented. All three justices agreed that the appropriate standard of review was reasonableness.

#### ***Reasons of Justice Near***

24. Justice Near held that the Appeals Officer’s decision was reasonable. With respect to the Appeals Officer’s interpretation of s. 125(1), Justice Near began by noting that the two circumstances contemplated in s. 125(1) – situations where the employer controls both the work place and the work activity, and situations where the employer controls the work activity but not the work place – are separated by the word “and,” which may be read either disjunctively or conjunctively depending on the context. Next, he held that the Appeals Officer reasonably found that some of the obligations listed in s. 125(1) cannot apply where the employer has no control over the work place. Justice Near explained that, contrary to CUPW’s submissions, the Appeals

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<sup>17</sup> *Ibid.* at para. 100.

<sup>18</sup> *Canadian Union of Postal Workers v. Canada Post Corporation*, [2016 FC 252](#) at paras. 52-53, 56, 58 [*Reasons of the Federal Court*], **Tab 2B**.

Officer's interpretation of s. 125(1) did not "read out" any part of the provision but rather recognized that no amount of control over the work activity would assist the employer in fulfilling obligations that depend on having physical control over the work place.<sup>19</sup>

25. With respect to the Appeals Officer's interpretation of s. 125(1)(z.12), Justice Near noted that, on appeal, the parties accepted that the purpose of the provision was "to permit the identification of hazards and the opportunity to fix them or to have them fixed." Since the Appeals Officer reasonably found that Canada Post could not alter or fix private properties in the event of a hazard, it was reasonable for him to conclude that Canada Post could not achieve the purpose of the inspection obligation in respect of locations outside the Burlington depot.<sup>20</sup>

26. Justice Near concluded that the Appeals Officer interpreted s. 125(1)(z.12) textually, contextually, and purposively in a way that does not undermine the Code's objective to protect the health and safety of employees. In support of this, Justice Near noted that the Appeals Officer recognized that the Code must be interpreted liberally, that s. 125(1) binds employers to the fullest extent possible, and that employers have obligations to implement hazard prevention programs, including in respect of areas of the work place they do not control.<sup>21</sup>

### *Reasons of Justice Nadon*

27. Justice Nadon held that the Appeals Officer's decision was unreasonable because (i) it constituted "a redrafting of the provision" and (ii) he unreasonably found that the inspection obligation could not be fulfilled by Canada Post because it did not control private properties.<sup>22</sup>

28. Justice Nadon applied a "plain grammatical reading" to s. 125(1), which in his view was "clear and unambiguous." He held that the obligations in s. 125(1) apply whenever the employer: (i) controls the work place, or (ii) does not control the work place but controls the work activity. He concluded that the Appeals Officer "read out" the second circumstance when he determined that the purpose of s. 125(1)(z.12) meant it could only apply to work places under employer control. Justice Nadon disagreed with Justice Near that the word "and" in s. 125(1) could be read

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<sup>19</sup> *Canadian Union of Postal Workers v. Canada Post Corporation*, [2017 FCA 153](#) at paras. 16-17, 19 [*Reasons of the Federal Court of Appeal*], **Tab 2C**.

<sup>20</sup> *Ibid.* at paras. 18, 20.

<sup>21</sup> *Ibid.* at paras. 21-22.

<sup>22</sup> *Ibid.* at para. 43.

disjunctively, as the French version of the provision uses the phrase “ainsi que,” which could only be conjunctive. Although Justice Nadon did not directly address the presumption against absurdity, he held that “if Parliament failed to consider all of the consequences ... resulting from its enactment, it is up to Parliament, not the courts or tribunals, to remedy the matter.”<sup>23</sup>

29. Justice Nadon further held that it was unreasonable for the Appeals Officer to find that Canada Post was not able to identify and fix hazards encountered on letter carrier routes and points of call. Justice Nadon referred to a Canada Post policy whereby supervisors may suspend mail delivery to a location until the hazard is removed. In his view, this policy demonstrated that Canada Post does not need to control property to fulfill the Code’s inspection obligation.<sup>24</sup>

### *Reasons of Justice Rennie*

30. Justice Rennie agreed with Justice Nadon that all of the obligations in s. 125(1) presumptively apply both where the employer controls the work place and where the employer controls the work activity but not the work place. However, Justice Rennie disagreed with his colleagues that the proper interpretation of s. 125(1) involves a “binary determination” whereby “the obligation ... either fully applies to the work activity or it has no application.” Instead, he held that the language of s. 125(1) requires a further analytical step: the scope of the inspection obligation must be informed by the extent of the employer’s control over the work activity.<sup>25</sup>

31. According to Justice Rennie, the inspection obligation may not always fully apply in areas of the work place outside employer control. For example, he stated that although Canada Post may provide postal workers with ice cleats, this does not mean that there is an obligation to inspect all of a city’s sidewalks. Instead, “[i]n each case, the analysis of the activity, and the parameters of the employer’s control over it, requires a fact specific analysis, informed by the nature of the activity.” Justice Rennie agreed with Justice Nadon in the result solely because the Appeals Officer found that Canada Post controlled the activity of its Burlington letter carriers.<sup>26</sup>

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<sup>23</sup> *Ibid.* at paras. 48-49, 52-53.

<sup>24</sup> *Ibid.* at paras. 63-65.

<sup>25</sup> *Ibid.* at paras. 76, 78.

<sup>26</sup> *Ibid.* at paras. 79-81.

