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**Citation:** 2006 PSLRB 49



*Public Service  
Staff Relations Act*

Before an adjudicator

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BETWEEN

**SCOTT FRAZEE**

Grievor

and

**CANADIAN FOOD INSPECTION AGENCY**

Employer

Indexed as  
*Fraze v. Canadian Food Inspection Agency*

In the matter of grievances referred to adjudication pursuant to section 92 of the  
*Public Service Staff Relations Act*

**REASONS FOR DECISION**

***Before:*** Léo-Paul Guindon, adjudicator

***For the Grievor:*** Alan H. Phillips, Professional Institute of the Public Service of  
Canada

***For the Employer:*** Harvey Newman, counsel

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Heard at Halifax, Nova Scotia,  
July 5 and 6 and October 6 and 7, 2005.

## REASONS FOR DECISION

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### Grievances referred to adjudication

[1] Dr. Scott Frazee, a veterinarian employed by the Canadian Food Inspection Agency (CFIA) at Larsen Packers Ltd., in Bernwick, Nova Scotia, filed two grievances on June 27, 2003.

[2] The first grievance referred to adjudication (PSSRB File No. 166-32-33258) relates to allegations of discipline without just cause. The grievance reads as follows:

*Because of allegations made by Larsen's Packers Ltd./Maple Leaf Foods Inc. (registered establishment 150) and the New Brunswick Pork Producers, on June 6<sup>th</sup>, 2003 I was given written orders, by Nova Scotia region managers, to remain off the kill floor until the issue was resolved. This order was a continuation of an order I received May 28<sup>th</sup>, 2003 in which I was ordered off the kill floor by another Nova Scotia region manager. Previous to this order, I was ordered off the kill floor May 8<sup>th</sup>, 2003.*

*All orders directed me to cease performing antemortem and postmortem duties in this establishment. Dispositions are a major part of the duties of my substantive position as Veterinarian-in-Charge at this establishment. These directions have not been rescinded in spite of the fact that four separate investigations have determined that there was no substance to the allegations that I was not performing these duties properly. These directions and the failure of the CFIA to return me to full duties are discipline without cause in the fact that these actions constitute a suspension from my duties. These actions are in violation of articles A.1.01, A1.02, and B12.02 of the collective agreement.*

*These actions by CFIA Nova Scotia regional managers have seriously damaged my previous harmonious working relationships with CFIA and Larsen's management and staff and my professional reputation has been damaged. Also, these actions have taken a heavy mental, emotional and physical toll on my family and myself.*

*I therefore grieve.*

### **CORRECTIVE ACTION REQUESTED**

*[T]hat the CFIA management refute the unsubstantiated allegations which Larsen's management and the Pork Producers of New Brunswick have made against me; and that I be made whole in every way. Transferred to a VM position in Animal Health in the Annapolis Valley, Nova Scotia.*

[3] The second grievance referred to adjudication (PSSRB File No. 166-32-33259) relates to a request from Dr. Frazee to the CFIA for an investigation pursuant to clause B12.02 of the collective agreement and the alleged interference against him in the performance of his duties pursuant to subsection 14(1) of the *Meat Inspection Act* and subsection 24(1) of Part II of the *Administration and Enforcement of the Food and Drug Act*. This grievance reads as follows:

*On June 12<sup>th</sup>, 2003, pursuant to article B12.02 of the Veterinary Medicine Collective Agreement, I requested in writing an immediate investigation of Larsen's Packers Ltd./Maple Foods Inc (registered establishment 150) interference by way of its unsubstantiated and frivolous allegations that prevented me from fully performing my duties as Veterinarian in Charge at this establishment. The CFIA and certain of its Nova Scotia region managers have failed to respond to my request to conduct an effective investigation or to implement corrective actions that will prevent Larsen's from making such allegations in the future. In contravention of the aforementioned article, these failures constitute interference by the CFIA and certain of its Nova Scotia region managers through their actions as proxies for harassment by Larsen's. In addition, these actions are in violation of section 14(1) of the Meat Inspection Act and 24(1) Part II Administration and Enforcement of the Food and Drug Act. I therefore grieve.*

**CORRECTIVE ACTION REQUESTED**

*That I never again be supervised by any of the Nova Scotia regional managers that interfered with me in the performance of my duties. That the CFIA suspend all the managers that participated in this interference until an investigation is completed in order to determine why they failed to act as required in article B12.02.*

[4] On April 1, 2005, the *Public Service Labour Relations Act*, enacted by section 2 of the *Public Service Modernization Act*, S.C. 2003, c. 22, was proclaimed in force. Pursuant to section 61 of the *Public Service Modernization Act*, these references to adjudication must be dealt with in accordance with the provisions of the *Public Service Staff Relations Act*, R.S.C., 1985, c. P-35 (the "former Act").

[5] At the outset of the hearing, Alan H. Phillips, from the Professional Institute of the Public Service of Canada (PIPSC), withdrew the reference to clauses A1.01 and B12.02 of the collective agreement from the first grievance (PSSRB File No. 166-32-33258).

[6] Counsel for the employer, Harvey Newman, submitted an objection in writing to the jurisdiction of an adjudicator to deal with alleged violations of the *Meat Inspection Act* and the *Administration and Enforcement of the Food and Drug Act* (Exhibit E-1, May 6, 2005). Additionally, it was submitted that Dr. Frazee has not provided any facts that could give rise to a violation of clause B12.02 of the collective agreement and, to that extent, an adjudicator would not have jurisdiction to deal with this matter. In response, Mr. Phillips submitted that the objection should be dismissed on the basis that a violation of clause B12.02 of the collective agreement was alleged in the grievance and that the action of the employer, who ordered Dr. Frazee off the kill floor, was in fact a suspension covered by subparagraph 92(1)(b)(ii) of the former *Act* (Exhibit G-2, May 10, 2005).

