

**Date: 20060822**

**Docket: T-1428-06**

**Citation: 2006 FC 1011**

**Edmonton, Alberta, August 22, 2006**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**CANADA POST CORPORATION**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA and  
CAROLYN POLLARD**

**Respondents**

**REASONS FOR ORDER AND ORDER**

**THE MOTION**

[1] This is a motion brought by Canada Post Corporation (Canada Post or the Applicant) for an interim order staying the decision and direction of the Canada Appeals Office on Occupational Health and Safety dated July 14, 2006 (Decision) pending the determination of an application for judicial review of the Decision.

[2] The Decision allowed the Respondents' (Ms.Pollard) appeal of a decision of the Health and Safety Office regarding Ms. Pollard's refusal to work made under the Occupational Health and Safety provisions of Part II of the *Canada Labour Code* (Code).

## **BACKGROUND**

[3] The Applicant is an agent of Her Majesty in right of Canada, pursuant to section 23 of the *Canadian Post Corporation Act*, R.S. 1985, c. C-10. Canada Post has exclusive jurisdiction for the establishment and operation of postal services in Canada.

[4] Ms.Pollard was initially hired as an independent contractor to perform rural mail delivery, and performed such functions in that capacity from September 1998 to December 2003.

[5] On December 3, 2003, Ms.Pollard was offered and accepted a position (effective January 1<sup>st</sup>, 2004) as an employee of Canada Post (referred to us a "rural and suburban mail carrier" (RSMC)), and she became subject to the provisions of Part II of the Code dealing with occupational health and safety.

[6] It had become an unauthorized practice for some RSMCs to deliver mail to rural boxes by delivering out of the drivers' side window whilst traveling on the wrong side of the road. In June 2004, Canada Post wrote to Ms.Pollard (and all other RSMCs) and advised that she was no longer permitted to drive on the left shoulder of roadways to deliver the mail to rural mailboxes, given that it was a violation of the highway traffic laws.

[7] Ms.Pollard raised her concerns with Canada Post with respect to the delivery of the mail through the passenger side of her car. After a re-inspection of her route that concluded that Ms.Pollard could safely deliver through the passenger side window, Canada Post advised her that she was required to do so.

[8] On November 24<sup>th</sup>, 2004 Canada Post advised Ms.Pollard that her route had been restructured to ensure that she was no longer required to deliver the mail on the left-hand shoulder of the roadway. Canada Post instructed Ms.Pollard to deliver through the passenger side window.

[9] Without attempting to perform her deliveries, Ms.Pollard refused to continue to work. She claimed that the required bending, stretching and twisting to deliver the mail to rural mailboxes through the passenger side window of her car constituted a danger within the meaning of Part II of the Code.

[10] In addition to Ms.Pollard's refusal, there have been a number of safety complaints and work refusals by RSMCs across Canada relating to traffic safety issues and, specifically, to safe delivery to rural mailboxes. As a result of these complaints and refusals, Canada Post commissioned a study by the National Research Council of Canada (NRC) on the development of safe delivery criteria for rural mailboxes.

### **Decision of the Health and Safety Officer**

[11] Health and Safety Officer (HSO) Manella was contacted and investigated Ms.Pollard's refusal to work on November 25<sup>th</sup>, 2004. On December 14<sup>th</sup>, 2004, HSO Manella issued his

Investigation Report and Decision, and determined that a danger did not exist for Ms.Pollard.

However, HSO Manella did issue a direction to Canada Post to institute a safe work procedure and conduct a job hazard analysis.

[12] On December 22<sup>nd</sup>, 2004, Ms.Pollard appealed HSO Manella's decision pursuant to subsection 129(7) of the Code.

[13] On April 10, 2006, Mr.Christopher Eady, Officer, Safety and Ergonomics for Canada Post conducted an ergonomic review of RSMC rural mail box delivery which Canada Post relied upon at the hearing of Ms.Pollard's appeal before the Canada Appeals Office on Occupational Health and Safety (CAOOHS).

#### **Decision of the CAOHS**

[14] On July 14<sup>th</sup>, 2006 the CAOHS rendered its decision and direction (Decision) and allowed Ms.Pollard's appeal and rescinded HSO Manella's decision.