## PART II – STATEMENT OF THE QUESTIONS IN ISSUE

32. This case raises issues of national importance that warrant consideration by this Court. The Code is the legislative pillar of the federal labour relations, employment standards, and occupational health and safety regimes. The decision of the Federal Court of Appeal raises fundamental issues about the scope of 45 occupational health and safety obligations that are applied daily by approximately 18,000 employers and 900,000 of their employees.<sup>27</sup> In particular, this case raises the following key issues:

- (1) **Interpretation of s. 125(1).** When and to what extent do all the duties in s. 125(1) of the Code apply to areas of the work place not controlled by the employer?
- (2) **Principles of statutory interpretation.**
  - (a) How should courts apply the presumption against absurdity?
  - (b) Can the word “and” be read either disjunctively or conjunctively when the French version of the statute uses the phrase “ainsi que?”
- (3) **Standard of review.** How should the reasonableness standard be applied to interpretation of a statute?

## PART III – STATEMENT OF ARGUMENT

### National and Public Importance

#### *Canada Labour Code Is an Important Federal Statute*

33. This Court has described its function as “to settle questions of law of national importance in the interests of promoting uniformity in the application of the law across the country, especially with respect to matters of federal competence.”<sup>28</sup> The Code lies at the heart of Canada’s federal labour and employment law regime. This Court has recognized that “[m]ost employees in federally regulated workplaces are governed by the [Code],” which establishes “an

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<sup>27</sup> Employment and Social Development Canada, “Federally Regulated Businesses and Industries” (14 July 2016), online: Government of Canada <<https://www.canada.ca/en/employment-social-development/programs/employment-equity/regulated-industries.html>>.

<sup>28</sup> *R. v. Gardiner*, [1982] 2 S.C.R. 368 at 397 (Dickson J.).

elaborate and comprehensive pattern of labour relations in all its aspects within the federal jurisdiction.”<sup>29</sup>

34. Part II of the Code is the main legislative vehicle for maintaining and promoting health and safety standards in federally regulated workplaces. The Court of Appeal for Ontario has recognized the importance of occupational health and safety statutes, calling them one of “the most important and well-known examples of regulatory laws.”<sup>30</sup> It has found that occupational health and safety statutes are “accepted as essential in the public interest.”<sup>31</sup>

***Decision Has Expansive Implications across a Broad Range of Industries***

35. The extent to which s. 125(1) of the Code applies to work places outside employer control is an issue of fundamental importance to the federal occupational health and safety regime. Across federally regulated industries, it is common for employees to work in extremely large numbers of non–employer-controlled locations. In the courier industry, employees are required to deliver mail or packages to every address in Canada. Telecommunications employees visit millions of private homes to install internet routers, phones, and televisions. Reporters and camera crews travel to constantly changing locations in Canada and abroad to cover breaking news. Nuclear technologists, engineers, and scientists work in locations ranging from home offices to Russian and Romanian high-security nuclear facilities. Airline employees work in airports around the world, including in security screening and customs and immigration areas. Often, work places are immense, constantly changing, and largely outside of employers’ direct control.<sup>32</sup> The application of s. 125(1) to these work places is important.

36. A number of companies across a range of federally regulated industries – including courier, telecommunications, media, nuclear science, and airline – have expressed common confusion and concern about the significant implications of the Federal Court of Appeal’s decision, especially in light of the conflicting majority reasons. This confusion and the specific

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<sup>29</sup> *Mounted Police Association of Ontario v. Canada (Attorney General)*, [2015 SCC 1](#) at para. 122 (McLachlin C.J. and LeBel J.); *International Longshoremen’s Association, Locals 273, 1039, 1764 v. Maritime Employers’ Association et al.*, [\[1979\] 1 S.C.R. 120](#) at 136.

<sup>30</sup> *R. v. Dow Chemical Canada Inc.* (2000), [47 O.R. \(3d\) 577](#) at para. 2 (Ont. C.A.).

<sup>31</sup> *R. v. Cotton Felts Ltd.* (1982), [2 C.C.C. \(3d\) 287](#) at para. 19 (QL) (Ont. C.A.).

<sup>32</sup> Paliwal Affidavit, paras. 9-10, **Tab 4B**; DiCresce Affidavit, paras. 2, 4-5, 7, **Tab 4D**; Daniels Affidavit, paras. 5, 7-8, **Tab 4C**; Newhook Affidavit, para. 6, **Tab 4F**.

implications of the decision – including impossibility of compliance and potential increased risk exposure for employees – are set out in more detail below.

**Issue 1: When and to what extent do all the duties in s. 125(1) of the Code apply to areas of the work place not controlled by the employer?**

37. The Code lies at the core of the federal occupational health and safety regime. The Federal Court of Appeal’s decision disrupts this regime in two ways. First, the decision creates confusion regarding the scope of the obligations imposed by s. 125(1)(z.12) and s. 125(1) more broadly. Second, compliance with the decision is impossible, could actually diminish the safety of employees, and is practically unworkable. As a result, guidance is needed as to when and to what extent the duties in s. 125(1) apply to areas of the work place outside employer control.

*Decision Creates Confusion Regarding Scope of Obligations*

38. **Inspection obligation.** The decision generates significant confusion regarding the s. 125(1)(z.12) inspection obligation. This confusion stems both from the conflicting majority reasons and the uncertainty surrounding Justice Rennie’s approach. Following the release of the decision, the inspection obligation may fully apply, partially apply, or not apply at all to areas of the work place outside of employer control. Without guidance from this Court, the scope of the inspection obligation will remain in a state of confusion.

