

Date: 20231120

File: 566-32-13176

Citation: 2023 FPSLREB 108

*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

LOUIS ABRAHAM

Grievor

and

CANADIAN FOOD INSPECTION AGENCY

Employer

Indexed as

Abraham v. Canadian Food Inspection Agency

In the matter of individual grievances referred to adjudication

Before: Chantal Homier-Nehmé, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Grievor: Sarah Godwin and Emilie Gagné, Professional Institute of the Public Service of Canada

For the Employer: Holly Hargreaves and Joshua Hall

Heard at Ottawa, Ontario,
October 28 to 31 and November 1, 2019,
and decided on the basis of written submissions,
filed December 2, 2019, and January 8, 2020.

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I. The grievances before the Board

[1] In 2011 and 2012, 242 employees (“the grievors”) employed by the Canadian Food Inspection Agency (“the Agency”) and classified at the Veterinary Medicine (VM) 1 group and level filed individual grievances alleging that the Agency breached clause E1.01 of the collective agreement between the Agency and the Professional Institute of the Public Service of Canada (“the Institute”) for the VM classification that expired on September 30, 2011 (“the collective agreement”).

[2] On November 1, 2014, the *Public Service Labour Relations and Employment Board Act* (S.C. 2013, c. 40, s. 365; “the *PSLREBA*”) was proclaimed into force (SI/2014-84), creating the Public Service Labour Relations and Employment Board (“the *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; *EAP2*) also came into force (SI/2014-84). Pursuant to s. 393 of the *EAP2*, 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 *EAP2*.

[3] 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 *PSLREBA*, the *PSLRA*, and the *Public Service Labour Relations Regulations* (SOR/2005-79) to, respectively, the Federal Public Sector Labour Relations and Employment Board (“the Board”), the *Federal Public Sector Labour Relations and Employment Board Act*, the *Federal Public Sector Labour Relations Act* (“*FPSLRA*”), and the *Federal Public Sector Labour Relations Regulations* (“the *FPSLR Regulations*”). Note that in this decision, “the Board” refers to the current Board and any of its predecessors.

[4] The present grievances address the work performed by certified veterinarians who work in the areas of meat hygiene and animal health at the Agency. They represent the last of three grievance campaigns.

[5] In their grievances, the grievors allege that the generic job description provided to them by the Agency is not, as required by the collective agreement, a complete and current description of their duties and responsibilities.

[6] Clause E1.01 of the collective agreement reads, in part, as follows: “Upon written request, an employee shall be entitled to an official, complete and current statement of duties and responsibilities of his position ...”.

[7] As well as the issue of the completeness of the job description, the grievors request retroactive pay back to 2001. The Agency objects to providing the grievors with retroactivity back to 2001 should the grievances be allowed.

[8] As indicated in the agreed statement of facts (“ASF”), there have been numerous attempts by the parties to address this issue and to revise the contested generic job description prior to the grievances being heard at adjudication before the Board. Several versions of proposed job descriptions were entered into evidence.

[9] In addition to these efforts, before the hearing, the parties were encouraged to use the Board’s Mediation and Dispute Resolution Services as the preferred mechanism to resolve these grievances. At the hearing, the Board again offered the parties the option of mediation-arbitration. The Agency declined all these offers.

[10] It is unfortunate that the parties could not resolve these grievances without the Board’s intervention as they are best placed to understand the realities of the workplace and the Agency’s mandate, roles, and obligations. Evidence heard at hearings of job-description grievances often does not accurately reflect all the realities of the operations of a workplace.

[11] Furthermore, the Board’s jurisdiction in matters involving the accuracy of job descriptions is limited. Employees often pursue these grievances in the hope of gaining a higher classification and higher pay, which matters fall outside the Board’s jurisdiction. Although I doubt that a decision in these matters will address the fundamental underlying issues that gave rise to these grievances or any future

grievances pertaining to the VM-01s' job description, nonetheless, the parties decided to pursue these grievances to adjudication.

[12] The parties agreed that among other things, the matter ought not to be treated as a test case but rather as one single file with all the grievances considered under the same Board file number and the ultimate decision applying to all those individuals listed in an appendix. Therefore, the Board consolidated these grievances under the name of one of the grievors, Louis Abraham.

[13] The list of all the grievors is annexed as Appendix A to this decision. Consistent with the way the grievances were presented at the final level of the grievance process, this decision applies to all VM-01 positions at the Agency. For the reasons that follow, the grievances are allowed in part.

II. Background, the history of the grievances, and the job descriptions from 2003 to 2011

[14] The Agency has its national headquarters in the National Capital Region and has 4 operational areas (Western, Ontario, Quebec, and Atlantic), 17 regional offices, 132 field offices, 702 federally registered meat establishments, and 13 laboratories.

[15] Each region has a director of operations and inspection managers who report to the director of operations for their region. Inspection managers manage staffing and program delivery in all Agency business lines (animal health, plant health, and food). The VM-02s report to the inspection managers, and the VM-01s largely report to the VM-02s, although some may report directly to the inspection managers.

[16] The parties' history on these grievances is taken from a summary drawn from the ASF that they submitted and from Dr. Valerie Coupal's oral evidence about the different job descriptions that were developed throughout the years, the *Safe Food for Canadians Regulations* (SOR/2018-108; "the regulations"), and the *Safe Food for Canadians Act* (S.C. 2012, c. 24). While these grievances were filed in 2011 and 2012, the issue of the accuracy of the job description applicable to the VM-01s dates back over a decade before that, to the inception of the Agency itself.

[17] The Agency was created in April of 1997 and integrated related inspection services that were formerly grouped under the auspices of Agriculture and Agri-Food Canada, Fisheries and Oceans Canada, and Health Canada. The challenge of

amalgamating different classification groups and levels into the newly created organization was given to the Agency. These grievances ultimately arose from the dissatisfaction with the outcome of that process of most employees classified at the VM-01 group and level.

[18] Between March 1999 and May 2000, the Agency considered several classification regimes and worked toward the creation of a new Agency classification plan (“ACS”). But in the end, it was acknowledged that the ACS did not address the VM group. In any event, it was never implemented.

[19] In June 2001, the Agency presented a work plan to the Institute’s representatives that addressed the writing of generic job descriptions for all levels of the VM group. The purpose was to create and implement current job descriptions for the VM group through a staggered approach. Further to this, the Agency issued a “Management Communique” to employees and stated that it would start working on updating the job descriptions for the VM group.

[20] In 2001, further to the Institute’s request, 322 employees in the VM occupational group filed individual grievances concerning the content of their job descriptions. Of this number, approximately 124 were VM-01s.

[21] In October of 2002, the Institute presented its proposal to the Agency for a new classification standard that would include a review of the VM job descriptions. The Agency and Institute agreed, in November 2002, to place the grievances from May 2001 in abeyance pending the development of the new Scientific Professional & Veterinarian (“SP&V”) classification standard.

[22] The Agency agreed to continue to work on the generic VM job descriptions in a way that would fit the new SP&V standard. In December 2002, work began on the new SP&V standard with the aim of replacing the existing group-specific standard with a new classification standard. For its part, the Institute agreed not to support new grievances except in the very limited circumstances set out in the November 2002 agreement and to encourage its members to participate in the job-description writing process.

[23] In August 2003, the Agency announced that the work of writing the SP&V job descriptions was starting, and sample descriptions were provided to illustrate the type

of information to be included in a position-specific description. At this stage, the existing job descriptions were position-specific rather than generic. Managers were to submit draft job descriptions by October 31, 2003.

[24] In her testimony, Dr. Coupal referred to several draft job descriptions that had been written with the Agency over the years. She identified Exhibit G-13 as a draft generic job description written with the Agency in 2003 to address the 2001 grievances. That job description was written by her and an employee of the Agency. Exhibits G-15 and G-16 represent draft job descriptions written with the Agency for animal health VMs. Exhibit G-15 is titled “Model Job Description” and was drafted under the SP&V standard, which standard was later abandoned. Exhibit G-16 is a job description for a position titled “Regional Foreign Animal Diseases Officer” classified at the VM-01 group and level.

[25] Between 2002 and 2006, Dr. Coupal worked with the Agency to write the classification standard and a new generic job description with the new classification standard as a mapping. At first, the Agency intended to draft one meat hygiene job description and one animal health job description, but in the end, it decided to scrap any new standard and merge the two into one generic job description under the existing standard. It is that job description that is at issue before me. She explained that the draft job descriptions on which she worked with the Agency were never made official. The documents were stored in a box and forgotten. In 2006, she stopped working with the Agency on the drafting of job descriptions. The Agency did not contradict that evidence, and its witnesses did not adduce any related evidence.

[26] In mid-October 2003, the Agency and the Institute signed a memorandum of understanding (“MOU”), in which they agreed to several processes relating to the presentation and hearing of job-content and classification grievances following any conversion to the SP&V classification standard.

[27] However, the implementation of any new standard was delayed between 2004 and 2009 due to a combination of changes in senior management and in the membership of the committee developing the new standard, emergent issues for the Agency (a bird flu epidemic), and federal budget cuts.

[28] In November of 2005, further to collective bargaining, a new article was added to the collective agreement, article G3, which refers to the Functional Supervisory

Differential (“FSD”) and provides an additional amount for those VM-01s who are “... assigned functional supervisory responsibilities on the evening or night shift, during which time there is no VM-02 supervisor on site ...”. In its essence, the article recognizes the greater authority and responsibility placed on those VM-01s who are required to work shifts when no supervisory VM-02 is present.

[29] The addition of this clause to the collective agreement and the issue it addresses are related to several of the changes to the job description proposed by the Institute. Briefly, the Agency argued that the payment of the FSD means that the proposed duties performed on such shifts, which attract that payment, need not be included in the job description as doing so would recognize and compensate the work twice.

[30] The Institute argued the contrary and believes that the payment of the FSD is evidence that the duties are required and performed and therefore should be included in the job description.

[31] In March of 2009, the Agency indicated that it was in the process of finalizing generic job descriptions, standards, a conversion plan, and a rollout. The same day, the *Expenditure Restraint Act* (S.C. 2009, c. 2, s. 393) came into force, prohibiting the restructuring of pay scales and limiting increases to the rates of pay in the federal public service between 2006 and 2011.

[32] Consequently, this legislation prevented the creation of the SP&V occupational group and the implementation of the new standard. In response, in 2009 and 2010, approximately 300 VM employees (approximately 145 of whom were classified at the VM-01 group and level) filed new job-content grievances.

[33] In March 2010, the Institute advised the Agency that it wished to have the 2001 grievances taken out of abeyance and transmitted to the third and final level of the grievance process.

[34] In June 2010, the parties signed another MOU to expedite the grievance process for the 2001 and 2009 job-description grievances. The MOU applied to all incumbents who filed a grievance in 2001 and 2009, regardless of whether they had since retired or changed positions. It also applied to incumbents of VM positions to which the job description applied, whether they had filed grievances or not.

[35] The MOU stipulated that the grievances would be heard on or before June 30, 2010, and that any resulting changes to the job description would have an effective date of May 1, 2001, or the date on which the job description came into effect if that date were later than May 1, 2001.

