

**Canada Labour Code**  
**Part II**  
**Occupational Health and Safety**

Carolyn Pollard

and

Canada Post Corporation  
*respondent*

Decision No. 06-022

July 14, 2006

This appeal was heard by Appeals Officer Douglas Malanka in Brampton, Ontario, on February 16, March 20, April 25 and April 26, 2006. A conference call was also held on May 4, 2006 and written submissions were received from parties on May 12, 16 and 24, 2006.

**Appearances**

**For the appellant**

Wayne Nash, First Vice President, Canadian Union of Postal Workers, and employee representative on the local health and safety committee, West Area Collection and Delivery, Toronto, Ontario

Jane Marsh, Technical Advisor, Canadian Union of Postal Workers  
Carolyn Pollard, Rural and Suburban Mail Carrier, Canada Post Corporation  
Kellie Marsh, Rural and Suburban Mail Carrier, Canada Post Corporation

**For the respondent**

Stephen Bird, Counsel  
Peter MacTavish, Counsel, Canada Post Corporation  
Cathy Janveau, Manager Operations, Transformation Group, Rural and Suburban Mail Carriers

**Health and safety officer**

Ken Manella, Labour Program, Human Resources and Social Development Canada (formerly Human Resources and Skills Development Canada) Toronto District Office, Toronto, Ontario

- [1] On December 22, 2004, Carolyn Pollard, a rural and suburban mail carrier (RSMC) employed in Brampton, Ontario, by Canada Post Corporation (CPC), made an appeal pursuant to subsection 129(7) of the *Canada Labour Code (Code)*, Part II. The object of her appeal was the decision of absence of danger rendered by health and safety officer

(HSO) Ken Manella on December 14, 2004, following his investigation of her refusal to work on November 24, 2004.

- [2] Documents submitted by C. Pollard established the following chronological events that preceded her refusal to work on November 24, 2004.
- [3] From September 1998 to January 2004, C. Pollard performed the duties of a RSMC for CPC on a contract basis. Her work status changed on January 1, 2004, when CPC appointed her as an indeterminate RSMC employee for the same route. On appointment, CPC referred C. Pollard to a *Route Information Sheet*, which stated that she was required to have a mini van with a minimum of 100 cubic feet of interior space.
- [4] In June 2004, after approximately six months of employment (and six months prior to her refusal to work), M. Traversy, Vice-President, Operations Transformation, CPC, wrote to C. Pollard. Among other things, she informed C. Pollard that driving on the left shoulder<sup>1</sup> of roadways to deliver<sup>2</sup> mail to rural mail boxes (RMBs) was a violation of the highway traffic laws and no longer permitted by CPC. M. Traversy assured C. Pollard that her route had been structured<sup>3</sup> to deliver mail from the right side of the road.
- [5] This precipitated an exchange of letters over the next couple of months between C. Pollard and M. Traversy and between C. Pollard and L. VanderPloeg, her Brampton Supervisor. Essentially, C. Pollard disagreed that her route was structured by CPC for delivery on the right shoulder of the roadway through the front passenger side window. Moreover, she held that it was impossible to deliver mail in this manner because it required her to reach a distance of six to eight feet from her driver's seat to the RMBs. She maintained that the distance was even greater in winter, when snow was ploughed against the RMBs.
- [6] C. Pollard also expressed concern that she was unable to pull over off the traveled part of the roadway at several RMBs stops where the shoulder of the roadway was not sufficiently wide, or was non-existent due to the presence of roadway curbs. She noted that vehicular traffic was impeded when this occurred and this increased the risk of road rage.
- [7] On August 17, 2004, M. Traversy wrote to C. Pollard to reply that CPC was requiring customers to relocate their RMBs and restructuring her route so that mail delivery could be made from the right shoulder of the roadway through the front passenger side window of her vehicle.

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<sup>1</sup> Due to the location of various RMBs on mail routes, there was a long standing practice whereby RSMCs drove on the left shoulder of roadways, against opposing traffic, to pickup and deliver rural mail out the front passenger side window of their vehicle. It appears that the police tended to turn a blind eye to the practice, so that it continued for years, including to this day.

<sup>2</sup> The terms "deliver" or "delivery" in the context of this case include: placing mail, which can consist of parcels, envelopes and flyers, into mail boxes; picking up mail in the box for delivery; and raising the flag on the mail box, if there is one, to indicate that the mail box contains mail.

<sup>3</sup> CPC structures RSMC routes and specifies, among other things, the direction RSMCs are to follow along the various roadways of their route.

- [8] M. Traversy further expressed confidence that C. Pollard would be able to complete her route without impeding traffic because her route had been inspected as part of the annual inspection of RSMC routes and because it had been re-inspected in June 2004, following her complaint. She told C. Pollard to report any obstacles to RMBs to her supervisor who would ensure that the matter was rectified.
- [9] With regard to C. Pollard's complaint that the distance made it impossible to reach between the driver's seat and RMBs, M. Traversy replied that RSMCs have the option of purchasing narrow vehicles or vehicles with bench seats. She also noted that many RSMCs use a stick/reaching device to raise and lower the flag on the mail box.
- [10] On September 6, 2004, C. Pollard wrote to Human Resources Development Canada, Labour Program, to ask for immediate intervention as she did not feel that CPC was addressing her health and safety concerns. She provided the Department with a copy of all relevant correspondence. HSO Manella replied to C. Pollard and suggested that she give notice to CPC pursuant to section 127.1, *Internal Complaint Resolution Process*, of the *Code*, Part II. He asked her to try and resolve her health and safety concerns internally.
- [11] C. Pollard wrote back to HSO Manella on October 6, 2004, and confirmed that she had given notice to L. VanderPloeg as he suggested. She complained that L. VanderPloeg's response was that she would have to pay for a helper out of her own pocket.
- [12] HSO Manella arranged to meet with the parties to resolve the matter. However, before the meeting was held, CPC informed C. Pollard, on November 24, 2004, that her route had been restructured so that deliveries from the left-hand shoulder of the roadways were no longer necessary. CPC instructed C. Pollard that all her mail deliveries had to be made in the future from the right shoulder of the roadways through the front passenger side window of her vehicle. C. Pollard immediately refused to work.
- [13] HSO Manella began his investigation of C. Pollard's refusal to work on November 25, 2004 and issued his *Investigation Report and Decision* on December 14, 2004. I retain the following from his report and testimony received at the hearing held on February 16, 2006.
- [14] HSO Manella met with C. Pollard on November 25, 2004, in the presence of 14 other employer and employee participants. Participants included CPC management, CUPW union representatives and members of the workplace health and safety committee. Employee representatives agreed with C. Pollard that there were ergonomic health and safety concerns connected with delivering mail through the front passenger side window. They also concurred that there were traffic health and safety concerns where shoulders of the roadways were too narrow to pull the vehicle completely off the traveled part of the roadway. They further agreed that both problems were worse in winter because of snow banks.

[15] C. Pollard completed the following statement of refusal to work at the meeting:

The main safety concern is that the route is absolutely impossible to deliver from the driver's side across my flyers my parcels and my tray of mail out the window and open the door to the mail box put the mail in and lift the flag. I cannot get my legs even out from under the steering wheel to lift myself up and over mail. Also to undo my seatbelt I am at risk. I deliver to 740 homes by one day I would be in pain never mind every day. Also in the window slipping on the mail when it gets wet changing it from back to front and when the winter you cannot even get close to the boxes.

