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Public Service Staff
Relations Act

Before the Public Service
Staff Relations Board

BETWEEN

MAUREEN HARPER

Grievor

and

CANADIAN FOOD INSPECTION AGENCY

Employer

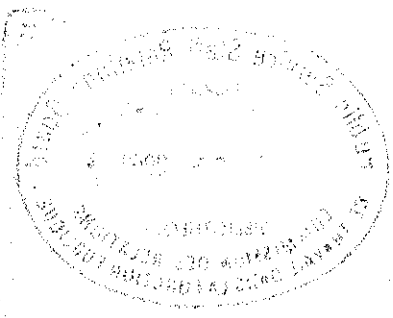


Before: Evelyne Henry, Deputy Chairperson

For the Grievor: Denise Balfe, The Professional Institute of the Public Service of
Canada

For the Employer: Robert Jaworski, Counsel

Heard at Toronto, Ontario,
July 24 and 25, 2002.



DECISION

[1] Dr. Maureen Harper grieved on September 21, 2001 that, she should be reimbursed for her registration fees paid to the Ontario Veterinary College (OVC) in keeping with clauses E2.01 and A1.02 of the Veterinary Medicine Group collective agreement.

[2] The parties agreed to the following facts:

The Grievor, Dr. Maureen Harper, currently holds a position as a VM-01 (veterinarian medicine - 01) in the Animal Health Program and is based at the Canadian Food and Inspection Agency's District Office in Brampton, Ontario. She held this position at the time of filing the within grievance, and has remained in it since that time.

A portion of Dr. Harper's duties at Lester B. Pearson International Airport include the examination of imported animals to determine whether they are eligible to enter into Canada.

Dr. Harper filed a grievance on September 21, 2001. It is Dr. Harper's position that she should be reimbursed for her registration fees to the College of Veterinarian of Ontario ("the College") for the year 2001 in the amount of five hundred and sixty-one dollars, and seventy-five cents (\$561.75). Attached as Appendix "A" is a copy of the Grievance Presentation Form.

At the time of filing the grievance, a collective agreement existed between the Canadian Food and Inspection Agency and the Professional Institute of the Public Service of Canada regarding the Veterinary Medicine (VM) Group bargaining unit. It has since expired. Article E2.01 of the same states:

The Employer shall reimburse an employee for his payment of membership or registration fees to an organization or governing body when the payment of such fees is a requirement for the continuation of the performance of the duties of his position.

Article A1.02 of the same collective agreement provides:

The parties to this agreement share a desire to improve the quality of the CFIA, to maintain professional standards and to promote the well-being and increased efficiency of its employees to the end that the people of Canada will be well and effectively served. Accordingly, they are determined to establish within the framework provided by law, an effective working relationship at all levels of the Canadian Food Inspection Agency in which members of the bargaining units are employed.

These articles were cited by Dr. Harper's union representative during the grievance hearings. It is alleged by Dr. Harper that these provisions have not been observed by the Employer.

The College is a provincial professional body that, among other things, licenses veterinarians to practice veterinary medicine within the province of Ontario. There is currently no Federal body or organization that licenses veterinarians on a national basis.

The Agency has responded to all of the grievance presentations with the position that having a veterinary licence is not a requirement for the continuation of the duties of Dr. Harper's position. It is the Employer's position that Dr. Harper need only be eligible for licensing by the College to continue in her employment with the Agency. Attached as Appendixes "B", "C", and "D" respectively are three letters denying the within grievance.

[3] In addition to the above facts, the parties agreed at the hearing that the Treasury Board policy directive on Membership Fees applies to the Canadian Food Inspection Agency (CFIA).

[4] Dr. Harper testified that she graduated as a veterinarian in 1980 and obtained a Master's Degree in Epidemiology in 1987. She has worked at the CFIA and its predecessor Agriculture Canada since 1981 in the Animal Health Program in the Brampton District office.

[5] In the Brampton District office there are three VM-01's like Dr. Harper and a VM-02, the District Veterinarian, one inspector and one clerk. Dr. George Mraz is the District Veterinarian in charge of the Brampton office.

[6] Dr. Harper is involved in overseeing the import and export of animals, as well as in disease control. She is involved in export testing of animals and making decisions on whether an animal can be imported into Canada.

[7] In disease control, Dr. Harper's work is to prevent the spread of and to eradicate communicable diseases such as tuberculosis, rabies, mad cow disease and foot-and-mouth disease.