[7] The decisions in *Marchand v. Treasury Board (Transport Canada)*, PSSRB File Nos. 166-2-25869 and 25870 (1995), and *Nolan v. Treasury Board (Health and Welfare Canada)*, PSSRB File No. 166-2-25229 (1994), were submitted by Mr. Phillips in support of the argument that he made verbally at the outset of the hearing in response to Mr. Newman's objection. For his part, Mr. Newman submitted the decision in *Gaw v. Treasury Board (National Parole Service)*, PSSRB File No. 166-2-3292 (1978). The objections were taken under advisement and will be considered with the decision to be rendered after the hearing on the merits of the case.

#### Summary of the evidence

[8] Dr. Frazee has been assigned as the Veterinarian-in-Charge (VM-1 group and level) for the CFIA at the Larsen Packers Ltd. plant located in Berwick, Nova Scotia, since December 1997. The Veterinarian-in-Charge supervises one veterinarian (Dr. John Ochieng, VM-1) and six animal health inspectors at the Larsen Packers Ltd. plant. The CFIA staff are responsible for performing ante-mortem and post-mortem evaluations on the hogs brought to the Larsen Packers Ltd. plant from Nova Scotia and New Brunswick.

[9] The written work description for the Veterinarian-in-Charge at Larsen Packers Ltd. summarizes the grievor's duties as follows (Exhibit G-23):

*Summary: Under the direction of a supervising Veterinarian, manages the inspection activities at a registered establishment(s) engaged in the slaughter of animals and the handling and processing of meat products. Enforces the relevant legislation, provides direction,*

*establishes guidelines and applies policy to all operations at a registered establishment. Supervises and controls the work of subordinate staff. Maintains effective relationships with plant management as well as other individuals and organizations involved in this area of the food industry. Undertakes special projects and assignments relating to animal diseases and other aspects of the meat industry.*

*Areas of Responsibility*

- 1. Ante and post mortem inspection.*
- 2. Processing operations and enforcement.*
- 3. Managerial and administrative responsibilities.*
- 4. Verification and certification of meat products.*
- 5. Special assignments and public relations.*

*Ante and post mortem inspection activities involve the application of professional skills in disease detection and disposition and associated activities relating to slaughtering procedures.*

...

*Verification of meat products involves the various tests and sampling to ensure product definition and meat safety. Certification involves the necessary professional assurances and declarations relating to preparation and export of meat products.*

...

[10] The inspectors perform post-mortem and ante-mortem evaluations on the hogs to detect abnormalities because of diseases or injuries that can present a danger for human consumption. If something is wrong with a living hog, it is isolated until final evaluation by a veterinarian. When a defect is found in the viscera or on a carcass, the carcass is taken out from the main kill line and transferred to a veterinarian rail for further examination. Veterinarians make the final decision for condemnation and complete an inspection report to declare the disease supporting the decision (Exhibit G-16). Dr. Frazee reports to Dr. Ken Chew, Inspection Manager, Nova Scotia region.

[11] On May 1, 2003, Dr. Chew received a telephone call from Mike Larsen, the owner of Larsen Packers Ltd., reporting a complaint that he had received from NB Pork, a producer from New Brunswick, for an alleged excessive condemnation rate. The producers complained to him that the situation was resulting in great financial loss and they would redirect their hogs to another facility if Dr. Frazee was not removed from the kill floor. On the same day, Mr. Larsen faxed some statistics, at Dr. Chew's

request, in support of his allegations that the condemnation rate had doubled in 2003 and was double the rate of the other plants (Exhibit G-8).

[12] Dr. Chew testified that he took the complaint very seriously and that the CFIA had an obligation to get to the bottom of the situation. The issues had to be resolved in an expeditious and a credible manner as possible.

[13] Dr. Chew sent an e-mail to Dr. Frazee stating that he wanted to meet with him on May 5, 2003, to review the slaughter and condemnation statistics and discuss general operations (Exhibit G-6). Dr. Frazee received a copy of the fax sent by Mr. Larsen and told Dr. Chew that the information provided was misleading (Exhibit G-7). Dr. Chew and Dr. Peter Scott-Savage (Regional Veterinary Officer) visited the Larsen Packers Ltd. establishment with plant management on May 5, 2003, and reviewed their findings with Dr. Frazee.

[14] In his testimony, Dr. Chew stated that at the May 5, 2003 meeting, Dr. Frazee agreed to stay away from the kill floor and to avoid doing any condemnation until the issue had been resolved with Larsen Packers Ltd. Dr. Chew summarized his understanding of short-term remedies as follows in his report dated May 6, 2003 (Exhibit G-9):

...

*Dr. Frazee has suggested some short term remedies to address the concerns:*

1. ***The VM on the final rail should not do any trimming*** as this is a plant function. This will remove any concerns about excessive trimming, etc. It will be up to the plant to trim off defects or isolated diseased portions for carcasses that could otherwise be passed for food purposes.
2. That he (***Dr. Frazee***) ***stay off final condemnations for this week*** since the industry is questioning his condemnation rates. I indicated that this should be for two weeks concurrent.
3. ***Sample submissions be sent to CFIA lab in St. Hyacinth as well as the Truro Vet Lab.*** I indicated samples be sent for carcasses condemned for jaundice, anemia or caseous abscesses for example. I shall advise the Truro Lab we could be sending such samples and ask their assistance.