[16] HSO Manella confirmed that C. Pollard's route consisted of approximately 743 points of service, involving some 700 RMBs, one set of group mail boxes and three community mail boxes. For this work, she purchased a mini van vehicle that met the interior space specifications of CPC.

[17] C. Pollard told HSO Manella that CPC had not provided her with any training relative to delivering mail from the right shoulder of the roadway through the front passenger side window.

[18] CPC management maintained that they had safe work procedures and that mail delivery connected with driving on the right side of the road did not constitute a danger.

[19] CPC also told HSO Manella that the employer was not responsible for providing RSMCs with a paid helper or a vehicle equipped with right-hand drive. They held that it was up to the RSMC to purchase a vehicle equipped with a bench seat, as opposed to bucket or single seats, to allow easier access to RMBs.

[20] On December 3, 2004, HSO Manella accompanied Wayne Pike, Letter Carrier Supervisor, to look at the work of RSMCs and C. Pollard's route. HSO Manella invited Wayne Nash, 1<sup>st</sup> Vice President of the union and employee representative on the local health and safety committee, to participate in his investigation. However, W. Nash was unavailable and HSO Manella decided to proceed without him.

[21] For his demonstration, W. Pike followed two RSMCs who delivered rural mail together in the Brampton area as driver and helper. He then showed HSO Manella a portion of C. Pollard's route and demonstrated how one delivers mail through the front passenger side window. However, this demonstration did not actually involve handling mail. HSO Manella later noted in his investigation report that each road, each route, each shoulder and each delivery point were different. He concluded that it was difficult to compare any two delivery points.

[22] During his investigation, HSO Manella determined that CPC did not have any safe work procedures requiring the use of signs or warning lights on personal vehicles used by RSMCs while stopped on the shoulder of roadways, or regarding the delivery of mail on the right side of the roadway when working alone. CPC provided HSO Manella with a copy of the *Contracted Route Maintenance Handbook, June 2000*. However, he decided

that the handbook did not adequately address such issues as job hazard analysis, safe work procedures or employee training. He further noted that it appeared to be for management personnel.

- [23] After his investigation, HSO Manella decided that a danger did not exist for C. Pollard. He informed C. Pollard and CPC of his decision on December 14, 2004. In this regard, HSO Manella clarified at the hearing that he interpreted C. Pollard's refusal to work to deal only with ergonomic hazards related to delivering mail through the front passenger side window. Therefore, he had not considered traffic safety concerns related to the fact that C. Pollard could not remove her vehicle completely off the traveled part of the roadway at various RMB stops as part of her refusal to work.
- [24] Notwithstanding his decision on the absence of danger for C. Pollard, HSO Manella issued a direction to CPC on December 14, 2004, pursuant to subsection 145(1) of the *Code*. The direction ordered CPC to complete a hazard assessment of the work of all RSMCs working alone under the authority of the Brampton Hale Road Postal Station. The hazard assessment was to determine any known or foreseeable health and safety hazards to which an employee could be exposed during deliveries on their route. The assessment was also to develop written safe working procedures and to train all relevant employees on the procedures.
- [25] C. Pollard testified and provided documents at the hearing. I retain the following from her documents and testimony.
- [26] C. Pollard confirmed that it typically took her from six to eight hours to sort her mail and approximately four hours to complete her delivery route. She estimated her route to cover approximately 150 kilometres.
- [27] To describe how mail to be delivered was arranged in her mini van, C. Pollard explained that the mail typically consisted of letters, parcels and flyers. The sorted mail was arranged in plastic trays measuring approximately 36 x 18 x 8 to 10 inches. One tray was placed on the passenger seat and the rest was put in the back. The parcels were also stored in the back and flyers in the middle, between the front driver side and passenger side seats. When the mail tray placed on the passenger seat vehicle was empty, she got out of her vehicle to transfer the trays. She also had to get out of her vehicle to deliver parcels too large for the mail boxes.
- [28] C. Pollard testified that the posted speed limit on the various roadways along her route varied from 40 to 80 kilometres per hour. The amount of traffic had increased since she had begun delivering mail.
- [29] C. Pollard tried delivering mail from the right side of the roadway through the passenger side window, after M. Traversy first advised her that RSMCs were no longer permitted to drive on the left shoulder of the road to deliver the mail. This caused her to twist and injure her back and to bruise her leg. She also held that she could be seriously or fatally injured if her vehicle was struck from behind while she was stopped at an RMB and stretched across the passenger side front seat without her seat belt on.

[30] C. Pollard also confirmed that she obtained a medical note from her physician after CPC first told her that she had to drive on the right-hand shoulder to deliver mail through the passenger window. While the note refers to an on-going back problem, C. Pollard clarified in testimony that she has arthritis in her back and her physician was confirming that the twisting motion connected with mail delivery through the front passenger side window of her vehicle would aggravate her arthritis. The medical note read:

This patient who has an ongoing back problem will not be fit to do her mail route due to the twisting involved in delivering mail to the passenger side of the vehicle in a left hand drive car.

[31] C. Pollard confirmed that CPC had not instructed or trained her on how to deliver mail from the passenger side of the vehicle. For example, CPC had not instructed her on where to place the mail trays or how to reach the RMBs from the driver's side seat. She once tried to use a reaching device but it added to the difficulty of delivering mail and did not help picking up mail from the mail boxes. C. Pollard noted that HSO Manella had not actually observed mail being delivered along her route when he investigated her refusal to work.

[32] C. Pollard submitted a document dated September 19, 2005 that listed 90 addresses on her route where she alleged it was unsafe to deliver mail. In all but five stops, she alleged that the shoulders on the roadway in front of the RMBs were too narrow to pull her vehicle off the traveled portion of the road. The hazard associated with the other five stops related to the fact that snow was ploughed onto the shoulders in the winter. The list was given to management. To her knowledge, no one responded or appeared to do anything and she was not aware that CPC examined these RMB locations with two CUPW representatives as alleged at the hearing.

[33] K. Marsh testified that she had been employed by CPC for three years. During this time she worked as an RSMC replacement for approximately three months and had done C. Pollard's rural mail route. She was, therefore, familiar with the RMB stops on C. Pollard's route.

[34] K. Marsh agreed that there were insufficient shoulders at RMBs on C. Pollard's route and that the speed of traffic along the routes varied between 60 to 80 kilometres. She too complained to her supervisor about the absence of sufficient shoulders to pull over for RMB stops and was not aware that CPC had taken any action.

[35] K. Marsh experienced problems related to delivering mail from the passenger side window of the vehicle. Stretching from the driver's seat to reach mail boxes put a lot of stress on her back and shoulder, and the situation was worse if the mail boxes were leaning or located too high.

[36] K. Marsh recalled that she had filed an injury report and refused to continue delivering rural mail from the right side passenger window of her vehicle. She did so because of ergonomic and safety concerns and because of the possibility of being struck by another vehicle. CPC provided her with a paid helper for the duration of her employment term.

She added that she tried using a reaching device, but it was difficult and ineffective for handling parcels.