[36] The Agency issued a final-level reply to the 2001 and 2009 grievances in approximately August of 2010, in which it committed to providing a new and, this time, generic job description and having it evaluated using the current VM standard.

[37] The Agency agreed to extend the deadline for referring the grievances to adjudication, and arrangements were made with the Board to have it accept one referral form for each of the 2001 and 2009 grievances, to reduce the administrative burden on the parties with respect to the referrals of hundreds of nearly identical grievances to adjudication.

[38] In December 2010, the parties agreed that any new job-content grievances filed after the referral to adjudication would be placed in abeyance.

[39] In June 2011, the parties signed another MOU concerning the management of anticipated classification grievances against the VM positions, which were anticipated to arise as the result of the issuance of a new generic job description.

[40] This new generic description was to be the culmination of the 2001 and 2009 work-description grievances. The MOU indicates that any classification decision would apply to all incumbents of positions. It extended the deadline for filing grievances to September 16, 2011.

[41] Between approximately March and July of 2011, employees occupying VM group positions received their new generic job descriptions, which indicated an effective date of May 1, 2001. New grievances concerning the content of these job descriptions were filed by 242 members of the VM group and are the subject of this decision.

[42] In June 2012, the parties negotiated what is indicated to be a draft MOU, signed by the Institute but not the Agency, which provided for the management of the 2011 VM job-description grievances now before me. It provided for the submission of one final-level grievance presentation for all job-description grievances for the VM-01 to VM-05 levels, with one representative grievor for each of the implicated job descriptions. The Agency committed to responding by August 31, 2012. According to *Federal Public Sector Labour Relations and Employment Board Act* and *Federal Public Sector Labour Relations Act*

the draft MOU, any resulting changes would be retroactive to May 1, 2001, or the date on which the job description came into effect if that date were later than May 1, 2001, which was the same wording used in the prior MOUs.

[43] In December 2012, negotiations were ongoing to establish yet another MOU with the same stated goal of expediting the grievance process. Again, it specified that one final-level grievance presentation would be provided in writing to the Agency, which would issue a single final-level reply, this time by March 31, 2013. Again, the Institute signed the draft MOU, but the Agency did not. The document in question also indicates, as do the other MOUs, an effective date of May 2001, and uses the same language as in the other MOUs and the draft MOU noted earlier in this decision.

[44] In February 2015, the parties signed a new MOU, which outlined a joint consultation process on the drafting of the job description. In the MOU, the Agency recognized the "... extensive period of time the aforementioned grievances have been outstanding". The parties agreed that joint consultation committee meetings would conclude by no later than April 30, 2015, after which the Institute could make a grievance presentation within 20 days. The time limit for the final-level grievance decision was extended to 30 working days after that. Any resulting changes were to be retroactive to May 1, 2001, or the date on which the job description came into effect if that date were later than May 1, 2001.

[45] In November 2015, the Agency notified the Institute of its determinations following the joint consultation on the VM job descriptions. The Agency agreed to modify the VM-05 National Veterinary Program Manager job description but determined that for the VM-01 level, the "... information obtained during the informal consultation was not of a nature that supported revisions to these generic job descriptions with broader horizon application".

[46] The Agency confirmed that the Institute retained its right to pursue the employees' right through the formal grievance process and confirmed that it would reactivate the grievances that had been placed in abeyance.

[47] On January 19, 2016, the Institute emailed the Agency about hearing dates for the 2011 grievances. It reconfirmed its position that the job description to be issued would apply to all the grievors in all three grievance campaigns and stated that it

would proceed under that assumption unless the Agency advised that it objected. No response containing any objection was sent to the Institute.

[48] Hearings for the 2011 grievances took place on April 6 and June 3, 2016, and the final-level replies were issued in August and September of 2016. The Agency denied that the VM-01 job description had to be amended and focused principally on what it termed was the Institute's major argument on night-shift duties, which it said were recognized and compensated for under clause G3.01, the FSD, and therefore did not have to be included in the job description.

[49] Documentary evidence was submitted that indicated that between 2006 and 2012, the FSD was paid to approximately 80 to 110 employees each year (the yearly average was 93 employees) and that it represented a payment of between \$300 and \$500 per year to each employee.

[50] In late 2016, the parties reached an agreement on a proposed approach that would minimize the administrative burden that the referral to adjudication of all the 2011 grievances represented.

III. Proposed changes to the job description

[51] At my request (union documents, tab 7), the Institute submitted a chart dated October 24, 2019, which sets out the elements it takes issue with in the VM-01 job description.

[52] These elements allege the failure to adequately describe specific duties in the existing "Key Activities" section of the job description at issue or to describe them at all. Five boxes contain suggested changes to existing job duties, and the last five boxes set out new items that the Institute alleges should be added to the present job description. At present, there are six Key Activities in the job description, and the grievors seek changes to five of them. As well, they request the addition of five new Key Activities.

A. Key Activity #1

[53] The first request for a change to a duty is to the present Key Activity #1 and is described in the first box of the chart. The duty as presently described in the job description states as follows: "Provides advice and guidance on the intent and implementation of the Animal Health and Meat Hygiene Programs and regulations to Federal Public Sector Labour Relations and Employment Board Act and Federal Public Sector Labour Relations Act"

CFIA inspectors, regulated establishment employees, breeders, veterinary practitioners and other stakeholders.”

[54] The change requested to this duty is set out in a box opposite the duty as written now and proposes the following changes:

...
*Provides **direction** and advice to industry representatives and other stakeholders on **all aspects** of the Animal Health [sic] and Meat hygiene programs, and **evaluates technical and operational changes proposed by industry to ensure their compliance with regulatory requirements**. These instructions and directives are addressed to CFIA inspectors / veterinarians, plant management, breeders, veterinary practitioners, and other stakeholders*

...
[Emphasis in the original]

[55] The proposed wording of this duty by the Institute resembles the wording in the VM-02 job description, which is the case for several of the proposed additions. Indeed, with respect to the changes proposed to existing duties, changes to four of the five present Key Activities suggested wording that was close to or identical to the wording found in the VM-02 job description. As for the five proposed additions to the job description, three of the five new duties are again found in the VM-02 job description.

[56] The Board’s jurisprudence confirms that the only relevant issue is whether the Agency requires that the duties be performed and that they are adequately described in the job description. Given that many of the proposed changes are based on duties that attract the payment of the FSD, the recourse to the wording of the VM-02 job description is hardly surprising.

[57] The chart indicates that the Institute sought no change to Key Activity #2, which the parties’ submissions generally reflect. However, in one document prepared by the Institute during the grievance process, for Dr. Coupal, there is a change proposed. I will deal with this issue separately later in this decision.

B. Key Activity #3

[58] The second change requested to a duty refers to the present Key Activity #3. The duty as presently written in the job description states, “Conducts clinical

examinations, epidemiological investigations, and ante-mortem and post-mortem inspections to evaluate the health of animals and diagnose diseases.”

[59] The change proposed would make this duty read as follows:

...
Leads and conducts clinical examinations, epidemiological investigations, and ante-mortem and post-mortem inspections to evaluate the health of animals and diagnose diseases, and verifies the work completed by inspectors and co-veterinarians.

...
[Emphasis in the original]

[60] Again, the proposed wording was taken from a VM-02 job description.

C. Key Activity #4

[61] The chart next identifies Key Activity #4 as requiring amendment. It states, “Investigates suspected and actual incidents of reportable, notifiable and other diseases within the district and prepares reports for the Supervisor.”

[62] The proposed change would make this duty read as follows: “Investigates suspected and actual incidents of reportable, notifiable and other diseases within the **district, Canada and other countries**. Prepares reports for the Supervisor and the **Program Specialist Officer**” [emphasis in the original].

D. Key Activity #5

[63] The fourth requested change to the job description involves Key Activity #5 and involves training. At present, the duty states that a VM-01 “Provides training to CFIA inspection staff, private veterinarians and employees in other agencies on the delivery of the Animal Health and Meat Hygiene Programs.”

[64] The new wording proposed would change the duty to read that the VM-01s provide “**instruction, mentoring** and training” [emphasis in the original], and, according to the evidence, this was included in a VM-02 job description.

E. Key Activity #6

[65] Finally, the fifth requested change to the wording of the present job description concerns Key Activity #6, the duty that sets out the reports that the VM-01s are asked

to draft. The present wording reads as follows: “Prepares statistical, operational, and compliance reports relating to the inspection activities at regulated parties.”

[66] The proposed change would make this duty read entirely differently, as follows: **“Reviews situations of non-compliance, initiates enforcement actions and testifies as an expert witness in legal proceedings”** [emphasis in the original].

[67] On the chart and with respect to this proposed change, the Institute noted that while it does not disagree with the present wording of the duty, it feels that the duty is better defined in its proposed language.

[68] The Institute argued that the VM-01s not only prepare reports but also must act in situations of non-conformity, take enforcement measures, and testify as expert witnesses in proceedings. The wording proposed can be found in the VM-02 job description.

F. Proposed additional new duties

[69] The chart then proposes the addition of five new duties or key activities to the VM-01 job description.

1. New Key Activity #7

[70] The first such duty, which I will refer to as New Key Activity #7, would read as follows: “Reviews, certifies and endorses official and accredited veterinary certificates governing animals and animal products for import, export and domestic purposes.”

[71] Again, this wording is found in the VM-02 job description.

2. New Key Activity #8

[72] The second proposed addition to the job description would add a duty about meeting attendance. The proposed addition is as follows: “Participates in meetings and committees and directs regional/national working groups as needed for the development of new national procedures /directives.”

3. New Key Activity #9

[73] The third proposed change would see adding a duty involving inspectors protecting the Agency’s interests and would read as follows: “Represent the Agency’s

interests in public and government forums to promote disease control measures, ensure product safety and promote export markets.”

4. New Key Activity #10

[74] The fourth proposed addition would mean the addition of the following duty:

...

Supervises directly or through subordinates a team of one veterinarian and inspectors, provides instruction and training, manages assigned resources; issues veterinary certificates; and compiles operational and legislative compliance reports for use by CFIA at the regional and national level.

...

[75] As with other proposed wording, this proposed wording was taken from the VM-02 job description.

5. New Key Activity #11

[76] The final proposed additional duty would see the addition of the following phrase, “Mediates, negotiates and resolves disputes that may occur between inspection staff and the management of registered establishments.”

[77] Again, this wording is found in the VM-02 job description.

G. Additional proposal

[78] Although the chart submitted by the Institute did not propose any change to the second duty outlined in the present job description, the Coupal document does suggest a change. At present, the duty reads as follows: “Ensures public and industry compliance with the Health of Animals Act and the Meat Inspection Act and associated regulations and policies to ensure proper certification for export, import and domestic purposes.”

[79] The change proposed in the document would change the word “ensures” to “verifies”, presumably to strengthen it, and would add the words “to deliver” to the phrase “to ensure proper certification”.

