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*Public Service  
Labour Relations Act*

Before the Public Service  
Labour Relations Board

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BETWEEN

PROFESSIONAL INSTITUTE OF THE PUBLIC SERVICE OF CANADA

Applicant

and

CANADIAN FOOD INSPECTION AGENCY

Respondent

Indexed as

*Professional Institute of the Public Service of Canada v. Canadian Food Inspection Agency*

In the matter of an application for a determination on a matter that may be included in an essential services agreement under subsection 123(1) of the *Public Service Labour Relations Act*

**REASONS FOR DECISION**

***Before:*** Michele A. Pineau, Vice-Chairperson

***For the Applicant:*** Sarah Godwin, Employment Relations Officer

***For the Respondent:*** Caroline Engmann, counsel

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Heard at Ottawa, Ontario,  
August 11 to 13 and December 14 to 16 and 18, 2009, and  
February 23 and September 22 to 24, 2010. Site visit on December 17, 2009.

**I. Application before the Board**

[1] On December 16, 2008, the Professional Institute of the Public Service of Canada (“the Institute”) filed an application pursuant to paragraph 123(1)(a) of the Public Service Labour Relations Act (PSLRA) for the determination of matters relating to an essential services agreement for the Veterinary Medicine (VM) group. VMs are employed by the Canadian Food Inspection Agency (CFIA or “the employer”).

[2] Between December 2004 and December 2006, the CFIA and the Institute engaged in discussions to establish the designated positions, in accordance with the *Public Service Staff Relations Act (PSSRA)*. When the *PSLRA* came into force, the process continued in view of achieving what is now referred to as an essential services agreement. Following the signing of the relevant collective agreement in November 2006, discussions continued, but they ended in December 2006 without an agreement.

[3] In its response to the application, the CFIA filed information about the positions that it deemed essential in order to meet the requirements of subsection 4(1) and section 120 of the *PSLRA*.

**II. Partial settlement of the essential services agreement**

[4] On May 28, 2009, the parties negotiated as follows a partial settlement of their dispute with respect to emergency services to be provided in the case of a strike:

1. *On a conditional basis, when the Area Executive Director seeks to respond to a suspected or diagnosed emergency animal disease by establishing an Emergency Operations Center the VMs necessary, as determined by the employer, will respond to the emergency.*

2. *The employer will be amending its essential services proposal accordingly.*

...

Other than for emergency services, the parties have taken diametrically opposed views concerning the services deemed necessary for the safety or security of the public or a segment of the public in the case of a work disruption.

### **III. CFIA's position on services deemed essential in a work disruption**

[5] The CFIA presented the following statement of principles about the services that should be part of an essential services agreement:

*The CFIA is dedicated to safeguarding food, animals and plants, which enhances the health and well-being of Canada's people, environment and economy. Based on the foregoing, the following criteria will be used to identify essential VM positions within the Agency (Operations, Programs and Science Branches):*

1. *Positions required to maintain a level of service for Meat Hygiene in order to ensure that CFIA meets its legislated / Mandated functions (ie. Food safety, food security);*
2. *Positions required to maintain a level of service for Animal Health in order to ensure that the CFIA meets its legislated / mandated functions (eg. Disease control (FMD), zoonotic diseases (Rabies, TB, etc), public health responsibilities, import inspections);*
3. *Specific positions in laboratories where it is agreed that duties relate to the [sic] animal health welfare;*
4. *Positions required by the Agency to respond to emergencies and to take a lead role in responding to food safety, animal health, plant health and any other emergencies that fall within the agency's mandate;*

*For greater clarity, an emergency is "an abnormal situation which, to limit damage to persons, property or the environment, requires prompt action beyond normal procedures". In an emergency situation, the appropriate Vice-President, Associate Vice-President or Executive Director would identify which positions are called-back to respond to the emergency.*

*Furthermore:*

*Adjustments will be made in the event of a new plant opening or in the event of a plant closure.*

*Unless staffing action is underway, vacant positions will not be part of any essential services agreement.*

*Unique and specific positions may be identified by either party.*

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#### **IV. The Institute's position on services deemed essential in case of a work disruption**

[6] The Institute presented the following statement of principles as to services that should be part of an essential services agreement:

*It is PIPSC's position that, in addition to the agreement reached between the parties on May 28, 2009 regarding emergency responses, the Veterinary Medicine Group at CFIA provides essential services and/activities (within the meaning of section 4 and Division 8 of the Public Service Labour Relations Act) as follows:*

1. *in **Animal Health**, investigations into suspect reportable or notifiable diseases with potential human impact (e.g. rabies) to the extent that an inspector cannot diagnose, treat or order destroyed the animal(s) in question;*

2. *in **laboratories**,*

*(a) services linked to suspect or confirmed notifiable or reportable diseases and maintenance of accreditation for national and international certification;*

*(b) conducting, evaluating and reporting on diagnostic and pathology tests of suspect or confirmed cases of diseases with human impact,*

*(c) technological transfers in an outbreak; and*

*(d) ordering of controlled substances in laboratories;*

3. *in **Policies and Programs**,*

*(a) where there is an outbreak of a reportable or notifiable disease with potential impact on human health in a trading partner, as per notice to the director of Animal Health, the preparation and provision of risk analysis and import restrictions; and*

*(b) where no applicable manual exists, responding to any inquiry about animal disease control and eradication policies relating to a reportable or notifiable disease with potential impact on human health.*

*Furthermore, in the event of a strike, the Veterinary Medicine Group at CFIA will continue to provide the following important, although non-essential activities related to laboratories.*

- (a) *supervising the lab animal health program*
- (b) *ongoing research (but not the commencement of new research);*
- (c) *participation on the Animal Health care in laboratories, and*
- (d) *provision of animal emergency care in laboratories; and*
- (e) *maintenance of specific pathogen free flocks.*

[Emphasis in the original]

## **V. Presentation of the evidence**

[7] Four witnesses testified on behalf of the employer: Dr. Brian Evans, Dr. Al Klemmer, Dr. Lindsay Elmgren and James Laws. Their testimonies presented an overview of the legislation and regulations that apply to the mandate and operations of the CFIA and of the issues that concern food safety as it affects the safety of the public. References to legislative and scientific documentation were filed in support of their testimonies.

[8] Dr. Evans is Executive Vice-President of the CFIA and has been its CEO since June 2007. He is also Canada's Chief Veterinary Officer. Dr. Evans is a member of the management board of the World Organization of Animal Health, the new name, since 2003, of the OIE, the historical acronym for the Office International des Épizooties, created in 1924.

[9] Dr. Klemmer is Senior Staff VM for the Program Policy Branch of the CFIA (acting). He has worked at the CFIA (previously Agriculture Canada) since 1988. Until 2006, he worked primarily in occupations related to meat hygiene within the Operations Branch. He now develops programs and policies.

[10] Dr. Elmgren is Executive Director for the Ontario Laboratories Network. He is responsible for the Ottawa Laboratory (Carling) and the Ottawa Laboratory (Fallowfield) and the Greater Toronto Area Laboratory, all of which perform work on food safety and quality and preventing fraud within the food supply, animal and plant health.

[11] Mr. Laws is Executive Director of the Canadian Meat Council (“the Council”). The Council is a national trade association of federally regulated meat packers and processors of beef, pork, poultry, veal, horsemeat and lamb. The Council collaborates with the CFIA on non-competitive issues such as meat safety.

[12] Five witnesses testified on behalf of the Institute: Dr. Valérie Coupal, Dr. Ravinder (Ravi) Valsign Rai, Dr. Thomas Wright, Dr. Doug Aitken and Dr. Ann Allain. All are highly qualified professionals who presented both scientific and personal views of the work of VMs within the CFIA. They are members of the Institute’s National Veterinary Group Executive.

[13] Dr. Coupal works as a VM-2 at Volaille Giannone Inc. in St-Cuthbert, Quebec, a chicken primary processing plant. She participates in a joint CFIA committee for Export Certification and Meat Hygiene.

[14] Dr. Rai is the regional veterinarian for the employer’s Central Region, a position he has occupied since 2005. He is an area meat-program specialist in Guelph for hogs and beef.

[15] Dr. Wright is Veterinary Biologics Veterinarian at the CFIA’s Prince Edward Island Regional Office. Before joining the CFIA, he was Chief Veterinarian for the Province of Prince Edward Island.

[16] Dr. Aitken is Veterinary Program Specialist (Import) - West (acting). He provides advice on the import and export requirements of regulated animal products and by-products to persons within the CFIA as well as to meat product importers. He issues import permits on behalf of the Minister of Agriculture and Agri-Food.

[17] Dr. Allain is Senior Staff Veterinarian, classified VM-4. Her work consists of writing and revising import directives concerning the risks of allowing a product to enter Canada based on its country of origin.

[18] This case involves an interpretation of the facts rather than an evaluation of the credibility of the witnesses. I found the testimony of all the witnesses forthright and informative, even though they presented different points of view. To avoid a lengthy recital of their testimonies, which at times was overlapping, the evidence is organized in two parts as follows: (a), CFIA’s evidence as it relates to its mandate

and operations, including information retrieved from the filed documents, and (b), the views of the Institute's witnesses.