[37] A video filmed by CUPW on December 9, 2004, was offered as evidence at the hearing. While the video dealt with C. Pollard's route, it was confirmed that she had not been consulted regarding its production. However, C. Pollard confirmed in testimony that the RMB stops shown in the video were on her route. I retain the following from this video:

- road shoulders were insufficient on several roadways and in front of numerous RMB stops on C. Pollard's route. In some cases, there were no shoulders because of the presence of roadside curbs;
- the absence of sufficient roadway shoulders also existed at the bottom of hills and on curves;
- traffic volume involving cars and heavy trucks was significant at several stops along her route;
- several vehicles were seen changing lanes to avoid colliding with the mail delivery vehicle stopped at several RMBs on C. Pollard's route;
- at least once, a driver blew the horn of his vehicle when changing lanes to avoid colliding with the mail delivery van at a stop;
- posted speed limits varied on the different roadways from 50 to 80 kilometres per hour;
- several RMBs were leaning away from the highway; and
- RMBs varied relative to their size, shape, location and condition.

[38] Cathy Janveau, Manager Operations, Transformation Group, CPC, testified at the hearing. I retain the following from her testimony.

[39] C. Janveau was employed in her current position since 2003. As operations manager, she was responsible for developing RSMC operation policies and communicating them to local, regional and national post offices across Canada. As well, she provided guidance to local RSMC managers on day to day field operations.

[40] C. Janveau stated that RSMC operations were covered by CPC's corporate manual system. This system includes the *Delivery Reference Manual, November 2000*, that, among other things, deals with organization of the routes, provides an overview of products and deals with safety and delivery problems.

[41] The manual system also includes the *Contracted Route Maintenance Handbook, June 2000*, which is provided to supervisors, superintendents and post masters at local post offices. This handbook deals with points of call on routes, annual route inspections, unsafe mail boxes and other matters.

[42] In connection with this, I observed that the *Contracted Route Maintenance Handbook, June 2000*, confirmed on page 17 that RMBs were deemed to be unsafe by CPC if the road had shoulders that were too narrow to allow delivery. The provision reads:

**Guidelines for Unsafe Rural Mail Boxes (RMB) or Group Mail Boxes (GMB) sites:**

The inspecting officer should use the following guidelines to determine if an existing RMB or GMB site is unsafe:

- the road does not have sufficient shoulders to allow delivery employee or customers to remove their vehicles from through traffic;

- [43] C. Janveau agreed that CUPW's video showed that some of the mail stops on C. Pollard's route were unsafe, as the shoulders were not wide enough in front of some RMBs and vehicular traffic was being impeded. She confirmed CPC's policy that RSMC routes were to be inspected annually and that problems with RMBs were to be rectified by local supervisors, superintendents and post masters. However, C. Janveau could not explain why the problem related to leaning RMBS and insufficient roadway shoulders in front of RMBs on C. Pollard's route had not been rectified in the two to three years since her refusal to work.
- [44] C. Janveau also testified that RSMC training was left to local supervisors, superintendents and post masters. She was not aware if CPC kept any central training registry to record employee training.
- [45] C. Janveau confirmed that, on March 2, 2000, G. Stephenson, Director, Regional Transportation Contracting Services and Purchasing Group, Central Region, wrote to RSMC contractors in his region to remind them that provincial traffic legislation prohibited driving on the wrong or left side of the road to make deliveries. However, she confirmed that M. Traversy only reminded C. Pollard of this in 2004.
- [46] To demonstrate that CPC was proactively acting on health and safety issues, C. Janveau referred to a traffic study that the National Research Council (NRC) conducted for CPC in January 2006. The study looked at the safety issue of RSMCs not being visible when delivering mail on their routes. Following the study, CPC jointly signed a memorandum of understanding (MOU) with CUPW on April 10, 2006. In the MOU, CPC agreed to provide RSMCs with signs, emergency lights and reflective strips for their vehicles. C. Janveau added that CPC involved its employees in the NRC study by presenting them with an early draft of the NRC final report. At the time of her testimony, she thought that the study was at the national policy health and safety committee level.
- [47] C. Janveau also referred to a report entitled *Ergonomic Review of RSMC Rural Mail Box Delivery* and dated April 10, 2006. The study constituted an ergonomic review of rural and suburban mail box delivery. She was one of two participants in this study, whose role was to deliver mail to approximately 45 RMBs for each scenario over a two-day period.
- [48] C. Janveau confirmed that roadway shoulders were insufficient in front of some of the RMBs covered by the ergonomic study, but that this fact was not considered.
- [49] The purpose of the study was to conduct an ergonomic safety review of in-vehicle RSMCs performing RMB delivery via three different techniques, including:



- delivery from the passenger seat from three different vehicles (Ford Taurus sedan, GMC truck and a Venture van), with various options such as bench seats, bucket seats and centre consoles;
  - delivery using, from the driver side, a reaching device out the front passenger side window; and
  - delivery out the driver side window using a right hand drive vehicle.
- [50] Two data collection sessions were performed outdoors under winter conditions. They represented the worst-case weather scenario, as snow banks often limited how close the participants could come to the rural mail boxes.
- [51] The report noted that RSMCs' routes were structured differently relative to the total number of RMBs in a route and the number of RMBs visited per hour. It confirmed that this affected the RSMCs' exposure to any ergonomic risk factor inherent to RMB delivery. In connection with this exposure, the report also confirmed that customer compliance with CPC's RMB design and installation specifications was low. That is, RMBs varied relative to overall height, height of openings and type of door openings, width and the depth of RMBs, and to the distance of the RMBs from the roadway.
- [52] The report stated the following regarding in-vehicle RSMCs performing RMB delivery from the driver seat out the passenger window, which involved movement across the vehicle:
- ergonomic concerns increased across all observed delivery methods as the rate of RMBs per hour increased;
  - test results suggested that there was no immediate risk of injury relatively to delivering mail from the trucks or vans tested, but long term injury implications were a concern where the rate of RMBs per hour exceeded 37-40; and
  - RMB delivery from the driver seat of a car with bucket seats and a center console posed an unacceptable ergonomic safety hazard.
- [53] The report recommended the following measures to reduce exposure to ergonomic risk factors:
- in the short term, CPC should develop best ergonomic practices for shuffling across the seat, manipulating the letter containers and reaching RMBs. CPC should deem any situation where a RSMC cannot park within 25 inches of the RMB to be an impediment to mail delivery. Additionally, CPC should inform RSMC drivers about vehicle features that are advantageous from an ergonomic point of view; and
  - in the long term, CPC should investigate alternative delivery modes that do not require RSMCs to slide across their vehicles.
- [54] The study further concluded that RSMCs should not use a reaching device to make deliveries from the driver's seat out the passenger window because its use increased ergonomic risk and the reaching device itself made mail delivery difficult or impossible.

