

Federal Court



Cour fédérale

Date: 20160226

Docket: T-2574-14

Citation: 2016 FC 252

Ottawa, Ontario, February 26, 2016

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

CANADIAN UNION OF POSTAL WORKERS

Applicant

and

CANADA POST CORPORATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of the decision of Appeals Officer, Michael Wiwchar [Appeals Officer] of the Occupational Health and Safety Tribunal Canada dated November 27, 2014.

[2] The Appeals Officer's decision rescinds a prior decision of a Health and Safety Officer finding the respondent, Canada Post Corporation [CPC], in contravention of the safety inspection

requirements as set out in paragraph 125(1)(z.12) of the *Canada Labour Code*, RSC 1985, c L-2 [CLC].

[3] For the reasons that follow, the application is dismissed.

I. Background

[4] The underlying facts are not in dispute. The following summary is taken from the Appeals Officer's decision.

[5] The applicant, Canadian Union of Postal Workers [CUPW] is the certified bargaining agent for a group of employees that includes letter carriers across Canada. The applicant also represents employee members of Local Joint Health and Safety Committees [LJHSC]. The respondent, CPC has exclusive jurisdiction over the establishment and operation of postal services in Canada.

[6] In July, 2012 CUPW LJHSC representatives at the respondent's Burlington, Ontario Depot [Burlington Depot] proposed, at a committee meeting, that inspections of the individual letter carrier routes be included as part of the Workplace Hazard Prevention Program [WHPP]. They argued the work place included public areas while a letter carrier is on delivery. However, in declining to follow that request, the respondent advised that, within the WHPP, delivery agents reported hazards on letter carrier routes to their supervisors.

[7] In August, 2012 the then Human Resources and Skills Development Canada [HRSDC] received a complaint from a CUPW LJHSC representative at the Burlington Depot stating that only part of the work place was being inspected, the physical building; whereas inspections should also occur on letter carrier routes. A Health and Safety Officer [HSO] attended the facility to investigate the complaint.

A. *The HSO Decision*

[8] In investigating the complaint the HSO found four contraventions of Part II of the CLC and directed the respondent to terminate the contraventions and take steps to ensure that the contraventions do not continue or reoccur. This judicial review application pertains only to Contravention No. 1.

[9] In respect of Contravention No. 1, the HSO concludes that, pursuant to paragraph 125(1)(z.12) of the CLC, the respondent had failed to ensure the LJHSC inspects all or part of the work place on a monthly basis such that inspections of each part of the work place occurs at least once a year. The contravention finding notes that the LJHSC's inspection activity is restricted to the building at the Burlington Depot.

[10] Paragraph 125(1)(z.12) of the CLC reads as follows:

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

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

employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,	employé dans un lieu de travail ne relevant pas de son autorité, dans la mesure où cette tâche, elle, en relève :
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[...]

[...]

(z.12) ensure that the work place committee or the health and safety representative inspects each month all or part of the work place, so that every part of the work place is inspected at least once each year;

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

[11] The respondent brought an appeal under subsection 146(1) of the CLC of the direction issued by the HSO claiming that the HSO had erred in citing four contraventions of the CLC.

B. *Relevant Submissions to the Appeals Officer*

[12] With respect to the contravention relevant to this application the issue before the Appeals Officer was the interpretation of “work place” as that term is used in paragraph 125(1)(z.12) of the CLC.

[13] The respondent, then appellant, argued that the HSO’s adoption of a broad interpretation of “work place” to include the routes and each point of call for letter carriers would create an absurd result. The respondent provided evidence to support this position.

[14] The respondent submitted that the Appeals Officer should take a purposive and contextual approach to interpreting the provision in its entirety, by considering paragraph 125(1)(z.12)’s place within subsection 125(1) of the CLC and within the statutory scheme. The

respondent further argued that the interpretation of paragraph 125(1)(z.12) should be tempered by two factors: (1) the nature of the locations themselves; and (2) the ability of the employer to control the location or any hazardous activity at the location. The respondent submitted that it does not have control over the actual delivery locations nor the hazards that may arise in locations which the HSO decision had defined as a work place. The respondent argued that the Appeals Officer should consider the question of control as central when determining what constitutes a work place for the purposes of subsection 125(1).

[15] In contrast the applicant, then respondent, stressed that the objectives of Part II of the CLC and the jurisprudence supports a broad interpretation of the term work place and that many tribunal decisions recognize that a work place is not necessarily a single location, an interior location or a stationary location. Furthermore, the applicant noted that while the respondent may not control the work place locations, it does control the activity and thus the obligations under subsection 125(1) would apply. The applicant also stressed that the respondent's interpretation of paragraph 125(1)(z.12) would be unduly restrictive and would defeat the purpose of the legislation.

II. Decision Under Review

[16] In deciding the matter, the Appeals Officer varied the Direction of the HSO by rescinding Contravention Nos. 1, 2 and 4 and varying Contravention No. 3 (*Canada Post Corp v Canadian Union of Postal Workers*, 2014 OHSTC 22 [the Decision]). Again, only Contravention No. 1 is relevant to this application.

[17] The Appeals Officer framed the issue raised by Contravention No. 1 as being whether paragraph 125(1)(z.12) of the CLC applies to all places where letter carriers carry out their work, including individual points of call and the lines of route.

[18] To address the issue the Appeals Officer considered two questions: (1) the meaning of “work place” under the CLC and specifically whether or not a letter carrier’s line of route and points of call is a “work place” within the meaning of subsection 125(1) of the CLC; and (2) whether there is a requirement for employer control over a work place before the obligations to inspect embodied in paragraph 125(1)(z.12) are engaged.

[19] On the first issue, the Appeals Officer found that the objective of health and safety legislation is the prevention of accidents and injuries and that in keeping with section 12 of the *Interpretation Act*, RSC 1985, c I-21 “work place” is to be interpreted broadly. The Appeals Officer relied on *Mowat Express v Communications, Energy and Paper Workers Union of Canada (QFL – CLC)* June 1, 1993, Decision No 94-004, to conclude that a letter carrier’s “work place” include places outside the physical building that is the Burlington Depot and that “work place” extended to a letter carrier’s points of call and lines of route.

[20] Having agreed with the applicant’s position on the need to adopt a broad definition of “work place” the Appeals Officer considered the nature of the obligations imposed under paragraph 125(1)(z.12) of the CLC.

[21] After considering the language of subsection 125(1) the Appeals Officer at para 93 concludes that the obligations set out in that section of the CLC “centre around the notion of control”:

93. There is a clear distinction between situations where work places are controlled by the employer and those where they are not. It becomes clear from a plain reading of the obligations that: (i) some obligations apply to any employer, whether or not they control the work place, as long as they control the work activity, and (ii) other obligations, in order to be executed, require that the employer have control of the physical work place.

