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*Public Service Labour Relations
and Employment Board Act and
Public Service Labour Relations Act*



Before a panel of the
Public Service Labour Relations
and Employment Board

BETWEEN

CHRISTOPHER MESZAROS

Grievor

and

**TREASURY BOARD
(Department of Justice)**

Employer

Indexed as

Meszaros v. Treasury Board (Department of Justice)

In the matter of an individual grievance referred to adjudication

Before: David P. Olsen, a panel of the Public Service Labour Relations and
Employment Board

For the Grievor: Sean McGee, counsel

For the Employer: Lesa Brown, counsel

Heard at Ottawa, Ontario,
June 22 and 23, 2015.
(Written submissions filed July 21 and September 8 and 16, 2015.)

I. Individual grievance referred to adjudication

A. Introduction

[1] On August 15, 2012, Christopher Meszaros, the grievor, grieved his management's failure to provide him with a complete and current statement of his duties and responsibilities. He alleged that this failure violated the statement-of-duties article of his collective agreement. By way of corrective action, he requested that the additional duties and responsibilities be added to his statement of duties in order to meet the requirements of the collective agreement between the Treasury Board and the Association of Justice Counsel that expired on May 9, 2014 ("the collective agreement").

[2] Mr. Meszaros's grievance was heard at the final level of the grievance process on April 5, 2013. His grievance was denied in a reply dated May 17, 2013. The reply noted that the information available to the Department of Justice ("the department") and provided during his presentation was examined with respect to the generic work description assigned to his position. The department found that Mr. Meszaros's current work description captured the work that he is required to accomplish. The reply stated in part as follows:

...

... As is the nature of a generic work description, the work requirements of the position are described in broad terms and cover a spectrum within the classification level. I have noted that your current work description includes responsibility to provide legal support on challenging matters having a variety of broad reaching impacts as well as the requirement to conduct and oversee agents in the conduct of challenging legal transactions on behalf of the client department or agency. Therefore, on the basis of my review, I have concluded that the work you are required to accomplish is captured in your current work description.

...

[3] The Association of Justice Counsel ("the bargaining agent") stated that the issue that Mr. Meszaros has put forth in this adjudication is not whether one classification or another is the best fit with his position. The question is whether Mr. Meszaros has received a complete and current statement of the duties and responsibilities of his position, as required by the collective agreement.

[4] The grievance was referred to adjudication on June 14, 2013. On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (“the Board”) to replace the former Public Service Labour Relations Board (“the former Board”) as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in sections 366 to 466 of the *Economic Action Plan 2013 Act, No. 2* (S.C. 2013, c. 40) also came into force (SI/2014-84). Pursuant to section 393 of the *Economic Action Plan 2013 Act, No. 2*, a proceeding commenced under the *Public Service Labour Relations Act* (S.C. 2003, c. 22, s.2) before November 1, 2014, is to be taken up and continue under and in conformity with the *Public Service Labour Relations Act* as it is amended by sections 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[5] Mr. Meszaros, is a lawyer employed with the department whose position was classified at the LA-2A group and level when he filed his grievance. As explained below, the LA group has since been designated as the LP group. Mr. Meszaros testified on his own behalf.

[6] Paul Barrette, who since August 2014 has been employed by the department in an LP-4 position, was at all material times an LA-2B team leader of the Real Property Group in the Department of Justice legal services unit at Public Works and Government Services Canada (PWGSC). He exercised managerial duties as well as practiced in his areas of expertise and was Mr. Meszaros’s team leader. Mr. Barrette co-chaired the Department of Justice Real Property Law Practice Group, a forum for department counsel to discuss a broad range of real property law issues with colleagues across the department. The employer called him to testify at the hearing.

[7] François Daigle, the assistant deputy minister responsible for the Business and Regulatory Law portfolio at the department, comprising some 800 lawyers and paralegals, with 14 legal services units, including those of PWGSC and Industry Canada, was also called to testify by the employer.

[8] For the reasons described below, I find that Mr. Meszaros’s work description does not provide him with a complete and current statement of his duties and responsibilities and that it must therefore be amended.

II. Summary of the evidence

[9] Mr. Meszaros was called to the Bar in Ontario in 1993. He developed his skills and expertise in real property, real property development, and commercial leasing in the private sector in Ottawa and Toronto, Ontario, before joining the department in 1999.

[10] He was recruited by the department, which was looking for someone with extensive expertise in construction and general leasing. Counsel with this experience was difficult to find in the department, as such counsel needed private-sector experience.

[11] His major client was to be PWGSC and in particular the Real Property Group.

[12] Mr. Barrette described the Real Property Group as having six large areas, namely:

- acquisitions and disposals of real property that extend to licenses of occupation and memorandums of understanding for use of space;
- commercial leasing, in which there is a distinction made depending on which side of the transaction one is on;
- construction, broadly categorized, which with leasing includes property development;
- aboriginal law as it relates to real property transactions;
- environmental law; and
- expropriation.

[13] Mr. Meszaros's specialization is in commercial leasing and construction. Approximately one-half of the counsel in the unit practices in the area of acquisitions and disposals, while the other half of the counsel in the unit practices in the area of construction and commercial leasing, with the workload split evenly between the two areas of practice. The total complement of the Real Property Group is approximately 22 employees, including counsel and paralegals reporting to Mr. Barrette.

[14] Mr. Meszaros stated that he was already highly specialized in the area of construction and commercial leasing when he joined the department.

[15] Mr. Meszaros commenced employment as an LA-1. He was advised that this was the only classification level available for entry into the department. Within a few years, he progressed through a competition to an LA-2A position.

[16] From 2000 until 2005-06, his main areas of responsibility were putting construction tenders in place across Canada; commercial leasing for other government departments; property management; and smaller-value contracts, which he described as good bread-and-butter files involving private-sector businesses that required space from the Crown.

[17] In 2006-07, there was a considerable increase in the level of his responsibilities. As he had become one of the more seasoned lawyers, he took on more complex work as described in more detail in the paragraphs that follow.

A. The work descriptions

[18] Mr. Daigle stated that he was familiar with the LA-2A and LA-2B work descriptions. He was a member of a committee in 2007-2008 that developed generic work descriptions. The committee reviewed many thousands of work descriptions in the department and reduced them to approximately 80 to 110 generic descriptions.

[19] Mr. Daigle described the structure for lawyers and several other classifications. The “LA” lawyer position classifications were changed after the filing of the grievance to “LP” and “LC” classifications. In tabular format, his evidence was as follows:

LA classifications		LP classifications (legal practitioner)	
Classifications before the grievance was filed		Classifications after the grievance was filed	
LA-1A		LP-01	
LA-2A		LP-02	
LA-2B	Subject matter experts	LP-03	Subject matter experts

	Team leaders and managers	LP-04	General counsel
LA-3		LC	Executive

[20] Mr. Daigle's evidence was that at the time the grievance was filed, there was an LA-2B work description for a senior counsel exercising managerial responsibilities and another LA-2B work description for a senior counsel considered a subject matter expert who did not exercise managerial responsibilities.

[21] The new LP category reaches as high as the LP-04 level. Counsel in the LP classification do not exercise managerial functions. They may have some administrative functions, such as approving leave or contributing to performance reviews.

[22] On February 6, 2012, Micheline Langlois, acting senior general counsel and executive director, PWGSC legal services unit, wrote to Mr. Meszaros and advised him that under the new classification standard, his position would be designated as LP-2. She stated in part as follows:

...

Existing model job descriptions, which were implemented in the late 1990s, must be replaced to prepare for the implementation of the new standard. [Classification standard for the LA practitioner group] A series of generic work descriptions have been developed and are being applied to all LA (Practitioner) positions in the Department. The content of these generic work descriptions has been approved by managers familiar with the work described.

The generic work description titled Legal Services Unit Counsel (LP-02) was developed for positions like the one to which you are currently appointed. I have reviewed this generic work description and agree that it can be used to describe the duties assigned to your current position. I have therefore signed the attached work description, which is based on the generic. I would ask that you review and sign the work description, indicating that you have been provided an opportunity to read and comment on its contents. . . .

...

[23] Mr. Meszaros stated that when he reviewed the LP-2 work description dated February 23, 2012, for his position, he was not satisfied that it reflected his work. He did not want to sign it. He stated that the existing description for the LA-2A position reflected a portion of what he does but that the description for the LA-2B position did so more completely and accurately, particularly where it referred to performing work on complex matters having a significant impact. He observed that the work description that he did eventually sign stated the position was classified LP-03. No one was certain what LP-03 meant at the time; it was quite confusing. However, he did not assert that his position was in fact reclassified LP-03.

[24] Mr. Meszaros compared the elements of his generic LA-2A and the LA-2B work descriptions and then described the work that he performed. He said he originally looked for elements that were less descriptive of his duties than the language of the LA-2A work description. In the end, each statement contained in the LA-2B work description was more descriptive of his work than its equivalent in the LA-2A description.

[25] In relation to Mr. Meszaros's claims about the complexity of his work, Mr. Barrette testified that in his view, the factors that determine the complexity of a real property file are the risk of being challenged before the courts or the Canadian International Trade Tribunal (CITT) or by other potential purchasers, bidders, and interested parties. In addition, the scope of the file is significant in the sense of its impact on other units and departments. The dollar value of the file from the point of view of the legal manager may not be the most critical factor in determining the level of effort required as files with the largest dollar factor may run smoothest and generate the least amount of complications.

[26] In the next section, I have set out the major purpose of both the LA-2A generic work description of Mr. Meszaros and the major purpose of the LA-2B generic work description in terms of client services results. Within this context, I will review the evidence generally with respect to the work that Mr. Meszaros testified he performed, as well as the evidence of Mr. Barrette and Mr. Daigle with respect to their approach in comparing the elements of the two generic descriptions. I will then turn to the major elements of both generic work descriptions and will review the evidence of the detailed description of the work that Mr. Meszaros testified that he performed under each of

these elements, which are the key activities, knowledge, communications, and interaction and leadership.

Client Service Results

Mr. Meszaros's LA-2A generic work description	LA-2B generic work description
<i>Provides a broad range of legal services on challenging matters having broad-reaching impacts for a client program or operation, including legal and legal policy advice and opinions, litigation support, dispute management and resolution, representation and support during negotiations, and the conduct of a variety of legal transactions.</i>	<i>Provides a broad range of legal services in assigned areas of law or program or activity to the client department or agency on complex matters having a significant impact on the client and leads functional teams in the provision of such services.</i>

[27] Mr. Meszaros stated that the LA-2A work description responds to a portion of what he does but what is critical is that the LA-2B work description specifies that the legal and legal policy advice to the client department or agency relate to complex matters having a significant impact on the client and to leading functional teams. That differentiates an LA-2A from an LA-2B.