- [55] Finally, the study reported that there was no immediate risk of injury relatively to delivering mail from the driver's seat out of the driver's window of a specialty right-hand drive vehicle, but long term injury implications were a concern where the rate of RMBs per hour exceeded 50.
- [56] In his summation, Wayne Nash held that I should find that a danger existed for C. Pollard in respect of the ergonomic hazards and the traffic hazards where the roadway shoulders were too narrow to allow the RSMCs to get off the roadway when conducting RMB stops.
- [57] With regard to the ergonomic hazards associated with RSMC in-vehicle RMB delivery through the front passenger side window, W. Nash pointed to the fact that C. Pollard did not receive any training on this method. He reiterated that C. Pollard's route consisted of 700 mail stops and that she worked five days a week. He further noted that she had hurt her back and bruised her leg when she tried to deliver mail in this manner. He reminded me that K. Marsh had done C. Pollard's route and testified that delivering rural mail through the front passenger side window hurt her back. Finally, W. Nash held that CPC's ergonomic study was not helpful as it only examined 45 RMBs.
- [58] With regard to the traffic hazards associated with RSMC in-vehicle RMB delivery, W. Nash reiterated that RSMCs were not always able to pull their vehicles off the roadway due to narrow shoulders. He pointed out that posted speed limits along some of the roadways on C. Pollard's route were as high as 80 kilometres per hour and vehicles could be moving faster. He noted that K. Marsh shared C. Pollard's concerns and felt unsafe when she had to remove her seatbelt without being able to see traffic behind her. He added that K. Marsh further agreed that RSMCs were even more at risk if they were struck from behind by another vehicle while stopped at an RMB and reaching through the front passenger side window to deliver the mail.
- [59] On May 18, 2006, W. Nash responded to the decisions<sup>4</sup> that I had brought to the attention of the parties for comment following the hearings. He reiterated that the facts support a finding of danger with regard to the potential ergonomic and traffic hazards connected with the work, and that the hazards could reasonably be expected to cause injury to C. Pollard before they could be corrected. He reiterated that C. Pollard's rural mail route consisted of at least 700 RMB stops and that it was impossible for her to pull her vehicle off the road at RMB stops where there were insufficient shoulders.
- [60] In his summation, Stephen Bird, Counsel for Post Canada, held that I would exceed my jurisdiction if I addressed vehicular traffic hazards associated with RSMC in-vehicle RMB delivery in my decision. He reasoned that C. Pollard's refusal to work related only to ergonomic concerns and that she had not raised traffic concerns with HSO Manella when he investigated her refusal to work.

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<sup>4</sup> I submitted the following decisions to the parties: *C. Brazeau, B. Martin, B. Thoms, B. Woods, A. Ozga, P. Gour, and CAW and Securicor Canada Limited*, Appeals Officer Douglas Malanka, Decision No. 04-049, December 16, 2004; *Annette Robitaille and Leonard Hawkins and VIA Rail Limited*, Appeals Officer Douglas Malanka, Decision No. 05-055, December 20, 2005; and *Charmion Cole and Lynn Coleman and Air Canada*, Appeals Officer Douglas Malanka, Decision No. 06-004, February 28, 2006.

[61] In support of his argument that the ergonomic concerns of C. Pollard did not constitute a danger, S. Bird referred me to the following decisions:

- *Correctional Service of Canada, Drumheller Institution, and Mr. Larry de Wolfe*<sup>5</sup>;
- *Darren Welbourne and Canadian Pacific Railway Company*<sup>6</sup>;
- *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent*<sup>7</sup>;
- *Leah Walton, Shepody Healing Centre, and Correctional Service Canada*<sup>8</sup>;
- *United Electrical, Radio and Machine Workers of Canada Re Ontario Ministry of Labour Occupational Health and Safety Division*<sup>9</sup>;
- *Brunet v. Canada Labour Relations Board*<sup>10</sup>;
- *Canadian National Railway Co. and Tetley*<sup>11</sup>;
- *Johnson v. Canadian National Railway*<sup>12</sup>;
- *Francois Lalonde v. Canada Post Corp.*<sup>13</sup>;
- *Nella Spadafora v. Canadian Airlines International Ltd.*<sup>14</sup>;
- *Michelle Dawson and Canada Post Corporation*<sup>15</sup>.

[62] S. Bird first referred me to the *Correctional Service of Canada, Drumheller Institution, and Mr. Larry de Wolfe*<sup>16</sup> decision. He held that the facts in the case were not persuasive for a finding of danger if I applied the criteria described in paragraph 41 of the decision. On that basis, I should confirm HSO Manella's decision that a danger did not exist for C. Pollard. Paragraph 41 of the decision reads:

[41] For deciding if a danger exists, the health and safety officer must consider all aspects of the definition of danger and, on completion of his or her investigation, decide if the facts in the case support a finding of danger

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<sup>5</sup> *Correctional Service of Canada, Drumheller Institution, and Mr. Larry de Wolfe*, Appeals Officer D. Malanka, Decision No. 02-005, May 9, 2002.

<sup>6</sup> *Darren Welbourne and Canadian Pacific Railway Company*, Appeals Officer S. Cadieux, Decision No. 01-008, March 22, 2001.

<sup>7</sup> *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent*, Justice J. Gauthier, 2004 FJC 767, May 26, 2004.

<sup>8</sup> *Leah Walton, Shepody Healing Centre, and Correctional Service Canada*, Appeals Officer M. McDermott, Decision No. 05-008, February 3, 2005.

<sup>9</sup> *United Electrical, Radio and Machine Workers of Canada Re Ontario Ministry of Labour Occupational Health and Safety Division*, J. Wolfson, Director of Appeals, Decision No. 11, May 27, 1987.

<sup>10</sup> *Brunet v. Canada Labour Relations Board*, V.L. Marleau, Decision No. 1239, December 22, 1998.

<sup>11</sup> *Canadian National Railway Co. and Tetley*, Appeals Officer D. Malanka, Decision No. 01-020, August 21, 2001.

<sup>12</sup> *Johnson v. Canadian National Railway*, Canada Labour Relations Board, S. Fitzgerald, Decision No. 41, December 3, 1999.

<sup>13</sup> *Francois Lalonde v. Canada Post Corp.*, Canada Labour Relations Board, S. Brault, Decision No. 731, March 8, 1989.

<sup>14</sup> *Nella Spadafora v. Canadian Airlines International Ltd.*, Canada Labour Relations Board, J. P. Morneault, Decision No. 981, December 18, 1992.

<sup>15</sup> *Michelle Dawson and Canada Post Corporation*, C.L.C.A.O. D. No.22, Appeals Officer D. Malanka, Decision No. 02-023, October 23, 2002.

<sup>16</sup> *Correctional Service of Canada, Drumheller Institution, and Mr. Larry de Wolfe*, *supra*.

under the *Code*. This determination must be done on a factual basis and the facts must be persuasive since the right to refuse and danger provisions under the *Code* are considered to be exceptional measures. For a health and safety officer to find that a danger under the *Code* exists at the time of his or her investigation in respect of a potential hazard or condition, as in this case, the facts in the case must be persuasive that:

- a hazard or condition will come into being;
- an employee will be exposed to the hazard or condition when it comes into being;
- there is a reasonable expectation that the hazard or condition will cause injury or illness to the employee exposed thereto; and
- the injury or illness will occur immediately upon exposure to the hazard or condition.