**A. The CFIA**

[19] The CFIA was created in 1997 by the *Canadian Food Inspection Agency Act* S.C. 1997, c.6. It reports to the Minister of Agriculture and Agri-Food. The CFIA's Corporate Business Plan describes it as Canada's largest science-based regulatory agency, responsible for the delivery of all federally mandated programs for food inspection, plant and animal health products, and production systems, as well as consumer protection as it relates to food. Its responsibilities flow from 13 federal statutes and 42 regulations, including the following: *Canadian Food Inspection Agency Act*, *Meat Inspection Act* R.S.C. 1985, c. 25 (1<sup>st</sup> supp), *Meat Inspection Regulations*, 1990 SOR/90-288, *Health of Animals Act* S.C 1990, c.21, *Health of Animals Regulations* C.R.C., c. 296, *Export Inspection and Certification Exemption Regulations* SOR/91-3, and *Reportable Diseases Regulations* SOR/91-2.

[20] The CFIA explains its mandate as the protection of public health, focusing primarily on the following aspects that affect the Canadian public:

- the protection of the public from preventable health risks;
- the protection of consumers through a fair and effective food, animal and plant regulatory regime that supports competitive domestic and international markets;
- the sustenance of the plant and animal resource base; and
- the security of Canada's food supply and agricultural resource base.

[21] Minimizing public risks to health allows Canadians to be more healthy and thus to be able to perform their work. Part of the CFIA's mandate is to bolster Canada's prosperity. The integrity of the inspection system is the economic driver that encourages Canadians to consume meat products and that removes trade barriers and provides international access. The CFIA facilitates Canadian entrepreneurs' access to international markets because of its safety record, and it encourages other countries to buy Canadian products.

[22] As described in further detail later in this decision, the CFIA uses a variety of tools to monitor and promote compliance with the legislation, including inspections, audits, product sampling and testing. Risk-based approaches focus effort on the areas of highest risk, that is, the systems, processes and facilities that most directly affect animal health and food safety. Additionally, Canada has national and international obligations in those areas. Scientific advancement is the basis for the continuing renewal of the regulatory program within a risk-management environment rather than via uniquely economic or political considerations. The successful delivery of programs that prevent and manage animal diseases and food safety risks provides the critical foundation for domestic and international market confidence.

[23] As the world becomes more globalized because of product and people movement and interdependence, the management of health risks and of the spread of zoonotic diseases from animals to humans becomes more crucial. The convergence of risks means that a disease on one continent can go global in a matter of days (such as, Bovine Spongiform Encephalopathy (BSE), avian influenza, H1N1 and the West Nile virus). Other factors that contribute to the rapid spread of disease include urbanization, climate change and an aging population that is more susceptible to disease.

[24] VMs deliver inspection and quarantine programs related to foods, plants and animals in 18 regions and 160 field offices, laboratories and food processing facilities across the country. The complement of veterinarians has grown from 470 at the time of the CFIA's creation in 1997 to 800 veterinarians in 2010. Products that may be subject to inspection certification by the CFIA include agricultural inputs (seeds, feeds and fertilizers), fresh foods (meat, fish, eggs, grains, dairy products, and (fruits and vegetables), and prepared and packaged foods.

[25] The determinants of public health are nutrition, food security, food safety and food affordability, with the understanding that animal disease has potential effects on humans. Different levels of government share responsibility for public health and food safety, each with its own laws, regulations and procedures. At the federal level, Health Canada, the CFIA and the Canada Border Services Agency (CBSA) share this responsibility.



[26] Health Canada establishes policies and standards relating to the safety and nutritional quality of food sold in Canada and assesses the effectiveness of the CFIA's food safety activities (subsection 11(4) of the *Canadian Food Inspection Agency Act*).

[27] The CFIA manages food safety risks by enforcing the policies and standards set by Health Canada by verifying industry compliance through the registration and inspection of abattoirs and food processing plants and the testing of products. In the case of a food safety emergency, the CFIA collaborates with Health Canada, the Public Health Agency of Canada, provincial agencies and the food industry to provide an emergency response system. It may also recall any regulated product that poses a risk to public, animal or plant health.

[28] The CBSA is responsible for enforcing the legislation that relates to the delivery of passenger and initial import inspection services performed at airports and other Canadian border points (subsection 11(5) of the *Canadian Food Inspection Agency Act*). The CFIA and the CBSA have a contractual agreement concerning the delivery of services by the CBSA at Canadian borders on behalf of the CFIA.

[29] The CFIA is also part of a network of public health partners, as follows: the Department of National Defence, with respect to biological warfare; the provincial governments of British Columbia, Saskatchewan and Manitoba, for which it provides inspection services (section 20 of the *Canadian Food Inspection Agency Act*); the private veterinary sector, with respect to specialist animal groups; and the United States government, with respect to the control of animal diseases that may disrupt the food supply.

[30] The Canadian Meat Council is composed of 45 industry members that share their knowledge and that participate in the development of policies on food safety initiatives, most recently with respect to the following risks: BSE, E. coli 0157:H7, listeria monocytogenes, avian influenza, campylobacter and salmonella. When the CFIA's Compliance Verification System came into effect, the Council organized a series of workshops for its members to explain the changes to the inspection system. The Council acknowledges that its members depend on the presence and expertise of VMs in abattoirs to continue operating. In the case of a work disruption, it would be unable to take over the meat inspection function from the CFIA because it does not have the expertise of CFIA veterinarians.

[31] In Canada and elsewhere, large-scale farming and food processing, together with the impact of the globalization of food markets, have contributed to increased opportunities for disease and contamination. The serious consequences of the 2008 listeriosis outbreak was cited as an example of the importance of food safety and of why food safety emergency-response systems are vital.

[32] International standards conceptualize the notion of “one world, one health”. Accordingly, the CFIA participates in the deliberations of major international organizations related to meat programs, including the Codex Alimentarius Commission and the United Nations Food and Agriculture Organization. It also works closely with the World Organization for Animal Health (OIE - see paragraph 8), notably in monitoring reportable diseases. As a member of the World Trade Organization, Canada sets standards according to the Sanitary and Phytosanitary Measures Agreement.

[33] Meat inspection programs have shifted over the years from organoleptic testing (inspection through visual examination and feeling and smelling products to detect signs of disease or contamination) to a science-based Hazard Analysis and Critical Control Point (HACCP) standard that emphasizes prevention as a means of controlling quality in the production process. Proposed by the Codex Alimentarius Commission for the food industry in general, and particularly for meat, poultry and seafood, the HACCP standard has been adopted by some 150 countries.

[34] The HACCP plan specifies, for a meat hygiene process or product, all the hazards, critical control points, critical limits, monitoring procedures, deviation procedures, verification procedures and records that must be kept. The HACCP standards are mandatory in all CFIA-registered establishments under the *Meat Inspection Regulations, 1990*, since 2005. Making the HACCP mandatory was the starting point for the Compliance Verification System, which merged the Food Safety Enhancement Program audits and traditional inspections under the Inspection Program.

[35] The Compliance Verification System sets out tasks used by CFIA inspection staff to assess compliance with regulatory requirements. Compliance involves a cooperative approach between plant operators and the inspection staff in which operators correct instances of non-compliance by developing and implementing

action plans. When a cooperative approach is unsuccessful, the CFIA pursues the enforcement options outlined in the *Meat Hygiene Manual of Procedures*.

[36] The *Meat Hygiene Manual of Procedures* (in Chapter 18) includes a procedure within the Compliance Verification System to amend the verification tasks. In slaughter establishments, the Compliance Verification System works hand-in-hand with Quality Management System activities that are the responsibility of the veterinarian-in-charge and the regional veterinarian officer.

[37] The key activities of VMs include meat hygiene and animal disease control and surveillance; international standard setting for animal health; overseeing veterinary biologics and biotechnology; overseeing the importation and exportation of animals and animal products; and food recalls and emergency response. As animal health specialists, VMs are present when the raw material enters the food distribution chain (the abattoirs) and within laboratories to diagnose disease and for testing purposes. They control the import and export of live animals and meat products and develop national policies and procedures for risk assessment, outbreak response and disease mitigation.

[38] The focus of VM work is to prevent or minimize the potential impact of zoonotic diseases. Zoonotic diseases (also called zoonoses) are infectious diseases that can spread from animals to humans. Zoonotic diseases are transmitted directly from animals to humans either through a contamination of the environment by animals or by a vector. Examples of these diseases include salmonella, E. coli, leptospirosis (bacterial), rabies, avian influenza (viral), ringworm, sporotrichosis (fungal), toxoplasmosis (parasitic), West Nile virus, spread by mosquitoes, and Lyme disease, spread by ticks (vector-borne).

[39] Other disease transmission risks may be found in contacts between wildlife and domestic animals, pathogens in the water supply and toxins in animal feed that may affect multiple animal species. Contrary to human physicians, who deal with a single species, veterinarians deal with multiple species and their interactions. Because veterinarians are not present on farms, their inspection of animals as they arrive at an abattoir is usually the first opportunity to detect disease.

[40] An abattoir or slaughterhouse (also referred to as a plant) is a facility that processes animals for consumption as food products. Abattoirs are the point of

entry of the meat industry, where farm animal stock enters the food chain. Federally inspected abattoirs are large commonly regulated meat processors and packers that ship product across provincial and international boundaries (paragraphs 7(a) and 8(a) of the *Meat Inspection Act*).

