

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120202

Docket: A-441-10

Citation: 2012 FCA 36

**CORAM: BLAIS C.J.
EVANS J.A.
SHARLOW J.A.**

BETWEEN:

TURNAROUND COURIERS INC.

Applicant

and

CANADA POST CORPORATION

**Intervener
(supporting the Applicant)**

and

CANADIAN UNION OF POSTAL WORKERS

Respondent

and

ATTORNEY GENERAL OF ONTARIO

Intervener

Heard at Toronto, Ontario, on January 12, 2012.

Judgment delivered at Ottawa, Ontario, on February 2, 2012.

REASONS FOR JUDGMENT BY:

EVANS J.A.

CONCURRED IN BY:

**BLAIS C.J.
SHARLOW J.A.**

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REASONS FOR JUDGMENT

EVANS J.A.

Introduction

[1] The question to be decided in this case is whether a bicycle and pedestrian courier company is providing “Postal Service” within the meaning of section 91(5) of the *Constitution Act, 1867* (U.K.) 30 & 31 Victoria, c. 3, by delivering time-sensitive letters and packages exclusively within Toronto. If it is, the company’s operations are subject to the laws enacted by Parliament and, as a

federal undertaking or business within the meaning of section 2 of the *Canada Labour Code*, R.S.C 1985, c. L-2 (Code), the Code applies to its labour relations. However, if the company is not providing “Postal Service”, it is a local undertaking under section 92(10) of the *Constitution Act, 1867*, and the laws of Ontario regulate its labour relations.

[2] This question arises from an application for judicial review by an employer, TurnAround Couriers Inc. (TurnAround), to set aside a decision of the Canada Industrial Relations Board (Board), dated October 18, 2010 (2010 CIRB 544).

[3] In that decision, the Board held that TurnAround was providing a postal service within the meaning of section 91(5) and that its operations therefore fell within the competence of Parliament. As a result, the Board had jurisdiction under the Code to certify the Canadian Union of Postal Workers (CUPW) as the sole bargaining agent for TurnAround’s employees.

[4] Canada Post Corporation (CPC) and the Attorney General of Ontario intervened in support of TurnAround’s application, which CUPW, the respondent, opposes.

[5] There is almost no judicial authority, or academic commentary, on the meaning and application of section 91(5), which provides as follows:

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming

91. Il sera loisible à la Reine, de l'avis et du consentement du Sénat et de la Chambre des Communes, de faire des lois pour la paix, l'ordre et le bon gouvernement du Canada, relativement à toutes les matières ne tombant pas

within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

...

5. Postal service

...

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

dans les catégories de sujets par la présente loi exclusivement assignés aux législatures des provinces; mais, pour plus de garantie, sans toutefois restreindre la généralité des termes ci-haut employés dans le présent article, il est par la présente déclaré que (nonobstant toute disposition contraire énoncée dans la présente loi) l'autorité législative exclusive du parlement du Canada s'étend à toutes les matières tombant dans les catégories de sujets ci-dessous énumérés, savoir :

[...]

5. Le service postal

[...]

Et aucune des matières énoncées dans les catégories de sujets énumérés dans le présent article ne sera réputée tomber dans la catégorie des matières d'une nature locale ou privée comprises dans l'énumération des catégories de sujets exclusivement assignés par la présente loi aux législatures des provinces.

[6] For the reasons that follow, I do not agree that TurnAround's operations constitute "Postal Service" for the purpose of section 91(5), the only head of federal power that could apply to the present facts. Rather, they are a local undertaking within the meaning of section 92(10) of the *Constitution Act, 1867*, and are thus within provincial legislative competence.

[7] Accordingly, I would grant the application for judicial review and set aside the Board's decision, on the ground that the Board had no constitutional jurisdiction to certify CUPW as the

bargaining agent for TurnAround's employees. I have included as an Appendix to these reasons the statutory provisions to which I refer.