B. General description of Mr. Meszaros's work

[28] In 2007, he assumed the lead role in the "Sale-Leaseback" file, which was an initiative of the federal government to sell significant buildings across the country and then lease them back to the Crown. The theory was that the massive sales and the contracts connected to those properties would both make money and result in a level of service that was higher than the government could provide. He described the transactions as extremely complicated. Even getting the file off the ground was difficult.

[29] He stated that he worked with multiple consultants; however, he was in charge of the legal work for the project and worked independently. A team was assembled, composed of experts from the Bank of Montreal, Royal Bank, and Deutsche Bank. They were brought together to carry out feasibility studies and projections. Once satisfied with the process after the completion of the feasibility study, he worked on putting together a request for proposal, which he described as a very complex document.

[30] The banks and the department had legal teams, and Mr. Meszaros assembled a separate legal team of senior practitioners from the private sector. He stated that he was essentially the point person on the file. In describing the scope of the project, he stated that he liaised with a team of at least 20 lawyers spread across the country. He described them as the top in their fields. He said he was working with all government agencies, the Privy Council, and the Treasury Board and with their lawyers.

[31] He described it as a “very, very” complicated transaction. The project had the highest possible political profile, and was described to him by the federal minister responsible for the project as one that could not fail. He described his involvement in the file as the turning point in his career at the department, as it involved him overseeing private-sector drafters and coordinating the entire effort. It was necessary as well that he instruct litigation counsel to successfully deal with a significant legal threat to the transaction. Even after the closing of the transaction, there was still a great number of negotiations yet to be completed.

[32] The transaction was very important to the government of the day and was written up in financial journals.

[33] The profit on the sale of the buildings was \$1.4 billion.

[34] The next projects he worked on were the National Portrait Gallery, the new headquarters for the Royal Canadian Mounted Police (RCMP), and the 90 Elgin Street building.

[35] Submissions with respect to a National Portrait Gallery were unacceptable to the government. Mr. Meszaros stated that his legal advice was essential to the decision not to proceed with the project.

[36] He always acted independently and with autonomy, as he had the experience. He described himself as the subject matter expert in the department when it came to property management, leasing, and construction as he possessed the highest level of knowledge and experience.

[37] The government needed to acquire new space for the RCMP’s headquarters. The government originally tried to purchase the property; however, the transaction fell through. A large developer purchased the property and offered to lease it to the government at a price that in Mr. Meszaros’s words the government could not refuse.

The transaction went forward by way of an advanced contract award notice and was procurement based. He put together the package for his client, the RCMP. He stated that he took another high-value, high-exposure, and could-not-fail transaction through to completion, relying on external agents as there was no expertise in-house other than his. He stated that he could translate his high-level private-sector expertise into Crown expertise.

[38] The Elgin Street Project, involving a redevelopment, had a monetary value upwards of a half-billion dollars and was one of the biggest projects in Ottawa. The project went out for tender to outside agents. Mr. Meszaros dealt with the Department of Finance and the Treasury Board. He became involved not only with the construction issues but also with design issues. He described his involvement as being a senior lead role. He was supported internally by a paralegal and by a lawyer with acquisition experience with respect to title. The bulk of the legal assistance was from the private sector.

[39] Throughout those projects, Mr. Meszaros would be called to meetings with the deputy minister to provide briefings and to brief the minister's staff.

[40] Following those projects, in 2010, Mr. Meszaros was assigned responsibility for the "Maintenance Project", which involved contracting out the property management and maintenance for all buildings owned by the federal government for all departments. The contracting out of those services resulted in a \$22 billion contract. Another counsel, whose position was classified LA-3A, was his predecessor on the file. Mr. Meszaros worked with him initially, then took over the file after the counsel retired, as he was the acknowledged expert on the file. In that sense, it can be said that he was performing duties at the LA-3A level.

[41] In coordinating and leading the Maintenance Project, Mr. Meszaros dealt with the auditor general. He has also been involved in the mediation and resolution of disputes. He had to work closely with other stakeholders, including other departments and agencies, as well as their counsel. He gave evidence that this interaction was, at times, not very cooperative.

[42] At the time of the hearing, Mr. Meszaros's attention, among other things, was on the Port Hope/Port Granby Nuclear Waste Remediation program, which is a large-scale, long-term waste remediation file that deals with levels of nuclear waste present in the

soil. He is working with Atomic Energy of Canada Limited, Natural Resources Canada, Environment Canada, and Canadian Nuclear Laboratories.

[43] During this project, he has provided CITT advice to his client, which was at odds with the fairness monitor. He had to convince his client of the advisability of the legal strategy on balancing risks.

[44] He described that part of his responsibilities involves coordinating counsel across multiple departments and coordinating high-level functionaries within departments. No one without his level of experience could do this. He adds value in terms of project knowledge. He described the dollar value on this project as \$85 million.

[45] He has also had a role in the Detroit International Bridge project and the Champlain Bridge redevelopment project in Montreal, Quebec. With respect to the Detroit River crossing, he is dealing with the construction side of the work with clients in Toronto and with non-construction lawyers at Transport Canada. Because his French-language skills are not at a level that would allow him to assume the lead on the Champlain Bridge redevelopment project, his role has been to work closely with his colleagues, advising them as the matter proceeds.

[46] Mr. Meszaros described other significant projects he is working on, including the Giant Mine Remediation Project in the Northwest Territories. That project required coordination, among others, with Indian and Northern Affairs as well as with territorial authorities. He has worked out a strategy to minimize the possibility of site accidents by advocating a novel approach to workplace health and safety.

[47] In summary, Mr. Meszaros stated that most of his more substantial files are very complex, with significant client impact. That is not to say that he does not address other matters based on his experience, which he handles quickly. He began doing LA-2A work a decade ago. At the time of the hearing, he was leading functional teams on major files such as the 90 Elgin Street building and Sale-Leaseback. With respect to the CITT challenge about the Port Hope/Port Granby Nuclear Waste Remediation program, he is leading a team of 10 to 20 lawyers, to which he provides functional direction. An LA-2A is part of a team. He is above that level — he does not receive direction; he gives it.

[48] Mr. Daigle stated that in his view, the biggest differences between the LA-2A and the LA-2B work descriptions are scope and impact. Scope relates to providing service horizontally over several program areas. He explained that an LA-2A may work on more complex files involving more scope, but that should not be the bulk of the LA-2A's work. He also testified that that classification is not driven by experience.

[49] He stated that over 50% of the lawyers in the department are appointed to LA-2A positions in the department and that most counsel in the department retire as LA-2As.

[50] Mr. Daigle acknowledged in cross-examination that he was not familiar with what Mr. Meszaros did on a day-to-day basis. He said he had been briefed and had heard his grievance and therefore was familiar with the submissions that Mr. Meszaros had put together in support of his grievance.

[51] Mr. Daigle described what he understood by the word "horizontal". He advised that "often, the legal practice reaches out to more than one department."

[52] Mr. Barrette was not intimately knowledgeable of the work performed by Mr. Meszaros, although he attempted to have a broad idea of what people were working on. Any knowledge he had was at a high level, meaning he would ask questions like, "Are we close to a conclusion?", "Are we going to end up in court?", or "Should senior management be made aware of something?" It was his expectation of counsel that they would apprise him of these types of matters. He acknowledged that the last time he had worked with Mr. Meszaros on files had been five years earlier. Given his managerial responsibilities, he did not have a sense of the day-to-day work that Mr. Meszaros was performing.

[53] Mr. Barrette stated that the LA-2B work description encompasses the duties of the LA-2A work description and introduces additional elements such as horizontal scope, in which the work could have an impact beyond the immediate client and the legal services unit to other government departments. The LA-2B work description also encompasses in a broad sense elements of managerial responsibility in supervising and assigning tasks to others.

[54] The LA-2B work description introduces elements of complexity in terms of the difficulty of the work. In his view, it brings the focus of the work to a higher level of significance — not that other levels are insignificant.

[55] Mr. Barrette stated that from his perspective, Mr. Meszaros's duties fit well into the LA-2A work description; however, there were elements of the LA-2B work description that applied to the type of work that he did. He stated that Mr. Meszaros is a good lawyer with a lot of experience, that he was performing valuable work, and that the work that he performed involved projects that were large in terms of dollar figure and complexity, which was not uncommon in the unit.

[56] In cross-examination, Mr. Barrette agreed that in a general sense, the LA-2A work description describes the duties of lawyers above that level. On the other hand, he agreed, it was necessary to also look at the differences between the LA-2A and the higher-level work descriptions to determine which one better described the work.

[57] Mr. Barrette acknowledged that over the last seven years, Mr. Meszaros's practice has involved complex as well as routine work, and that the LA-2B work description includes the performance of routine work.

[58] As part of his managerial responsibilities, Mr. Barrette prepared performance and employee appraisals for his staff. An appraisal is an administrative requirement related to pay increases. His philosophy was to recognize the work of an employee through feedback and encouragement as a means of recognizing significant effort. It enabled him as a team leader to make recommendations as to who on the team would warrant an "exceptional" rating.

[59] In 2007-2008, Mr. Barrette prepared a performance and employee appraisal report for Mr. Meszaros. In it, he stated in part as follows:

As can be seen from Mr. Meszaros' summary of work activities and accomplishments for the 2007/2008 period, he has worked on a number of highly complex files such as the Portrait Gallery acquisition, the Rosdev disputes and the St. Joseph's Corporation litigation.

However, the most notable file for Mr. Meszaros was the sale and leaseback of 9 major Crown properties across Canada. The work involved in this file includes preparing engagement agreements for the consultants, drafting of the lease and management agreement, giving advice on the bid evaluation

process, coordinating legal communications, assisting on First nation consultation issues, providing advice on client delegations, liaising with outside counsel, meeting regularly with Minister and Deputy Minister of PWGSC and negotiations with a number of parties.

... Mr. Meszaros has demonstrated remarkable skills in managing client expectations and dealing with outside parties ... Mr. Meszaros is regularly consulted by Justice colleagues on matters relating to his areas of expertise.

...

[60] In 2008-2009, Mr. Barrette prepared a performance and employee appraisal report for Mr. Meszaros. In it, he stated in part as follows:

... he provides strategic legal advice to various client groups, including the Leasing Directorate and the Real Property Contracting Directorate. ...