[41] There are three main categories of abattoirs: slaughter-only plants (cutting and boning carcasses), slaughter and process plants, and processing-only plants (simple cutting and boning and complex-process meat products). Most abattoirs specialize in a single species, such as beef, pigs or poultry, but some may be multi-species in the case of specialized or smaller productions. Kosher and Halal laws may also control the process; however, those religious laws are not the topic of this decision. To understand the intervention of federal veterinarians in abattoirs, an overview of the slaughtering process is useful.

[42] Cattle, pigs, sheep and other livestock are received by truck from a farm or feedlot. Birds are received in cages and held until slaughter. The ante-mortem inspection of birds is performed by means of an examination of the flock information document and sometimes by a visual examination. Other animals are herded into holding pens for ante-mortem inspections (by examining a sample from a shipment) related to animal health, rearing practices and humane transportation.

[43] Ante-mortem inspection is described in section 2 of the *Meat Inspection Regulations, 1990*, as follows

For birds:

...

*“ante-mortem examination” means, in respect of a bird, other than an ostrich, a rhea or an emu, the examination by the operator under the supervision of an official veterinarian, including the examination of a sample from a shipment of the birds or the examination of the flock information document for the shipment of the birds; (examen ante mortem)*

...

For other animals:

...

*“ante-mortem inspection” means the inspection of a food animal by an official veterinarian or by an inspector under the supervision of an official veterinarian; (inspection ante mortem)*

...

[Emphasis added]

[44] Before being slaughtered, the bird or animal is stunned and then hung on the processing line. Death is by exsanguination. The carcass is dressed, eviscerated and inspected. The separated parts of the same bird or animal are kept together on the production line so that any diseased or abnormal part can be linked and, if need be, trimmed, discarded or condemned at any point on the production line via post-mortem examination.

[45] Post-mortem inspection is described in section 2 of the *Meat Inspection Regulations, 1990*, as follows:

...

*“post-mortem examination”... means in respect of a food animal to which a shared inspection program or a post-mortem examination program applies, the examination of the carcass, blood or parts of a carcass of the food animal by the operator under the supervision of an official veterinarian; (examen post mortem)*

...

*“post-mortem inspection” means the inspection of the carcass, blood or parts of a carcass of a food animal by an official veterinarian or by an inspector under the supervision of an official veterinarian; (inspection post mortem)*

...

[46] Carcasses are chilled to reduce meat deterioration and are then broken into cuts and packaged. Waste material is sent to a licensed rendering plant. Wastewater associated with the slaughtering process is sent to a specialized treatment plant. The meat is then ready for distribution.

[47] Animals live as part of a continuum. They are born, they grow for specified periods and they are then slaughtered. If they cannot be slaughtered as scheduled, they continue to grow. If new animals are born, without mature animals being slaughtered, farms become overcrowded, and there is an increased risk of disease and of it spreading. Animals destroyed on a farm because of disease do not enter the food chain. As the CFIA does not manage the herds, it does not instruct breeders on how to manage their livestock.

[48] Provincial abattoirs operate under their own legislation and regulations, and their products do not cross provincial borders (paragraph 8 of the *Meat Inspection Act*). The difference between the federal and provincial systems is scale and scope. Registered federal abattoirs process approximately 85% of the slaughtered livestock, while provincially licensed abattoirs account for about 15%. Provincial abattoirs are usually small, family-run businesses located in rural areas and address smaller productions of lamb and veal and niche markets such as bison, farmed deer and elk, ostrich, emu, ducks, geese, partridge, Cornish hens, and wild boars. Provincial plants do not usually meet the construction requirements for federal plants.

[49] Another significant difference between the two systems is the availability of an on-site veterinarian at every federal facility to conduct the ante- and post-mortem examinations. The size of federal plants and the volumes of processed animals dictate the need for ready access to a veterinarian and make it economically practicable. In most provincially licensed plants, slaughter occurs one or two days per week, and the volume is comparatively low, so the attendance of a veterinarian is required infrequently. Advice is usually available by telephone from a veterinary scientist or a regional veterinarian, and an appointed veterinarian will be called to the plant to examine an animal or carcass. Just as in the federal system, when a provincial meat hygiene officer identifies a problem that requires the attention of a veterinarian, the animal or carcass is held pending the necessary advice. No decision is made concerning the disposition of the animal or carcass until that advice is obtained. Products from federally registered meat processing plants can be shipped between provinces and internationally, but products from provincially registered processing plants can be shipped only within the province.

[50] In abattoirs, VM-1s supervise the work of technical inspectors, classified Engineering and Scientific Support (EG). VMs may be divided among the shifts,

depending on the size of the operation and the type of animals. The number of inspectors present in an abattoir depends on its size and the speed of the inspection line. In a plant processing or storing meat products, an EG acting under veterinary direction monitors all operations. A VM-3 may also be present in a very large slaughtering operation.

[51] The EGs are trained to spot abnormalities in animals upon their arrival, such as lameness, inability to walk properly, tremors or ticks, respiratory distress, neurological problems, or any other apparent disease. Poultry is inspected for wetness, discharge or sneezing and other concerns. Animals with abnormalities, such as tuberculosis, are set aside for a veterinary inspection to avoid disease contaminating the kill floor or infecting workers in the plant. A VM may also make a disposition on the kill floor. Under subsection 67(3) of the *Meat Inspection Regulations, 1990*, no food animal can be slaughtered in a federally registered establishment unless the slaughter has been authorized by an official veterinarian (or a slaughter inspector working under VM instruction). Under subsection 43(1) of the *Meat Inspection Regulations, 1990*, food animals cannot be removed from a registered establishment without the written consent of a VM.

[52] Under subsection 67(7) of the *Meat Inspection Regulations, 1990*, as follows, a VM may give advance instructions and supervise inspectors without being in the plant at all times. This may occur when a VM must cover more than one plant.

*67. (7) An official veterinarian may instruct an operator or an inspector who is not an official veterinarian that food animals with certain deviations from normal behaviour or appearance*

*(a) are not required to be referred to an official veterinarian for a detailed inspection; and*

*(b) are to be disposed of in accordance with the instructions provided by an official veterinarian.*

*(8) An operator shall comply with any instructions from an official veterinarian under subsection (6) or (7).*

...

[53] If a veterinarian is absent for a limited period, abattoirs may carry out slaughter operations with fully trained EG staff qualified in the species being

slaughtered. However, if there are any held carcasses, a veterinarian must be available on site no later than the end of the day of slaughter to deal with any required dispositions. An abattoir may destroy suspect animals without veterinarian intervention; however, the animals must be examined post-mortem to identify the presence of any disease. The abattoir may not discard a suspect carcass without VM instruction once it is on the processing line.

[54] Under section 9 of the *Meat Inspection Regulations, 1990*, meat cannot be identified as edible unless the food animal from which the meat product is derived was subjected to an ante-mortem examination or inspection and the carcass was subjected to a post-mortem examination.

[55] VMs also supervise operators authorized under section 30.2 of the *Meat Inspection Regulations, 1990*, to operate a shared inspection program or a post-mortem examination program. Under a shared inspection program, an operator is responsible for certain parts of the post-mortem examination of food animals (section 2 of the *Meat Inspection Regulations, 1990*). The VM ensures that information on animals and flocks is available, that there are no food safety issues, that transported animals have a satisfactory health status, and that they have been humanely transported. Under subsections 67(8), 68(1) and 83(4) of the *Meat Inspection Regulations, 1990*, an operator must comply with instructions from a VM in the conduct of its operations.

[56] An operator's licence may be suspended or even revoked if the operator does not comply with the requirements of the *Meat Inspection Act*, the *Meat Inspection Regulations, 1990*, the *Food Safety Enhancement Program* manual or the CFIA's *Manual of Procedures*.

[57] Regional veterinary officers, VM-3s, provide policy support to VMs in the abattoirs in their dealings with the operators, ensure consistency in the application of those policies and provide updates of industry requirements, for example, with respect to export requirements. They provide scientific expertise and assistance in cases of disease concerns and food recalls and mitigate any danger to life, health, property or the environment that may result from the existence of a disease. At the national level, VMs work on policy development and requirements for import and export permits.



[58] The Animal Health Program in the Operations Branch is responsible for the identification and control of diseases in Canada under the *Health of Animals Act* and the *Health of Animals Regulations*. Samples taken from abattoirs allow retracing to the farm of origin and the testing of other animals affected by a disease. Farm livestock may be quarantined as a result of a disease diagnosis.

[59] Under section 33 of the *Health of Animals Act*, veterinary inspectors exercise the powers and perform any of the duties or functions of the Minister of Agriculture and Agri-Food. The *Health of Animals Act* defines a veterinary inspector in section 2 as follows: “veterinary inspector’ means a veterinarian designated as an inspector pursuant to section 32.”

