



SUPREME COURT OF CANADA

CITATION: Canada Post Corp. v. Canadian Union
of Postal Workers, 2019 SCC 67

APPEAL HEARD: December 10, 2018
JUDGMENT RENDERED: December 20, 2019
DOCKET: 37787

BETWEEN:

Canada Post Corporation
Appellant

and

Canadian Union of Postal Workers
Respondent

- and -

**Attorney General of Canada, DHL Express (Canada), Ltd., Federal Express
Canada Corporation, Purolator Inc., TFI International Inc., United Parcel
Service Canada Ltd., Workers' Health and Safety Legal Clinic, FETCO Inc.
(Federally Regulated Employers — Transportation and Communications),
Canadian Union of Public Employees, Professional Institute of the Public
Service of Canada, Rogers Communications Inc., Canadian Broadcasting
Corporation, Bell Canada, Bell Technical Solutions Inc., Bell Media Inc.,
Maritime Employers Association, Halifax Employers Association, British
Columbia Maritime Employers Association, International Longshore and
Warehouse Union Canada, International Longshoremen's Association, Locals
269, 1341, 1657 and 1825 and Canadian Union of Public Employees, Local 375**
Intervenors

CORAM: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown,
Rowe and Martin JJ.

REASONS FOR JUDGMENT:
(paras. 1 to 67)

Rowe J. (Wagner C.J. and Moldaver, Karakatsanis, Gascon,
Côté and Brown JJ. concurring)

DISSENTING REASONS:
(paras. 68 to 102)

Abella J. (Martin J. concurring)

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CANADA POST CORP. v. CUPW

Canada Post Corporation

Appellant

v.

Canadian Union of Postal Workers

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DHL Express (Canada), Ltd.,
Federal Express Canada Corporation,
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Workers' Health and Safety Legal Clinic,
FETCO Inc. (Federally Regulated Employers —
Transportation and Communications),
Canadian Union of Public Employees,
Professional Institute of the Public Service of Canada,
Rogers Communications Inc.,
Canadian Broadcasting Corporation,
Bell Canada, Bell Technical Solutions Inc.,
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Locals 269, 1341, 1657 and 1825 and
Canadian Union of Public Employees, Local 375**

Interveners

Indexed as: Canada Post Corp. v. Canadian Union of Postal Workers

File No.: 37787.

2018: December 10; 2019: December 20.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

ON APPEAL FROM THE FEDERAL COURT OF APPEAL

Administrative law — Judicial review — Labour relations — Federally-regulated employer’s work place inspection obligation — Health and safety officer finding that employer failed to ensure that every part of work place is inspected at least once a year — Appeals officer concluding that employer’s work place inspection obligation applies only to parts of work place over which employer has control and rescinding contravention — Whether appeals officer’s interpretation of work place inspection obligation was reasonable — Framework for determining applicable standard of review and conducting reasonableness review set out in Vavilov applied — Canada Labour Code, R.S.C. 1985, c. L-2, s. 125(1)(z.12).

Following a complaint and subsequent investigation, a health and safety officer found Canada Post Corporation, as a federally-regulated employer, in contravention of certain health and safety obligations set out in Part II of the *Canada Labour Code* (“Code”). The complaint was filed by a representative of the letter carriers’ union, who claimed that the work place safety inspections performed by the joint health and safety committee should include letter carrier routes and points of

call. The health and safety officer issued a direction finding that the employer failed to comply with s. 125(1)(z.12) of the Code, which states that “every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employer in a work place that is not controlled by the employer, to the extent that the employer controls the activity, 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 one each year”. The employer appealed the health and safety officer’s direction to the Occupational Health and Safety Tribunal Canada. The appeals officer rescinded the contravention relating to work place inspections, determining that the work place inspection obligation applied only to the parts of the work place over which the employer had control; this did not include letter carrier routes and points of call. The Federal Court dismissed the union’s application for judicial review. The Federal Court of Appeal allowed the union’s appeal and reinstated the health and safety officer’s direction that the employer failed to comply with s. 125(1)(z.12) of the Code.

Held (Abella and Martin JJ. dissenting): The appeal should be allowed and the appeals officer’s order restored.

Per Wagner C.J. and Moldaver, Karakatsanis, Gascon, Côté, Brown and **Rowe JJ.:** Applying the framework set out in *Vavilov* for determining the applicable standard of review and conducting reasonableness review, the appeals officer’s

decision concluding that the obligation to inspect the work place in s. 125(1)(z.12) of the Code is one that can only apply to an employer who has control over the physical work place was reasonable. The appeals officer's analysis followed a rational and logical line of reasoning and his decision was defensible in light of the relevant legal and factual constraints. He employed well-established principles of statutory interpretation, engaged with the submissions and evidence before him, and drew on his knowledge of the field when considering the practical implications of his interpretation. The interpretation he arrived at is harmonious with the text, context and purpose of the provision and aligns with past decisions of the Occupational Health and Safety Tribunal Canada.

The appeals officer's decision is reviewable on a standard of reasonableness. None of the situations set out in *Vavilov* for departing from the presumption of reasonableness review apply here: the legislature has not statutorily prescribed a standard of review or provided for an appeal from the administrative decision to a court and the question on review does not fall into one of the categories of questions that the rule of law requires be reviewed on a standard of correctness.

As provided for in *Vavilov*, when conducting reasonableness review, a reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with respectful attention, seeking to understand the reasoning process followed by the decision maker to arrive at a conclusion. What is required of statutory delegates to justify their decision will depend on the context in

which the decision is made. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker.

In the instant case, the appeals officer's reasons do not in any way display a fatal flaw in rationality or logic. His decision was not rendered unreasonable by, on the one hand, recognizing that the employer through its internal policies seeks to identify and resolve hazards for letter carriers, while also concluding that it does not have the capacity to ensure all areas of the work place outside the employer's physical building are inspected annually. Far from being internally incoherent, the appeals officer's reasoning demonstrates his in-depth understanding of the ways in which the employer fulfils the purposes of the Code, bearing in mind the practical limitations of the work place.

When reviewing a question of statutory interpretation, reviewing courts should not conduct a *de novo* interpretation, nor attempt to determine a range of reasonable interpretations against which to compare the interpretation of decision makers. A "reasons first" approach rather requires reviewing courts to start with how decision makers arrived at their interpretation, and determine whether it was defensible in light of the interpretative constraints imposed by law. Where the meaning of a statutory provision is in dispute, administrative decision makers must demonstrate in their reasons that they were alive to the essential elements of statutory interpretation. In addition to being harmonious with the text, context and purpose of

the provision, a reasonable interpretation should conform to any interpretative constraints in the governing statutory scheme, as well as interpretative rules arising from other sources of law. The evidentiary record and the general factual matrix act as constraints on the reasonableness of a decision, and must be taken into account. The principles of justification and transparency require that administrative decision makers' reasons meaningfully account for the central issues and concerns raised by the parties. However, administrative decisions makers are not required, on their own account, to consider every aspect of the statutory context that might bear on their decisions. While reviewing courts should ensure the decision under review is justified in relation to the relevant facts, deference to decision makers includes deferring to their findings and assessment of the evidence. Reviewing courts must pay respectful attention to decision makers' demonstrated expertise when considering whether an outcome reflects a reasonable approach given the consequences and the operational impact of a decision.

In this case, the appeals officer interpreted s. 125(1)(z.12) using well-established principles of statutory interpretation, with due regard to the submissions before him. His reasons amply demonstrate that he considered the text, context and purpose of the provision, and his focus on the practical implications of his interpretation enriched and elevated the interpretative exercise. He demonstrated a sustained effort to discern legislative intent throughout his analysis, and did not simply reverse-engineer a desired outcome. His broad interpretation of what constitutes a work place conformed to the definition in the Code and to prior

decisions on this point, and accounted for all the areas in which an employee may be engaged in work. His interpretation of the scope of the obligations arising from s. 125(1) was not contrary to the plain text of the statute, as the words “and” and “*ainsi que*” in the opening phrase of the English and French versions of s. 125(1) do not preclude the conclusion that the provision indicates that certain obligations apply only where an employer has control over the work place. The appeals officer’s reasons also demonstrate that he turned his mind to the context of s. 125(1)(z.12). He considered the practical implications of the interpretation in light of the purpose of s. 125(1)(z.12), an imputed purpose accepted by the parties and consistent with the broad, purposive interpretation afforded to remedial legislation. His interpretation did not frustrate the statutory purpose set out in the Code. There is no indication that he failed to consider the evidence presented at the hearing, or that he based his decision on a misapprehension of the evidence, thereby rendering his decision unreasonable.

Per Abella and Martin JJ. (dissenting): The appeal should be dismissed. The appeals officer’s conclusion that the safety inspection duty in s. 125(1)(z.12) of the Code requires the employer to inspect only those workplaces within its physical control was unreasonable and inconsistent with the purpose and text of the safety inspection provision. The employer contravened its statutory duty in s. 125(1)(z.12) by preventing the health and safety committee from inspecting mail routes for safety hazards.

The introductory language of s. 125 is an unambiguous dual legislative direction to employers that their safety obligations apply both to workplaces they control and, if they do not control the actual workplace, to every work activity that they do control to the extent of that control. Nothing in the text of s. 125(1) limits an employer's inspection duty to workplaces under its physical control.