[22] The Appeals Officer then states at paras 95 to 96:

95. The wording at the beginning of subsection 125(1) indicates to me that the legislator drafted the section in this way in order to ensure that the employer be bound to the fullest extent possible by the obligations under the Code and its Regulations. Some paragraphs under subsection 125(1) refer to obligations which can only be carried out at a work place that is under the control of the employer. Conversely, other paragraphs confer an obligation on any employer whether or not they control the work place, as long as they control the work activity. One example of the latter is found at paragraph 125(1)(t) which states:

(t) ensure that the machinery, equipment and tools used by the employees in the course of their employment meet prescribed health, safety and ergonomic standards and are safe under all conditions of their intended use;

96. In my opinion, the obligation to inspect under (z.12) belongs to the former category because the purpose of the work place inspection obligation is to permit the identification of hazards and the opportunity to fix them or to have them fixed. Control over the work place is necessary to do so.

[23] In holding that paragraph 125(1)(z.12) does not apply to any place where a letter carrier is engaged in work outside the physical building the Appeals Officer, at para 100 of the Decision

notes that the respondent “has many policies, programs and assessment tools that evaluate and promote the health and safety of their employees in all the elements of their work”.

III. Relevant Legislation

[24] The relevant portions of the CLC and the *Canada Occupational Health and Safety Regulations*, SOR/86-304 [Regulations] are reproduced at Appendix “A” to this Judgment and Reasons.

IV. Applicant’s Submissions

[25] The applicant seeks an order in the nature of certiorari, quashing and setting aside the Appeals Officer’s decision with respect to Contravention No. 1 and reinstating the HSO’s finding that the respondent is in contravention of paragraph 125(1)(z.12) of the CLC.

[26] The applicant submits the Appeals Officer’s interpretation of paragraph 125(1)(z.12) lacks justifiability and intelligibility as a result of internal inconsistencies in the reasons. The applicant argues that the decision falls outside the range of outcomes that are acceptable within the constraints of the language, scheme and purpose of the CLC and the decision-maker’s interpretation of the facts.

[27] The applicant submits that upon finding that: (1) letter carrier routes and points of call are part of the work place for purposes of subsection 125(1); (2) the respondent controls the work activities on letter carrier routes and points of call right down to how they walk the routes; and

(3) the respondent can take steps to identify and resolve hazards on letter carrier routes and points of call, the Appeals Officer could not logically conclude that paragraph 125(1)(z.12) does not oblige CPC to conduct annual inspections of letter carrier routes and points of call. The Appeals Officer's failure to reconcile his factual findings with his narrow definition of "control" resulted in a decision that lacked justification.

[28] The applicant argues that the purpose of health and safety legislation is to protect the health and safety of workers, and this is well-established in the jurisprudence. As a result any doubt or ambiguity arising from the language of the CLC is to be resolved in a manner that favours the protection of employees. The applicant then notes that the Appeals Officer properly interpreted the term "work place" in subsections 122(1) and 125(1) of the CLC to include letter carrier routes and points of call.

[29] The applicant then addresses the Appeals Officer's consideration of subsection 125(1) of the CLC. The applicant argues that on a plain reading of the subsection, the duties listed in subsection 125(1) apply both where an employer controls the work place and where the employer does not control the work place but does control the work activity.

[30] Relying on the Ontario Court of Appeal's decision in *R v Huggins*, 2010 ONCA 746 at para 17, 326 DLR (4th) 720, the applicant submits that a decision-maker should not limit a statute's application by reason of a belief that the application is impractical, as the practicality of application of the statute belongs to the legislature not an administrative decision-maker or the Courts. Furthermore, the applicant argues that the limited exception of cases where the

application of a provision would result in absurdity does not apply here as one cannot conclude that requiring employers to adhere to all obligations in subsection 125(1), to the extent of their control over a work activity, would lead to ridiculous or inequitable consequences that are incompatible with the purposes of the legislation (*Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 27).

[31] The applicant argues further, or in the alternative, that the Appeals Officer unreasonably adopted an unduly restrictive interpretation of “control”. The applicant submits that determining “control” was limited to circumstances where an employer has exclusive access and/or a right to alter the physical work place in combination with the Appeals Officer’s determination that paragraph 125(1)(z.12) of the CLC applies only where an employer controls a work place absolves the respondent of its obligation to inspect work places to identify and take steps to fix hazards. The applicant submits the respondent’s substantial functional control over letter carrier routes and points of call amounts to a level of control over the work place sufficient to attract the obligation under subsection 125(1) even if the Appeals Officer has not committed a reviewable error in holding that the obligation applies only where an employer controls a work place.

[32] Finally, the applicant argues that an interpretation of subsection 125(1) that relieves federal employers from identifying and resolving safety hazards in a work place where they do not have exclusive access is contrary to the scheme of the CLC. The applicant argues that subsection 125(1) seeks to enhance not derogate from the general duty of employers under section 124 of the CLC to ensure safety in the work place.

[33] The applicant also takes issue with the respondent's use of hypothetical examples relating to other federally regulated work places and evidence relating to CPC employees who take taxis to their routes, and eat meals on route. The applicant argues that there is insufficient evidence before the Court in relation to these examples to justify their use in interpreting the CLC and as such the only focus should be the Burlington routes and points of call.

V. Respondent's Submissions

[34] The respondent submits that the Appeals Officer's interpretation of subsection 125(1) and paragraph 125(1)(z.12) of the CLC fell within the range of possible acceptable outcomes and was supported by the evidence before him and therefore was reasonable.

[35] At the outset of oral submissions the respondent noted that the applicant's position that Part II of the CLC is a public welfare statute and thus generally requires a broad and purposive interpretation was not in dispute. However, relying on *Blue Mountain Resorts Ltd v Bok*, 2013 ONCA 75 at para 26, 114 OR (3d) 321 [*Blue Mountain Resorts*] the respondent submits that a broad and generous interpretation of the CLC does not necessitate a limitless interpretation.

[36] The respondent advanced the view that subsection 125(1) of the CLC requires one to first determine if the place in question is a work place. However, unlike the applicant, the respondent argues that in assessing the duties and obligations imposed by subsection 125(1) the determination that a location is a "work place" does not end the inquiry. Rather the respondent argues that the obligations imposed by subsection 125(1), will differ depending upon whether or not the employer controls the work place or alternatively only controls the work activity.

[37] The respondent also takes issue with the applicant's position that in interpreting subsection 125(1) the Appeals Officer's focus should have only been on the letter carrier routes at the Burlington location. The respondent argues that an inquiry into the interpretation of subsection 125(1) requires assessing not only where the employees go but also how they get there.

[38] The respondent then sets out the evidence it put before the Appeals Officer related to CPC employees at the Burlington Depot and to CPC's employees generally for the purpose of demonstrating the ramifications of the finding that paragraph 125(1)(z.12) applies in the manner the applicant advanced. For example, the respondent submits that the applicant's interpretation would include an obligation to inspect public transportation used to transport a letter carrier to the beginning of a route because many letter carriers are transported to their first point of call by public transportation or taxis.