39. Although they concurred in the result, Justices Nadon and Rennie provide conflicting guidance regarding the application of s. 125(1)(z.12). It is unclear whether, as Justice Nadon held, the provision applies to the entire work place as long as one of the circumstances in s. 125(1) is met, or whether, as Justice Rennie held, the extent of the obligation must be informed by a case-by-case analysis of the extent of the employer’s control over the work activity. For companies like Air Canada and Canadian Nuclear Laboratories Ltd. (“CNL”), which exert some but not total control over work activities, these reasons provide conflicting guidance about the extent of their obligations under s. 125(1)(z.12).<sup>33</sup>

40. Employers across a range of industries are confused by these conflicting reasons. For example, in the courier industry, Canada Post, United Parcel Service Canada Ltd. (“UPS Canada”), and Federal Express Canada Corporation (“FedEx Canada”) are unsure whether they

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<sup>33</sup> Bajzath Affidavit, paras. 5-7, **Tab 4E**; Daniels Affidavit, paras. 7-8, **Tab 4C**.

are required to inspect every part of their delivery employees' routes, as per Justice Nadon, or whether they are only required to inspect certain areas, as per Justice Rennie.<sup>34</sup> In the media and telecommunications industries, Rogers Communications Inc. ("Rogers"), Bell Canada and Bell Media Inc. ("Bell Media") are concerned that Justice Nadon's reasons would require their work place committees to inspect "every living room, bedroom, and rooftop attended by one of our technicians, as well as the literally limitless numbers of domestic and foreign locations at which our news correspondents work."<sup>35</sup> Although Justice Rennie's reasons may impose narrower inspection obligations, none of Rogers, Bell Canada or Bell Media are clear about which portions of the work place require inspection under Justice Rennie's approach.<sup>36</sup>

41. Justice Rennie's contextual approach creates further confusion. He held that "the extent of control of the activity necessarily informs the extent of the inspection obligation." However, his reasons provide no guidance regarding how differing degrees of control over a work activity could or should inform the extent of an obligation in a work place outside of employer control. He also provides conflicting guidance about the extent of the obligation if an employer wholly controls the activity but has no control over the work place. He states that Canada Post's provision of ice cleats to employees "does not mean that there is an obligation to inspect all of the sidewalks in a city." However, if Canada Post fully controls letter carriers' activities, then his reasons suggest that it *is* required to inspect every sidewalk.<sup>37</sup> Companies such as Rogers "are not clear about which portions of the work place require inspection under his interpretation."<sup>38</sup>

42. **Other Code obligations.** In addition to uncertainty regarding the inspection obligation, the decision creates confusion regarding the applicability of other s. 125(1) duties to work place areas outside of employer control. For example, following the decision,

- Canada Post is concerned that Justice Nadon's reasons would require it to ensure that work place buildings it neither owns nor controls meet the requirements of the National Building Code, as per s. 125(1)(a) of the Code and s. 2.2(1) of the

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<sup>34</sup> Paliwal Affidavit, paras. 23-25, **Tab 4B**; Griffin Affidavit, para. 9, **Tab 4A**; Riding Affidavit, para. 5, **Tab 4G**.

<sup>35</sup> DiCresce Affidavit, para. 7, **Tab 4D**. See also Gagné Affidavit, para. 8, **Tab 4H**.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Reasons of the Federal Court of Appeal, supra* note 19 at paras. 78-79, **Tab 2C**.

<sup>38</sup> DiCresce Affidavit, para. 7, **Tab 4D**.

*Canada Occupational Health and Safety Regulations* (the “Regulations”). Under Justice Rennie’s approach, Canada Post does not know how to assess how much it “controls” the activities of its delivery employees for the purpose of determining the scope of its obligations.<sup>39</sup>

- Rogers is concerned that Justice Nadon’s reasons would require it to retrofit customer kitchens and living rooms with slip-resistant materials, as per s. 125(1)(a) of the Code and s. 2.14(3)(a) of the Regulations. Under Justice Rennie’s approach, Rogers does not know how to determine which surfaces need to be slip resistant in light of how much control it exerts over the work activity.<sup>40</sup>
- Jazz is concerned that Justice Nadon’s reasons would require it to control activities of airport personnel to ensure they are properly operating and maintaining all electrical equipment, as per s. 125(1)(m)(iii) of the Code and s. 8.3(2) of the Regulations. Under Justice Rennie’s approach, Jazz does not know how to use the extent of its control over work activity to determine which airport electrical equipment and staff it would have to oversee.<sup>41</sup>

***Both Sets of Reasons Impose Impossible and Potentially Dangerous Obligations***

43. **Inspection obligation.** Although the scope of the inspection obligation is now unclear, both majority reasons impose some additional inspection obligations. Compliance with these obligations may be physically impossible, dangerous, and practically unworkable:

- No access to private property. Work place committees and representatives do not have a right to access private property. Large portions of the work places of federally regulated employers are on others’ property, such as the porches, living rooms, and kitchens of private homes; the offices of commercial buildings; private roofs and tunnels; taxis and buses; foreign airports and government

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<sup>39</sup> *Canada Occupational Health and Safety Regulations*, S.O.R./86-304, s. 2.2(1); Paliwal Affidavit, paras. 25, 33, **Tab 4B**.

<sup>40</sup> DiCresce Affidavit, para. 8, **Tab 4D**.