Section 125(1)(z.12) is part of an extensive web of employer responsibilities which flow from a general obligation placed on employers to ensure workplace safety, and are designed to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment. All of the 45 duties placed on employers are introduced by language stipulating that they apply in all workplaces controlled by employers and to all employer-controlled work activities carried out by employees. Section 125(1) aims to protect workers from safety hazards — a purpose that is undermined if the safety inspection duty is confined to workplaces under an employer's physical control. By drafting s. 125(1) to cover workplaces within and outside an employer's physical control, Parliament sought to protect the thousands of employees working outside an employer-owned location, affording the same quality of safety protection to all employees wherever they work.

Safety inspections were a central methodology by which Parliament intended to broaden preventive health and safety protections for workers. They exist to proactively identify hazards before workers are exposed to them, and ensure that they will either be fixed or avoided. It makes little sense that Parliament, having

expressly chosen under s. 125(1) to extend safety protections to activities in workplaces outside an employer's control, would have intended that a core part of those protections — the safety inspection duty — be exempt from that extension. The preventive purpose of the inspection obligation further reinforces that it was not meant to apply only to workplaces under an employer's physical control.

A narrowing of the inspection duty is inconsistent with the expansive definitions of “workplace” found in many provincial health and safety statutes. The unifying feature of all these statutes is a functional, purposive definition of a workplace that centers on where the worker performs his or her employment, not on whether the employer controls the physical premises. The language of s. 125(1)(z.12) should not be interpreted in isolation to shrink an employer's duty to protect workers from safety hazards; it should be read as part of s. 125(1), which expressly imposes the duty in connection with any work activity to the extent that the employer controls the activity. Therefore, safety inspections should be done in a way that protects employee safety as much as possible in the circumstances, not in a way that deprives whole categories of workers — those who work outside a physical building — from protection.

The fact that the inspections may be difficult to carry out does not support eliminating the duty completely. Parliament did not intend that a provision binding all federally-regulated employers be interpreted based on whether it is easy or difficult for any particular employer to implement. The language of s. 125(1) eschews an

all-or-nothing view of the safety obligations, in favour of a context-specific approach capable of accommodating the diverse group of federally-regulated employers. The flexibility anticipated by s. 125(1) is underscored by Parliament's delegation of inspection responsibilities to joint health and safety committees. By delegating the safety inspection obligation to joint workplace committees, Parliament clearly contemplated a flexible inspection process sensitive to workplace-specific concerns and limitations. Just because inspections may be difficult does not mean that they do not have to be done at all, and just because hazards cannot be fixed entirely does not mean that nothing can be done to address them. This interpretation is the only one that is true to the preventive purpose of s. 125(1) in general and the safety inspection provision in particular.

In the instant case, the appeals officer's reasoning process was deeply flawed. He acknowledged that safety inspections are meant to protect employees from workplace hazards, but failed to give this purpose, and the plain language of s. 125(1), any meaningful effect, let alone a generous interpretation. His interpretation ignores the second part of s. 125(1), which simultaneously imposes the inspection duty on employers for work activities in workplaces they do not control. In so restricting the scope of s. 125(1)(z.12), the appeals officer redrafted the provision. The employer's control of the work activity of letter-carriers is stringent, bringing its work arrangements with its letter-carriers squarely within the language of s. 125(1). By restricting inspections to locations where the employer exercises property rights, the appeals officer's decision risks leaving workplace health and safety committees

unable to proactively identify and address the hazards that may arise in the areas where letter-carriers work. By reading out the words and purposes of the safety inspection duty, the appeals officer came to an unreasonable conclusion that subverted not only the preventive purpose of the employer safety duties in s. 125(1), but of the specific goal in s. 125(1)(z.12) to ensure that inspections are carried out to make workplace as safe as possible.

Cases Cited

By Rowe J.

Applied: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; **referred to:** *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, [2018] 2 S.C.R. 230; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6; *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708; *Canada Post Corp. v. Public Service Alliance of Canada*, 2010 FCA 56, [2011] 2 F.C.R. 221, rev'd in part 2011 SCC 57, [2011] 3 S.C.R. 572; *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5; *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895; *Delios v. Canada (Attorney General)*, 2015 FCA 117, 100 Admin L.R. (5th) 301;

Law Society of New Brunswick v. Ryan, 2003 SCC 20, [2003] 1 S.C.R. 247; *New Brunswick Liquor Corp. v. Small*, 2012 NBCA 53, 390 N.B.R. (2d) 203; *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, [2018] 1 S.C.R. 635; *Bell Canada*, 2011 OHSTC 21; *Mowat Express v. Communications, Energy and Paper Workers Union of Canada*, [1994] C.L.C.R.S.O.D. No. 4; *Seair Seaplanes Ltd. v. Bhangal*, 2009 LNOHSTC 24; *Blue Mountain Resorts Ltd. v. Ontario (Ministry of Labour)*, 2013 ONCA 75, 114 O.R. (3d) 321; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226.

By Abella J. (dissenting)

Public Service Alliance of Canada v. Canada (Attorney General), 2015 FCA 273, [2016] 3 F.C.R. 33; *Atomic Energy of Canada Ltd.*, 2013 OHSTC 21; *Aviation General Partner Inc. v. Jainudeen*, 2013 OHSTC 32; *Laroche v. Canada Border Services Agency*, 2010 OHSTC 12; *Canada (Public Works and Government Services) (Re)*, 2009 LNOHSTC 35; *Morrison v. Canada Post Corp.*, 2009 LNOHSTC 32; *Ontario (Ministry of Labour) v. United Independent Operators Ltd.*, 2011 ONCA 33, 104 O.R. (3d) 1; *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Ontario (Ministry of Labour) v. Quinton Steel (Wellington) Ltd.*, 2017 ONCA 1006; *Ontario*

(Ministry of Labour) v. Hamilton (City) (2002), 58 O.R. (3d) 37, leave to appeal refused, [2002] 3 S.C.R. vi.

Statutes and Regulations Cited

Budget Implementation Act, 2017, No. 1, S.C. 2017, c. 20.

Canada Labour Code, R.S.C. 1985, c. L-2, Part II, ss. 122(1), 122.1, 122.2, 124, 125, 125.1, 125.2, 125.3, 126, 127.1, 135, 135.1(1), (14), 140, 145, 146, 146.1, 146.2.

Canada Occupational Health and Safety Regulations, SOR/86-304, ss. 1.3, 12.1.

Interpretation Act, R.S.C. 1985, c. I-21, s. 12.

Occupational Health and Safety Act, R.S.N.L. 1990, c. O-3, s. 2(n).

Occupational Health and Safety Act, R.S.O. 1990, c. O.1, s. 1(1) “workplace”.

Occupational Health and Safety Act, R.S.P.E.I. 1988, c. O-1.01, s. 1(y).

Occupational Health and Safety Act, S.A. 2017, c. O-2.1, s. 1(bbb) “work site”.

Saskatchewan Employment Act, S.S. 2013, c. S-15.1, s. 3-1(1)(hh).

Authors Cited

Canada. House of Commons. *House of Commons Debates*, vol. 136, No. 71, 2nd Sess., 36th Parl., March 24, 2000, at pp. 5207-8.

Evans, John M. “Triumph of Reasonableness: But How Much Does It Really Matter?” (2014), 27 *C.J.A.L.P.* 101.

Facey, Marcia, Ellen MacEachen, Anil Verma, and Kathy Morales. “The everyday functioning of joint health and safety committees in unionized workplaces: a labour perspective” (2017), 15 *Policy and Practice in Health and Safety* 160.

Nova Scotia. *The Westray Story: A Predictable Path to Disaster — Report of the Westray Mine Public Inquiry*, Halifax, 1997.

O’Grady, John. “Joint Health and Safety Committees: Finding a Balance”, in Terrence Sullivan, ed., *Injury and the New World of Work*. Vancouver: UBC Press, 2000, 162.

Ontario. *Report of the Royal Commission on the Health and Safety of Workers in Mines*. Toronto: Ministry of the Attorney General, 1976.

Sharpe, Robert J. *Good Judgment: Making Judicial Decisions*, Toronto: University of Toronto Press, 2018.

Tucker, Eric. “Diverging Trends in Worker Health and Safety Protection and Participation in Canada, 1985-2000” (2003), 58 *I.R.* 395.

APPEAL from a judgment of the Federal Court of Appeal (Nadon, Near and Rennie JJ.A.), 2017 FCA 153, [2017] F.C.J. No. 708 (QL), 2017 CarswellNat 3271 (WL Can.), setting aside a decision of Gleeson J., 2016 FC 252, [2016] F.C.J. No. 272 (QL), 2016 CarswellNat 620 (WL Can.), dismissing an application for judicial review of an appeals officer’s decision, 2014 OHSTC 22, 2014 LNOHSTC 22 (QL), 2014 CarswellNat 8704 (WL Can.). Appeal allowed, Abella and Martin JJ. dissenting.

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Christopher Pigott and Rachel Younan, for the intervener FETCO Inc. (Federally Regulated Employers — Transportation and Communications).

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Brian Smeenk, for the intervener Rogers Communications Inc.

Maryse Tremblay, for the interveners the Canadian Broadcasting Corporation, Bell Canada, Bell Technical Solutions Inc. and Bell Media Inc.

Stéphane Fillion and Michael Adams, for the interveners the Maritime Employers Association, the Halifax Employers Association and the British Columbia Maritime Employers Association.

Craig D. Bavis and *Jitesh Mistry*, for the interveners the International Longshore and Warehouse Union Canada, the International Longshoremen's Association, Locals 269, 1341, 1657 and 1825 and the Canadian Union of Public Employees, Local 375.

