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*Federal Public Sector
Labour Relations and
Employment Board Act and
Federal Public Sector
Labour Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

DANIELLE CURRIE AND MICHELLE WHITE

Grievors

and

**TREASURY BOARD
(Correctional Service of Canada)**

Employer

Indexed as

Currie v. Treasury Board (Correctional Service of Canada)

In the matter of individual grievances referred to adjudication

Before: John G. Jaworski, a panel of the Federal Public Sector Labour Relations and
Employment Board

For the Grievors: Marie-Claude Chartier, Professional Institute of the Public Service
of Canada

For the Employer: John Craig, counsel

Heard at Ottawa, Ontario,
July 4 to 6, 2018, and January 21 to 23 and 25, 2019.

REASONS FOR DECISION

I. Individual grievances referred to adjudication

[1] At all material times, Danielle Currie and Michelle White (“the grievors”) were employed by the Treasury Board (TB or “the employer”) as junior environmental officers (JEO) in the Physical Sciences Group classified at the PC-01 level. They worked at the Correctional Service of Canada (CSC) in the Environmental Protection Program (EPP) in the Corporate Services-Technical Services Division (“the Corporate Services Division”) at the CSC’s National Headquarters (NHQ) in Ottawa, Ontario.

[2] At the time of the matters at issue in the grievances, the grievors’ terms and conditions of employment were partially governed by a collective agreement between the employer and the Professional Institute of the Public Service of Canada for the Applied Science and Patent Examination Group that was signed on July 31, 2013, and that expired on September 30, 2014 (“the collective agreement”).

[3] On June 16, 2014, the grievors each filed a grievance that alleged that the employer violated article 20 of the collective agreement, specifically that it failed to provide each of them with a complete and current job description. Clause 20.01 states as follows:

20.01 Upon written request, an employee shall be entitled to a complete and current statement of the duties and responsibilities of the employee’s position, including the position’s classification level, the position rating form and an organization chart depicting the position’s place in the organization.

[4] 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 (PSLREB) to replace the former Public Service Labour Relations Board as well as the former Public Service Staffing Tribunal. On the same day, the consequential and transitional amendments contained in ss. 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 s. 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; *PSLRA*) before November 1, 2014, is to be taken up and continue under and in conformity with the *PSLRA* as it is amended by ss. 365 to 470 of the *Economic Action Plan 2013 Act, No. 2*.

[5] On June 19, 2017, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures* (S.C. 2017, c. 9) received Royal Assent, changing the name of the PSLREB and the titles of the *Public Service Labour Relations and Employment Board Act* and the *PSLRA* to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, and the *Federal Public Sector Labour Relations Act*.

II. Summary of the evidence

[6] The CSC is responsible for the housing, care, and control of persons who have been convicted of criminal offences (inmates) and are serving incarceration sentences of two years or more. They live in institutions of different security levels across the country, based on a number of different factors. The institutions are large facilities found on federal lands, which often host more than one institution. These large properties, referred to as federal reserves, impact the environment.

[7] The EPP is a branch of the Corporate Services Division. Its task is to ensure that the CSC’s operations comply with environmental legislation and to attempt to minimize the CSC’s impact on the environment. In addition to NHQ, it has personnel in all five of the CSC’s regions.

[8] At the hearing, and at the time of the facts relevant to the grievances, Paul Provost was the EPP’s director. He said that when all positions were filled, about 30 staff who reported to him: 21 in the CSC’s 5 regions, and 9 at NHQ. He said that between 2012 and March of 2014, everyone reported directly to him but that it changed that March. Entered into evidence was an organizational chart dated March 31, 2014 (“the org. chart”). Also entered was a memo dated that same day from Mr. Provost to members of the EPP in which he set out changes to the reporting structure and referenced an announcement at a staff meeting of March 18, 2014.

[9] Ms. Currie joined the EPP as a co-op student in January of 2010 and remained in that position until August 26, 2011. On January 30, 2012, she was offered a full-time casual assignment from February 6, 2012, to June 13, 2012. On May 16, 2012, she was offered a full-time specified-period appointment as a JEO from June 1, 2012, to May

31, 2013. On November 22, 2012, she was made indeterminate in the JEO position, effective November 21, 2012.

[10] Sometime in January of 2015, Ms. Currie temporarily left her position on spousal relocation leave. She remained on that leave up to and including the duration of the hearing before me. Before her leave began, she had been away from work on other leave since approximately mid-December 2014.

[11] Ms. White joined the EPP as a co-op student in January of 2011. She was in that position until August 26, 2011, and again from April 23 to August 16, 2012. On September 18, 2012, she was offered a full-time casual assignment for 90 days. On December 31, 2012, she was made indeterminate in the JEO position, effective that day.

[12] At the time of the hearing, and since 2008, Dawne Flaborea was the national manager for water quality and environmental protection in the EPP and was classified at the PC-04 group and level. The org. chart disclosed that she reported directly to Mr. Provost.

[13] At the time relevant to the facts at issue in the grievances, Debra Richardson was an engineer classified at the EN-ENG-04 group and level in the EPP. The org. chart disclosed that she reported to Mr. Provost and that Ms. White reported to her.

[14] As of the hearing, and since 2009, Katja Graether was a senior environmental officer classified at the PC-03 group and level in the EPP. The org. chart disclosed that she reported to Mr. Provost and that Ms. Currie reported to her.

[15] At the time relevant to the facts at issue in the grievances, Martin Sarault was a senior environmental officer classified at the PC-03 group and level in the EPP. The org. chart disclosed that two environmental officers classified at the PC-02 group and level reported to him and that in turn, he reported to Mr. Provost.

[16] On May 21, 2014, both grievors requested a complete and current statement of the duties and responsibilities of their positions. On May 28, 2014, Mr. Provost responded by providing each of them with a copy of the work description dated March 27, 2012, together with a copy of the EPP's org. chart and a copy of a Classification Committee Report for the position, dated April 3, 2012. The relevant portion of the work description provided to the grievors states as follows:

*Federal Public Sector Labour Relations and Employment Board Act and
Federal Public Sector Labour Relations Act*

...

Client Service Results

Participates in the activities and/or the conduct of research and analysis that contributes basic scientific/technical information on specific environmental issues of departmental concern.

Key Activities

1. Assists in scientific evaluations and/or assessments of scientific/technical data in various physical science fields using established scientific approaches and methods. Work is undertaken under the guidance/instruction of a more senior Environmental Officer.

2. Gathers, compiles and analyses data from various types of sources; maintains records and reports results of analyses or activities to environmental officers for presentation in scientific reports.

3. Makes recommendations regarding the implementation of systems and/or processes to functional management.

4. Provides support to environmental science colleagues on data or systems used to improve effectiveness/efficiency and to help resolve problems.

5. Attends and contributes to various intra and inter-departmental meetings.

6. Provides basic environmental research support and assistance on other environmental related duties as per operational needs. Tasks and studies are assigned based on familiarity with the specific field and relevant work.

...

[Emphasis in the original]

[17] The grievors submitted a work description that they believed was more appropriate.

[18] Mr. Provost stated that since 1997, and every three years, the CSC tables a Sustainable Development Strategy (SDS). He said that he has been involved in all of them, including the one for the 2012-2015 period. He said that the SDS sets targets but that compliance is not required. In short, the SDS sets out what the CSC should do but not what it is legally required to. He also said that the CSC's commissioner sets out directives called "Commissioner's Directives" (CDs), of which CD-318 is with respect to environmental protection and the EPP. There are also sub-directives identified as Internal Service Directives (ISD), which frame the EPP's programs. He gave as examples energy conservation, water conservation, green builds, and the guide to green

meetings. He said that achieving results requires having CSC senior management buy into plans.

A. Ms. Currie's grievance, Board File No. 566-02-11271

[19] Entered into evidence were performance evaluations (PERs) for Ms. Currie for the periods of June 1, 2012, to September 30, 2012; October 1, 2012, to March 31, 2014; and April 1, 2014, to March 31, 2015.

[20] Ms. Currie identified two documents that she submitted as part of the grievance process as illustrative of the work she carried out, the first at an initial stage. She identified the second as an updated version of the first ("the Currie additional task document"). The two documents are similar and set out essentially the same information, albeit in slightly different formats.

[21] The five major tasks identified in the Currie additional task document are as follows:

1. Project management;
2. Monitoring the work of consultants;
3. Performing audits;
4. Provides input into the design, planning and development of national programs, policies and procedures; and,
5. Provides interpretation on environmental policy.

[22] The work description put forward by Ms. Currie that she felt was more appropriate for her position, at the time, was in line with the Currie additional task document.

[23] As of the hearing, Claudia Simonato was a senior environmental specialist at the PC-03 group and level with Public Services and Procurement Canada (formerly Public Works and Government Services Canada; PWGSC) located in Calgary, Alberta, in its western region. At the time relevant to the issues in the grievances, she was located in Ontario. She joined PWGSC in 2009. She testified that she worked with Ms. Currie from about 2011 until Ms. Currie went on leave.

[24] Mr. Provost was shown the Currie additional task document and indicated that he was familiar with the work that Ms. Currie identified in Tasks Nos. 1 and 2.

[25] Ms. Graether testified that as March of 2014, she reported directly to Mr. Provost. She stated that functionally, she worked with Ms. Currie, who reported to her as of April 1, 2014. Ms. Graether was shown the Currie additional task document and stated that she was familiar with it. She stated that she was familiar the task items Ms. Currie listed as Nos. 3, 4, and 5 and that they would have involved her (Ms. Graether).

Tasks 1 and 2: Project Management and Monitoring the work of consultants

[26] These two tasks go hand in hand.

[27] Ms. Currie testified that the project management task dealt largely with work involving soil or water contamination. Dealing with a contaminated site involves two major steps, which are identifying the extent of the contamination and remediating (cleaning) it by removing the contaminated material. Ms. Currie said that she was involved in the work on these types of projects in both the Atlantic and Ontario Regions and that she started performing tasks with respect to these projects during her co-op program. She said that the number of projects each year varied but that when she left in late 2014, she was working on three projects.

[28] Ms. Simonato described Ms. Currie as her client. She said that the CSC would approach PWGSC with a list of projects and that she would help Ms. Currie develop a scope of work and collaborate on documents to obtain consultant services. She stated that Ms. Currie would provide her with the detail involved with the project objectives, including the history of the site, which she would then use to obtain proposals from consultants. Once a consultant was hired, she said that she would work with Ms. Currie with respect to logistics and access. She said that at times, if the consultants had questions while on-site, she would consult with Ms. Currie, if necessary. She further said that when a project was complete, a report would be issued, and that she would review it, as would Ms. Currie, to ensure quality control.