<sup>41</sup> Newhook Affidavit, para. 11, **Tab 4F**.

buildings; train tracks; and high-security nuclear facilities. Inspection of these locations is likely to be impossible.<sup>42</sup>

- Increased hazard exposure. The decision may also increase employees' exposure to hazards. For Bell Media and Rogers, an expanded inspection obligation would require employees to visit potentially dangerous work place areas – including rooftops, war zones, and natural disaster scenes like the areas affected by Hurricane Irma – more frequently than they otherwise would.<sup>43</sup>
- Practically unworkable. Imposition of the inspection obligation across the entire work place could prove unworkable. For Canada Post, that obligation would cost around \$90m annually, nearly double Canada Post's 2016 income of \$55m. It could also create compliance challenges with Canada Post's other statutory obligations under the CPCA, as Canada Post does not have legislative authority to suspend mail delivery in situations not involving the use of mail to commit an offence. For Air Canada, it would require the inspection of taxis in multiple foreign jurisdictions. For Bell Canada, it would require inspection of customers' personal spaces, leading to privacy concerns. In many industries, the work place is vast and constantly changing, such that a delivery employee, reporter, or cable technician may only drive on a particular road to visit a particular location once. Now, all of those locations would require inspection.<sup>44</sup>

44. **Other Code obligations.** The importance of the decision extends beyond s. 125(1)(z.12). It applies to all the other duties in s. 125(1), leading to the same issues identified above with respect to s. 125(1)(z.12). Employers may not be able to comply with Code provisions such as ss. 125(1)(a), (b), (m), and (r), which require employers to build, modify, and maintain physical property in accordance with certain standards. For example, Canada Post is unlikely to be able to

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<sup>42</sup> Paliwal Affidavit, paras. 24, 26-28, **Tab 4B**; Griffin Affidavit, paras. 7-8, **Tab 4A**; DiCresce Affidavit, paras. 7-8, **Tab 4D**; Riding Affidavit, paras. 6-7, 9, **Tab 4G**; Newhook Affidavit, paras. 9-10, **Tab 4F**; Hynes Affidavit, paras. 3, 12, **Tab 4I**; Daniels Affidavit, para. 7, **Tab 4C**.

<sup>43</sup> Gagné Affidavit, para. 13, **Tab 4H**; DiCresce Affidavit, para. 9, **Tab 4D**.

<sup>44</sup> Paliwal Affidavit, paras. 29-31, **Tab 4B**; Bajzath Affidavit, paras. 4, 7, **Tab 4E**; Gagné Affidavit, para. 10, **Tab 4H**; Griffin Affidavit, para. 4, **Tab 4A**; Riding Affidavit, para. 7, **Tab 4G**.

comply with s. 125(1)(a) if that duty requires Canada Post to ensure all buildings in its work place meet the National Building Code requirements. It has “no power to ensure that any property [outside its control] is built under any particular building code.”<sup>45</sup>

45. The decision also affects other Code obligations. For example, ss. 135(1) and 136(1) require employers to establish and appoint health and safety committees and representatives for work places “controlled by the employer.” The Code does not impose these requirements for work places outside employer control. If s. 125(1)(z.12) applies to work places outside employer control, then employers will be required to appoint representatives and establish committees that do not otherwise exist to conduct inspections for work places outside employer control, thereby expanding the express language of ss. 135(1) and 136(1). This is only one example of the decision’s confusing implications for the Code’s health and safety regime.<sup>46</sup>

46. This lack of clarity is especially concerning in the context of Part II of the Code because its enforcement depends on the “Internal Responsibility System,” an “employee-employer partnership in ensuring a safe ... workplace.”<sup>47</sup> This system requires employers and employees to work together to identify Code contraventions and develop policies and procedures to implement the Code’s provisions. Employers and employees therefore need to have a clear understanding of the Code’s obligations.<sup>48</sup> Guidance from the Court is necessary to establish that clarity.

### **Issue 2(a): How should courts apply the presumption against absurdity?**

47. As of 2017, provincial courts of appeal have issued conflicting decisions about the circumstances in which courts can depart from the literal text of a statute to avoid absurd consequences. This case provides this Court with an opportunity to establish uniformity in the application of a well-established and widely used principle of statutory interpretation.

48. The Appeals Officer, Federal Court, and Federal Court of Appeal each considered the presumption against absurdity in interpreting s. 125(1). The Appeals Officer held that it would be

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<sup>45</sup> Paliwal Affidavit, para. 33, **Tab 4B**.

<sup>46</sup> Gagné Affidavit, paras. 14-15, **Tab 4H**; *Canada Labour Code*, *supra* note 2, ss. 135(1), 136(1).

<sup>47</sup> Canadian Centre for Occupational Health and Safety, “OH&S Legislation in Canada - Internal Responsibility System” (15 August 2016), online: Canadian Centre for Occupational Health and Safety <<https://www.ccohs.ca/oshanswers/legisl/irs.html>>.

<sup>48</sup> Hynes Affidavit, paras. 14-15, **Tab 4I**.

impractical for an employer to perform certain obligations in s. 125(1)(a) where the employer lacks physical control over the work place. Justice Gleeson cited the presumption against absurdity, with reference to *Rizzo*. Although Justice Nadon did not expressly mention the presumption, he held that any “difficulties or problems” caused by Parliament’s failure to consider “all of the consequences ... resulting from its enactment” are not a legitimate reason to depart from the plain meaning of s. 125(1). He cited no authority for this proposition.<sup>49</sup>

49. It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences.<sup>50</sup> However, “[d]etermining the permissible response to absurdity remains a live issue in Canada and has received considerable attention from the courts.”<sup>51</sup> As recently as 2014, the courts of appeal of Ontario and British Columbia, on the one hand, and those of Newfoundland and Labrador and Québec, on the other hand, have issued conflicting judgments on how to apply the presumption against absurdity.

50. In *Huggins*, the Ontario Court of Appeal cited this Court’s decision in *McIntosh* for the proposition that “the clear wording of a statute must be given effect even if it may lead to an absurdity.”<sup>52</sup> *Huggins* has been cited for this proposition six times, including by CUPW at the Federal Court.<sup>53</sup> *McIntosh* was also relied on by the British Columbia Court of Appeal in *Bedwell* to hold that the presumption against absurdity only applies if a provision is ambiguous.<sup>54</sup> The British Columbia Court of Appeal cited *Bedwell* this year to reject an absurdity argument.<sup>55</sup>

51. The above authorities conflict with other recent appellate decisions that have held that a court may depart from the plain meaning of a statute in order to avoid absurd consequences. In 2014, the Newfoundland and Labrador Court of Appeal held that, “[w]here it appears that the words chosen by the drafter of the statute lead to an absurd result ... the court is entitled to

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<sup>49</sup> *Reasons of the Appeals Officer*, *supra* note 12 at para. 97, **Tab 2A**; *Reasons of the Federal Court*, *supra* note 18 at para. 47, **Tab 2B**; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 27 [*Rizzo*]; *Reasons of the Federal Court of Appeal*, *supra* note 19 at para. 52, **Tab 2C**.