The judgment of Wagner C.J. and Moldaver, Karakatsanis, Gascon, Côté, Brown and Rowe JJ. was delivered by

ROWE J. —

[1] This appeal concerns an application for judicial review of a decision by the Occupational Health and Safety Tribunal Canada (“OHSTC”). The administrative decision maker was tasked with interpreting a provision of the *Canada Labour Code*, R.S.C. 1985, c. L-2 (“Code”), to determine whether the employer, Canada Post Corporation (“Canada Post”), complied with its work place health and safety obligations. He determined that Canada Post was not in contravention of its work place inspection obligation under the Code. The application for judicial review was dismissed at the Federal Court, and allowed on appeal.

[2] The appeal before this Court provides an opportunity to apply the framework for judicial review set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. The standard of review is reasonableness. This Court’s role is to review the reasons given by the administrative

decision maker and determine whether the decision is based on an internally coherent chain of reasoning and is justified in light of the relevant legal and factual constraints. For the reasons that follow, I find that the decision of the OHSTC is reasonable and would therefore allow the appeal with costs throughout.

I. Facts

[3] The appellant, Canada Post, is a Crown corporation that provides postal services throughout Canada. The respondent, the Canadian Union of Postal Workers (“Union”), is a certified bargaining agent that represents employees of the appellant, including letter carriers. As a federally-regulated employer, Canada Post must abide by certain health and safety obligations set out in Part II of the Code. The issue in this appeal is whether the interpretation of one of these obligations by a statutory delegate was reasonable. In my view, it was.

[4] The facts are not in dispute. In August 2012, a representative of the Union who sat on the Local Joint Health and Safety Committee (“Committee”) at the Burlington Depot, in Ontario, filed a complaint with Human Resources and Skills Development Canada. The complaint claimed that the Committee failed to comply with mandatory health and safety obligations in the Code by limiting its work place inspections to the Burlington Depot. The complaint stated that the safety inspections should include letter carrier routes and locations where mail is delivered (“points of call”), and not just the Burlington Depot building. While the complaint related only to the 73 letter carrier routes in Burlington, the disposition could affect operations

throughout the country. Canada Post estimated that letter carriers travel 72 million linear kilometres delivering mail to 8.7 million points of call.

[5] Following the complaint, a Health and Safety Officer (“HSO”) attended the facility and upon investigation, found that Canada Post failed to comply with s. 125(1)(z.12) of the Code, which provides that the employer must ensure that every part of the work place is inspected at least once a year. The HSO also found Canada Post in contravention of three other obligations in Part II of the Code, none of which are at issue in this appeal. Canada Post appealed the HSO’s direction to the OHSTC. The Appeals Officer rescinded the contravention relating to work place inspections. Contrary to the HSO, the Appeals Officer determined that this obligation applied only to the parts of the work place over which the employer had control; this did not include letter carrier routes and points of call. The Union sought judicial review of the Appeals Officer’s decision to rescind the contravention of s. 125(1)(z.12).

II. Issue

[6] The Appeals Officer concluded that s. 125(1)(z.12) applied only to parts of the work place over which the employer had control. The sole issue before this Court is whether the Appeals Officer’s interpretation of s. 125(1)(z.12) of the Code was reasonable.

III. Occupational Health and Safety Scheme

[7] The Code generally applies in respect of employment on or in connection with the operation of any federal work, undertaking or business. The Code is comprised of three parts. Part I deals with industrial relations. Part II deals with occupational health and safety, and is the Part relevant to this appeal. Part III deals with minimum labour standards, including work hours, wages, vacations and holidays.

[8] The purpose of Part II is set out in s. 122.1: “to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies”. Part II of the Code imposes duties on employers and employees.

[9] There is a general duty on every federally-regulated employer to “ensure that the health and safety at work of every person employed by the employer is protected” (s. 124). The Code sets out specific health and safety obligations incumbent on employers in ss. 125 to 125.3. This appeal concerns one of the specific obligations created by s. 125(1)(z.12), which reads as follows:

Specific duties of employer

125 (1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,

...

(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;

Employees also have duties under the Code. Section 126 sets out employees' duties in respect of health and safety. The *Canada Occupational Health and Safety Regulations*, SOR/86-304 ("Regulations"), are prescribed for the purposes of the provisions dealing with the duties of employers and employees (ss. 125, 125.1, 125.2 and 126) (see s. 1.3 of the Regulations).

[10] For larger work places (with twenty or more employees), the scheme places the primary responsibility for identifying and resolving health and safety hazards with joint work place committees composed of employers and employees. Section 135(1) of the Code provides for the mandatory establishment of a work place health and safety committee for each "work place controlled by the employer at which twenty or more employees are normally employed". The committee must be comprised of at least two people, and at least half of the members must be employees who "do not exercise managerial functions", and, subject to any regulations, have been selected by the employees or, where, applicable, the trade union in consultation with employees not so represented (Code, s. 135.1(1)).

[11] The Code sets out the duties of the committee in s. 135(7), one of which is to inspect the work place. The provision states that the committee "shall inspect each month all or part of the work place, so that every part of the work place is inspected at least once each year" (s. 135(7)(k)). The committee's work place

inspection obligation corresponds with the employer's duty to ensure work place inspection set out in s. 125(1)(z.12).

[12] Should a disagreement between employees and their employer arise in relation to any of these obligations, the parties must first attempt to resolve the issue through an internal complaint resolution process (s. 127.1). If this fails, a delegate of the Minister — at the relevant time, this delegate was the HSO — shall investigate and may issue directions to resolve the matter (ss. 127.1, 140 and 145).

[13] The direction of the Minister's delegate can be challenged before an appeals officer (s. 146). The appeals officers are grouped under the OHSTC. The powers of an appeals officer, as well as procedural requirements for proceedings before an appeals officer, are outlined in ss. 146.1 and 146.2. These include a requirement to provide written reasons (s. 146.1(2)). (I note that, since the hearing of this appeal, some of these provisions were modified by the *Budget Implementation Act, 2017, No. 1*, S.C. 2017, c. 20.)

[14] Canada Post and the Union have established protocols to promote work place health and safety. For example, the Workplace Hazards Prevention Program ("WHPP") provides an "exemplary . . . protocol for identifying and reporting hazards that are encountered at the points of call" (2014 OHSTC 22, at para. 100 (CanLII)). Another example is Canada Post Policy 1202.05, Hazards and Impediments to Delivery on Route, which outlines the steps that letter carriers, supervisors and

superintendents must take to “identify and correct hazards and impediments to delivery”.

[15] While employer policies fall outside the statutory scheme, it is useful to illustrate how Canada Post seeks to fulfil the purposes of the Code in practice. The occupational health and safety scheme created by the Code, the Regulations, and policies specific to the employer operate together as a net of overlapping obligations designed to protect the health and safety of federally-regulated workers. As the Appeals Officer noted, the WHPP demonstrates “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” (para. 100).

IV. Decisions Below

A. *Occupational Health and Safety Tribunal Canada*

[16] In his reasons, the Appeals Officer gave a lengthy description of the parties’ submissions before setting out his analysis of the four contraventions cited by the HSO. The parts of his reasons that deal with the contravention to s. 125(1)(z.12) are relevant to this appeal.

[17] Based on the wording of s. 125(1), the Appeals Officer first determined that the obligations arising from this subsection applied only in respect of a work place (paras. 87-88). After considering the definition of “work place” at s. 122(1), as

well as the remedial purpose of health and safety legislation and relevant jurisprudence, he concluded that “work place” had to be interpreted broadly so as to include “all places where an employee works, whether or not they are under the employers’ control” (para. 92). For letter carriers, this included places outside the Burlington Depot, such as points of call and lines of route.

[18] The Appeals Officer then turned to the scope of the obligations under s. 125(1). He concluded that the provision dealt with two situations: when the employer controls both the work place and the activity; and when the employer controls the activity, but not the work place (para. 93). In his view, a close reading of the obligations created by s. 125(1) reveals that some obligations apply to both situations while others can only apply where the employer has control over the work place.

[19] The Appeals Officer concluded that s. 125(1)(z.12) can only apply to work places over which the employer has control “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” (para. 96). Since Canada Post has no control over lines of route or points of call, he determined that the obligation to ensure that the work place was inspected by the Committee could not apply to these locations: “I fail to see how an employer can effectively ensure that an inspection be carried out in accordance with (z.12) at a work place over which it has no control” (para. 99). Finally, he noted that

the WHPP already had in place procedures for identifying and reporting hazards encountered by letter carriers. This program shows how the Code and its Regulations can be implemented to protect the health and safety of workers in different settings.

B. *Federal Court*

[20] Gleeson J. applied a reasonableness standard and dismissed the application for judicial review. In his view, the Appeals Officer applied the proper method of statutory interpretation as laid out by this Court in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, and *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27. He found that the Appeals Officer's interpretation of the provision was "based on a harmonious reading of the words in their context" (2016 FC 252, at para. 52 (CanLII)) and the purpose of s. 125(1)(z.12), and therefore it was within the range of reasonable outcomes. Gleeson J. further held that there were no internal inconsistencies in the reasons (para. 55) and that the outcome was consistent with the purpose of the scheme: to protect the health and safety of employees (para. 56).