- [63] In this regard, S. Bird also made reference to *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent*<sup>17</sup>, where Justice Gauthier referred to Appeals Officer Cadieux's decision in *Parks Canada Agency and Mr. Doug Martin and Public Service Alliance of Canada*<sup>18</sup>, which essentially contained the same criteria.
- [64] S. Bird referred me to paragraph 16 of *United Electrical, Radio and Machine Workers of Canada*<sup>19</sup>, where the adjudicator stated that the purpose of the Ontario health and safety statute was to protect the average worker and not a worker with special needs arising out of that worker's particular physical condition. S. Bird suggested that CPC might have had a duty to accommodate C. Pollard, who had a back problem, but her complaint did not constitute a danger because it related to her physical condition.
- [65] S. Bird also referred me to paragraph 24 of my decision in *Canadian National Railway Co. and Tetley*<sup>20</sup>, where I found that the employee could have physically repositioned his body to mitigate the ergonomic hazard. S. Bird argued that a danger did not exist for C. Pollard because she too could have repositioned her body to mitigate the ergonomic hazard. In this regard, he reiterated that there was no danger for C. Pollard because she controlled her environment and decided what body positioning or movement to use to effect delivery. He added that she also controlled the type of vehicle and vehicle options she would use for her route.
- [66] S. Bird then referred me to the *Leah Walton, Shepody Healing Centre, and Correctional Service Canada*<sup>21</sup> decision where Appeals Officer M. McDermott had accepted the employee's withdrawal of appeal and closed the file. He held I should close the file in this case without rendering a decision regarding danger because C. Pollard had similarly signed a settlement agreement with her employer and agreed to withdraw her appeal.

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<sup>17</sup> *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent, supra.*

<sup>18</sup> *Parks Canada Agency and Mr. Doug Martin and Public Service Alliance of Canada*, Appeals Officer S. Cadieux, Decision No. 02-009, May 23, 2002.

<sup>19</sup> *United Electrical, Radio and Machine Workers of Canada, supra.*

<sup>20</sup> *Canadian National Railway Co. and Tetley, supra.*

<sup>21</sup> *Leah Walton, Shepody Healing Centre, and Correctional Service Canada, supra.*

- [67] S. Bird later responded to the decisions that I had brought to the attention of the parties for comment following the hearings. He argued that they lead me to one of two options for a finding of danger in this case. Either, I had to assume that an unspecified type of motion connected with C. Pollard's in-vehicle RMB delivery existed which was reasonably certain to cause injury to C. Pollard. He argued against this option because he held that C. Pollard had not identified any particular unsafe motion connected with delivering rural mail at RMBs through the front passenger side window of her vehicle. Therefore, I would have to speculate on whether or not an unsafe act would occur and cause injury to C. Pollard. In the alternative, he held that I would have to assume that any movement connected with rural mail delivery by RSMCs carried the potential risk of causing injury. Such a conclusion, he argued, was irrational.
- [68] Finally, S. Bird also referred me to paragraph 71 of my decision in *Charmion Cole and Lynn Coleman and Air Canada*<sup>22</sup>, and held that the current definition of danger required an impending element because the injury or illness had to occur before the hazard or condition could be corrected or the future activity altered. He held that this was not the case here.
- [69] The issue in this case is whether or not a danger existed for C. Pollard at the time of HSO Manella's investigation of her refusal to work. To decide this, I must consider the Part II legislation, the facts in the case and the jurisprudence cited by parties.
- [70] Danger is defined in section 122(1) of Part II as follows:
- "danger" means any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system[.]
- [71] The definition means that the hazard or condition can be existing or potential and the activity, current or future. In this case, as C. Pollard refused to work before starting her deliveries, the hazards in question were potential in nature.
- [72] The Honourable Justice Gauthier stated in paragraph 36 of *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent*<sup>23</sup>, that for a finding of danger, one must ascertain in what circumstances the potential hazard or condition or future activity could reasonably be expected to cause injury or illness to any person and to determine that such circumstances will occur in the future as a reasonable possibility, as opposed to a mere possibility. Madame Justice Gauthier wrote:
- [36] In that respect, I do not believe either that it is necessary to establish precisely the time when the potential condition or hazard or the future

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<sup>22</sup> *Charmion Cole and Lynn Coleman and Air Canada, supra.*

<sup>23</sup> *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent, supra.*

activity will occur. I do not construe Tremblay-Lamer's reasons in *Martin* above, particularly paragraph 57, to require evidence of a precise time frame within which the condition, hazard or activity will occur. Rather, looking at her decision as a whole, she appears to agree that the definition only requires that one ascertains in what circumstances it could be expected to cause injury and that it be established that such circumstances will occur in the future, not as a mere possibility but as a reasonable one.

[My underline]

- [73] More recently, the Federal Court of Appeal commented on this in *Douglas Martin and Public Service Alliance of Canada v. Canada (Attorney General)*<sup>24</sup>. The Honourable Judge Rothstein stated in paragraph 37 that for a finding of danger, the determination to be made is whether it is more likely than not that what the applicant is asserting will take place in the future. Judge Rothstein wrote:
- [37] I agree that a finding of danger cannot be based on speculation or hypothesis. However, when attempting to ascertain whether a potential hazard or future activity could reasonably be expected to cause injury before the hazard could be corrected or the activity altered, one is necessarily dealing with the future. Tribunals are regularly required to infer from past and present circumstances what is expected to transpire in the future. The task of the tribunal in such cases is to weigh the evidence to determine whether it is more likely than not that what an applicant is asserting will take place in the future.
- [74] In my opinion, Justice Gauthier's finding in *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent*<sup>25</sup>, is not at odds with the above noted statement made by Judge Rothstein.
- [75] In light of these recent rulings by the Federal Court, I do not find Mr. Bird's reference to my decision in *Correctional Service of Canada and Mr. Larry De Wolfe*<sup>26</sup> and that of Appeals Officer Cadieux in *Parks Canada Agency and Doug Martin and Public Service Alliance of Canada*<sup>27</sup> to be particularly helpful.
- [76] The Part II definition of danger also specifies that for a finding of danger, the hazard, condition or activity must be reasonably expected to cause injury or illness *before the hazard or condition can be corrected or the activity altered*. Two decisions of the Federal Court enable us to interpret this notion. In *Martin v. Canada (Attorney General)*<sup>28</sup>, Justice Tremblay-Lamer stated in paragraph 59 that the definition of danger adopted in September 2000 still requires an impending element because the injury or illness has to

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<sup>24</sup> *Douglas Martin and Public Service Alliance of Canada v. Canada (Attorney General)*, 2005 F.C.A. 156, **May 6, 2005**.

<sup>25</sup> *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent*, *supra*.

<sup>26</sup> *Correctional Service of Canada and Mr. Larry De Wolfe*, *supra*.

<sup>27</sup> *Parks Canada Agency and Doug Martin and Public Service Alliance of Canada*, *supra*.

<sup>28</sup> *Martin v. Canada (Attorney General)*, 2003 FC 1158, [2003] F.C.J. No. 1463 (T.D.).

occur before the hazard or condition can be corrected or the activity altered. Paragraph 59 reads:

[59] Nevertheless, in my opinion, the new definition still requires an impending element because the injury or illness has to occur "before the hazard or condition can be corrected or before the activity is altered".

[My underline]

[77] In *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent*<sup>29</sup>, Justice Gauthier stated in paragraph 34 that the definition of danger does not require that the hazard, condition or activity could reasonably be expected to cause injury or illness every time that it occurs. In paragraph 35, she declared that it must be capable of causing injury or illness at any time, but not every time. In paragraph 36, she affirmed that it is not necessary to establish the precise time when the hazard, condition or activity will occur. These paragraphs read:

[34] The above statement is not entirely accurate. As mentioned in *Martin, supra*, the injury or illness may not happen immediately upon exposure, rather it needs to happen before the condition or activity is altered. Thus, here, the absence of handcuffs on a correctional officer involved in an altercation with an inmate must be reasonably expected to cause injury before handcuffs are made available from the bubble or through a K-12 supervisor, or any other means of control is provided.