[39] The respondent, again relying on *Blue Mountain Resorts* at para 38, submits that it was also appropriate for the Appeals Officer to consider hypothetical circumstances in assessing the impact of the applicant's proposed interpretation of paragraph 125(1)(z.12). The respondent argues that these hypothetical circumstances involving Parks Canada Agency, the National Research Council and the Royal Canadian Mounted Police demonstrate the potential absurdity in interpreting paragraph 125(1)(z.12) as requiring federally regulated employers to conduct inspections of work places not under control of the employer.

[40] The respondent argues that the Appeals Officer reasonably recognized the necessity of the concept of control in respect to the application of paragraph 125(1)(z.12) of the CLC by agreeing with the respondent's position that CPC could not enforce the requirement to ensure all permanent and temporary buildings and structures meet the prescribed standards with respect to structures it neither owns nor has a right to alter. In turning his mind to the possible absurdities arising from a finding that a work place is anywhere a person performs work, the Appeals Officer's approach of not adopting a narrow interpretation of work place as the Ontario Court of Appeal did in *Blue Mountain Resorts* but rather focusing on the element of employer control led to a similarly reasonable and logical conclusion.

[41] The respondent also argues that the Appeals Officer did not lose sight of the employer's obligation to ensure the protection of the health and safety of employees and considered the evidence before him to the effect that the respondent had many policies and programs in place to deal with outdoor and delivery related hazards, noting particularly the WHPP. The respondent stressed that the Appeals Officer's reference at para 100 of the Decision to the WHPP was an implicit finding that CPC is effectively working to comply with Part XIX of the Regulations, and that compliance assuaged the Appeals Officer's concerns of potential consequences relating to hazard identification that could arise from the interpretation adopted on paragraph 125(1)(z.12) of the CLC.

VI. Issues

[42] The sole issue arising in this application is whether or not the Appeals Officer's interpretation of subsection 125(1) and consequently paragraph 125(1)(z.12) of the CLC was

reasonable. Specifically the Court asks whether the Appeals Officer's determination that the obligations under paragraph 125(1)(z.12) only apply to work places where the employer exercises control falls within the range of possible, acceptable outcomes defensible in respect of the facts and law.

VII. Standard of Review

[43] The parties agree that the reasonableness standard of review applies to the Appeals Officer's decision, inclusive of the interpretation and application of paragraph 125(1)(z.12) of the CLC, as the Appeals Officer was interpreting his home statute, an area in which he has considerable expertise (*Canada Post v Canadian Union of Postal Workers*, 2011 FCA 24 at paras 17-18, 28, 330 DLR (4th) 729).

[44] In concluding that the decision is to be reviewed on a reasonableness standard, the Court is mindful of the Federal Court of Appeal's decision in *First Nations Child and Family Caring Society of Canada v Canada (Attorney General)*, 2013 FCA 75 at para 14, 444 NR 120. In that decision, the Court of Appeal establishes that in the context of reviewing a decision that involves the interpretation of a statute the range of possible and acceptable outcomes can be relatively narrow since "The Tribunal's decision primarily involves statutory interpretation – a matter constrained by the text, context and purpose of the statute."

VIII. Analysis

A. *Statutory Interpretation*

[45] In reviewing a decision interpreting a statutory provision it is helpful to first review the core underlying principle of statutory interpretation as identified in Supreme Court of Canada jurisprudence. In *Bell ExpressVU Limited Partnership v Rex*, [2002] 2 SCR 559 [*Bell ExpressVU*], a unanimous decision of the Court, Justice Iacobucci states the following at paras 26 and 27:

26 In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings [sources omitted]. I note as well that, in the federal legislative context, this Court's preferred approach is buttressed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

27 **The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute** [emphasis added]: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 Can. Bar Rev. 1, at p. 6, 'words, like people, take their colour from their surroundings'. **This being the case, where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive** [emphasis added]. In such an instance, the application of Driedger's principle gives rise to what was

described in *R. v. Ulybel Enterprises Ltd.*, [2001] 2 S.C.R. 867, 2001 SCC 56, as “the principle of interpretation that presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter”.

[46] In *Bell ExpressVU* at paras 29 to 30, Justice Iacuobucci then addressed the issue of ambiguity in a statutory provision:

29 What, then, in law is an ambiguity? To answer, an ambiguity must be “real” (*Marcotte*, supra, at p. 115). The words of the provision must be “reasonably capable of more than one meaning” (*Westminster Bank Ltd. v. Zang*, [1966] A.C. 182 (H.L.), at p. 222, per Lord Reid). By necessity, however, one must consider the “entire context” of a provision before one can determine if it is reasonably capable of multiple interpretations. In this regard, Major J.’s statement in *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743, at para. 14, is apposite: “It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids” (emphasis added), to which I would add, “including other principles of interpretation”.

30 For this reason, ambiguity cannot reside in the mere fact that several courts -- or, for that matter, several doctrinal writers -- have come to differing conclusions on the interpretation of a given provision. Just as it would be improper for one to engage in a preliminary tallying of the number of decisions supporting competing interpretations and then apply that which receives the “higher score”, it is not appropriate to take as one's starting point the premise that differing interpretations reveal an ambiguity. It is necessary, in every case, for the court charged with interpreting a provision to undertake the contextual and purposive approach set out by Driedger, and thereafter to determine if “the words are ambiguous enough to induce two people to spend good money in backing two opposing views as to their meaning” (*Willis*, supra, at pp. 4-5).

[47] Furthermore in *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 27, Justice Iacobucci, again writing for a unanimous Supreme Court of Canada, addresses the principle of statutory interpretation avoiding absurd consequences:

27 It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to *Côté, supra*, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (*Sullivan, Construction of Statutes, supra*, at p. 88).

B. *Reasonableness of the Decision*

[48] Based on these principles of statutory interpretation I will now consider the reasonableness of the Appeals Officer's interpretation of subsection 125(1) and paragraph 125(1)(z.12) within the broader context of the CLC.

[49] As noted above, the applicant argues that it was unreasonable for the Appeals Officer to conclude that the obligations set out in subsection 125(1) do not apply equally to employers who control the work place or work activity within a work place. I respectfully disagree.

[50] In interpreting subsection 125(1) of the CLC the Appeals Officer was required to consider the words of subsection 125(1) in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the CLC (*Bell ExpressVU* paras 26 and 27).

[51] In this case the Appeals Officer closely examined subsection 125(1) of the CLC and, after concluding that for CPC letter carriers' work place included places outside the physical building controlled by the employer and included points of call and lines of route, he then considered the specific obligations enumerated in subsection 125(1) of the CLC. He notes the subsection draws a clear distinction between work places that are controlled by the employer and those that are not. He further concludes, based on a plain reading of the subsection that not all obligations apply where the employer does not control the work place. To demonstrate this he notes the obligation set out in paragraph 125(1)(a), requiring that all permanent and temporary buildings and structures must meet prescribed standards and concludes that this is an obligation that an employer can only satisfy where the employer controls the physical work place and can thus alter structures. He contrasts this with the obligation set out in paragraph 125(1)(t), to ensure the safety of all machinery, equipment and tools used by the employees in the course of their employment, noting that this obligation can be respected both where the employer controls the work place and where the employer only controls the work activity. It is on this basis that the Appeals Officer concludes that the inspection obligation at paragraph 125(1)(z.12) only arises where the employer controls the work place, as the purpose of the 125(1)(z.12) inspection is the identification and opportunity to fix hazards. This, the Appeal Officer concludes requires control of the work place.