C. *Federal Court of Appeal*

[21] Nadon J.A. allowed the appeal and reinstated the HSO's direction. In his view, s. 125(1) is clear and unambiguous: the employer must fulfil every obligation enumerated by the provision if it controls either the work place or the work activity (2017 FCA 153, at para. 48 (CanLII)). The interpretation put forth by the Appeals

Officer was therefore unreasonable because it constituted a redrafting of the provision, which would limit the obligations of employers with regard to work place health and safety. Furthermore, Nadon J.A. held that the Appeals Officer's finding that Canada Post could not fulfil the obligation of s. 125(1)(z.12) since it did not control the work place was unreasonable. This was based on the record, which showed that Canada Post was able to identify and address safety hazards on routes and points of call through its various policies and prevention programs (paras. 64-65).

[22] Rennie J.A. concurred with Nadon J.A. in the result but set out a different approach. Based on the words "to the extent that" in s. 125(1), he held that the question was not whether an obligation existed, but rather what was the extent of that obligation based on the level of control the employer exerted over the work activity (paras. 77- 78). Since it was not contested that Canada Post controlled the work activity of letter carriers, Rennie J.A. agreed with Nadon J.A that the Appeals Officer's decision was unreasonable (para. 81).

[23] In dissent, Near J.A. held that it was reasonable for the Appeals Officer to determine that some obligations under s. 125(1) — including para. (z.12) — apply only if the employer has control over the work place (paras. 17-18). In his view, this interpretation was not inconsistent with the fact that Canada Post can identify and resolve hazards at points of call through its health and safety policies. Near J.A. pointed out that the various obligations under s. 125(1) are of different natures. If the inspection obligation applies to the letter carrier routes and points of call, Canada Post

would not merely be obligated to attempt to identify and fix potential hazards, it would be obligated to ensure that such hazards are identified and fixed, including those on private property (para. 20). He concluded that the Appeals Officer's interpretation was consistent with the purpose of the Code without extending the employer's obligation beyond what is reasonable and logical (para. 21).

V. Analysis

A. *The New Administrative Law Framework*

[24] This appeal was heard shortly after the *Vavilov* and *Bell/NFL* appeals (*Bell Canada v. Canada (Attorney General)*, 2019 SCC 66), in which the Court reconsidered and clarified the framework for determining the applicable standard of review as well as the application of reasonableness review (“*Vavilov* framework”). The Federal Court and Federal Court of Appeal decisions in this appeal were taken (and the submissions before this Court were made) under the “*Dunsmuir* framework” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190). I apply the *Vavilov* framework in coming to my conclusion that the decision of the Appeals Officer was reasonable. No unfairness arises from this as the applicable standard of review and the result would have been the same under the *Dunsmuir* framework.

[25] Relying on the *Dunsmuir* framework, the parties agreed before this Court that the standard of review is reasonableness. Canada Post submitted that reasonableness “presumptively applies to an administrative decision-maker’s

interpretation of [their enabling] statute” (A.F., at para. 47, citing *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2018 SCC 31, [2018] 2 S.C.R. 230, at para. 27, and *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 S.C.R. 6, at para. 8). The standard of reasonableness was undisputed in the courts below, and I agree that under the *Dunsmuir* framework, the standard of review would be reasonableness.

[26] I agree substantially with the dissenting reasons of Near J.A. in which he applied the *Dunsmuir* framework, as described above. I would note again that Near J.A. concluded it was reasonable for the Appeals Officer to find that certain obligations only apply where employers have control over the work place, and not merely control over the work activity: “If the employer does not control the work place, it is not possible for the employer to ensure that the work place is inspected; no amount of control over the work activity will assist the employer in this regard” (para. 19). He considered the reasons in light of the objectives of the Code and the broader context, and concluded:

The Appeals Officer’s interpretation, while limiting the applicability of the inspection obligation, does not undermine the objective of the Code to protect the health and safety of employees. The Appeals Officer recognized: that the Code must be interpreted liberally (reasons at para. 91); that subsection 125(1) binds employers to the fullest extent possible (reasons at para. 95); and that employers have obligations under the Regulations to implement hazard prevention programs (reasons at para. 100). In my view, the Appeals Officer’s interpretation promotes the public welfare objectives of the Code without over-extending the work place inspection obligation beyond what is reasonable and logical. [Citations omitted; para. 21.]

In my view, Near J.A. properly concluded that the Appeals Officer's decision was reasonable under the *Dunsmuir* framework. The Appeals Officer's decision bore the hallmarks of "justification, transparency and intelligibility" and it fell "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). As I explain below, under the *Vavilov* framework, where reasons for an administrative decision are provided, the reviewing court takes a "reasons first" approach focusing on the administrative decision maker's justification for the decision (*Vavilov*, at para. 84), in light of any relevant legal and factual constraints. Under both frameworks, I am of the view that the Appeals Officer's decision was reasonable.

B. *Determining the Applicable Standard of Review*

[27] In *Vavilov*, this Court set out a revised framework for determining the applicable standard of review for administrative decisions. The starting point is a presumption that a standard of reasonableness applies. This presumption can be rebutted in two types of situations. The first is where the legislature has statutorily prescribed a standard of review or where it has provided for an appeal from the administrative decision to a court. The second is where the question on review falls into one of the categories of questions that the rule of law requires be reviewed on a standard of correctness. None of these situations for departing from the presumption of reasonableness review apply here. The Appeals Officer's decision is reviewable on a standard of reasonableness.

C. *Conducting Reasonableness Review Under Vavilov*

[28] In *Vavilov*, this Court held that “[r]easonableness review aims to give effect to the legislature’s intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law” (para. 82). The Court affirmed that “it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies” (para. 86 (emphasis in original)).

[29] *Vavilov* provides guidance for conducting reasonableness review that upholds the rule of law, while according deference to the statutory delegate’s decision. While deferential review has never meant showing “blind reverence” to statutory decision makers (*Dunsmuir*, at para. 48), in *Vavilov* the Court re-emphasized that judicial review considers not only the outcome, but also the justification for the result (where reasons are required). Reasons, the Court wrote, “are the primary mechanism by which administrative decision makers show that their decisions are reasonable” (para. 81). “[W]here reasons are provided but they fail to provide a transparent and intelligible justification . . . the decision will be unreasonable” (*Vavilov*, at para. 136).

[30] In this case, the Appeals Officer was required to give written reasons (Code, s. 146.1(2)). He did so, and in this case provided detailed reasons for his

decision. As I will discuss below, the “discipline of reasons” (R. J. Sharpe, *Good Judgment: Making Judicial Decisions* (2018), at p. 134, cited in *Vavilov*, at para. 80) as exercised in this case “demonstrate[s] that the decision was made in a fair and lawful manner” (*Vavilov*, at para. 79). His reasons cogently explain “the rationale for [the] decision” (*Vavilov*, at para. 81). The administrative decision maker’s reasons in this case were exemplary. However, it is important to note that what is required of statutory delegates to justify their decision will depend on the context in which the decision is made. The reviewing court should be mindful that perfection is not the standard (*Vavilov*, at para. 91). Instead, “when read in light of the evidence before it and the nature of its statutory task, the [administrative decision maker]’s reasons [should] adequately explain the bases of its decision” (*Newfoundland and Labrador Nurses’ Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708, at para. 18, quoting *Canada Post Corp. v. Public Service Alliance of Canada*, 2010 FCA 56, [2011] 2 F.C.R. 221, at para. 163, per Evans J.A., dissenting; this Court adopted Evans J.A.’s reasons: see 2011 SCC 57, [2011] 3 S.C.R. 572). The reasons should demonstrate that the decision conforms to the relevant legal and factual constraints that bear on the decision maker and the issue at hand (*Vavilov*, at paras. 105-7).

[31] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the

reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion” (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand “the basis on which a decision was made” (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

[32] A reviewing court should consider whether the decision as a whole is reasonable: “what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review” (*Vavilov*, at para. 90). The reviewing court must ask “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

[33] Under reasonableness review, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov*, at para. 100). The challenging party must satisfy the court “that any shortcomings or flaws relied on . . . are sufficiently central or significant to render the decision unreasonable” (*Vavilov*, at para. 100). In this case, that burden lies with the Union.

[34] The analysis that follows is directed first to the internal coherence of the reasons, and then to the justification of the decision in light of the relevant facts and law. However, as *Vavilov* emphasizes, courts need not structure their analysis through these two lenses or in this order (para. 101). As *Vavilov* states, at para. 106, the framework is not intended as an invariable “checklist for conducting reasonableness review”. The structure I have adopted is one that is convenient and useful in the circumstances of this case.

(1) The Appeals Officer’s Decision Was Based on an Internally Coherent Reasoning

[35] As I discuss below, the Appeals Officer’s analysis followed a rational and logical line of reasoning. He employed well-established principles of statutory interpretation, engaged with the submissions and evidence before him, and drew on his knowledge of the field when considering the practical implications of his interpretation.

[36] Before this Court and the courts below, the Union argued that the Appeals Officer’s decision was internally inconsistent. The Union submitted that the Appeals Officer’s findings with respect to Canada Post’s health and safety practices and policies (for example, conducting route audits, and a protocol for identifying and resolving hazards) demonstrated that the employer had the capacity to fulfil the obligation set out in s. 125(1)(z.12). Therefore, the conclusion that para. (z.12) could not apply to a work place outside the control of the employer was unreasonable.

[37] I agree with Near J.A. that the Appeals Officer's decision was not rendered unreasonable by, on the one hand, recognizing that Canada Post through its internal policies seeks to identify and resolve hazards for letter carriers, including the audit of certain routes, while also concluding that Canada Post does not have the capacity to "ensure all areas of the work place outside the physical Canada Post building are inspected annually" (para. 20). Canada Post's discretionary policies (pursued in furtherance of its responsibilities under the Code) take into account practical considerations regarding the work of letter carriers. The duty under para. (z.12) is mandatory; if applicable, Canada Post would have been obligated to ensure that every part of the work place was inspected annually, regardless of any impracticalities arising from the nature of the work of its employees.