[29] Ms. Simonato testified that by her recollection, she was part of about 10 projects that Ms. Currie was involved in and that their values were usually between \$40 000 and \$350 000. She said that some projects had more challenges, some had public involvement, and some had media or ministerial attention.

[30] Ms. Currie identified the Kingston Penitentiary (KP) project as a major project that she was involved in and stated that it was a high priority for the TB; it was a high-

value property with a high public profile. She also identified the Frontenac LandFill project (on the lands associated with the Collins Bay medium-security institution and the former Frontenac minimum-security institution).

[31] In the Currie additional task document, under the Task 1 (project management) heading, the box marked “basis for request” states as follows:

- *Incumbent acts as project officer/project leader for multiple projects, including two major on-going contaminated sites projects (Kingston Penitentiary Environmental Site Assessment and Risk Assessment and Risk Assessment and Collins Bay Remediation project).*
- *Incumbent is the only CSC employee with a detailed knowledge of the projects, and oversees the day-to-day happenings of the projects.*
- *Incumbent participates in (and/or leads) tasks such as developing project scope, developing project charter, developing statement of works, estimating costs, resources and schedule, monitoring project schedule and costs, ensuring deliverables meet quality standards, etc.*

[Sic throughout]

[32] In the Currie additional task document, under the Task 2 (monitoring the work of consultants) heading, the box marked “basis for request” states as follows:

- *As part assisting [sic] in the management of environmental project, incumbent continuously monitors the work of PWGSC and external consultants to ensure project deliverables are met, budget and timelines are respected, and work is conducted in line with CSC's internal policies and priorities. The incumbent is the external consultant's main contact at CSC.*

[33] Ms. Currie testified that she monitored both consultants and PWGSC. She stated that she was the main point of contact. She stated that this work was the same across the different regions, that Mark Slacke, who reported to Mr. Sarault, performed this work in the Prairie and Pacific Regions, and that Mr. Sarault was responsible for Quebec. She said that all the work was the same and that it was indistinguishable; the only difference was the part of the country it was conducted in. She also stated that she would visit the sites.

[34] I heard no evidence from either Messrs. Slacke or Sarault as to how this work was conducted in their regions.

1. Work at KP

[35] Mr. Provost said that in 2012, the CSC decided to close KP and another institution, in Quebec. He said that when the CSC divests itself of a property, for example, KP, it assesses the property. He said that adjacent to and on one side of KP is Lake Ontario and that it had some contamination from historical coal storage. He said that Mr. Sarault was responsible for this project and tasking work to others, some of which went to Ms. Currie. He said that depending on the work carried out, further studies may be required, to determine the level of remediation. He identified a number of phases involved in the work at KP, as follows:

- assess historical data, including aerial photos of site;
- confirm the contamination through sampling and laboratory testing to determine if the contamination exceeds acceptable levels;
- obtain a detailed report of the contamination (what it is; where it is; how much of it is there);
- arrange for a remediation (dig it up and remove it); and,
- confirm remediation has removed all contamination.

[36] Mr. Provost said that with respect to the KP project, a number of participants were involved, including the following:

- himself;
- Mr. Sarault;
- the institution's on-site maintenance person;
- Ms. Simonato (service manager or project officer) from PWGSC;
- Ms. Currie; and,
- senior CSC management (due to the location of the contamination).

[37] Mr. Provost described Ms. Currie's tasks as liaising between him and Ms. Simonato. He provided the link to more senior CSC management. Once contamination "hot spots" were determined, he would be briefed. At times, he received material information, while at other times, he received only verbal information.

[38] It was determined that a fence would be erected. Ms. Currie was involved, as she was the main contact for the contracting authorities at the CSC. Mr. Provost stated that the contract was under his delegated authority, that he authorized payments, and that

this contract arose from a standing offer. Mr. Provost stated that Ms. Currie was in essence the initial point of contact for the contract and that she handled questions.

[39] Entered into evidence was a copy of a contract to erect fencing at the KP site between the CSC and a third party in the sum of \$6856.84 that the respective parties signed on April 26 and 30, 2014. Ms. Currie was identified at paragraph 5.2 of the contract as the “Project Authority”, which is defined at that paragraph as follows:

The Project Authority is the representative of the department or agency for whom the Work is being carried out under the Contract and is responsible for all matters concerning the technical content of the Work under the Contract. Technical matters may be discussed with the Project Authority, however the Project Authority has no authority to authorize changes to the scope of the Work. Changes to the scope of the Work can only be made through a contract amendment issued by the Contracting Authority.

[40] The “Contracting Authority” was set out at paragraph 5.1 of the contract and was identified as another person, a CSC senior procurement officer. Mr. Provost said that it was a simple contract for a fence and that Ms. Currie coordinated it. Entered into evidence was her email dated February 24, 2014, to Mr. Provost, and copied to Mr. Sarault, with her questions about the KP project fence. He said that he was sure that he responded to the email and that he also could have sought some input from Mr. Sarault. He said that she showed up at his door a number of times per day, with questions. The email states as follows:

- *As discussed, I have a few questions about the fence that is planned to be put up at KP:*
- *Is this something that we are going to be responsible for, or is there someone else (the institution or the region) who is going to be setting this up? Does CSC own any temporary fencing?*
- *Do we have to go through contracting to set up the installation of the fence?*
- *Are we thinking of renting temporary fencing, or are we planning installing a chainlink fence?*
- *Should Comms be consulted regarding whether or not we put up the cloth fence insert (for dust control)? There may be some optics issues if we block the view?*
- *How is access going to be controlled through the fence? I am assuming that the city and DFO still want access to the site (at least to move the boats), so will there need to be someone watching the fence/gate?*

- *What date have we chosen to install the fence?*

[Sic throughout]

[41] Where Ms. Currie suggested that she acted as a project officer or project leader, including on the KP project, Mr. Provost stated that project-liaison officer would be more accurate. He said that she helped coordinate the project. He said that PWGSC managed the project and that the CSC, via the EPP, was a client. He said that the CSC has no authority; they have no power; they are not a contracting entity. He said while the grievor had detailed knowledge of the KP project, he and Mr. Sarault did too. He said that while she did liaise day-to-day if needed, if a dilemma arose or something had to be dealt with, it was bumped up to Mr. Sarault, and then, if needed, to him.

[42] Where Ms. Currie suggested that she participated in (or led) a task, such as developing the scope, charter, or statement of work; estimating costs, resources, and schedule; and monitoring a project schedule and cost and ensuring that the deliverables met quality standards, Mr. Provost said that in some respects, she did participate with respect to developing the scope or charter of the work. However, it was done with the senior environmental officer (Mr. Sarault) and with the PWGSC officer. She was not a project lead and did not oversee projects. He said that with respect to estimating costs, dealing with resources, and monitoring schedules and ensuring that deliverables met quality standards, it was all PWGSC's responsibility.

[43] Mr. Provost stated that while Ms. Currie was involved in projects, it was not every day; nor was it day-to-day oversight. She would receive reports from consultants. She would not act independently but would run things by and through him and Mr. Sarault.

[44] Entered into evidence was a draft memorandum of understanding (MOU) between the Department of Fisheries and Oceans (DFO) and the CSC with respect to the "Assessment and Remediation of the Eastern Portion of Portsmouth Harbour", dated April 1, 2014. Ms. Currie stated that she participated in drafting it. She pointed out that the second-last page lists her and Mr. Provost as the CSC contacts.

[45] Also entered into evidence was a second draft of that MOU, dated May 12, 2014. On May 20, 2014, Ms. Currie forwarded it to Mr. Provost (with a copy to Ms. Graether). Her forwarding email stated as follows:

As discussed on Friday, please find attached my (with great help from Katja) first draft for the MOU between CSC, TC and DFO for the work that is going to be done at Kingston Penitentiary. It is still a bit rough and definitely needs a look at by you, Real Property and Legal (Mel?). If possible, do you think you and Real Property could have a look at it and let me know what modifications you would like? I hope that it is at least pointing us in the correct direction.

[46] No final copy of the MOU was entered into evidence; nor did I hear any evidence about its particulars.

[47] I heard no other evidence about any other specific contracts with respect to KP.

2. Work at Frontenac-Collins Bay

[48] The Frontenac-Collins Bay project involved two landfills on the Collins Bay reserve, one of which was situated next to a wetland. Ms. Currie said that the total cost was about \$1 million. Mr. Provost explained that in the past, the CSC had landfills on its sites that would be capped and then closed. At the Collins Bay reserve, it detected that the landfill was leaching into adjacent wetlands. The course of action taken was to move the landfill to another part of the site, to prevent further leaching. He stated that Mr. Sarault was the officer with the overall responsibility for the project. He separated the project into many small tasks, some of which were assigned to Ms. Currie.

[49] I did not hear much in the way of specifics about contracts related to this project.

[50] In discussing the complexity of the KP and Frontenac-Collins Bay projects, Mr. Provost described them as rather simple and not complex.

Task 3: Performing Audits

[51] In the Currie additional task document, under the Task 3 (performing audits) heading, the box marked “basis for request” states as follows:

• The incumbent conducts compliance audits (independently and with the SEO [senior environmental officer] of CSC facilities, focusing mainly on Petroleum Storage Tanks, Halo Carbon Equipment, and CEAA. During the compliance audits, the incumbent identifies and documents areas of non-compliance including using professional judgement to request immediate corrective actions on non-compliances that pose an immediate risk

to human or environmental health. Based on the finding of the audits, the incumbent develop [sic] a plan to assist the institution(s) in becoming compliant with the regulations. Recommendations of audits are given beyond functional management.

• The incumbent monitors the CEAA portfolio, including monitoring the CEAA check list [sic] program and participating in the audit of the CEAA program to ensure the program is running effectively.

[52] This has three aspects: petroleum-storage tanks, halocarbons, and the *Canadian Environmental Assessment Act, 2012* (S.C. 2012, c. 19, s. 52; “CEAA, 2012”).

1. Petroleum-storage tanks

[53] Ms. Graether testified that the CSC has four types of petroleum-storage tanks. It is responsible for maintaining and managing a 50 000 liter heating-oil tank, a 1000 liter waste-oil tank, gasoline and diesel fuel tanks, and a separate tank for an emergency generator. The CSC must comply with environmental legislation, which Environment Canada enforces. Environment Canada can inspect sites on short notice. It has the power to shut things down for non-compliance. She said that the EPP was not responsible for the compliance and that that responsibility fell to the chief of facility management for each institution. The EPP provided related assistance, advice, and guidance to the chiefs.

[54] Ms. Graether stated that she developed the internal policy on what the CSC had to do to meet the requirements in the environmental protection legislation for these tanks and that she was both the EPP person responsible for the tanks and the subject matter expert (SME) on them. Any questions with respect to them were to go to her. She said that when questions came to Ms. Currie, Ms. Currie was to speak to her. She would provide Ms. Currie with advice, information, and guidance, which would be passed on.