[80] The Institute supports this change by arguing that veterinarians are the final authority on import and export certificates and that if not all conditions are met, they

can refuse to sign a certificate and require changes, and they must be able to justify their actions, since their actions can have important economic consequences on the industry. This is supported by the legislation that they are required to uphold and apply.

[81] Before moving on, I wish to address an issue that was raised by the Agency on several occasions during the hearing. The Agency pointed out that while several of the Institute's proposals were drawn from the VM-02 job description, those VM-01s in receipt of the FSD did not perform the full scope of VM-02 duties. I accept this as a fact.

[82] However, this is not determinative of the issue before me, which is whether the VM-01s perform the specific duties that they have proposed. The Agency's argument would form the basis of its defence in the case of an acting-pay grievance, but these are job-description grievances, and they must be determined based on the evidence related to the functions that they are called on to perform by the Agency and not whether they perform the full scope of VM-02 duties.

IV. Issues, and Board jurisprudence

A. Issues before the Board

[83] The present decision concerns these three issues:

- whether the contested job description meets the terms of the collective agreement;
- if it does not and requires amendment, what duties should be included; and
- if an amendment to the job description is required, what is the date on which it should be applied?

[84] Therefore, as the issue of the retroactivity of the contested job description arises only if the Board finds that the job description is found in violation of the collective agreement, I will first decide the issue of whether the job description is in violation of the provision of the collective agreement, and then, if required, I will decide the issue of the amendments to be made as well as the issue of retroactivity.

B. The Board's jurisprudence in job-description cases

[85] I have read all the jurisprudence submitted to me by the parties, and I am familiar with the prior decisions of the Board in particular. The Board's jurisprudence and jurisdiction in job-description cases is well established, and neither party took

issue with it. Indeed, much of the same jurisprudence was cited by both parties, but each argued for differing interpretations and applications.

[86] The Agency referred me to s. 7(1) of the *Financial Administration Act* (R.S.C., 1985, c. F-11), which gives the Agency the right to assign duties. It also referred to s. 7 of the *FPSLRA*, which states that nothing in the *FPSLRA* is to be construed as affecting the right or authority of the Treasury Board or a separate agency to determine the organization of those portions of the federal public administration for which it represents Her Majesty in right of Canada as Agency or to assign duties to and to classify positions and persons employed in those portions of the federal public administration.

[87] The parties agreed that that the burden of proof was on the grievors to prove that on the preponderance of the evidence, the present job description violates clause E1.01 of the collective agreement; see *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; and *Raabe v. Treasury Board (Department of Indian Affairs and Northern Development)*, 2019 FPSLREB 111.

[88] Like other Board adjudicators, I agree that a job description is a fundamental and multipurpose document that impacts an employee in many ways, such as with respect to classification, remuneration, staffing, discipline, performance evaluation, career development, and language proficiency requirements; see *Jennings v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 20, which cites the Board's prior decision in *Breckenridge v. The Library of Parliament*, PSSRB File Nos. 466-LP-225 to 233 and 241 to 245 (19960912). As so many work-related obligations are related to this document, it must reflect the realities of an employee's work situation; see *Currie v. Canada (Canada Customs and Revenue Agency)*, 2006 FCA 194.

[89] The jurisprudence has established the following general principles:

- that a job description must contain sufficient information to describe what an employee is required to do and that tasks performed voluntarily should not be included;
- it must not omit a responsibility or duty that an employee must perform;
- a generic job description is acceptable if it satisfies those two points but is insufficient if it fails to describe the required task; and

- it need not contain a detailed list of all activities performed as part of a particular duty; see *Jennings*, at para. 52; *Public Service Alliance of Canada v. Treasury Board (Department of Employment and Social Development)*, 2016 PSLREB 24; *Hughes v. Treasury Board of Canada (Natural Resources Canada)*, 2000 PSSRB 69; *Jaremy v. Treasury Board (Revenu Canada - Customs, Excise & Taxation)*, 2000 PSSRB 59; *Duffield*; *Wilcox v. Treasury Board (Department of Human Resources and Skills Development)*, 2013 PSLRB 145; and *Barnes v. Canada Customs and Revenue Agency*, 2003 PSSRB 13.

[90] While the Agency need not include every detail of each activity, and the Board's role is not to wordsmith or impose a better formulation, the Agency cannot avoid its obligations by using vague or general language that does not describe the work adequately; see *Carter v. Treasury Board (Department of Fisheries and Oceans)*, 2011 PSLRB 89.

[91] Also, the Board has held that episodic duties must be included and that duties need not be permanent and continuous to warrant inclusion. Finally, I agree that a job description should reflect the extent and scope of the tasks required by the Agency.

[92] All the modifications requested by the grievors are to the Key Activities portion of the job description. In its written submissions, the Institute argued that all the modifications it had requested to the Key Activities section were necessary to ensure that the VM-01s were aware of their importance, and it cited the Board's decision in *Bafaro v. Treasury Board (Department of National Defence)*, 2014 PSLRB 23 at para. 88, in which the adjudicator found that the lack of inclusion of several words in a job description's Key Activities section and their inclusion elsewhere did not reflect the scope or extent of the activity being performed.

[93] The Institute also pointed to the Agency's guide on the drafting of job descriptions, which states that the final job description should be reviewed to ensure that every major duty or responsibility is described by a Key Activity. It argued that the modifications it proposed considered both the extent to which the activities are carried out as well as their importance. Dr. Coupal stated that these documents are important to consider in drafting the VM position description. The documents at Exhibits G-17 and G-10 explain the importance of the words used to describe the duties performed by the VM-01s as well as their importance and value.

[94] However, I note that the guide in question was drafted for the writing of the job descriptions under the SP&V standard and that the document states that generic job

descriptions do not, as a rule, apply to SP&V positions. On the issue of the extent of an activity, the Institute argued that even if key activities were not performed on a regular basis, nonetheless, they should be found under the Key Activities section. The Institute supported its argument on this point by referring to three of its proposals and pointing out their importance to the work of a VM-01.

[95] I will treat each of these examples when I examine each requested change in turn, but I will state at the outset that I accept the decision in *Bafaro* to the effect that it is not sufficient that a key job duty be found somewhere in a job description; the job description must also reflect the importance of functions but not be an exercise in wordsmithing.

C. The inclusion of duties that attract FSD compensation

[96] Briefly put, the Agency objects to several of the proposed changes not because it denies that the work is performed but because it argues that the work at issue is VM-02 work and is already compensated for when VM-01s who perform functional supervisory duties on the evening and night shifts are paid the differential.

[97] The documentation that the parties submitted to the Board included a document that had been prepared for one of the grievors, Dr. Coupal, as part of the grievance process. I will refer to it as “the Coupal document”. This nine-page document, Exhibit G-8, sets out the changes proposed by the Institute on behalf of the grievors, along with a supporting narrative. While part of it refers to the changes proposed in the Institute’s chart, it goes further than the chart in that it also refers to the substance of the division between the parties on the FSD issue, which is described earlier in this decision. I did not consider the Coupal document as evidence of the work to be performed but simply as an aid to assist the witnesses with their testimonies.

[98] The Institute argues that it was nonsensical for the collective agreement to include the FSD but not have it included in the job description, as this duty is an integral part of their salary and working conditions.

[99] The Coupal document argues that the FSD payment justifies the changes it proposed, such as to Key Activities #1 and #3, and the addition of other duties, such as Key Activity #11. The Institute argued that the draft job description must be enlarged

to capture the VM-01s' role, particularly with respect to the first Key Activity. Those working evening or night shifts were required to do more than merely provide advice and guidance. They were required to give directions, such as stopping production or setting aside product, and to address matters relating to non-conformity.

[100] As stated earlier in this decision, the Agency does not deny that many VM-01s perform work that attracts the payment of the FSD. However, the Agency does object to the inclusion of any FSD-related duties in the job description as it argues that doing so will lead to pyramiding. Many of the Institute's proposals are related to duties that attract the payment of the FSD; therefore, I will deal with the Agency's objection on this issue at the outset.

[101] Dr. St-Hilaire testified about the FSD, stating that it is a bonus for work that a VM-01 performs when no VM-02 or anyone else is present on a shift. Operational supervision is paid for. It is to ensure correct operation and to ensure that everything is done in accordance with regulations and that the VM-01 can make any decisions necessary for operations when no VM-02 is onsite. It is not a bonus that comes with the delegation of human resources authority or with financial delegation. It is strictly so that operations will run smoothly. Only one VM-01 per shift receives the bonus.

[102] I accept the Institute's argument that compensating an employee for work performed is not the same as recognizing it as part of their job description and as an assigned duty. The collective agreement provision at issue gives an employee the right to an accurate job description and provides no exception for duties that attract additional compensation.

[103] The Agency also based its argument on numbers, pointing out that not every establishment had a second or even a third shift and that on any given night in the province of Quebec, only between 5 and 10 VM-01s received the FSD. It also stated that employees who received the FSD did not, as did the VM-02s, complete performance evaluations for other employees or approve leave requests, and they had no financial delegation authority. Although such an argument would apply to an acting-pay grievance, the grievors at present have restricted their requests to discrete changes to their job description, and I find that the Agency's argument as to the VM-01s not performing the full VM-02 duties, as described earlier, has no application to this case.

[104] I also find the issue of numbers unconvincing. While not every VM-01 will perform duties that attract the payment of the FSD on every shift, the evidence disclosed that the duties are indeed required to be performed and that they are performed by enough VM-01s on what can be described as a regular basis. The ASF indicates that as of October 2019, the VM-01 bargaining unit comprised 264 individuals. Given that the evidence disclosed that a yearly average of 93 employees receive the FSD and that evening and night shifts are of a continuing nature and not sporadic, I find that the numbers involved are more than sufficient for the inclusion of this duty in a generic job description. It was the Agency's choice to proceed by a generic job description that combines the duties of VMs working in both animal health and hygiene, even if only those working in the area of animal hygiene would be eligible for the FSD, as such a payment is made only to those working in slaughterhouses.

[105] The Agency's argument amounts to stating that no work that attracts extra pay can be included in a job description, which is a proposition that it has not proven to me via evidence or jurisprudence. Also, the Board rejected this proposition at paragraph 170 of *Currie v. Canada Revenue Agency*, 2008 PSLRB 69 ("*Currie 2008*"), when the adjudicator stated, "That they have received acting pay for this work does not change the fact that the revised PM-03 job description did not accurately reflect the work being performed." As I have stated earlier in this decision, I see no way to read such an exception into the present wording of the collective agreement, which gives an employee the right to an accurate job description.

[106] The grievors argue that the duties outlined that attract the payment of the FSD are an expected and a regular part of the duties of the VM-01s who work evening or night shifts in slaughterhouses and therefore warrant mention. Dr. Coupal testified that she was part of the bargaining team and that the payment of the FSD was in fact a recognition by the Agency that the VM-01s have always done this work. As I have found earlier in this decision, the collective agreement requirement for a complete and accurate job description does not have an exception clause stating that all duties must be described except for those otherwise compensated in the collective agreement.

[107] Dr. Cagna explained that as for the functional supervisory tasks performed in the evening, the term appeared in 2006, but that he had always done the work, including the ante-mortem, post-mortem, post-mortem hygiene, and the humane

aspect at the ante-mortem. They have final say on what can take place in slaughterhouses.