[38] Far from being internally incoherent, the Appeals Officer's reasoning demonstrates his in-depth understanding of the ways in which Canada Post fulfils the purposes of the Code, bearing in mind the practical limitations of a work place spanning 72 million kilometres of postal routes. With respect to the Union's position, Canada Post's ability to carry out *some* route audits does not imply that it has the capacity to inspect *all* routes in a year. Further, as I explain below, the Appeals Officer's interpretation of the provision centred on control over the work place, not the finite capacity of the employer to fulfil the obligation. Findings related to the employer's capacity to carry out such extensive route audits are supplementary to the Appeals Officer's reasoning regarding how the statutory scheme should operate in the circumstances of this case.

[39] Accordingly, I find that the Appeals Officer's reasons do not in any way display a fatal flaw in rationality or logic.

(2) The Appeals Officer's Decision Was Defensible in Light of the Relevant Legal and Factual Constraints

(a) *The Appeals Officer's Interpretation of Section 125(1)(z.12)*

[40] The administrative decision maker "holds the interpretative upper hand" (*McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895, at para. 40). When reviewing a question of statutory interpretation, a reviewing court should not conduct a *de novo* interpretation, nor attempt to determine a range of reasonable interpretations against which to compare the interpretation of the decision maker. "[A]s reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did" (*Delios v. Canada (Attorney General)*, 2015 FCA 117, 100 Admin. L.R. (5th) 301, at para. 28, quoted in *Vavilov*, at para. 83). The reviewing court does not "ask itself what the correct decision would have been" (*Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247, at para. 50, quoted in *Vavilov*, at para. 116). These reminders are particularly important given how "easy [it is] for a reviewing court to slide from the reasonableness standard into the arena of correctness when dealing with an interpretative issue that raises a pure question of law" (*New Brunswick Liquor Corp. v. Small*, 2012 NBCA 53, 390 N.B.R. (2d) 203, at para. 30).

[41] With respect, the majority in the Court of Appeal appears to have conducted a *de novo* interpretation of the impugned provision; it also failed to engage adequately with the Appeals Officer's reasoning. Such an approach, whereby a "court embarks on its own interpretation of the statute to determine the reasonableness of the tribunal's decisions," is in tension with the guidance of the majority reasons in *Vavilov* on how to conduct reasonableness review, as it leaves "little room for deference" (J. M. Evans, "Triumph of Reasonableness: But How Much Does It Really Matter?" (2014), 27 *C.J.A.L.P.* 101, at p. 109). Taking a "reasons first" approach rather requires the reviewing court to start with how the decision maker arrived at their interpretation, and determine whether it was defensible in light of the interpretative constraints imposed by law.

[42] Where the meaning of a statutory provision is in dispute, the administrative decision maker must demonstrate in their reasons that they were alive to the "essential elements" of statutory interpretation: "the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision" (*Vavilov*, at para. 120). Because those who draft statutes expect that the statute's meaning will be discerned by looking to the text, context and purpose, a reasonable interpretation must have regard to these elements — whether it is the court or an administrative decision maker tasked with the interpretative exercise (*Vavilov*, at para. 118). In addition to being harmonious with the text, context and purpose, a reasonable interpretation should conform to any interpretative constraints in the governing statutory scheme, as well as interpretative

rules arising from other sources of law. In this case, the Appeals Officer's interpretation was constrained by interpretative rules within the Code, the *Interpretation Act*, R.S.C. 1985, c. I-21, and common law rules of statutory interpretation.

[43] The Appeals Officer's interpretation was guided by the general rule set out in s. 12 of the *Interpretation Act* that "[e]very enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects" (quoted in OHSTC reasons, at para. 91). As I discuss below, the Appeals Officer's reasons amply demonstrate that he considered the text, context, purpose, as well as the practical implications of his interpretation (see *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22, [2018] 1 S.C.R. 635, at para. 41). His focus on practical implications did not supplant the need to ensure consistency with the text, context and purpose of the provision, but rather "enrich[ed] and elevate[d] the interpretive exercise" (*Vavilov*, at para. 119). He demonstrated a sustained effort to discern legislative intent throughout his analysis, and did not simply "'reverse-engineer' a desired outcome" (*Vavilov*, at para. 121).

(i) The Text of Section 125(1)(z.12)

[44] In deciding whether the inspection obligation under para. (z.12) required Canada Post to inspect letter carrier routes and points of call, the Appeals Officer

determined that he had to interpret the term “work place”, as well as the “scope of the specific obligations arising from subsection 125(1)” (para. 93).

[45] Starting with the introductory text of s. 125(1), the Appeals Officer determined that “[i]t is clear . . . that, in order for any obligation under subsection 125(1) to apply to an employer, it must be in respect of a work place” (para. 88). The Appeals Officer began his interpretation with the statutory definition of “work place” at s. 122(1). The definitions in s. 122(1) apply to Part II of the Code (Occupational Health and Safety). Section 122(1) states: “**work place** means any place where an employee is engaged in work for the employee’s employer”.

[46] Despite the submission of Canada Post that what constitutes a work place depends on whether the employer controls the location or work activity, it was not open to the Appeals Officer to deviate from the definition provided by the governing statute. The Appeals Officer’s interpretation conformed to the definition of “work place” in the Code. He concluded that “‘work place’ 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 the necessary mobility of a letter carrier” (para. 91). The Appeals Officer followed prior OHSTC decisions on this point (*Bell Canada*, 2011 OHSTC 21, at paras. 30 and 32 (CanLII), cited in OHSTC reasons, at paras. 30 and 50; *Mowat Express v. Communications, Energy and Paper Workers Union of Canada*, [1994] C.L.C.R.S.O.D. No. 4 (QL), cited in OHSTC reasons, at para. 92;

Seair Seaplanes Ltd. v. Bhangal, 2009 LNOHSTC 24 (QL), at paras. 39-43, cited in OHSTC reasons, at para. 30).

[47] Turning to the scope of the obligations arising from s. 125(1), the Appeals Officer noted that “[t]he very precise wording . . . indicates that the obligations set out in subsection 125(1) centre around the notion of control” (para. 93). In his view, the phrases “every work place controlled by the employer”, and “every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity” in s. 125(1) are to be read disjunctively: “There is a clear distinction between situations where work places are controlled by the employer and those where they are not” (para. 93).

[48] Before this Court, the Union argued that the Appeals Officer’s interpretation is contrary to the plain text of the statute. In its view, nothing in the introductory language of s. 125 indicates that the obligations listed in s. 125 are meant to apply exclusively to one or the other of the two circumstances. The Union says that the word “and” in this context is to be read *conjunctively*, meaning that all the obligations apply to employers that control the work place, and to employers that control the work activity. Further, the Union submitted that even when read disjunctively, as long as one pre-condition is met (control of the work place or control over the work activity), all of the obligations follow.

[49] I agree with Near J.A. that the word “and” can be read conjunctively or disjunctively depending on the context (para. 16). The use of the word “and” in the opening phrase of s. 125(1) does not preclude the Appeals Officer’s conclusion that the provision indicates that certain obligations apply only where the employer has control over the work place, nor does the French “*ainsi que*”. In any event, the text of the opening language of the provision, read in isolation, is not so clear so as to be determinative of the matter.

(ii) The Statutory Context

[50] The Appeals Officer had regard to the broader statutory context of the obligations under s. 125(1), noting “[it is] 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” (para. 93). The Appeals Officer considered specific obligations that in his view, support his interpretation. For example, he referred to para. (t), which obliges the employer to “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”, concluding that this obligation is applicable to all employers, regardless of whether they control the work place, as long as they control the work activity. Conversely, para. (a), which requires that employers “ensure that all permanent and temporary buildings and structures

meet the prescribed standards” is an example of an obligation that applies only where an employer has control over the work place (para. 97).

[51] While the Appeals Officer’s reasons demonstrate that he turned his mind to the context of s. 125(1)(z.12), he did not need to consider every related provision of the Code in his analysis. Before this Court the parties made submissions regarding how s. 135 — which establishes and sets out the duties of the committee — should bear on the interpretation of the obligations under s. 125(1). Section 135(1) reads:

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

Subsection (7) sets out the duties of the committee. Paragraph (k) mirrors the work place inspection obligation in s. 125(1)(z.12):

(7) A work place committee, in respect of the work place for which it is established,

...

(k) shall inspect each month all or part of the work place, so that every part of the work place is inspected at least once each year;

Counsel for Canada Post submitted that ss. 135(1) and 135(7)(k), when read together, make clear that the inspection obligation therein (which mirrors s. 125(1)(z.12))

applies only to the controlled work place. In response, counsel for the Union argued that s. 135(1) requires only that a committee be established for each controlled work place at which twenty or more employees are employed. The Union continued that subs. (7)(k) does not indicate that the committee, once established, has jurisdiction only over those parts of the work place that are controlled by the employer.

[52] The Appeals Officer did not refer to s. 135(1). The foregoing argument was not made before him; it was raised for the first time before the Court of Appeal by an intervener. The fact that the Appeals Officer did not refer to s. 135(1) in his analysis does not render his interpretation unreasonable. Administrative decision makers — and for that matter, judges — are not required, on their own account, to consider every aspect of the statutory context that might bear on their decision (*Vavilov*, at para. 122). In our system, the parties frame the arguments to be considered. Failure to consider a particular piece of the statutory context that does not support a decision maker’s statutory interpretation analysis will not necessarily render the interpretation unreasonable. The impact of such an omission will be case-specific and will depend on whether the “omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached” (*Vavilov*, at para. 122).