[8] At the airport where Dr. Harper works in rotation an average of one week a month, she is involved when an animal is refused entry into Canada and is returned or is refused entry until proper documentation or certification is provided. In the case of

birds, small animals and turtles that are smuggled, they are surrendered to the Crown and destroyed except for endangered species which are turned over to Environment Canada.

[9] In the course of her airport duties, Dr. Harper may be required to use controlled drugs to euthanize animals in distress or sedate animals to perform some testing. To euthanize small birds and turtles, Dr. Harper has had to use a drug called Xylazine or T61 which is a schedule F drug under the *Food and Drugs Act* (FDA). T61 is the drug that CFIA provides to its veterinarians. T61 does not require a veterinarian to be licensed to be used but it requires a licensed veterinarian to distribute it.

[10] Another drug used by Dr. Harper is sodium pentobarbital which is a narcotic under the *Controlled Drugs and Substances Act* subject to the Narcotic Control Regulations. Dr. Harper may be required to use sodium pentobarbital to sedate an animal. Dr. Harper prefers the use of sodium pentobarbital to euthanize an animal in distress.

[11] Dr. Harper described the effect of T61 on animals she euthanized. Dr. Harper does not like to use T61 for humane reasons. T61 is no longer used in the United States of America where it has been removed by the manufacturer. Dr. Harper is of the opinion that sodium pentobarbital is a more humane method of euthanasia and should be used.

[12] Dr. Harper introduced her job description (Exhibit G-4), which she claims is incomplete because it does not reflect her airport duties. Dr. Harper pointed to the following duties and responsibilities in Exhibit G-4 which may require her to use her licence as a veterinarian:

1. ...

- *making clinical examinations of animals to identify symptoms and signs of disease including the taking of various specimens for laboratory diagnosis e.g. blood samples, skin scrapings.*
- *performing diagnostic tests directly on animals suspected of disease or on specimens taken from such animals e.g. tuberculin tests, microscopic examination of tissues and fluids. Halothane testing.*

- ...

- *conducting inspections, health examinations and prescribed tests or sample collections to meet the certification requirements of animals and animal products for exportation to other countries in accord with the importing country's requirements.*
- *... Examines imported animals upon arrival and at appropriate intervals thereafter for signs of disease and reviews morbidity and mortality records to detect and diagnose reportable diseases, including the submission of specimens to the laboratory for confirmatory testing.*
- ...
- *Confirming the findings of technical staff and accredited v[e]terinarians, reporting suspicious or positive findings on field tests e.g. tuberculin test reactions by examining and evaluating the findings and test results and by performing a repetition of the test or other confirming tests e.g. comparative cervical tuberculin test.*

6. ...

- *may act as a district veterinarian.*
- *may be a member of the region's Disease Emergency Response team.*

[13] Dr. Harper stated that in order to diagnose diseases she may have to restrain animals. When she is dealing with animals in distress she may have to euthanize them for reasons of public health. In order to carry out these duties, Dr. Harper has to use drugs that require her to hold a valid veterinarian's licence, particularly sodium pentobarbital.

[14] Dr. Harper stated that she regularly has to euthanize small animals when working at the airport which happens one week a month. On average, she euthanizes two animals at least during said week. Her drug of choice for that duty is sodium pentobarbital but CFIA requires her to use T61.

[15] Because of her duty to replace the District Veterinarian during his absence, Dr. Harper could be called upon to acquire Xylazine (T61) for the office; she would require her veterinarian licence to acquire this drug.

[16] Dr. Harper indicated that when she was sent to the United Kingdom by CFIA with a number of other veterinarians to try to stamp out foot-and-mouth disease, she

was provided with a bottle of sodium pentobarbital and T61. The British Government paid to have her licensed by the Royal College of Veterinary Surgeons to use these drugs.

[17] Upon her return during the summer 2001, there was a quarantine case, caused by a rabid skunk, in which Dr. Harper was involved. The owner of the farm had been ordered to put barn cats down because they were suspected of having rabies. He had not executed the order. The District Office's supply of T61, the drug used to euthanize small animals, was exhausted. The District Veterinarian instructed Dr. Harper to obtain sodium pentobarbital from the Chelemham Veterinary Clinic to use on the barn cats.