...

[Emphasis in the original]

[15] Dr. Frazee explained in his testimony that he did not suggest staying off the kill floor for a week but that he agreed to let Dr. Ochieng proceed to the condemnation of Metz's Hogs (a producer of NB Pork). His understanding was that he should stay off the kill floor as much as possible and let Dr. Ochieng do most of the work. Dr. Frazee filed the notes he took of the May 5, 2003, meeting to corroborate his testimony (Exhibit G-25).

[16] Mr. Larsen was advised of the short-term remedies by Dr. Chew. In an e-mail dated May 5, 2003, Mr. Larsen maintained that Dr. Frazee should have been out of the plant when he was not looking after the kill to avoid non-professional reactions on his part (Exhibit E-2). NB Pork requested by letter dated May 7, 2003, that Dr. Chew remove Dr. Frazee from the Larsen Packers Ltd. plant (Exhibit G-3):

...

*We understand that Dr. Scott Frazee was not supposed to be present on the kill floor the last couple of days and another vet would be conducting the inspections. Apparently, this has not been the case. We understand that he has been present on the kill floor and the condemnation of our hogs continues. **This situation is unacceptable to our producers and cannot continue.***

***We are requesting that Dr. Scott Frazee be removed from the Larsen Packer [sic] plant immediately or our producers will have no other option but to redirect their hogs to another facility. No other option is acceptable.***

...

[Emphasis in the original]

[17] Dr. Chew explained that he did not wish to address the concerns about the professionalism of Dr. Frazee at that point and that he saw no reason to remove him from the Larsen Packers Ltd. establishment until the issue of the condemnation rate was addressed. Dr. Chew replied to NB Pork on May 8, 2003, and outlined the action plan implemented by the CFIA as follows (Exhibit G-10):

...

*These are,*

*1. The veterinarian will not do any trimming as this is a plant function. This will remove any concerns about excessive trimming by the vet.*

*2. Dr. Frazee be [sic] off the final condemnations the remainder of this week and next week. This will be reviewed further. A meeting [sic] has been arranged by certain producers with Dr. Frazee for the 13th May. I plan to be attending the meeting.*

*3. Sample submissions for laboratory confirmation will be taken for carcasses condemned for jaundice and anemia. Others may also be taken as deemed necessary. I had discussions with Dr. Frazee about jaundiced carcasses, anemia, feeding practices, etc.*

*4. With the approval of our Regional Director, we are actively looking into arranging an expert swine meat hygiene veterinarian from either Ontario or Quebec to come to Est 150 to review onsite condemnations by our veterinarians.*

...

[18] The situation created pressure on management and employees of Larsen Packers Ltd., as well as on the CFIA inspection staff members. Dr. Chew emphasized to CFIA staff members that they had to maintain their cool and professionalism in a message informing them of the condemnation rates issue on May 8, 2003 (Exhibit E-3).

[19] On May 8, 2003, Mr. Larsen complained again to Dr. Chew that Dr. Frazee was present on the kill floor in contradiction to the confirmation received the previous day to the effect that the misunderstanding with Dr. Frazee had been clarified and that he was to stay off the kill floor. Mr. Larsen concluded his correspondence in the following words (Exhibit G-11): "At this point, there is no solution that is acceptable to us other than the immediate removal of Dr. Frazee from EST 150."

[20] Dr. Chew replied on the same day to Mr. Larsen (Exhibit G-11) to inform him that Dr. Frazee had been instructed as planned to stay off the kill floor and that he had agreed to this. Furthermore, Dr. Chew advised Mr. Larsen that:

...

*... we are presently actively looking into getting an expert veterinary swine condemnation correlator from another CFIA area to Est 150. In the meantime I shall be detailing other veterinary staff to help out where possible starting next week.*



...

[21] Also on the same day, Dr. Frazee confirmed to Dr. Chew via e-mail that he was complying with his order to stay off the kill floor (Exhibit G-12).

[22] Dr. Chew testified that Larsen Packers Ltd. played a game to push him to do what they wanted but he maintained his action plan without going into disciplinary issues. Stephen Spidle, an inspector at Larsen Packers Ltd. and a shop steward for the Public Service Alliance of Canada (PSAC), contended to the CFIA president and regional directors that the NB Pork complaint was unacceptable intimidation by industry and had a direct affect on the integrity and credibility of the CFIA and its inspection staff (Exhibit G-4, May 9, 2003). On the same day, Gord Duke, an inspector at Larsen Packers Ltd., expressed his solidarity with Dr. Frazee and all inspection staff and requested from the CFIA management to give them proper backing and support (Exhibit E-4).

[23] A meeting was planned at Larsen Packers Ltd. for May 12, 2003, between Drs. Chew and Frazee. On this occasion, Dr. Chew was told by Dr. Frazee that his stepfather had died and that he would be on bereavement leave. Dr. Shane Hood, Atlantic Area Representative for the CFIA National VM Group Executive, made a representation in writing to Freeman C. Libby, Acting Regional Director for Nova Scotia, on May 12, 2003, as follows (Exhibit E-5):

...