Over the review period, Chris also assisted in training new lawyers to this unit in the areas of Crown law, construction procurement and claims management, leasing and leasing procurement.

Chris continues to work on many litigation files relating to a number of claims. He also works on high profile files such as the AFD (SNC Lavalin-Profac) and the redevelopment of 90 Elgin Street.

...

Chris is an experienced practitioner who is not afraid to take a position on a matter and defend that position. He is often consulted by Justice colleagues for his knowledge and experience in commercial leasing and construction law.

...

[61] In 2009-2010, Mr. Barrette prepared a performance and employee appraisal report for Mr. Meszaros. In it, he stated in part as follows:

...

... Chris has worked on some high profile files, such as the 90 Elgin Street redevelopment project, the Cliff Plant explosion and the Rostrust litigation file. All of these files have presented Chris with highly complex legal and policy issues. The clients usually require quick turnaround times.

...

[62] In 2010-2011, Mr. Barrette prepared a performance and employee appraisal report for Mr. Meszaros. In it, he stated in part as follows:

...

Over the review period, Chris has worked on some high profile files, such as the 90 Elgin redevelopment project, based on a P3 model. Chris also spent time working on the audit by Price Waterhouse Coopers into SNC Lavalin's billing practices under the AFD. Chris also worked extensively on the closing of the option to purchase at L'Esplanade Laurier.

These files have presented Chris with highly complex legal and policy issues. The clients usually require quick turnaround times.

...

[63] In the 2011-2012 review, the appended "Work Activities and Accomplishments" document prepared by Mr. Meszaros states:

This year's major accomplishment pertained to the SNC Lavalin O&M audit and mediation. This file had major significance and my contribution exemplified outstanding performance throughout the year that far exceeded the objectives set for an LP-03 in terms of quality and quantity.

This file required hours of advising the most senior client officials including the Minister, Deputy Minister, Associate and several Assistant Deputy Ministers, often with competing agendas, as well as working with and coordinating the efforts of Senior General Counsel, litigation counsel and other legal counsel from within and without the DLSU.

This file had extremely high visibility which required hours of meetings and work to provide appropriate advice under pressure and tight timelines. I took the initiative and was able to deal with a major exposure to the department by insisting that the auditors report directly to me and that I would coordinate the dissemination of their reports throughout the department. In doing so I was able to preserve the privilege in documents whose release otherwise would have been viewed by department officials as divulging compromising information. I handled the dispute with SNC, coordinating the efforts of litigation counsel and drafted the agreements to mediate, to engage a renowned mediator and to settle the complicated dispute. I also wrote the ADM's opening statement and worked closely with our litigator in preparing the detailed mediation brief. I took a lead role in working with the auditors and department officials in

crafting our legal position and was instrumental arriving at a settlement with SNC. . . .

. . .

[Sic throughout]

[64] Mr. Barrette, in his appraisal for 2011-12, refers to those files as being large projects, and in addition, he observes that Mr. Meszaros managed a steady stream of routine requests as well.

[65] Mr. Barrette accepted in cross-examination that, year after year, he had described the work performed by Mr. Meszaros as “highly complex”. He confirmed that that was an accurate statement.

[66] I will now review the detailed evidence that Mr. Meszaros gave when describing his work under the other elements of both generic work descriptions, namely, key activities, knowledge, critical thinking and analysis, and leadership.

Key Activities

Mr. Meszaros’s LA-2A generic work description	LA-2B generic work description
<p><i>Provides legal and legal policy advice on challenging matters having a variety of broad-reaching impacts on any aspect of programs or operations of the client department or agency, including:</i></p> <ul style="list-style-type: none"> <i>-assessing legal and other risks and providing advice on mitigation and risk management strategies;</i> <i>-supporting client officials in the formulation of legislative and regulatory proposals as well as in the formulation of new or revised legislation or regulations;</i> <i>and</i> <i>-delivering legal training to client officials.</i> <p><i>Provides litigation support services on challenging matters having a variety of broad-reaching impacts on the client department or agency, including:</i></p> <ul style="list-style-type: none"> <i>-participating in the assessment of risk and formulation of the litigation strategy;</i> <i>-representing client interests (e.g. providing relevant legal and business context with respect to the issue at hand);</i> 	<p><i>Provides legal and legal policy advice to the client department or agency relating to a broad range of complex matters of significant scope, risk and impact on the client, or leads functional teams on the provision of such advice, including:</i></p> <ul style="list-style-type: none"> <i>-monitoring legal services provided to the client to ensure coordination within the Department of Justice and appropriateness to client business requirements; and</i> <i>-providing advice or coordinating advice provided by other Legal Services Unit team members on issues affecting client programs or operations (e.g. the legal, legal risk management and legal policy implications of proposed and actual legislation, regulations, litigation, policies, and practices, or the legal and legal policy implications of new and emerging jurisprudence).</i> <p><i>Provides or leads functional teams providing litigation support services with</i></p>

Mr. Meszaros's LA-2A generic work description	LA-2B generic work description
<p><i>-identifying linkages and implications between files and issues relevant to the client department/agency context to ensure the effective and consistent treatment of files;</i></p> <p><i>-providing advice to the client regarding risks and implications of litigation issues and potential outcomes;</i></p> <p><i>-providing advice in regards to the impact of any decision and supporting the client in their implementation; and</i></p> <p><i>-supporting client obligations and litigation processes (e.g. discovery and redaction of documents).</i></p> <p><i>Represents the client department or agency in the negotiation of agreements and other arrangements with broad-ranging impacts, including participating on negotiation teams with client department or agency officials.</i></p> <p><i>Conducts and/or oversees agents in the conduct of challenging legal transactions on behalf of the client department or agency (e.g. leases, land conveyances, etc.).</i></p> <p><i>Advises and consults with colleagues within unit and across the Department of Justice on the implications of specific legal approaches being considered on behalf of a client department or agency and the implications on other departments or agencies to ensure an integrated approach that considers all interests.</i></p> <p><i>Contributes to the effective management of the Legal Services Unit, including:</i></p> <ul style="list-style-type: none"> <i>- overseeing and assigning tasks to less experienced counsel, paralegals, students and support staff;</i> <i>- providing input to managers for the performance evaluation of paralegals, students and support staff;</i> <i>-providing feedback on client service needs and resulting resource requirements; and</i> <i>- complying with applicable business and</i> 	<p><i>respect to complex matters of significant scope, risk and impact, including:</i></p> <ul style="list-style-type: none"> <i>- formulating litigation strategy in consultation with senior client officials and litigation counsel;</i> <i>- identifying linkages and implications between the matter in question and other related files and issues to support the effective and consistent horizontal treatment of issues;</i> <i>- providing and coordinating advice to departments or agencies provided by other team members on litigation issues and potential outcomes;</i> <i>- facilitating and/or leading discussions between litigation counsel, other Department of Justice colleagues and senior client officials to ensure a balance among client program or operational objectives, the law, and the position of the Department; and</i> <i>- assisting client officials in meeting their discovery and other obligations.</i> <p><i>Conducts and/or oversees agents and other team members in the conduct of more complex legal transactions having a major impact on the client department or agency.</i></p> <p><i>Represents the client department or agency in the negotiation of major agreements and other arrangements having a major impact on the client, and leads or participates on negotiation teams composed of client officials.</i></p> <p><i>Anticipates potential developments and identifies important legal trends that may have a significant impact on programs, policies and legislation of the client or other departments or agencies, and provides legal and legal policy advice in support of risk management and mitigation options.</i></p> <p><i>Contributes to the effective management of the Legal Services Unit, including:</i></p> <ul style="list-style-type: none"> <i>- anticipating client legal services needs</i>

Mr. Meszaros's LA-2A generic work description	LA-2B generic work description
<i>management processes (e.g. timekeeping, recordkeeping, knowledge management and other procedures).</i>	<i>and resulting resource requirements, and providing input to the Department of Justice and client department or agency planning processes; - promoting and complying with applicable business and management processes (e.g. timekeeping, recordkeeping, knowledge management, training and other procedures); and - mentoring, assigning tasks and transferring knowledge to less experienced counsel, paralegals and support staff (e.g. legal assistants) and overseeing the work related to assigned matters.</i>

[67] Mr. Meszaros stated that the key activities described in the LA-2A description relate to legal and legal policy advice on challenging matters having a variety of broad-reaching impacts, while the key activities described in the LA-2B description involve complex matters with significant scope of work and impact on the client and leading functional teams, all of which he performed on a regular basis. It is the degree of complexity of his work and the teams that he leads that separates his work from the LA-2A work description. He stated that he helps his clients at a high level based on his 20 years of experience.

[68] The LA-2B work description requires counsel to provide advice and to coordinate advice provided by other legal services units. In one case, a decision of the Canadian International Trade Tribunal concerning leasing in Quebec, Mr. Meszaros stated that he coordinated the response with other counsel in other legal services units. As a consequence of the CITT ruling, the leasing rules are now very stringent, and they impact major acquisitions and leasing.

[69] In July 2015, the CITT rendered another decision involving subcontracting. It was necessary for him to re-educate client departments on the implications of the decision, which involved many contractors and had an impact in the millions of dollars.

[70] Mr. Meszaros maintains that on account of his expertise, he understands his clients' businesses from the ground up. He sits with clients and works with them to develop new processes. To that end, he prepared a presentation for a committee

headed by the Assistant Deputy Minister of Justice, to be presented by his general counsel.

[71] He claims that he provides advice with respect to the legal policy implications of emerging jurisprudence as in the CITT ruling previously described, which brought about a pivotal change. He also advises his clients on the impact of Supreme Court of Canada (SCC) rulings and other jurisprudence on their operations.

[72] In terms of litigation support, according to Mr. Meszaros, there is a distinction between the LA-2A and the LA-2B work descriptions in terms of identifying linkages and implications between files and issues relevant to the client department or agency context. In the LA-2A description, it is to ensure the effective and consistent treatment of files, while in the LA-2B description, it is to support the effective and consistent horizontal treatment of issues. Mr. Meszaros, as counsel, sits on a Treasury Board committee to ensure that the approach to construction issues across government is consistent. Members of the committee are PWGSC, Defence Construction Canada, the RCMP, and the National Capital Commission. The committee's mandate is to ensure the consistent application of jurisprudence and precedents. When a decision is rendered by the SCC that impacts construction, Mr. Meszaros will make a presentation, take questions, and make adjustments to the relevant documentation, if necessary.