[52] The applicant argues that this interpretation fails to reflect the need for a broad generous interpretation of the CLC and that the mere fact that an interpretation might be viewed as impractical by a decision-maker is not sufficient to allow the decision-maker to limit its application. In this case I am of the view that the Appeals Officer has adopted a reasonable

interpretation of subsection 125(1) and paragraph 125(1)(z.12), based on a harmonious reading of the words in their context. The Appeals Officer's determination that the employer can only satisfy certain obligations imposed by the subsection when in control of the work place is not driven by an impracticality assessment but rather a determination that the underlying purpose of paragraph 125(1)(z.12) can only be achieved where the employer is in a position to both identify and fix hazards. As noted by the Ontario Court of Appeal in *Blue Mountain Resorts* at paras 26 and 27 a generous interpretation of public welfare statutes cannot justify extending the reach of legislation beyond the intent of the legislator:

26. This generous approach to the interpretation of public welfare statutes does not call for a limitless interpretation of their provisions however.

27. One of the problems with what is otherwise an understandable approach to the interpretation of public welfare legislation is that broad language, taken at face value, can sometimes lead to the adoption of overly broad definitions. This can extend the reach of the legislation far beyond what was intended by the legislature and afford the regulating ministry a greatly expanded mandate far beyond what is needed to give effect to the purposes of the legislation.

[53] In the context of this review I need not determine whether or not the Appeals Officer was correct in his interpretation but rather whether or not the interpretation was reasonable keeping in mind that the range of reasonable acceptable outcomes may be relatively narrow. In this case I am satisfied that the Appeals Officer's interpretation was reasonable.

[54] Similarly, I cannot agree with the applicant's position that the Appeals Officer adopted an unreasonable interpretation of "control" in considering subsection 125(1) of the CLC. As the Appeals Officer notes the parties did not dispute the fact that the employer does not exercise

physical control over points of call or lines of route. Similarly, there was no dispute with respect to the fact that many points of call are private property. As such it was not unreasonable for the Appeals Officer to conclude that an employer did not control the work place and in turn could not effectively carry out an inspection and accomplish the underlying purpose of paragraph 125(1)(z.12). The hypothetical examples from the record which the respondent provided above supported this interpretation (*Blue Mountain Resorts* at para 38).

[55] Further, I am of the opinion that the Appeals Officer's finding that the respondent exercises substantial control over the work activity is neither internally inconsistent with the decision, nor does it undermine the reasonableness of the decision. The Appeals Officer identifies that subsection 125(1) draws a clear distinction between control over the work place and control over the work activity. He found that distinction to be significant and meaningful in interpreting subsection 125(1). Having concluded that the subsection distinguishes between work place control and work activity control, and having determined that work place control was the determinative factor in respect of the obligations imposed by paragraph 125(1)(z.12) there was no need, in my opinion, for the Appeals Officer to address the question of employer control over work activity.

[56] Of course to be reasonable the interpretation must also not run contrary to or defeat the statutory objective of the CLC, the protection of the health and safety of employees. The applicant submits this is exactly what the Decision does. However, I am satisfied that the Decision reflects a contextual consideration of subsection 125(1) within the scheme of the CLC that both recognizes and promotes the underlying principle of the CLC. Section 124 imposes a

general duty on every employer to ensure the health and safety at work of every person employed by the employer is protected. Subsection 125(1) of the CLC supplements rather than limits that general duty (*Laroche v Canada (Attorney General)*, 2011 FC 1454 at para 8, 401 FTR 287). An interpretation limiting any of the obligations set out at subsection 125(1) therefore does not limit the broader duty articulated at section 124, nor necessarily undermine or contravene the purpose of the *Code*. Nor, does the Decision with respect to paragraph 125(1)(z.12) affect Part XIX of the Regulations relating to the employer's obligations with respect to the creation and implementation of a hazard prevention program.

[57] I recognize that the Appeals Officer did not specifically refer to section 124 of the CLC or to Part XIX of the Regulations in the analysis but the failure to do so does not lead me to conclude that the provision was not considered. As Justice LeBel held for a unanimous Supreme Court of Canada in *Agraira v Canada (Public Safety and Emergency Preparedness)*, [2013] 2 SCR 559 at para 57, citing *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, [2011] 3 SCR 654: "a decision maker's decision on the merits may imply a particular interpretation of the statutory provision at issue even if the decision maker has not expressed an opinion on that provision's meaning". I am satisfied that the role of section 124 of the CLC and Part XIX of the Regulations was implicit in the Appeals Officer's interpretation of subsection 125(1) and paragraph 125(1)(z.12). This is reflected in the finding at paragraph 100 of the Decision:

100 In any event, the evidence has demonstrated that Canada Post has many policies, programs and assessment tools that evaluate and promote the health and safety of their employees in all elements of their work. **Notably, the WHPP developed by Canada Post is exemplary in its protocol for identifying and reporting hazards that are encountered at the points of call. In**

my opinion the program is 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 [emphasis added].

IX. Conclusion

[58] In my opinion the Decision reflects that preservation of the broad obligations of the CLC was at the forefront of the Appeals Officer's interpretation of the CLC. He implicitly recognized that adopting the respondent's restrictive interpretation of the term "work place" could have the effect of diluting the remedial effects of the CLC. The Appeals Officer recognized that Parliament intended to give the broadest possible protection to employees including to those performing work in a place which the employer may not control. In my view the Appeals Officer's interpretation of subsection 125(1) and paragraph 125(1)(z.12) demonstrates sensitivity to preserving the broad nature of the employer's obligations to ensure the health and safety of its employees without placing obligations upon the employer that the latter would be unable to fulfill.

[59] I am satisfied that the Appeals Officer decision is justified, transparent and intelligible, and falls within a range of possible acceptable outcomes defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47). The application is therefore dismissed with costs to the respondent.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and
2. Costs to the respondent.

"Patrick Gleeson"

Judge

Appendix "A"

Canada Labour Code, RSC 1985, c L-2

122. (1) In this Part, "work place" means any place where an employee is engaged in work for the employee's employer;

122.1 The purpose of this Part is to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies.

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

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

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.

122.1 La présente partie a pour objet de prévenir les accidents et les maladies liés à l'occupation d'un emploi régi par ses dispositions.