*Article D8.02*

“WHERE AN EMPLOYEE IS REQUIRED TO ATTEND A MEETING ON DISCIPLINARY MATTERS THE EMPLOYEE IS ENTITLED TO HAVE REPRESENTATON OF THE INSTITUTE ATTEND THE MEETING WHEN THE REPRESENTATIVE IS AVAILABLE”

***Dr. Frazee believes he has been removed from performing the major portion of his job, he feels he has been disciplined without just cause or proof of wrong doing. Dr. Frazee from this point on, requests representation from the Institute, at any future meetings with CFIA management dealing with his current job discipline or the compliant [sic].***

...

[Emphasis in the original]

[24] On the same day, Mr. Libby responded as follows to the discipline issue (Exhibit E-5):

...

*Secondly, please pass on to Scott that the CFIA is not looking at this as a form of discipline. I discussed this issue with Paul Farrell in detail and it was felt that due to the circumstances it was best to bring in someone to review the situation in order to satisfactorily address the concerns put forth by industry. No conclusions have been drawn by management and we continue to recognize that Dr. Frazee is the VIC of Est. 150 and a valued member of the Nova Scotia region staff.*

...

[25] Also on May 12, 2003, Maureen Harper, Vice-President for the bargaining agent, submitted her concerns about the situation at Larsen Packers Ltd. to Dr. Chew as follows (Exhibit E-7):

*Hello Ken. I am writing because I have some very grave concerns about what is happening at the abattoir where Scott has been working for a number of years. I understand that plant management has expressed consternation about their recent rates of condemnation. I believe that CFIA has a responsibility to investigate the plant's concerns. This should be done by a national correlation team as is done with similar complaints in poultry plants.*

*What is concerning me is how Scott is being treated. I believe by removing Scott from his duties, you are not only sending the wrong message to industry (the tail of the dog wagging the dog), but you are also unjustly treating one of your employees. What ever happened to being innocent until proven guilty? I am even more concerned to learn that you feel Scott is not entitled to union representation in this matter. You and plant management have tried to have him removed from performing his duties at the abattoir and you think that he is not entitled to be represented by the union?*

*This is becoming an all too frequent occurrence in this Agency. Plant management makes a complaint to CFIA if they perceive a vet is too stringent in performing his duties which causes an economic loss to the plant and CFIA pulls the vet from the job to keep the industry happy. And we dare call ourselves a regulatory Agency!*

*This issue is scheduled to be discussed at the national UMC on June 16. I will personally be addressing it. I am tired of continually hearing about veterinarians in abattoirs being subjected to harassment not only from plant management, but also CFIA. This all has to stop because quite frankly, the CFIA does not have any vets to spare when they keep removing them from the abattoirs.*

*I would suggest that you really need to be careful how you handle this situation.*

...

[26] Dr. Chew explained to Ms. Harper his intervention plan to respond to the Larsen Packers Ltd. situation. He also said that it was not a punitive measure to ask Dr. Frazee to stay away temporarily from the kill floor, although no assessment of blame or acknowledgement of any fault had been made (Exhibit E-7, May 14, 2003).

[27] On May 13, 2003, Dr. Chew met with a group of 13 livestock producers, the chairman of the NB Pork Marketing Board and their veterinary swine consultant. They were informed of the action plan to get a national “correlator” team, experienced in swine condemnation, to be present on site and who would act as an expert reference point for discussions with both Drs. Frazee and Ochieng. Drs. Charles LeBlanc (Chief, Food and Animal Origin, Atlantic Canada), Murio St-Jean (Program Specialist, Meat Products, Atlantic Area) and Yves Robinson would be at Larsen Packers Ltd. to do the “correlation” and review Dr. Frazee’s condemnation rates and report their findings (Exhibit E-8 and G-14).

[28] Drs. LeBlanc and St-Jean visited the plant with Dr. Frazee on May 21 and 22, 2003 to discuss condemnation criteria. They detected that two conditions in particular were being over-reported, anemia and jaundice, because the carcasses had other underlying conditions (poly-arthritis for example). In those cases, poly-arthritis should have been reported rather than anemia or jaundice. Condemnation rates for these two conditions would have dropped; however, Dr. LeBlanc felt that this would not have changed the general condemnation statistics (Exhibit G-15). After that “correlation” visit, Dr. Frazee returned to all of his duties on the kill floor in the third week of May 2003.

[29] Mr. Libby prepared recommendations that were approved on May 28, 2003, by Cameron Prince, Executive Director for Atlantic Operations (Exhibit G-26). According to Mr. Libby, the preliminary findings of Drs. LeBlanc and St-Jean indicated some discrepancies in condemnations that warranted further standardization efforts.

[30] Mr. Larsen contacted Mr. Prince to voice his concern over the return of Dr. Frazee to the kill floor and indicated that his return should not take place until the issue had been resolved. Consequently, Mr. Libby directed Dr. Frazee to stay off the kill floor until the issue had been resolved (Exhibit G-17). He also discussed the situation with Dr. Alan Phillips, a PIPSC representative (Exhibit G-26).

[31] On May 28, 2003, in correspondence to CFIA management, Dr. Ochieng complained that his workload and stress had increased by pulling Dr. Frazee off the kill floor. Dr. Ochieng further stated that no one had given him a reason why the Veterinarian-in-Charge was not allowed on the kill floor (Exhibit G-27). Dr. Chew did not respond to this correspondence.