Factual background

[8] The relevant facts are not in dispute and can be stated briefly. TurnAround is a for-profit corporation with a social mission: to provide "at-risk" youth with an opportunity to turn around their lives by offering them employment as couriers and in its office. The company also provides interest-free loans to its employees to purchase bikes, helmets, locks, and maps, together with other forms of assistance, including scholarships to those wishing to return to school. Its aim is to help young people experiencing difficulties in life to gain self-confidence and enter the mainstream economy.

[9] At the material time, TurnAround employed six bicycle couriers and two walkers. Most of their pick-ups and deliveries were within the central core of Toronto. In addition, employees sometimes travelled by subway to collect or deliver mail and packages for customers further out in the Greater Toronto Area (GTA). TurnAround operated exclusively within Ontario.

[10] TurnAround generally delivered material on the same day that it was picked up. This is a service that the CPC did not provide and was not within the terms of its statutory monopoly. TurnAround had no contracts or any other connections with either the CPC or an inter-provincial carrier.

[11] On June 8, 2010, the Board certified CUPW as the bargaining agent for a unit comprising the couriers employed by TurnAround: Certification Order No. 9879-U. TurnAround was self-represented at the Board hearing by its president. No one questioned whether the Board had the constitutional jurisdiction to deal with CUPW's application for certification.

[12] After the Board certified CUPW, TurnAround retained counsel who requested the Board to exercise its jurisdiction under section 18 of the Code to review and rescind its order, on the ground that TurnAround's operations were not subject to federal law and the certification order was therefore beyond the constitutional limits of the Board's jurisdiction.

Decision of the Board

[13] Despite objections by CUPW, the Board exercised its discretion under section 18 of the Code to review the certification order. CUPW has not challenged this decision.

[14] On the basis of written submissions from the parties on the constitutional law issue, the Board held that section 91(5) was the only possible source of federal legislative competence over TurnAround's operations. This was because, unlike national and international courier companies such as FedEx and Purolator, TurnAround operated exclusively within a province and its activities were not integral to any inter-provincial work or undertaking. The sole question for the Board to decide, therefore, was whether TurnAround was providing a postal service within the meaning of section 91(5).

[15] The Board noted at the outset of its analysis (at para. 27) that in *Reference re Minimum Wage Act of Saskatchewan*, [1948] S.C.R. 248 at 270 (*Minimum Wage Act Reference*), Justice Estey had stated that “Postal Service” in section 91(5) was “a phrase of the widest import”.

[16] Turning to the *Canada Post Corporation Act*, R.S.C. 1985, c. C-10 (CPC Act), the Board observed that section 15 limits CPC’s exclusive privilege under section 14 of collecting, transmitting, and delivering letters within Canada. In particular, paragraph 15(1)(e) provides as follows:

<p>15. (1) The exclusive privilege referred to in subsection 14(1) does not apply to</p>	<p>15. (1) Le privilège exclusif octroyé au paragraphe 14(1) ne s’applique pas aux documents suivants :</p>
--	---

...

[...]

(e) letters of an urgent nature that are transmitted by a messenger for a fee at least equal to an amount that is three times the regular rate of postage payable for delivery in Canada of similarly addressed letters weighing fifty grams;

e) les lettres urgentes transmises par porteur moyennant une rétribution au moins égale à trois fois le port exigible pour la distribution au Canada de lettres de destination comparable pesant cinquante grammes;

...

[...]

[17] The Board based its decision largely on this provision, and the fact that a statutory object of the CPC is to establish and operate “a postal service”, not the postal service (CPC Act, paragraph 5(1)(a)). It reasoned (at para. 29) that Parliament intended that the CPC would not necessarily be the sole provider of postal services

... and contemplated that other enterprises could and would be involved in the provision of postal services within the meaning of section 91(5) of the *Constitution Act*.

[18] The Board then examined the activities of TurnAround from a functional and practical perspective, and concluded (at para. 33) that

... the pith and substance of TurnAround's operations is the collection, transportation and delivery, for a fee, of small items capable of being carried by someone on foot or on a bicycle. The items that TurnAround deals with, generally letters and small packages, are clearly "mailable matter" within the meaning of the *CPC Act*. ... But for their time sensitive nature, these are items that could be carried by CPC in the normal course of its operations.