[55] Ms. Graether testified that she would carry out site visits to ensure that information received from the regions and institutions was accurate. She identified them as compliance reviews. She said that while the term “audit” was at times used in this vein, she said that they were not audits as the EPP had no enforcement powers. She said that the CSC has an internal audit group that carries out audit functions. She said that when she testified, this group was actually conducting an audit.

[56] She said that she carried out the first set of compliance reviews in Ontario. She said that any site visit was carried out through an EPP regional coordinator. She said that the visits were coordinated with the specific institution's chief of facilities management. She said that the visits involved both physically reviewing assets and reviewing documents. The document review included information with respect to the tanks, including but not limited to service logs and registration forms, along with emergency plans for spills, fires, and explosions.

[57] She said that Ms. Currie accompanied her on the initial visits, which were in Ontario. She further stated that she and Ms. Currie developed a two-page checklist for the review process. The checklist was mirrored on a registration form Ms. Graether said that she had developed earlier for obtaining information for registering new petroleum tanks with Environment Canada.

[58] She said that Ms. Currie's participation in these visits was in a secondary role. They did not work independently; it was not a case of divide and conquer as they were together. Ms. Graether said that during these visits, she would explain to Ms. Currie what they were looking for and how to spot the less-evident things. The visits would result in a feedback report. Ms. Graether said that Ms. Currie volunteered to write the reports based on the checklist and notes they made, and Ms. Graether would review and edit them before Ms. Currie sent them to the institution involved and to the EPP's regional representatives.

[59] Ms. Graether testified that Ms. Currie made a separate trip to carry out compliance-review visits in western Canada. Again, they were coordinated with the EPP's regional offices. She said that the PC-02s in the western regions participated. She said that the questions that arose came to her. She said that she communicated with Ms. Currie and that the regional representatives were also there. She said that she had no concerns as what took place mirrored the Ontario reviews and that Ms. Currie had the checklist, which had been tweaked since it was first developed during the Ontario reviews. She said that upon Ms. Currie's return to Ottawa, they again made recommendations, in the same manner as they had for the Ontario sites that had been visited, which were sent.

[60] When she answered question about Ms. Currie's role in ensuring compliance with the legislation, Ms. Graether said that it had to go through her.

[61] In cross-examination, Ms. Graether was brought to an email dated October 7, 2013, which Ms. Currie sent to individuals in the Prairie Region about the compliance visit by her and others and their findings. One of the bullet points referenced that a tank had to be temporarily withdrawn from service. Ms. Graether said that Ms. Currie did not complete the email independently. When it was put to Ms. Graether that Ms. Currie alerted the staff at Bowden Institution on the spot about the tank being temporarily withdrawn, Ms. Graether said that this is set out in the governing regulations; as such, it is a typical response.

[62] Ms. Currie testified that she carried out these inspections either independently or with Ms. Graether. She said that she carried out seven independently and three with Ms. Graether. When asked if Ms. Graether had supervised her, she said that she did not think so. When asked about writing the compliance letters, she said that sometimes, she wrote them, and that sometimes, it was Ms. Graether. She stated that if both of them went to a site, she would write the letter and send it to Ms. Graether. She said that if she carried out an inspection independently, and the situation was urgent, she would hand over the letter on the spot.

[63] Entered into evidence was an email dated June 26, 2013, from Ms. Currie to Mr. Provost (copied to Ms. Graether), with the subject line “Findings of storage tank audit in ONT region.” The relevant portions of the email state as follows:

As you know, in response to the EPCO and warning letters we have receive in the past few months for CSCs’ petroleum storage tank systems, Katja and I performed pseudo compliance audit/site visits in the Ontario Region (Beaver Creek/Fernbrook, Warkworth, Bath/Millhaven, Collins Bay/Frontenac). The goal of each visit was to get a better sense of the potential compliance issues, as well as to provide support (if needed) to ensure that they are prepared for any future inspections by Environment Canada Enforcement Officers.

...

Given the findings of our visit, Katja and I strongly believe that we should visit sites in the other 4 regions, to not only ensure that tanks are compliant with the regulations, but also to draw attention in the regions/site to their storage tanks (and other areas of compliance such as wastewater and halocarbons).

...

[64] Entered into evidence was an email dated October 7, 2013, from Ms. Currie to a number of individuals, including Ms. Graether and Mr. Provost, with respect to the petroleum-storage tank site visit to Bowden Institution that was noted as taking place in September of 2013.

[65] Ms. Currie's PER for October 1, 2012, to March 31, 2014 (18 months), indicated that work on the petroleum-storage-tank compliance inspections took place in the summer and fall of 2013.

[66] There was no evidence that Ms. Currie carried out any petroleum-storage-tank site visits after the trip to western Canada in the fall of 2013 and before she left the unit in early January of 2015. I heard no evidence of any other JEO conducting similar work for the period after the fall of 2013 up to and including the time the evidence was presented before me.

2. Halocarbons

[67] Halocarbons are chemicals found in cooling equipment, such as refrigerators and freezers.

[68] Ms. Graether testified that unlike the petroleum-storage tanks, the compliance review for halocarbons was largely a paper exercise. However, she confirmed that she and Ms. Currie did conduct some site reviews in Ontario when they carried out the petroleum-storage-tank visits. She said that the reviews largely involved chillers on the roofs of buildings. She stated that she, Ms. Currie, and one other individual received training on fall protection and the appropriate certification to go onto building roofs when they visited the Bath and Millhaven institutions. She said that in the end, Ms. Currie did not go on the roofs. She said that Ms. Currie's work with respect to halocarbons was to review documents.

[69] She said that the time Ms. Currie spent on all the site visits in both Ontario and western Canada, including travel time, was 10 days.

3. The CEAA, 2012

[70] The *CEAA, 2012* is also referred to in the Currie additional task document under Task No. 4. As such, all material referring to it is in the next section.

Task 4: Provides input into the design, planning and development of national programs, policies and procedures

[71] In the Currie additional task document, under the Task 4 (provides input into the design, planning, and development of national programs, policies, and procedures) heading, the box marked “basis for request” states as follows:

- *Incumbent disseminates information from the CEAA interdepartmental working group and the Canadian Environmental Assessment Agency and participated in the integration of the information into the design, planning and development of the CEAA program.*
- *Incumbent planned, designed and drafted the CEAA checklist and its associated procedures.*
- *Incumbent participated in the planned and design, and drafted an internal Service Directive (national policy directive) on a piece of federal legislation (CEAA 2012).*
- *Incumbent drafted an Environmental Guideline on the management of contaminated sites.*

[Sic throughout]

[72] Ms. Graether testified that all departments were required to adhere to the provisions of the *CEAA, 2012*. Section 67 provided that each department was to make a determination as to whether a construction project would have an environmental impact. The CSC hired a consultant to determine how to comply with s. 67, and a checklist was developed for project managers (“the *CEAA, 2012* checklist”). She said that a project manager would complete the checklist, which would be forwarded to her and Ms. Currie and Ms. Currie would input the information into a spreadsheet.

[73] She said that there was no compliance audit of the *CEAA, 2012* checklist.

[74] Ms. Graether was cross-examined on the use of the term “audit”. It was pointed out to her that this term was used in some of the documents, particularly in those setting out Ms. Currie’s performance objectives and appraisal. Ms. Graether acknowledged that the word “audit” was used but stated that it was not an audit in the true sense.

[75] Ms. Currie stated that she created the *CEAA, 2012* checklist. Entered into evidence was a draft of it. She confirmed that a process was in place under which Ms. Graether, Mr. Provost, and people working in policy reviewed it. She said that once it

was approved for use, it was sent to all project managers, who were supposed to complete it and return it to the EPP, which she said she monitored. She said that she was the only one who looked at the checklist. She said that she spent about 20% of her time working on it.

[76] With respect to Ms. Currie's submission that she planned, designed, and drafted the *CEAA, 2012* checklist and its associated procedures, Ms. Graether said that while Ms. Currie created it in 2012, it was submitted to Ms. Graether, who provided comments. She said that this work involved considerable supervision and considerable discussion between her and Ms. Currie. The draft was amended and then reviewed by Mr. Provost and those further up the organizational chain.

[77] Ms. Graether stated that the CSC is governed by a number of CDs, which often require creating ISDs to further explain and detail requirements that flow from the CDs. She said that at the CSC, environmental issues are not at the top of the priority list and that at the time at issue, the *CEAA, 2012* was not enforced. She said that despite this fact, the CSC was required to report to Parliament, under legislation.

[78] Ms. Graether said that Ms. Currie put together the draft ISD for the *CEAA, 2012* sometime in the summer of 2012. Entered into evidence was a draft of an ISD that Ms. Currie worked that was entitled, "Federal Environmental Assessment of Projects".

[79] Ms. Graether said that Ms. Currie had help drafting it, that Ms. Graether made many comments, and that it went through 10 to 12 versions before it was finalized. She said more senior people in the organization also reviewed the drafts, and that it was done over the course of that year.

[80] With respect to Ms. Currie's submission that she drafted a guideline on managing contaminated sites, Ms. Graether stated that she did this for Mr. Sarault. She was aware that she performed the work but could not say that she reviewed the document. In cross-examination, she was shown a copy of the grievor's PER for the period of June 1 to September 30, 2012, and was referred to a reference in it to the grievor's work on ISDs. In response, she confirmed that the reference was in the PER.

[81] In cross-examination, Ms. Graether was brought to her email exchange with Ms. Currie on May 9 and 12, 2014. The initial email was from the grievor to Ms. Graether in which she summarized her work plan for the 2014-2015 fiscal year. Ms. Graether's

response was that the email was a good synopsis of what had been discussed. Set out in that email was the following:

...

1. Canadian Environmental Assessment portfolio

- a. Continue to oversee the CEAA 2012 portfolio (ongoing)
- b. Prepare and oversee the annual report to Parliament (late summer)
- c. Conduct an audit of the CEAA program to determine if it requires adjustment as well as to address concerns raised by the Quebec region (summer-winter)
- d. Review the Cabinet Directive on Environmental Assessment of Policy, Plan and Program Proposals (Strategic Environmental Assessment) and report on the policy implications (if time permits)

...

3. Environmental Management Systems

- a. Review existing Internal Service Directive on Environmental Management Systems (summer)

...

- b. Draft an updated ISD on EMS (including consulting with the regions) (early fall-late-spring)

...

[82] Ms. Graether confirmed that these tasks had been discussed, that they were to be worked on if there was time, and that Ms. Currie might have worked on them. In re-examination, Ms. Graether said that the items in those emails were general things that Ms. Currie could have worked on through the year under Ms. Graether's supervision.