[32] Dr. Frazee considered that being ordered off the kill floor again was harassment and disciplinary in nature because no blame had been made against him in Dr. LeBlanc's May 26, 2003 report. Another investigation took place on June 2 and 3, 2003, by Drs. Scott Braden (Program Specialist, Red Meat, Ontario), Mike Aleong (Regional Veterinary Officer, Ontario) and LeBlanc. The report noted that the recording errors relating to anaemia and jaundice had been rectified. The condemnation of the carcass for multiple abscesses was also discussed, and the team felt that Dr. Frazee's disposition was stricter than what the team members would have made. The report included suggestions for continuing education for Dr. Frazee (Exhibit G-18):

...

1. *Attendance at a red meat wet lab with Dr. Robinson*
2. *Exposure to other hog slaughter establishments to interact & discuss condemnation criteria with other CFIA VMs.*
3. *Have an up-to-date meat hygiene reference at Est. 150 (suggest Meat Hygiene 10th edition by Gracey)*

...

[33] On June 6, 2003, Dr. Frazee was reinstated in his duties on the kill floor. The management of Larsen Packers Ltd. was not happy about that situation and spoke with Paul Farrell (Regional Director for Nova Scotia). On the same day, Mr. Farrell instructed Dr. Frazee not to participate in final dispositions at Larsen Packers Ltd. until he had an opportunity to work with veterinarians in other hog slaughter establishments in Ontario (Exhibit G-19). However, due to the Severe Acute Respiratory Syndrome (SARS) epidemic in Ontario, the recommendation to work with other veterinarians could not be implemented.

[34] Dr. Robinson met with Mr. Farrell and Drs. Frazee, Chew and Phillips at the Larsen Packers Ltd. establishment in the middle of June 2003. He verbally reported that there was nothing out of the ordinary and made no allegations against Dr. Frazee's performance. The tests that were performed on the samples sent to the laboratory revealed that 95% of Dr. Frazee's diagnostics had been confirmed and the other 5% were inconclusive.

[35] Mr. Spidle requested an update on the situation on June 9, 2003. In response, Dr. Chew stated that he had spoken with Larsen Packers Ltd.'s management but that they had refused to meet with Dr. Frazee. Dr. Chew was trying to arrange a visit to hog plants outside the Maritimes (Exhibit E-9).

[36] On June 12, 2003, Dr. Frazee requested an investigation into the interference with his duties as Veterinarian-in-Charge at Larsen Packers Ltd. over the past seven weeks, according to clause B12.02 of the collective agreement, and demanded to return to all of his duties, including making dispositions on the kill floor (Exhibit G-24). Clause B12.02 of the collective agreement between the CFIA and the PISPC for the Veterinary Medicine (VM) group bargaining unit (expiry date: September 20, 2003) reads as follows:

...

***B12.02 Interference in the Performance of Duties***

*If an employee or employees whose normal duties are performed on third party premises are interfered with, or otherwise harassed or coerced such that they are prevented from fully and effectively performing their duties on the industrial employer's premises, the employee or employees shall report the matter in writing to the Employer. The Employer will then consider appropriate measures to*

*investigate and implement corrective action for any substantiated claims of such interference.*

...

[Emphasis in the original]

[37] No investigation was conducted as a result of Dr. Frazee's request. Dr. Chew testified that no purpose would be served by a second investigation in the absence of apparent interference by the people at Larsen Packers Ltd. against Dr. Frazee.

[38] On June 13, 2003, Dr. St-Jean sent a memorandum to Dr. Chew following an onsite investigation after NB Pork and Mr. Larsen had complained. Dr. St-Jean concluded as follows (Exhibit G-5):

...

*In conclusion, from my discussions with Dr Frazee and my on-site evaluation, I have not been able to detect any significant discrepancies between both plants (Est. 150 & 95) in the disposition criterias being applied for the condemnation of carcasses and/or parts of it. And such findings are also sustained by some discussions with Dr Ochieng-Mitulla who has formerly been trained at Establishment 95 and who was during my visit working at the Est. 150.*

*However, some demerit reporting differences which are the results of different operational processes between both plants do exist. But, there wasn't any indication at the time of investigation that the NB hog producers have been penalized due to the existence of some operational differences between those plants.*

[39] In his correspondence dated June 18, 2003, Mr. Larsen still questioned whether Dr. Frazee interpreted conditions were consistent with national standards or whether the diagnosis was consistent with what happened in the rest of the country. He concluded his e-mail as follows (Exhibit G-20):

...

*While I have been satisfied that the seriousness of the situation has been appreciated by everyone we have talked to (at least, that is what everyone has said), I have not seen that understanding reflected in any actions taken.*

...

[40] On June 25, 2003, Mr. Farrell notified Dr. Frazee that he would remain in his position as Veterinarian-in-Charge at Larsen Packers Ltd. and that he would be responsible for the full range of duties of that position (Exhibit G-21). Mr. Farrell wrote that:

...

*Part of the responsibility of your position is to work with industry representatives that are impacted by your decisions and to ensure the results of your work are well understood by all. There will be a significant challenge to rebuild relationships with plant management and the NB Porc Producers, to re-establish an efficient and effective working relationship with them and to gain their trust. A relationship based on trust between the industry, you and your staff at Est 150 is critical to the success of our Agency. In order to move forward it is essential that this process begin now.*

*In order to begin the process of regaining the trust of the industry the following actions are to be carried out. If you, or your staff have further suggestions, I would appreciate hearing from you.*

1. *When declaring condemnations, validate your decision with a second look, and consult with Dr. Ochieng for questionable ones. Follow up with sampling for the pathology confirmation in most cases, especially for jaundice and anemia. These actions will help greatly when and if required to defend decisions.*
2. *When questioned by either plant management or producers, ensure you take the time to explain your decisions in a straight forward, responsive manner.*
3. *If the condemnation rate, as applied by either you or Dr. Ochieng, rises above the normal rate, engage in consultation with plant management as to your findings so they can be aware immediately.*
4. *Ken and I will be arranging for you to have some exposure to activities in another hog plant in the near future.*

...