[19] On the basis of the record before it, and distinguishing the few decisions (mainly by labour boards) cited to it, the Board held (at para. 37) that

... TurnAround is engaged in providing a postal service and thus its operations fall within the legislative competence of the Parliament of Canada pursuant to section 91(5) of the *Constitution Act*. The provisions of the *Code* therefore apply to TurnAround's operations and the Board had the requisite jurisdiction to issue Certification Order No. 9879-U.

Issue

[20] The issue to be decided in this case is whether TurnAround's business of delivering time-sensitive material falls within federal jurisdiction over "Postal Service" by virtue of section 91(5) of the *Constitution Act, 1867*.

[21] In a nutshell, TurnAround and the interveners argue that "Postal Service" means Canada's national postal service, currently provided by CPC, a federal crown corporation, and previously by the Post Office, a Department of the federal government. Since it operates entirely within the Province of Ontario, they submit that TurnAround is a local undertaking and, as such, its labour relations are not regulated by the Code. CUPW, on the other hand, says that TurnAround is

providing a postal service within the meaning of section 91(5) because it is doing something that Parliament could authorize the CPC to do as part of its monopoly over postal service: offer a same-day local delivery service for letters and small packages.

Analysis

(i) *preliminary matters*

[22] First, correctness is the applicable standard of review because the principal question before the Board involved the interpretation of section 91(5) of the *Constitution Act, 1867: Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at para. 58. However, the findings of fact on which the Board based its decision are entitled to deference, despite their constitutional significance: *Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters*, 2009 SCC 53, [2009] 3 S.C.R. 407 at para. 26 (*Fastfrate*). In the present case, the accuracy of the Board's findings of fact is not in dispute.

[23] Second, there is a constitutional presumption that labour relations are within provincial legislative competence and the situations falling within federal jurisdiction are exceptional and limited in scope: *Fastfrate*, paras. 27-28; *NIL/TU, O Child and Family Services Society v. B.C. Government and Service Employees' Union*, 2010 SCC 45, [2010] 2 S.C.R. 696 at para. 11 (*NIL/TU, O*).

(ii) *the functional test*

[24] *NIL/TU, O* reminds us (at para. 3) that an analysis of whether the regulation of the labour relations of an employer falls within federal or provincial jurisdiction starts with

... an inquiry into the nature, habitual activities and daily operations of the entity in question to determine whether it constitutes a federal undertaking. This inquiry is known as the “functional test”.

[25] TurnAround’s business involves the collection, transportation and delivery, for a fee, of time-sensitive letters and small packages exclusively within the GTA. An item is generally delivered on the same day that it is collected. TurnAround has no connection of any kind with the CPC or any other inter-provincial delivery service. Its “habitual activities and daily operations” are so local and limited in nature as to suggest that TurnAround is not a federal undertaking.

[26] Only if these activities constitute the provision of “Postal Service” within the meaning of section 91(5) will TurnAround’s labour relations be subject to federal law. The parties agree that the interpretation of section 91(5) will be determinative of the issue in dispute. Thus, if “Postal Service” in subsection 91(5) means, as TurnAround argues, the national postal service, it is clear that the Board had no constitutional jurisdiction to grant CUPW’s certification request.

[27] In the particular circumstances of this case, it is not relevant to undertake the next step in the analytical framework established by the majority in *NIL/TU, O* (at para. 3): a determination of whether the provincial regulation of TurnAround’s labour relations would impair the “core” of the federal power with respect to postal service. However, were such an inquiry necessary, the “core” of

Canada's exclusive power over postal service would not, in my view, be impaired if TurnAround's labour relations were regulated by provincial law.