124. L'employeur veille à la protection de ses employés en matière de santé et de sécurité au travail.

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

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| accordance with prescribed standards; | aux normes réglementaires; |
| (c) investigate, record and report in the manner and to the authorities as prescribed all accidents, occupational diseases and other hazardous occurrences known to the employer; | c) selon les modalités réglementaires, d'enquêter sur tous les accidents, toutes les maladies professionnelles et autres situations comportant des risques dont il a connaissance, de les enregistrer et de les signaler aux autorités désignées par les règlements; |
| (d) post in a conspicuous place accessible to every employee | d) d'afficher à un endroit bien en vue, accessible à tous les employés : |
| (i) a copy of this Part, | (i) le texte de la présente partie, |
| (ii) a statement of the employer's general policy concerning the health and safety at work of employees, and | (ii) l'énoncé de ses consignes générales en matière de santé et de sécurité au travail, |
| (iii) any other printed material related to health and safety that is prescribed or that may be directed by the Minister; | (iii) les imprimés réglementaires concernant la santé et la sécurité et ceux que précise le ministre; |
| (e) make readily available to employees for examination, in printed or electronic form, a copy of the regulations made under this Part that apply to the work place; | e) de mettre à la disposition des employés, de façon que ceux-ci puissent y avoir effectivement accès sur support électronique ou sur support papier une copie des règlements d'application de la présente partie qui sont applicables au lieu de travail; |
| (f) if a copy of the regulations is made available in electronic form, provide appropriate training to employees to enable them to have access to the regulations and, on the request | f) lorsque les règlements d'application de la présente partie sont mis à la disposition des employés sur support électronique, de veiller à ce que ceux-ci reçoivent la formation nécessaire |

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| of an employee, make a printed copy of the regulations available; | pour être en mesure de les consulter et de mettre à leur disposition, sur demande, une version sur support papier; |
| (g) keep and maintain in prescribed form and manner prescribed health and safety records; | g) de tenir, selon les modalités réglementaires, des dossiers de santé et de sécurité; |
| (h) provide prescribed first-aid facilities and health services; | h) de fournir les installations de premiers soins et les services de santé réglementaires; |
| (i) provide prescribed sanitary and personal facilities; | i) de fournir les installations sanitaires et personnelles réglementaires; |
| (j) provide, in accordance with prescribed standards, potable water; | j) de fournir, conformément aux normes réglementaires, de l'eau potable; |
| (k) ensure that the vehicles and mobile equipment used by the employees in the course of their employment meet prescribed standards; | k) de veiller à ce que les véhicules et l'équipement mobile que ses employés utilisent pour leur travail soient conformes aux normes réglementaires; |
| (l) provide every person granted access to the work place by the employer with prescribed safety materials, equipment, devices and clothing; | l) de fournir le matériel, l'équipement, les dispositifs et les vêtements de sécurité réglementaires à toute personne à qui il permet l'accès du lieu de travail; |
| (m) ensure that the use, operation and maintenance of the following are in accordance with prescribed standards: | m) de veiller à ce que soient conformes aux normes réglementaires l'utilisation, le fonctionnement et l'entretien : |
| (i) boilers and pressure vessels, | (i) des chaudières et des réservoirs sous pression, |
| (ii) escalators, elevators and other devices for moving | (ii) des escaliers mécaniques, ascenseurs et autres dispositifs |

persons or freight,	destinés au transport des personnes ou du matériel,
(iii) all equipment for the generation, distribution or use of electricity,	(iii) de l'équipement servant à la production, à la distribution ou à l'utilisation de l'électricité,
(iv) gas or oil burning equipment or other heat generating equipment, and	(iv) des brûleurs à gaz ou à pétrole ou autres appareils générateurs de chaleur,
(v) heating, ventilation and air-conditioning systems;	(v) des systèmes de chauffage, de ventilation et de conditionnement de l'air;
(n) ensure that the levels of ventilation, lighting, temperature, humidity, sound and vibration are in accordance with prescribed standards;	n) de veiller à ce que l'aération, l'éclairage, la température, l'humidité, le bruit et les vibrations soient conformes aux normes réglementaires;
(o) comply with prescribed standards relating to fire safety and emergency measures;	o) de se conformer aux normes réglementaires en matière de prévention des incendies et de mesures d'urgence;
(p) ensure, in the prescribed manner, that employees have safe entry to, exit from and occupancy of the work place;	p) de veiller, selon les modalités réglementaires, à ce que les employés puissent entrer dans le lieu de travail, en sortir et y demeurer en sécurité;
(q) provide, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure their health and safety at work;	q) d'offrir à chaque employé, selon les modalités réglementaires, l'information, la formation, l'entraînement et la surveillance nécessaires pour assurer sa santé et sa sécurité;
(r) maintain all installed guards, guard-rails, barricades and fences in accordance with prescribed standards;	r) d'entretenir, conformément aux normes réglementaires, les dispositifs protecteurs, garde-fous, barrières et clôtures qui y

- sont installés;
- (s) ensure that each employee is made aware of every known or foreseeable health or safety hazard in the area where the employee works;
- 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;
- (t) ensure that the machinery, equipment and tools used by the employees in the course of their employment meet prescribed health, safety and ergonomic standards and are safe under all conditions of their intended use;
- t) de veiller à ce que l'équipement — machines, appareils et outils — utilisé par ses employés pour leur travail soit conforme aux normes réglementaires de santé, de sécurité et d'ergonomie, et sécuritaire dans tous les usages auxquels il est destiné;
- (u) ensure that the work place, work spaces and procedures meet prescribed ergonomic standards;
- u) de veiller à ce que le lieu de travail, les postes de travail et les méthodes de travail soient conformes aux normes réglementaires d'ergonomie;
- (v) adopt and implement prescribed safety codes and safety standards;
- v) d'adopter et de mettre en oeuvre les normes et codes de sécurité réglementaires;
- (w) ensure that every person granted access to the work place by the employer is familiar with and uses in the prescribed circumstances and manner all prescribed safety materials, equipment, devices and clothing;
- w) de veiller à ce que toute personne admise dans le lieu de travail connaisse et utilise selon les modalités réglementaires le matériel, l'équipement, les dispositifs et les vêtements de sécurité réglementaires;
- (x) comply with every oral or written direction given to the employer by the Minister or an appeals officer concerning the health and safety of employees;
- x) de se conformer aux instructions verbales ou écrites qui lui sont données par le ministre ou l'agent d'appel en matière de santé et de sécurité des employés;
- (y) ensure that the activities of every person granted access to
- y) de veiller à ce que la santé et la sécurité des employés ne

the work place do not endanger the health and safety of employees;

soient pas mises en danger par les activités de quelque personne admise dans le lieu de travail;

(z) ensure that employees who have supervisory or managerial responsibilities are adequately trained in health and safety and are informed of the responsibilities they have under this Part where they act on behalf of their employer;

z) de veiller à ce que les employés qui exercent des fonctions de direction ou de gestion reçoivent une formation adéquate en matière de santé et de sécurité, et soient informés des responsabilités qui leur incombent sous le régime de la présente partie dans la mesure où ils agissent pour le compte de l'employeur;

(z.01) ensure that members of policy and work place committees and health and safety representatives receive the prescribed training in health and safety and are informed of their responsibilities under this Part;

z.01) de veiller à ce que les membres du comité d'orientation, ainsi que les membres du comité local ou le représentant, reçoivent la formation réglementaire en matière de santé et de sécurité, et soient informés des responsabilités qui leur incombent sous le régime de la présente partie;

(z.02) respond as soon as possible to reports made by employees under paragraph 126(1) (g);

z.02) de répondre sans délai à tout rapport fait au titre de l'alinéa 126(1)g);