[15] Canada Post alleges that CAOHS made the following findings:

- (a) HSO Manella erred in his decision because he looked too narrowly at the issues related to Ms.Pollard's refusal to work and did not consider the circumstances in existence at the time of Ms.Pollard's refusal to work;
- (b) A "danger" within the meaning of Part II of the Code existed for Ms.Pollard in respect of the potential traffic and ergonomic hazards related to her work;

- (c) A “danger” within the meaning of Part II of the Code could be made in circumstances where the environment and type of ergonomic movement performed was solely within the discretion of the worker;
- (d) Canada Post had a duty under Part II of the Code to inform its employees of the options to perform the work in question and to provide them with the necessary training;
- (e) There was inherent risk of injury for delivery frequencies in excess of 40 rural mailboxes per hour which constituted a “danger” within the meaning of the Code;
- (f) The medical condition specific to Ms.Pollard, namely arthritis in her back, that rendered her unable to complete the duties of her position constituted a “danger” within the meaning of the Code;
- (g) All employees may possibly suffer from physical or mental frailty that would prevent them from safely performing the required work;
- (h) Ms.Pollard could refuse to perform work on the basis of ergonomic safety without specifying which movement or motion constituted a “danger” within the meaning of the Code to her health and safety;
- (i) The ergonomic movements in question did not constitute “normal conditions of employment,” and were thus not exempt from the provisions related to dangerous work, pursuant to subsection 128(2)(b) of the Code;
- (j) A grievance settlement release signed by Ms.Pollard, in which she withdrew her appeal, did not bar adjudication of the appeal; and

- (k) Canada Post breached its obligations under the Code to provide training to RSMCs in respect of delivery of rural mailboxes through the passenger side window of their vehicles.

### **Canada Post's Application for Judicial Review**

[16] On August 8, 2006, Canada Post commenced an application for judicial review for an order in the nature of *certiorari*, quashing and setting aside the Decision of CAOHS on the basis of the following reviewable errors:

- (a) By finding that it had jurisdiction to assess and make a finding of “danger” under the Code in respect of traffic safety related matters, notwithstanding that they were not the subject of the HSO’s Manella’s review, direction nor raised in the appeal;
- (b) By determining that finding of “danger” under the Code could be made:
  - (i) in circumstances where the work environment, body positioning, and type of ergonomic movement performed was solely within the discretion of the worker;
  - (ii) on the basis that Canada Post had the duty under Part II of the Code to inform its employees of the options to perform the work in question and to provide them with the necessary training in respect of the body positioning, and the type of ergonomic movement performed in effecting delivery to rural mail boxes;
- (c) By making a finding that there was an inherent risk of injury for delivery frequencies in excess of 40 rural mail boxes per hour, to the point that it constituted a “danger” under the Code under any and all potential circumstances;

- (d) By making a determination that a medical condition specific to Ms. Pollard that rendered her unable to complete the duties of her position constituted a “danger” under the Code that would permit other employees, not similarly afflicted, with the right to also refuse to perform such work;
- (e) By making a determination that all employees may possibly suffer from a physical or mental frailty which would prevent them from safely performing the required work, in the absence of any evidence to support this conclusion;
- (f) By making a determination that Ms. Pollard could refuse to perform work on the basis of ergonomic safety without specifying which movement or motion constituted a “danger” under the Code to her health and safety, and accordingly *de facto* determining that no ergonomic motion would constitute a danger;
- (g) By making a determination that the ergonomic movements in question did not constitute “normal conditions of employment,” and were thus exempt from the provisions related to dangerous work, pursuant to subsection 128(2)(b) of the Code;
- (h) By making a determination that a grievance settlement release signed by Ms. Pollard, in which she withdrew her appeal, did not bar adjudication of the appeal;
- (i) By breaching the natural justice rights of Canada Post by failing to provide to Canada Post an opportunity to make submissions and provide additional evidence in respect of the Coors’s enquiry on traffic safety issues, after specifically advising counsel for Canada Post (after an objection was made during the course of the hearing) that such an opportunity would be afforded; and,
- (j) By breaching the natural justice rights of Canada Post by failing to provide to Canada Post an opportunity to make submissions and provide evidence in respect of

the Coors's reliance upon the provisions of the Material Handling Regulations of the Canada Occupational Health and Safety Regulations SOR/86-304, which was not argued by the parties nor drawn to their attention by the Appeals Officer, and an opportunity to respond to its applicability was not afforded to the parties.