[35] Also, I do not believe that the definition requires that it could reasonably be expected that every time the condition or activity occurs, it will cause injury. The French version « susceptible de causer » indicates that it must be capable of causing injury at any time but not necessarily every time.

[36] In that respect, I do not believe either that it is necessary to establish precisely the time when the potential condition or hazard or the future activity will occur. I do not construe Tremblay-Lamer's reasons in *Martin* above, particularly paragraph 57, to require evidence of a precise time frame within which the condition, hazard or activity will occur. Rather, looking at her decision as a whole, she appears to agree that the definition only requires that one ascertains in what circumstances it could be expected to cause injury and that it be established that such circumstances will occur in the future, not as a mere possibility but as a reasonable one.

[My underline]

[78] It follows from the above citations that it is not necessary to establish the precise time when the hazard, condition or activity in question will occur, or that it occurs every time. I further interpret from these references that, where it is not possible to precisely determine the time when the injury or illness will occur, it is nevertheless necessary to

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<sup>29</sup> *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent, supra.*

determine the circumstances under which the “impending” element of the definition will come into effect.

- [79] With regard to S. Bird’s contention that I would exceed my jurisdiction under subsection 146.1(1) of the *Code* if I addressed highway safety hazards, I disagree with both of his suppositions. Specifically, I do not agree with his contention that C. Pollard’s refusal to work on November 24, 2004 related only to the ergonomic hazards associated with her rural mail delivery. Nor do I agree with his contention that I would exceed my jurisdiction by dealing with the road safety hazards even if C. Pollard had not raised them in her refusal to work complaint.
- [80] With regard to whether or not C. Pollard’s refusal to work included road traffic safety hazards, the evidence shows that she wrote to HSO Manella on October 6, 2004 and expressed her continuing concerns regarding her rural mail delivery to RMBs through the front passenger side window of her vehicle. She provided HSO Manella with copies of documents exchanged between her and CPC management that confirmed that her concerns dealt with both ergonomic and highway traffic hazards.
- [81] Moreover, C. Pollard reiterated her health and safety concerns regarding her refusal to work at the meeting that HSO Manella held on November 25, 2004 to investigate her refusal to work. HSO Manella’s notes confirm that the discussion included reference to both ergonomic hazards and work related traffic hazards.
- [82] Additionally, the refusal to work statement that C. Pollard provided HSO Manella on November 25, 2004, included the statement “[a]lso to undo my seatbelt I am at risk.”
- [83] I further note that the video of C. Pollard’s route that CUPW filmed a few days following her refusal to work also focused on the road safety hazards associated with her route.
- [84] Finally, HSO Manella issued a direction to CPC in respect of the highway hazards following his investigation pursuant to subsection 145(1) (*termination of a contravention*) of Part II. In doing so, he effectively concluded that highway hazards did not constitute a danger for C. Pollard.
- [85] In my opinion, HSO Manella had received sufficient information to be aware – or he ought to have been aware – that C. Pollard’s health and safety concerns at the time of her refusal to work related to both ergonomic and traffic hazards.
- [86] With regard to Mr. Bird’s position that I would exceed my jurisdiction under subsection 146.1(1) of the *Code* if I addressed the highway hazards, I rely on the following:
- subsection 146.1(1) specifies that an Appeals Officer is to investigate into the circumstances of an appeal made under subsections 146.(1) or 129(7); it reads:  
  
146.1 (1) If an appeal is brought under subsection 129(7) or section 146, the appeals officer shall, in a summary way and without delay, inquire into the circumstances of the decision or direction, as the case may be, and the reasons for it and may



- (a) vary, rescind or confirm the decision or direction; and
  - (b) issue any direction that the appeals officer considers appropriate under subsection 145(2) or (2.1).
- section 146.2 gives Appeals Officers broad investigation powers to inquire into an appeal. For example, they may summon witnesses and compel them to give evidence and submit documents; administer oaths; receive evidence that they see fit; examine records; and determine the procedure to be followed as long as they abide by the principles of natural justice;
  - section 122.1, the purpose clause of Part II, convinces me that I would be remiss, if not totally irresponsible, if I failed to act where the facts of a case convince me that a danger exists for any person. It reads:

122.1 The 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.

- in *Douglas Martin and Public Service Alliance of Canada v. Canada (Attorney General)*<sup>30</sup>, the Federal Court of Appeal ruled that the review made by an Appeals Officer is *de novo*;
- in that same decision, Justice Rothstein ruled that an Appeals Officer is authorized by subsection 145.1(2) of Part II to issue a direction pursuant subsection 145(1) should the Appeals Officer conclude that Part II is being contravened. Subsection 145.1(2) reads:

(2) For the purposes of sections 146 to 146.5, an appeals officer has all the powers, duties and immunity of a health and safety officer.

[87] I fail to see how this would not include a finding of danger in the context of the inquiry conducted into an appeal made pursuant to subsections 146(1) or 129(7). For these reasons, I conclude that I am empowered under the *Code* to look into all the circumstances surrounding an appeal and to make whatever decision I feel is necessary, appropriate and consistent with the facts and the purpose of Part II.

[88] In my decision, I give no weight to S. Bird's argument that C. Pollard could have avoided injury because she had the option of buying any vehicle she wished. Nor do I give weight to his argument that she could have altered the methodology of delivery relative to the mail trays. At the time of her refusal to work, C. Pollard was employed by CPC as an indeterminate employee and not as an independent contractor. Under section 124 of the *Code*, the employer is responsible for ensuring the health and safety of all its employees. Therefore, if injury was preventable through options relative to the selection of a vehicle or the work procedures, CPC had the duty under Part II to inform its employees of these options and to provide them the necessary training on them. For reference, section 124 reads:

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<sup>30</sup> *Douglas Martin and Public Service Alliance of Canada v. Canada (Attorney General)*, *supra*.

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

- [89] In connection with this, I note that the ergonomist in the CPC ergonomic 4 study recommended the following measures in line with this to reduce RSMC exposure to ergonomic risk factors:
- in the short term, CPC should develop best ergonomic practices for shuffling across the seat, manipulating the letter containers and reaching RMBs. CPC should deem any situation where a RSMC cannot park within 25 inches of the RMB to be an impediment to mail delivery. Additionally, CPC should inform RSMC drivers about vehicle features that are advantageous from an ergonomic point of view; and
  - in the long term, CPC should investigate alternative delivery modes that do not require RSMCs to slide across their vehicles.
- [90] S. Bird argued that C. Pollard had an existing back injury and so any danger she would experience was due to her own health situation. Therefore, he held that CPC's only responsibility may have extended to "accommodate" C. Pollard. I do not assign any significant weight to this because I found reliable and credible C. Pollard's testimony that she had an arthritic condition in her back, as opposed to an on-going back problem that required the formal job accommodation referred to by S. Bird. I further interpret from her physician's note that the problem for C. Pollard was the twisting involved in delivering mail through the passenger side of her vehicle.
- [91] While I am not taking a position here relative to the application of the "average person" concept for interpreting the definition of danger in Part II, I would expect that the "average person" concept referred to by S. Bird includes a range of physical and mental frailties normal to the human condition. These physical and mental frailties typically may get magnified with age without requiring a formal job accommodation by the employer.
- [92] In this perspective, there is evidence in section 14.48 of Part XIV, Materials Handling, of the *Canada Occupational Health and Safety Regulations* that the employer is required to develop procedures that take into account the employee's capabilities. I see little difference in principle relative to the handling of mail. Section 14.48 reads:
- 14.48 Where an employee is required manually to lift or carry loads weighing in excess of 10 kg, the employer shall instruct and train the employee
- (a) in a safe method of lifting and carrying the loads that will minimize the stress on the body; and
  - (b) in a work procedure appropriate to the employee's physical condition and the conditions of the work place.
- [My underline]