[18] Dr. Harper indicated to Dr. Mraz that she required her veterinarian licence to obtain the drug and told him she would claim the registration fees if she obtained it. Dr. Mraz instructed Dr. Harper to get the drug because of the emergency situation and agreed to pay her registration fees. Subsequently, Dr. Harper submitted a claim (Exhibit G-5) which Dr. Mraz approved and sent. Subsequently, Dr. Harper received a letter from the acting Regional Director, Anthony Sangster, (Exhibit G-6), denying her claim for the reason that: "... it is the policy of the CFIA not to reimburse these fees."

[19] Dr. Harper stated that sodium pentobarbital might be required in the tuberculosis eradication program. While Canada is tuberculosis free, some cases do come up occasionally and require CFIA intervention to maintain that status.

[20] Another situation where drugs might be used is in foreign animal disease simulation where CFIA veterinarians are testing the contingency plan. The District Office may not be aware of when they will be involved in a simulated exercise because the purpose is to test the contingency plan.

[21] In cross-examination, Dr. Harper agreed that her job description (Exhibit G-4) does not specifically mention that she must restrain animals or euthanize animals. Dr. Harper agrees that her job description does not state that she must prescribe drugs, do obstetrics, dentistry, ova transfer or give penicillin or antibiotics to animals. Dr. Harper indicated that her job description is the subject of a separate grievance.

[22] Dr. Harper agrees that her duties are different from a private veterinary practitioner but states that she is a hands-on veterinarian. Dr. Harper identified CFIA

Section 14 of the *Disease Control Manual on Rabies* (Exhibit E-1). She agreed it did not state that she has to euthanize animals. Dr. Harper agreed that there are more private veterinary practitioners in her area than in more isolated areas such as Northern Ontario.

[23] Dr. Harper stated she has no authority to call in a private practitioner to euthanize an animal. Dr. Harper believes that she would be disciplined if she refused to euthanize smuggled animals using T61 even if she weren't licensed. Dr. Harper stated that Jim Crawford (Regional Director Operations) did not direct her not to use sodium pentobarbital, but that she was instructed to use it if the need arises by her supervisor Dr. Mraz. Dr. Harper believes Dr. Mraz is not required by CFIA to be licensed.

[24] Dr. Nina Szpakowski is Regional Director of Animal Program Network at the CFIA Guelph Office. She started as a field veterinarian in June 1986 with Agriculture Canada. In 1989, she became a supervisor in the Regional District Office; she had district and field veterinarians reporting to her for ten years. In her current position in Program Advisory, she acts as an advisor to Dr. Bill Tuther, the CFIA Regional Director for Ontario. She also provides advice to field staff in the interpretation of legislation, manuals and directives which her department has either designed or redesigned.

[25] When employed in Hamilton, over ten years ago, Dr. Szpakowski investigated rabies and evaluated the health status of animals for export and for import. Dr. Szpakowski tested animals, did post mortems and worked occasionally at the Hamilton Airport. Her job description was of the same vintage as that in Exhibit G-4. The general duties were the same; the administrative duties have changed.

[26] From Dr. Szpakowski's perspective, a veterinarian does not need to be licensed to work for CFIA. One must be eligible to be licensed and the common way to prove this is a licence. Many veterinarians have let their licence lapse.

[27] Dr. Szpakowski stated that there have recently been administrative changes to require veterinarians to be licensed to get the job and they may have to keep the licence up but they did not have to in the past. Dr. Szpakowski is not aware of the reason why CFIA allowed unlicensed veterinarians to work for it. Dr. Szpakowski is licensed but, to do her job, she does not need to be. There is no need to be licensed to do the job of a VM-01.

[28] When Dr. Szpakowski hired people in the past, they had to have graduated from certain schools but they did not have to have a licence from a regulatory body of a province. For ten years, the veterinarians on her staff did not require a licence. She did not keep a list of those who were licensed or unlicensed as the duties, the majority of the time, do not require a licence.

[29] Dr. Szpakowski is of the opinion that it is not necessary for field veterinarians to euthanize animals themselves. The mandate of CFIA is to control the spread of disease among people and animals. The programs and directives are designed so the CFIA staff do not have to kill animals personally. For instance, they quarantine animals or order them destroyed by the owner. CFIA brings in the police to enforce this order and enters into contracts with other professionals to restrain animals, euthanize them or dispose of them. Generally speaking, the staff do not have to kill animals themselves.

[30] There are three exceptions: in a non-compliance issue of a severe nature, where the owner is refusing to destroy his animals when ordered to do so in writing; in cases of seizure of non-compliance and abandonment of diseased animals; and in preparation for foreign animal disease incursion like foot-and-mouth disease, there are emergency response teams who may receive special training in killing animals.