[108] Dr. Cagna explained that the work did not change in 2006, when the FSD was introduced. He has been doing the same work since July 2001. The VM-01s receive the Differential for evening-shift establishments in the area he occupies in Berthierville for chicken slaughter and in Saint-Esprit at a pig slaughterhouse.

[109] Dr. Cagna said that with respect to the frequency at which the VM-01s can be called to receive the evening FSD, when he was hired, he was told that if he chose an evening-shift establishment, he would have to work evenings. When enough staff is on hand, it is livable to work two weeks back-to-back, one month on days, and two weeks on evenings. Attrition took place because of the VMs' retirements and illnesses. The Agency forced itself to comply with the collective agreement by scheduling at least two weeks of days and two weeks of evenings. The VM-02s do not work evenings; they must manage in step with management and must stay on days. If nobody volunteers to work evenings, it is implied when attached to a plan containing an evening shift; they are then compelled to work the evening shift. At that point, the VM-01s receive the differential.

[110] I find that the issue of the FSD being a separate bonus is a compensation and bargaining issue and that it should not impact the interpretation of clause E1.01 of the collective agreement and the grievors' right to a complete and current job description. I take judicial notice of the fact that it is common for collective agreements to provide for allowances, in addition to acting pay, for the performance of exceptional duties or the performance of duties under exceptional conditions, yet the wording of the collective agreement clause at issue in this case does not make any exception for the inclusion of such duties.

[111] The Agency did not provide me with evidence or jurisprudence on the requirement to exclude from a job description all duties that are the subject of such allowances or that attract extra remuneration, such as shift work or being called back to work. The Agency merely asserted without more that the inclusion in a job description of any FSD-related duty would constitute pyramiding. I do not find that the Agency has met its burden on this issue.

[112] If the Agency chose a route to address the issue that it is not satisfied with and that it feels conflicts with what it did at the bargaining table, it should address it during the next round of bargaining, where it properly belongs. Therefore, I reject the Agency's objection to including any FSD-related duty in the generic job description and find that this issue will be decided on the usual principles applicable to job-description grievances.

[113] I find that the grievors have convinced me that duties covered by the payment of the FSD can be included in a job description if they are of such significance that their inclusion is warranted. Whether the alleged duties are performed and, if so, how to reflect them is the issue before me. The grievors have spread these FSD-related duties throughout the job description rather than group them into one Key Activity, a concern about which I will comment later in this decision.

D. Witnesses: credibility, and a summary of their qualifications and evidence

[114] The issue of the credibility of witnesses arose in argument, and I wish to dispose of it from the outset of my decision. The Institute asserted that Drs. Coupal, Rachel Martel, and Stefano Cagna testified as to their experience as VM-01s and VM-02s as well as to their observations of other colleagues and that therefore, their testimony is more credible and reliable. The Institute maintained that the Agency's witnesses provided no reliable information as to the activities performed by the VM-01s as neither Dr. Rémi Girard nor Dr. Sylvain St-Hilaire had worked in abattoirs since 2007 and 2004 respectively. As a result, it argued, neither had any practical knowledge or experience, and it alleged that the former testified in a manner that was vague and unconvincing.

[115] I find that rather than being an issue of credibility, as all witnesses testified in a credible manner, the main issue related to witnesses was indeed one of specificity and its relevance to the issues that are before me. The witness's testimony and its specificity will be addressed in turn as I examine each requested change to the Key Activities.

[116] I will now set out the background and general evidence given by each of the witnesses. The Institute called Drs. Coupal, Martel, and Cagna to testify on behalf of the grievors. The Agency agreed that the evidence presented by them would apply to all the VMs who grieved.

[117] At the hearing, Dr. Coupal, a VM-02, testified that she had been working for the Agency for 29 years as a veterinarian and that she was active in her union. She began working for the Agency as a VM-01 in 1990, and 5 months later, she became a VM-02. She was the lead on the campaigns for the grievances for all the VM-01s to VM-05s and all their related job descriptions. Throughout her career at the Agency, she supervised VM-01s. As a manager of VM-01s, she spoke to the duties required of the VM-01 position and the duties they performed.

[118] As of the hearing, Dr. Martel had been working for the Agency for 19 years. She testified about her experience as outlined in her CV (Exhibit G-20) as a doctor of veterinary medicine in Saint-Hyacinthe, Quebec.

[119] Dr. Martel started in private practice with a bovine speciality. In 2001, she worked at the Agency at a cattle slaughterhouse in Colbec, in the region of Quebec, and she was a VM-01 for 1.5 years. She then worked as a VM-02 on an acting basis. In 2004, until late October, she held a VM-02 position in meat hygiene at a slaughterhouse. She was then transferred to poultry and rabbits with a priority to relocate to a VM-01 animal health position. It was a demotion from the VM-02 to the VM-01 position because she wished to return to Quebec City, Quebec, to live there. Since 2007, she has been working at the animal health office in the Quebec district. Several times, she has held acting VM positions, including a long-term acting VM-02 position from 2014 to 2016.

[120] In July 2016, she held a VM-03 position on an acting basis, followed by an animal health VM-01 position because the Agency decided to move the VM-02 position to Chicoutimi, Quebec. The VM-01 position covered the Quebec district. She has held VM-03 positions on an acting basis three or four times.

[121] Dr. Martel is still a VM-01. She applied for a VM-03 position and was found qualified for it. The problem at the Agency is that VM-01 positions are lacking. She testified that on at least four occasions, her manager refused to allow her to transfer to a VM-03 position because of the lack of VM-01s at the Agency. The Agency did not refute her claim on this.

[122] Dr. Martel explained the difference between VM-01s working in animal health and those in meat hygiene. Animal health is different. There are over 10 programs, and the legislation and regulations differ. There are many programs to cover. The animal

health program is not as structured as meat hygiene, and the questions can cover many subjects, including imports, exports, by-products, animal products, livestock identification, and humane transportation, which meat hygiene also covers. There are a dozen programs. The main differences are that its work is not as supervised as in meat hygiene, the schedule is more flexible depending on the work to be done, and some days may be more flexible than in meat hygiene.

[123] Dr. Martel indicated that the basis for the work is set out in the *Health of Animals Regulations* (C.R.C., c. 296). All the programs are listed in the operational directives, all duties are based on those regulations, and legislative obligations for each client are the basis of the work. One district covers a geographic area per group of veterinarians and inspectors. Quebec has seven or eight separate districts. Currently, in the Quebec District, there are only two VM-01s and one remote VM-02, which is not enough. Originally, there were three VM-01s and one VM-02, and there should be a team of four.

[124] Dr. Cagna has worked at the Agency since 2001 in meat hygiene at slaughterhouses. As for emergencies, he has helped in British Columbia with avian influenza. Most of his duties consist of signing meat certificates, especially in exports. He deals with clients with pets, animal certificates, and certificates and products that correspond to regulations. From September 24, 2018, until today, he has been a VM-02 in Saint-Esprit, Quebec. Since 2006, VM-01s working the evening or night shifts have received the FSD. He disagreed with the Agency's VM-01 job description with the May 1, 2001, effective date.

[125] The Agency called Drs. Girard and St-Hilaire as witnesses.

[126] As of the hearing, Dr. Girard was an operational specialist's manager classified at the SR-05 group and level for the Québec National Centre, which he had held since October 2018. He has worked for the Agency since 1998. In 1998, he worked at the VM-01 level in the Quebec region, specifically in slaughterhouses. In 2003, he was the VM in charge in a horse slaughterhouse. In 2007, he worked as an inspection manager in the Montréal, Quebec, region until his assignment in 2016. In his current operational specialist's manager position, he deals with issues at the operational centre that require intervention at the provincial level, including any issue that cannot be resolved locally. He is responsible for planning and emergency responses and supports the

director of operations, particularly with respect to agreements with different government levels. Dr. Girard testified about the Institute's proposed amendments to the position descriptions.

[127] Dr. St-Hilaire testified for the Agency. As of the hearing, he was an inspection manager in the Policy and Programs General Branch classified at the IM-00 group and level. His office is in Montréal. He has been with the public service since January 1997. Before working for the Agency, he was a large-animal veterinarian in private practice. He was hired in 1997 as a VM-01 in a poultry slaughterhouse in Grenville, Quebec. He held that position for a few years before becoming a VM-02 supervisor, which position he held for a few years. Then, he was selected for a three-year management trainee program, which developed managers through gaining leadership skills by completing internships in all the Agency's branches. After the three-year training, he was successful in an operations coordinator process at the AS-07 group and level in 2007 at the Québec National Centre and was then appointed to the inspection manager position in Montréal. He is responsible for a virtual team that reviews the Agency's import policies, and everything involved with activities abroad.

[128] Dr. St-Hilaire supervises employees at different levels. He must be able to provide the necessary support to the inspection teams. The tasks include staffing team positions, ensuring that each team has the necessary number of employees, supervising supervisors in their daily management activities, setting objectives, and providing training. He must ensure that employees have the training necessary for their work, which means supporting the team onsite. If a contentious situation arises, he becomes involved at the supervisor's request. He is responsible for keeping senior management informed of any issues arising in the region. In total in Canada, there are approximately 8500 to 9000 employees, and in Quebec, around 1000 in operations. He is familiar with the VM-01s' work because he has held that position.

[129] A VM-01 position is at the entry level in the Agency. For example, when an animal carcass appears dubious or suspicious to Agency inspection staff or company staff, it is placed on another production line or station for a VM to verify it in more depth, to determine whether it is fit for human consumption. There are also ante-mortem assessments for export. The VM-01s carry out verifications before animals are slaughtered, which include a general assessment of how an animal was treated from a humane perspective, to avoid potentially contaminating other animals.

[130] In animal health, the VM-01s' slaughterhouse work is prescribed. They are assigned to slaughtering establishments in premises owned by companies. A VM-02 manages a team of VMs including inspectors, etc. They travel and carry out screening tests. If an animal arrives from another country, e.g., at Mirabel, Quebec, then the VM-01s will travel there and evaluate the arriving animal.

[131] Animal health ensures the safety of food for Canadians' well-being. It avoids animals that might have a reportable disease and limits the risk. It is the same in meat hygiene and animal health; the difference is the workplace. There are roughly 150 to 170 establishments, depending on the businesses and the volume to be slaughtered; about 40 are in Quebec. The slaughterhouses have 2 shifts. There are between 7 and 8 but probably between 5 and 10; it can vary over time.

[132] The number of slaughterhouses changes year to year, depending on the industry and the volume to be slaughtered. Instead of two shifts, some establishments institute a longer day shift and overtime. Agency approval is required. This can lead to hiring more employees.

[133] Dr. St-Hilaire is familiar with Exhibit G-1, Tab 4, which is the Institute's proposed job description. He recognized the main activities described in the VM-01 job description, on the right-hand side, and the Institute's proposed changes on the left.

E. Proposed changes to the VM-01 job description

[134] I now turn my attention to each of the changes and proposed additions outlined by the Institute in its submissions and testimony.