### **Compliance with the Decision**

[17] In the few weeks following the receipt of the CAOHS' Decision, Canada Post took steps to ensure the safety of RSMCs. In this regard, Canada Post has taken the following measures:

- a) Ms.Pollard has been given a helper who delivers the mail through the passenger side window;
- b) Safe work procedures on delivery to rural mailboxes have been re-issued;
- c) Ms.Pollard has been given a flashing light and a sign for her vehicle to increase its road-side visibility;
- d) Ms.Pollard's route has been reviewed using the NRC criteria and corrections have been initiated;
- e) Delivery problem reports have been sent to rural mail recipients with respect to rural mailboxes which need to be modified in order to ensure the safe delivery of the mail.

[18] Canada Post has also taken steps with respect to the safety of other RSMCs. Helpers have been provided where there have been complaints related to ergonomic considerations. In respect of traffic safety concerns, Canada Post has reviewed the concerns against the NRC criteria, and where appropriate, has implemented one of several amelioration procedures, such as:

- a) Requiring that the rural mail box be moved to a safe location;
- b) Requiring rural mail recipients to pick up mail at centralized locations; or,
- c) Changing the delivery from individual rural mail boxes to centralized group delivery at a Community Mail Box.

[19] Canada Post has also established an independent “Panel of Experts” with traffic, ergonomic and legal expertise in health and safety, whose mandate is to provide expert advice and research on matters related to the health and safety of rural mail delivery.

#### **Enforcement of Decision by Human Resources Skills Development Canada**

[20] On August 1<sup>st</sup>, 2006, an HSO for Human Resources and Skills Development Canada (HRSDC), Mr. Ken Manella, called Canada Post to advise that he had been tasked by HRSDC to set up a fact finding meeting with Canada Post’s representatives, together with Ms. Pollard and her representatives, in order to determine what steps had been taken by Canada Post since the release of the Decision.

[21] HSO Manella advised Canada Post that it was HRSDC’S interpretation of the Decision that it prohibited delivery to rural mailboxes if the vehicle used was not completely off the roadway.

[22] HSO Manella requested that Canada Post provide to him the number of RSMC’s working out of the facility and the number of points of call where an RSMC vehicle could not effect mail delivery in a manner which would permit the vehicle to be completely off the roadway.

[23] HSO Manella advised Canada Post that the fact finding meeting could result in HRSDC deciding and directing that RSMCs were not to deliver the mail to rural mailboxes if they were not completely off the roadway while effecting delivery to rural mailboxes, as such an activity would be considered unsafe by HRSDC.

### **Operational Impact of Decision (Ergonomic Issue)**

[24] There are approximately fifty-eight (58) RSMCs who work out of Canada Post's mail processing facility for Brampton North. There are approximately forty (40) RSMC routes delivering to rural mailboxes.

[25] RSMCs are permitted to determine the type of vehicle they use in effecting delivery and pick up of mail, save and except that certain capacity requirements are mandated. Nationally, RSMCs utilize all manner of vehicles, from passenger cars, to mini-vans to pick-up trucks of various makes, models and sizes.

[26] All RSMCs are required to effect delivery to pick up from rural mail boxes through the passenger side window of their vehicle. Except when effecting delivery to community mail boxes (a multiple grouping of boxes within a single mail box structure), to other centralized points, or to the door, RSMCs, for reasons of safety, are not permitted to exit their vehicles whilst making deliveries.

[27] There are approximately 840,000 rural mailboxes in Canada servicing approximately 1,760,000 Canadians.

[28] Canada Post alleges that the Decision does not relate to any particular ergonomic movement complained of in respect of the work refusal. Accordingly, the Decision could be extended to every movement by every RSMC across Canada, and could effectively prevent Canada Post from delivering mail to 840,000 rural mailboxes.

[29] Canada Post alleges that a potential long-term solution to the delivery and pick up through the passenger side window is to purchase right-hand drive vehicles. However, sufficient numbers of these types of vehicles are not currently available in Canada to be used by all RSMCs, and, as a result, it would take an inordinate period of time to obtain these vehicles and the cost would be prohibitive. Although European models are available in the right-hand drive configuration, these vehicles do not meet North American standards.

[30] Canada Post is concerned that the Decision could be used as a precedent that would not only impact all the other RSMCs in Brampton, ON, but also all the other RSMCs currently delivering and picking up mail through the passenger side window of their vehicles across Canada. Canada Post says this type of direction would be completely unmanageable if it extended to the office or national level due to the lack of time and flexibility regarding alternate solutions.

#### **Operational Impact of Decision (Traffic Safety Issue)**

[31] Canada Post's position is that many of the points of call on rural mail routes serviced by Brampton and Greater Toronto post offices would not permit a vehicle to be completely off the roadway, yet would be in conformity with the NRC safe delivery criteria.