[83] Ms. Graether testified that Ms. Currie attended several interdepartmental working groups. Sometimes, she went alone, and sometimes, with Ms. Graether. When she attended on her own, she had no authority to make any decisions, and she conveyed information to Ms. Graether.

Task 5: Provides interpretation on environmental policy

[84] In the Currie additional task document, under the Task 5 (provides interpretation on environmental policy) heading, the box marked "basis for request" states as follows:

- *Incumbent routinely provides interpretation [sic] environmental policy and environmental protection issues, and in particular interpretation on the Canadian Environmental Assessment Act and the Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations.*
- *Incumbent provides interpretation and explanation to individuals within her immediate working group, as well as to individuals at NHQ, RHQ and within the institutions.*
- *Incumbent is assigned to the environmental compliance portfolio which, by default, requires the incumbent to have knowledge of environmental legislation and interpret environmental policy and environmental protection issues.*

[85] Ms. Currie testified that she had to answer questions from institutions or that at times, she was assigned questions from either Ms. Graether or Mr. Provost. She stated that she would respond directly to the person who had originally inquired and that she would copy her supervisor on the answer. She said that she would not seek approval before sending a response. She said that she did this from the outset of her work as a term employee until she went on leave.

[86] Ms. Graether testified that the EPP would receive requests from institutions. She said that when Ms. Currie received questions, she would discuss them with Ms. Graether, whose responses would be set out in the reply emails to the institutions.

Miscellaneous

[87] Ms. Currie was nominated for an Environmental Protection Award, which she received in June of 2014. Mr. Provost awarded it to her. His speaking notes at the award ceremony stated as follows:

...

Danielle has demonstrated exceptional leadership and initiative in the area of contaminated site management as well as in advancing CSC's policy on environmental assessment of projects. She has an unwavering commitment and dedication to surpass the duties of her position and provide professional guidance material that is used within CSC and also transferable to other federal government departments.

In particular, Danielle's efforts have ensured that just over one year since the promulgation of the Canadian Environmental Assessment Act, CSC's first Internal Services Directive on the environmental assessment of projects was published. She also demonstrates valuable leadership by managing several contaminated site projects.

...

B. Ms. White's grievance, Board File No. 566-02-11272

[88] Ms. Flaborea testified that the org. chart did not show the people who reported directly to her at NHQ; nor did it disclose the regional coordinators in each of the CSC's five regions who reported to her. She said that originally, she was responsible for both drinking water and wastewater; however, wastewater was transferred to Ms. Richardson in the reorganization in early 2014.

[89] Ms. Flaborea confirmed that Ms. White worked in both the water-quality and wastewater areas. She estimated that 60% of Ms. White's work was done in those two areas. She said that Ms. Richardson was Ms. White's formal supervisor but that when Ms. White worked on matters involving drinking-water quality, Ms. Flaborea would provide functional supervision. She said that the three of them all sat together in the same area in a triangle, and as such, she was familiar with Ms. White's work, overall.

[90] Entered into evidence were Ms. White's PERs for the periods of December 31, 2012, to March 31, 2014, and April 1, 2014, to March 31, 2015.

[91] Entered into evidence was an email dated October 9, 2013, which had attached a phone list for the EPP that set out next to Ms. White's name the following three areas: Water Monitoring Protocol (Y drive/Env.), Green Building Design Checklist, and WaterTrax Program. Also entered into evidence was an email dated August 25, 2014, which had attached a phone list for the Environmental Division. That list differed somewhat from the list distributed on October 9, 2013. It had Ms. Richardson's and Ms. White's names in the same box, which listed the following areas of responsibility for both of them: Wastewater Treatment Systems, Water Quality Program and WaterTrax, Water Conservation, Water Monitoring Protocol (Y drive/Env.), and Green Building Design Checklist.

[92] Ms. White said that when the grievance was filed, while the org. chart listed her as reporting to Ms. Richardson, and Ms. Richardson approved her leave requests and completed her PER, Ms. Flaborea and Mr. Provost assigned her tasks. She said that at that time, she had been assigned to update two policy documents and worked on implementing targets listed in the SDS.

[93] On June 12, 2015, and effective June 15, 2015, Ms. White was offered and accepted a full-time indeterminate JEO position at the PC-01 group and level in what was identified as the Environmental Development Program (“the EDP”). Attached and forming part of that offer was a work description for the position, which is different from the one being grieved.

[94] Entered into evidence was a binder of material identified as the “Portfolio for Michelle White PC-01 Junior Environmental Officer Environmental Development Program December 2015” (“the EDP binder”), which Ms. White identified as containing all the training required and the tasks she completed to demonstrate that she met the benchmarks for promotion to the PC-02 level.

[95] Ms. White testified that she accepted the EDP offer because it was the only way she could move from the JEO (PC-01) position to an environmental officer II (PC-02) position. She said that she believed that the work description for the environmental officer II position reflected the work she had done when she filed her grievance.

[96] On February 17, 2016, and effective November 16, 2015, Ms. White was offered a full-time indeterminate position as an environmental officer II at the PC-02 group and level. She accepted that offer on February 19, 2016. Attached to it was a copy of a work description for that position.

[97] Mr. Provost testified in general about the reasoning behind the EDP. He said that initially, a program was developed for engineering and physical sciences. It set out the benchmarks that an entry-level employee had to achieve to move up to a higher level. Benchmarks are tasks at the higher level that the lower-level employee, in the EDP, carries out under the supervision of more-senior employees to demonstrate that he or she has the knowledge and capacity for the higher-level work. The EDP was designed for the JEOs to move to the next level. He said that the program was in development for about five years before it was finalized and approved for use, which was in May of 2015. Mr. Provost said that Ms. White was put into the EDP in June of 2015 and that she graduated from it by November of 2015.

[98] Like Ms. Currie, Ms. White identified two documents that she submitted as part of the grievance process. They were formatted similarly. The second was identified as, “Requested additions to the Current work description” (“the White additional task document”). It identified five key task areas that Ms. White felt were either not in the

work description or not properly described, after which she set out, in a chart similar to the Currie additional task document, the reasoning behind her position. The tasks listed were as follows:

- *Contributes to the design development and implementation of strategies and plans related to the Correctional Service of Canada's (CSC) Sustainable Development Strategy (SDS) and monitor [sic] and ensure [sic] the attainment of environmental targets;*
- *Manages various environmental projects within the CSC and monitors the work of external contractors;*
- *Provides input into the design, planning and development of national programs, policies and procedures concerning environmental protection;*
- *Provides environmental interpretations on environmental legislation, regulations, policy and guidelines and provides assistance to ensure compliance with such; and,*
- *Performs audits and monitors the environmental protection programs within the CSC; researches and prepares reports on various environmental issues.*

Task 1: Contributes to the design development and implementation of strategies and plans related to the Correctional Service of Canada's (CSC) Sustainable Development Strategy (SDS) and monitor and ensure the attainment of environmental targets

[99] The White additional task document sets out the rationale under this task as follows:

Incumbent has contributed to the design, development, planning and implementation of several SDS Targets since December 31, 2012. More specifically the incumbent:

- *Conducts extensive research, develops, plans and writes documentation in support of the implementation of SDS Targets. This includes the Green Building Design Checklist (Target 1.1), the Institutional Water Conservation Plan template (Target 6.1) and the Institutional Energy Conservation Plan template (Target 4.4) as tools for use by all institution [sic] across the national organization, and the Guide to Green Meetings (another initiative)*
- *Assists with the process of distributing the documentation which includes conducting the final review, and drafting memorandums.*
- *Monitors and confirms the attainment of environmental targets.*
- *Reviews and completes updates and adaptations to these documents to support the implementation of the SDS Targets.*
- *Provides advice and responds to questions/concerns regarding the implementation or procedures associated with SDS Targets.*

[100] Ms. White testified that through 2011 to 2014, without providing more specific time frames, Mr. Provost assigned her to develop or design tools for the CSC to implement the SDS, including the green building design checklist, the institutional water conservation plan, and the institutional energy conservation plan. She said that between December 31, 2012, and March 31, 2014, about 30% of her time was dedicated to those three plans.

[101] Entered into evidence was an email exchange dated May 14, 2014, between Mes. White, Richardson, and Flaborea (copied to Mr. Provost). In the initial email in the chain from Ms. White, the portion of which addressed matters under this heading stated as follows:

...

Sustainable Development Strategy

- *Complete an update to the Green Building Design Checklist and re-evaluate the procedure that triggers the requirement for completing the Checklist.*
- *Assist when required on the Energy Audits that are being performed at Joyceville and Matsqui this fiscal year.*
- *Attend site visit to inventory energy consuming equipment etc and other various meetings.*

...

[Emphasis in the original]

1. Green building design checklist

[102] Ms. White stated that the green building design checklist was for all CSC construction and renovation projects. It was to help ensure that any construction work was done in the most environmentally friendly manner possible. She said that she was first assigned to research this in 2011 and that she produced drafts, which were sent up the organizational chain and reviewed. After iterations over several years, the checklist was implemented on March 31, 2014. She said that the project leaders for construction projects were to complete the checklist, which was submitted to a generic email address, from which she retrieved and reviewed the submitted checklists. She said that in 2014-2015, she was responsible for updating the checklist based on the feedback received. She also said that as of the hearing, she continued to monitor it.

[103] With respect to the green building program, Mr. Provost identified it as a largely private-sector program having both national and international standards, which would allow an organization to certify that it is at a certain environmentally friendly level when it comes to building. An example was turning off lights at night. He said that in the CSC's business, given its uniqueness, it wanted to see what it could do in this respect.

[104] He said that he tasked Ms. White to research this, which she did for several months, under supervision. He said that a checklist with scoring percentages was developed based on 100 points; it was to be used to help builders build in a manner that was more green. He said that as part of the instructions given to Ms. White, she would have learned what was out there in the public and private sectors and that she would have been asked to particularize it to the CSC's business. He confirmed that she would have created the initial draft, which not only he but other staff reviewed. From those discussions, further iterations were created, and eventually, a checklist was finalized, which he described as a good and useful user-friendly document.

[105] Mr. Provost said that using the checklist was not mandated but that it was encouraged. He said that not many checklists would have been submitted, as they were to be used for new buildings, but that he had no doubt that Ms. White would have reviewed those that came in. When asked about how complex the work was, he said that it was difficult to define. He suggested that it was of fair to medium complexity. However, he also said that it could have also been a student project carried out over a four-month internship.

2. Institutional water conservation plan

[106] Ms. White testified that in 2012, Mr. Provost also assigned her to research creating an institutional water-conservation plan. She said that until that point, no such thing had existed, so under Ms. Flaborea's supervision, she created one. She said that the plan was complete by 2013 and that in 2013-2014, she was responsible for reviewing each institution's plan and ensuring that its targets were met. She said that these are now incorporated into an internal policy document that requires each institution to have a plan in place every three years.