[53] On my reading, not only does s. 135(1) not cause me to lose confidence in the outcome reached, this provision provides, if anything, only additional support for the Appeal Officer’s interpretation of s. 125(1)(z.12). The possibility that the

justification provided might have been strengthened by reference to s. 135(1) does not affect the reasonableness of his decision.

(iii) The Purpose of Section 125(1)(z.12)

[54] The purpose of Part II of the Code is provided at s. 122.1: “[t]he 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.” A reasonable interpretation of any provision under Part II should be informed by the overarching objectives of Part II of the Code.

[55] The Appeals Officer concluded that in order to fulfil the obligation in para. (z.12), control over the work place is necessary 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” (para. 96). He considered the practical implications of the interpretation in light of the purpose of the provision, and agreed with the submissions of Canada Post that “it would be impractical for an employer to perform [the work place inspection] obligation in respect of structures it neither owns nor has a right to alter” (para. 97). A reviewing court must pay “[r]espectful attention to a decision maker’s demonstrated expertise” when considering whether an outcome reflects a reasonable approach given the “consequences and the operational impact of the decision” (*Vavilov*, at para. 93). Here, the Appeals Officer had “dealt with and implemented most, if not all, of the employer obligations under subsection 125(1)” (para. 94), and also demonstrated this expertise through his reasons by, for example,

demonstrating his familiarity with the statutory scheme and the different types of obligations it imposes on employers (para. 95; see also *Vavilov*, at para. 94). While the parties' concessions on this point are not binding on us, they do, in this case, speak to the Appeals Officer's findings on the point. The purpose of the obligation as described by the Appeals Officer appears to have been accepted by the parties before the Court of Appeal (F.C.A. reasons, at para. 18, per Near J.A.). In my view, the purpose of para. (z.12) imputed by the Appeals Officer is consistent with the broad, purposive interpretation afforded to remedial legislation.

[56] In accordance with the statutory purpose of Part II of the Code, the Appeals Officer noted that Canada Post promotes the health and safety of its employees "in all the elements of their work" through its various policies and assessment tools, even though it lacks the necessary control over the work place to fulfil the inspection obligation under s. 125(1)(z.12) (para. 100). For example, the Appeals Officer referred to the WHPP, which sets out a "detailed protocol for letter carriers and supervisors with respect to delivery hazards, including the identification, investigation, and resolution with customers" (OHSTC reasons, at para. 60). The WHPP was developed by Canada Post and the Union as a prevention program in accordance with the obligations of the Code, the Regulations and the Collective Agreement (see Code, s. 125(1)(z.03) and Regulations; see also A.R., vol. III, at p. 22).

[57] Before this Court, Canada Post submitted that the Appeals Officer's interpretation is congruent with the scheme of the Code and does not undermine its purposes. It noted that, as an employer, it is bound by the general duty set out in s. 124: "[e]very employer shall ensure that the health and safety at work of every person employed by the employer is protected." The Union argued that the interpretation of s. 125(1) given by the Appeals Officer created such limitations on the duties of the employer so as to be contrary to the statutory purpose. Further, the Union submitted that if the purposes of the obligations under s. 125 could be met by s. 124 and the creation of the WHPP, then s. 125(1) would be redundant.

[58] The Appeals Officer inferred from the text of s. 125(1) that the legislator intended the employer to be bound to the fullest extent possible: "the wording . . . 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" (para. 95). While we presume that the legislator does not speak in vain, in my view, an interpretation that allows for an overlapping "net" of obligations ensuring work place health and safety is appropriately broad so as to apply to the myriad of work activities and work places regulated by the Code. Where one obligation cannot be met due to the nature of the work place, employers are nonetheless bound to ensure health and safety by other measures provided for in the scheme. Accordingly, I am not persuaded by the Union's argument that the Appeals Officer's interpretation of the obligations under s. 125(1) renders the provision redundant, and is therefore unreasonable.

[59] 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 work place. A different interpretation of the statute would not change that reality. As the Ontario Court of Appeal held in *Blue Mountain Resorts Ltd. v. Ontario (Ministry of Labour)*, 2013 ONCA 75, 114 O.R. (3d) 321 (cited in OHSTC reasons, at paras. 26-28, 50 and 74), while public welfare statutes are generally to be given a liberal interpretation, broad language may be given a narrower interpretation to avoid absurdity (paras. 24 and 29). Accordingly, the Appeals Officer’s interpretation did not frustrate the statutory purpose set out in s. 122.1 of the Code so as to render his decision unreasonable.

(b) *The Appeals Officer Accounted for the Submissions of the Parties and the Evidence Before Him*

[60] While a decision maker is not necessarily confined to the parties’ submissions, “[t]he principles of justification and transparency require that an administrative decision maker’s reasons meaningfully account for the central issues and concerns raised by the parties” (*Vavilov*, at para. 127). As always, this will vary with the circumstances of the case at hand. Here, where the Union and Canada Post made detailed submissions, the circumstances called for the Appeals Officer to address those submissions. As this Court explained in *Vavilov*, “a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the

parties may call into question whether the decision maker was actually alert and sensitive to the matter before it” (para. 128). The Appeals Officer contended with the submissions of the parties throughout his analysis. While he agreed with the Union on the interpretation of “work place”, he ultimately accepted the submission of Canada Post that it cannot inspect parts of the work place over which it has no control.

[61] A reviewing court may conclude that a decision is unreasonable where the decision maker failed to take into account the evidence and submissions before them at first instance. The “evidentiary record and the general factual matrix” act as constraints on the reasonableness of a decision, and must be taken into account (*Vavilov*, at para. 126). However, while a reviewing court should ensure the decision under review is justified in relation to the relevant facts, deference to a decision maker includes deferring to their findings and assessment of the evidence. Reviewing courts should refrain from “reweighing and reassessing the evidence considered by the decision maker” (*Canadian Human Rights Commission*, at para. 55, citing *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 64; see also *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226, at paras. 41-42, cited in *Vavilov*, at para. 125).

[62] Over the course of the five-day hearing, the Appeals Officer heard evidence specific to the dispute before him, including evidence of: the time per day that a letter carrier generally spends delivering mail; the time values associated with

delivery at each point of call according to the “letter carrier route measurement system”; the time it takes to perform a “work place audit” by Committee members; and prior route audits conducted in accordance with the WHPP to locate and correct hazards. The Appeals Officer noted statistics provided at the hearing by the HSO relating to the activities of letter carriers and the ground they cover in carrying out their work activities. He also considered examples of Canada Post’s occupational health and safety policies and programs described above, which were referred to by the parties.

[63] The Appeals Officer’s decision responded to the issue before him, and took into account the detailed submissions of both parties. There is no indication that he failed to consider the evidence presented at the hearing, or that he based his decision on a misapprehension of the evidence, thereby rendering his decision unreasonable.

[64] Decision makers, simply by reciting evidence and submissions made to them, do not thereby immunize their reasons from challenge on the basis that they have failed to have regard to something that is relevant and significant. Recitation is not justification, or as the reasons in *Vavilov* state, at para. 102:

Reasons that “simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion” will rarely assist a reviewing court in understanding the rationale underlying a decision and “are no substitute for statements of fact, analysis, inference and judgment”: R. A. Macdonald and D. Lametti, “Reasons for Decision in Administrative Law” (1990), 3 *C.J.A.L.P.* 123, at p. 139; see also

Gonzalez v. Canada (Minister of Citizenship and Immigration), 2014 FC 750, 27 Imm. L.R. (4th) 151, at paras. 57-59.

Further, depending on the circumstances of the case, a detailed statement of evidence and submissions may not be needed. That said, in *this* case, the Appeals Officer made more clear and complete the basis for his decision by the thoroughness with which he reviewed the evidence and the submissions.

VI. Conclusion

[65] Before the Appeals Officer, it was undisputed that Canada Post does not have physical control over individual points of call or lines of route, and that many of the points of call are private property. The Appeals Officer further found that Canada Post cannot alter nor fix the locations in the event of a hazard. The Appeals Officer applied his interpretation of the provision to these facts and concluded the obligation to inspect the work place “is one that can only apply to an employer who has control over the physical work place. [Therefore,] subsection 125(1)(z.12) does not apply to any place where a letter carrier is engaged in work outside of the physical building [in] Burlington” (para. 99).

[66] The Appeals Officer’s conclusions followed from a clear line of reasoning. With due regard to the submissions before him, he interpreted s. 125(1)(z.12) using well-established principles of statutory interpretation. The interpretation he arrived at is harmonious with the text, context and purpose of the

provision and aligns with past decisions of the OHSTC. He applied his interpretation to the facts of the case and justified his conclusion.

[67] I agree with Near J.A. that the Appeals Officer's decision was reasonable. I would therefore allow the appeal with costs throughout and restore the Appeals Officer's order rescinding the contravention of s. 125(1)(z.12) as directed by the HSO.

The reasons of Abella and Martin JJ. were delivered by

ABELLA J. —

[68] The issue in this appeal is whether the safety inspection obligation in the *Canada Labour Code* applies to the mail routes where Canada Post's letter-carriers spend three-quarters of their time.

