

# Supreme Court Limits Safety Inspection Duty Of Federally Regulated Employers To Workplaces Under Their Control



In *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67, one of the last decisions of the Supreme Court of Canada (“SCC”) in 2019, the court clarified the extent of a federally-regulated employer’s inspection obligations under the *Canada Labour Code* (CLC) as set out in 125(1) (z.12):

125(1) Without restricting the generality of section 124, every employer shall, in respect of every workplace 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,

...

(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 a year.

## Background

In 2012, a union representative who sat on the Local Joint Health and Safety Committee (“Committee”) at Canada Post’s depot in Burlington, Ontario filed a complaint with Human Resources and Skills Development Canada. The complaint stated the Committee failed to comply with mandatory health and safety obligations in the CLC because its workplace inspections were limited to the Burlington Depot and did not include letter carrier routes and locations where mail is delivered (“points of call”). Canada Post estimated that letter carriers travel 72 million linear kilometers delivering mail to 8.7 million points of call, over which Canada Post has no control (many of them private property), and which Canada Post could not alter or fix in the event of a hazard.

The Health and Safety Officer (“HSO”) who conducted the investigation found that Canada Post failed to comply with s. 125(1) (z.12). His direction to the Occupational Health and Safety Tribunal Canada (“OHSTC”) was appealed by Canada Post and rescinded by the Appeals Officer who concluded that the inspection obligation applied only to the parts of the workplace over which the employer had control, which did not include letter carrier routes and points of call. The OHSTC determined that Canada Post was not in contravention of its workplace inspection obligation under s. 125(1) (z.12) of the CLC. The Federal Court dismissed the complainant’s application for review; however, the Federal Court of Appeal (“FCA”) allowed the complainant’s application for judicial review and reinstated the HSO’s direction to the OHSTC. The decision of the FCA was appealed to the SCC.

# Decision of the Majority of the SCC

In finding that the decision of the Appeals Officer was reasonable, the SCC applied the revised framework for judicial review it had just set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. Under the *Vavilov* framework, where reasons for an administrative decision are provided, the reviewing court is expected to review the decision on a standard of reasonableness first analyzing the internal coherence of the reasons, and then analyzing the justification for the decision in light of the relevant facts and law.

The SCC concluded that the Appeals Officer's reasons were rational and logical and demonstrated that the Appeals Officer considered the text, context, purpose, and practical implications of his interpretation. In arriving at this conclusion, the SCC pointed to various aspects of the Appeals Officer's interpretation, including the following:

- In interpreting the text, the Appeals Officer began with the statutory definition of "workplace" in s. 122(1) ("any place where an employee is engaged in work for the employee's employer"). He concluded "workplace" must be interpreted broadly to account for all the areas in which an employee may be engaged in work, and in this case, in light of a letter carrier's mobility.
- In considering the scope of the employer's obligations arising from s. 125(1), the Appeals Officer concluded that certain obligations apply only where the employer has control over the workplace.
- In analyzing the statutory context of s. 125(1) (z.12), the Appeals Officer noted that the purpose of Part II of the CLC, as provided in s. 122.1, "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.” He concluded that to fulfil this purpose, control over the workplace is necessary.

- The Appeals Officer agreed with Canada Post that an interpretation that imposed a duty on the employer that it could not fulfil would not further the goal of preventing accidents and injury. He concluded that the inspection obligation cannot be fulfilled by an employer that does not control the workplace.

In concluding that the Appeals Officer’s interpretation was reasonable, the SCC reiterated:

An interpretation which imposed on the employer a duty it could not fulfil would do nothing to further the aim of preventing accidents and injury. While the Appeals Officer’s interpretation does limit the application of the obligations under s. 125(1), those obligations – and specifically the inspection obligation ‘ cannot be fulfilled by an employer that does not control the workplace. (para. 59)

## **The Dissent**

Justices Abella and Martin dissented from the majority. They interpreted the employer’s inspection duty set out in s. 125(1) as applying both to workplaces employers control and, if they do not control the workplace, to work activities in workplaces employers do not control.

## **Bottom Line for Employers**

The recent decision of the SCC in *Canada Post* is a positive development for federally-regulated employers, as they now have clarity that under the CLC their duty to inspect the workplace extends only to workplaces they control.

Although statutes in other Canadian jurisdictions that are not

federally regulated may use different language when referring to the duty of employers to inspect workplaces, the SCC's *Canada Post* decision may support employers in those jurisdictions when they argue that their obligation to inspect the workplace does not extend to workplaces outside their control.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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