[31] It is Dr. Szpakowski's opinion that VM-01's do not have to kill animals but they may have to have them destroyed. There are lists of veterinarians to be called to euthanize animals. Dr. Szpakowski has no idea if the Brampton office has such a list.

[32] Dr. Szpakowski stated that T61, a barbiturate, is a dangerous drug. If self-injected or injected into someone else by accident, it can be fatal. There is a need to restrain animals before use. The restraint need not be another drug as there are many forms of restraints. It does not require a veterinarian to kill animals. There are severe liabilities associated with the killing of animals and CFIA does not require its staff to do so.

[33] Dr. Szpakowski shares Dr. Harper's concern about using T61; she questions its use in Canada since it is no longer used in the U.S.A. Dr. Szpakowski is of the opinion that Dr. Harper would not be disciplined if she refused to euthanize animals.

[34] Dr. Szpakowski stated that CFIA programs are designed so veterinarians use their knowledge and expertise. Veterinarians are hired to be thinkers, to know the policy and work together to prevent the spread of disease. It benefits CFIA if they can be innovative. In really bad cases they evaluate the options and may react to the calling of the profession, not necessarily the calling of CFIA.

[35] Dr. Szpakowski, as a field veterinarian, knew she had a licence and knew she could get the drug and use it to control the spread of disease even if it is not CFIA's preferred course. She believed that it was important to do so as a courtesy to CFIA and the public so she euthanized the animals.

[36] As a manager, Dr. Szpakowski has a greater appreciation of the liability and of doing a proper job, making sure all the i's are dotted and t's are crossed. If the policy is not followed, CFIA may face difficulty in court and ultimately not be able to control the disease.

[37] In the reference to tuberculosis, staff agreed to use their licence to destroy animals on behalf of CFIA. They were not compelled; they volunteered. Most licensed veterinarians volunteer to get some practice. CFIA updates its staff on the duties captured in their job description; it does not update them in the administration of drugs except in situations like the work of the emergency response team.

[38] In cross-examination, Dr. Szpakowski agreed that T61 is a schedule F drug under the *Food and Drugs Act* and that sodium pentobarbital is a controlled drug that can only be used by a licensed practitioner. Dr. Szpakowski also agreed that T61 has to be sold to a licensed practitioner.

[39] Dr. Szpakowski is of the opinion that Dr. Mraz is not required to have an OVC licence. She is not aware that he has to obtain T61. It is Dr. Szpakowski's understanding that Dr. Mraz is a licensed veterinarian and therefore can legally purchase T61.

[40] Dr. Szpakowski stated that CFIA has no established policy around the purchase of drugs. If it becomes necessary to purchase drugs, Dr. Mraz would discuss with his supervisor, Regional Director Jim Crawford, who is not a veterinarian, the best method to purchase the drugs. CFIA does not have a budget *per se* to purchase drugs so it must be done with discussion and authorization.

[41] Dr. Szpakowski is of the opinion that Dr. Harper does not have to euthanize animals; if she does, it is because Dr. Harper is making a choice as a professional, but she has the choice to say no.

[42] Asked if there would be disciplinary action tomorrow should all veterinarians in the Brampton office refuse to euthanize animals, Dr. Szpakowski replied that they are still responsible for controlling disease. They can use the existing mechanism such as contracting with veterinarians in private practice. Dr. Szpakowski stated that: "Before they change their practice, it would be nice if the Brampton veterinarians advised the CFIA Regional District Office."

[43] Dr. Szpakowski has no personal knowledge of how Dr. Mraz is reimbursed for his purchase of T61. She is not aware of any directives telling supervisors not to use T61. Dr. Szpakowski has no knowledge with regard to Dr. Harper's having to use T61 to dispose of animals in seizures. There is no written CFIA policy on euthanasia of animals. While Dr. Szpakowski is aware that Dr. Harper and Dr. Mraz have euthanized animals at the airport, she is not aware whether they were told that this is not part of their duties. Dr. Szpakowski is of the opinion that these are not regular situations.

[44] Dr. Szpakowski was not aware that Dr. Harper, when asked to get sodium pentobarbital, told her supervisor she needed her licence to do so and would put in a claim for reimbursement of her registration fees if he asked her to do so. In spite of this, her supervisor still requested her to get the drug. Dr. Szpakowski was not aware of it at the time but has learned of it since. She believes that Dr. Mraz did not have the authority to do this, that he has no budget to do this.