- [93] Based on the evidence, I believe that the back problem referred to by C. Pollard's physician falls within the context of the "average person" and is not associated with a job accommodation obligation under another statute than Part II.
- [94] In my further opinion, there is no basis for S. Bird's contention that there can be no finding of danger because C. Pollard had not specified what movement would cause injury to her. To the contrary, C. Pollard indicated that she had to reach from six to eight feet to deliver mail to RMBs through the front passenger side window, to pick up mail from the RMBs and to raise the flag on the RMBs. She specified that the required stretching and twisting injured her back and leg. She complained that this was made worse by the fact that she made approximately 700 RMB stops each day, 5 days a week, and that her route took approximately 4 hours to complete.
- [95] As previously cited, Justice Gauthier stated in *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent*<sup>31</sup> that the definition only requires that one ascertains in what circumstances the potential hazard could be expected to cause injury and that it be established that such circumstances will occur in the future, not as a mere possibility but as a reasonable one. The following circumstances were established in evidence in this regard.
- [96] The CPC ergonomic report concluded that associated ergonomic concerns increased across all observed delivery methods as the rate of RMBs per hour increased. The report suggested that there was no immediate risk of injury in delivering mail from the truck or vans tested in the study, but cautioned that long term injury implications were a concern where the rate of RMBs per hour exceeded 37-40. In this case, C. Pollard had to make 700 RMB stops in approximately 4 hours. To stay within 40 RMBs per hour, C. Pollard would take more than 17 hours every day to complete her route. Thus her actual RMB delivery rate exceeded four times the rate of 40 RMBs per hour. Based on this, and that fact that the ergonomic study looked only at 45 RMB stops per scenario, I give little weight to the suggestion in the report that there might not be an immediate risk to RSMCs associated with the work.
- [97] Added to this, CPC had not provided C. Pollard with training on the delivery of rural mail from the right-hand shoulder of roadways that was appropriate to her physical condition and work environment when it advised her on November 24, 2004, that her deliveries had to be carried out in this manner. In fact, CPC did not provide her with any training. The absence of training was not surprising because it appeared that CPC had not considered the need to revise its RSMC in-vehicle RMB delivery procedures in conjunction with its notices to RSMC's that delivery on the left-hand shoulder of roadways was no longer permitted.
- [98] With regard to C. Pollard's specific work environment, the video confirmed that there were several RMBs along her route that were leaning away such that the distance required to reach into the mail box and raise the flag was even greater than normal.

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<sup>31</sup> *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent, supra.*

- [99] In my opinion, it is reasonable in the aforementioned circumstances to expect that the hazard related to stretching and twisting in order to deliver rural mail to RMBs through the front passenger window of her vehicle could reasonably be expected to cause injury to C. Pollard.
- [100] In addition to the aforementioned circumstances, I believe that the following facts further confirm the impending element required by Part II.
- [101] First, there was no evidence in the case that CPC had consulted with its RSMCs through its health and safety committees regarding changes to the long standing work practice of delivering rural mail to RMBs from the left shoulder of roadways through the driver's side window of the vehicle. This was necessary because RSMC in-vehicle RMB delivery through the front passenger side window significantly changed how the work was done and impacted on RSMCs health and safety. In my opinion, there was no evidence in the case to conclude that this would be corrected in the immediate future. In this regard, I refer the employer to paragraphs 125(1)(z.05) and (z.06) and paragraphs 134.1(4)(h) and 135(7)(i) of Part II, which state:

125(1) ... every employer shall...

(z.05) consult the policy committee or, if there is no policy committee, the work place committee or the health and safety representative to plan the implementation of changes that might affect occupational health and safety, including work processes and procedures;

(z.06) consult the work place committee or the health and safety representative in the implementation of changes that might affect occupational health and safety, including work processes and procedures;

134.1(4) A policy committee

(h) shall participate in the planning of the implementation and in the implementation of changes that might affect occupational health and safety, including work processes and procedures.

135(7) A work place committee, in respect of the work place for which it is established,

(i) shall participate in the implementation of changes that might affect occupational health and safety, including work processes and procedures and, where there is no policy committee, shall participate in the planning of the implementation of those changes[.]

- [102] Moreover, the evidence indicated that the complaint resolution process in place at CPC was inadequate. In this regard, I refer to the evidence that CPC did not adequately respond to the health and safety complaints of C. Pollard or K. Marsh regarding ergonomic and highway traffic hazards.

[103] In addition, the video and other evidence established that, either C. Pollard's rural route was not being inspected on an annual basis as specified by CPC, or action was not being taken to correct the hazards related to insufficient shoulders on roadways and non-compliant RMBs. The same RMB violations continued along C. Pollard's route for more than three years without being corrected.

[104] The evidence also confirmed that CPC did not proactively consult its employees on health and safety studies through its health and safety committees. This was demonstrated by the traffic safety study that the NRC conducted on behalf of CPC. Similarly, CPC did not consult its employees, through the health and safety committees, regarding the design and conduct of the ergonomic study of hazards associated with rural mail delivery by RSMCs. C. Janveau's evidence was that CPC shared the results of the studies after the fact. In this regard, I would refer CPC to paragraphs 134.1(4)(d) and 135(7)(e) of Part II, which read:

134.1(4) A policy committee

(d) shall participate to the extent that it considers necessary in inquiries, investigations, studies and inspections pertaining to occupational health and safety;

135(7) A work place committee, in respect of the work place for which it is established,

(e) shall participate in all of the inquiries, investigations, studies and inspections pertaining to the health and safety of employees, including any consultations that may be necessary with persons who are professionally or technically qualified to advise the committee on those matters[.]

[105] Finally, C. Janveau testified that she had not received any training regarding Part II and her responsibilities there under. I would refer her and CPC to paragraph 125(1)(z) of Part II, which reads:

125(1) .... every employer shall...

(z) ensure that employees who have supervisory or managerial responsibilities are adequately trained in health and safety and are informed of the responsibilities they have under this Part where they act on behalf of their employer[.]

[106] All of this suggests that the internal responsibility system at CPC was somewhat dysfunctional at the time. Based on this, and on the totality of the evidence, I find that it is reasonable in the circumstances to expect that C. Pollard would have been injured by exposure to the ergonomic hazards connected with delivering mail through the front passenger side window of her vehicle before the hazards could be corrected.

[107] S. Bird argued that any danger faced by C. Pollard was normal to her work, as the process was common to all persons delivering rural mail. However, Justice Gauthier pointed out in paragraph 55 of *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent*<sup>32</sup>, that a normal danger is not a danger connected with the methodology that could usually be altered in order to eliminate or avoid the danger. This would apply in respect of C. Pollard. Paragraph 55 reads:

[55] The customary meaning of the words in paragraph 128(2)(b) supports the views expressed in those decisions of the Board because "normal" refers to something regular, to a typical state or level of affairs, something that is not out of the ordinary. It would therefore be logical to exclude a level of risk that is not an essential characteristic but which depends on the method used to perform a job or an activity. In that sense and for example, would one say that it is a normal condition of employment for a security guard to transport money from a banking institution if changes were made so that this had to be done without a firearm, without a partner and in an unarmoured car?