<sup>50</sup> *Rizzo*, *ibid.* at para. 27.

<sup>51</sup> Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham, ON: LexisNexis Canada, 2014), ch. §10.17 at 313 (QL).

<sup>52</sup> *R. v. Huggins*, 2010 ONCA 746 at para. 17 [*Huggins*]; *R. v. McIntosh*, [1995] 1 S.C.R. 686 at para. 34 (Lamer C.J.).

<sup>53</sup> *Reasons of the Federal Court*, *supra* note 18 at para. 30, **Tab 2C**.

<sup>54</sup> *Bedwell v. McGill*, 2008 BCCA 526 at para. 31 [*Bedwell*].

<sup>55</sup> *Veracity Capital Corporation v. Canada (National Revenue)*, 2017 BCCA 3 at para. 79.

disregard them.”<sup>56</sup> Similarly, in 2013, the Québec Court of Appeal rejected a literal interpretation on the basis that it was necessary to take into account a provision’s purpose, context, logic, and spirit as well as “*des effets ou conséquences de telle ou telle interprétation, le législateur étant présumé ne pas avoir voulu légiférer de manière déraisonnable ou inique.*”<sup>57</sup>

**Issue 2(b): Can the word “and” be read either disjunctively or conjunctively when the French version of the statute uses the phrase “ainsi que?”**

52. The decision also raises fundamental questions about the acceptable interpretations of the terms “and” and “ainsi que,” in light of the conflicting approaches taken by Justices Near and Nadon. In interpreting s. 125(1) of the Code, Justice Near relied on the Federal Court of Appeal’s decision in *Seck* for the proposition that “and” may be read either disjunctively or conjunctively depending on the context. Justice Nadon disagreed that the word “and” in s. 125(1) could be read disjunctively because the French version of the provision uses the term “ainsi que,” which in his view could only be conjunctive.<sup>58</sup>

53. This disagreement has broad implications for the construction of bilingual statutes, and federal statutes in particular. Over 3,000 provisions in French versions of federal statutes contain the term “ainsi que.” If “ainsi que” can only be conjunctive, then under the shared meaning rule, the meaning of the word “and” in the English versions of these provisions is called into question.<sup>59</sup> This would contradict long-standing authority from this Court that the terms “or” and “and” may be read interchangeably where context so requires.<sup>60</sup> It would also contradict appellate authorities holding that “and” can be read conjunctively or disjunctively depending on context, and the sole Federal Court authority stating that “ainsi que” can be read disjunctively.<sup>61</sup>

<sup>56</sup> *Ryan v. Dew Enterprises Limited*, [2014 NLCA 11](#) at para. 44.

<sup>57</sup> *4053532 Canada inc. c. Longueuil (Ville de)*, [2013 QCCA 1428](#) at para. 58, leave to appeal to S.C.C. refused, 471 N.R. 399.

<sup>58</sup> *Reasons of the Federal Court of Appeal*, *supra* note 19 at paras. 16, 53-54, **Tab 2C**; *Seck v. Canada (Attorney General)*, [2012 FCA 314](#) at para. 47.

<sup>59</sup> *Canada (Minister of Citizenship and Immigration) v. Khosa*, [2009 SCC 12](#) at para. 39 (Binnie J.).

<sup>60</sup> *Clergue v. Vivian & Co.* (1909), [41 S.C.R. 607](#) at 617 (Anglin J.); *R. v. Wu*, [2003 SCC 73](#) at para. 62 (Binnie J.).

<sup>61</sup> *R. v. Yadegari*, [2011 ONCA 287](#) at para. 62; *Sinclair v. Sinclair*, [2013 SKCA 123](#) at paras. 23-26; *Canada (Minister of Citizenship and Immigration) v. Dueck*, [154 F.T.R. 241](#) at para. 20, FN 5 (F.C.).

### **Issue 3: How should the reasonableness standard be applied to interpretation of a statute?**

54. A year after this Court’s decision in *Wilson*, courts continue to take divergent approaches when applying the reasonableness standard of review to a decision interpreting a statutory provision.<sup>62</sup> A central point of controversy is whether courts may conduct their own interpretation of a statutory provision and then use that interpretation as the measure of reasonableness, or whether courts must limit themselves to reviewing the interpretive process of the administrative decision-maker for certain indicia of unreasonableness. The law is also unclear as to the circumstances in which a court may find that only one reasonable interpretation was open to the administrative decision-maker. Guidance is necessary to ensure consistency.

55. This case is a clear example of the divergent applications of the reasonableness standard and the need for guidance. Justice Near reviewed the Appeals Officer’s interpretation of the statute to determine whether it broadly complied with the “modern principle” set out in *Rizzo*.<sup>63</sup> In contrast, Justice Nadon developed his own construction of s. 125(1) based on a “plain grammatical reading” and then applied it to the interpretation of the Appeals Officer.<sup>64</sup> Justice Rennie followed a similar approach, focusing solely on the proper construction of the statute.