[73] The LA-2A work description speaks of providing advice to clients about the risks and implications of litigation issues and potential outcomes. The LA-2B description speaks of providing and coordinating advice to departments or agencies provided by other team members on litigation issues and potential outcomes.

[74] Mr. Meszaros pointed out that construction is extremely litigious. Any change in the law relating to contracting and tendering needs to be disseminated quickly and widely across government. The same is the case for leasing as in, for example, a recent CITT decision dealing with that subject, which had to be disseminated quickly throughout the department so as to decide whether to judicially review it. There was a need to explain the impact of the decision on property management contracts. When dealing with areas of the law for which he is an expert, he sees it as part of his responsibility to disseminate that information.

[75] He has also led an initiative to revise documentation to bring it closer to what is being used by the private sector and industry as in his view the Crown cannot be

working in a vacuum. He endeavours to keep the Treasury Board committee on construction abreast of what is going on.

[76] The LA-2A description speaks of supporting client obligations in litigation processes (e.g., discovery and the redaction of documents). The LA-2B description refers to assisting client officials in meeting their discovery and other obligations. Mr. Meszaros questioned whether that was a meaningful distinction. He did not think so. He had a form letter prepared to facilitate the litigation process. As an LA-2A, he became involved in preparing documents for discovery; now, he steps back, and a litigator deals directly with the client.

[77] The LA-2A description speaks of conducting “and/or” overseeing agents conducting challenging legal transactions on behalf of the client department or agency (e.g., leases, land conveyances, etc.). The LA-2B description refers to conducting “and/or” overseeing agents and other team members conducting more complex legal transactions having a major impact on the client department. The bulk of Mr. Meszaros’s legal transactions are quite complex and have major impacts on his clients. He is often assigned those files that have that kind of impact as he has the depth and breadth of experience and knowledge to handle them.

[78] The LA-2A description speaks of representing the client department or agency in the negotiation of agreements and other arrangements with broad-ranging impacts, including participating on negotiation teams with client department or agency officials. The LA-2B description refers to the representation of client departments or agencies in the negotiation of major agreements and other arrangements having a major impact on the client and leading or participating in negotiation teams composed of client officials. Mr. Meszaros maintains that starting in 2007 with the Sale-Leaseback file, he has handled agreements having major client impact.

[79] The LA-2A description speaks of advising and consulting colleagues within the unit and across the department on the implications of specific legal approaches being considered and the implications on other departments to ensure an integrated approach. The LA-2B description refers to anticipating potential developments and identifying important legal trends that may have a significant impact on the programs, policies, and legislation of the client or other departments and agencies and providing legal and legal policy advice in support of risk management and mitigation options. Mr. Meszaros described his role in drafting integrity provisions into contracts in which

he exercised a leadership role with a wide impact, as more stringent rules may impact the manner in which some large players deal with the Crown.

[80] The LA-2A description speaks of contributing to the effective management of the legal services unit, including overseeing and assigning tasks to less-experienced counsel, providing input to managers for evaluating subordinate staff, providing feedback on client-service needs and the resulting resource requirements, and complying with applicable business and management processes. The LA-2B description refers to contributing to the effective management of the unit, including anticipating client-service needs and resource requirements and providing input into the unit's or agency's planning processes, promoting and complying with applicable business and management processes, mentoring assigned tasks, and transferring knowledge to less-experienced counsel and subordinate staff and overseeing that work. Mr. Meszaros stated that several times, there has been attrition in the unit, and he has quickly brought new counsel up to speed as it fell on his shoulders. He proactively anticipates client-service needs and resource requirements such as ensuring that there are sufficient Crown agents in place to meet his clients' needs for legal services.

[81] Mr. Meszaros also states that he has input into and works with his client department to ensure that he can manage the workflow. He stepped into a managerial role for a period of four months less a day and for a two-month period that was not formally recognized as an acting appointment. In that role, he was responsible for exercising all management functions, including the assignment of work, the monitoring of workloads, etc.

[82] Mr. Meszaros asserts that he is the mentor for counsel on the contracting side of the Real Property Group, including commercial leasing, to ensure a consistency of approach among the group of some 10 lawyers.

Knowledge

Mr. Meszaros's LA-2A generic work description	LA -2B generic work description
<i>Requires sound knowledge of public law (Crown law, constitutional and administrative law) with particular emphasis on areas of law relevant to assignments, and their application to the client's programs or operations to:</i>	<i>Requires advanced knowledge of public law (Crown law, constitutional and administrative law) and assigned areas of law or the law relevant to client programs or activities to: -provide and lead the provision of legal</i>

Mr. Meszaros's LA-2A generic work description	LA -2B generic work description
<p><i>-identify the legal issues relevant to the legal services required;</i> <i>-identify options for the provision of legal services;</i> <i>-plan for and deliver responsive legal services; and</i> <i>-conduct research, negotiations and transactions, in a timely manner.</i></p> <p><i>Requires sound knowledge of legal advisory, litigation support, legislative drafting, negotiation, legal transactions, and other legal practices to provide a full range of legal services to respond to the needs of the client department or agency.</i></p> <p><i>Requires sound knowledge of legal, policy, program and operational contexts of the client department or agency to:</i> <i>-identify the legal and legal policy issues relevant to the legal services required by client department or agency officials; and</i> <i>-represent the interests of the client department or agency in transactions and negotiations, and where legal advice being formulated for other departments or agencies requires consideration of the client department or agency interests.</i></p>	<p><i>services relating to complex issues of significant scope, risk and impact;</i> <i>-lead negotiations and transactions on complex matters of significant scope, risk and impact; and</i> <i>-propose legal risk management strategies to address anticipated legal issues, legal developments and risks having a broad variety of impacts on client operations.</i></p> <p><i>Requires advanced knowledge of legal advisory, legal drafting, negotiation, litigation support and other legal practices to provide and lead the provision of legal services in assigned areas of law or client department or agency, including:</i> <i>-monitoring and coordinating legal services;</i> <i>-leading consultations between departmental colleagues on complex issues of significant scope, risk and impact; and</i> <i>-providing functional guidance to team members.</i></p> <p><i>Requires a strong understanding of legal, policy and operational contexts of clients, other parties, and Government as a whole to:</i> <i>-identify broad-ranging impacts of complex issues of significant scope and risk and develop responsive risk mitigation strategies; and</i> <i>-represent the interests of client departments or agencies in complex and high risk transactions and negotiations.</i></p>

[83] The LA-2A description speaks generally of requiring a sound knowledge of public law, Crown law, and constitutional and administrative law, while the LA-2B description speaks of requiring advanced knowledge of public law, Crown law, and constitutional and administrative law. Mr. Meszaros stated that given the complex files that he deals with on a daily basis, based on his 15 years of experience, he has an advanced knowledge of those areas of the law. Counsel whose positions are classified LA-3A or LA-2B come to him regularly for advice.

[84] The LA-2A description requires a sound knowledge of public law to identify legal issues, identify options, plan and deliver legal services, and conduct research, negotiations, and transactions. The LA-2B description requires an advanced knowledge of public law to provide and lead legal services relating to complex issues of significant scope, risk, and impact, to lead negotiations and transactions on complex matters of significant scope, risk, and impact, and to propose legal risk-management strategies to deal with a broad variety of impacts on client operations.

[85] In Mr. Meszaros's view, with over 22 years in practice and 15 years acting for the Crown in his areas of specialization, the language used in the LA-2B description describes his work, although he maintains that the complexity of his work and its impact exceeds the adjectives in the LA-2B description. He seeks out files that involve complex issues with a significant scope of risk.

[86] The LA-2B description refers to leading consultations between departmental colleagues on complex issues of significant scope, risk, and impact and providing functional guidance to team members.

[87] Mr. Meszaros leads those initiatives by bringing complex issues out into the open both within his own unit with the client, as well as outside the unit. He has instigated discussions throughout the department on how to handle solicitations and standing offers and has been called upon to provide advice on acquisitions.

[88] The LA-2B description also requires counsel to have a strong understanding of legal policies and the operational contexts of clients, other parties, and the government as a whole.

[89] In Mr. Meszaros's view, he always thought that what separated an LA-2A from an LA-2B is that the LA-2B had to know the client's operations better than the client did. Based on the files handled in his 15 years of experience with clients, he has that knowledge, while an LA-2A would not be as effective.

Critical Thinking and Analysis

Mr. Meszaros's LA-2A generic work description	LA-2B generic work description
<i>Analyzes and synthesizes a wide variety of program, operational and legal information to provide legal and legal</i>	<i>Analyzes and synthesizes a wide variety of legal, program, policy and operational information to provide legal and legal</i>

Mr. Meszaros's LA-2A generic work description	LA-2B generic work description
<p><i>policy advice and services on a range of comprehensive and challenging issues having broad-reaching impacts on the client department or agency, including:</i></p> <ul style="list-style-type: none"> <i>-identifying and assessing underlying legal issues to business problems;</i> <i>-anticipating future steps, issues and contingencies;</i> <i>-developing options on how to address the issues and risk management approaches;</i> <i>-balancing the program or operational interests of the client with the requirements of the law in the implementation and management of solutions; and</i> <i>-representing the interests of the client department or agency in transactions and negotiations.</i> <p><i>Plans and prioritizes legal services delivery in relation to assigned caseload requiring an understanding of underlying client department or agency legal services needs.</i></p>	<p><i>policy advice and services on a range of complex issues of significant scope, risk and impact, including:</i></p> <ul style="list-style-type: none"> <i>-identifying and anticipating legal policy implications of new and emerging jurisprudence affecting the client department or agency, providing advice and recommending suitable risk management strategies;</i> <i>-leading broad consultations with relevant stakeholders to balance client interests with the requirements of the law to craft and implement often unprecedented solution options;</i> <i>-providing functional guidance to team members to ensure consistency and quality of legal work products; and</i> <i>-conducting or leading others in the conduct of legal transactions of significant scope, risk and impact.</i> <p><i>Monitors and coordinates legal services provided to the client department or agency by the Department of Justice on a broad range of matters in assigned areas of law and ensures all legal and legal policy issues are anticipated and addressed by uncovering trends and underlying issues, creating strategies to address these issues, and advising client department or agency officials as well as colleagues concerning such issues and strategies.</i></p>

[90] The main difference between the LA-2A and the LA-2B work descriptions in analyzing and synthesizing information is the distinction between providing advice and services on a range of comprehensive and challenging issues having broad-ranging impacts and, in the case of the LA-2B, to providing advice and services on a range of complex issues of significant scope, risk, and impact. Mr. Meszaros reiterated that he handles the complicated issues with the most significant impact on his clients. If he is good at something, it would not make sense nor would it be in the interests of his clients that he not work on their major files.