(iii) section 91(5)

(a) jurisprudence

[28] As I have already indicated, the question raised in this case appears to be one of first impression. True, both provincial labour relations boards and the Board have assumed jurisdiction over same-day courier companies. See, for example, decisions of the Board certifying CUPW as the bargaining agent: *T.O. Turtle Express Inc.*, 2010 CIRB LD 2365; *L.D. J.V. Courier Plus Inc.* (2007), Order No. 9261-U; *Intelcom Courier Canada Inc.* (2003), Order No. 8561-U. And for examples of orders by provincial boards applying provincial employment standards legislation to employees, see *Globex Plus Messenger Service*, [2005] O.E.S.A.D. No. 802; *Kenjak (c.o.b. Aries Courier Services) (Re)*, [2005] M.L.B.D. No. 8; *King (Re)*, [2005] B.C.E.S.T.D. No. 37. However, it appears that in no previous case has the constitutional issue been considered.

[29] However, the constitutional issue has been raised in connection with businesses providing a delivery service under a contract with the CPC. For example, in *Letter Carriers' Union of Canada v. Canadian Union of Postal Workers*, [1975] 1 S.C.R. 178, an employer had contracted with the Post Office to deliver and collect mail. The Court held that the labour relations of the truck drivers employed by the employer were governed by the *Canada Labour Code* and that the Labour Relations Board of Saskatchewan had exceeded its constitutional jurisdiction when it certified the respondent union as their bargaining agent.

[30] Similarly, in *Canada Post Corporation v. Canada Union of Postal Workers*, [1988] F.C.J. No. 37 this Court dismissed the argument that the Canada Labour Relations Board had exceeded the constitutional limits of its jurisdiction by finding that there had been a sale of a business when a post office operated by the CPC in a shopping mall closed, and a new post office operated by a drug store in the same mall opened.

[31] The basis of the decisions in these cases, and others like them, is that the activities of the employers were integral to the work of either the Post Office, or its successor the CPC, because they provided services pursuant to contracts. Accordingly, the activities of the employers fell within section 91(5).

[32] In the present case, TurnAround did not deliver letters and packages in Toronto pursuant to a contractual or any other kind of relationship with the CPC. Therefore, on the basis of the above decisions it cannot be said that TurnAround's operations were within federal jurisdiction. The fact that TurnAround was providing a service that was neither provided by the CPC nor within the scope of its statutory monopoly is not sufficient to make its operations integral to those of the CPC.

(b) *interpretation of section 91(5)*

1. Errors of the Board

[33] In my respectful view, the Board committed three errors in its approach to the interpretation of section 91(5) which led it astray. First, it relied too heavily on paragraph 5(1)(a) of the CPC Act which provides that the CPC is to operate “a postal service”, not “the postal service”, to support its

conclusion that “Postal Service” in section 91(5) was not necessarily limited to the services provided by the CPC.

[34] The provisions of legislation enacted under the head of power in question provide no more than context that may shed some light on what the drafters of the Constitution intended. The terms of the *Post Office Act, 1867*, 31 Vic. c. 10, enacted soon after Confederation, are more relevant to determining the meaning of section 91(5) than the CPC Act, enacted more than a hundred years later. Section 7 of the *Post Office Act, 1867* established a Post Office Department for the “superintendence and management of the Postal Service of Canada”, while section 32 conferred on it, subject to some limited exceptions, a broad “exclusive privilege” to collect, convey and deliver letters within Canada. Furthermore, the most important text for present purposes, section 91(5) itself, places no article, definite or indefinite, before the relevant head of federal power, “Postal Service”.

[35] Second, the Board stated that the term “Postal Service” should be interpreted broadly so as to include the postal services provided by TurnAround, because Estey J. said in the *Minimum Wage Act Reference* case (at 270) that they are words of “the widest import” Hence, they should be interpreted to include postal services provided by entities other than the CPC.

[36] I do not agree. When Estey J.’s observation is read in context, it does not have the meaning attributed to it by the Board. He said (at 270):

The phrase “Postal Service” does not appear to have been generally used prior to Confederation, but the business of the Post Office as then conducted, the use of the

phrase “Postal business and arrangements” in the *Post Office Act* (Can.22 Vict., c. 31, s. 14(16)), indicate that the Imperial Parliament in adopting the phrase “Postal Service”, - a phrase of the widest import – in the *B.N.A. Act*, s. 91(5), intended that it should be construed as sufficiently comprehensive to include all the accommodations and facilities provided by the Post Office.