56. In *Delios*, the Federal Court of Appeal presaged the standard of review problems in the present case. Justice Stratas reviewed the direction from this Court and warned that, when applying the reasonableness standard, reviewing judges should not “develop [their] own view of the matter and then apply it to the administrator’s decision, finding any inconsistency to be unreasonable.” Instead, they should look for certain indicia of unreasonableness to assist them, such as a decision whose effects appear to conflict with the purpose of the statute.<sup>65</sup> Justice Near implicitly applied this approach when he reviewed the considerations that went into the Appeals Officer’s decision and found them to be indicia of reasonableness. In contrast, Justices Nadon and Rennie began by developing their own views of the proper interpretation of s. 125(1), and then compared those views to the Appeals Officer’s interpretation.<sup>66</sup>

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<sup>62</sup> *Wilson v. Atomic Energy of Canada Ltd.*, [2016 SCC 29](#) [*Wilson*].

<sup>63</sup> *Rizzo*, *supra* note 49 at para. 21; *Reasons of the Federal Court of Appeal*, *supra* note 19 at paras. 15, 17-18, 21-22, **Tab 2C**.

<sup>64</sup> *Ibid.* at paras. 48-50.

<sup>65</sup> *Delios v. Canada (Attorney General)*, [2015 FCA 117](#) at paras. 26-28.

<sup>66</sup> *Reasons of the Federal Court of Appeal*, *supra* note 19 at paras. 48-49, 74, **Tab 2C**.

57. In addition to raising questions about the application of the reasonableness standard as articulated in *Delios*, this case illustrates the need for clarity regarding the circumstances in which the interpretation of a statute will attract only one reasonable outcome. This issue was raised but not resolved by this Court in *Wilson*.<sup>67</sup> In her reasons, Justice Abella explained that “[e]ven in statutory interpretation, the interpretive exercise will usually attract a wide range of reasonable outcomes... But there may be rare occasions where only one ‘defensible’ outcome exists.” In contrast, Justices Côté, Brown, and Moldaver expressed concern about applying the reasonableness standard to statutory interpretation questions because it “opens up the possibility that different decision-makers may each reach opposing interpretations of the same provision, thereby creating ‘needless uncertainty in the law...’”<sup>68</sup> In this case, three reasonableness reviews led to three different conclusions as to the only reasonable interpretation, leading to uncertainty in the law – the precise outcome cautioned against by Justices Côté, Brown, and Moldaver and identified as “rare” by Justice Abella. Guidance from this Court is necessary to establish uniformity in the application of the reasonableness standard to statutory interpretation questions.

#### PART IV – SUBMISSIONS WITH RESPECT TO COSTS

58. The Applicant does not seek costs against the Respondent.

#### PART V – ORDER SOUGHT

59. The Applicant therefore seeks an order granting them leave to appeal to this Honourable Court the order of the Federal Court of Appeal dated July 13, 2017, in Court File No. A-94-16, with no costs of the application.

September 29, 2017

ALL OF WHICH IS RESPECTFULLY SUBMITTED

  
as agent for

John Terry and Aria Laskin  
Counsel for the Applicant  
Canada Post Corporation

<sup>67</sup> *Wilson*, *supra* note 62 at paras. 18-38, 70.

<sup>68</sup> *Ibid.* at paras. 34-35, 81.

## PART VI – TABLE OF AUTHORITIES

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<i>R. v. Cotton Felts Ltd.</i> (1982), <a href="#">2 C.C.C. (3d) 287</a> , 8 W.C.B. 447 (QL) (Ont. C.A.).	34
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## PART VII – STATUTORY PROVISIONS

*Canada Labour Code, R.S.C. 1985, c. L-2*

*Code canadien du travail, L.R.C. (1985), ch. L-2*

### Definitions

[122 \(1\)](#) In this Part,

...

work place means any place where an employee is engaged in work for the employee's employer; (*lieu de travail*)

### General duty of employer

[124](#) Every employer shall ensure that the health and safety at work of every person employed by the employer is protected.

### Specific duties of employer

[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,

(a) ensure that all permanent and temporary buildings and structures meet the prescribed standards;

(b) install guards, guard-rails, barricades and fences in accordance with prescribed standards;

...

(m) ensure that the use, operation and maintenance of the following are in accordance with prescribed standards:

...

(iii) all equipment for the generation, distribution or use of electricity,

...

### Définitions

[122 \(1\)](#) Les définitions qui suivent s'appliquent à la présente partie.

...

lieu de travail Tout lieu où l'employé exécute un travail pour le compte de son employeur. (*work place*)

### Obligation générale

[124](#) L'employeur veille à la protection de ses employés en matière de santé et de sécurité au travail.

### Obligations spécifiques

[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 :

a) de veiller à ce que tous les ouvrages et bâtiments permanents et temporaires soient conformes aux normes réglementaires;

b) d'installer des dispositifs protecteurs, garde-fous, barrières et clôtures conformes aux normes réglementaires;

...

m) de veiller à ce que soient conformes aux normes réglementaires l'utilisation, le fonctionnement et l'entretien :

...

(iii) de l'équipement servant à la production, à la distribution ou à l'utilisation de l'électricité,

...

(r) maintain all installed guards, guard-rails, barricades and fences in accordance with prescribed standards;

(s) ensure that each employee is made aware of every known or foreseeable health or safety hazard in the area where the employee works;

...

(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;

...

### **Complaint to supervisor**

[127.1 \(1\)](#) An employee who believes on reasonable grounds that there has been a contravention of this Part or that there is likely to be an accident or injury to health arising out of, linked with or occurring in the course of employment shall, before exercising any other recourse available under this Part, except the rights conferred by sections 128, 129 and 132, make a complaint to the employee's supervisor.