[107] Mr. Provost testified that during the 2012-2015 SDS cycle, institutions were already required to complete water conservation plans. He said that NHQ decided that

they should be given some guidance. He said that the EPP already had some material but that given Ms. White's knowledge base and interest in the area, she was asked to put material together to help the institutions with this task. In short, it involved examining an institution's water consumption and finding ways to improve its efficiency. Mr. Provost said that he provided Ms. White with materials and guidance and that they had some meetings. He said that both he and Ms. Flaborea supervised her. Once an institutional plan was developed, it was up to the institution to implement it.

3. Institutional energy conservation plan

[108] With respect to the institutional energy-conservation plan, Ms. White said this project was largely another individual's but that she contributed to it. She said that she had to ensure that each institution completed this task and that each one's targets were achieved. But she provided no more specifics and said that it was not one of her ongoing duties.

[109] Mr. Provost testified that the institutional energy-conservation plan mimicked the institutional water-conservation plan, although he could not say which of the two came first. Again, once it was created, it was up to each institution to put it into place.

4. Guide to green meetings

[110] Ms. White directed me to her email dated August 16, 2012, to Mr. Provost, to which she had attached a copy of the first draft of the CSC's guide to green meetings. She noted that Ms. Graether had reviewed it once. She was an intern when she did this.

[111] Ms. White, as was Ms. Currie, was nominated for an Environmental Protection Award, which she received in June of 2014. Mr. Provost's speaking notes stated as follows:

...

Michelle has been instrumental in advancing CSC's policies on water and energy conservation. Her efforts have ensured that three of CSC's Sustainable Development Strategy targets were achieved this year.

For example, Michelle created a Green Building Design Checklist that is currently being used across the country. She also demonstrated significant leadership by developing Institutional

Energy and Water Conservation templates to assist institutions in fulfilling their responsibilities.

...

Task 2: Manages various environmental projects within the CSC and monitors the work of external contractors

[112] The White additional task document sets out the rationale under this task as follows:

The incumbent has been the project authority for multiple projects (PWGSC has no involvement), and continues to assist and support the management of two on-going [sic] complex projects (The National Lab Analysis of Water and the Energy Audits) since December 31, 2012. More specifically the incumbent:

- *Independently managed/led the project for The Implementation of the Upgrades to the Building Automation Systems (BAS) to connect the low chlorine residual alarm, reservoir low level alarms and fire pump status signal for the existing water reservoir at Bath/Millhaven Institutions. [December 31, 2012–November 29, 2013] (\$25,000).*
- *Independently managed/led the project for Training for CSC Institutional Staff in the Prairie Region for Drinking Water Sampling Techniques provided on-site [December 31, 2012–October, 2013] (\$25,000).*
- *Assists and provides support to the management of the major contract for the Energy Audits at Bath/Millhaven and Joyceville Institutions (\$120,000) [January 2013–Present].*
- *Assists and provides support to the management of the major contract for the National Laboratory Analysis of Water (\$2 Million) [March 2013–Present].*

[113] Ms. White identified two projects under this task: Bath-Millhaven and the “Training for CSC Institutional Staff in the Prairie Region for Drinking Water Sampling Techniques” (“the Prairie Region Training”).

1. Bath-Millhaven

[114] Ms. White testified that with respect to the Bath-Millhaven project, her responsibility was to develop a statement of work and to establish procedures under which the work would be carried out. She was responsible for reviewing and assessing the quotes for the work. As the project value was under \$25 000, PWGSC did not provide a project manager. She stated that the statement of work was reviewed by Ms. Flaborea as well as the institution and that Ms. Flaborea also reviewed the quotes. She

stated that this project took place between December 31, 2012, and November 29, 2013.

[115] Ms. White stated that she did the following:

- was the project authority;
- coordinated meetings with consultants and staff on-site;
- attended and monitored the work on-site;
- reviewed the consultant's report.

[116] Ms. Flaborea testified that she and an EPP environmental engineer conducted a study that contained certain recommendations and that one of them was to be implemented, upgrading buildings' automation alarms systems to be built in with respect to certain preset levels. She said that the EPP's role was to facilitate the work.

[117] She said that the site already had a contractor lined up for work with respect to some alarms there and that as such, her office facilitated the process. In describing what Ms. White did, Ms. Flaborea said that she provided Ms. White with a statement of work from a previous contract and that they discussed the items that had to be changed. In short, she said that Ms. White updated the statement of work. She said that she reviewed and edited Ms. White's work. She said that significant edits were made. She said that when the document was ready, it was sent to the site for review and input.

[118] She said that they also wrote a memo for Mr. Provost to present to the contract review board. She stated that Ms. White input the information, which Ms. Flaborea reviewed and passed on to Mr. Provost. She said that Ms. White asked her who the Contracting Authority should be and that Ms. Flaborea said that she could have put her name but decided that it should be Ms. White. She said that Ms. White was responsible for checking on the project every now and then.

[119] When asked to comment on the suggestion in the White additional task document that Ms. White suggested that she "independently managed and led the project", Ms. Flaborea said that in her view, this would not be accurate, as her staff and that of the site carried out a significant amount of review. It was the first time Ms. White had done it, and it was a learning process.

[120] In cross-examination, Ms. Flaborea was asked if she agreed that Ms. White was involved in overseeing. She said, “No.” She said that the project was hers and Ms. Richardson’s.

2. The Prairie Region Training

[121] Ms. White testified that as part of the EPPs mandate, they are required to collect drinking water samples. She said staff turnover is high. She said that Ms. Flaborea assigned her to research training providers and requested that a contract be set up to provide training on this at the institutions. She stated that she did the following:

- prepared a statement of work;
- obtained quotes from bidders;
- reviewed the quotes;
- prepared a justification for the selected contractor; and,
- was the project authority.

[122] Ms. Flaborea identified this as a small sole-source contract of about \$12 500.

[123] Again, she confirmed that Ms. White was the Project Authority. Ms. Flaborea confirmed that Ms. White performed a significant amount of work on the project; and again, she stated that she worked on it with Ms. White, as did regional staff. She said that she and the contracting office reviewed the material that Ms. White produced before it went out.

[124] She said that the EPP had identified a need for training staff in this area. She stated that she had come across a course in Ontario that was in line with what was needed. She said that she showed it to Ms. White and told her to find something similar that was offered in the prairies. She gave Ms. White some parameters to work with. She said that Ms. White carried it out and that they discussed further. She said that she provided Ms. White with the specific wording for emails such that the bidders knew exactly what was being sought. She said that they had a teleconference call with the regional coordinator, that they provided the proposals they had obtained, and that they agreed upon one.

[125] Ms. Flaborea again stated that she disagreed with the suggestion in the White additional task document that Ms. White independently managed and led the project. She said that Ms. White was a liaison in the process and that she would bring

information and suggestions to Ms. Flaborea, who would provide information and suggestions to take back to the region and the contractor. She confirmed that Ms. White was a point of contact but stated that the process was a team effort with significant guidance from Ms. Flaborea and input from regional staff.

3. Other project management work

i. Energy audit at Bath-Millhaven

[126] Ms. White testified that Mr. Slacke was the Project Authority for this project. The White additional task document shows it as a contract for under \$120 000. She stated that she attended a site visit and that she reviewed and evaluated bids with others, including Mr. Slacke, Ms. Currie, and the contracting office. She said that she also attended a debrief with an unsuccessful bidder and that she attended and monitored the work of contractors. She stated that a group would attend on-site, divide and review the work, and make comments to report on the work of the contractors.

[127] Ms. Flaborea testified that Ms. White provided some assistance to Mr. Slacke with respect to inventory, as did another EPP employee. Information was entered into a spreadsheet. She said that Ms. White did not assist or support management.

ii. National laboratory analysis of water

[128] This was identified as a contract of approximately \$2 million. PWGSC was involved as the Contracting Authority. Ms. White identified Ms. Flaborea as the Project Authority. She said that Ms. Flaborea asked her, as part of the EPP team involved, to review bids and participate in their evaluation, which she did.

[129] Ms. Flaborea identified this as eight different contracts to analyze drinking water in all five of the CSC's regions. She said that before putting this into place, she had to come up with some form of an estimate. So, she looked into how often water was tested in Canada and made a template of all the institutions in the country, to arrive at a rough cost estimate. She then looked into the testing that had been done, to evaluate the cost. In the end, a basis for contracts for laboratories to analyze drinking water was developed, up to the value of the contract they were awarded. In short, there were a number of water-analysis contracts with a fixed time frame for the analysis in each region and for every institution.

[130] Ms. Flaborea said that Ms. White helped implement the contracts. Entered into evidence was a copy of her email exchange of February 5 and 6, 2014, with Ms. White with respect to the cost calculations for the Pacific Region contract. PWGSC sent the initial email in the chain on February 5, 2014. It was copied to Ms. Flaborea, who then forwarded it to Ms. White. The email chain is as follows:

[Email dated February 5 from PWGSC; copied to Ms. Flaborea:]

*I am pleased to advise you that [name deleted] has been selected for contract award for the provision of chemical, physical and microbiological analysis of **drinking water for the Pacific region**, based on the bid it submitted in response to the above-noted solicitation. Canada's total liability to the Contractor under the Contract for all authorized Task Authorizations, inclusive of any revisions but excluding options, must not exceed [amount deleted]. Customs duties are excluded and the Goods and Services Tax or Harmonized Sales Tax is extra, if applicable.*

If you have any questions regarding the attached Contract or the performance of the Work, please do not hesitate to contact me.

...

[Email dated February 6, at 09:45, from Ms. Flaborea to Ms. White:]

Hi Michelle,

Here is a copy of the contract for Drinking Water in Pacific Region, Annex B has the cost per sample that we will be charged. Insert these costs into the table along with # of samples to provide overall costing. If you need any help just holler.

...

[Email dated February 6, at 16:09, from Ms. White to Ms. Flaborea:]

Hi Dawne,

I have completed the cost calculations for the Pacific Region, See:

...

Notes:

1. To Ensure compliance with 318-10 all samples highlighted in green were added the current sampling regime that was provided by Elaine.

2. As per 318-10 in Annex A lists the chemical and physical parameters that are to be analyzed annually. 189 Total Organic Carbon (TOC) and 1811 Ammonia are not listed in Annex A as a requirement and therefore are not accounted for in the Cost Calculations.

Let me know if you need help with this. Thanks!

...

[Emphasis in the original]

[131] Ms. Flaborea explained this email exchange. She said that she had developed a spreadsheet, which was to be filled in. She said that Ms. White did so for the Pacific Region. She said that it has to be done every year and that Ms. White did it. It determines the cost calculations. In short, it is a spreadsheet and a template that is filled in.