1. Key Activity #1

[135] The first requested change to the job description is related to the following described duty:

#1

Provides advice and guidance on the intent and implementation of the Animal Health and Meat Hygiene Program and regulations to CFIA inspectors, regulated establishment employees, breeders, veterinary practitioners and other stakeholders.

...

[136] The change requested to this duty was set out by the Institute and would make the duty read as follows:

#1

*Provides **direction** and advice to industry representatives and other stakeholders on **all aspects** of the Animal Health [sic] and Meat hygiene programs, and **evaluates technical and operational changes proposed by industry to ensure their compliance with regulatory requirements. These instructions and directives are addressed to CFIA inspectors / veterinarians, plant management, breeders, veterinary practitioners and other stakeholders***

...

[Emphasis added and in the original]

[137] Dr. Coupal acknowledged that Exhibit G-5, a job description for the supervising veterinarian at the VM-02 group and level, was her job description. She recognized that all the key activities are accurate and that the Agency requires her to complete them.

[138] Dr. Coupal agreed that day shift VM-02 duties and evening shift VM-01 duties are similar.

[139] Dr. Coupal testified about the issue of resolving conflicts on both the day and evening shifts. A significant difference is when a daytime conflict arises with respect to the VM-02's role. If industry inspectors have problems, or if conflicting problems arise, the VM-02 will manage them. In the evening, VM-01s assume that responsibility so that the slaughter may continue. Evening shift VM-01s are responsible for resolving conflicts that arise, to ensure the continuance of slaughter operations. The VM-01 then issues a report to the VM-02, who evaluates and decides if there is more to do. The VM-02 then notifies their manager.

[140] During the evening schedule in the establishment where she works, about 15 000 carcasses can be processed. It is like 2 slaughterhouses in 1. The day and evening shifts have different foremen teams, and there is only one VM supervisor. The evening shift VM-01 is more autonomous than the VM-01 working the day shift because they must solve all the problems that arise. The VM-02 does the paperwork that arises out of issues identified during all shifts. The work of the VM-01 is not the same for the day shift, but for everything related to managing fragile animals, whether in the day or night, the VM-01 provides instructions. VMs at any level are responsible

for enforcing the regulations and are required to provide instructions. The VM-01s working on evening shifts take charge of the Agency's programs to ensure that food safety is not compromised. The Agency's senior management will give new directives to the day-VM-02 who in turn passes it on to the VM-01. The evening shift VM-01 is the conduit to the day shift VM-02.

[141] According to her, VM-01s assigned to work the evening shift share similar main duties with the VM-02s. The VM-01s receive the FSD for the evening shift; they are required to manage the program's application and advise the VM-02s. However, the VM-01s may be called upon to give other VM-01s enhanced training.

[142] She admitted that the VM-01s and the VM-02s do not carry out the same work. Final performance evaluations are to be done by the VM-02. However, while VM-02s sign them, VM-01s often suggest wording. The evening-VM-01 will assess those who need reinforcement and train other VM-01s when required. They will work with a VM-01 if a problem comes up during the evening shift. As for the implementation of the Agency's program, the VM-02 supervises it and is the conduit for finding necessary information and any new way of doing it. The VM-02 provides information and must explain directives. The same applies to the VM-01 working evenings, who must explain directives because there is no VM-02 on evening shifts. The evening shift VM-01 must manage everything and has only the training tools given by the VM-02. The VM-02s' training has enabled the VM-01s to perform this work since 2001.

[143] During the evening shift, when no VM-02s are onsite, the VM-01s are paid the FSD, which represents 4% in addition to the VM-01 salary. "Functional Supervisory" has no single definition. When the new bonus was applied in 2006, the Agency did not write anything down. She indicated that the Agency had always only paid it and indicated how to pay it but that it had never said what specific tasks attract the FSD. For her, the applicable regulations are clear, and supervision is required under the regulation. The regulations, it was alleged, go as far as to give orders and give the VMs the power to direct the industry, which must obey the VM-01s' instructions.

[144] Two VM-01s always work evenings, but only one of them receives the FSD. If no VM-02 is onsite, one of the VM-01s receives it. The regulation states that under it, the official veterinarian must perform the duties, and they supervise the other VM-01 on duty as well as the inspectors.

[145] The official VM-01 does not approve leave. The VM-02 level with a management level 6 authority remains at VM-02. The official VM-01 has no financial authority.

[146] Dr. Coupal's testimony was clear that the VM-01s perform this main activity. The functional supervision of the inspection team employees has always been done. The inspectors report functionally to the VM-01s. When disputes arise between two inspectors, or for any labour relations issue, the evening-VM-01 is responsible for everything that happens during that shift schedule. The VM-01s ensure the division of duties to respect health and safety so that the establishment may continue to operate. A VM-01's management decisions can lead to a slowdown or create overtime for employees. Disputes may arise between inspectors and establishment employees, and the VM-01 in charge must intervene, to maintain a healthy work environment. The VM-01s often remove a foreman, for example, due to a dispute with inspectors. The VM-01 must make all necessary decisions to ensure the health and safety of all employees. In addition, the VM-01s are responsible for distributing tasks when changes are required to those tasks. So, they must know how to prioritize and reassign tasks. Accordingly, they must be able to complete the documentation to explain to the VM-02 who arrives the next day.

[147] Dr. Coupal referred to Exhibit G-13, point 3, which is one of the draft job descriptions on which she worked with the Agency, and it bears the position title "Veterinarian (Meat Hygiene)" but no level, which states, "Participates in restricting livestock movement and quarantine". The evening- or night-VM has control and restricts products, personnel, and animal movement for the evening and night schedules in quick-verification establishments. In 2003, for high-speed shift-work establishments, the Agency agreed that the evening- and night-VM "... controls quarantine and restriction of product, personnel and livestock movement activities on the night or evening shift".

[148] In cross-examination, Dr. Coupal agreed that Exhibit G-1, Tab 4, the Institute's proposed Main Activity 1, is different from the Main Activity 1 in Exhibit G-8, page 3, in the grievance submission dated 2016. As stated earlier in this decision, I have used the Institute's submissions on the issue of proposed wording and not that found in Exhibit G-8.

[149] According to Dr. Martel, the VM-01s' main activities in the sectors include being responsible for all questions, animal exports, animal by-products, anything that might have an animal product for import or export, insemination centres, European export, and the export of livestock at auctions. They also supervise practising veterinarians. Veterinarians carry out those tasks for the Agency under the VM-01s' supervision. If there are questions, the VM-01s answer them. A certificate must be under a VM-01's supervision to have status. They follow up on herds. If inspectors have hard questions, they consult the Agency veterinarians.

[150] Dr. Martel, in referring to the Institute's proposed wording for Key Activity #1, agreed that animal health VM-01s provide instructions, which is more than just advice to the industry and stakeholders for all programs. The scope of this task must be expanded because the VM-01s must evaluate any industry-proposed changes and must carry out verifications to agree to certify or accredit an establishment.

[151] Dr. Martel explained that for animal health VM-01s, things take time. It takes at least three to five years to become fully functional, and even then, they will not know everything. She still does not know some things. For a given subject, she has to review regulations. It is very rare that one or two particular situations do not arise. For example, the Agency must certify artificial insemination centres. Approval was required for insemination in the European Union (EU), which was new to the organization, so the person in charge of the insemination centre was directed to meet all the EU's standards, to be approved in the end. Many exchanges took place with the centre's manager and the veterinary practitioner. They must be directed and helped because often European legislative requirements are difficult to achieve as standards.

[152] Dr. Martel referred to Exhibit G-26 as an example, which is an email she sent to the person in charge of the insemination centre, informing them of the necessary protocol changes. She sent a link so that they could amend their protocol to be approved. They had to provide it to her, to review the export regulations. She reviewed their application to direct them so that they could be accredited. Therefore, it involves much more than leading and instructing.

[153] In addition, Dr. Martel explained that Exhibit G-27 is another example of her being called on to direct and provide export instructions. Her email was addressed to the veterinarian in charge of the centre and was about a regulatory situation at a pig-

isolation centre that was to conduct evaluation tests for the export centre. As a VM-01, she was responsible for testing. She had noted that some pigs were not fit for transportation. She emailed them and stated that they had to comply with the humane animal transportation centre. It was a reminder to them that it was desired to not go further at the regulatory level. She had to follow those clear guidelines.

[154] Exhibit G-28, according to Dr. Martel, is another example of her being required to provide not only advice but also help with drafting agreements for export approval. In this exhibit addressed to an insemination centre, she advises them that she requires two modifications to the agreement. That is a frequent work requirement for her. The directives are given to several people. As for the accredited veterinarians whom she must supervise, she sometimes must explain anything missing in terms of operational procedure, and she must standardize. If an accredited veterinarian makes a mistake, she identifies it so that the person may correct it.

[155] Dr. Martel explained that in animal health, the VM-01s work with accredited veterinarians who are veterinary practitioners under Agency contract. Typically, the veterinary practitioners have more manual tasks. To certify an export, they must maintain their accreditation. The VM-01s must meet with veterinarians every three years and train them on what they must and cannot do. They are supposed to supervise the veterinarians in their work for certain tasks and only according to their accreditation and the Agency contract.

[156] When completing tasks, accredited veterinarians are obligated to comply with the regulations. Dr. Martel gave as an example a situation in which, in her VM-01 role, she had to intervene with an accredited veterinarian. In one incident, an accredited veterinarian had certified a load of bovines for export. There had been a holdup at customs because some animals were unfit for transportation. She had to call both the customs centre and the accredited veterinarian and reiterate the regulations about requirements for the humane transportation of animals. It led to a visit to the establishment in question. All VM-01s must carry out that work.

[157] With respect to exporting products, to the EU, for example, if a client wishes to export, as a VM-01, Dr. Martel explained that she must direct the establishment so that it will meet the standards. As soon as a requirement arises to enforce regulatory standards, regardless of the level, the VM-01s or VM-02s are responsible for regulatory

requirements. All VM-01s must perform that work. She has been with the Agency since 2007, and she still does it. If the company cannot meet the standard, until the regulatory standard is met, she will not approve the protocol.

[158] Dr. Cagna also testified as to his present worksite in Saint-Esprit and to his observations as an acting VM-02. He testified that the VM-01s under his supervision regularly give directions on the day shift and that only serious issues are escalated to his level as he is busy with his other duties.

[159] Dr. Cagna explained that the VM-01s on the evening shift often had no choice but to address issues on the spot as certain matters could not wait until his arrival the following day. Dr. Cagna testified that the VM-01s had no choice but to assure themselves that all was in conformity with the law and regulations and that any failure in that respect could have had serious consequences. That testimony aligns with Dr. Coupal's, who made it clear at the hearing that such instructions and decisions are reflected in all legislative texts.

[160] Dr. Cagna reiterated that the important phrase in activity 3, as the Institute proposed, is "provide instructions". The VM-01s are not only slaughterhouse advisors; when something does not work, they also make decisions and provide instructions. The company turns to the VM-01, and if a problem arises, most of which occur on high-speed slaughter lines, given that the company does not want to reduce the speed, the VM-01 will implement a temporary solution, to allow time to solve the problem permanently. Problems arise often, and the VM-01s must be resourceful, to correct situations and enable operations to continue.