[60] To prevent the transmission of diseases to other herds in Canada, and because of their importance to human or animal health and the Canadian economy, diseases outlined in the *Health of Animals Act* and the *Health of Animals Regulations* must be reported to a CFIA district veterinarian. Laboratory testing is used to confirm a veterinarian’s findings. A VM may be required to visit a farm to perform an inspection and diagnosis. Section 5 of the *Health of Animals Regulations* provides as follows that only a veterinary inspector may issue certain orders, such as the quarantine or destruction of an animal:

5. (1) *Where an animal is affected or suspected of being affected with a communicable disease or has been in contact with an animal so affected or suspected of being so affected, a veterinary inspector may order the person having the possession, care or custody of the animal,*

*(a) to quarantine, keep separate or treat the animal,*

*(b) to destroy the animal, or*

*(c) to destroy the animal and dispose of its carcass*

*in such a manner, at such a place or places, under such conditions and within such period of time as are necessary to prevent the spread of the communicable disease, which manner, place or places, conditions and time shall be specified in the order.*

*(2) Every person who receives an order referred to in subsection (1) shall comply with the order.*

*(3) Where an order referred to in subsection (1) requiring an animal to be destroyed or destroyed and*

*disposed of is not complied with within the time specified therein, a veterinary inspector may have the animal*

*(a) removed to and destroyed at an establishment registered under the Meat Inspection Act; or*

*(b) destroyed at a time and place determined by him, and have its carcass disposed of as determined by him.*

...

[Emphasis added]

[61] Under subsection 104(1) of the *Health of Animals Regulations*, only a veterinary inspector can order a disinfection as a result of a diseased animal, as follows:

**104.** *(1) When a veterinary inspector finds or suspects that an animal is affected with or died from a communicable disease he may*

*(a) order*

*(i) the owner or occupier of any outhouse, stable, yard or other place affected or suspected of being affected with a communicable disease, or*

*(ii) the owner or operator of any aircraft, railway car, vehicle or vessel affected or suspected of being affected with a communicable disease,*

*to clean and disinfect such outhouse, stable, yard or other place or such aircraft, railway car, vehicle or vessel;...*

...

[62] Under section 114 of the *Health of Animals Regulations*, only a veterinary inspector can order the disposal of diseased carcasses, as follows:

**114.** *A veterinary inspector may order a person who owns or has the possession, care or control of an animal that dies of, or is suspected of having died of, a communicable disease or that is destroyed pursuant to section 37 or 48 of the Act to dispose of the carcass in any manner that the veterinary inspector may specify.*

[63] In a laboratory setting, veterinary scientists provide specialized laboratory testing, research and expert scientific advice as well as develop technology to support the CFIA's staff in the abattoirs and its broader activities with respect to

public health. Veterinary scientists conduct risk assessments of diseases and pests introduced into Canada that could threaten its plants and animals. The disease detection and research supports the CFIA's participation in multilateral efforts to set international laboratory standards for animal health and plant protection.

[64] The CFIA oversees a network of 14 laboratories across Canada. In the laboratory system, specially trained veterinarians perform gross and cellular anatomy to diagnose animal pathologies that cause disease and the transmission of disease in support of the meat hygiene and animal health programs. This is the backbone of scientific advice used for CFIA programs and by public health authorities.

[65] The laboratories are also involved in the detection of transmissible spongiform encephalopathies (TSEs). Bovine Spongiform Encephalopathy is a degenerative disease of the central nervous system in cattle. It is linked to a rare, fatal disease in humans called variant Creutzfeldt-Jakob Disease (vCJD), the most well-known of human TSEs.

[66] The Ottawa Laboratory at Fallowfield (OLF) is dedicated to agricultural research and management and acts as a bio-containment laboratory for reportable and exotic diseases. Part of its operation consists of a 200-acre farm of small herds of pigs and sheep and flocks of chickens raised to be pathogen free and avian influenza free and that are used for experiments and comparative testing in a controlled environment for known diseases. This farm is unique in Canada. The swine herd is the only one of its kind in North America. CFIA laboratories across Canada use the animals and their products from this farm for test purposes. For example, the Winnipeg Laboratory used eggs from the OLF flocks for H1N1 influenza virus testing.

[67] A key role of the staff veterinarian at the OLF is supervising the production, holding and use of research and diagnostic animals on the farm and providing for their emergency care, treatment and humane euthanasia when required, along with the post-mortem examinations of all unexpected deaths. The animals are an essential part of detection and prevention programs to control the spread of disease, and they require sustained veterinary care.

[68] The Winnipeg Laboratory cares for animals infected as part of testing procedures or projects seeking to detect animal diseases. The animals are highly pathogenic and require the constant care of a veterinarian, who determines the use of barbiturates and controlled substances on them and who handles their humane disposal at the end of the testing cycle. The head of the avian unit manages the operation of diagnostic tests for the detection of diseases such as avian influenza, Newcastle disease, classical swine fever, bluetongue, epizootic hemorrhagic fever, Africa swine fever, turkey rhinotracheitis, morbilliviruses and other exotic viral diseases. The unit also plays a major role in the Canadian wild bird surveillance program, one of a series of avian influenza prevention and preparedness initiatives of the federal government in conjunction with provincial and territorial governments and other industry and public health practitioners.

[69] The Lethbridge Laboratory manages a pathogen-free beef cattle herd used for bovine biosecurity programs aimed at reducing disease transmission. It also conducts calving and artificial insemination programs.

[70] VMs are also in charge of diagnostic programs for zoonotic diseases and bovine tuberculosis, a reportable disease under the *Health of Animals Regulations* that may produce infection in humans. VMs in the laboratories work with colleagues from programs and operations to establish containment measures for those diseases when there is an outbreak. Laboratories are normally set up to receive samples from Monday to Friday, but in an emergency, they may receive them at any time. Samples are submitted by CFIA veterinarians, testing is carried out by EGs and all diagnoses must be confirmed by a VM. Samples of a suspect disease may also be sent by a private veterinarian for testing through a CFIA district office.

[71] Other examples of unique work conducted by VMs are the following. The veterinary pathologist at the OLF conducts diagnostic tests for the detection of pathological changes and makes expert diagnoses in support of CFIA programs, breed and producer associations, laboratory staff, and private and provincial laboratories. The veterinary microbiologist manager at the OLF develops and evaluates diagnostic tests for program teams and is the sole veterinary microbiologist for the zoonotic diseases program. The pathology manager in the St-Hyacinthe laboratory supports abattoir pathology across Canada and assists the

Winnipeg Laboratory with respect to the detection of exotic animal diseases and avian influenza.

[72] Veterinarians are continuously working on projects that may become time sensitive at any given moment, such as a sudden unexplained high animal death rate or avian influenza, an airborne and easily transmitted disease. Currently, the incidence of avian influenza in the wild bird population and its threat on domestic flocks is under study.

[73] For those diseases that are public health risks because they can spread in a matter of hours, the CFIA must be able to quickly implement control measures. In such a case, a district VM-2 oversees the collection of samples for testing. For example, a diagnosis of tuberculosis at the time of slaughter would entail rapidly finding its origin to avoid spreading the disease. VMs also respond to inquiries from private sector veterinarians who are not trained to deal with emergencies and biomedical procedures.

[74] In the context of policies and programs, VMs focus on global analysis and the adjustments that must be made at the border when disease is diagnosed in another country. Diseases that historically were not threats to Canada have now become threats. Some diseases are migrating from their historic locations because of climate change, such as bluetongue animal disease, rib valley fever and ebola. Airport import inspections by the CBSA prevent the illegal entry of animals that may harbour disease. For example, turtles and reptiles are known to carry salmonella.

[75] The export of meat products is controlled by the *Meat Inspection Regulations, 1990*, in particular section 122.1, which provides that inspection certificates must state that the meat products derived from food animals have received ante-mortem and post-mortem veterinary inspection in accordance with those regulations.

[76] The export of animals is regulated under section 19 of the *Health of Animals Act*. No animal can be exported without a veterinary inspector having certified that the prescribed requirements respecting health, protection and transportation have been complied with.

[77] The import of meat products is controlled by section 123 of the *Meat Inspection Regulations, 1990*, which provides that the imported meat product must have been manufactured in an establishment operating under an HACCP-based system determined equivalent to the Food Safety Enhancement Program established by the CFIA. A senior veterinary officer is the final contact for questions about disease status and risks associated with animal imports or their products and for problems with import shipments and quarantines. He or she provides border control advice for animals entering Canada as well as the disposal and disinfection of in-transit mortalities posing a risk of disease introduction. In the case of an animal disease outbreak, the senior veterinary officer takes a lead role in ensuring that policy changes that safeguard Canada's animal health status are made, and that zoonotic diseases do not enter Canada.

[78] In accordance with section 150 of the *Health of Animals Regulations*, every air carrier and sea carrier must, upon the completion of a voyage or flight, make a report to a veterinary inspector at the port of embarkation respecting an animal that has died, was killed or was seriously injured during the flight or voyage.

[79] Inspection is required for swine, bear, non-domestic poultry, non-domestic felines from the United States and cattle for immediate slaughter and is carried out by a VM upon appointment (with certain exceptions). Certain categories of animals are not inspected at the border. Forfeiture to the Crown of animals that cannot be imported may require a veterinary inspection before destruction. VMs do not perform primary inspections at border crossings; however, they are a secondary level of referral for the CBSA and provide emergency services. An outbreak may cause a closure of the border.