[91] The LA-2A description speaks of planning and prioritizing legal services delivery in relation to an assigned caseload and requiring an understanding of the underlying client department or agency's legal service needs. The LA-2B description refers to monitoring and coordinating legal services to the client department or agency on a broad range of matters in assigned areas of law and ensuring all legal and legal policy issues are anticipated and addressed by uncovering trends and underlying issues, creating strategies to address the issues, and advising client departments as well as colleagues on those issues and strategies.

[92] Mr. Meszaros states that because he knows his clients' operations, he is able to get ahead of the legal trends in discussions with them and can foresee the ripple effect of decisions, such as the CITT subcontracting decision, in a proactive as opposed to a reactive way.

Communications and Interactions

Mr. Meszaros's LA-2A generic work description	LA-2B generic work description
<p><i>Consults with clients to obtain a comprehensive and detailed understanding of the relevant practices related to their programs and operations and to explain and educate clients on challenging matters of law, in order to:</i></p> <ul style="list-style-type: none"> <i>-identify underlying issues;</i> <i>-ensure full and mutual understanding of legal and business contexts and implications; and</i> <i>-provide legal advice.</i> <p><i>Writes legal opinions on a variety of challenging matters of law and programs or operations dealing with novel circumstances requiring significant interpretation.</i></p> <p><i>Provides written and oral legal comments on documents (e.g. correspondence, submissions, reports, program or policy frameworks, etc.) prepared by clients to assess legal risk and ensure the client is properly informed of the legal implications of approaches.</i></p> <p><i>Advocates for client interests and positions</i></p>	<p><i>Consults with and provides advice to Department of Justice colleagues and client officials on the nature and level of legal services required on a broad range of matters having a major impact on the client in assigned areas of law to ensure that all contributions are coordinated and that client officials have the necessary information and understanding to manage their programs or operations in a risk-managed fashion.</i></p> <p><i>Writes legal opinions on new and emerging legal and other issues related to a broad range of matters in assigned areas of law. Issues typically have a major impact on the client, often requiring broad consultation within the Department of Justice and the client given the subject matter's horizontal nature.</i></p> <p><i>Conducts complex negotiations and transactions related to assigned areas of law, including representing client interests, and influencing and persuading other parties toward client-favourable positions.</i></p>

Mr. Meszaros's LA-2A generic work description	LA-2B generic work description
<p><i>in negotiations and legal transactions with third parties.</i></p> <p><i>Facilitates discussions between clients, Department of Justice colleagues and other parties on challenging matters of law and business, where different points of view can be expected, creating disagreements, conflict and unpredictable situations.</i></p>	<p><i>Works with departmental colleagues and client officials to influence legal and policy direction and approaches, and coordinate legal services appropriately.</i></p>

[93] The LA-2A description speaks of consulting with clients to obtain a comprehensive and detailed understanding of the relevant practices related to their programs and operations and to explain and educate clients on challenging matters of law in order to provide service. The LA-2B description refers to consulting with and providing advice to colleagues and client officials on the nature and level of legal services required on a broad range of matters having a major impact on the client in assigned areas of law to ensure that all contributions are coordinated and that clients have the necessary information and understanding to manage their programs or operations. Having the knowledge acquired in the area and being a subject matter expert, Mr. Meszaros is regularly consulted by other colleagues and clients on matters having a major impact. He states that he writes opinions on new and emerging legal and other issues. For example, he drafted a paper on the CITT for senior management for public-service-wide distribution. The level at which he communicates includes briefing ministers' offices as for example in the Port Hope/Port Granby Nuclear Waste Remediation file. His clients request that he go to senior-level meetings so that he can provide the advice directly.

Leadership

Mr. Meszaros's LA-2A generic work description	LA-2B generic work description
<p><i>Independently manages relationships with officials of client departments and agencies as well as resulting workload to gain a comprehensive and detailed understanding of the relevant legal and policy frameworks and to ensure officials receive well adapted legal services and advice.</i></p>	<p><i>Leads functional teams on the provision of legal and legal policy advice and other legal services on a broad range of matters of significant scope, risk and impact, including:</i></p> <ul style="list-style-type: none"> <i>-assigning tasks to Legal Services Unit colleagues and engaging other Department of Justice colleagues where</i>

Mr. Meszaros's LA-2A generic work description	LA-2B generic work description
<p><i>Consults and coordinates with peers, colleagues, senior officials and other stakeholders to ensure that legal advice and services represent the consensus view of all interested Department of Justice, Government or other stakeholders as appropriate in the circumstances.</i></p> <p><i>Oversees the completion of tasks assigned to less experienced counsel, paralegals, students and support staff.</i></p> <p><i>Contributes to the effective management of the work unit through:</i> <i>-providing input to managers for the performance evaluation of less experienced counsel, paralegals, students and support staff; and</i> <i>-providing input on client service needs and resulting resource requirements in support of the Legal Services Unit and client planning.</i></p>	<p><i>required, and ensuring quality and consistency of the work through monitoring and feedback; and -sharing knowledge and information among Legal Services Unit and departmental colleagues as well as client officials to foster common vision and understanding on a broad range of matters.</i></p> <p><i>Manages relationships with colleagues and client officials in the delivery and coordination of legal services related to a broad range of legal matters as well as to promote a common understanding of issues, trends and broad-ranging, potentially horizontal implications across multiple departments or agencies.</i></p> <p><i>Consults with colleagues within the Department of Justice and multiple department or agency officials in order to ensure coordination and consistency in position and strategy matters.</i></p> <p><i>Anticipates client legal services needs and resulting resource requirements and works to ensure these are integrated in the Department of Justice and client department or agency planning processes.</i></p> <p><i>Promotes applicable timekeeping, recordkeeping, knowledge management, training and other procedures and assists with the planning of legal services delivery.</i></p>

[94] Mr. Meszaros referred to his evidence concerning him leading functional teams as in the cases of the Sale-Leaseback file and the 90 Elgin Street building. The LA-2A description speaks of independently managing relationships with officials of clients and departments in consulting and coordinating with peers, colleagues, senior officials, and stakeholders. The LA-2B description refers to leading functional teams, managing relationships with colleagues and client officials in the delivery and coordination of legal services related to a broad range of legal matters, and consulting with colleagues within the department and multiple department or agency officials to ensure coordination and consistency. Mr. Meszaros stated that he does both. He

consults peers on the acquisition side, but that is reciprocated. In his view, he is functioning more within the LA-2B description by sharing his expertise and knowledge. He manages relationships with colleagues and client officials with respect to the delivery and coordination of legal services both within the department and with the Privy Council Office. The more important the file is to the government, the greater the likelihood will be of the need to coordinate within the department, especially if it requires the Treasury Board's approval.

[95] Mr. Meszaros stated that on an ongoing basis, he assigns lower-level files to more junior counsel. Sometimes he does it directly; other times, he will refer the matter back to the manager with the recommendation as to who would be best suited to take on the file, taking into consideration balancing the workload.

[96] In sum, Mr. Meszaros stated that the work he was performing involved complex matters with significant scope and impact on his clients and that he has led functional teams. In his view, the degree and complexity of the work he was performing and the teams he led separated his work from that of an LA-2A. Over the course of his career with the department, he has taken on larger and more important roles. He has not chosen to further his career by moving to a legal services unit at another department but rather continues to provide legal services to his clients at a higher level with his over 20 years of experience; that, in his view, should be recognized.

[97] Mr. Barrette gave evidence that with most projects of which he had knowledge, the hiring of legal advisors was a complex process. Doing so began with a discussion about viability with senior managers; then there was a discussion within the department to determine if an outside agent should be hired. The next step was to canvass the entire department from coast to coast, in every sector, to determine whether the expertise and resources could be found internally. Only then was the lawyer able to begin to ask to hire outside counsel.

[98] Mr. Meszaros testified that he was not made to follow that process in the major projects in which he had been involved.

[99] Mr. Barrette stated in his testimony that there are two streams for the purposes of work descriptions and classifications. The first is one in which the employee's work is the active practice of law. There may be some additional duties of an administrative nature. The second stream is administrative and managerial. It may be that someone in

the managerial stream would retain a component of actively practicing law. In his case, the position is almost exclusively managerial and administrative.

[100] Mr. Barrette stated that although Mr. Meszaros had received the highest rating for his position for only two years, those ratings were controlled. Management in the department had a quota on the number of outstanding ratings allowed to be allocated to lawyers for their performance.

[101] Mr. Barrette was asked to comment on the “Law Practice Model.” He was asked whether the Department of Justice had set a target to have a certain percentage of lawyers at the LA-2A level. He responded, “No, the objective was to restore balance at the LA-01 and higher levels.” He agreed that the Law Practice Model sought to achieve a profile of 47% LA-2As in the legal workforce but maintained that the overall purpose was to increase the number of LA-01s and to reduce the senior complement. However, he acknowledged that targets impacted the ability of counsel to move from LA-2A to LA-2B positions.

[102] A document entitled “Implementation of the Law Practice Model” and dated “09-10-13”, issued by the Deputy Minister’s team, states in part as follows:

...

Strategic Review helped the Department realize that there are opportunities to reorganize the way in which we approach our work - particularly the way in which we distribute and assign our legal work.

As of August 31, our legal work force was made of up [sic] 15.6 percent LA-01s, 51.9 percent LA-2As, and 32.5 percent LA senior complement. In order to have a distribution of LAs that responds better to the changing demands for legal services, we need to achieve a profile of 25.5 percent LA-01s, 47 percent LA-2As, and 27.5 percent LA senior complement by March 31, 2012.

...

III. Summary of the arguments

A. For the bargaining agent

[103] The collective agreement provides as follows at clause 33.01:

STATEMENT OF DUTIES

33.01 Upon written request, a lawyer shall be entitled to a complete and current statement of the duties and responsibilities of his position including the position's classification level and point rating allotted by factor where applicable, and an organization chart depicting the position's place in the organization.

[104] The law is clear that an employee's work description must reflect that employee's tasks as well as the level of complexity at which they are executed. That work description must be current and complete.

[105] To ascertain whether the complexity level is adequate, tribunals have allowed employees to compare and contrast their work descriptions with higher-level positions. Therefore, using and adding such wording to a work description does not make a grievance about reclassification.

