

HAPPY NEW YEAR! SUPREME COURT LIMITS EMPLOYERS' DUTY TO INSPECT WORK PLACES

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The Supreme Court's final decision of 2019 had federally-regulated employers under the *Canada Labour Code* ("Code") celebrating.^[1] In *Canada Post Corp. v. Canadian Union of Postal Workers*,^[2] a majority of the Supreme Court confirmed that an employer's obligation to conduct safety inspections only applies to work places over which the employer has control.

Background

A representative of the Canadian Union of Postal Workers ("CUPW") filed a complaint with Human Resources and Skills Development Canada ("HRSDC") alleging that Canada Post failed to comply with subsection 125(1)(z.12) of the Code. This subsection provides that employers must ensure that every part of the work place is inspected by the work place health and safety committee or a health and safety representative at least annually.

CUPW's complaint specifically alleged that Canada Post failed to comply with the Code by limiting safety inspections to its Burlington Depot. The complaint stated that the safety inspections should also include letter carrier routes and locations where mail is delivered (referred to as "points of call"). In support of this position, CUPW noted that "work place" is broadly defined in the Code as "any place where an employee is engaged in work for the employee's employer".

In response to the complaint, a Health and Safety Officer from HRSDC conducted an investigation and found that Canada Post had failed to comply with the Code's safety inspection requirements. However, Canada Post appealed the Health and Safety Officer's finding on the basis that subsection 125(1)(z.12) only applies to parts of the work place over which the employer has control. The matter eventually made its way up to the Supreme Court.

Supreme Court's Decision

In siding with Canada Post, a majority of the Supreme Court noted that the purpose of Part II of the Code (Occupational Health and Safety) is to prevent accidents and injury in the course of employment. Regarding

safety inspections in particular, the purpose of subsection 125(1)(z.12) is to permit the identification and removal of hazards in the work place. In order to fulfil this purpose, control over the work place is necessary.

In this case, Canada Post had no control over the carrier routes or individual points of call (e.g., many points of call are on private property). Even if a hazard existed on a carrier route or at a point of call, Canada Post would be unable to alter or fix the hazard in most cases. In the Supreme Court's words: "[a]n interpretation which imposed on the employer a duty it could not fulfil would do nothing to further the aim of preventing accidents and injury."

A majority of the Supreme Court also acknowledged that there would be practical limitations to requiring safety inspections along letter carrier routes and at points of call, given that Canada Post letter carriers travel approximately 72-million linear kilometres whilst delivering mail to 8.7-million points of call across the country.

Therefore, the Supreme Court confirmed that Canada Post's obligation to inspect the work place did not extend to carrier routes or points of call.

Lessons for Employers

Because *Canada Post Corp. v. Canadian Union of Postal Workers* dealt with the interpretation of a specific subsection of the Code, the Supreme Court's decision is only binding on federally-regulated employers.^[3] Nevertheless, the Supreme Court's reasons will be highly persuasive in terms of interpreting the Code's provincial counterparts.

In Ontario, for example, the *Occupational Health and Safety Act* ("Ontario OHSA") requires employers to inspect the condition of the work place at least once a month (or, if it is not practical to inspect the work place once a month, at least once a year). Much like in the Code, "work place" is broadly defined in Ontario OHSA as "any land, premises, location or thing at, upon, in or near which a worker works". Applying the Supreme Court's reasoning, it is likely that the safety inspection requirements under Ontario OHSA apply only to those work places that the employer controls.

Please note that safety inspection requirements vary from province-to-province. For more information, please contact a member of our Employment & Labour Relations Group.

by Paul Boshyk

[1] RSC 1985, c L-2.[ps2id id='1' target='']

[2] 2019 SCC 67.[ps2id id='2' target='']

[3] In Canada, the power to make laws is divided between the federal and provincial governments. In the area of employment law, the federal government has jurisdiction over employment laws for specific works and

undertakings within exclusive federal constitutional jurisdiction, such as air transportation, banks, marine shipping, ferry and port services, railways and interprovincial transportation (about 6% of workers in Canada).

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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