[37] The issue in the *Minimum Wage Act Reference* was whether Saskatchewan’s minimum wage legislation applied to an employee in the post office in Maple Creek, Saskatchewan. It was argued that the legislation applied because no analogous federal legislation had been enacted with respect to employees of the Post Office. The Court rejected this argument, on the ground that provincial legislation that encroached upon the federal head of power over Postal Service was invalid, whether or not Parliament had exercised its legislative power to the fullest extent and dealt with the subject-matter of the provincial statute in the federal sphere.

[38] In the passage quoted above, Estey J. was emphasizing the breadth of the federal head of power under section 91(5), stating that it covers all the services and accommodations provided by the Post Office, including, as relevant to that case, the operation of local post offices. There is no suggestion here that the words “Postal Service” include services provided by private companies independently of the entity responsible for the national postal service. If anything, the quotation supports TurnAround because Estey J. stated that “Postal Service” in section 91(5) should be construed as referring to all the services provided by the Post Office.

[39] Third, the Board seems to have thought that because paragraph 15(1)(e) of the CPC Act exempts the delivery of urgent mail from the CPC’s monopoly, it must be a postal service. On this

reasoning, entities engaged in any of the other activities exempted by subsection 15(1) would also be providing postal service within the meaning of section 91(5), including the delivery of inter-office mail (paragraph 15(1)(g)) and the service of process or a writ (paragraph 15(1)(b)). In my view, it is inconceivable that these activities, if conducted wholly within a province, fall under federal legislative competence.

2. Interpretative principles

[40] The interpretation of the Constitution, like that of legislation, is based on the text, context and purpose of the provision in dispute, as well as on principles associated particularly with constitutional interpretation, such as the “living tree” doctrine: see generally Peter W. Hogg, *Constitutional Law of Canada*, 5th ed. supplemented, loose leaf (Toronto: Carswell, 2007), 15.9, 60.1 (Hogg).

[41] **Text:** Not much can be inferred from the words “Postal Service” that bears on the present debate, although the choice of the singular form of the noun provides some support for TurnAround’s position that there is only one postal service in Canada, not as many as there are individuals providing some of the services that the CPC could provide.

[42] It might be suggested that if the drafters had intended section 91(5) to connote a single postal service, they could have conferred legislative authority on Parliament with respect to the Post Office. In 1851, Britain relinquished responsibility for the postal system in Canada and it was placed in the hands of the provinces, which operated four postal systems until 1867. As Robert

Campbell observes in *The Politics of Post: Canada's Postal System from Public Service to Privatization* (Peterborough: Broadview Press, 1994) at 27 (*The Politics of Post*),

As a national concern – like currency and customs – postal authority was assigned exclusively to the federal government at confederation.

[43] However, this is not a particularly strong point for CUPW, because the federal head of power is with respect to postal service, not the entity that delivers it.

[44] **Context:** The meaning of provisions of the Constitution is not frozen in time; their text is to be interpreted in light of events after 1867, including major societal, economic, and technological developments: Hogg, 15.9(f), 60.1(e), (f). However, as noted above, the historical context from which the *Constitution Act, 1867* emerged may assist in its interpretation.

[45] It may be inferred that the drafters of the *Constitution Act, 1867* intended “Postal Service” in section 91(5) to be the national postal system, which, in the same year, Parliament created the Dominion Post Office to administer. Replacing the four postal systems previously operated by the provinces with a single national system would facilitate the delivery of mail beyond provincial boundaries,

[46] A helpful summary of the history of the postal service in Canada, as well as the organization of a world postal service, is provided in the affidavit of Dr Robert Campbell, a political scientist and public policy analyst specializing in postal economics and policy: see CPC’s Application Record, pp. 7-28; and *The Politics of Post*, chaps. 1 and 2. What follows is taken largely from that affidavit

and is not controversial. Dr Campbell's affidavit describes the essential characteristics of the postal service throughout its history in Canada, as well as in other countries: CPC's Application Record, pp. 21-22. They include the following.