[32] It is unknown how many rural mailboxes would be affected by the traffic safety

interpretation being advanced by HRSDC. The location of the box and the dimensions of the particular RSMC's vehicle will impact upon the ability to deliver without being on the traveled portion of the roadway. A change in the type of vehicle could lead to a change in the "safeness" of the delivery. Canada Post says there are potentially hundreds of thousand of points of call to which Canada Post may no longer be able to effect delivery under HRSDC's interpretation.

[33] Canada Post feels that a potential solution to the traffic safety concerns is to have rural mail clients pick up and drop off their mail at centralized Post Offices. In addition to the inconvenience to the customers, however, Canada Post's facilities would not have the capacity to handle large volumes of mail for customer pick up for an extended period of time. Canada Post says it would be put to exceptional expense in respect of handling, distributing and storing mail in its facilities, which could not be recovered in damages.

[34] Canada Post was forced to use this option in Newmarket, ON, Fredericton, NB, Dauphin, MB and Truro, NS. There was an immediate negative reaction from customers who contacted local and national politicians and media to contest this change to the delivery of their mail. As a result, Canada Post's reputation as a quality service provider was irreparably damaged by this quick fix solution.

[35] Canada Post alleges that another potential solution is to discontinue delivery and pick up and relocate the point of delivery to a centralized community mail box. However, there are not enough of such boxes in Canada Post's inventory, or available commercially, to accommodate the need should delivery be required to be discontinued to all potentially "unsafe" points of call nationally.

In addition, authorization for sites for such boxes must be obtained from municipalities and, after approval, the sites must be prepared to receive the boxes. In addition to the inconvenience to its customers, Canada Post says it would be put to exceptional expense in respect of the location determination and approvals, box purchase and preparation and site preparation/installation, which could not be recovered in damages.

[36] In the few weeks since the communication of the Decision and over the last several months of investigation, Canada Post has been unable to identify other satisfactory solutions to the narrow roadway shoulder issue short of convincing the municipal/provincial authority to modify the roadway.

### **Irreparable Harm**

[37] Canada Post says it has already suffered irreparable harm to its reputation as a quality service provider due to changes that it has had to make in order to comply with the Decision, which cannot be compensated by damages.

[38] In respect of accommodating the ergonomic issue, Canada Post has provided paid assistants to those RSMCs who have complained or refused to work. Canada Post is currently expending approximately \$200,000 per month in this regard. In the event that the Decision is given broader application by HRSDC, the costs to Canada Post will increase exponentially, and are not capable of recovery in damages.

### **Undertakings**

[39] Canada Post has provided the following undertakings with respect to this motion for a stay:

- a) Canada Post shall pay any damages as determined by the Court arising out of the granting of this stay;
- b) Canada Post has commissioned an ergonomic study through Human North Research, and, upon completion of this study, will assess ergonomic complaints or work refusals in accordance with the guidelines established in this study and will make decisions regarding the mode of continued delivery based upon these criteria and in compliance with the provisions of the Code;
- c) Canada Post will assess complaints or work refusals relating to delivery or traffic safety matters in accordance with the Panel of Experts' recommendations on safe delivery criteria, and will make decisions regarding continued delivery based upon these criteria and its obligations pursuant to the provisions of the Code; and,
- d) Canada Post will maintain all remedial actions which it has instituted in respect of Ms. Pollard's route pending final determination of this judicial review application.

## **ISSUES**

[40] The issue raised in this motion is whether Canada Post has made out the substantive grounds necessary for the Court to order the extraordinary remedy of a stay.

[41] Canada Post must satisfy the usual three part test for a stay of the Decision at issue in this case:

- b. prima facie case;
- c. irreparable harm;
- d. balance of convenience.

[42] Canada Post bears the onus of proving each element of this three-stage test. Canada Post must prove each element on a balance of probabilities. If Canada Post fails to prove any one of these elements, the stay motion must be denied.

### **ANALYSIS**

[43] The Supreme Court of Canada set out the test for the granting of a stay in *RJR-Macdonald Inc. v. Canada (Attorney-General)* where it adopted the three-part test adopted in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.* to determine if a stay should be ordered. The test can be summarized as follows:

- First, the court must determine whether there is a serious issue to be tried.
- Second, it must consider whether the applicant will suffer irreparable harm if the application is refused.
- Third, and finally, it must assess which of the parties will suffer greater harm from the granting or refusal to grant the interlocutory remedy pending a decision on the merits.