[41] On September 11, 2003, Mr. Prince responded to NB Pork's May 7, 2003 complaint as follows (Exhibit G-22):

...

*In light of concerns raised regarding dispositions conducted by Dr. Frazee, CFIA Management took necessary measures to ensure that his rate of condemnation was within the national standards. Dr. Frazee remains the Vet-in-Charge at Establishment 150 with full management support.*

*While we recognize the need for CFIA and regulated parties to foster mutually respectful and productive working relationships, I must emphasize the fact that CFIA retains authority regarding the management of CFIA staff.*

*Paul Farrell, Regional Director for NS Region, is continuing to work with both plant management and Dr. Frazee in order to come to a long-term resolution in this matter.*

...

[42] In his testimony Dr. Frazee stated that no “normal rate” of condemnation existed in the CFIA or that there was a “national standard” that was definite for the rate of condemnation. The rate of condemnation fluctuated depending on the health condition of the hogs and the diagnosis established by applying the science of veterinary medicine. The CFIA veterinarians and inspectors have to observe and discover the health problems that render the meat unfit for human consumption. No national standard on condemnation rates could be established because the causes for condemnation are variable and very unpredictable.

### Summary of the arguments

#### For the grievor

[43] In his submissions, Mr. Phillips recapitulated the facts and reiterated the arguments in reply to Mr. Newman’s preliminary objection. The employer took Dr. Frazee off the kill floor on three occasions after allegations of wrongdoing by NB Pork and Larsen Packers Ltd. He was clearly directed not to proceed to final disposition notwithstanding the investigations performed by CFIA management and their conclusion that the allegations were not founded. The action of the employer against Dr. Frazee was disciplinary in nature because he was suspended within the meaning of section 92 of the former Act.

[44] Mr. Phillips submitted that the meaning of the words “suspension” and “suspend” in *Black’s Law Dictionary*, Fifth Edition, included the removal of an employee from his duties. In the present case, the employer suspended Dr. Frazee from his duties on the kill floor that related to final condemnation between May 5 and



June 25, 2003, and this was a “suspension” according to *Black’s Law Dictionary (supra)*. In *Marchand (supra)*, the adjudicator found that the removal of employees from their duties was a suspension even though it was with pay.

[45] In *Nolan (supra)*, it was found that a suspension with pay was disciplinary in nature and was adjudicable pursuant to paragraph 92(1)(b) of the former *Act*. That principle should be applied here, and the disciplinary measure imposed on Dr. Frazee should be considered as unmerited and unfair.

[46] The allegations of excessive condemnations against Dr. Frazee constitute the basis of the suspension and showed the disciplinary nature of the employer’s decision. The CFIA performed investigations to verify Dr. Frazee’s criteria for condemnation. Nothing blameworthy came out of the investigations, but the CFIA directed Dr. Frazee to stay off the kill floor after Larsen Packers Ltd.’s requests to that effect.

[47] Dr. Frazee had a significant portion of his duties removed when he was directed to avoid final dispositions, and he considered that he was interfered with or coerced by Larsen Packers Ltd. and the producers from performing his duties on the kill floor. On June 12, 2003, Dr. Frazee requested the CFIA to investigate such interference on the basis of clause B12.02 of the collective agreement. The CFIA never reacted to that complaint.

[48] Mr. Phillips requests a statement that the employer’s decision to suspend Dr. Frazee from his duties on the kill floor was disciplinary in nature and without just cause. The adjudicator should order the employer to remove all information related to these incidents from Dr. Frazee’s file.

[49] The adjudicator should declare that the employer’s failure to proceed to the investigation requested by Dr. Frazee into the interference by Larsen Packers Ltd. and NB Pork was in violation of clause B12.02 of the collective agreement and should order the CFIA to proceed with the investigation as Dr. Frazee had requested.

#### For the employer

[50] The onus is on Dr. Frazee to demonstrate that the employer breached the collective agreement. In the first grievance, Dr. Frazee was not disciplined by the employer. The allegations of an excessive condemnation rate stated by a regulated party have to be investigated by the CFIA, which has to get to the bottom of the

charges. The employer did not consider Dr. Frazee at fault with respect to anything, and the decision to direct him not to proceed to final condemnation was not disciplinary.

[51] Dr. Frazee was not removed from his position as Veterinarian-in-Charge at Larsen Packers Ltd. and he was performing other duties than final disposition for the entire period covered by the grievance. The employer has the managerial authority to assign duties to its employees and it is not disciplinary to do this in the circumstances of the grievance. Dr. Chew has the responsibility to investigate the serious allegations made by the producers and Larsen Packers Ltd.

[52] From the May 5, 2003 meeting with Dr. Frazee, Dr. Chew understood that Dr. Frazee himself had made the suggestion to stay off the kill floor for the time of the investigation, as stated in the May 6, 2003 e-mail. Dr. Frazee did not write back to Dr. Chew to deny that. It is reasonable to conclude that, in those circumstances, the decision not to participate in condemnations for the period of the investigation was administrative and not punitive. The CFIA management told Dr. Frazee to refrain from working on the kill floor and emphasized that it was not a disciplinary action, rather this would allow the CFIA time to address the issue.