[108] Finally, I give no weight to the CPC-CUPW agreement that C. Pollard signed on this matter. In my opinion, the agreement was inadequate for CPC to meet its duties under Part II and it is therefore to be ignored.

[109] As to the potential hazards related to traffic safety, I find that it is reasonable to conclude that C. Pollard or another person could have been injured in the following work circumstances before the hazards could be corrected.

[110] C. Pollard and K. Marsh gave uncontested evidence that there were RMBs where C. Pollard could not pull her vehicle completely off the traveled part of the roadway to safely deliver the mail because its shoulder was too narrow or non-existent due to roadway curbs. The video demonstrated that, where the RSMC's vehicle remained on the traveled part of the road, traffic was impeded and vehicles had to change lanes to avoid the vehicle. The video also showed that posted traffic speeds along portions of C. Pollard's route were up to 80 kilometres per hour and that traffic included heavy trucks.

[111] At the time of C. Pollard's refusal to work, RSMC vehicles, including that of C. Pollard, were not equipped with safety equipment warning other vehicles of the presence of a postal vehicle that was stopped on the side of the road to deliver mail. The risk increased when weather conditions impede driver vision on the highway.

[112] C. Pollard and K. Marsh also gave uncontested evidence that it was necessary to remove the vehicle seat belt to deliver mail to an RMB. This placed the RSMCs, including C. Pollard at an even higher risk.

[113] As previously noted, the evidence indicated that the complaint resolution process in place at CPC was inadequate.

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<sup>32</sup> *Juan Verville and Service Correctionnel du Canada, Institution Pénitentiaire de Kent, supra.*

- [114] All of this suggests to me that the question is more *when*, than *if*, an accident will occur in the future.
- [115] In my opinion, HSO Manella erred in his decision because he looked too narrowly at the issues related to C. Pollard's refusal to work and did not consider the circumstances in existence at the time of C. Pollard's refusal to work.
- [116] For all the aforementioned reasons, I find that a danger existed for C. Pollard in respect of the potential traffic and ergonomic hazards related to her work. Therefore, I hereby rescind the decision of HSO Manella that a danger did not exist for C. Pollard at the time of his investigation of her refusal to work.
- [117] Furthermore, since I am convinced that a danger still exists despite the encouraging measures mentioned in evidence that CPC has recently taken, I am instructing CPC by the attached direction to ensure that C. Pollard and any other employee are protected from the danger.
- [118] Finally, in light of the findings made in this case, I encourage HSO Manella or any other health and safety officer, to verify CPC's compliance with Part II and to take whatever measures are necessary to assist CPC toward a more effective internal responsibility system relative to changes to work place processes and procedures, and to the conduct of investigations, studies and inspections pertaining to employee health and safety.

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Douglas Malanka  
Appeals Officer

APPENDIX I

**IN THE MATTER OF CANADA LABOUR CODE  
PART II – OCCUPATIONAL HEALTH AND SAFETY**

**DIRECTION TO THE EMPLOYER PURSUANT TO PARAGRAPHS 145(2)(a) and (b)**

On November 25, 2004, and December 3, 2004, health and safety officer Ken Manella conducted an investigation into the refusal to work of rural and suburban mail carrier (RSMC) Carolyn Pollard, who, on behalf of Canada Post Corporation (CPC), an employer subject to *the Canada Labour Code*, Part II, doing business at 26 Hale Road, Brampton, Ontario, the said business known as Canada Post, had to perform duties on different rural roadways in Brampton, Ontario.

RSMC Pollard appealed under subsection 129(7) of the *Canada Labour Code*, Part II, the decision of absence of danger made by health and safety officer Manella after his investigation. Following my inquiry into the circumstances of that decision, I find that a danger existed for C. Pollard in connection with RSMC in-vehicle rural mail box (RMB) deliveries or pick-ups through the front right passenger side window of her vehicle in the following two circumstances:

*First, C. Pollard has to stretch and twist her body to reach from her driver's seat through the front passenger side window of her vehicle to deliver mail to approximately 700 RMBs stops per day, 5 days a week, without having received instruction and training in an ergonomic work procedure appropriate to her physical condition, the conditions of her vehicle and the conditions of the different delivery and pick-up work places (the mail boxes' positions). In addition, several of the RMBs along her route are not in compliance with CPC positioning and placement specifications, such that the distance to deliver mail to the RMBs is greater.*

*Secondly, a danger exists when C. Pollard has to make rural mail delivery stops where the shoulders of the road are too narrow or non-existent due to curbs, such that she cannot pull her vehicle off the traveled part of the roadway. Also, a danger exists because her vehicle is not equipped with warning devices to warn other drivers that her mail vehicle is stopped on the shoulder of the roadway for mail delivery. As a result, she is exposed, in fair and inclement weather, to the hazard of being struck by other cars and heavy trucks on roadways where speed can vary between 40 and 80 kilometres per hour.*

Therefore, you are HEREBY DIRECTED, pursuant to subparagraph 145(2)(a)(i) of the *Canada Labour Code*, Part II, to take appropriate and immediate measures to correct these two hazards that constitute a danger.

Furthermore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(b) of the *Canada Labour Code*, Part II, to cease RSMC in-vehicle RMB delivery activity carried out by C. Pollard until such time as you have complied with the present direction, which does not prevent you from taking all measures necessary for the implementation of the direction.



Ottawa, July 14, 2006

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Douglas Malanka  
Appeals Officer

To: Canada Post Corporation  
26 Hale Road  
Brampton, Ontario L6W 3M0

## Summary of Appeals Officer's Decision

**Decision No.:** 06-022

**Applicant:** Carolyn Pollard

**Respondent:** Canada Post

**Provisions:** *Code*, 122,125, 128, 129, 129 134.1, 135, 145, 145.1 and 146.1  
*Regulations*, 14.48

**Keywords:** danger, rural and suburban mail carrier, stretch and twist, ergonomic, hazards, impede traffic, roadway shoulders, and delivery through passenger side window.

### Summary:

A rural and suburban mail carrier (RSMC) refused to deliver mail to rural mail boxes (RMBs) on her route. She complained that delivering mail out the passenger side window of her vehicle could cause her injury due to the stretching and twisting involved in reaching into the box and afterwards raising the flag. She also complained that other vehicular traffic on the roadways could collide with her mail delivery vehicle because the shoulders of the roadways in front of numerous RMBs were insufficient or non-existent and she was unable to pull her vehicle off the travelled part of the roadway.

The health and safety officer who investigated her refusal to work looked into her ergonomic concerns connected with mail delivery out the passenger window of her vehicle and decided that a danger did not exist for the RSMC. He did not rule on the traffic hazards.

Following his review of the appeal, the Appeals Officer considered the numerous circumstances connected with RSMC delivery to RMBs including an ergonomic study conducted by Canada Post Corporation subsequent to health and safety officer's decision. The Appeals Officer decided that a danger existed for the RSMC with regard to both the ergonomic and traffic hazards. The Appeals Officer directed Canada Post Corporation to take appropriate and immediate measures to correct the two hazards that constituted a danger and, in the meantime, to cease mail delivery carried out by the employee.