[69] On August 28, 2012, a representative of the Canadian Union of Postal Workers who was on the Local Joint Health and Safety Committee at the Canada Post office in Burlington, Ontario, filed a formal complaint against Canada Post because it had prevented the Committee from inspecting local mail routes for hazards:

[We] ha[ve] been told that when doing building inspections we are only to inspect part of our work place[.] Postal workers spend 2 hours in the building, but then 6 hours outdoors. [We want] to inspect not only in the

building but also letter carrier routes for hazards — and CPC [Canada Post Corporation] said no[.]

[70] The Health and Safety Officer who received the complaint issued the following Direction on September 21, 2012, requiring Canada Post to allow the Committee to carry out safety inspections on mail routes:

The employer has failed to ensure that the work place health and safety committee inspects each month all or part of the workplace, such that every part of the work place is inspected at least once per year. The work place health and safety committee's current inspection activity is restricted to the building located at 688 Brant St, Burlington, Ontario.

[71] Canada Post appealed to the Occupational Health and Safety Tribunal Canada. The Appeals Officer found that the safety inspection duty in s. 125(1)(z.12) of the *Labour Code* requires Canada Post to inspect only those workplaces within its physical control. Since Canada Post only controls the Burlington depot station, not the mail routes, the inspection obligation did not apply.

[72] The Federal Court upheld the Appeals Officer's decision. On appeal, a majority in the Federal Court of Appeal overturned the Appeals Officer's decision and reinstated the Direction of the Health and Safety Officer.

[73] I agree with the majority in the Federal Court of Appeal. In my view, the Appeals Officer's conclusion was unreasonable and inconsistent with the purpose and text of the safety inspection provision.

Analysis

[74] There is no dispute between the parties about the applicable standard of review or principles of statutory interpretation. The dispute is over how they should apply to the statutory provision at issue in this case, which states:

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,

...

(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;

[75] In particular, the dispute revolves around whether it was reasonable for the Appeals Officer to conclude that the safety inspection duty found in s. 125(1)(z.12) requires employers to inspect only those parts of the workplace that they physically control.

[76] Section 125(1)(z.12) is found in Part II of the *Canada Labour Code*, R.S.C. 1985, c. L-2, and is part of an extensive web of employer responsibilities designed “to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment” (s. 122.1; see also *Public Service Alliance of Canada v. Canada (Attorney General)*, 2015 FCA 273, [2016] 3 F.C.R. 33, at para.

17). These responsibilities flow from a general obligation placed on employers under s. 124 to ensure workplace safety:

General duty of employer

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

[77] Section 125 gives substance to this overriding obligation (*Public Service Alliance of Canada*, at para. 17; *Atomic Energy of Canada Ltd.*, 2013 OHSTC 21, at para. 58 (CanLII)). It places 45 specific duties on employers, including the safety inspection provision at issue in this appeal. All of these duties are introduced by language stipulating that they apply in all *workplaces* controlled by employers *and* to all employer-controlled *work activities* carried out by employees (*Aviation General Partner Inc. v. Jainudeen*, 2013 OHSTC 32, at para. 62 (CanLII); *Laroche v. Canada Border Services Agency*, 2010 OHSTC 12, at paras. 121-22 (CanLII); *Canada (Public Works and Government Services) (Re)*, 2009 LNOHSTC 35 (QL), at para. 68; *Morrison v. Canada Post Corp.*, 2009 LNOHSTC 32 (QL), at para. 226):

Specific duties of employer

125 (1) Without restricting the generality of section 124, every employer shall, in respect of *every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer*, to the extent that the employer controls the activity

[78] This is an unambiguous dual legislative direction to employers that their safety obligations — including the inspection duty — apply both to *workplaces* they control *and*, if they do not control the actual workplace, to every *work activity* that they do control to the extent of that control. Nothing in the text of s. 125(1) limits an employer’s inspection duty to workplaces under its physical control. The Appeals Officer’s interpretation effectively ignores the second part of s. 125(1), which simultaneously imposes the inspection duty on employers for work activities in workplaces they do *not* control. I agree with Nadon J.A. that in so restricting the scope of s. 125(1)(z.12), the Appeals Officer “redrafted the provision”.

[79] On a plain reading of s. 125(1)(z.12), if Canada Post controls the activities of its letter-carriers, it is bound by the inspection duty. The Appeals Officer acknowledged that Canada Post has extensive and strict control over mail delivery by letter-carriers. As he noted, it sets their routes down to minute details and dictates the manner of the mail delivery, “right down to the way they hold their satchels and how they walk the routes”. This not only shows that Canada Post controls the “work activity” of letter-carriers, it shows that the control is stringent. This brings Canada Post’s work arrangements with its letter-carriers squarely within the language of s. 125(1).

[80] This interpretation is also the only one that is true to the purpose of s. 125(1) in general and the safety inspection provision in particular (*Ontario (Ministry of Labour) v. United Independent Operators Ltd.*, 2011 ONCA 33, 104

O.R. (3d) 1, at para. 31). Section 125(1) aims to protect workers from safety hazards — a purpose that is undermined if the safety inspection duty, a core protection within s. 125(1), is confined to workplaces under an employer’s physical control. In drafting s. 125(1), Parliament clearly anticipated that not all employees work under the same physical conditions, or in workplaces their employers physically control. By drafting s. 125(1) to cover workplaces within *and* outside an employer’s physical control, Parliament sought to protect the thousands of employees working outside an employer-owned location. The beauty of s. 125(1) is that all employees are afforded the same quality of safety protection wherever they work, so long as their work is controlled by their employer.

[81] The inspection duty is an obvious fit with the protective purpose of s. 125(1), and is essential to the preventive approach to workplace hazards adopted in Part II of the *Labour Code*. Section 122.1 states that the purpose of Part II of the *Code* is “to *prevent* accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies”. The following section, 122.2, explains that: “[p]reventive measures should consist first of the elimination of hazards, then the reduction of hazards and finally, the provision of personal protective equipment, clothing, devices or materials, all with the goal of ensuring the health and safety of employees.”

[82] These provisions highlight Parliament’s implementation of a preventive approach to workplace safety, an approach clearly expressed through the safety

inspection duty. Safety inspections exist to proactively identify hazards *before* workers are exposed to them, and ensure that they will either be fixed or avoided. And as the intervener Workers' Health and Safety Legal Clinic submitted, proactive safety inspections are especially important for non-unionized workers, who may have limited negotiating leverage to encourage inspection through individual requests to employers (*Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at pp. 1002-3).

[83] It bears remembering that the inspection duty was a crucial part of the package of workplace safety reforms introduced in 1995 in response to the 1992 Westray Mine tragedy in Nova Scotia in which 26 miners were killed. The subsequent public inquiry identified poor inspection procedures as a key cause of the tragedy. As Justice K. Peter Richard wrote, “[m]anagement failed, the inspectorate failed, and the mine blew up” (*The Westray Story: A Predictable Path to Disaster — Report of the Westray Mine Public Inquiry* (Nova Scotia, 1997), at p. 606 (Justice K. Peter Richard, Commissioner)). The widespread anger and pressure on government following the mine explosion led to the review of the occupational health and safety provisions of labour legislation both provincially and federally.

[84] Among the proposals emerging from the Westray Inquiry was the recommendation that there be regular workplace inspections by joint health and safety committees (Eric Tucker, “Diverging Trends in Worker Health and Safety Protection and Participation in Canada, 1985-2000” (2003), 58 *I.R.* 395, at p. 413).

These recommendations were enacted in 2000 through amendments to Part II of the *Labour Code*.

[85] The inspection obligation was introduced in s. 125(1)(z.12). As the Parliamentary Secretary to the then-Minister of Labour explained, the purpose of Part II of the *Code* was to “protect workers” by “moderniz[ing]” the *Code*’s approach to health and safety regulations and by improving employees’ knowledge about hazards in their workplaces:

The resulting amendments were formulated, first, to ensure that Part II continues to do what it is supposed to do, namely, protect workers; second, to align Part II with occupational health and safety regulations in other jurisdictions; and third, to modernize the Part II approach to occupational health and safety regulations.

...

Part II of the code . . . establishes three basic employee rights in the health and safety area: *the right to know about hazards in the workplace and ways of dealing with them*, the right to participate in correcting those workplace hazards, and the right to refuse work which the employee believes to be dangerous or unhealthy. [Emphasis added.]

(*House of Commons Debates*, vol. 136, No. 71, 2nd Sess., 36th Parl., March 24, 2000, at p. 5207 (Mrs. Judi Longfield))

[86] The government also emphasized the need for greater worker participation in identifying workplace hazards:

Overwhelmingly, the parties agreed that the existing code has worked well and that it could form a basis and a foundation for the new and improved system. In particular, the parties agreed that the time had come for a new approach to the regulation of workplace health and safety. This

agreement is reflected in Bill C-12, which is based on the philosophy that the proper role of the Government of Canada is to *empower* workers and employers to *assume responsibility for the regulation of their own workplace*.

. . . Workers and employers should be given the *power and discretion to identify and resolve new and emerging health and safety hazards*. [Emphasis added.]

(*Debates*, at pp. 5207-8)

[87] Safety inspections were highlighted as the first of five “important and necessary” features of the new legislation, ensuring that workplace health and safety issues could be resolved pre-emptively. As the Parliamentary Secretary explained:

Five features of the bill seem to be particularly important and necessary. First, as a result of this bill, local health and safety committees will be mandated to conduct regular workplace inspections and will be given increased powers in dealing with complaints. This will *permit the parties to identify and solve problems swiftly* as they arise. This will be done with government guidance and it *will enhance the role of the health and safety committees*. [Emphasis added.]