[53] Mr. Newman apologized for the CFIA's failure to respond to Dr. Frazee's request for investigation into interference in the performance of his duties. On June 12, 2003, the issue had not been resolved at that point. Dr. Chew testified that there was no point in conducting another investigation in the absence of any apparent interference with Dr. Frazee's duties.

[54] The adjudicator should not go into the merits of a reassignment of duties for a short period of time. The administrative actions of the employer have to be distinguished from disciplinary actions according to the principle stated in the decisions rendered in *Gaw (supra)*, *Nolan (supra)* and *Marchand (supra)*. In those decisions, the grievors were ordered to stay home for long periods of time, contrary to the facts in this case.

#### Reply of the grievor

[55] Dr. Frazee's notes of the May 5, 2003 meeting corroborate the fact that he never suggested to stay off the kill floor as he stated in his testimony at the hearing. On that

point, the adjudicator has to weigh the evidence. Allegations of misconduct against Dr. Frazee as well as requests to have him relieved of his duties were made by NB Pork and Larsen Packers Ltd. (Exhibits G-3 and G-11).

[56] The CFIA never conducted an investigation into the interference with Dr. Frazee's performance of his duties as requested on June 12, 2003. The CFIA management proceeded to an investigation into allegations of excessive condemnations but that was a separate issue from the one of interference, which was never investigated.

### Reasons

#### On the grievance related to the suspension of duties

[57] From the evidence before me, I can conclude that Dr. Frazee was directed not to perform final disposition of carcasses between May 5 and June 25, 2003. Specifically, he was directed to avoid condemning carcasses and being present on the kill floor of the Larsen Packers Ltd. plant between these dates, but for the duration of the "correlation" process performed on different occasions within that period. The orders came from Dr. Chew (Inspection Manager) on May 5 and May 8, 2003, from Mr. Libby (Acting Regional Director for Nova Scotia) on May 28, 2003, and from Mr. Farrell (Regional Director for Nova Scotia) on June 6, 2003. In so doing, the CFIA management suspended Dr. Frazee from an important part of his duties according to the meaning given to the words "suspend" or "suspension" in *Black's Law Dictionary (supra)*:

**Suspend.** *To interrupt; to cause to cease for a time; to postpone; to stay, delay, or hinder; to discontinue temporarily, but with an expectation or purpose of resumption. As a form of censure or discipline, to forbid a public officer, attorney, employee, or ecclesiastical person from performing his duties or exercising his functions for a more or less definite interval of time.*

*To postpone, as a judicial sentence. To cause a temporary cessation, as of work by an employee; to lay off.*

*See also Suspension.*

...

**Suspension.** *A temporary stop, a temporary delay, interruption, or cessation. Thus, we speak of a suspension of the writ of habeas corpus, of a statute, of the power of alienating an estate, of a person in office, etc.*

*A temporary cutting off or debarring one, as from the privileges of one's profession.*

*Temporary withdrawal or cessation from employment as distinguished from permanent severance accomplished by removal; "removal" being, however, the broader term, which may on occasion include suspension.*

[Emphasis in the original]

[58] That suspension was a result of the allegations of excessive condemnations made against Dr. Frazee by Larsen Packers Ltd., NB Pork and 13 producers who are members of NB Pork. The allegations of excessive condemnations were directed only against Dr. Frazee, whereas no blame was attached to Dr. Ochieng or any CFIA inspectors performing their duties at the Larsen Packers Ltd. plant. Some undetailed allegations about Dr. Frazee's professionalism were added to the excessive condemnation allegation by Mr. Larsen. However, these allegations were not investigated by the CFIA management.

[59] The allegations of wrongdoing were investigated by Drs. Chew and Savage on May 5, 2003. A second investigation was conducted by Drs. St-Jean and LeBlanc on May 21 and 22, 2003. Another "correlation" for the criteria applied for condemnation was made by Drs. Barden, Aleong and LeBlanc on June 2 and 3, 2003. Finally, Dr. Robinson gave a verbal report of his findings further to his investigation, in mid June.

[60] Minor inconsistencies were noted in Drs. St-Jean and LeBlanc's report regarding the diagnosis indicated as the reason for condemnation in inspection reports. Those discrepancies had been rectified as observed in the June 2 and 3, 2003 investigation. The sample testing performed for pathology confirmation, especially for jaundice and anaemia, validated the diagnosis made by Dr. Frazee by 95%. Until his reinstatement in his full duties on June 25, 2003, the CFIA management told Dr. Frazee that the decision to take him off the kill floor was not disciplinary and that no blame was put on him, notwithstanding the repeated requests from Mr. Larsen to Dr. Chew for disciplinary action.

[61] Mr. Spiddle reacted as the bargaining agent representative and, on May 9, 2003, criticized the allegations as unacceptable intimidation by industry. Dr. Hood, the bargaining agent's representative for the VM group, complained that the suspension of duties was discipline without just cause and requested on May 12, 2003, that Dr. Frazee's right to representation be respected. On the same day, Ms. Harper, PIPSC

Vice-President, repeated that the actions by the CFIA were disciplinary and that “correlations” were made with similar complaints in poultry plants without a suspension of duties.