*RJR-Macdonald Inc. v. Canada (Attorney-General)*, (1994), 111 D.L.R. (4<sup>th</sup>) 385 at p. 400 (S.C.C.)

[44] It is clear from the materials filed and the arguments adduced by Counsel for Canada Post that what Canada Post fears is a direction by HRSDC that the Decision will apply generally, so that HRSDC might decide and direct that RSMCS are not to deliver mail to rural mailboxes unless their vehicle are completely off the roadway.

[45] The Decision itself only relates to Ms. Pollard and Canada Post has had no problem in implementing interim remedial measures to alleviate Ms.Pollard's difficulties. Ms.Pollard, in fact, is delivering mail on her route.

[46] It is clear to me that the Court cannot grant an interim stay to prevent HRSDC from making a future decision based upon a general direction. The Court has no jurisdiction to do so because there is no underlying judicial review application for such a decision and, because no such decision has yet been made, and may never be made, and if it is made there is no way at this time to ascertain it's scope, any damages that the Applicant might suffer are, at this point, entirely speculative so that the second branch of the *RJR-Macdonald* test cannot be satisfied. The fact that HRSDC may have adopted a particular "interpretation" of the Decision is not the issue. HRSDC has yet to decide whether that interpretation requires a general direction, and it may (following the fact-finding exercise that is presently underway) decide otherwise. So there is no telling what might happen at this juncture and the present motion is premature in so far as it seeks a stay of what HRSDC might or might not do as a consequence of its "interpretation" of the Decision.

[47] Insofar as the Decision relates to Ms.Pollard (and the Respondent agrees this is its entire scope) then the *R.J.R.-Macdonald* test cannot be satisfied because the Applicant has already acted to put in place interim remedial measures that will remain in place until the judicial review application is heard.

[48] As a consequence, this motion, in my view, is entirely premature.

[49] In addition, the fact that it is a pre-emptive attempt to forestall damage that may never occur, because HRSDC may not make the kind of decision Canada Post fears, means that irreparable harm cannot be proved and remains entirely speculative.

[50] The second part of the *RJR-MacDonald* test requires that Canada Post establish that it will suffer irreparable harm if the stay is not granted. Irreparable harm involves substantial harm that in the normal course cannot be cured by damages. In *RJR-MacDonald*, Sopinka and Cory JJ. defined “irreparable harm” as follows:

At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicant’s own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the results of the interlocutory application. “Irreparable” refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court’s decision (*R.L. Crain Inc v. Hendry* (1988), 48 D.L.R. (4<sup>th</sup>) 228 (Sask. Q.B.)); where only one party will suffer permanent market loss or irrevocable damage to its business reputation (*American Cyanamid*, *supra*); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (*MacMillan Bloedel Ltd. v. Mullin*, [1985] 3 W.W.R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration (*Hubbard v. Pitt*, [1976] Q.B. 142 (C.A.)).

*RJR-MacDonald*, *supra* at pp. 405-406

[51] In my view, Canada Post has not presented evidence of irreparable harm of the kind required by the jurisprudence. Instead, it relies on bald assertions regarding potential harm that is entirely speculative. In addition, Canada Post seeks to rely on purported harm arising from decisions rendered in other health and safety proceedings that are not the subject of the present judicial review application and that are not the subject of this motion for a stay.

[52] The Federal Court of Appeal has held that applicants for a stay must present clear and cogent evidence of irreparable harm. Courts have consistently held that evidence of harm that is merely speculative, or is indirect evidence of harm, is insufficient.

*Syntex Inc. v. Apotex Inc.*, [1991] F.C.J. NO. 423 (C.A.)  
*Centre Ice Ltd. v. National Hockey League*, [1994] F.C.J. No. 68 at para. 7 (C.A.)  
*Boston Pizza International v. Boston Market Corp.*, [2003] F.C.J. No. 531 at 28, 35 (T.D.)

[53] I agree with the Respondents that it is clear from paragraphs 57-60 of Canada Post's factum that the primary form of irreparable harm alleged is the harm that "could result" (para. 58) "in the event that this [the Pollard] Decision and Direction is given broader application by HRSDC" (para.60).

[54] The speculative nature of the harm is clear from these paragraphs as well as from Canada Post's assertion at paragraph 57 of its factum that "HRSDC's interpretation of the Decision and Direction could be applied nationally and affect all rural areas in Canada." [emphasis added]

[55] The speculative nature of the harm is also clear from the fact that HRSDC has not formulated an official position on the proper interpretation of the Decision. It has also not enforced any particular interpretation of the Decision or issued any directions to the parties purporting to enlarge the scope of the Decision.