[106] In *Currie v. Canada (Canada Customs and Revenue Agency)*, 2006 FCA 194, the grievor in that case brought an appeal of a judicial review by the Federal Court. The original grievance, which was to have the work descriptions of the relevant collective agreement amended, had been heard by Adjudicator Kuttner of the Public Service Staff Relations Board. The adjudicator had found that he did not have jurisdiction to require the employer to provide position-specific work descriptions. His decision was judicially reviewed by the Federal Court, which ultimately sided with the adjudicator.

[107] However, at the appeal, it was found that the employees were being assigned work of a complexity level beyond what was stated in their work description. Justice Pelletier reasoned at paragraph 26 that "... [the work description] is a document which must reflect the realities of the employee's work situation since so many aspects of the employee's rights and obligations in the workplace are bound to his or her Work Description."

[108] Justice Pelletier went on to conclude at paragraph 28 that "... the only way in which individual employees can access the reclassification process is by means of a revised job description which accurately describes the duties and responsibilities of their position."

[109] The appeal was allowed, and the matter was remitted to a new adjudicator.

[110] Eventually, that case appeared once again before the Federal Court in *Attorney General of Canada v. Currie*, 2009 FC 1314, this time for a judicial review of the

employer's refusal to amend the work description in accordance with the second adjudicator's request "... for a 'complete and current statement of the duties and responsibilities' ...". Adjudicator Mackenzie of the former Board presided over the remittance and ordered the employer to insert certain amendments into the work description. As noted at paragraph 17 of the Federal Court's decision, the adjudicator reasoned as follows:

The evidence showed that three of the grievors ... did perform duties outside of the revised PM-03 job description on a regular and ongoing basis. That they have received acting pay for this work does not change the fact that the revised PM-03 job description did not accurately reflect the work being performed.

[111] The adjudicator also found that the grievors were not given a choice of performing the work that was beyond their work description. Therefore, he amended the work description to include the fact that "[o]n an episodic basis, and over an extended period ...", the grievors did perform duties of the higher-level job classification (see *Attorney General of Canada v. Currie*, at para. 16).

[112] The employer's contention with the adjudicator's decision was that by using words from the higher-level work description, the adjudicator was attempting to reclassify the grievor. On this issue, the Federal Court found that using words from the higher-level work description was reasonable and that it did not amount to a reclassification. The Court went on to describe the difference and at paragraph 38, stated the following: "It is important to understand the difference between a job description and job classification. The first can be referred to adjudication while the second is the prerogative of the employer."

[113] The Federal Court cited the SCC decision in *Polymer Corporation v. Oil, Chemical, and Atomic Workers International Union, Local 16-14*, [1962] S.C.R. 338, which affirmed that adjudicators possess remedial powers that flow from the terms of a collective agreement such that they can require parties to act in accordance with it. As such, no reviewable errors were found, and the judicial review was dismissed.

[114] The law has also established that a generic work description is insufficient if it fails to describe a task that is required of an employee. In *Jennings v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 20, Adjudicator Richardson reiterated certain points on the purpose of the work description. Indeed, he wrote at

paragraph 51 that “[a]n employee’s job description is the cornerstone of the employment relationship.” Moreover, he quoted from *Breckenridge et al. v. The Library of Parliament*, PSSRB File Nos. 466-LP-225 to 233 and 241 to 245 (19960912), that the job description “... is a fundamental, multipurpose document which is referred to with regard to classification, staffing, remuneration, discipline, performance evaluation, identification of language requirements, and career planning.” He concluded that that this document is so important that an employee is entitled to request a complete and accurate work description under the relevant collective agreement.

[115] The adjudicator added at paragraph 52, quoting from *Taylor v. Treasury Board (Revenue Canada - Customs and Excise)*, PSSRB File no. 166-02-20396 (19901221), that the work description must not omit a “... reference to a particular duty or responsibility which the employee is otherwise required to perform’.” Moreover, he confirmed that as is the case in many public service jobs, a generic work description will be satisfactory as long as it satisfies that fundamental requirement.

[116] In the end, the adjudicator found that the grievors had provided sufficient evidence to support an amendment of the work description. Therefore, he ordered the amendment of the “Key Activities” of the work description at issue.

[117] Finally, in an analogous case, *Aphantitis v. Treasury Board (Department of Justice)*, 2014 PSLRB 85, Adjudicator Potter found that the collective agreement had been breached after the employer had conceded that certain elements of the employee’s work were not included in the generic work description. He also added at paragraph 57 that “[a] job description is not intended to list all the activities an employee does, but it should contain the bulk of those activities”.

[118] There are two work descriptions at issue, Mr. Meszaros’s current generic work description, the LA-2A description, and the LA-2B description.

[119] Mr. Barrette agreed that there can be a true difference in the work of a position when different language is chosen for the higher-level description. He agreed that in a general sense, the LA-2A description could describe Mr. Meszaros’s job but that it could also describe many jobs at a higher level. In this context, there can be no debate that a central issue is not whether the LA-2A description accurately describes his work. The question is, rather, whether the LA-2A description accurately describes the work he does.

[120] This is consistent with the jurisprudence of the Board and its predecessors and of the Federal courts.

[121] When reviewing the evidence, it can be characterized as follows. Mr. Meszaros testified that the language of each section of the LA-2B description accurately describes his work. He gave examples in each case to support that characterization.

[122] The employer called two witnesses. Mr. Barrette stated that he did not have the detailed knowledge of the work being done by Mr. Meszaros but that the LA-2A work description described the work that he was doing. Mr. Daigle also did not have detailed knowledge of the work being performed by Mr. Meszaros. Neither of them said that the wording of the LA-2B work description was inapplicable to the work performed by Mr. Meszaros.

[123] Any statement by either of the employer witnesses about whether the LA-2A or the LA-2B work description best describes Mr. Meszaros's job must be considered in light of the limited knowledge they have about what Mr. Meszaros actually does.

[124] During his cross-examination, it was not suggested to Mr. Meszaros and he never agreed that his evidence about the applicability of the descriptions in the LA-2B work description was incorrect.

[125] Setting aside the comments on each individual paragraph in the LA-2B work description, the evidence of the two witnesses for the employer was that the major differences between the two work descriptions were complexity, scope, impact, and risk.

1. Degree of complexity

[126] The degree of complexity is one of the recurring and central differences between the two work descriptions. The evidence of Mr. Barrette in cross-examination, supported by the appraisals, was that the work Mr. Meszaros does is highly complex. This characterization surpasses both generic work descriptions.

[127] There can be no doubt that for all indications that refer to complexity, the language of the LA-2B work description must be chosen in preference to the LA-2A work description, with the exception that the expression "highly complex" should be used because it more accurately describes the work performed by Mr. Meszaros.

2. Scope

[128] The evidence of Mr. Meszaros was uncontradicted on this point. His work had significant scope, whether that expression is measured by his involvement with departments and agencies outside PWGSC, his range of contacts within PWGSC (regularly extending up to the level of the deputy minister and the minister's office), or the breadth of the projects on which he works and their dollar values.

3. Impact

[129] Mr. Meszaros testified that the impact of his work on clients, other departments and agencies, and the agenda of the government is significant. He was not challenged on those statements. No witness was called to say that his work did not have significant impact.

4. Risk

[130] As just set out and as noted in the table, Mr. Meszaros works on projects that are of an order of magnitude that speaks of the enormity of the risk. He gave evidence of the consequences of error. He explained the political imperatives attached to projects like the Sale-Leaseback file, the Detroit International Bridge, the Maintenance Project and others. He was personally told at a ministerial or deputy ministerial level that projects "cannot fail". He explained the consequences if creative strategies were not used to mitigate the possible consequences of emerging legislation and jurisprudence. He explained how he had to work to convince the stakeholders, including clients and colleagues, of the need for new approaches to avoid significant negative consequences.

[131] Mr. Meszaros said the level of risk of the projects and other work for which he was responsible is described by the language in the LA-2B work description. No witness was called to testify that the language in that description does not apply to his work. Rather, what was stated was that the language in the LA-2A description could also capture it.

5. Conclusion

[132] Mr. Meszaros spoke to each portion of the LA-2B work description and explained, with examples, how each one of those elements accurately described his work.

[133] The employer tendered no evidence to contradict Mr. Meszaros on those points. The employer's evidence was limited to stating that the LA-2A description could describe or described the work he does or did. That is not the test to use when examining whether a work description is accurate and complete.

[134] On the evidence, the employer should be required to rewrite Mr. Meszaros's work description to include all elements in the LA-2B work description.

B. For the employer

[135] The grievor has alleged a violation of clause 33.01 of the applicable collective agreement.

[136] The LA-2A work description is a generic work description. As such, the issue properly before the Board is whether it accurately reflects the work that the grievor was required to perform and, as such, constitutes a complete and current statement of his duties as per article 33 of the collective agreement. The employer agrees with the grievor that any issue as to whether one classification or another is the best fit with grievor's position is not before the Board.

[137] The employer has sole authority under section 7 of the *Financial Administration Act* (R.S.C., 1985, c. F-11; *FAA*) to assign duties and classify positions. It is entitled to manage the workplace, which includes the right to assign duties to employees (see section 7 of the *FAA* and *Batiot v. Canada Customs and Revenue Agency*, 2005 PSLRB 114 at para. 51).

[138] It is well established that the burden of proof was on the grievor. Specifically, he had to prove that on the balance of probabilities his work description lacks the elements he has identified and that they are in fact an integral part of his job functions; see *Suric v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 44 at para. 46; *Belliveau v. Treasury Board (Department of Agriculture and Agri-Food)*, 2013 PSLRB 69 at para. 76; *Bowen v. Treasury Board*

(*Correctional Service of Canada*), 2013 PSLRB 87 at para. 80; *Hughes v. Treasury Board of Canada (Natural Resources Canada)*, 2000 PSSRB 69 at para. 27; and *Kerswill v. Treasury Board (Natural Resources Canada)*, 2000 PSSRB 91 at para. 21.

[139] The role of the adjudicator or arbitrator is not to propose the ideal wording but instead to establish whether the current wording meets the requirements of the collective agreement. His or her role is not to correct the wording or the expressions that are used as long as they broadly describe the responsibilities and duties being performed (see *Suric* at para. 48; and *Carter v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 89 at para. 20).