(*Debates*, at p. 5208)

[88] Safety inspections were therefore a central methodology by which Parliament intended to broaden preventive health and safety protections for workers. The intent of Parliament was to empower and enable the identification of danger to prevent accidents before they occurred. It makes little sense that Parliament, having expressly chosen under s. 125(1) to extend safety protections to activities in workplaces *outside* an employer’s control, would have intended that a core part of those protections — the safety inspection duty — be exempt from that extension.

[89] The preventive purpose of the inspection obligation further reinforces that it was not meant to apply only to workplaces under an employer's physical control. As the Appeals Officer acknowledged, the inspection obligation allows workplace safety committees to "identif[y and] . . . fix [hazards] or to have them fixed". These purposes are no less crucial for employees who work in locations which are not under an employer's physical control, such as those who work outdoors or whose employment involves regular travel. I agree with the Canadian Union of Postal Workers that by restricting inspections to locations where the employer exercises property rights, the Appeals Officer's decision risks leaving workplace health and safety committees unable to proactively identify and address the hazards that may arise in the areas where letter-carriers work. This makes pre-emptive safety protections, which were intended for all employees, unavailable for those whose employment is not confined to a particular physical location.

[90] Finally, a narrowing of the inspection duty is inconsistent with the expansive definitions of "workplace" found in the Appeals Officer's own reasons and in many provincial health and safety statutes. Ontario's legislation, for example, defines a "workplace" as "*any land, premises, location or thing at, upon, in or near which a worker works*" (*Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, s. 1(1)). Alberta's *Occupational Health and Safety Act* defines "work site" as a location where a worker "is, or is likely to be, engaged in any occupation" (S.A. 2017, c. O-2.1, s. 1(bbb)). Newfoundland and Labrador, Prince Edward Island, and Saskatchewan all have similarly expansive wording (*Occupational Health and Safety*

Act, R.S.N.L. 1990, c. O-3, s. 2(n); *Occupational Health and Safety Act*, R.S.P.E.I. 1988, c. O-1.01, s. 1(y); *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1, s. 3-1(1)(hh)). The uniting feature of all these statutes is a functional, purposive definition of a “workplace” that centers on where the worker performs his or her employment, not on whether the employer controls the physical premises.

[91] This brings us back to s. 125(1)(z.12). The employer has a duty to

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[.]

[92] This language should not be interpreted in isolation to shrink an employer’s duty to protect workers from safety hazards; it should be read as part of s. 125(1), which expressly imposes the duty in connection with any work activity “to the extent that the employer controls the *activity*”. This means that safety inspections should be done in a way that protects employee safety as much as possible in the circumstances, not in a way that deprives whole categories of workers — those who work outside a physical building — from protection.

[93] The crux of Canada Post’s argument against this remedial and purposive interpretation is that it would be “impractical” to implement. That, as Nadon J.A. observed, “is not . . . a legitimate reason for the Appeals Officer to depart from the clear intent of the legislative provision”. Central to Canada Post’s argument — and the Appeals Officer’s decision — is the flawed premise that an employer can only

address hazards identified during an inspection if the employer exercises control over the area being inspected. It is clear, however, that through the high degree of control it traditionally imposes over its letter-carriers' activities, Canada Post can protect its employees from hazards on mail routes without physically controlling the *routes* themselves. Canada Post's control over its employees' work activities gives it several options for addressing hazards on mail routes, such as instructing employees to avoid certain portions of their routes pending resolution of those hazards by the party with the capacity to do so. Canada Post can also provide its carriers with equipment or guidance designed to mitigate potential hazards revealed by a safety inspection (see for example: *Canada Occupational Health and Safety Regulations*, SOR/86-304, s. 12.1). These are precisely the kinds of protective measures s. 125(1) contemplates when it says "to the extent that the employer controls the [work] activity". That Canada Post can take such steps is borne out by the extensive evidence before the Appeals Officer that it has, in fact, already implemented schemes to address hazards on mail routes, despite lacking physical control over them.

[94] In addition, the Appeals Officer's interpretation of s. 125(1)(z.12) turned on feasibility concerns limited to *one* employer: Canada Post. Section 125(1)(z.12), however, applies to *all* employers subject to the *Labour Code*. I cannot accept that Parliament intended that a provision binding on all federally-regulated employers be interpreted based on whether it is easy or difficult for any particular employer to implement.

[95] But in any event, the obligations on Canada Post under s. 125(1)(z.12) are expressly not categorical — as Rennie J.A. observed, they are to be fulfilled “*to the extent* that the employer controls the [work] activity”. This language eschews an all-or-nothing view of safety obligations, in favour of a context-specific approach capable of accommodating the diverse group of federally-regulated employers to which s. 125(1) applies. Inspections were clearly intended to be done in a way that protects employee health and safety as well as possible in the circumstances. The fact that the inspections may be difficult to carry out does not support eliminating the duty completely.

[96] The flexibility anticipated by s. 125(1) is underscored by Parliament’s delegation of inspection responsibilities to joint health and safety committees. Section 135(1) of the *Labour Code* requires that a workplace health and safety committee be established for workplaces of twenty or more employees. The responsibilities of this committee include participating in all of the inquiries, investigations, studies and inspections pertaining to the health and safety of employees (s. 135(7)(e)) and inspecting all or part of the workplace each month (s. 135(7)(k)).

[97] The role of joint health and safety committees such as the one at Canada Post is to recognize workplace hazards, evaluate the hazards and risks that may cause incidents, and participate in the development and implementation of programs to protect employees’ safety and health. These committees are the main route through which workers participate in workplace health and safety, and provisions for joint

committees are found in every provincial and federal labour law regime (John O’Grady, “Joint Health and Safety Committees: Finding a Balance”, in Terrence Sullivan, ed., *Injury and the New World of Work* (2000), 162, at p. 170). They give effect to the principle that workers who bear the risk of being injured, made ill or dying from unsafe and unhealthy work should have a say in the regulation of hazardous working conditions (*Report of the Royal Commission on the Health and Safety of Workers in Mines* (Ministry of the Attorney General, Ontario, 1976), at pp. 146-47 (James M. Ham, Commissioner)). Moreover, empirical research shows that health and safety systems that include worker voices are “positively and consistently associated with lower injury rates, lower lost time accident rates, and lower injury reporting” (Marcia Facey, Ellen MacEachen, Anil Verma and Kathy Morales, “The everyday functioning of joint health and safety committees in unionized workplaces: a labour perspective” (2017), 15 *Policy and Practice in Health and Safety* 160, at p. 162). These committees not only enhance participation, they promote pragmatic effectiveness.

[98] By delegating the safety inspection obligation to joint workplace committees, Parliament clearly contemplated a flexible inspection process sensitive to workplace-specific concerns and limitations. As the Canadian Union of Public Employees and the Professional Institute of the Public Service of Canada note in their intervener factum, joint health and safety committees “have a great deal of scope to find practical and workable solutions” to fulfill the inspection obligation. Section 135.1(14), for example, allows the committee to establish its own rules of procedures

for its operation. I agree with both interveners that “it was the intent of parliament to leave decisions as to the conduct of investigations largely up to Joint Committees . . . who being in the work places and trained in health and safety issues, are best placed” to fulfill these obligations.

[99] As a result, these committees can tailor inspections to suit workplace needs and capacity. In this case, for example, the Joint Health and Safety Committee in Burlington suggested a number of different inspection options, the most extensive of which would have required 18 days for the Committee to inspect all of the letter-carrier routes in its jurisdiction. This is the type of flexible, localized approach that s. 125(1) contemplates. Just because inspections may be difficult does not mean that they do not have to be done at all, and just because hazards cannot be fixed entirely does not mean that nothing can be done to address them.

[100] The Appeals Officer’s reasoning process was “deeply flawed” (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, at para. 72). He acknowledged that safety inspections are meant to protect employees from workplace hazards, but failed to give this purpose, and the plain language of s. 125(1), any meaningful effect, let alone a “generou[s]” interpretation (*Ontario (Ministry of Labour) v. Quinton Steel (Wellington) Ltd.*, 2017 ONCA 1006, at para. 19 (CanLII); *Ontario (Ministry of Labour) v. Hamilton (City)* (2002), 58 O.R. (3d) 37 (C.A.), at para. 16, leave to appeal refused, [2002] 3 S.C.R. vi). He assumed that Canada Post could do nothing to protect workers from safety hazards on mail routes without physically controlling the

routes, despite extensive, unchallenged evidence to the contrary. He relied on concerns about impracticality that were specific to Canada Post, despite the broad application of s. 125(1) to all federally-regulated employers. He adopted an all-or-nothing approach to safety inspections, despite the express guidance in s. 125(1) that employer safety obligations apply only to “the extent that the employer controls the [work] activity”.

[101] By reading out the words and purposes of the safety inspection duty, the Appeals Officer came to an unreasonable conclusion that subverted not only the preventive purpose of the employer safety duties in s. 125(1), but of the specific goal in s. 125(1)(z.12) to ensure that inspections are carried out to make workplaces as safe as possible. On a proper reading of the applicable provisions, Canada Post contravened its statutory duty in s. 125(1)(z.12) by preventing the Joint Health and Safety Committee in Burlington from inspecting local mail routes for safety hazards.

[102] I would dismiss the appeal with costs.

Appeal allowed with costs throughout, ABELLA and MARTIN JJ. dissenting.

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