## **B. The Institute's evidence**

[80] The Institute's witnesses did not disagree that the CFIA provides the services set out in the evidence detailed earlier in this decision. However, they took the position that based on their practical experience; the employer had over evaluated the requirement for the continued presence of a VM in the conduct of its business. They also took the position that the job descriptions filed by the employer as part of its evidence were outdated and did not reflect the true nature of their work. The witnesses' observations may be summarized as follows:

- VMs and EGs are similarly trained. EGs are highly qualified and can assume many of the tasks of a VM.
- Because of changes in meat hygiene procedures since 1999, notably the HACCP and the Compliance Verification System, VMs no longer perform the critical inspections they once did; these have been delegated to EGs and industry.
- The responsibility for food safety, such as the Poultry Rejection Process, lies with the operator, who can dispose of suspect carcasses rather than have them inspected by a VM.
- Condemnation certificates issued by a VM have no medical value. The VM's role is to attribute financial loss when an animal does not enter the food chain.
- VMs do not inspect imported meat or meat at processing plants.
- A VM's responsibility for quality management is an audit and is not time sensitive; it can be done after the fact.
- Issues concerning the humane handling of animals are handled by the plant and inspection staff and do not constitute a food safety issue.
- Foreign disease outbreaks (which are rare) have been discovered on farms in Canada and not in the abattoirs.
- In the absence of VMs in the abattoirs, suspicions of disease can be referred for a response to the CFIA head office or to a district VM.
- Quarantines can be established by inspectors and do not have an immediate impact on the safety or security of the public.
- Some federal abattoirs have operated and animals have been slaughtered without a VM for an entire day.
- In red-meat abattoirs, the industry can euthanize an animal not fit for human consumption; a VM is necessary only for a post-mortem inspection in the case of a serious problem or if a foreign animal disease is suspected. This is not an emergency procedure.

- In poultry operations, the producer is responsible for the accuracy and timely receipt of the flock sheets that VMs sign only quarterly.
- Drive cards for the delivery of cattle signed by VMs are an export requirement; meat slaughtered within a province is edible without a drive card.
- An inspector and not a VM is present at the following three points of a slaughter operation: when birds are unloaded and when they are stunned (humane slaughter) and in the protection area. A VM-2 intervenes when there are dead animals upon arrival.
- Inspectors conduct investigations subject to verification by a VM-2. A VM-2 ensures that inspectors are doing their tasks appropriately.
- A VM may instruct an operator or inspector that certain deviations from normal appearance need not be referred to him or her and that they may be disposed of according to instructions (subsections 83(1) and (3) of the *Meat Inspection Regulations, 1990*) without a VM being present at all times.
- A VM can give advance instructions concerning how to perform a post-mortem inspection (from ss. 83(5)) of the *Meat Inspection Regulations, 1990*.
- Abattoirs closed down for short periods (such as during the Ontario blackout in 2002) do not affect the health and safety of the public.
- In the event of a strike, carcasses can be kept and meat products sold in the province of origin.
- There is no impact on the health and safety of the public if export certificates are not signed.
- The provincial system of operating abattoirs without the constant presence of a veterinarian does not negatively affect the health and safety of the public.
- Sampling and surveillance projects as they relate to import requirements for products, by-products and animals can continue without the immediate presence of a VM.



- The issuance and endorsement of export certificates can be discontinued in the event of a work disruption.
- Testing of semen and embryos at artificial insemination centres, principally for export, can be done by inspectors, and product can be frozen without harm until a VM becomes available.
- A VM inspection at the border mainly concerns animal welfare and humane transportation, which does not affect human health or safety. Many species do not require border inspection, and operators make appointments for species that require inspection.
- Updating procedures, legislation, policies and programs are not essential work and could be resumed on an emergency basis in the event of an outbreak of a reportable or notifiable zoonotic disease. A CFIA employee other than a VM can respond to an inquiry about animal disease or eradication policies, and any other emergency can be handled by the emergency activities already agreed to as a partial settlement of an essential service agreement.
- Import information is readily available through the Automated Import Reference System, regulations and policies without a VM presence. The Institute has agreed that a VM can be made available in the case of unanswered questions.
- The safest route for imports during a work disruption is to prevent them from entering the country, which does not affect the health and safety of the public.

## **VI. Summary of the arguments**

### **A. For the employer**

[81] The employer submits that, if a disease outbreak is suspected, VMs play a crucial role in diagnosing the disease and determining the need for a response. It does not matter whether the disease is reportable or zoonotic. Under the legislation, the employer is not required to change its operations to meet the emergency or to find an alternate method of delivering the service. If certain members of the public use the service, it is essential. The employer asserts that VMs' work in abattoirs is essential for the health and safety of the public. Whether abattoirs could be closed

in the case of a work disruption to protect safety and security of the public is not the relevant issue.

[82] The employer argues that specific positions with respect to the safe delivery of meat hygiene are essential to public health. The critical activities are ante- and post-mortem examinations, because those activities affect the CFIA's public health responsibilities. Laboratory activities are also necessary to protect the safety of the public. The CFIA is subject to a regulatory framework that prevents the spread of disease and that protects public health, involving the security of the food supply in an agricultural resource base. While most services are provided as reactions to events as they occur, they still aim to protect public health. Import controls are ongoing and therefore require constant monitoring to identify risks. The employer asks that I set the standard of activities that meets the criteria of subsection 4(1) of the *PSLRA*.

[83] The employer argues that previous decisions outlining the reasons for protecting public safety and security under the *PSSRA*, in particular for the veterinary sciences group, are still relevant under the *PSLRA*. Disease patterns change; disease agents mutate, and new diseases are always on the horizon.

[84] The employer argues that subsection 4(1) of the *PSLRA* does not prohibit the Public Service Labour Relations Board ("the Board") from considering the employer's overall operations and not merely those activities arising within the context of a work disruption.

[85] While VMs' work has shifted to compliance, they still exercise their expertise and professional judgement daily. VMs are the risk managers of the food products that enter the food system. Consequently, their work focuses on protecting Canadians from preventable risks, on managing animal hygiene to prevent the transmission of disease to humans and on providing security from threats at the borders.

[86] The notion of public health encompasses more than just the absence of public disease, since it affects safety and security. Managing the BSE outbreak in Saskatchewan and tending a now globalized food supply are examples of how the CFIA prevents risks to our food supply. Foot and mouth disease in England was diagnosed in an abattoir and serves to highlight the connectivity of the work of VMs

in an abattoir with the globalization of the food supply. The work of VMs is multidisciplinary. Animal welfare is an important issue because distressed animals shed pathogens that, if left unaddressed, can have implications for the food chain.

[87] The Council is an important stakeholder in improving the safety of meat and meat products. It meets with the CFIA and Health Canada about those issues. Product safety is the driver of markets for consumable meat. Consumers expect a safe product. Alternate food sources cannot replace the volume of federally inspected meat. The *Report of the Independent Investigator into the 2008 Listeriosis Outbreak* provides a useful description of the safety of Canada's food system. The site visits to two abattoirs demonstrated the essence of the work and the interaction between the VMs and food inspectors in abattoirs. VMs have the authority to request corrections to unsanitary conditions. VMs are essential to evaluating the health of animals, diagnosing diseases, certifying animals for import and export.

[88] The fact that someone else could do the work of VMs is irrelevant. VMs are important to the zoosanitary status of the national herd. They have the knowledge base and can deal with questions and inquiries as they come up. Surveillance, monitoring and disease control are ongoing. Disease can spread and become a public health issue in a very short time. The movement of animals and their contact with wildlife pose an additional threat. The services of VMs in abattoirs and laboratories cannot be safely withdrawn because the threat of disease cannot be foreseen and must be addressed immediately.

[89] In response to the Institute's arguments, the employer states that, while importers do make appointments for border inspections, it can be reasonably foreseen that some do not, which is why the CFIA has a memorandum of understanding with the CBSA to deal with those situations. It is also unrealistic to expect Canada to close its borders when VMs go on strike. The issue is not the closure of Canada's borders but whether there are any safety risks that require halting imports.

[90] With respect to abattoirs, the employer responds that the issue is not whether abattoirs should remain open but whether the employer can continue its operations in the event of a strike. If abattoirs are closed, an essential service agreement becomes unnecessary. The CFIA does not operate abattoirs; it regulates the activities of private producers. The CFIA contracts with operators for the cost

recovery of the services it provides and these contracts are not relevant to why VMs are needed.

[91] The employer argues that other avenues of supply are not relevant to the central issue of public health. Provincial production cannot in any case take over existing federal production, and some provinces have arrangements with the CFIA to deliver meat hygiene services. The disposal of stockpiles is not relevant since the length or occurrence of a work disruption is unpredictable.

[92] The “one world, one health” principle to address the reality of globalization is meant to address food safety and is not hypothetical. The currency of job descriptions is not crucial, but rather, the specific activities that the employer requires to carry out its mandate are crucial. The employer argues that its case rests on the crucial activities carried out by certain positions and not on broad principles that are unhelpful to deciding this case. The employer states that the only relevance of previous blackouts is that emergencies can happen and need to be dealt with.