(z.03) 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 it that also provides for the education

z.03) en consultation avec le comité d'orientation ou, à défaut, le comité local ou le représentant, d'élaborer et de mettre en œuvre un programme réglementaire de prévention des risques professionnels — en fonction de la taille du lieu de travail et de la nature des risques qui s'y posent —, y compris la formation des employés en matière de santé

of employees in health and safety matters;

(z.04) where the program referred to in paragraph (z.03) does not cover certain hazards unique to a work place, develop, implement and monitor, in consultation with the work place committee or the health and safety representative, a prescribed program for the prevention of those hazards that also provides for the education of employees in health and safety matters related to those hazards;

(z.05) consult the policy committee or, if there is no policy committee, the work place committee or the health and safety representative to plan the implementation of changes that might affect occupational health and safety, including work processes and procedures;

(z.06) consult the work place committee or the health and safety representative in the implementation of changes that might affect occupational health and safety, including work processes and procedures;

(z.07) ensure the availability in the work place of premises, equipment and personnel necessary for the operation of the policy and work place committees;

et de sécurité, et d'en contrôler l'application;

z.04) relativement aux risques propres à un lieu de travail et non couverts par un programme visé à l'alinéa z.03), en consultation avec le comité d'orientation ou, à défaut, le comité local ou le représentant, d'élaborer et de mettre en oeuvre un programme réglementaire de prévention de ces risques, y compris la formation des employés en matière de santé et de sécurité relativement à ces risques, et d'en contrôler l'application;

z.05) de consulter le comité d'orientation ou, à défaut, le comité local ou le représentant, en vue de planifier la mise en oeuvre des changements qui peuvent avoir une incidence sur la santé et la sécurité au travail, notamment sur le plan des procédés et des méthodes de travail;

z.06) de consulter le comité local ou le représentant pour la mise en oeuvre des changements qui peuvent avoir une incidence sur la santé et la sécurité au travail, notamment sur le plan des procédés et des méthodes de travail;

z.07) de mettre à la disposition du comité d'orientation et du comité local les installations, le matériel et le personnel dont ils ont besoin dans le lieu de travail;

(z.08) cooperate with the policy and work place committees or the health and safety representative in the execution of their duties under this Part;

z.08) de collaborer avec le comité d'orientation et le comité local ou le représentant pour l'exécution des responsabilités qui leur incombent sous le régime de la présente partie;

(z.09) develop health and safety policies and programs in consultation with the policy committee or, if there is no policy committee, with the work place committee or the health and safety representative;

z.09) en consultation avec le comité d'orientation ou, à défaut, le comité local ou le représentant, d'élaborer des orientations et des programmes en matière de santé et de sécurité;

(z.10) respond in writing to recommendations made by the policy and work place committees or the health and safety representative within thirty days after receiving them, indicating what, if any, action will be taken and when it will be taken;

z.10) de répondre par écrit aux recommandations du comité d'orientation, du comité local ou du représentant dans les trente jours suivant leur réception, avec mention, le cas échéant, des mesures qui seront prises et des délais prévus à cet égard;

(z.11) provide to the policy committee, if any, and to the work place committee or the health and safety representative, a copy of any report on hazards in the work place, including an assessment of those hazards;

z.11) de fournir au comité d'orientation, ainsi qu'au comité local ou au représentant, copie de tout rapport sur les risques dans le lieu de travail, notamment sur leur appréciation;

(z.12) ensure that the work place committee or the health and safety representative inspects each month all or part of the work place, so that every part of the work place is inspected at least once each year;

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

(z.13) when necessary, develop, implement and

z.13) selon les besoins, d'élaborer et de mettre en

<p>monitor a program for the provision of personal protective equipment, clothing, devices or materials, in consultation, except in emergencies, with the policy committee or, if there is no policy committee, with the work place committee or the health and safety representative;</p>	<p>oeuvre, en consultation — sauf en cas d'urgence — avec le comité d'orientation ou, à défaut, le comité local ou le représentant, un programme de fourniture de matériel, d'équipement, de dispositifs ou de vêtements de protection personnels, et d'en contrôler l'application;</p>
<p>(z.14) take all reasonable care to ensure that all of the persons granted access to the work place, other than the employer's employees, are informed of every known or foreseeable health or safety hazard to which they are likely to be exposed in the work place;</p>	<p>z.14) de prendre toutes les précautions nécessaires pour que soient portés à l'attention de toute personne — autre qu'un de ses employés — admise dans le lieu de travail les risques connus ou prévisibles auxquels sa santé et sa sécurité peuvent être exposées;</p>
<p>(z.15) meet with the health and safety representative as necessary to address health and safety matters;</p>	<p>z.15) de tenir au besoin avec le représentant des réunions ayant pour objet la santé et la sécurité au travail;</p>
<p>(z.16) take the prescribed steps to prevent and protect against violence in the work place;</p>	<p>z.16) de prendre les mesures prévues par les règlements pour prévenir et réprimer la violence dans le lieu de travail;</p>
<p>(z.17) post and keep posted, in a conspicuous place or places where they are likely to come to the attention of employees, the names, work place telephone numbers and work locations of all of the members of work place committees or of the health and safety representative;</p>	<p>z.17) d'afficher en permanence dans un ou plusieurs endroits bien en vue et fréquentés par ses employés les nom, numéro de téléphone au travail et lieu de travail des membres des comités locaux et des représentants;</p>
<p>(z.18) provide, within thirty days after receiving a request, or as soon as possible after</p>	<p>z.18) de fournir, dans les trente jours qui suivent une demande à cet effet ou dès que possible</p>

that, the information requested from the employer by a policy committee under subsection 134.1(5) or (6), by a workplace committee under subsection 135(8) or (9) or by a health and safety representative under subsection 136(6) or (7); and

(z.19) consult with the workplace committee or the health and safety representative on the implementation and monitoring of programs developed in consultation with the policy committee.

par la suite, les renseignements exigés soit par un comité d'orientation en vertu des paragraphes 134.1(5) ou (6), soit par un comité local en vertu des paragraphes 135(8) ou (9), soit par un représentant en vertu des paragraphes 136(6) ou (7);

z.19) de consulter le comité local ou le représentant pour la mise en oeuvre et le contrôle d'application des programmes élaborés en consultation avec le comité d'orientation.