### **Referral to the Minister**

[127.1 \(8\)](#) The employee or employer may refer a complaint that there has been a contravention of this Part to the Minister in the following circumstances:

(a) where the employer does not agree with the results of the investigation;

(b) where the employer has failed to inform the persons who investigated the complaint of how and when the employer intends to resolve the matter or has failed to take action to resolve the matter; or

(c) where the persons who investigated the complaint do not agree between themselves as

r) d'entretenir, conformément aux normes réglementaires, les dispositifs protecteurs, garde-fous, barrières et clôtures qui y sont installés;

s) de veiller à ce que soient portés à l'attention de chaque employé les risques connus ou prévisibles que présente pour sa santé et sa sécurité l'endroit où il travaille;

...

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;

...

### **Plainte au supérieur hiérarchique**

[127.1 \(1\)](#) Avant de pouvoir exercer les recours prévus par la présente partie — à l'exclusion des droits prévus aux articles 128, 129 et 132 —, l'employé qui croit, pour des motifs raisonnables, à l'existence d'une situation constituant une contravention à la présente partie ou dont sont susceptibles de résulter un accident ou une maladie liés à l'occupation d'un emploi doit adresser une plainte à cet égard à son supérieur hiérarchique.

### **Renvoi au ministre**

[127.1 \(8\)](#) La plainte fondée sur l'existence d'une situation constituant une contravention à la présente partie peut être renvoyée par l'employeur ou l'employé au ministre dans les cas suivants :

a) l'employeur conteste les résultats de l'enquête;

b) l'employeur a omis de prendre les mesures nécessaires pour remédier à la situation faisant l'objet de la plainte dans les délais prévus ou d'en informer les personnes chargées de l'enquête;

c) les personnes chargées de l'enquête ne

to whether the complaint is justified.

### **Duty and power of Minister**

[127.1 \(10\)](#) On completion of the investigation, the Minister

- (a) may issue directions to an employer or employee under subsection 145(1);
- (b) may, if in the Minister's opinion it is appropriate, recommend that the employee and employer resolve the matter between themselves; or
- (c) shall, if the Minister concludes that a danger exists as described in subsection 128(1), issue directions under subsection 145(2).

### **Establishment mandatory**

[135 \(1\)](#) For the purposes of addressing health and safety matters that apply to individual work places, and subject to this section, every employer shall, for each work place controlled by the employer at which twenty or more employees are normally employed, establish a work place health and safety committee and, subject to section 135.1, select and appoint its members.

### **Appointment of health and safety representative**

[136 \(1\)](#) Every employer shall, for each work place controlled by the employer at which fewer than twenty employees are normally employed or for which an employer is not required to establish a work place committee, appoint the person selected in accordance with subsection (2) as the health and safety representative for that work place.

### **Delegation**

[140 \(1\)](#) Subject to any terms and conditions specified by the Minister, the Minister may delegate to any qualified person or class of persons any of the powers, duties or functions the Minister is authorized to exercise or

s'entendent pas sur le bien-fondé de la plainte.

### **Pouvoirs du ministre**

[127.1 \(10\)](#) Au terme de l'enquête, le ministre :

- a) peut donner à l'employeur ou à l'employé toute instruction prévue au paragraphe 145(1);
- b) peut, s'il l'estime opportun, recommander que l'employeur et l'employé règlent à l'amiable la situation faisant l'objet de la plainte;
- c) s'il conclut à l'existence de l'une ou l'autre des situations mentionnées au paragraphe 128(1), donne des instructions en conformité avec le paragraphe 145(2).

### **Constitution obligatoire**

[135 \(1\)](#) Sous réserve des autres dispositions du présent article, l'employeur constitue, pour chaque lieu de travail placé sous son entière autorité et occupant habituellement au moins vingt employés, un comité local chargé d'examiner les questions qui concernent le lieu de travail en matière de santé et de sécurité; il en choisit et nomme les membres sous réserve de l'article 135.1.

### **Nomination**

[136 \(1\)](#) L'employeur nomme un représentant pour chaque lieu de travail placé sous son entière autorité et occupant habituellement moins de vingt employés ou pour lequel il n'est pas tenu de constituer un comité local.

### **Délégation**

[140 \(1\)](#) Le ministre peut, aux conditions et selon les modalités qu'il précise, déléguer à toute personne compétente ou toute catégorie de personnes compétentes les attributions qu'il est autorisé à exercer pour l'application de la

perform for the purposes of this Part.

### **Appeal of direction**

146 (1) An employer, employee or trade union that feels aggrieved by a direction issued by the Minister under this Part may appeal the direction in writing to an appeals officer within 30 days after the date of the direction being issued or confirmed in writing.

### ***Canada Occupational Health and Safety Regulations, S.O.R./86-304***

2.2 (1) The design and construction of every building, the construction of which begins on or after the day of the coming into force of this subsection, shall meet the requirements of the National Building Code.

2.14 (3) Every travelled surface in a work place shall be

- (a) slip resistant; and
- (b) kept free of splinters, holes, loose boards and tiles and similar defects.

8.3 (2) The operation and maintenance of all electrical equipment shall meet the standards set out in the Canadian Electrical Code.

### ***Canada Post Corporation Act, R.S.C. 1985, c. C-10***

#### **Objects**

5 (1) The objects of the Corporation are

- (a) to establish and operate a postal service for the collection, transmission and delivery of messages, information, funds and goods both within Canada and between Canada and places

présente partie.

### **Procédure**

146 (1) Tout employeur, employé ou syndicat qui se sent lésé par des instructions données par le ministre sous le régime de la présente partie peut, dans les trente jours qui suivent la date où les instructions sont données ou confirmées par écrit, interjeter appel de celles-ci par écrit à un agent d'appel.

### ***Règlement canadien sur la santé et la sécurité au travail, D.O.R.S./86-304***

2.2 (1) Tout bâtiment dont la construction débute à la date d'entrée en vigueur du présent paragraphe ou après cette date doit être conçu et construit conformément aux exigences du Code canadien du bâtiment.