[47] First, the service is universal and available to all. In other words, the CPC must collect mail from anywhere in Canada and deliver it to any address in Canada, and must accept any items up to a certain weight that customers want to have delivered.

[48] Second, the service is affordable by all. In particular, the cost of the service does not depend on the remoteness of the location to which mail is to be delivered. In practice, this means that postal service in high-density areas subsidises the service provided in areas that are less populated and further removed from the major conurbations.

[49] Third, the service requires a national operational network in order to discharge the obligations of universal service, availability, and affordability. The network includes post offices and sorting plants, a national system of addresses and postal codes, and a payment system (generally a system of prepayment through the sender's purchase of the necessary stamps).

[50] Fourth, the postal service must be operated or regulated by a national, governmental entity in order to ensure that the necessary requirements of a national service are in place and the network supporting it is working properly. Currently, the CPC, a Crown corporation, performs this role. Even if Parliament decided to turn the operational functions of the CPC over to one or more

commercial corporations, a public authority would still be required to regulate the service in order to ensure that it retained the defining attributes of a national postal service, thereby discharging Canada's international obligations.

[51] Fifth, in order to facilitate the international transmission and delivery of mail, the Treaty of Bern of 1874 established the General Postal Union, subsequently called the Universal Postal Union (UPU).

The UPU's formation integrated a series of national postal services into one coherent and remarkably efficient and effective international postal service.

(Campbell affidavit, CPC's Application Record, p. 17).

The UPU is now an agency of the United Nations. Only a national service can discharge Canada's international obligation to meet the postal service standards established by the UPU.

[52] It hardly needs saying that TurnAround has none of these characteristics of a postal service.

[53] **Purposes:** The purposes served by section 91(5) in conferring exclusive legislative competence on Canada with respect to "Postal Service" are to be found largely in the characteristics described above. A national postal service was a necessity for the economic development of Canada, and performed an important nation-building role: see CPC's Application Record, pp. 44-49; *The Politics of Post*, at 27-32. These purposes could only be achieved by vesting the necessary legislative authority in the federal Parliament.

3. Application to this case

[54] The considerations examined above in my opinion indicate that “Postal Service” in section 91(5) refers to the national delivery system, which is currently either operated directly by the CPC or managed by it through contracts with other entities.

[55] In addition, this interpretation is easy to apply and, unlike the position advanced by CUPW, does not require a case-by-case analysis to determine how much of a courier’s business is devoted to the collection and delivery of mailable material, and how much to other items. Thus, for example, in *Critical Path Couriers Ltd. (Re)*, 2011 CIRB 604 at para, 20, the Board distinguished its decision in the present case on the ground that, unlike TurnAround, Critical Path specialized in the delivery of material that, because of its size or nature, was not mailable.

[56] The achievement of predictability and certainty are important goals in constitutional interpretation. Hence, whenever possible, courts should avoid interpretations that require decision-makers “to splice and dice discrete differences among companies”: *Fastfrate* at para. 46.

Conclusions

[57] For these reasons, I would grant the application for judicial review with costs to TurnAround, set aside the Board’s decision, and quash Certification Order No. 9879-U on the ground that it was beyond the constitutional jurisdiction of the Board.

“John M. Evans”

J.A.

“I agree
Pierre Blais C.J.”

“I agree
K. Sharlow J.A.”

APPENDIX A

Post Office Act, 1867, 31 Victoria c. 10

7. There shall be at the Seat of Government of Canada a Post Office Department for the superintendence and management of the Postal Service of Canada, under the direction of a Postmaster General.