[93] The employer relies on the following cases in support of its position: *Aéroports de Montréal*, [1991] CIRB No. 23; *Atomic Energy of Canada Limited*, [2001] CIRB No. 122; *Attorney General of Canada v. The Public Service Staff Relations Board*, 1997 1 F.C. 56; *Canadian Air Traffic Control Assn. v. Canada (Treasury Board)*, [1982] 1 S.C.R. 696; *Canadian Air Traffic Control Assn. v. Canada (Treasury Board)*, PSSRB File No. 181-02-134 (19810407); *The Canadian Air Traffic Control Association v. Canada (Treasury Board)*, PSSRB File No. 181-02-134 (19811119); *International Brotherhood of Electrical Workers v. Canada (Treasury Board)*, PSSRB File No. 181-02-08 (19690925); *NAV Canada*, [2002] CIRB No. 168; *Public Service Alliance of Canada v. Treasury Board*, PSSRB File No. 181-02-173 (19850221); *Public Service Alliance of Canada v. Parks Canada Agency*, 2008 PSLRB 97; *Public Service Alliance of Canada v. Treasury Board*, 2009 PSLRB 155; *R. v. Perlich Bros. Auction Market Ltd. and Verhoeven*, 1979 A.J. No. 936 (QL); *The Professional Institute of the Public Service of Canada v. Canada (Treasury Board)* PSSRB File No. 181-02-49 (19760630); *The Professional Institute of the Public Service of Canada v. Canada (Treasury Board)*, PSSRB File No. 181-2-49 (19760506); *The Professional Institute of the Public Service of Canada v. Canada (Treasury Board)*, PSSRB File No. 181-02-49 (19760810); *Tobin v. Canada (Attorney General)*, 2009 FCA 254; *Treasury Board v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 128; *Union des*

*producteurs agricoles v. Canada (Canadian Food Inspection Agency)*, 2001 FCT 1432; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42; *Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada*, 2000 PSSRB 13; Finkelman and Goldenberg, *Collective Bargaining in the Public Service: The Federal Experience in Canada*, 1st Ed. (1983) p. 483-549; (Finkelman and Goldenberg) *Evidence and Procedure in Canadian Labour Arbitration*, Vol.1 (1994) paras 11.12-11.13; *House of Commons Debates, Official Report (Hansard)*, 37th Parliament, 2nd Session, Vol. 138, No. 060 (February 14, 2003); *International Brotherhood of Electrical Workers, Local 2228 v. Canada (Treasury Board)*, PSSRB File No. 181-02-16 (19720221); *Jaworski v. Canada (Attorney General)*, [1998] 4 F.C. 154; Rootham, *Labour and Employment Law in the Federal Public Service*, at Chapter 6, “Bargaining” (2007); *Public Service Alliance of Canada v. Treasury Board (Program and Administrative Services Group)*, 2009 PSLRB 56; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Serco Facilities Management Inc. v. Public Service Alliance of Canada*, 1999 N.J. No. 201 (QL); *The Crown in Right of Ontario v. Ontario Public Service Employees Union*, File No. 2697-04-M, Ontario Labour Relations Board; *The Crown in Right of Ontario v. Ontario Public Service Employees Union*, File Nos. 3553-01-U and 3554-01-M, Ontario Labour Relations Board; *Treasury Board v. Public Service Alliance of Canada*, PSSRB File No. 181-02-235 (19870319); and Advisory Committee on Labour Management Relations in the Public Service (Fryer Committee), *Working Together in the Public Interest*, Final Report, Chapter IV, s. 4.9 to 4.11 (2001).

## **B. For the Institute**

[94] The Institute submits that the sole issue in dispute is whether VMs perform any essential service, given the CFIA’s current mode of operation and structure. The Institute admits that, in addition to the agreement reached on May 28, 2009 for emergency responses, VMs provide essential services and activities identified in section 4 of the *PSLRA* with respect to the following:

- In animal health, the investigation of suspect reportable or notifiable diseases with potential human impact (e.g., rabies) to the extent that an inspector cannot diagnose, treat or order destroyed the animal(s) in question.
- In laboratories:

- services linked to suspect or confirmed notifiable or reportable diseases and the maintenance of accreditation for national and international certification;
  - conducting, evaluating and reporting on diagnostic and pathology tests of suspect or confirmed cases of diseases with human impact;
  - technological transfers in an outbreak; and
  - the ordering of controlled substances in laboratories.
- In policies and programs:
    - when there is an outbreak of a reportable or notifiable disease with potential impact on human health in a trading partner, as per notice given to the director of animal health, the preparation and provision of risk analysis and import restrictions; and
    - when no applicable manual exists, responding to any inquiry about animal disease control and eradication policies relating to a reportable or notifiable disease with potential impact on human health.
  - In the event of a strike, VMs will also continue to provide the following non-essential activities related to laboratories:
    - supervision of the lab animal health program;
    - ongoing research (but not beginning new research);
    - participation in the Animal Health Care Committee; and
    - the maintenance of specific pathogen-free flocks.

[95] The Institute opposes the employer's broad approach to providing services that support trade and economic issues. The Institute submits that the employer did not lead any evidence to indicate that any of the activities that it wishes to continue in the event of a strike would have a serious impact on the food supply.

[96] The Institute argues that, in making its decision, the Board should apply the following principles previously used in the jurisprudence to determine whether a service, facility or activity is necessary for the safety or security of the public:

- the essential services should be precisely defined;
- the safety and security of the public should be the only focus of its analysis;
- safety and security should be determined according to a given function and not merely to the activities within that function;
- hypothetical risks should not be considered;
- the employer should have to consider whether it can accomplish the function with an alternate service;
- the time period for concern should be short; and
- safety and security should not mean business as usual or take into account any economic hardship or inconvenience to third parties.

[97] Based on those principles, the Institute argues that the closure of abattoirs during a work disruption does not affect the safety and security of the public. There are provincial abattoirs that can deliver meat inspection services. If federal abattoirs cannot operate without the presence and supervision of a VM, the CFIA has the legislative authority to order them closed. If the closure of abattoirs creates overcrowding on farms and results in animals being destroyed, those welfare and economic issues do not affect the health and safety of the public. The Institute submits that the CFIA could obtain exemptions to the legislation for the duration of the strike to allow abattoirs to continue to operate.

[98] The Institute also submits that the CFIA has adduced no evidence that it must consistently perform the level of service that it usually provides or that a VM need be present in abattoirs at all times. The Institute argues that the CFIA's contractual obligations with third parties should not determine whether a service is essential. The Board must merely decide whether the operation of abattoirs is essential.

[99] In the alternative, the Institute argues that, if the abattoirs remain open during a strike, they can operate safely without the presence of VMs. The Institute takes the position that VM work can equally be performed by EGs, such as ordering quarantines and setting aside suspect animal carcasses, with the exception of an animal diagnosed with a foreign animal disease. Many provincial abattoirs are inspected by meat inspectors. The safety of the public is assured by the fact that the federal *Food and Drugs Act* R.S.C. 1985, c. F-27, provides that no article of food can be sold that is unfit for human consumption. Meat can be sold within most provinces without federal VM involvement.

[100] The Institute does not object to district animal health VMs being contacted should a foreign animal disease be suspected at an abattoir, as it could affect humans. The sample collected by the district animal health veterinarian can be sent to a laboratory for testing. To that extent, the Institute does not object to VMs performing laboratory work or to VMs conducting investigative work.

[101] The Institute recognizes that VMs play a unique role with respect to exports but argues that exports are economic activities that do not constitute an essential service. During a legal work disruption, business does not continue as usual, and economic hardship is to be expected. If a VM is unavailable to sign an endorsement, a product can be turned away, destroyed or held, without an impact on humans. During a work disruption, a VM will remain available for tasks that cannot be performed by an inspector or clerk.

[102] In response to the employer's arguments that certain positions are required to maintain a level of service to respond to its legislated and mandated functions, the Institute replies that the employer has focused on positions rather than on the essential service that employees in those positions perform. The job descriptions reference many activities that in the Institute's opinion are not essential for meat hygiene, are not done in abattoirs, are not done by VMs or are not VM tasks. EGs or operators perform many of these activities, and most are not time sensitive, except in an economic context. The Institute emphasizes that it has agreed to the continuation of much of the laboratory work during a strike.

[103] The Institute relies on the following cases in support of its position: *Public Service Alliance of Canada v. Parks Canada Agency*, 2008 PSLRB 97; *Public Service Alliance of Canada v. Treasury Board (Program and Administrative Services Group)*,



2009 PSLRB 55; *Public Service Alliance of Canada v. Treasury Board (Program and Administrative Services Group)*, 2009 PSLRB 56; *Treasury Board v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 120; *Treasury Board v. Professional Institute of the Public Service of Canada*, 2009 PSLRB 128; *Public Service Alliance of Canada v. Treasury Board*, 2009 PSLRB 155; *Treasury Board v. Professional Institute of the Public Service of Canada*, 2010 PSLRB 15; *Public Service Alliance of Canada v. Treasury Board (Heating, Power and Stationary Plant Operations Group - Operational Category)*, PSSRB File No. 181-02-18 (19720427); *Canada (Treasury Board) v. Public Service Alliance of Canada (Radio Operation Group - Technical Category)*, PSSRB File No. 181-02-99 (19790601); *Treasury Board v. Public Service Alliance of Canada*, PSSRB File No. 181-02-235 (19870319); *The Professional Institute of the Public Service of Canada v. Treasury Board*, PSSRB File No. 181-02-115 (19800722); *The Crown in Right of Ontario, as represented by Management Board of Cabinet v. The Ontario Public Service Employees Union*, 1996 O.L.R.D. No. 914 (QL); and *R. v. Aylmer Meat Packers Inc.* (20071214), unreported (Ontario Superior Court of Justice, Information No. 05-6616).