Canada Occupational Health and Safety Regulations, SOR/86-304:

19.1 (1) The employer shall, in consultation with and with the participation of the policy committee, or, if there is no policy committee, the workplace committee or the health and safety representative, develop, implement and monitor a program for the prevention of hazards, including ergonomics-related hazards, in the workplace that is appropriate to the size of the workplace and the nature of the hazards and that includes the following components:

- (a) an implementation plan;
- (b) a hazard identification and assessment methodology;
- (c) hazard identification and assessment;

19.1 (1) L'employeur, en consultation avec le comité d'orientation ou, à défaut, le comité local ou le représentant et avec la participation du comité ou du représentant en cause, élabore et met en oeuvre un programme de prévention des risques professionnels — y compris ceux liés à l'ergonomie —, en fonction de la taille du lieu de travail et de la nature des risques qui s'y posent, et en contrôle l'application. Ce programme comporte les éléments suivants:

- a) le plan de mise en oeuvre;
- b) la méthode de recensement et d'évaluation des risques;
- c) le recensement et l'évaluation des risques;

(d) preventive measures;	d) les mesures de prévention;
(e) employee education; and	e) la formation des employés;
(f) a program evaluation.	f) l'évaluation du programme.
(2) [Repealed, SOR/2009-84, s. 2]	(2) [Abrogé, DORS/2009-84, art. 2]
19.2 (1) The employer shall	19.2 (1) L'employeur doit :
(a) develop an implementation plan that specifies the time frame for each phase of the development and implementation of the prevention program;	a) élaborer un plan de mise en oeuvre qui fait état de l'échéance de chacune des étapes de l'élaboration et de la mise en oeuvre du programme de prévention;
(b) monitor the progress of the implementation of the preventive measures; and	b) contrôler le déroulement de la mise en oeuvre des mesures de prévention;
(c) review the time frame of the implementation plan regularly and, as necessary, revise it.	c) vérifier à intervalles réguliers l'échéancier prévu au plan de mise en oeuvre et, au besoin, le modifier.
(2) In implementing the prevention program, the employer shall ensure that ergonomics-related hazards are identified and assessed and that they are eliminated or reduced, as required by subsection 19.5(1), as much as is reasonably possible and that any person assigned to identify and assess ergonomics-related hazards has the necessary instruction and training.	(2) Dans le cadre de la mise en oeuvre du programme de prévention, l'employeur veille à ce que les risques liés à l'ergonomie soient recensés et évalués et à ce qu'ils soient éliminés ou réduits, conformément au paragraphe 19.5(1), autant qu'il est raisonnablement possible de le faire et que toute personne désignée pour recenser et évaluer les risques liés à l'ergonomie ait reçu la formation et l'entraînement nécessaires.
19.3 (1) The employer shall develop a hazard identification and assessment methodology,	19.3 (1) L'employeur élabore une méthode de recensement et d'évaluation des risques, y

including an identification and assessment methodology for ergonomics related hazards, taking into account the following documents and information:	compris ceux liés à l'ergonomie, en tenant compte des documents et renseignements suivants :
(a) any hazardous occurrence investigation reports;	a) tout rapport d'enquête de situation comportant des risques;
(b) first aid records and minor injury records;	b) le registre de premiers soins et le registre de blessures légères;
(c) work place health protection programs;	c) les programmes de protection de la santé dans le lieu de travail;
(d) any results of work place inspections;	d) tout résultat d'inspection du lieu de travail;
(e) any employee reports made under paragraph 126(1)(g) or (h) of the Act or under section 15.3;	e) tout élément signalé par l'employé au titre des alinéas 126(1)g) ou h) de la Loi et tout rapport fait par l'employé au titre de l'article 15.3;
(f) any government or employer reports, studies and tests concerning the health and safety of employees;	f) tout rapport, toute étude et toute analyse de l'État ou de l'employeur sur la santé et la sécurité des employés;
(g) any reports made under the Safety and Health Committees and Representatives Regulations;	g) tout rapport présenté sous le régime du Règlement sur les comités de sécurité et de santé et les représentants;
(h) the record of hazardous substances; and	h) le registre des substances dangereuses;
(i) any other relevant information, including ergonomics-related information.	i) tout autre renseignement pertinent, y compris tout renseignement lié à l'ergonomie.
(2) The hazard identification	(2) La méthode de recensement et d'évaluation des risques

and assessment methodology shall include	comporte les éléments suivants:
(a) the steps and time frame for identifying and assessing the hazards;	a) la marche à suivre et l'échéancier pour recenser et évaluer les risques;
(b) the keeping of a record of the hazards; and	b) la tenue d'un registre des risques;
(c) a time frame for reviewing and, if necessary, revising the methodology.	c) l'échéancier de révision et, au besoin, de modification de la méthode.
19.4 The employer shall identify and assess the hazards in the work place, including ergonomics-related hazards, in accordance with the methodology developed under section 19.3 taking into account	19.4 L'employeur recense et évalue les risques professionnels, y compris ceux liés à l'ergonomie, conformément à la méthode élaborée aux termes de l'article 19.3 et en tenant compte des éléments suivants :
(a) the nature of the hazard;	a) la nature du risque;
(a.1) in the case of ergonomics-related hazards, all ergonomics-related factors such as	a.1) dans le cas de risques liés à l'ergonomie, tout facteur lié à l'ergonomie tel que :
(i) the physical demands of the work activities, the work environment, the work procedures, the organization of the work and the circumstances in which the work activities are performed, and	(i) les exigences physiques des tâches, le milieu de travail, les méthodes de travail et l'organisation du travail ainsi que les circonstances dans lesquelles les tâches sont exécutées,
(ii) the characteristics of materials, goods, persons, animals, things and work spaces and the features of tools and equipment;	(ii) les caractéristiques des matériaux, des biens, des personnes, des animaux, des choses et des espaces de travail ainsi que les particularités des outils et de l'équipement;
(b) the employees' level of	b) le niveau d'exposition des

exposure to the hazard;	employés au risque;
(c) the frequency and duration of employees' exposure to the hazard;	c) la fréquence et la durée de l'exposition des employés au risque;
(d) the effects, real or apprehended, of the exposure on the health and safety of employees;	d) les effets, réels ou potentiels, de l'exposition sur la santé et la sécurité des employés;
(e) the preventive measures in place to address the hazard;	e) les mesures qui ont été prises pour prévenir le risque;
(f) any employee reports made under paragraph 126(1)(g) or (h) of the Act or under section 15.3; and	f) tout élément signalé par l'employé au titre des alinéas 126(1)g) ou h) de la Loi et tout rapport fait par l'employé au titre de l'article 15.3;
(g) any other relevant information.	g) tout autre renseignement pertinent.
19.5 (1) The employer shall, 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:	19.5 (1) Afin de prévenir les risques, y compris ceux liés à l'ergonomie, qui ont été recensés et évalués, l'employeur prend toute mesure de prévention selon l'ordre de priorité suivant :
(a) the elimination of the hazard, including by way of engineering controls which may involve mechanical aids, equipment design or redesign that take into account the physical attributes of the employee;	a) l'élimination du risque, notamment par la mise au point de mécanismes techniques pouvant comprendre des aides mécaniques et la conception ou la modification d'équipement en fonction des attributs physiques de l'employé;
(b) the reduction of the hazard, including isolating it;	b) la réduction du risque, notamment par son isolation;
(c) the provision of personal protective equipment, clothing, devices or materials; and	c) la fourniture de matériel, d'équipement, de dispositifs ou de vêtements de protection