[132] Also entered into evidence was an email exchange between Ms. Flaborea and White dated February 25, 2014, which Ms. Flaborea identified and explained dealt with wastewater analysis, specifically in the Quebec Region. Ms. Flaborea said that Ms. Richardson was more hands-on with respect to this part of the project and that Ms. White participated less. The email exchange is as follows:

[Email from Ms. Flaborea to Ms. White, at 12:01:]

Quebec regions [sic] existing contract runs out end of fiscal year and we will be starting wastewater analysis with [name deleted] (same lab that won drinking water contract) in April. Can you please create the TA/sampling schedule for SADP, Cowansville and La Macaza (speak to Deb to get base information) and we will send to Benoit to confirm with the institutions that all their required analysis are included.

We can then go forward with setting up short call with [name deleted] and CSC staff etc. to have switch over in place for start of April.

...

[Email from Ms. White to Ms. Flaborea, at 12:06:]

Yes, I would be happy to do so. I will let you know once complete.

...

Task 3: Provides input into the design, planning and development of national programs, policies and procedures concerning environmental protection

[133] The White additional task document sets out the rationale under this task as follows:

The incumbent has been tasked with providing input and contributing to the design, planning, development and implementation of CSC policies, requirements and procedures since December 31, 2012. More specifically the incumbent:

- *Completed a significant re-write to combine the two Environmental Guidelines (EG) 318-02: Energy Measurement*

and Conservation and EG 318-09: Water Measurement and Conservation into one Internal Service Directive (LSD).

■ *Oversees the policy update process of having the IDS promulgated. This process includes collaborating with Strategic Policy, conducting a formal consultation with policy stakeholders, incorporating the comments that are received, having the document reviewed by Legal Services and finally by the ACCS and drafting memos on behalf of the ACCS.*

■ *Research and develop procedures for a Standard Operating Procedures (SOP) and CSC Standards outlining the requirements for Automated Water and Wastewater Plants.*

[Sic throughout]

[134] Ms. White testified that in 2012, she was assigned the task of updating and combining two environmental guidelines and eventually to combine them into one. She said that she received direction from Mr. Provost and that Ms. Flaborea reviewed the drafts. The ISD was active sometime in either 2014 or 2015.

[135] Ms. Flaborea explained that “EG” was the historical acronym for environmental guideline and stated that there were EGs for water (drinking and wastewater), halocarbons, and garbage. Several EGs were revised to become ISDs; they were more-or-less the same except that they had a different format. She said that at some point, the CSC’s commissioner directed that the CSC wanted to reduce the number of guidelines, and that it was determined that EG-318-02 and EG-318-09 could be combined into one.

[136] The White additional task document identified them as EG-318-02 and EG-318-09. In the grievor’s PERs, they were identified as CD-318-02 and CD-318-09. It appears that CD-318-02 relates to energy conservation and that CD-318-09 relates to water conservation. Entered into evidence was an email chain dated May 14, 2014, including Meses. White, Flaborea, and Richardson and Mr. Provost, the subject of which was Ms. White’s work plan for the 2014-2015 fiscal year. The initial email, which was from Ms. White at 15:45 and was about matters that fall under this heading, stated as follows:

...

Drinking Water Portfolio

Oversee the process of completing the update of the Commissioner’s Directives (CD) 318-2 (Energy Measurement and Conservation) & 318-9 (Water Measurement and Conservation).

CD-318-2 and CD 318-9 will be integrated into one ISD that will be published by 31 March 2015.

...

[Emphasis in the original]

[137] The evidence disclosed that in July of 2014, work was being done on integrating EG-318-02 and EG-318-09 into one combined document. The information in the EDP binder indicates that ISD 318-02, on energy and water conservation, was in effect as of August 24, 2015.

[138] Ms. Flaborea indicated that she, Ms. Graether, and Mr. Provost provided input and that they reviewed the drafts that Ms. White prepared. She described the process as merging two guidelines (one format) for two different areas (water and energy) into a new document (in a different format), an ISD. She said that the drafts, changes, and suggestions would be reviewed and then sent further up the CSC organizational chain, where they were reviewed and sent back with changes or questions. She said that Ms. White was responsible for keeping track of the decisions and changes made.

[139] Ms. Flaborea said that her difficulty with what was set out in the White additional task document was that Ms. White used the term “oversees”. Ms. Flaborea said that she and Ms. White worked with people from strategic policy and that the strategic policy people were responsible for overseeing the process. Ms. White was responsible for overseeing the inputting of changes at the EPP’s end of the process.

[140] The employer conceded that the work that Ms. White carried out is not in the work description.

Task 4: Provides environmental interpretations on environmental legislation, regulations, policy and guidelines and provides assistance to ensure compliance with such

[141] The White additional task document sets out the rationale under this task as follows:

Since December 31, 2012, the incumbent has specifically been tasked to:

- *Interpret the EG-318-10 Drinking Water Quality Management,, EG-318-06 Management of Wastewater Treatment Systems, and the Wastewater Systems Effluent Regulations (WSER) established under the Fisheries Act to develop sampling schedules and prepare Chain of Custodies*

for various institutions to ensure institutions are sampling water and wastewater according to the requirements in with EG-318-10 and EG 318-06 and the WSER.

■ *Analyse scientific results on drinking water and wastewater quality at CSC's institutions to determine the degree of regulatory compliance with Health Canada's Guidelines for Canadian Drinking Water Quality) and the WSER.*

■ *Provide guidance, explanations and advice to Regional/Institutional staff with respect to the science of water quality and ensuring compliance with the Guidelines.*

■ *Develop reporting templates for data that must be reported on monthly, quarterly and yearly as a requirement under the WSER and EG 318-10.*

■ *Investigate Alerts received when water quality parameters are reported in exceedance of the Guidelines and Regulations and determine their validity.*

■ *Interpret the EG-318-02 and EG 318-09 in order to ensure institutions are complaint with the requirements in these EGs by providing on-going support for the Water Consumption Monitoring Protocol and Energy Monitoring Protocol.*

■ *Conducting a policy review.*

[Sic throughout]

[142] Referring to the White additional task document, Ms. White testified that she was responsible for what she described as Acts; however, the document does not set out any legislation. It refers to internal CSC EGs and the *Wastewater Systems Effluent Regulations* (SOR/2012-139; WSER), which are promulgated under the *Fisheries Act* (R.S.C., 1985, c. F-14). However, I heard no evidence about Ms. White interpreting that or any other legislation.

[143] The evidence referred to in the section just before this one disclosed that Ms. White was involved in the review, updating, and revision process of the two EGs on energy and water conservation and management into what was finally an integrated ISD in August of 2015.

[144] Ms. White testified that she regularly received calls about matters involving EGs 318-02, 318-06, 318-09, and 318-10 and that she would respond by providing guidance. However, she confirmed that she was not the lead on these matters; it was Ms. Flaborea.

[145] Ms. White stated that 12 institutions have their own wastewater systems and that 15 have their own potable water systems. The exact details and specifics of what this meant was not made clear to me in the evidence.

[146] Ms. Flaborea testified that with respect to the sampling studies and EG-318-06, Ms. Richardson was the lead and was a SME.

[147] With respect to the drinking-water chain of custody, Ms. Flaborea said that it was a template document that recorded analysis that the EPP requested, based on a sampling schedule that she said that she and Ms. Richardson created. With respect to interpreting it, she said that it is a one-page table and that she does not believe it requires much interpretation. She confirmed that Ms. White did help with respect to facilitating the sampling taking place.

[148] Ms. Flaborea said that the information indicates whether the results are above or below a certain set level. With respect to interpreting the samples, Ms. Flaborea said that Ms. Richardson was responsible for determining compliance with the WSER. For drinking water, she said that the EPP used WaterTrax.

[149] WaterTrax was described as management software used to store, sort, and analyze data related to water. According to Ms. Flaborea, it is user friendly and reports and exports data easily. It comes with templates that can be customized for individual users. She said that the CSC's version is based on their needs.

[150] With respect to the bullet point that refers to the "science of water quality", Ms. Flaborea said that she would not use that term. She said that there were "cookie-cutter" responses (often the same question is asked repeatedly, so a standard response is developed), which Ms. White would deliver when a query arrived that had been asked many times before.

[151] In her response to a question about the bullet point referencing developing templates for data to report results, Ms. Flaborea said that templates come out of WaterTrax with respect to both drinking and wastewater. She said that the CSC has a contract with WaterTrax and that it provides templates, which the EPP customizes. She confirmed that Ms. White was involved in the process but said that it was not complex; it was a matter of a few clicks on a computer. She stated that WaterTrax is used because it provides the templates.

[152] With respect to the bullet point referencing investigating alerts, Ms. Flaborea again referred to the choice of WaterTrax, as it has the ability to preset limits. For example, if a bacteria level exceeds a preset limit, an alert is automatically triggered and sent to the site, the region, and the EPP at NHQ. The region deals with the alert.

[153] Ms. Flaborea said that WaterTrax carries out quality control and quality assurance. It is done monthly, and WaterTrax produces a report then for both drinking water and wastewater. The sampling is coded as it goes into WaterTrax, which provides alerts based on preset criteria. The alert can signal any number of things, depending on the criteria set and how a particular sample was entered or where or when the sample was taken. The alert is just that — something to look into. It should not be considered or called water-quality science, which it does not necessarily mean.

[154] With respect to the bullet point reference that states that EG-318-02 and EG-318-09 are to be interpreted to ensure that institutions are compliant, Ms. Flaborea said that Ms. White was responsible for 2 of the 17 requirements of the new ISD that was created out of the two EGs. She was responsible for the water and energy data that was entered and was to ensure that it was compliant. Being compliant could mean ensuring spreadsheets are up to date. If information was not sent in, Ms. White might have had to follow up with the institutions, possibly including sending a simple standard memo. Ms. Flaborea said that Ms. White would follow up on the data. She did not interpret that as ensuring compliance. Ms. White was required to ensure that the data was complete, and if not, she was to follow up.

Task 5: Performs audits and monitors the environmental protection programs within the CSC; researches and prepares reports on various environmental issues

[155] The White additional task document sets out the rationale under this task as follows:

Incumbent has been tasked with conducting audits and monitoring environmental protection programs within the CSC. More specifically the incumbent:

- *Manages the WaterTrax program, which involves analysing data and conducting internal/external quality control and assurance of data for both Drinking Water and Wastewater and identifying and remediating/resolving issues.*
- *Reports on drinking water and wastewater sampling result data for individual institutions and/or the entire CSC Agency.*

- *Contributes to the Energy Audit at Joyceville Institution and the Bath/Millhaven institutions by auditing, surveying and collecting inventories at over 10+ buildings on-site and creating a database for the audited information.*
- *Audits, monitor [sic] and ensure [sic] the validity of the information entered into the spreadsheets of the Water Consumption Monitoring Protocol (WCMP) and Energy Monitoring Protocol (EMP) for each institution to ensure that the institutions are meeting the requirements outlined in the following policies EG 318-02 and 318-09.*
- *Compiles and analyses data and develops a report on the national corporate water consumption, at the request of the D-EPP, for use departmentally and for responding to audit requirements, and in communicating information in media lines.*

[156] Under this heading, Ms. White talked about two things: WaterTrax, and an energy audit.