[62] Firstly, the decision of the employer was directed personally against Dr. Frazee, and none of the other members of the CFIA inspection staff at the Larsen Packers Ltd. plant were involved in similar allegations of excessive condemnation during that period. Secondly, the allegations of wrongdoing on the part of Dr. Frazee were repeatedly made. Thirdly, Dr. Frazee was directed on four different occasions not to perform an important part of his duties within a short period of time. Fourthly, the CFIA management decided that they could not perform their investigation into the allegations of excessive condemnation without suspending him from an important part of his duties in post-mortem evaluations. In those circumstances, I conclude that the suspensions from performing final condemnation and from being present on the kill floor between May 5 and June 25, 2003 imposed on Dr. Frazee were disciplinary in nature; the CFIA justified those decisions on the basis of the allegations of excessive condemnation rates.

[63] The disciplinary nature of the employer’s decision to suspend Dr. Frazee from an important part of his duties is adjudicable pursuant to subparagraph 92(1)(b)(i) of the former *Act* and gives me jurisdiction to adjudicate the grievance.

[64] The disciplinary decision by the CFIA to relieve Dr. Frazee of his duties on the kill floor between May 5 and June 25, 2003 appears to have been unfounded according to the “correlations” performed on four occasions. For all of the above-cited reasons, I find that the CFIA’s decision to suspend Dr. Frazee was unwarranted. Consequently, the employer should remove from Dr. Frazee’s personnel file all information relating to the incidents that occurred between May 1 and June 25, 2003.

#### On the grievance related to interference in the performance of duties

[65] On June 12, 2003, Dr. Frazee requested that the CFIA proceed with an investigation of Larsen Packers Ltd.’s interference that prevented him from fully performing his duties. The evidence showed that the CFIA management did not follow up on that request. I understand from Dr. Chew’s testimony that there was no purpose for another investigation in the absence of any apparent interference by Larsen Packers Ltd.’s management against Dr. Frazee.

[66] The wording of clause B12.02 of the collective agreement is imperative and creates an obligation on the employer to “consider appropriate measures to investigate and implement corrective action for any substantiated claims” of interference. It is obvious that the CFIA did not assume its obligation to investigate Dr. Frazee’s complaint of interference against NB Pork and management at the Larsen Packers Ltd. plant between May 1 and June 25, 2003.

[67] Mr. Newman submitted an apology to Dr. Frazee for the employer’s failure to respond to his complaint. The wording of the apology indicated that the only wrongdoing on the part of the CFIA was the absence of a written response. This is not sufficient to meet the CFIA’s obligations under clause B12.02 of the collective agreement, which imposes on the employer an obligation to investigate and implement corrective actions for any substantiated claims of interference. In the present case, the CFIA should have considered appropriate measures to investigate Dr. Frazee’s claim.

[68] The issue of the alleged harassment or coercion was also raised by Ms. Harper in her May 12, 2003, correspondence where she states that “correlation” was performed in similar complaints in poultry plants with a national “correlation” team and without removing the inspecting employee from his duties or from the plant. That suggestion should have been considered by the CFIA management when it was investigating the allegations made against Dr. Frazee. A more appropriate investigative measure, without having to relieve Dr. Frazee of his responsibilities on the kill floor, may have come about if the employer had considered his claim of interference.

[69] A serious consideration of the circumstances referred to by Dr. Frazee in his claim pursuant to clause B12.02 may prevent what could be an “administrative investigation” from slipping into a “disciplinary suspension”. A correlation between the condemnation rate and the criteria to be applied for diagnosis and the reporting of the reason for condemnation can be performed without pointing out a person and removing that person from his or her duties. The representations by the bargaining agent’s representative should have opened the eyes of the CFIA management concerning the disciplinary nature of its action. By removing Dr. Frazee from his duties on the kill floor, they sent a message to the industry that something was wrong with the number of condemnations decided on by Dr. Frazee and that wrongdoing on his part motivated his suspension, thus, prompting Mr. Larsen to pursue his efforts to get Dr. Frazee out of the plant.

[70] I consider that the repetitive requests transmitted by the swine producers of the New Brunswick Pork Marketing Board and by Mr. Larsen, for the Larsen Packers Ltd. establishment, to the CFIA management are in the nature of “harassment and coercion”, as stated in clause B12.02 of the collective agreement. The expressly stated objective of the industry was to have Dr. Frazee removed off the kill floor and, later, out of the Larsen Packers Ltd.’s plant. Those pressures prevented Dr. Frazee from fully and effectively performing his duties in relation to final dispositions on the Larsen Packers Ltd. premises. Those circumstances meet the criteria stated in clause B12.02 of the collective agreement.

[71] Consequently, I find that the employer failed to consider appropriate measures to investigate and implement corrective action with respect to Dr. Frazee’s claim of interference, in contravention of clause B12.02 of the collective agreement. Notwithstanding the long period that has lapsed since the incident, I find that the written evidence submitted to me at the hearing is sufficiently substantiated that the employer should consider appropriate measures to investigate Dr. Frazee’s claim and implement the corrective actions required. The employer is consequently ordered to comply with clause B12.02 of the collective agreement.

[72] For all of the above reasons, I make the following order:

*(The Order appears on the next page.)*

Order

[73] The grievances are granted to the extent that follows:

- the CFIA is ordered to remove from Dr. Frazee's file all information concerning the complaints made in May and June 2003 by NB Pork, NB Swine Producers and the Larsen Packers Ltd. plant, and any information related to the alleged excessive condemnation rate;
- the CFIA is ordered to comply with clause B12.02 of the collective agreement in relation with the request by Dr. Frazee submitted on June 12, 2003, and to consider appropriate measures to investigate and implement corrective action concerning the interference.

May 5, 2006.

**Léo-Paul Guindon,  
adjudicator**