[45] Dr. Szpakowski is not aware that any veterinarians' registration fees have been paid at CFIA. When asked how the T61 she used as a field veterinarian was obtained, she replied that, at the time, it was a Minister-approved purchase required of a central supply agency. She had signed the request as a licensed veterinarian because she had agreed to do this for the agency on a voluntary basis.

[46] Dr. Szpakowski recounted an incident in Northern Ontario where her staff volunteered to put down a herd which had become a threat to wildlife. Normally CFIA hires non-veterinarians to advise it on means to destroy animals, such as sharp shooters. CFIA has the ultimate authority to control certain infectious diseases in Canada such as tuberculosis if someone is not complying. CFIA tries to help in paying

for the cost of destruction and disposal of animals. Early destruction is a way to prevent the spread of disease.

[47] Dr. Szpakowski is of the opinion that veterinarians volunteer to be on the Emergency Response Team. The volunteers rotate in specific jobs and the teams are self-directed.

Arguments for the grievor

[48] The grievor argued that the issue is the interpretation of Article E2.01 and whether Dr. Harper is entitled to reimbursement of her licence registration fees for 2001.

[49] The facts of this case are unique as are those of most cases where similar issues and identical clauses are involved.

[50] The grievor refers to the decision in *Bertrand* [1988] C.P.S.S.R.B. No. 324, Board file 166-2-16666 and 16667 at page 5 where the adjudicator stated:

In all the adjudication decisions dealing with the interpretation of the Nurses collective agreement and the reimbursement of professional fees, the facts and evidence were similar. However, adjudicators rendered different decisions because the facts were distinguishable in each case.

The clause in the *Bertrand* decision is identical to the one in the Veterinary Medicine Group.

[51] The grievor then referred to the Treasury Board Directive on Membership Fees which applies to agencies listed in Schedule II of the *Financial Administration Act* which includes CFIA. The grievor quoted the Policy Requirements 1:

1. The Deputy Head may delegate the authority to approve memberships which are a federal statutory requirement of a position. Such memberships are only payable where the employee actively practices professional duties that cannot be legally carried out unless the incumbent is an active member of a recognized professional body. (See Appendix A (a))

and from the Appendix A, Types of Memberships 1.(A):

(A) *Statutory*

The only instances in which it is absolutely necessary for a federal employee to be licensed or registered are those in which the requirement is established by federal statute such as, the Food and Drug Act. The only occupational groups affected by these statutes are: Dentistry, Land Survey, Law, Medicine, Pharmacy and Veterinary Science, and this applies only to those individuals actively practising their respective professions in those occupational groups. In accordance with this policy, such fees are reimbursed and no T-4A Supplementary is issued in these cases. Memberships are not paid to employees in these occupational groups who are working in an administrative capacity or who are working in a related field but outside the above occupational groups.

[52] It is clear that the policy covers the Veterinary Medicine Group. Dr. Harper has used drugs covered by the *FDA*. She is practising actively in her profession and it is a requirement in the performance of her duties that she use drugs regulated by the *FDA* and the Food and Drugs Regulations which are federal legislation. Xylazine (T61) is listed in the *FDA* and can only be distributed through a licensed practitioner. Dr. Mraz purchases T61 for the Brampton office. Under the *FDA* he needs his OVC licence to distribute it to his staff. Dr. Harper is required by her job description to replace Dr. Mraz when he is sick or away on leave. She also has to have an OVC licence in situations where she must obtain T61 or distribute it. Dr. Harper has to euthanize animals at the airport on a monthly basis; this is a duty required by the job of field veterinarian in the Brampton office. Dr. Harper is not doing so on a voluntary basis. She has no choice in the matter. There is no policy stating that veterinarians have an option to decline performing these duties. Dr. Harper does not like to use T61 for humane reasons and would not do so unless directed to destroy these animals in that manner.

[53] The *Controlled Drugs and Substances Act* and the Narcotic Control Regulations apply to Dr. Harper and CFIA employees; subsections 4(2), 5(1) and 5(2) are relevant to Dr. Harper and the facts outlined here. When Dr. Harper was required by Dr. Mraz to obtain sodium pentobarbital which is a narcotic listed in this Act, she informed Dr. Mraz this was a controlled drug under the statute and he still asked her to get it. Later, he also signed her claim for reimbursement. Dr. Harper was directed, as a required part of her duties, to get the controlled drug and to use it if the need arose. Even Dr. Szpakowski has used that drug as part of her duties at CFIA. Dr. Harper

might have to use the drug to sedate animals in order to take samples to conduct her duties.