[157] Ms. Flaborea stated that Ms. White monitored the “Y drive”. With respect to the first bullet point, Ms. Flaborea said that WaterTrax houses all the water data. It compares data against standards set by Health Canada or a province or with a level set by the EPP. It has a notification system, meaning an alert, which notifies if something appears amiss. It is an easy to use reporting system that also easily exports data. Its templates are easy to customize.

[158] With respect to the bullet point that suggested that Ms. White conducted internal and external quality control and quality assurance, Ms. Flaborea said that the WaterTrax company provides it. She said that the EPP received monthly reports on both drinking water and wastewater. She said that sometimes, a transcription or a data-entry error arises, and the EPP follows up on it. She called it “clarification” as opposed to quality control or quality assurance.

[159] Ms. Flaborea said that WaterTrax analyzes data. It allows some people to view the information, while others can also change it. She said that she was an administrator, so she could change the information. She said that she would not characterize Ms. White as managing or analyzing the information. She said that Ms. White does some investigating.

[160] Ms. Flaborea stated that with respect to the bullet point about reporting on drinking water and wastewater, she could not find reporting on wastewater, only on

drinking water, and that these template reports can be run weekly, monthly, or quarterly and nationally, regionally, or by institution.

[161] With respect to the bullet point that refers to the energy audit at Joyceville Institution, Ms. Flaborea said that this work was not auditing; it was carrying out an inventory over a two-day period by which information was entered into a spreadsheet.

[162] With respect to the bullet point that refers to auditing information entered into spreadsheets of the water-consumption-monitoring protocol and the energy-monitoring protocol, Ms. Flaborea stated that Ms. White was to ensure that data was entered and that it was complete. She said that one of their colleagues had set up a spreadsheet. She disagreed with the use of the word “audit” and stated that Ms. White was responsible for ensuring that the data was complete. She said that others on a committee carry out internal audits, which are a very comprehensive look at things.

[163] Ms. Flaborea stated that with respect to the bullet point stating that Ms. White compiled and analyzed data and developed a report on national corporate water consumption, Ms. White compiled water-consumption data.

III. Summary of the arguments

[164] The grievors referred me to *McKenzie v. Treasury Board (Correctional Service of Canada)*, 2017 FPSLRB 15, *Aphantitis v. Treasury Board (Department of Justice)*, 2014 PSLRB 85, *Meszaros v. Treasury Board (Department of Justice)*, 2016 PSLREB 29, *Canada (Attorney General) v. Currie*, 2009 FC 1314, *Currie v. Her Majesty the Queen in Right of Canada as represented by Canada Customs and Revenue Agency*, 2006 FCA 194, and *Jennings v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 20.

[165] The employer referred me to *Duffield v. Treasury Board (Department of Employment and Social Development)*, 2016 PSLREB 7, *Suric v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 44, *Maillet v. Treasury Board (Department of Employment and Social Development)*, 2014 PSLRB 16, and *Wilcox v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 145.

IV. Reasons

[166] The sole issue before me is whether the work description provided to the grievors was a complete and current statement of the duties and responsibilities of their positions. They bore the onus of proving that it was not.

[167] It is not the Board's function to write work descriptions; nor is it to wordsmith them to ensure that the best and most accurate wording is used to capture each and every task carried out by an employee in satisfying the requirements of a position at any given time. The question is not whether the wording in a different or draft work description better describes the grievors' work but whether the one that the grievors were provided met the requirements set out in the collective agreement and the jurisprudence. The Board also does not have a classification function, which is another process outside its jurisdiction.

[168] Clause 20.01 refers to a "complete and current statement of ... duties". It is clear that the word "current" is meant to be read in conjunction with the first words of the clause, "Upon written request". The grievors made their request on May 21, 2014, and were provided with a copy of a work description on May 28, 2014. As such, before embarking on a determination as to whether the tasks set out in the work description provided are complete, it is incumbent on me to address the meaning of the word "current".

[169] The word "current", as well as the phrases "belonging to the present time" and "happening now", are fluid and can mean many different things, depending on the words and phrases that they modify or that modify them. It can mean right at this exact moment in time or the current hour, day, week, month, or even year. The entire context of the workplace, including the organizational setup, is also important. Therefore, it is important to consider the organization, in this case the EPP, which is an organization within a larger organization, the CSC, which itself is an organization within a very large employer, the TB.

[170] It is clear that the character of a job may have intrinsic to it any number of variables that may impact what "current" means. For example, hypothetically, someone may be asked to shovel snow as part of their job duties. In some parts of Canada, it would be done seasonally, and were that work location Ottawa and the job description was requested in June or July, it would be difficult to suggest that a job description

that requires someone to shovel snow, if requested in July, would not be considered current, as the snow will eventually fall and have to be shoveled at some point during the year. “Current”, in that hypothetical context, would refer to over the course of the year.

[171] In addition, employees might be asked to carry out a function, on the odd occasion. These are the proverbial “one-offs” not covered by their work descriptions, yet they have been asked to carry them out and have done so. However, this does not automatically require revising a work description. Employers can and often do ask employees to carry out a task that may or may not fall strictly within those duties set out in their work descriptions. But if the employee is not required or expected to do the duty regularly, the jurisprudence provides that it need not be set out in the job description. *Jennings*, at para. 52, states the following:

[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.

...

[172] Each grievor alleged that five broad task areas were not covered in her work description and submitted wording that she felt was more appropriate. I will address

their cases separately as they were presented separately and they performed different tasks.

A. Ms. Currie's grievance, Board File No. 566-02-11271

[173] Ms. Currie was in the JEO position from November 21, 2012, albeit she had been in the position as a term from June 1, 2012. Her last day of work before she left on an extended leave was sometime in December of 2014. She was still on that leave when she testified before me.

Tasks 1 and 2: Project Management and Monitoring the work of consultants

[174] The evidence that I heard with respect to these two submissions largely covered Ms. Currie's involvement with contracts being entered into for both assessing sites for potential contamination and work related to their remediation. The most detail I heard was with respect to the process of entering into a contract for a fence around a portion of the KP site that was contaminated and that was subject to a larger assessment and remediation process. The evidence I heard with respect to this submission differed somewhat depending on who described the work. However, the difference was not that work in this area was not being done; it was more a question of the level and extent of Ms. Currie's involvement.

[175] I believe that the tasks described as being carried out could be characterized, in some sense, as project management. However, it is difficult to determine the extent and level of Ms. Currie's involvement and responsibility. It is clear that she played a role in the contracting process, but it is also clear that she had very little decision-making power and no delegated authority with respect to entering into contracts. However, my jurisdiction does not involve a classification exercise but involves whether the statement of duties provided to Ms. Currie, upon her request, was accurate. In this respect, it was not. From the evidence before me, it appears that this was a major portion of her work, and in reviewing the key tasks set out in the work description, nothing in it covers the work described under this heading. Ms. Currie submitted that the wording in the fourth paragraph of the PC-02 work description, under the heading "Key Activities", would be appropriate. I do not agree.

[176] The evidence presented did not establish that Ms. Currie carried out all the elements set out in that paragraph or in the manner it appears to be written. The evidence did establish that she participated and contributed, in some fashion, to the

contracting process as it involved both retaining consultants to conduct assessments and, if necessary, remediating contaminated sites, which therefore the work description should be amended to reflect.

Task 3: Performing Audits

[177] “Audit” is defined in the *New World Dictionary of the American Language, Second College Edition*, as follows:

...

***Audit**...1. a formal, often periodic examination and checking of accounts or financial records to verify their correctness 2. a settlement or adjustment of accounts 3. an account thus examined and adjusted 4. a final statement of account by auditors 5. any thorough examination and evaluation of a problem.*

...

[Emphasis in the original]

[178] The evidence brought forward under this heading involved three areas: petroleum-storage tanks, halocarbons, and the *CEAA, 2012*.

[179] In 2013, Ms. Graether and Ms. Currie visited three Ontario institutions and conducted what Ms. Graether described as compliance reviews of the petroleum-storage tanks and chillers (for halocarbons). Later the same year, Ms. Currie, accompanied by regionally located EPP colleagues, visited sites in the CSC’s Prairie Region (largely Alberta) and conducted similar site-compliance reviews of petroleum-storage tanks.

[180] The information obtained from the compliance-review site visits was compiled, and the findings and recommendations were sent to the institutions. According to Ms. Graether, the chief of facility management at each institution would have been responsible for ensuring that any identified issues were corrected.

[181] The evidence with respect to halocarbons disclosed that this was largely a data-gathering process, as the only on-site compliance reviews of halocarbons appeared to occur when Mses. Graether and Currie visited the three Ontario institutions on their petroleum-storage-tank site visits. Ms. Graether stated that Ms. Currie did not actually go on the rooftops to see the chillers, but she did carry out document reviews.

[182] With respect to Ms. Currie's submission that she performed audits with respect to the *CEAA, 2012* checklist, again, the evidence was that the information from the checklists that the project managers completed was sent to the EPP and that it was received, collected, and put into a spreadsheet.

[183] The evidence before me disclosed that certainly, Ms. Currie reviewed documents and records with respect to the issues described under this heading and that twice in 2013, she participated in site visits during which visual inspections were carried out. Ms. Graether used the term "compliance review" to describe the work. This is an adequate way of describing the work. I do not agree that the term "audit" is an accurate reflection of what Ms. Currie did in this respect. While some documents and records were reviewed, from the description provided, they were not financial records. While the review was done to determine if there was a problem, the evidence did not disclose that a problem was thoroughly examined and evaluated.

[184] In any event, the work carried out by Ms. Currie with respect to the petroleum-storage tanks, halocarbons, and *CEAA, 2012* checklist was adequately covered under the Key Activities in the work description provided by the employer, where it states as follows:

...

... Gathers, compiles and analyses data from various types of sources

... Makes recommendations regarding the implementation of systems and/or processes to functional management.

... Provides support to environmental science colleagues on data or systems used to improve effectiveness/efficiency and to help resolve problems.

...