[56] I also agree with the Respondents that it is also clear from paragraph 7 of Mr.Paliwal's affidavit filed in support of Canada Post's motion that the harm alleged is speculative, as he refers to harm that might occur "if HRSDC'S interpretation of the CAOHS's decision and direction is

enforced,” or “if it extended to the office or national level” and harm that might arise because the decision “could be used as a precedent.” [emphasis added]

[57] The speculative nature of the harm is also clear from paragraph 9 of Mr.St.-Germaine’s affidavit where he states that the harm alleged is that which might flow from a yet to be scheduled potential future fact-finding meeting between HRSDC and the parties in this matter. As stated at paragraph 9 of his affidavit, Mr.St.-Germaine is concerned that such a meeting “could result” in HRSDC deciding and directing that RSMCs are not to deliver\_mail to rural mailboxes unless their vehicle is completely off the roadway.

[58] Hence, I have to agree with the Respondent that, from the above-noted paragraphs of Canada Post’s motion, it is clear that the harm alleged in this matter is speculative at best. It is harm that might result if future eventualities occur. It would only result if HRSDC decided to officially adopt an interpretation that would broaden the scope of the Decision. However, since such a decision on the part of HRSDC has not been taken at this time, any harm that could potentially flow from it is entirely speculative.

[59] If such an official interpretation is formulated and HRSDC issues directions to the parties based on this interpretation, it would be open to Canada Post to challenge the interpretation and directions through the appropriate channels. However, as the Respondent says, any challenge to a decision that has yet to be taken is premature and any harm that might possibly flow from such a decision is merely speculative at this time.

### **Decisions in Other Proceedings**

[60] A portion of the harm claimed by Canada Post is harm that is alleged to flow from decisions rendered in other health and safety proceedings that are not the subject of the present judicial review application nor the present motion for a stay.

[61] For example, at paragraph 17 of his affidavit, Mr. Sanjay Paliwal states that “Canada Post was forced to use this option [use of centralized post offices] in Newmarket, ON, Fredericton, NB, Dauphin MB, and Truro, NS”, that there was a negative reaction from customers, and that “[a]s a result, Canada Post’s reputation as a quality service provider was irreparably damaged....”.

[62] Canada Post similarly asserts, at paragraph 59 of its factum, that “Canada Post has already suffered irrevocable damage to its business reputation as a quality service provider due to changes it has had to make in order to comply with the Decision and Direction.”

[63] Once again, I must agree with the Respondents that any harm associated with changes that Canada Post has made, or has been required to make, in other locations due to decisions rendered in health and safety proceedings, is not harm flowing from the Decision in this matter. It is the Decision regarding danger to Ms. Pollard that is sought to be stayed in these proceedings. Any stay imposed by this Court in this matter would not affect decisions in other locations, and therefore, any harm flowing from changes made in response to those decisions cannot constitute irreparable harm that might flow from a decision not to grant a stay in the present matter.

[64] I concur with the Respondents that, in regards to its claim of irreparable harm arising from damages to its business reputation, Canada Post has failed to present any evidence, direct or otherwise, of this “irrevocable damage to its business reputation as a quality service provider” (paragraph 59 of factum) and certainly no evidence that would result from the Decision. This damage cannot be assumed. Canada Post bears the onus of proving this harm and it has failed to do so.

### **CONCLUSIONS**

[65] Because the *RJR-Macdonald* test is conjunctive and all those elements must be proved, there is little point in continuing further to consider serious issue or balance of convenience. Even if the Court had the jurisdiction to consider this motion (and in so far as it relates to a possible future decision by HRSDC, I conclude there is no jurisdiction), Canada Post has not demonstrated irreparable harm in accordance with the governing jurisprudence.

### **ORDER**

#### **THIS COURT ORDERS that**

1. The motion for a stay is dismissed.
2. The parties may address the Court on the issue of costs.

“James Russell”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1428-06

**STYLE OF CAUSE:** CANADA POST CORPORATION v.  
CAROLYN POLLARD et al.

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** August 14, 2006

**REASONS FOR ORDER AND ORDER:** RUSSELL J.

**DATED:** August 22, 2006

**APPEARANCES:**

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Mr. David I. Bloom	FOR THE RESPONDENT Carolyn Pollard
No One Appearing for Department of Justice	FOR THE RESPONDENT Attorney General of Canada

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