[161] Dr. Cagna stated that the VMs are responsible for food safety and that the humane treatment of animals is respected. They will instruct; as VM-01s, they are responsible for directing the company and ordering it to slow down if they consider doing so appropriate. They can go as far as stopping the production line. Evening-VM-01s must make logical decisions, according to regulations. If a company loses money because of their actions, it can sue them for the damage it sustained. When an emergency arises, the evening-VM-01 does not wait for the VM-02 the next day but must act quickly when problems arise. On that point, the evening-VM-01 must carry out the same work as does the day-VM-02. The risk of being sued by the company is the same during the day and night.

[162] Dr. Cagna noted that day-VM-01s also instruct. For example, when multiple VMs are working with pigs or bovines, they solve all basic day problems on the floor. As a VM-02, he will hear about such problems, but he does not intervene in the VM-01s' decision-making process. An everyday example of a day-VM-01's autonomy is the condensation problem. The VM-01 takes over and ensures that recurring problems are solved. With respect to personal disputes between inspectors, the VM, and the company, the VM-01 intervenes, but the dispute must be severe to justify the VM-02's intervention.

[163] Dr. Cagna stated that the VM-01s assess technical and operational changes. No company wants to stop production, and the VM-01s are onsite to ensure regulatory compliance. They must ensure that all changes respect regulations, so that the product is produced safely, with no problems in terms of humane treatment, i.e., pigs or poultry are treated without ante-mortem suffering. The VM-01s carry out that technical and operational assessment to ensure that the meat product is safe and edible and to ensure the humane treatment of the animal in how it was brought to slaughter. If the product and method do not meet regulations, the product is considered unsafe and will be discarded. That exercise cannot wait several hours. The product to the consumer must be safe and must have been produced safely. The VM-01s must be careful with respect to the tools and solutions used for product safety. If it is unsafe in terms of the mechanics behind it all, then the unsafe product must be made safe; it can be reworked, retained, or condemned as inedible.

[164] Dr. Cagna confirmed that the VM-01s teach. They do not provide general advice; truly, it is, "[translation] You do this." It is unequivocal. The VM-01s set out how things will work; they instruct and make themselves heard. The industry is forced to follow their instructions. Yes, they must listen. If the industry does not respond to their instructions given as VM-01s, they can decide to stop a slaughter. If product safety or humane treatment is at issue, the industry is forced to listen to the VM-01s.

[165] Dr. Cagna stated that Engineering and Scientific Support Group (EG) inspectors can report issues to industry. They see all the problems. They observe the basic mechanics every hour. Not only the VM-01s solve problems. When an inspector does not observe the requested result, the VM-01 comes and decides. If a slaughter line has a problem, the VM-01 will request that the problem be corrected. The EG cannot condemn but can reject. To stop the slaughter, the EG must call the VM-01 for a

decision. For targeted lots — for questions about rejection, if doubt arises about a product — the VM-01 always responds and makes the decision.

[166] The Agency’s evidence on this proposed change was provided by Dr. Girard. Dr. Girard explained that he recalled the duties required of the VM-01s because he was once a VM-01 and that when he was a VM-02, he supervised VM-01s. He currently supervises VM-03s and SR-03s who are program specialists. Dr. Girard’s CV indicates that he last worked as a VM-01 at the floor level in 2003. He stated that he was unclear what was meant by the word “direction” as the Institute had never defined it. He also testified that he never asked the VM-01s to provide direction to industry representatives and other parties. He stated that he was uncomfortable with the wording to “give orders”. I find that Dr. Girard’s evidence on this point is not helpful in determining whether this work is performed by the VM-01s. His opinion and discomfort did not address the issue before me, and his evidence on the issue before me was cursory and lacked the great detail that was provided by the Institute’s witnesses.

[167] According to Dr. Girard, the task of evaluating industry-proposed technical and operational changes is performed by the VM in charge, who has the ultimate responsibility for this task, with the VM-01’s providing recommendations and consultation. He agreed that the VM-01s were involved in that task, but he did not see the point of including it as it was a technical change. The EG inspectors and the VMs perform tasks related to industry activities. Their work is not about changing them. The VMs must respect the system. Establishments base their operations on the “Hazard Analysis Control Point - HACCP”, which is restrictive. They are regular activities that are integrated into the VM-01s’ regular activities. The words “evaluates technical and operational changes” are specific and too restrictive and do not add to what has already been written. According to him, communicating with industry representatives was the duty of a VM-02. Also, I note that the Agency argued that while the VM-01s worked without a VM-02 on the evening and night shifts, there was no requirement for them to make representations to members of the industry on that shift.

[168] The Institute denied that this proposed change was wordsmithing and stated that it was consistent with the evidence and statutory parameters and that it reflected the supervisory and authority role that was observable in the work of the VM-01s. The

evidence, it argued, revealed that the VM-01s gave directions rather than mere guidance, which was not reflected in the current wording of the job description.

[169] The Institute pointed out that Dr. Martel testified to the fact that VM-01s who worked in animal health are required to “give direction to private veterinarians” as well as “... farm inspectors, order quarantine, and give direction on import and export files”. The Institute cited much legislation and regulations indicating that veterinarians in general (not necessarily VM-01s working for the Agency) must give directions and order that appropriate measures be taken.

[170] While a good deal of the evidence on this issue related to the work of the VM-01s on the evening and night shifts (in other words, work attracting the payment of the FSD), Drs. Cagna and Martel also gave evidence relating to the work performed by VM-01s during the standard workweek.

[171] In its submissions, the Institute referred to the testimonies of Drs. Coupal and Cagna as to the work required of the VM-01s working in meat hygiene on the evening or night shift. Those veterinarians were able to stop the production line, condemn a product, or deal with live transport issues and as a result were required to give instructions or directions to industry representatives. Decisions had to be made that could not have awaited the arrival of the day shift and the presence of a VM-02.

[172] The Institute also referred to Dr. Coupal’s evidence, when she explained that the VM-01s take charge, give instructions to slaughterhouse teams, and decide whether a product should be detained and assessed later. In an emergency, to ensure that food safety is not an issue and that the slaughter is carried out humanely, the VM-01s must provide clear and specific instructions. They do not call anyone. They must make the necessary decisions. As of the hearing, she was supervising the VM-01s, and she agreed with the Institute’s proposed description of the activity.

[173] In support of its argument on this, the Institute cited the Board’s determination of essential services set out in *Professional Institute of the Public Service of Canada v. Canadian Food Inspection Agency*, 2011 PSLRB 16 (“*PIPSC*”). In that decision, the Board found that meat hygiene and animal health were both essential services. I find that this decision is not relevant to the issues before me. First, it concerns the determination of essential services and not the accuracy of a job description. Secondly, the decision

concerns VMs in general and not VM-01s specifically. I accept the portions of the decision that set out the importance of VM work in general.

[174] The Agency maintained that Dr. Girard's evidence confirmed that what was written in the job description was accurate in that the VM-01s provide advice and guidance, and that as the Board stated in *Suric*, an adjudicator's role is not to correct the formulation or expressions used in the job description if they generally describe the duties assigned. The Agency also asserted that the grievors had not proven that they were required to provide instructions on "all aspects" of the programs and that they had not defined what that meant and proved such a broad statement. According to Dr. Girard, the present job description's wording was such that it was already encompassed and better captured the required duties and included the proposed phrase "... and evaluates technical and operational changes proposed by industry to ensure their compliance with regulatory requirements."

[175] The Agency also argued that the proposed additional phrase, about the evaluation of technical and operational changes, was included elsewhere in the job description, under the "Analysis and Problem Solving" section, where it states that the VM-01s conduct inspections of establishments and equipment and monitor and evaluate the implementation of operational procedures at regulated establishments to ensure that they comply with legislation and regulations. The duty also states that they review violations or cases of non-compliance to evaluate proposed corrective measures by plant management and that they negotiate action plans.

[176] The changes proposed by the Institute would see the word "guidance" replaced with "direction", the addition of the phrase "all aspects" with respect to, and finally, the addition of a lengthy phrase that refers to evaluating technical and operational changes and that lists to whom "instructions and directives" are given.

[177] I find that with respect to the first requested change to the duty, being the addition of the word "direction", has been proven on a balance of probabilities. The evidence has established that VM-01s do give directions rather than merely advice and guidance. Their interventions are more directory, require compliance by several actors, and go beyond giving advice and guidance. Dr. Cagna was unequivocal in stating that VM-01s in slaughterhouses on the day shift provided direction and not merely advice and guidance. On the other hand, Dr. Martel's evidence was less specific and more

impressionistic. He had not, by his own admission, worked as a VM-01 in nearly 20 years, and his evidence did not counter in any way the assertions made by the Institute's witnesses as to the work they performed or saw performed at the time of the hearing.

[178] On the addition of the phrase "all aspects", I find that its addition is not necessary as it is implicit in the present wording, and I find that its addition would amount to wordsmithing.

[179] As for the request to add the phrase "... **and evaluates technical and operational changes proposed by industry to ensure their compliance with regulatory requirements**" [emphasis in the original], I find that the evidence has established that the VM-01s did have a role to play in this Key Activity, even if the ultimate responsibility for such matters resides with the VM-02.

[180] Dr. Girard objected to the inclusion of this duty not because the VM-01s did not have a role to play in such matters but because he felt that as the ultimate responsibility lay with the VM in charge, this closed the matter. I agree that merely consulting employees on changes or proposed changes does not turn such an action into a Key Activity for the person being consulted. Good labour relations and good management dictate that consulting employees is a practice to be encouraged, but it does not change the fact that the responsibility for the duty lies elsewhere than with the VM-01. However, the evidence disclosed that the VM-01s were more involved than on a mere consultation basis, and I was provided with specific evidence from Dr. Martel about her work for the accreditation of artificial insemination centres and their compliance with regulations. Dr. Cagna also provided direct evidence that VM-01s carry out technical and operational assessments to ensure that a meat product is safe and edible and to ensure the humane treatment of the animal in how it was brought to slaughter. If the regulations are not followed, the VM-01s can decide to stop a slaughter, and the industry is forced to follow their instructions. I find that the Institute has proven that on a balance of probabilities, the VM-01s do evaluate technical and operational changes proposed by industry to ensure compliance with regulations.

[181] Lastly, I must address the list of industry representatives that the present proposal includes. First, I find the phrase "these instructions and directives" to be

unclear, and indeed, the word “instructions” is not found in the preceding phrases. I take it that the list was meant to provide some kind of clarity to the earlier phrase, “industry representatives and other stakeholders”, but if so, I find that this would amount to wordsmithing as the present phrase is clear and unambiguous as well as being broadly inclusive.

2. Key Activity #3

[182] The second change requested to a duty refers to the following duty as written in the present job description: “#3 Conducts clinical examinations, epidemiological investigations, and ante-mortem and post-mortem inspections to evaluate the health of animals and diagnose diseases.”