32. Subject always to the provisions and regulations aforesaid, and the exceptions hereinafter made, the Postmaster General shall have the sole and exclusive privilege of conveying, receiving, collecting, sending and delivering letters within Canada;— And (except in the cases hereinafter excepted) any person who collects, send, conveys or delivers or undertakes to convey or deliver any letter within Canada, or who receives or has in his possession any letter for the purpose of conveying or delivering it, otherwise than in conformity with this Act, shall, for each and every letter so unlawfully conveyed or undertaken to be conveyed, received, delivered or found in his possession, incur a penalty not exceeding twenty-dollars :

But such exclusive privilege, prohibition and penalty shall not apply to—

Letters sent by a private friend in his way, journey or travel, provided such letters be delivered by such friend to the party to whom they are addressed ;
Letters sent by a messenger on purpose, concerning the private affairs of the sender or receiver ;

Commissions or returns thereof, and affidavits or writs, process or proceedings or returns thereof, issuing out of a Court of Justice ;

Letters addressed to a place out of Canada and sent by sea and by a private vessel ;

Letters lawfully brought into Canada, and immediately posted at the nearest Post Office ;

Letters of merchants, owners of vessels of merchandize, or of the cargo or loading therein, sent by such vessel of merchandize, or by any person employed by such owners for the carriage of such letters according to their respective addresses,—and delivered to the persons to whom they are respectively addressed, without pay, hire, reward, advantage or profit for so doing ;

Letters concerning goods or merchandize sent by common known carriers to be delivered with the goods to which such letters relate, without hire or reward, profit or advantage for receiving or delivering them;

But nothing herein contained shall authorize any person to collect any such excepted letters for the purpose of sending or conveying them as aforesaid,—or shall oblige any person to send any Newspaper, Pamphlet or Printed Book by Post.

Canada Post Corporation Act, R.S.C. 1985, c. C-10

5. (1) The objects of the Corporation are

(a) to establish and operate a postal service for the collection, transmission and delivery of messages, information, funds and goods both within Canada and between Canada and places outside Canada;

...

14. (1) Subject to section 15, the Corporation has the sole and exclusive privilege of collecting, transmitting and delivering letters to the addressee thereof within Canada.

...

15. (1) The exclusive privilege referred to in subsection 14(1) does not apply to

...

(b) commissions, affidavits, writs, processes or proceedings issued by a court of justice;

...

(e) letters of an urgent nature that are transmitted by a messenger for a fee at least equal to an amount that is three

5. (1) La Société a pour mission :

a) de créer et d'exploiter un service postal comportant le relevage, la transmission et la distribution de messages, renseignements, fonds ou marchandises, dans le régime intérieur et dans le régime international ;

[...]

14. (1) Sous réserve de l'article 15, la Société a, au Canada, le privilège exclusif du relevage et de la transmission des lettres et de leur distribution aux destinataires.

[...]

15. (1) Le privilège exclusif octroyé au paragraphe 14(1) ne s'applique pas aux documents suivants :

[...]

b) les décisions judiciaires et les actes, affidavits ou commissions rattachés à la procédure judiciaire;

[...]

e) les lettres urgentes transmises par porteur moyennant une rétribution au

times the regular rate of postage payable for delivery in Canada of similarly addressed letters weighing fifty grams;

...

(g) letters concerning the affairs of an organization that are transmitted between offices of that organization by an employee thereof;

...

moins égale à trois fois le port exigible pour la distribution au Canada de lettres de destination comparable pesant cinquante grammes;

[...]

g) les lettres concernant les activités d'un organisme et transmises entre ses bureaux par un de ses employés;

[...]

Canada Labour Code, R.S.C. 1985, c. L-2

2. In this Act,

“federal work, undertaking or business” means any work, undertaking or business that is within the legislative authority of Parliament ...,

18. The Board may review, rescind, amend, alter or vary any order or decision made by it, and may rehear any application before making an order in respect of the application.

2. Les définitions qui suivent s'appliquent à la présente loi.

« entreprises fédérales » Les installations, ouvrages, entreprises ou secteurs d'activité qui relèvent de la compétence législative du Parlement [...],

18. Le Conseil peut réexaminer, annuler ou modifier ses décisions ou ordonnances et réinstruire une demande avant de rendre une ordonnance à son sujet.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-441-10

STYLE OF CAUSE: Turnaround Couriers Inc. and
Canada Post Corporation
(Intervener supporting the
Applicant) and Canadian Union of
Postal Workers

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REASONS FOR JUDGMENT BY: EVANS J.A.

CONCURRED IN BY: BLAIS C.J., SHARLOW J.A.

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