## **VII. Reasons**

### **A. The issue**

[104] This matter concerns the determination of which services delivered through the CFIA by VMs constitute an essential service necessary for the safety or security of the public or a segment of the public in the event of a strike. The parties submitted an initial position (see paragraphs 5 and 6 of this decision), but modified it somewhat during the course of presenting their evidence, which is reflected in my conclusions.

[105] This decision is the first of a two-part determination. In accordance with the legislation, the first part consists of identifying the facility, service or activity that is essential for the safety or security of the public. The second part consists of the level of service in the case of a work disruption as determined by the employer. In the absence of an agreement between the parties, I may be called upon subsequent to this decision to determine the type, number and specific positions necessary to provide the level of essential services set by the employer.

[106] The burden of proof is on the employer to demonstrate that there is a reasonable and sufficient basis for finding that the services, facilities or activities it proposes to maintain in the case of a work disruption are essential within the meaning of subsection 4(1) of the *PSLRA*.

[107] In this matter, the employer takes the position that the disputed services provided by VMs are essential because they form part of its legislated mandate. It argues that it is not required to change its operations to meet an emergency or to find an alternate method of delivering the service. The safe delivery of the legislated meat hygiene program is essential to public health. Laboratory activities go hand-in-hand with the work done in the abattoirs in protecting the safety of the public. VMs are the risk managers of food products that enter the Canadian food system; they protect Canadians from preventable risks and from the transmission of zoonotic diseases as well as from food and animal security threats, as part of international trade and at the borders.

[108] The Institute claims that its members would be available for emergency services during a strike and that, therefore, certain laboratory functions would continue. However, it takes the position that inspection and compliance and the enforcement of food safety legislation is not an essential service because abattoirs can simply be closed or operated without them or others can do those tasks. It also takes the position that services that relate to the import and export of animals and their products and that relate to border services are economic activities that do not impact the safety or security of the public or a segment of the public. The Institute argues that, in the event of a legal work disruption, it is not business as usual and that I should not be concerned with any economic effects on third parties.

[109] In light of those arguments, I will first review the statutory framework for the determination of what constitutes essential services under the *PSLRA*.

#### **B. Statutory framework for essential services under the *PSLRA***

[110] The *PSLRA* came into force on April 1, 2005. Paragraph 194(1)(f) requires that, if the bargaining agent has chosen conciliation as a precondition to employees exercising their right to strike, an essential services agreement must have been negotiated with the employer. If the parties are unable to agree on an essential

services agreement, the role of the Board is to determine disputes over matters that may be contained in an essential services agreement.

[111] In making its determination, the Board must abide by certain principles contained in the legislation. First, the employer has the exclusive right to determine the level at which essential services are to be provided to the public. Second, the employer cannot be required to change the level at which an essential service is to be provided to the public, including the extent and frequency with which the service is to be provided. Third, the employer may require some employees to perform their duties as they relate to the provision of the essential service in a greater proportion during a strike than they do normally.

[112] The provisions of the *PSLRA* summarized above are the following:

...

*4. (1) The following definitions apply in this Part.*

*“essential service”*  
*« services essentiels »*

*“essential service” means a service, facility or activity of the Government of Canada that is or will be, at any time, necessary for the safety or security of the public or a segment of the public.*

*“essential services agreement”*  
*« entente sur les services essentiels »*

*“essential services agreement” means an agreement between the employer and the bargaining agent for a bargaining unit that identifies*

*(a) the types of positions in the bargaining unit that are necessary for the employer to provide essential services;*

*(b) the number of those positions that are necessary for that purpose; and*

*(c) the specific positions that are necessary for that purpose.*

...

**122.** (1) *If the employer has given to the bargaining agent a notice in writing that the employer considers that employees in the bargaining unit occupy positions that are necessary for the employer to provide essential services, the employer and the bargaining agent must make every reasonable effort to enter into an essential services agreement as soon as possible.*

(2) *The notice may be given at any time but not later than 20 days after the day a notice to bargain collectively is given.*

**123.** (1) *If the employer and the bargaining agent are unable to enter into an essential services agreement, either of them may apply to the Board to determine any unresolved matter that may be included in an essential services agreement. The application may be made at any time but not later than*

*(a) 15 days after the day a request for conciliation is made by either party; or*

*(b) 15 days after the day the parties are notified by the Chairperson under subsection 163(2) of his or her intention to recommend the establishment of a public interest commission.*

...

(3) *After considering the application, the Board may determine any matter that the employer and the bargaining agent have not agreed on that may be included in an essential services agreement and make an order*

*(a) deeming the matter determined by it to be part of an essential services agreement between the employer and the bargaining agent; and*

*(b) deeming that the employer and the bargaining agent have entered into an essential services agreement.*

(4) *The order may not require the employer to change the level at which an essential service is to be provided to the public, or a segment of the public, at any time, including the extent to which and the frequency with which the service is to be provided.*

...

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### C. Discussion and conclusion

[113] A thorough analysis of the origins of the provisions of the *PSLRA* and its application was ably provided by my colleagues in *Public Service Alliance of Canada v. Parks Canada Agency*, 2008 PSLRB 97, and I have no intention of repeating it. However, I note that exactly what is understood by the specific expression “safety or security of the public,” a concept crucial to my decision, is not defined in the *PSLRA*; nor has it been the subject of any comprehensive analysis to date. From my analysis of the evidence and arguments presented by the parties, they do not make this concept as clear as perhaps they assumed.

[114] The cases decided under the *PSSRA* and the *PSLRA* have mostly emphasized the balancing that must occur between the right to strike to give effect to the collective bargaining regime and the rights and obligation of the employer in ensuring the safety of the public without delving in any detail into the very notion of what constitutes the safety and security of the public. In 1976, the Public Service Staff Relations Board (PSSRB) considered, in *The Professional Institute of the Public Service of Canada v. Treasury Board (Veterinary Science Group)*, PSSRB File No. 181-02-49 (May 16, 1976), the level of services that would be required in the interest of the safety or security of the public in the case of lawful strike. However, it did not provide a rationale for the services that it considered essential, other than enumerating the factors necessary to make its designations. The legislation and the duties of VMs have both changed considerably since that decision was issued, and I consider it of limited assistance in defining what constitutes the safety and security of the public in this case.

[115] In the absence of a precise definition in the legislation, the canons of interpretation dictate that terms be given their usual meanings. The Canadian Oxford Dictionary defines “safety” as the condition of being safe or freedom from danger or risks. The word “security” is defined as the condition of being protected from or not exposed to danger, or measures taken to ensure safety. The word “public” is defined as the community in general, or members of the community or a section of the community having a particular interest or some special connection. Based on those definitions, the concept of “safety or security of the public” can be summed up as follows: conditions or measures taken to protect the community in general or its members from danger or from being exposed to risk.

[116] In *Canada (Treasury Board) v. Public Service Alliance of Canada*, PSSRB File No. 181-02-99, (19790601), the PSSRB gave the following interpretation of what constitutes “in the interest of the safety or security of the public”:

...

*13. Expressed more positively, in our view, duties that are necessary to be performed in the interest of the safety or security of the public do encompass those that, in any given set of circumstances, would reasonably be required to prevent or guard against the probability or even the rational possibility of harm or injury to the health or physical well-being of individuals ... Indeed, in the Electronics Designated Employees Case No. 1 (File 181-2-8), the Board described the obligation placed upon it to determine who are to be designated employees under section 79 of the Act [as it then was], in the absence of an agreement by the parties, as being an “awesome responsibility”. The Board correctly observed that, in the final analysis, it was called upon to speculate as to what conditions might arise in the course of a strike that might endanger the safety or security of the public. It further went on to say that in these circumstances the Board ought to err, if err it does, on the side of caution. We do not quarrel with this dictum.*

...

[117] Using that statement as a guide, my determination of essential services delivered by the CFIA will focus on the conditions or measures that are necessary to protect the community in general or its members (the public) from danger or from being exposed to risk (safety or security) in the event of a legal work disruption.

[118] The CFIA was established by Parliament as the agency responsible for the federal inspection system for food, animal and plant health to ensure consumer protection. It enforces the food safety and nutritional quality standards set out by Health Canada for domestic and imported products. When food safety standards are not met, or when health risks are identified, the CFIA can invoke enforcement and emergency procedures. Through investigations and product recalls, it ensures the safety of Canada’s food supply. The *Meat Inspection Act* and the *Meat Inspection Regulations, 1990*, require that meat processing companies that sell in more than one province or that export to other countries be federally registered and licensed and that they establish safety controls, such as HACCP plans monitored by the CFIA.

Likewise, imported meat products are subject to legislated controls. The CFIA works with Health Canada in the case of a recall to deal with the risk to public health.

[119] The CFIA's programs are part of a global response to food safety that, as the evidence discloses, is an increasingly important public health issue because of the movement of people and products, an aging population and the migration of disease.

[120] Food safety is a scientific discipline that describes the handling, preparation and storage of food to prevent food-borne illness. Food hazards can transmit disease from person to person and, in the context of meat products, from animals to humans (zoonoses).

[121] Food-borne diseases are unpredictable, and outbreaks may take on massive proportions. For example, in 2008, Canada was affected by a listeriosis outbreak at the Maple Leaf Bortor Road Plant in Toronto due to a lack of sanitation that caused widespread illness in Canada and that ultimately claimed the lives of 22 Canadians.