[54] Whether Dr. Harper uses a controlled drug once or all the time is of no moment; she was directed to acquire and use sodium pentobarbital. It is therefore a requirement of her job to be licensed because it would be illegal to obtain the drug if she were not licensed.

[55] The grievor reviewed the jurisprudence, citing *Gajadharsingh et al* (Board files 166-2-16812 to 16815 and 17674) with an identical clause, more specifically the following sentence in the first paragraph of the reasons for the decision: "Also the uncontradicted evidence is that the nurses sign for and dispense narcotics and controlled substances. There is a requirement to be a registered nurse to sign for and dispense narcotics." Those grievances were allowed.

[56] Also cited is the *Booth et al* decision (Board files 166-2-16224 to 16231) dealing with an identical clause at page 16 of the QL version in the reasons for the decision:

... Moreover, guidelines published by the Department of National Health and Welfare required certain medical procedures such as intravenous therapy, I.V.'s, to be administered only by Registered Nurses. The administering of I.V.'s forms part of the duties of the grievors. In particular, the evidence before me was that there is no such person as a federally-licensed or recognized "Registered Nurse". The only "Registered Nurses" are those persons who are licensed or registered by the various provinces.

[57] The evidence has revealed that foot-and-mouth and other foreign diseases could become a concern if an epidemic were to occur in Canada. CFIA is a major player in controlling disease in animals. Dr. Harper's training in the U.K. to prepare for such a situation has involved the receipt and use of sodium pentobarbital to euthanize animals and to sedate them in the taking of samples. It is very possible for Dr. Harper to use or distribute controlled drugs and she is required to have a licence in case of an outbreak so that she may continue with her duties. Not requiring veterinarians to hold a licence but requiring them to perform duties that require a licence shows that CFIA is making no effort to maintain professional standards.

[58] Dr. Szpakowski had no explanation as to why CFIA does not require its veterinarians to be licensed. She stated the policy in hiring had changed and required

a licence but diluted this testimony in cross-examination. Dr. Szpakowski is unaware of many issues surrounding the Brampton office and more particularly the barn cats incident.

[59] There are no federal legislation or standards for the registration of veterinarians. Federal employees are not covered under the provincial legislation. There are therefore no minimum standards applying to CFIA veterinarians. CFIA has agreed to "maintain professional standards" in Article A1.02 of the collective agreement. By not requiring an OVC licence for its employees working in Ontario, CFIA is not promoting increased efficiency and is not ensuring that the people of Canada are well and effectively served in Ontario.

[60] The grievor then cited the decision in *Chorney et al* (Board files 166-2-14644 and 14656) the final paragraph 32:

32. I consider it advisable to add the following comments. It appears to me that the statutory requirement that nurses be required to retain their membership in their respective professional nurses association is sound public policy and serves the public interest. These professional associations are the guardians of the standards of professional practice by reason, inter alia, of their statutory power to discipline or to withhold from an incompetent person the right to practice nursing. ... In my view then, the legal requirement to remain a member in good standing of a governing nurses' professional organization as a condition of employing a person in that professional capacity is essential for the protection of all human beings in our society and in the public interest.

[61] This nurses' case is similar although the clause is not identical to A1.02. The standards for federal veterinarians are lower than those under provincial acts and regulations. CFIA exists for the public interest; by not requiring its veterinarians to be licensed, it does not live up to its mandate.

[62] The grievor also submitted the following decisions: *Barbas et al* (Board files 166-2-18122 to 18176), *Yeghiayan* (Board file 166-2-21265) and *Farley et al* (Board files 166-2-22553 to 22665), all nurses' cases dealing with registration fees under identical clauses.

[63] In summary, because Dr. Harper's duties involve obtaining Xylazine and using sodium pentobarbital, substances covered by federal legislation that require her to be

a licensed practitioner, CFIA is violating Article A1.02 by not requiring her to be licensed and violating Article E2.01 by not reimbursing her registration fees.

Arguments for the Employer

[64] The employer argues that the grievor bears the burden of proving that a licence is a requirement for the continuation of the performance of the duties of her position and that she has failed to do so.

