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SUPREME COURT OF CANADA: WORK PLACE SAFETY INSPECTIONS UNDER *CANADA LABOUR CODE* ONLY APPLY TO WORK PLACE OVER WHICH EMPLOYER HAS CONTROL

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The Supreme Court of Canada has held that an employer's work place inspection obligations under the *Canada Labour Code* (Code) only extend to that part of the work place over which it has physical control, and not to locations beyond its control where its employees may be engaged in work. This decision is welcome news for employers that may require employees to work outside of the employer's physical location.

In *Canada Post v. Canadian Union of Postal Workers*, 2019 SCC 67, the union had filed a complaint with Human Resources and Skills Development Canada that the employer failed to ensure the joint health and safety committee complied with the mandatory inspection obligations set out in s. 125(1) (z.12) of the Code. That provision states that the committee must inspect every part of a work place at least once a year. The union argued that the employer's work place inspection obligations for letter carriers involved not just the mail depot, but letter carrier routes and locations where mail is delivered ("Points of Call"). As noted by the majority of the Supreme Court of Canada, the letter carrier routes span over 72 million linear kilometres and involve 8.7 million Points of Call.

A Health and Safety Officer found that the employer failed to comply with its safety obligations. On appeal, it was undisputed before the Appeals Officer that Canada Post did not have physical control over the letter carrier routes or the Points of Call, many of which are on private property. He held that based on the language in the Code, which states that s. 125 applies "in respect of every work place controlled by the employer," the obligation relating to work place inspections applied only to that part of the work place over which the employer has control. The Federal Court dismissed the union's application for judicial review, but the Federal Court of Appeal (with one judge dissenting) allowed the application, holding that the employer's work place included the letter carrier routes and Points of Call.

A majority of the Supreme Court of Canada restored the Appeals Officer's decision, finding it was reasonable in accordance with its newly articulated standard of review analysis in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

It referred extensively to the reasons of the Appeals Officer, which did not "in any way display a fatal flaw in rationality or logic," and among other things noted that the Appeals Officer:

- first had regard to the statutory definition of work place ("any place where an employee is engaged in work for the employee's employer") and then reviewed the wording of section 125(1), noting that there "is a clear distinction between situations where work places are controlled by the employer and those where they are not";

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- had regard to the statutory context of the s. 125(1) obligation and noted that in order to fulfil it, 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;
- considered the practical implications of the union's interpretation in light of the purpose of the statute 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"; and
- noted that Canada Post had various policies and assessment tools in place to promote the health and safety of its employees "in all elements of their work," including protocols for identifying delivery hazards.

The majority stated:

> [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. [...]

Justices Abella and Martin dissented, holding that the conclusion that the safety inspection duty only applies to those work places within an employer's physical control was unreasonable and inconsistent with the purpose and text of the safety inspection provision.

This decision is based on the specific language of the Code, and it is important to remember that the language on work place inspection obligations varies depending upon the jurisdiction.

That being said, the decision is significant for all employers who have employees working outside of the four walls of an employer's physical work place, whether by telecommuting from their home, visiting clients, travelling in a mobile work place, or otherwise, due to its discussion of control over the work place. It overturns a Federal Court of Appeal decision that imposed obligations which, for many employers, were impractical and unmanageable. The decision also provides clear direction to federal employers and their joint health and safety committees regarding the extent and limits of their work place inspection obligations.

Michael Hines, Lauri Reesor and Gregory Power of Hicks Morley represented the following interveners in this case: DHL Express (Canada) Ltd., Federal Express Canada Corporation, Purolator Inc., TFI International Inc. and United Parcel Services Canada Ltd.

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