[122] As detailed in the *Report of the Independent Investigator into the 2008 Listeriosis Outbreak*, the prevention of food-borne diseases and ultimately disease that affects the health of Canadians is the role of government through the implementation and regulatory compliance of strict rules of hygiene, along with the public services of veterinary surveying of animal products in the food chain. The power of control and law enforcement rests with the CFIA and ultimately with the veterinarians responsible for compliance with disease prevention standards.

[123] Consequently, Canadians have come to depend on the safety of the food system. Meat is part of daily nutrition for most Canadians. The central question in determining what constitutes the safety or security of the public then becomes, what are the consequences on the safety of the Canadian food system were VMs to withdraw their services in the event of a legal work disruption?

[124] When VMs are absent from the abattoirs, no qualified person is available to diagnose potentially diseased meat samples on a day-to-day basis. The absence of VMs in the laboratories means that diseased samples cannot be determined within the required 24 hours. While EGs are trained to spot abnormalities at the ante-mortem stage, they are not qualified to diagnose disease or the consequences

of disease. EGs are not qualified to make a disposition on the kill floor. Moreover, the following activities in abattoirs cannot be accomplished without the final authorization of a VM: the slaughter of food animals, the removal of an animal and the destruction of an animal once it is on the processing line. Under current legislation, meat is not edible unless it has been subject to an ante-mortem or post-mortem examination overseen by a VM.

[125] Under those conditions, without VM intervention, meat cannot be processed safely without creating a food safety risk. If meat cannot be processed safely, abattoirs cannot operate and as a result must close. The undisputed evidence is that provincial abattoirs do not have the capacity of taking over the work done by federal establishments. In the case of British Columbia, Saskatchewan and Manitoba, for which the CFIA provides inspection services, there would be no meat available. As provincially inspected meat cannot cross borders, the remaining provinces would be unable to ship their meat to other provinces. The effect of abattoir closure would be to effectively shut down most of Canada's meat supply.

[126] The Institute's arguments about why VMs are unnecessary in abattoirs are not convincing. While VMs and EGs are similarly trained for inspection purposes, EGs are not appointed with veterinary responsibility under the legislation and do not have the veterinary training to replace VMs. Critical inspections are still within the purview of VMs for enforcement purposes. The ultimate responsibility for food safety lies with the CFIA, which is charged with enforcing the legislated policies and standards developed by Health Canada, which is well explained in the *Report of the Independent Investigator into the 2008 Listeriosis Outbreak*.

[127] Even under the Poultry Rejection Program, a fully equipped and staffed veterinary disposition station must be provided by the operator as a prerequisite to receiving a condemnation certificate from the CFIA. The medical value of condemnation certificates is not at issue; certificates are required under the *Meat Inspection Regulations, 1990*.

[128] The absence of a commodity due to a lack of export certificates is not a mere matter of trade, as other populations who depend on the exported products for survival will be affected. The legislation does not limit the "public" to Canadians. If VMs are not available to review import certificates for animals and their products, including inspection services at the border, animals and meat products in Canada



cannot be shipped internationally. Animals meant for slaughter or meat products can be held only for a limited time and have to be destroyed if they cannot be exported. As shown earlier in this decision, overcrowding on farms increases the likelihood of disease, infection and quarantine. Conversely, in the case of imports, animals that require inspection would be unable to enter the country and would either have to be quarantined at the border or returned to the producers. Although meat for export could theoretically be rechanneled to support the Canadian population, I have no evidence that one balances the other or how this could effectively be accomplished if only provincial abattoirs were in operation.

[129] If there is but a limited source of meat products during a work disruption, it is unrealistic to think that Canadians will revert to fish or vegetarian options and that those options would be sufficient to feed the entire population for an unpredictable amount of time. This crisis would affect the health of the public and consequently its security. The Institute's example of the temporary closure of Ontario abattoirs during the 2002 blackout does not apply to a legal strike situation as that disruption was due to a short-lived emergency. At that time, there were sufficient backup provisions to feed the population. Not having meat on hand for any prolonged period would be disastrous. The coercive nature of a strike is that its length and timing are unpredictable.

[130] I am also of the view that agricultural and laboratory research must continue without interruption because of the unique nature of the services they deliver and the requirement for pathogen-free animals to maintain essential research. It would be irresponsible to dismiss the crucial role played by OLF flocks with respect to the most recent H1N1 influenza outbreak.

[131] What the Institute argues is mere paperwork, such as reviewing flock sheets, drive cards condemnation certificates, compliance reports, and so on, are in fact operations that formalize the veterinary review process. My view of two abattoirs (a chicken primary processing plant and a pig primary processing plant) was instructive and persuasive that VMs are the first line of protection of public health and safety in Canada with respect to meat products. Whether VMs are exercising their duties in the immediacy of the abattoir or in a laboratory setting, whether they are enforcing compliance or overseeing imports and exports, or whether they are

providing advice to the CBSA, I am persuaded that their services in these areas are necessary to protect Canadians from the risk of disease entering the food chain.

[132] The legislated right to strike under the *PSLRA* must in this case be tempered by a duty of care to safeguard the safety and security of the public. Food safety and emergency response cannot be left to chance or to mere emergency procedures. The occurrence of disease is unpredictable. The evidence has clearly demonstrated that the only way of controlling the risk of disease entering the food chain is by constant monitoring, that is, through scientific risk management. The management of risk is a daily occurrence. The expertise of VMs cannot be replaced by a reliance on EGs or by veterinarians in private practice who are not trained, who do not have the resources to deal with a disease outbreak and who are dependent on the laboratory services provided by the CFIA.

[133] I considered the possibility that certain services being available to the employer on an on call basis. However, I have dismissed this option for the following reasons. Public health involves the essential elements of food safety. VMs are the risk managers of the food safety system. The evidence has persuaded me that the absence of VMs during an unpredictable period of time to oversee food hygiene in abattoirs, to provide disease diagnosis and advice on animal health and to provide immediate response to public health emergencies would create an unnecessary risk for the safety and security of the public. The closure of abattoirs goes far beyond the absence of meat. There would be a direct consequence on farms being unable to sell their herds and of overcrowding leading to a potential health risk for the public. There is no evidence that VMs would be available in sufficient numbers and on short notice to deal with a food related emergency. As was seen in the 2008 Listeriosis Outbreak, a food emergency can be created in a matter of hours and response must be immediate. Furthermore, the programs delivered by the CFIA are part of the global management of food-based risks of disease and the effects on that carefully managed system must weigh in when considering the overall effects on the safety and security the public.

[134] While I am to a certain extent being called upon to speculate as to what conditions might arise in the course of a work disruption that might endanger the safety or security of the public, I must, as did the PSSRB in *Canada*

*(Treasury Board) v. Public Service Alliance of Canada*, err on the side of caution in deciding this matter.

[135] Accordingly, I have concluded that the employer has met its onus of convincing me that services related to

(i) meat hygiene, as it relates to the CFIA's mandate under the *Meat Inspection Act* and the *Meat Inspection Regulations, 1990*;

(ii) laboratories as it relates to diagnostics, pathology, food safety and food security and animal health care; technological transfers in an outbreak and ordering of controlled substances;

(iii) animal health as it relates to the mandate of the CFIA under the *Health of Animals Act* and *Health of Animals Regulations*;

(iii) care of animals within the specialized farms and in laboratories managed by the CFIA;

(v) issuance of export and import certificates as provided under the *Meat Inspection Regulations, 1990* and the *Health of Animals Act*;

(vi) import and border inspection services related to animal health and welfare;

(vii) emergency response to food safety, animal health, and any other emergency that falls within the CFIA's mandate;

are essential to the safety or security of the public and must continue to be provided by the Institute in the case of a legal work disruption. The parties have already agreed to the following provision regarding emergency services:

*On a conditional basis, when the Area Executive Director seeks to respond to a suspected or diagnosed emergency animal disease by establishing an Emergency Operations Center the VMs necessary, as determined by the employer, will respond to the emergency.*

[136] For all of the above reasons, the Board makes the following order:

*(The Order appears on the next page)*

**VIII. Order**

[137] The CFIA's essential services agreement with the Institute will include provisions for the following services that are necessary for the safety or security of the public:

- (i) meat hygiene, as it relates to the CFIA's mandate under the *Meat Inspection Act* and the *Meat Inspection Regulations, 1990*;
- (ii) laboratories as it relates to diagnostics, pathology, food safety and food security and animal health care; technological transfers in an outbreak and ordering of controlled substances;
- (iii) animal health as it relates to the mandate of the CFIA under the *Health of Animals Act* and *Health of Animals Regulations*;
- (iii) care of animals within the specialized farms and in laboratories managed by the CFIA;
- (v) issuance of export and import certificates as provided under the *Meat Inspection Regulations, 1990* and the *Health of Animals Act*;
- (vi) import and border inspection services related to animal health and welfare;
- (vii) emergency response to food safety, animal health, and any other emergency that falls within the CFIA's mandate;
- (viii) on a conditional basis, when the Area Executive Director seeks to respond to a suspected or diagnosed emergency animal disease by establishing an Emergency Operations Center the VMs necessary, as determined by the employer, will respond to the emergency.

February 8, 2011.

**Michele A. Pineau,  
Vice-Chairperson**