[65] Dr. Szpakowski, who was a field veterinarian in the time frame that the job description (Exhibit G-4) was drafted, testified that registration was not a requirement for the performance of those duties.

[66] Dr. Harper agreed that the duties in her job description were detailed and specific. There are no requirements in the job description to restrain animals or to euthanize them. There are no requirements to perform surgery, prescribe drugs, perform obstetrics, dentistry or ova transfer or to administer antibiotics. The job is quite different from that of private practitioners.

[67] Dr. Harper stated that her job description is out of date but in a detailed job description one would expect to find a reference to euthanasia of animals if it was required. Dr. Harper in cross-examination agreed that there is no expressed reference to euthanasia of animals in the chapter (Exhibit E-1) on rabies control. If it is not present expressly, one must conclude it is not required of her.

[68] The evidence revealed that while acting for Dr. Mraz she has not had to purchase drugs; it has not happened.

[69] Dr. Harper presented no proof she would lose her job if she let her licence lapse. If unlicensed tomorrow, Dr. Harper could still control animal imports and exports, issue quarantines or act as a contact and give advice, which are the elements of her job description. This is not to demean her job but to define it in comparison to the veterinarians in the private sector.

[70] CFIA veterinarians are valued for their knowledge and expertise, perhaps not for their hands-on work.

[71] What Dr. Harper is doing at the airport, that portion of her job description which is incomplete, is using T61. She does not require an OVC licence to continue those duties.

[72] Dr. Harper has described a case that is one of the three exceptional scenarios illustrated by Dr. Szpakowski. There is no duty to destroy animals; she is not compelled to do so, and she has a choice. She would not be disciplined or lose her position if she let her licence lapse.

[73] The employer cited the Federal Court of Appeal decision in *Lefebvre et al* [1980] 2 F.C. 199. This was a successful application for judicial review of a decision of an adjudicator appointed under the Public Service Staff Relations Act. The employer cited paragraph 6, which reads:

6. Respondents, for their part, argued that it is not necessary for the purposes of the case at bar to resolve the question raised by applicant. In the submission of respondents, article 32.01 of the collective agreement, if it is correctly interpreted, imposes on the employer an obligation to reimburse the monies claimed by respondents despite the fact that, under the principles of constitutional law relied on by applicant, the latter could legally have carried out their duties without being members of the Order of Chemists of Quebec.

[74] The provincial statute does not bind the CFIA. There are no restrictions on the possession or administering of T61.

[75] The employer also cited the decision in *Jolie et al* (Board files 166-2-21409, 21410 and 21432) specifically page 5, at the last paragraph:

The grievors firmly believe that a CA designation is of great assistance when discussing taxation matters with Corporate taxpayers, and this may be so. However, this is a personal perception and unsupported by the evidence adduced. The necessity for the grievors to maintain CA designation is again of a personal choice, and not reflected in the evidence placed before me. I therefore find that although being designated a CA could be seen as one of the possible requirements to being considered for appointment to an AU position the CA designation is not a requirement for the continuation of the performance of the duties of the grievor's position as required by clause 42.01 of the Collective Agreement and therefore these three grievances are denied.

[76] While the licence may be of assistance to Dr. Harper, it is not a requirement for the continuation of her duties.

[77] The employer also relied on the decision in *Rosendaal et al* (Board files 166-2-22291, 23143 and 23144) and on the decision in *Muller et al* (Board files 166-34-30742 and 30743) where the above principles were followed. The employer referred to paragraphs 30 to 38 of the *Muller* decision (*supra*).

[78] The employer distinguished the decision in *Chorney* and the other nurses' cases by stating that there is a qualitative difference in treating people and animals. The *Health of Animals Act* deals with the preservation of animal health, which is the basis for euthanizing animals. T61 is a legal drug and does not require a licence to be administered.

[79] The rare circumstances where Dr. Harper may use a controlled drug are not what Article E2.01 is designed for. The uncontradicted evidence is that Dr. Harper faces no jeopardy if she lets her licence lapse; she would still be a veterinarian in the Brampton office.

Reply Arguments

[80] The job description (Exhibit G-4) and the directive on rabies (Exhibit E-1) do not prove that the use of controlled drugs is not a requirement of Dr. Harper's job.

[81] Whether Dr. Harper would be disciplined or lose her job if she let her licence lapse is not the point. She would be contravening federal statutes by administering controlled drugs and performing her duties as directed by her supervisor.