[140] In *Jennings*, at para. 52, Adjudicator Richardson stated:

[52] What is a complete and current statement of the duties and responsibilities of an employee? The parties and the arbitral authorities on which they rely agree that a work description must contain enough information to accurately reflect what the employee does. It must not omit a "... reference to a particular duty or responsibility which the employee is otherwise required to perform"; see Taylor v. Treasury Board (Revenue Canada - Customs & Excise), PSSRB File No. 166-02-20396 (19901221). A job description that contains broad and generic descriptions is acceptable as long as it satisfies that fundamental requirement. In Hughes v. Treasury Board of Canada (Natural Resources Canada), 2000 PSSRB 69, at para 26, the adjudicator wrote the following: "A job description need not contain a detailed listing of all activities performed under a specific duty. Nor should it necessarily list at length the manner in which those activities are accomplished." See also Currie et al. v. Canada Revenue Agency, 2008 PSLRB 69, at para 164; Jaremy et al. v. Treasury Board (Revenue Canada - Customs, Excise & Taxation), 2000 PSSRB 59, at para 24; and Barnes et al. v. Canada Customs and Revenue Agency, 2003 PSSRB 13. The employer is not required to use any particular form of wording to describe the duties and responsibilities of an employee and "...it is not the adjudicator's role to correct the wording or the expressions that are used," so long as they broadly describe the responsibilities and the duties being performed (see Jarvis et al. v. Treasury Board (Industry Canada), 2001 PSSRB 84, at para 95; and see Barnes, at para 24.

[141] This paragraph was cited with approval in *Aphantitis*, at para. 40 and 41, and *Maillet v. Treasury Board (Department of Employment and Social Development)*, 2014 PSLRB 16 at para. 65. Moreover, a work description is not intended to list all

activities an employee does, but it should contain the bulk of those activities (*Aphantitis*, at para. 57).

[142] As stated at paragraph 28 of *Wilcox v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 145, generic work descriptions are a common instrument within the public service, especially when the duties and responsibilities they refer to are performed on a national scale and by a large number of employees. Moreover, as stated at paragraph 24 of *Jaremy v. Treasury Board (Revenu [sic] Canada - Customs, Excise & Taxation)*, 2000 PSSRB 59, it is not unusual for work descriptions, particularly those that are intended to be applicable to a number of positions across the country, to be written in fairly broad language. By necessity, generic work descriptions are not detailed. As long as a generic work description does not omit any particular duties or responsibilities that an employee is required to perform, it will satisfy the requirement that it be a complete and current statement of duties (*Bowen*, at para. 77).

[143] The employer's position is that duties performed by the grievor on the Sale-Leaseback file, the 90 Elgin Street building, the National Portrait Gallery, the new RCMP Headquarters, the Maintenance Project, the Port Hope/Port Granby Nuclear Waste Mediation program, and the Giant Mine Remediation Project fall within the portions of the LA-2A work description. The wording of that work description is broad enough to encompass the duties that the grievor was required to perform.

[144] The employer knows its business. Mr. Barrette was the team leader for the Real Property Law Group during the relevant period. During that period, the LA-2B work description applied to him. He had 22 employees under his supervision, including the grievor. He explained the six areas of practice in the Real Property Law Group.

[145] Mr. Barrette further explained that the grievor's primary areas of specialization are in two of those six areas, namely, commercial leasing and construction law. During the relevant period, Mr. Barrette co-chaired the Department of Justice Real Property Law Practice Group. Mr. Barrette acknowledged that he was not intimately familiar with the details of the grievor's day-to-day work, as this was not practically feasible. However, he explained that he provided a high level of oversight to all counsel under his supervision, including the grievor. He explained that several counsel in the Real Property Law Group had developed specializations within the six areas of law practiced by the Group. While he also had his own areas of specialization, namely, acquisitions

and disposals, and expropriations, it was part of his duties as the LA-2B team leader to provide input and assistance to the counsel under his supervision about the inner workings of the client department, and to expect to be kept apprised if there was an issue that needed to be elevated to senior levels of management, including files attracting media attention, political interest, or court challenges.

[146] Mr. Barrette further explained that the duties he performed under the LA-2B work description included preparing performance evaluations for employees under his supervision and conducting related performance discussions, approving leave requests, managing leave situations, staffing, assigning work to counsel, and assisting the senior general counsel in the legal services unit in the management of financial resources, including the negotiation of memorandums of understanding for funding for the unit.

[147] The grievor placed significant importance on the dollar value of the files upon which he provided legal advice. However, Mr. Barrette explained that while the dollar figure was a factor to be considered in determining the complexity level of a file, it is not the most important factor. He testified that in his experience, the files with high dollar values ran the smoothest and generated the least amount of complications. Mr. Barrette explained that while the grievor had worked on some complex files, his practice consisted of other less complex files as well.

[148] While there is no dispute that the grievor is a skilled and experienced lawyer as well as a valued employee, the fact that he has approximately 15 years of experience does not in itself mean that the LA-2A work description is no longer applicable to him. As Mr. Daigle, the assistant deputy minister for the Business and Regulatory Affairs Branch explained, there is an expectation that an employee will gain experience and develop in both an LA-1A and an LA-2A position and that the use of generic work descriptions allows for this development. It is important to remember that work descriptions are not mutually exclusive. As recognized in *Cooper v. Canada Revenue Agency*, 2009 PSLRB 160 at para. 41, it is reasonable to expect that to allow the employer to manage its workforce, two or more work descriptions may overlap.

[149] The performance appraisals must be considered in context. Their purpose is distinct from that of a work description, which is to outline the duties that an employee may be required to perform. Performance appraisals, on the other hand, ultimately determine the level of performance award, if any, an employee will receive,

as well identify any performance issues. Mr. Barrette explained that he did not review or consult the LA-2A work description in his preparation of the grievor's performance appraisals.

[150] Mr. Barrette explained that his understanding of the Law Practice Model was that it was intended to restore balance at the senior levels as well as the LA-2A levels within the department. There was no evidence to suggest that the Law Practice Model had any applicability to the grievor's work description. In fact, the grievor acknowledged that he has been unsuccessful in promotional opportunities at the LA-2B level.

[151] The employer submits that the grievor failed to demonstrate that the LA-2A work description does not accurately reflect the duties that he was required to perform. The grievance should be dismissed.

[152] In the event that it should be determined that there has been a violation of clause 33.01, the employer's position is that any amendments ordered would apply only to the work description applicable to the grievor. This is an individual grievance about a generic work description. The grievor's evidence was specific to the duties that he performed rather than to any other employee to whom the generic work description applies. The employer notes that that approach was taken in *Aphantitis* and submits that the same approach should be taken in this matter.

[153] Finally, the grievor claimed that since as early as 2007, he was performing duties that were not reflected in his work description. His grievance, however, was not filed until August 15, 2012. Accordingly, the employer submits that any amendments to the work description that may be ordered should take effect no earlier than the 25 days preceding the filing of the grievance (see *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL)).

C. Reply of the bargaining agent

[154] On September 15, 2015, the bargaining agent provided the following reply submissions:

The Evidence of Mr. Barrette

The Employer seems to want to minimize the evidence of Mr. Barrette both in the written performance appraisals and

in his evidence, during which Mr. Barrette adopted those statements and confirmed that they were true.

On page 5 of its submission, the Employer wrote that Mr. Barrette testified that he was responsible for, among other things, preparing performance evaluations and assigning work to counsel.

At page 5 of its submission, with respect to performance appraisals, the Employer stated that:

The purpose of such appraisals is distinct from the purpose of a work description. While the purpose of a work description is to outline the duties that an employee may be required to perform, the purpose of a performance appraisal is ultimately to determine the level of performance award, if any, an employee will receive as well to identify any performance issues.

Although they may be distinct documents, the case law clearly indicates that there is an intricate link between a work description and a performance appraisal. An appraisal of the work cannot be done without determining the nature of the job, the work required and the level of the work expected, including attributes such as its complexity.

Moreover, Mr. Barrette, being the Team Leader for the Real Property Law Group, would have had a complete and global understanding and knowledge of the level of complexity of files each member of his group was working on and able to take on.

It is submitted that Mr. Barrette accurately and honestly described the level of responsibility of Mr. Meszaros in his performance evaluation and his testimony must be considered in that context.

Occasional Less-complex Work

The Employer's response mentions that there are some tasks that Mr. Meszaros performed that were less complex. The Employer's witnesses accepted that lawyers accurately described at the higher level would, at times, have responsibility for less complex matters. This does not mean that the job description rates an employee for his occasionally less challenging or complex work.

Overlapping Descriptions

The Bargaining agent accepts that work descriptions are not always mutually exclusive. The evidence was that the lower job description would often use language that was more general and/or encompassed work in the higher description.

The contrary is not true. If the job description notes work at the higher level (e.g. highly complex) it will not apply to work performed under the lower job description. In the case of Mr. Meszaros, the evidence clearly demonstrates he is doing the work accurately described in the language of the higher job description.

IV. Reasons

[155] The grievor has the burden of proof to establish on a balance of probabilities that the employer failed to provide him with a complete and current statement of the duties and responsibilities of his position.

[156] Under section 7 of the *FAA*, the employer has the sole authority to assign duties and to classify positions. Thus, Mr. Meszaros's grievance cannot serve to change his classification and level. As Adjudicator Potter pointed out at paragraph 3 of *Aphantitis*:

*3 It is no secret that the real objective an employee has in filing a grievance under this type of collective agreement provision is often to increase his or her classification level. Adjudicators do not have jurisdiction over classification, but they do have jurisdiction over alleged violations of a collective agreement. If an adjudicator finds that an employee's statement of duties is not complete and current, the adjudicator can find that the collective agreement has been violated and order that a complete and current statement of duties be provided. Whatever effect this has on the classification level of the position is of no concern to the adjudicator. However, as the Federal Court of Appeal stated in *Currie v. Canada (Customs and Revenue Agency)*, 2006 FCA 194, at paragraph 28 "... the only way in which individual employees can access the classification process is by means of a revised job description which accurately describes the duties and responsibilities of their position."....*

[157] In *Jennings*, Adjudicator Richardson noted as follows at paragraphs 51 and 52:

*51 An employee's job description is the cornerstone of the employment relationship. In *Breckenridge et al. v. The Library of Parliament*, PSSRB File Nos. 466-LP-225 to 233 and 241 to 245 (19960912), the adjudicator stated the following: "It is a fundamental, multipurpose document which is referred to with regard to classification, staffing, remuneration, discipline, performance evaluation, identification of language requirements, and career planning." In *Currie v. Canada (Canada Customs and Revenue Agency)*, 2006 FCA 194, at para 26, the Federal Court of Appeal wrote that a work description "... must reflect the realities of the employee's work situation since so*

many aspects of the employee's rights and obligations in the workplace are bound to his or her Work Description." Its importance is such that, under the collective agreement, any employee is entitled to request a complete and current work description.