[185] In addition, with respect to the on-site inspections that Ms. Currie carried out, it appeared that Ms. Graether instituted them, that she and Ms. Currie carried out one trip in June of 2013, and that Ms. Currie carried out a second set of visits at seven western-Canadian sites in September of 2013. There was no evidence that any compliance visits took place in 2012 or in 2014. There was also no evidence that another JEO or someone else in the organization continued these tasks, or that they were carried out annually at all institutions, or on the other hand that they were scrapped altogether.

[186] As set out in *Suric*, it is up to the grievor to "... prove on the balance of probabilities that her job description lacks the elements she has identified, that in fact they are an integral part of her job function ...". The evidence in this case did not disclose that when Ms. Currie requested her statement of duties, these tasks were an integral part of her job function, or that they were not covered by the wording already set out in it.

Task 4: Provides input into the design, planning and development of national programs, policies and procedures

[187] Under this requested amendment in the Currie additional task document, Ms. Currie spoke about drafting materials with respect to compliance with s. 67 of the *CEAA, 2012* via the *CEAA, 2012* checklist, which was eventually put into use. Information provided via the checklist was compiled and put into a spreadsheet.

[188] In addition, Ms. Currie worked on an ISD for the *CEAA, 2012* and on a guideline for managing contaminated sites.

[189] All this work is adequately covered under the Key Activities in the work description provided by the employer, where it states as follows:

...

... Makes recommendations regarding the implementation of systems and/or processes to functional management.

... Provides support to environmental science colleagues on data or systems used to improve effectiveness/efficiency and to help resolve problems.

... Attends and contributes to various intra and inter-departmental meetings.

... Provides basic environmental research support and assistance on other environmental related duties as per operational needs. Tasks and studies are assigned based on familiarity with the specific field and relevant work.

...

Task 5: Provides interpretation on environmental policy

[190] With respect to this requested addition, Ms. Currie indicated that she interpreted environmental policy and protection issues. The evidence disclosed that questions were put to her that came in the form of direct inquiries from institutions

and from other sources. Ms. Currie suggested that she merely copied her supervisor on her answers, while Ms. Graether said that often, there was a discussion.

[191] It is clear to me that the work described by Ms. Currie in this task falls under any number of the Key Activities in the work description provided by the employer.

B. Ms. White's grievance, Board File No. 566-02-11272

[192] Ms. White was in the JEO position from December 31, 2012, albeit she had been in it as a casual from September 18, 2012. She was in that position until June 15, 2015, when she accepted a position in the EDP. She was in the EDP until December of 2015, when she was promoted to an environmental officer II position at the PC-02 group and level.

[193] Ms. White testified that she accepted the EDP offer as it was the only way she could move up the organizational chain. Entered into evidence was the EDP binder, which disclosed the work required to meet the qualifications of the environmental officer II position, as well as the tasks she completed in doing so.

[194] As set out earlier in these reasons when discussing the compliance-review visits that Ms. Currie carried out with respect to the petroleum-storage tanks, the fact is that a task not normally or regularly carried out or not normally required to be carried out by an employee is not specifically required to be recorded in the work description. The fact that at some point between the start of her employment with the EPP, in any capacity, and December of 2015, when she was appointed to the environmental officer II position, Ms. White might have done some task or tasks, does not necessitate that the task or tasks be included in the work description for her position. It was incumbent on her to illustrate that at the time she requested a copy of her work description, the tasks she carried out not only were current but also were not set out in the work description she was provided. Like Ms. Currie, Ms. White set out five key tasks she felt were not adequately encompassed in the work description that the employer provided to her in May of 2014.

Task 1: Contributes to the design development and implementation of strategies and plans related to the Correctional Service of Canada's (CSC) Sustainable Development Strategy (SDS) and monitor and ensure the attainment of environmental targets

[195] With respect to the creation of the green building design checklist, while Ms. White played a role in both its creation and later its monitoring, this work is adequately covered under the Key Activities in the work description provided by the employer, where it states as follows:

...
... Gathers, compiles and analyses data from various types of sources; maintains records and reports results of analyses or activities to environmental officers for presentation in scientific reports.

... Makes recommendations regarding the implementation of systems and/or processes to functional management.

[196] With respect to the creation of the institutional water- and energy-conservation plans, Ms. White spoke about conducting research and then creating a water-conservation plan under Ms. Flaborea's supervision and helping another EPP employee create the energy-conservation plan. The evidence disclosed that this work went on for a number of years and that while she contributed to the process, many others also contributed, until it was finalized. Again, the work that Ms. White carried out in this area is captured by the Key Activities portion of the work description provided by the employer under the following tasks:

...
... Provides basic environmental research support and assistance on other environmental related duties as per operational needs. Tasks and studies are assigned based on familiarity with the specific field and relevant work.

...
... Makes recommendations regarding the implementation of systems and/or processes to functional management.

... Provides support to environmental science colleagues on data or systems used to improve effectiveness/efficiency and to help resolve problems.

[197] With respect to the guide to green meetings, again, this is captured by the Key Activities portion of the work description provided by the employer under the following tasks:

...

... Assists in scientific evaluations and/or assessments of scientific/technical data in various physical science fields using established scientific approaches and methods. Work is undertaken under the guidance/instruction of a more senior Environmental Officer.

... Gathers, compiles and analyses data from various types of sources

... Makes recommendations regarding the implementation of systems and/or processes to functional management.

...

... Provides basic environmental research support and assistance on other environmental related duties as per operational needs. Tasks and studies are assigned based on familiarity with the specific field and relevant work.

...

Task 2: Manages various environmental projects within the CSC and monitors the work of external contractors

[198] Similar to my findings with respect to Ms. Currie, it is clear from the evidence I heard about the projects in which Ms. White was involved that the work described in the evidence cannot be said to fall under any of the activities described in the work description the employer provided. As already set out in these reasons, under a similar heading for Ms. Currie addressing the issues of project management and monitoring the work of consultants, the same can be stated with respect to work carried out by Ms. White.

[199] It is clear that the tasks described can be characterized in some sense as project management. Again, it is difficult to determine the extent and level of Ms. White's involvement and responsibility. Like Ms. Currie, it is clear that she played a role in the contracting process and that she was listed as a Project Authority or contact person. However, it is also clear that she had very little decision-making power and no delegated authority with respect to entering into contracts and that she often had to report up to others in the org. chart when decisions would be made. But it is clear that she carried out that work and that the employer-provided work description contains nothing resembling a statement describing it.

[200] Ms. White suggested that the wording to be added to the work description to cover these tasks should be, "Manages various environmental projects within the CSC

and monitors the work of external contractors.” I do not agree. While the evidence presented points to her being involved in the contracting process, it falls far short of her managing environmental projects and monitoring the work of consultants. Again, like Ms. Currie, she played a role in contracting out work and reporting on the work of the contractors or consultants. But she had no authority and had to report up to persons who had authority and could enter into contracts and authorize them, or direct action. Given this finding, such as those with respect to Ms. Currie, the work description in this respect should be amended.

Task 3: Provides input into the design, planning and development of national programs, policies and procedures concerning environmental protection

[201] The evidence disclosed that the work carried out involved the work on EGs and CDs and combining them into an ISD. There is no question that Ms. White was actively involved in this process for a significant period. That said, the evidence provided with respect to the work carried out is adequately covered off in the Key Activities portion of the employer-provided work description, as follows:

...
... Makes recommendations regarding the implementation of systems and/or processes to functional management.

...
... Attends and contributes to various intra and inter-departmental meetings.

... Provides basic environmental research support and assistance on other environmental related duties as per operational needs. Tasks and studies are assigned based on familiarity with the specific field and relevant work.

...

Task 4: Provides environmental interpretations on environmental legislation, regulations, policy and guidelines and provides assistance to ensure compliance with such

[202] The evidence provided with respect to this suggested addition to the work description largely engaged work with respect to what were EGs 318-02, 318-06, 318-09, and 318-10, as well as CD-318, and the data and information that was collected and analyzed by WaterTrax.

[203] The evidence disclosed that Ms. Flaborea was the lead and SME with respect to drinking-water issues, while Ms. Richardson was the lead and SME for wastewater. There is also no question that Ms. White worked with them in these areas and that she carried out tasks related to entering and categorizing data on water as well as assisting with compliance issues.

[204] Again, there is no question that Ms. White performed work in this area. However, again, there is no doubt that the tasks she carried out fall under any number of the tasks set out in Key Activities portion of the employer-provided work description, as follows:

...

... Assists in scientific evaluations and/or assessments of scientific/technical data in various physical science fields using established scientific approaches and methods. Work is undertaken under the guidance/instruction of a more senior Environmental Officer.

... Gathers, compiles and analyses data from various types of sources; maintains records and reports results of analyses or activities to environmental officers for presentation in scientific reports.

... Makes recommendations regarding the implementation of systems and/or processes to functional management.

... Provides support to environmental science colleagues on data or systems used to improve effectiveness/efficiency and to help resolve problems.

...

... Provides basic environmental research support and assistance on other environmental related duties as per operational needs. Tasks and studies are assigned based on familiarity with the specific field and relevant work.

Task 5: Performs audits and monitors the environmental protection programs within the CSC; researches and prepares reports on various environmental issues

[205] In this task, similar to Ms. Currie's request, Ms. White also used the word "audit" to describe work she carried out. Ms. Flaborea described the work as "monitoring". It is clear that the work carried out was some form of review of information. The precise nature and extent of that review is not clear. Certainly, it was not reviewing financial

data. While at times, it could be viewed as looking at a problem, the tasks carried out as described in the evidence do not meet the definition of “audit”.

[206] That said, the work described in the evidence falls under any number of the tasks set out in Key Activities portion of the employer-provided work description, as follows:

...

... Assists in scientific evaluations and/or assessments of scientific/technical data in various physical science fields using established scientific approaches and methods. Work is undertaken under the guidance/instruction of a more senior Environmental Officer.

... Gathers, compiles and analyses data from various types of sources; maintains records and reports results of analyses or activities to environmental officers for presentation in scientific reports.

... Makes recommendations regarding the implementation of systems and/or processes to functional management.

... Provides support to environmental science colleagues on data or systems used to improve effectiveness/efficiency and to help resolve problems.

...

... Provides basic environmental research support and assistance on other environmental related duties as per operational needs. Tasks and studies are assigned based on familiarity with the specific field and relevant work.

...

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

(The Order appears on the next page)

V. Order

[208] The grievances in Board File nos. 566-02-11271 and 11272 are partially allowed as set out in this decision.

[209] The employer was in breach of the collective agreement when it provided the work description to the grievors on May 28, 2014, which did not set out the work they were carrying out related to construction-project management.

[210] The PC-01 job description shall be amended by adding the following task to the Key Activities:

Participates in the construction management process, which work is undertaken under the guidance/instruction of a more senior environmental officer, engineer or manager.

September 3, 2021.

**John G. Jaworski,
a panel of the Federal Public Sector
Labour Relations and Employment Board**