[82] The facts of the case in *Lefebvre (supra)* are different. The issue was dealing with chemists covered by provincial legislation. There were no federal statutes requiring the chemists to be licensed, as is the case here.

[83] The other jurisprudence cited by the employer dealt with chartered accountants. There were no legal ramifications if these employees were not licensed.

[84] With regard to the argument that humans hold more rights than animals, the grievor wished to point that CFIA's mandate is to protect the Canadian public from animals. Dr. Harper may be using controlled drugs in the discharge of that mandate

and she does. No matter how rare the circumstances, it is still her duty and she should be reimbursed for her licence registration.

Reasons for Decision

[85] The issue I have to decide is whether Dr. Harper is entitled to have her OVC registration fees reimbursed.

[86] The pertinent clauses of the VM Group collective agreement are clauses A1.2 and E2.01:

A1.02 The parties to this Agreement share a desire to improve the quality of the Canadian Food Inspection Agency, to maintain professional standards and to promote the well-being and increased efficiency of its employees to the end that the people of Canada will be well and effectively served. Accordingly, they are determined to establish within the framework provided by law, an effective working relationship at all levels of the Canadian Food Inspection Agency in which members of the bargaining units are employed.

ARTICLE E2 - REGISTRATION FEES

E2.01 The Employer shall reimburse an employee for his payment of membership or registration fees to an organization or governing body when the payment of such fees is a requirement for the continuation of the performance of the duties of his position.

[87] The employer requires Dr. Harper to be eligible for a veterinarian licence and employs her for her knowledge and expertise but refuses to reimburse her for her annual OVC registration fees. This, in view of the evidence before me, is contrary to the principles enunciated in clause A1.02 above.

[88] As a professional veterinarian, Dr. Harper has to make decisions that involve the health and lives of animals. This is what her duties call for. When she chooses to euthanize an animal or use a specific drug to restrain an animal to perform certain procedures, she is not volunteering to use her OVC licence; she is performing her job in accordance with the professional standards of her profession.

[89] I find that it is indicative of Dr. Harper's professionalism that she has not let her licence lapse. I note that Dr. Szpakowski and Dr. Mraz have also maintained their

licence, in spite of CFIA policy. In her testimony Dr. Szpakowski stated that the common way to prove that one is eligible to be licensed is the licence itself.

[90] Dr. Szpakowski has described three exceptions to the CFIA's practice of not having its field veterinarians euthanize animals themselves. One of these exceptions applied to Dr. Harper in 2001, a non-compliance issue of a severe nature where an owner was refusing to destroy his animals. Dr. Harper was required to acquire a controlled drug to euthanize potentially rabid barn cats. It was because she was a licensed veterinarian that Dr. Harper was able to carry out her duties in that instance.

[91] Dr. Harper has described how in the course of her duties she may have to use sodium pentobarbital, which is a controlled drug under the *Controlled Drugs and Substances Act* and the Narcotic Control Regulations. This requires her to be licensed.

[92] Acquiring and/or distributing Xylazine (T61) also requires a veterinarian licence under the *Food and Drugs Act*. I accept Dr. Harper's evidence that her airport duties and CFIA's policy require her to use this drug despite the dangers described by Dr. Szpakowski and the inhumane effect on turtles and other small animals. The district veterinarian is required to distribute this drug. Dr. Harper's job description requires her to act as the district veterinarian in his absence. Dr. Harper is therefore also required to have a licence to acquire and/or distribute Xylazine while acting in the district veterinarian's position.

[93] There are two conditions for the application of clause E2.01, first that the payment of registration fees be required to be licensed and second that the licence be a "requirement for the continuation of the performance of the duties of his position."

[94] The evidence clearly reveals that Dr. Harper requires her licence for the performance of her duties. This requirement is mandated by federal statutes, the *Controlled Drugs and Substances Act* and the *Food and Drugs Act*. Therefore, Dr. Harper has met the second condition under clause E2.01.

[95] The parties have agreed that there is no federal body or organization that licenses veterinarians on a national basis and that the OVC is the provincial body that licenses veterinarians in Ontario and that to maintain her OVC licence, Dr. Harper had to pay registration fees. She therefore meets the first condition of Article E2.01.

[96] In 2001, the amount for the registration fees was \$561.75. The grievance is allowed and Dr. Harper is therefore entitled under clause E2.01 to the reimbursement of her registration fees in the amount of \$561.75.

**Evelyne Henry,
Deputy Chairperson.**

OTTAWA, September 23, 2002.