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| | personnels; |
| (d) administrative procedures, such as the management of hazard exposure and recovery periods and the management of work patterns and methods. | d) l'établissement de procédures administratives, telles que celles relatives à la gestion des durées d'exposition aux risques et de récupération ainsi qu'à la gestion des régimes et des méthodes de travail. |
| (2) As part of the preventive measures, the employer shall develop and implement a preventive maintenance program in order to avoid failures that could result in a hazard to employees. | (2) À titre de mesure de prévention, l'employeur élabore et met en oeuvre un programme d'entretien préventif afin d'éviter toute défaillance pouvant présenter un risque pour les employés. |
| (3) The employer shall ensure that any preventive measure shall not in itself create a hazard and shall take into account the effects on the work place. | (3) L'employeur veille à ce que les mesures de prévention ne constituent pas un risque en soi et tient compte de leurs répercussions sur le lieu de travail. |
| (4) The preventive measures shall include steps to address | (4) Les mesures de prévention doivent comprendre la marche à suivre pour parer : |
| (a) newly identified hazards in an expeditious manner; and | a) dans les meilleurs délais, à tout risque nouvellement recensé; |
| (b) ergonomics-related hazards that are identified when planning implementation of change to the work environment or to work duties, equipment, practices or processes. | b) aux risques liés à l'ergonomie qui sont recensés lors de la planification de la mise en oeuvre de changements au milieu de travail, aux tâches ou à l'équipement utilisé pour les exécuter ou aux pratiques ou méthodes de travail. |
| (5) The employer shall ensure that any person assigned to implement ergonomics-related prevention measures has the | (5) L'employeur veille à ce que toute personne désignée pour mettre en oeuvre les mesures de prévention des |

necessary instruction and training.

risques liés à l'ergonomie ait reçu la formation et l'entraînement nécessaires.

19.6 (1) The employer shall provide health and safety education, including education relating to ergonomics, to each employee which shall include the following:

19.6 (1) L'employeur offre à chaque employé une formation en matière de santé et de sécurité — y compris une formation en matière d'ergonomie — qui porte notamment sur les éléments suivants :

(a) the hazard prevention program implemented in accordance with this Part to prevent hazards applicable to the employee, including the hazard identification and assessment methodology and the preventive measures taken by the employer;

a) le programme de prévention mis en oeuvre aux termes de la présente partie pour prévenir les risques à l'égard de l'employé, notamment la méthode de recensement et d'évaluation des risques et les mesures de prévention qui ont été prises par l'employeur;

(b) the nature of the work place and the hazards associated with it;

b) la nature du lieu de travail et des risques qui s'y posent;

(c) the employee's duty to report under paragraphs 126(1)(g) and (h) of the Act and under section 15.3; and

c) l'obligation qu'a l'employé de signaler les éléments mentionnés aux alinéas 126(1)g) ou h) de la Loi et celle de faire rapport au titre de l'article 15.3;

(d) an overview of the Act and these Regulations.

d) les dispositions de la Loi et du présent règlement.

(2) The employer shall provide education to an employee

(2) L'employeur offre la formation :

(a) whenever new hazard information in respect of a hazard in the work place becomes available to the employer; and

a) chaque fois qu'il a accès à de nouveaux renseignements sur les risques dans le lieu de travail;

(b) shortly before the employee is assigned a new

b) peu de temps avant que l'employé soit affecté à une

activity or exposed to a new hazard.	nouvelle tâche ou qu'il soit exposé à un nouveau risque.
(3) The employer shall review the employee education program, and, if necessary, revise it	(3) L'employeur révisé le programme de formation et, au besoin, le modifie :
(a) at least every three years;	a) au moins tous les trois ans;
(b) whenever there is a change in conditions in respect of the hazards; and	b) chaque fois que les conditions relatives aux risques sont modifiées;
(c) whenever new hazard information in respect of a hazard in the work place becomes available to the employer.	c) chaque fois qu'il a accès à de nouveaux renseignements sur les risques dans le lieu de travail.
(4) Each time education is provided to an employee, the employee shall acknowledge in writing that they received it, and the employer shall acknowledge in writing that they provided it.	(4) Chaque fois que l'employé reçoit la formation, l'employeur et l'employé attestent par écrit que la formation a été offerte ou reçue, selon le cas.
(5) The employer shall keep, in paper or computerized form, records of the education provided to each employee, which shall be kept for a period of two years after the employee ceases to be exposed to a hazard.	(5) L'employeur tient, sur support papier ou informatique, un registre de la formation reçue par chaque employé et le conserve pendant les deux ans qui suivent la date à laquelle l'employé cesse d'être exposé à un risque.
19.7 (1) The employer shall evaluate the effectiveness of the hazard prevention program, including its ergonomics-related components, and, if necessary, revise it	19.7 (1) L'employeur évalue l'efficacité du programme de prévention — y compris ses éléments liés à l'ergonomie — et, au besoin, le modifie :
(a) at least every three years;	a) au moins tous les trois ans;
(b) whenever there is a change in conditions in respect of the	b) chaque fois que les conditions relatives aux risques

hazards; and	sont modifiées;
(c) whenever new hazard information in respect of a hazard in the work place becomes available to the employer.	c) chaque fois qu'il a accès à de nouveaux renseignements sur les risques dans le lieu de travail.
(2) The evaluation of the effectiveness of the prevention program shall be based on the following documents and information:	(2) L'évaluation de l'efficacité du programme de prévention est fondée sur les documents et renseignements suivants :
(a) conditions related to the work place and the activities of the employees;	a) les conditions relatives au lieu de travail et aux tâches accomplies par les employés;
(b) any work place inspection reports;	b) tout rapport d'inspection du lieu de travail;
(c) any hazardous occurrence investigation reports;	c) tout rapport d'enquête de situation comportant des risques;
(d) any safety audits;	d) toute vérification de sécurité;
(e) first aid records and any injury statistics, including records and statistics relating to ergonomics-related first aid and injuries;	e) le registre de premiers soins et toute statistique sur les blessures, y compris les inscriptions au registre et statistiques relatives aux soins et blessures liés à l'ergonomie;
(f) any observations of the policy and work place committees, or the health and safety representative, on the effectiveness of the prevention program; and	f) toute observation formulée par le comité d'orientation et le comité local, ou le représentant, concernant l'efficacité du programme de prévention;
(g) any other relevant information.	g) tout autre renseignement pertinent.
19.8 (1) If a program evaluation has been conducted under section 19.7, the	19.8 (1) Dans le cas où l'évaluation de l'efficacité du programme de prévention

employer shall prepare a program evaluation report.

prévue à l'article 19.7 a été effectuée, l'employeur rédige un rapport d'évaluation.

(2) The employer shall keep readily available every program evaluation report for six years after the date of the report.

(2) L'employeur garde les rapports d'évaluation du programme de façon qu'ils soient facilement accessibles pendant les six ans qui suivent la date du rapport.

Interpretation Act, RSC 1985, C I-21

12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

12. Tout texte est censé apporter une solution de droit et s'interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2574-14

STYLE OF CAUSE: CANADIAN UNION OF POSTAL WORKERS v
CANADA POST CORPORATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 14, 2015

JUDGMENT AND REASONS: GLEESON J.

DATED: FEBRUARY 26, 2016

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