[183] The change proposed by the Institute would make the duty read as follows:

...

#3

Leads and conducts clinical examinations, epidemiological investigations, and ante-mortem and post-mortem inspections to evaluate the health of animals and diagnose diseases, and verifies the work completed by inspectors and co-veterinarians.

...

[Emphasis in the original]

[184] Dr. Coupal explained that the VM-01s are required to supervise the Agency inspectors’ post-mortem inspections. The VM-01s are responsible for enforcing the *Health of Animals Act* (S.C. 1990, c. 21), which requires inspecting the events between the breeder’s location, the transportation, and the animal’s death. All inspection-related activities are carried out under the VM-01s’ supervision, as required by the *Health of Animals Act*. The VM-01s’ ante-mortem inspections are provided to the industry and carried out by company employees, always under the VMs’ functional supervision.

[185] According to Dr. Coupal, the regulations document is an important document in the accomplishment of her work. Section 138(1) provides for ante-mortem inspections and all related activities. It has been in force since 2019. The regulations, which came into force on January 15, 2019, provide that if no VM is in the establishment, the inspector cannot decide. The *Meat Inspection Regulations, 1990* (SOR/90-288) do not refer to a veterinarian in charge. Regardless of the VMs’ classification levels, under *Federal Public Sector Labour Relations and Employment Board Act* and *Federal Public Sector Labour Relations Act*

ss. 67(7) and (8) and 83, the veterinarians have the final decision-making authority, and the operators must comply with their instructions. This requirement is applicable to evening- or night-VM-01s. Those regulations have been in force since 1990. This work has been carried out since 2001 and before then. The regulations have changed since then, but the same principle recurs. Dr. Coupal agreed with some parts but not all.

[186] Dr. Coupal referred to the slaughterhouse manual. The 1990 regulations are incorporated by reference. The term “Veterinarian in Charge” is in the glossary in Chapter 1 of the manual. A distinction is made between the veterinarian in charge and the official veterinarian. The veterinarian in charge, the VM-02, carries out ante- and post-mortems in small slaughterhouses. If there are multiple inspection stations, an inspector is added under the supervision of the VM in charge. The evening schedule has an official VM and an inspector. The VM in charge approves the programs, but in the evening, the official VM-01 takes over and makes any decisions to ensure that product safety is not compromised. Parts 1.4.2.1. and 14.3.2 set out that the day-VM-02 prepares an outline but that the VM-01 has latitude and permission, which the legislation tells them to do.

[187] Exhibit G-16, the proposed but abandoned animal health job description for VM-01s, states that the VM-01s assess the VM-02s’ emergency plans and make recommendations to improve them, which demonstrates the scope of their mandate. Dr. Coupal explained that as a VM-02, she is responsible for setting up a program in case an exotic disease breaks out in a slaughterhouse. The VM-01 regional foreign animal disease officer goes onsite to evaluate the emergency plan for all establishments and districts. They have full autonomy and act as liaisons between all involved. The VM-01 must consult people in the industry and on the inspection team and provide feedback to management for all non-compliance situations. They verify the slaughterhouse and the emergency-response-protocol program in the districts. The Agency prepared Exhibit G-16, mentioned earlier in this decision and with an effective date of 2007, which includes several different positions. It covers several positions in the west. The Agency did not contradict this evidence.

[188] Both Drs. Martel and Coupal testified to the effect that the VM-01s would be responsible throughout inquests into declarations of suspected disease and that those working in animal health would be alone with the inspector on different worksites

such as suspected or infected farms or insemination sites and would lead the clinical exams and give instructions or directions to the inspector and the farm client.

[189] In her testimony, Dr. Martel explained that in working to eradicate sheep scrapie some years back, the VM-01s had coordinated the work of inspectors, given them directions, and communicated information to infected farm owners.

[190] Dr. Martel explained that from late 2010 to early 2011, she had worked in meat hygiene in the different sectors. She held VM-01, VM-02, and VM-03 positions at different times throughout. At the time of the hearing, she was a VM-01. She explained that the VM-01s were onsite. As a VM-01, she carried out ante-mortem inspections and post-mortem inspections on the killing floor, and she had to make approvals and condemnations as appropriate. She was responsible for export certification, residue sampling, and all the tasks relevant to a VM working in a slaughterhouse. Her supervisors worked remotely. When she was not on the floor, she was processing animal records at the same time. She went on an ad-hoc basis once or twice a month. One of her colleagues left for two years to cover the shortage of VM-01s in meat hygiene.

[191] As a VM-01, Dr. Martel explained that she conducts examinations from A to Z. In animal health, when a case arises that requires controlling animals, she fully manages it, and depending on the disease, she checks the epidemiology and visits the location in case of a suspicion of disease. Breeders are not keen to invite federal VMs onto their sites. As a VM-01, she must explain their obligations under the *Health of Animals Act* (S.C. 1990, c. 21), and they must cooperate, or else she can call a peace officer. Discussions take place with the breeders. In a disease-control situation, it is not too complicated, but in an emergency response situation, breeders are emotional because the animals are their babies. The Agency's role must be explained, to ensure the minimal possible impact on the country's economy. She must gather all the information and must inform them of all the legal procedures to follow. At the beginning of an epidemiological investigation, a large number of questions are asked, to find the origin of the disease and the potential of contamination in other locations to spread the disease. To control the spread of the disease, this is always the first step because afterward, obtaining information is more difficult.

[192] Dr. Martel explained that she makes an appointment with the breeder to assess the animals. The breeders always have a long list of questions, such as how long the intervention will last. She answers their questions and provides as much information as possible. She prepares for the visit, usually with one or two inspectors. She determines where they are going, along with the requirements. A list is compiled over time so that she knows who will come with her. She refers to the chart that has been in place for some time. The inspectors come with her according to their rotation chart. She opens her chart according to the specified inspector chart and explains her plan to the inspector, which often depends on what is taking place at the location. She leads the inspector and tells them what she expects from them. During the investigation, she receives the information and documentation that the inspector collects according to her plan. She examines the animals and their history and asks for permission to speak to the veterinary practitioner. Sampling is done for each disease; there is always a series of tests. She always has one or two inspectors with her, and sometimes, she has two teams. It depends on the size of the herd. She analyzes everything and plans the tracing with the upstream and downstream people. All this is done in a continuum depending on the circumstances; for example, for a large investigation of a large farm with a large herd, often, another VM-01 comes with her. Sometimes, as a VM-01, she is the lead, and at other times, another VM-01 is the lead, and she follows their instructions. When she is the lead, she is not accountable to anyone. She plans her Agency intervention based on the initial visit and reports when she is done, but she leads it from A to Z.

[193] Dr. Martel provided an example of a report titled “Inspector’s Report” (Exhibit G-29), which was about scrapie and was her A-to-Z investigation report. It demonstrates that she carried out the investigation as a VM-01 as the veterinarian in charge as explained in the Agency’s document (Exhibit E-1). The EGs do not write inspector’s reports. Animal health VM-01s are veterinary inspectors. As Agency employees, they are Agency inspectors for all inspections. The investigation began in November 2010, and in October 2011, the epidemiological investigation completed after one year of testing and investigating all the sanitary control measures. After a year passes, a five-year monitoring period begins, with controls done four times a year. Dr. Martel discussed her VM-01 role in an emergency response episode for a salmon infection. She had the lead for a site infected with a disease and was responsible for everything that took place at the site, managing the onsite inspectors, and managing the

schedules at the site to be controlled. That emergency measure lasted four or six weeks. She did not remember exactly when the investigation ended. In 2007, when she began working as a VM-01, she did not lead teams because she was not yet comfortable doing so, but she was responsible for a small file. In 2010, she began handling larger files.

[194] In cross-examination, Dr. Martel explained that she handles organizing and planning epidemiological investigations or euthanasia cases; she decides on her own and does not ask the VM-02 on duty.

[195] According to Dr. Cagna, the VM-01s “lead and produce”; for example, they will take on a problem of a suspicion of an exotic disease. To protect exports, when foreign authorities carry out audits, if a large number of dead animals comes to a pig trailer or if issues arise with poultry ante-mortems, mass necropsies must be performed. The VM-01 will ask the inspectors to be deployed to take the samples. And for example, company employees will be asked to provide the labour to help with pig carcasses. The VM-01s will ask to cut it a certain way, to cut a little more, or to open it at a certain spot. If a VM-01 has strongly suspected the presence of a disease, all the slaughterhouse workers will be confined. Those are big decisions. The VM-01 is backed by specialists but not at 10:00 p.m.

[196] Dr. Cagna explained that the VM-01s working an evening or night shift and who are in receipt of the FSD are called on to lead in post-mortems. If a new lot is slaughtered, and if an inspector states that injuries are visible, then the VM-01 examines the slaughter line and decides how to proceed. For example, they can ask the inspector for that lot to take something out for them. They then direct the company and inform it of the action to take to address the situation. They do not wait for the day-VM-02 on the next day. They must take action. For example, an exotic animal disease can appear at any time in a lot. The VM in charge is responsible for regulations.

[197] Dr. Cagna stated that the VM-01s conduct clinical reviews. During an ante-mortem, the foreman may call the VM and inform them of a significant amount of death in a cage. The company alerts them as to the percentage. If the problem is limited to a trailer, something else may be thought of; maybe it was a typical transportation problem. If it is 5% or 10% of the lot, and if it is poultry, it sometimes means 200 to 300 chickens and some are in the shacklers, then necropsies are

required, and 10 to 15 chickens are taken to decide whether to continue with the slaughter or whether sampling is required. The question is whether the farm or slaughterhouse must have a non-compliance carrier report because the carrier did not transport the animals properly. That is the most classic case.

[198] The VM-01s instruct inspectors, who have significant experience. That is how the work is done. The onsite VM-01 has final authority. They go as far as instructing experienced company people, for example, for sampling. They cannot refuse, unless there are very good reasons.

[199] Dr. Cagna referred to Exhibit G-1, Tab 33, which is s. 29 of the new *Regulations*. For ante-mortem inspections, for large animals, the inspection must take place within 24 hours of the slaughter. A VM or a trained inspector can carry out the inspection. If it is the VM-01, they make the decision. If it is the inspector, they will notify the onsite VM to conduct the comprehensive inspection. If a problem arises on the regulated side, significant consequences may ensue.

[200] Slaughterhouse employees who unload animals are not trained to suspect disease in exotic animals. They will set aside animals that seem to have major problems. There is always a VM, a senior EG, and a junior EG, but there is always a VM-02 and a VM-01 in charge. The EG, who is sometimes a veterinarian, can carry out the inspection, but it is always under the VM-01's or VM-02's supervision. The condemnation process is reserved to the VM.

[201] From the Agency's perspective, Dr. Girard said that the VM-01s do not lead clinical examinations. He would say instead that they carry them out. There may be some leadership due to the experience of one VM as compared to another. According to him, the term "leads" does not describe what is required of a VM-01. He would say that a VM-01 could give some direction but that the term must be used with care. It would be risky to use such a verb without clear usage. Dr. Girard did not explain further why it would be risky to use that term, but neither he nor the Agency suggested any alternate wording.