2.14 (3) Les aires de circulation dans un lieu de travail doivent être :

- a) antidérapantes;
- b) exemptes d'éclats de bois, de trous, de planches et carreaux mal fixés et d'autres défauts semblables.

8.3 (2) La mise en service et l'entretien de l'outillage électrique doivent être conformes aux normes énoncées dans le Code canadien de l'électricité.

### ***Loi sur la Société canadienne des postes, L.R.C. (1985), ch. C-10***

#### **Mission**

5 (1) La Société a pour mission :

- a) de créer et d'exploiter un service postal comportant le relevage, la transmission et la distribution de messages, renseignements, fonds ou marchandises, dans le régime

outside Canada;

(b) to manufacture and provide such products and to provide such services as are, in the opinion of the Corporation, necessary or incidental to the postal service provided by the Corporation; and

(c) to provide to or on behalf of departments and agencies of, and corporations owned, controlled or operated by, the Government of Canada or any provincial, regional or municipal government in Canada or to any person services that, in the opinion of the Corporation, are capable of being conveniently provided in the course of carrying out the other objects of the Corporation.

### **Idem**

5 (2) While maintaining basic customary postal service, the Corporation, in carrying out its objects, shall have regard to

(a) the desirability of improving and extending its products and services in the light of developments in the field of communications;

(b) the need 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 and that is similar with respect to communities of the same size;

(c) the need to conduct its operations in such manner as will best provide for the security of mail;

(d) the desirability of utilizing the human resources of the Corporation in a manner that will both attain the objects of the Corporation and ensure the commitment and dedication of its employees to the attainment of those objects; and

(e) the need to maintain a corporate identity program approved by the Governor in Council that reflects the role of the Corporation as an institution of the Government of Canada.

intérieur et dans le régime international;

b) d'assurer les prestations, ainsi que la réalisation et la fourniture des produits, qu'elle estime utiles à son exploitation;

c) d'assurer, à l'intention ou pour le compte des administrations fédérales, provinciales, régionales ou municipales ou des établissements qui en relèvent, ou, d'une façon générale, à l'intention de quiconque, les prestations dont elle s'estime capable sans inconvénient pour la réalisation des autres objectifs de sa mission.

### **Idem**

5 (2) Dans l'exercice de sa mission, la Société, tout en assurant l'essentiel du service postal habituel :

a) tient compte de l'opportunité d'adapter, qualitativement et quantitativement, ses prestations et ses produits à l'évolution de la technologie des communications;

b) veille à l'autofinancement de son exploitation dans des conditions de normes de service adaptées aux besoins de la population du Canada et comparables pour des collectivités de même importance;

c) tend à assurer son exploitation dans les meilleures conditions de sécurité du courrier;

d) vise à assurer l'efficacité de son exploitation par un déploiement rationnel de ses moyens humains et par la stimulation de la conscience professionnelle et de l'esprit de service chez son personnel;

e) met en oeuvre, pour ce qui la concerne et selon les modalités approuvées par le gouverneur en conseil, le programme de symbolisation fédérale.

**Exclusive privilege**

[14 \(1\)](#) Subject to section 15, the Corporation has the sole and exclusive privilege of collecting, transmitting and delivering letters to the addressee thereof within Canada.

**Fair and reasonable**

[19 \(2\)](#) The rates of postage prescribed pursuant to subsection (1) shall be fair and reasonable and consistent so far as possible with providing a revenue, together with any revenue from other sources, sufficient to defray the costs incurred by the Corporation in the conduct of its operations under this Act.

**Interim prohibitory order**

[43 \(1\)](#) Where the Minister believes on reasonable grounds that any person

(a) is, by means of mail,

(i) committing or attempting to commit an offence, or

(ii) aiding, abetting, counselling or procuring any other person to commit an offence,

(b) with intent to commit an offence, is using mail to accomplish his object, or

(c) is, by means other than mail, aiding, abetting, counselling or procuring any other person to commit an offence by means of mail,

the Minister may make an order (in this section and in sections 44 to 47 called an “interim prohibitory order”) prohibiting the delivery, without the consent of the Minister, of mail addressed to or posted by that person (in this section and in sections 44 to 47 called the “person affected”).

**Privilège exclusif**

[14 \(1\)](#) Sous réserve de l’article 15, la Société a, au Canada, le privilège exclusif du relevage et de la transmission des lettres et de leur distribution aux destinataires.

**Réalisme des tarifs**

[19 \(2\)](#) Les tarifs de port visés au paragraphe (1) doivent être justes et réalistes et permettre d’assurer, dans la mesure du possible, des recettes qui, jointes à celles d’autres sources, suffisent à équilibrer les dépenses engagées par la Société pour l’exécution de sa mission.

**Arrêté provisoire d’interdiction**

[43 \(1\)](#) Le ministre peut, par arrêté provisoire d’interdiction, appelé « arrêté » au présent article et aux articles 44 à 47, interdire la livraison, sans sa permission, du courrier destiné à une personne, appelée « personne visée » au présent article et aux articles 44 à 47, ou posté par cette personne, qu’il soupçonne, avec des motifs raisonnables, de l’un ou l’autre des faits suivants :

a) elle utilise le courrier :

(i) soit pour commettre une infraction ou tenter de la commettre,

(ii) soit pour aider, encourager ou inciter une personne à commettre une infraction ou lui conseiller de la commettre;

b) elle utilise le courrier, dans l’intention de commettre une infraction, pour en arriver à ses fins;

c) sans utiliser elle-même le courrier, elle aide, encourage ou incite une personne à commettre une infraction au moyen du courrier ou lui conseille de la commettre.