52 What is a complete and current statement of the duties and responsibilities of an employee? The parties and the arbitral authorities on which they rely agree that a work description must contain enough information to accurately reflect what the employee does. It must not omit a "... reference to a particular duty or responsibility which the employee is otherwise required to perform"; see Taylor v. Treasury Board (Revenue Canada - Customs and Excise), PSSRB File no. 166-02-20396 (19901221). A job description that contains broad and generic descriptions is acceptable as long as it satisfies that fundamental requirement. In Hughes v. Treasury Board of Canada (Natural Resources Canada), 2000 PSSRB 69, at para 26, the adjudicator wrote the following: "A job description need not contain a detailed listing of all activities performed under a specific duty. Nor should it necessarily list at length the manner in which those activities are accomplished." See also Currie et al. v. Canada Revenue Agency, 2008 PSLRB 69, at para 164; Jaremy et al. v. Treasury Board (Revenue Canada - Customs, Excise and Taxation), 2000 PSSRB 59, at para 24; and Barnes et al. v. Canada Customs and Revenue Agency, 2003 PSSRB 13. The employer is not required to use any particular form of wording to describe the duties and responsibilities of an employee and "... it is not the adjudicator's role to correct the wording or the expressions that are used," so long as they broadly describe the responsibilities and the duties being performed (see Jarvis et al. v. Treasury Board (Industry Canada), 2001 PSSRB 84, at para 95; and see Barnes, at para 24).

[158] As did Adjudicator Potter in *Aphantitis*, at para. 41, I concur with that extract.

[159] In this case, it is necessary to determine whether the generic work description for the LA-2A position meets the requirements of article 33.01 of the collective agreement in providing a complete and current statement of Mr. Meszaros's duties.

[160] The significant differences between the LA-2A and LA-2B work descriptions are degrees of complexity, scope, impact, risk, and leadership in the provision of legal services.

[161] The degree of complexity recurs throughout the descriptions of the elements of the two work descriptions. Mr. Meszaros testified in detail concerning his practice and

outlined the major files over which he has had carriage since 2007, which include the Sale-Leaseback file, the National Portrait Gallery, the new RCMP headquarters, the 90 Elgin Street building, the Maintenance Project, the Port Hope/Port Granby Nuclear Waste Remediation program, the Detroit International Bridge, and the Champlain Bridge redevelopment. I accept his evidence that those files presented complex legal issues with significant impacts on his clients. This evidence was confirmed in his performance and employee appraisals for all relevant years.

[162] The employer contends that these appraisals must be considered in context as their purpose is distinct from that of a work description. These appraisals are meant to determine a performance award level. In my view, irrespective of their purpose, these appraisals are done in the context of the nature of the job, and will necessarily take into account the level of the work as well as its complexity and impact. See the quote reproduced earlier in this decision from *Breckenridge v. The Library of Parliament*, PSSRB File Nos. 466-LP-225 to 233 and 241 to 245 (19960912); [1996] C.P.S.S.R.B. No. 69 (QL).

[163] Mr. Barrette testified that the work done by Mr. Meszaros, as outlined in his performance appraisals, was in fact highly complex. Mr. Barrette did venture that the dollar value of a file may not be the most critical factor in determining its complexity as some of the largest dollar files may run smoother and not present complex legal issues. He did not relate this factor to any of Mr. Meszaros's files. I conclude on all the evidence that Mr. Meszaros's major files were in fact highly complex.

[164] I am satisfied as well based on his detailed evidence that Mr. Meszaros's practice has significant scope over a broad range of complex matters, which includes his services to departments and agencies outside PWGSC as well as within the department. His involvement in coordinating the response to the CITT concerning leasing in Quebec, among a number of legal services units, and his re-educating client departments on the implications of the CITT decision involving subcontracting supports this conclusion. Mr. Meszaros sits on a Treasury Board committee to ensure that the approach to construction issues across government is consistent and briefs the committee on the legal policy implications of emerging jurisprudence. He also disseminates changes in the law relating to contracting and tendering widely across government.

[165] I am also satisfied based on the detailed evidence that the major files that Mr. Meszaros handles involve matters of significant risk to and impact on his clients, including the Sale-Leaseback file, the National Portrait Gallery, the new RCMP headquarters, the 90 Elgin Street building, and the Maintenance Project file. I accept his evidence that he was advised at the ministerial and deputy ministerial level that those projects could not fail.

[166] The evidence adduced by Mr. Meszaros as to the complexity, scope, impact, and risk of the major files he carried was not challenged by the employer.

[167] I am also satisfied on the evidence that Mr. Meszaros exercises leadership in the provision of legal services. I refer to Mr. Meszaros's evidence concerning him leading functional teams as in the Sale-Leaseback file and the 90 Elgin Street building. He shares his expertise and knowledge and manages relationships with colleagues and client officials in the delivery and coordination of legal services within the department on a variety of files.

[168] The employer takes the position that the duties performed by Mr. Meszaros on the Sale-Leaseback file, the 90 Elgin Street building, the National Portrait Gallery, the new RCMP headquarters, the Maintenance Project, the Port Hope/Port Granby Nuclear Waste Remediation program, and the Giant Mine Remediation Project fall within the portions of the LA-2A work description as the wording is broad enough to encompass the duties that the grievor was required to perform. The bargaining agent acknowledges that work descriptions are not always mutually exclusive and that lower-level work descriptions often use language that is more general or is encompassed in higher-level work descriptions. It argues the contrary is not true. If the work description notes that the work at the higher level is highly complex, it will not apply to the work performed under the lower-level work description.

[169] A similar argument was considered and rejected by Adjudicator Richardson in *Jennings*, at paras. 69-72, in which counsel for the employer argued that the key activity of the higher position could fit within one of the activities of the grievors' current work description. He outlined the difficulties that he had with the argument as the key activities of the existing work description were so general as to apply to virtually anyone. I accept this reasoning.

[170] I am satisfied on all the evidence that Mr. Meszaros's work description does not provide him with a complete and current statement of his duties and responsibilities. The work description ought to be amended to reflect to reflect the complexity, scope, impact, risks, and leadership of his duties and responsibilities.

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

(The Order appears on the next page)

V. Order

[172] The grievance is allowed.

[173] The following elements are to be appropriately described in a personal job description given to the grievor effective July 21, 2012. Those duties are as follows:

Client Service Results

Provides a broad range of legal series in assigned areas of law or program or activity to the client department or agency on complex matters having a significant impact on the client and leads functional teams in the provision of such services.

Key Activities

Provides legal and legal policy advice to the client department or agency relating to a broad range of complex matters of significant scope, risk and impact on the client, or leads functional teams on the provision of such advice.

Provides or leads functional teams providing litigation support services with respect to complex matters of significant scope, risk and impact.

Conducts and/or oversees agents and other team members in the conduct of more complex legal transactions having a major impact on the client department or agency.

Represents the client department or agency in the negotiation of major agreements and other arrangements having a major impact on the client, and leads or participates on negotiation teams composed of client officials.

Anticipates potential developments and identifies important legal trends that may have a significant impact on programs, policies and legislation of the client or other departments or agencies, and provides legal and legal policy advice in support of risk management and mitigation options.

Contributes to the effective management of the Legal Services Unit.

Knowledge

Requires advanced knowledge of public law (Crown law, constitutional and administrative law) and assigned areas of law or the law relevant to client programs or activities to:

- provide and lead the provision of legal services relating to complex issues of significant scope, risk and impact;
- lead negotiations and transactions on complex matters of significant scope, risk and impact; and
- propose legal risk management strategies to address anticipated legal issues, legal developments and risks having a broad variety of impacts on client operations.

Requires advanced knowledge of legal advisory, legal drafting, negotiation, litigation support and other legal practices to provide and lead the provision of legal services in assigned areas of law or client department or agency, including:

- monitoring and coordinating legal services;
- leading consultations between departmental colleagues on complex issues of significant scope, risk and impact; and
- providing functional guidance to team members.

Requires a strong understanding of legal, policy and operational contexts of clients, other parties, and Government as a whole to:

- identify broad-ranging impacts of complex issues of significant scope and risk and develop responsive risk mitigation strategies; and
- represent the interests of client departments or agencies in complex and high risk transactions and negotiations.

Critical Thinking and Analysis

Analyzes and synthesizes a wide variety of legal, program, policy and operational information to provide legal and legal policy advice and services on a range of complex issues of significant scope, risk and impact.

Monitors and coordinates legal services provided to the client department or agency by the Department of Justice on a broad range of matters in assigned areas of law and ensures all legal and legal policy issues are anticipated and addressed by uncovering trends and underlying issues, creating strategies to address these issues, and advising client department or agency officials as well as colleagues concerning such issues and strategies.

Communications and Interactions

Consults with and provides advice to Department of Justice colleagues and client officials on the nature and level of legal services required on a broad range of matters having a major impact on the client in assigned areas of law to ensure that all contributions are coordinated and that client officials have the necessary information and understanding to manage their programs or operations in a risk-managed fashion.

Writes legal opinions on new and emerging legal and other issues related to a broad range of matters in assigned areas of law. Issues typically have a major impact on the client, often requiring broad consultation within the Department of Justice and the client given the subject matter's horizontal nature.

Conducts complex negotiations and transactions related to assigned areas of law, including representing client interests, and influencing and persuading other parties toward client-favourable positions.

Works with departmental colleagues and client officials to influence legal and policy direction and approaches, and coordinate legal services appropriately.

Leadership

Leads functional teams on the provision of legal and legal policy advice and other legal services on a broad range of matters of significant scope, risk and impact.

Manages relationships with colleagues and client officials in the delivery and coordination of legal services related to a broad range of legal matters as well as to promote a common understanding of issues, trends and broad-ranging, potentially horizontal implications across multiple departments or agencies.

Consults with colleagues within the Department of Justice and multiple department or agency officials in order to ensure coordination and consistency in position and strategy matters.

Anticipates client legal services needs and resulting resource requirements and works to ensure these are integrated in the Department of Justice and client department or agency planning processes.

Promotes applicable timekeeping, recordkeeping, knowledge management, training and other procedures and assists with the planning of legal services delivery.

[174] I will remain seized of this file for a period of 60 days following the issuance of this decision in the event that the parties encounter difficulty in its implementation.

April 4, 2016.

**David P. Olsen,
adjudicator**