[202] Dr. Girard explained that on the day shift, in a literal sense of the word, the VM-02 always provides guidance on the work to be done. In a strict sense, the VM-02 always provides that guidance with respect to the VM-01. For the night shift, the VM-01 receives the differential but does not have the delegation, so they cannot lead the work

team. The VM-01 can be called on to respond to an incident. It is part of the evening tasks that the differential is for. The term “leads” must be defined. The day, evening, or night shift VM-01 does not have the delegation to direct.

[203] The VM-01s do not check the inspectors’ work. It is not part of their jobs to monitor the EGs’ slaughterhouse tasks. As for the EG-03 inspectors, the EG-05 supervises them. It is up to the EG-05 to check the inspectors’ work, and the VM-02 supervises employees, which is a VM-02 task. The VM-01 does not have to check anyone’s work. During the evening or night shift, the VM-01 receives the differential. They have no delegation per se; they do not have to complete performance evaluations. That is not in their job description, even if they receive the evening differential.

[204] Dr. Girard stated that he was familiar with the content of the regulations and with their purpose. Section 139, which defines the licence-holder’s obligation to present an animal and a sample of a shipment, sets out an obligation for the licence holder to present to a veterinary inspector or an inspector under their supervision. References to an inspector’s supervision means their own supervision, not delegating to one. Those references are not about intervening with the inspector staff. Instead, they mean supervision for detecting disease or pathology in an animal when it arrives at a slaughterhouse. There is a regulatory obligation to determine the disease or pathology, to request a deeper examination or a condemnation.

[205] In support of its contention on its proposed change to Key Activity #3, the Institute again referred to *PIPSC*, cited earlier, and to the passage that states that the VMs (broadly speaking) are risk managers who use their professional judgement and competence daily. As set out earlier, I accept this broad statement but find that that decision is not relevant to the issue before me as it does not address the work performed by the VM-01s.

[206] The Institute also referred to Dr. Martel’s testimony to the effect that she explains policies and conditions to private veterinarians and animal owners and that she certifies and approves veterinarian certificates for animals or animal products destined for import or export.

[207] In its submissions, the Institute referred to Dr. Coupal’s testimony on the work performed in this respect by the VM-01s on the night shift. According to Dr. Coupal, the term “leads” is missing. The VM-01s work with live animals in -20 degrees

centigrade conditions and colder, or in hot weather. Storms can occur, and the VM-01s must act on arriving animals. They must perform necropsies, direct and examine the animals, take pictures, and investigate the animals' conditions, to document the reasons they were weakened, because it could result in significant fines for the truck driver or the breeder.

[208] According to the Institute, during emergency measures, the VM-01s direct work teams to eradicate disease and have done so since 2003, and it pointed to the testimony of Dr. Coupal on this.

[209] The Agency argued that the Institute had not proven that the work in question was an integral part of the grievors' duties and argued that it had also failed to prove that they were authorized to lead a variety of exams or verify the work of others.

[210] The Agency pointed to the testimony of Dr. Girard to the effect that the grievors were not asked to lead exams, only conduct them, as outlined in the job description and that the evidence led by the Institute had only confirmed this. It also referred to Dr. Girard's testimony to the effect that the VM-01s did not verify the work of others and that this duty was given to the VM-02s or the EG-05s.

[211] As for work on emergency responses, it stated that this work was voluntary and that it should not be included. The Agency's jurisprudence includes the Board's decision in *Maillet v. Treasury Board (Department of Employment and Social Development)*, 2014 PSLRB 16, to the effect that voluntary duties cannot "bootstrap" an employee into a new job description and that an Agency must require the employee to perform the duty in question.

[212] The VM-01 generic job description contained in the ASF, in addition to the Key Activities section, refers to the conduct of clinical and epidemiological examinations in the section that follows the Key Activities section and that is entitled "Responsibility". The second paragraph in this section states that the VM-01s are "accountable for planning and conducting" such examinations, as well as post-mortem and ante-mortem examinations at "regulated establishments in an assigned District" to assess the fitness of the animal of the meat for human consumption. The following two paragraphs set out the importance of this function as wrongful decisions might "endanger citizens' health", and the risks and implications were "major".

[213] I find that the request to add the word “Leads” has been proven by the Institute on the balance of probabilities. I find that the use of the word “conducts” is not sufficient to describe the duty. I do not accept the testimony of Dr. Girard, who stated that the VM-01s are not authorized to “lead” such examinations and that the duty they are required to perform is already included in the job description. Simply asserting that the VMs are not authorized by the Agency to lead is not in and of itself evidence that they do not perform this work.

[214] Drs. Coupal and Cagna are both VM-02s and both worked as VM-01s. They currently supervise VM-01s, and both were able to give clear examples of the work performed by the VM-01s for this Key Activity in the area of ante- and post-mortems, necropsies, and clinical examinations. Dr. Martel gave detailed testimony about her work in animal health as well as meat hygiene, and her testimony supported those of Drs. Coupal and Cagna to the effect that VM-01s are required to lead rather than simply conduct as they work as part of a team but that they bear a higher responsibility than do industry representatives or inspectors. I find that the duties under this heading are better captured in the wording presented by the Institute. For this reason, I prefer their testimonies over that of Dr. Girard.

[215] I find that its present inclusion in both the Key Activities section as well as the “Responsibility” section is not sufficient to describe the duty and to signal its importance. The legislation requires the VM-01s to certify animals; to do that, they must lead and conduct examinations.

[216] However, I find that the proposed addition related to verifying the work of others goes too far as it suggests some kind of supervisory responsibility, which they do not have. One must keep in mind the environment in which the VMs work and the fact that all sectors, such as industry employees, government inspectors, and veterinarians, work together as a team but in different supervisory silos. While the veterinarian may perform their duties after an employee or inspector has completed their tasks, I believe that it goes too far to state that they are responsible for verifying the work of other employees. I find Dr. Girard’s testimony credible when he stated that this task is required in the roles of the EG-05 and the VM-02.

3. Key Activity #4

[217] The third request to amend a duty focused on the addition of a broader geographic scope to the existing duty and the addition of another person to whom the VM-01s submit disease reports. The Institute identified the following duty as needing amendment: “#4 Investigates suspected and actual incidents of reportable, notifiable and other diseases within the district and prepares reports for the Supervisor.”

[218] The proposed change would make this duty read as follows:

...

#4

*Investigates suspected and actual incidents of reportable, notifiable and other diseases within the **district, Canada and other countries**. Prepares reports for the Supervisor and **the Program Specialist Officer**.*

...

[Emphasis in the original]

[219] The Coupal document provides a general statement on the Institute’s position. It argues that as presently written, the VM-01s work only in their assigned districts and report only to their supervisors. The Institute argued that the scope is in fact much larger. The document refers to several outbreaks of different types that occurred across Canada (in B.C., Saskatchewan, Manitoba, and Newfoundland) as well as the United Kingdom, stating that the VM-01s were sent afield to lead teams working on the eradication of the outbreaks.

[220] Dr. Coupal explained that since 2003, animal diseases, including influenza outbreaks in the west and salmon infections in Newfoundland, have become more and more common. The Agency asks VMs to go anywhere in Canada to help, and even elsewhere in the world. The Agency plays an important role and must have an emergency plan to address animal disease outbreaks before they reach Canada.

[221] Dr. Coupal stated that there is a lack of significant related resources, which is why the VMs are often asked to help. The Agency asks the VM-01s and VM-02s to participate in developing emergency teams. Animal diseases are still present, and the Agency requests that the VM-01s and VM-02s work across Canada. They are called on constantly to participate in national committees. They make much broader recommendations, and they receive national training. In a crisis, the animal health VMs

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

are called first. Those in meat hygiene also respond to outbreaks. The Agency then adds personnel, an inspector and other VMs to the team, to treat the disease-stricken region.

[222] According to the ASF, emergency measures were taken in 2003, 2004, 2005, 2007, and 2009. Incidents are not simply reportable events. There is animal scrapie of sheep in Quebec. The VM-01s and VM-02s are borrowed from other institutions to eradicate the disease and then treat the animals. As for tuberculosis in the west and elk scrapie, all the inspectors and veterinarians are still in reaction mode to counteract those diseases. They must be destroyed to continue exporting to other countries.

[223] The VM-01s must help in emergency situations. The VM-01s are sent on rotations of no more than three weeks. In terms of health and safety, it is difficult to euthanize animals. The VMs often become sick, so rotations are necessary. When the VM-01 bank is empty, then the meat hygiene VM-01s and all veterinarians, the VM-03s and VM-04s, go; they all go. All the VMs are called on.

[224] In such situations, the VM-01s prepare reports not only for their supervisors but also for the program specialist officer. I note that Dr. Cagna's performance review, Exhibit G-55, which he signed in July 2018, refers to his efforts with respect to emergency response work in 2004 and 2008 in both B.C. and St. Wenceslas, Quebec.

[225] Dr. Martel explained the VM-01s work in several districts and other provinces. She stated that they prepare reports for specialists, during either their regular work or during emergencies. The VM-01s rarely travel to other provinces, but they travel to other districts. For example, as a VM-01, she had to travel to the Rimouski, Quebec, district to investigate scrapie, to Mirabel to perform her regular animal health duties, and to other provinces for emergencies or other preparations. As an example, she stated that she was asked to be a trainer for a team in Manitoba and to investigate suspected incidents of disease, such as avian influenza or tuberculosis in B.C. This was part of what is often referred to as train-the-trainer. She explained that she has travelled across Canada to perform those tasks since she began working in animal health.

[226] As a meat hygiene VM-01, she had to go to other slaughterhouses, which is common in animal health. Since the beginning, she has travelled to other districts for different reasons, including in late 2001 and 2004 and then in 2007. Dr. Martel

referred to her 2009-2010 performance evaluation, which confirmed that she worked in different districts, as well the one for 2011-2012. She was a substitute in the Rimouski and Sherbrooke, Quebec, districts. Her performance evaluations are in Exhibits G-21 and G-22. Exhibit G-31 refers to her emergency response team work.

[227] Dr. Martel explained that she had been an aquatic-site coordinator in Newfoundland first in 2012 and that in 2013 and 2014, she managed all the field and diagnostic monitoring teams. Managing the teams involved managing the people who came and went and all the veterinary staff. She had to ensure that the necessary vaccinations, etc., and everything else was done according to health-and-safety standards. She then reported to the lead VM-02, to keep them informed.

[228] Dr. Martel agreed with the Agency that they do not have to lend a hand but that if an event arises that requires their expertise, a good reason would be required to refuse to help. For its emergency response, this group takes significant training and keeps up to date on events. The Agency wants its VMs trained and able to respond at all times. It would be frowned upon if she did not help. No VM has ever refused to help. The job description does not state that helping is obligatory. There is an obligation to intervene. Everything is planned so that the VM-01s involved can leave within 24 hours.

[229] In cross-examination, Dr. Martel stated that her 2016-2017 performance evaluation had an overall score of A+ and that her performance exceeded requirements, both quantitative and qualitative. However, she was clear that emergency responses are an integral part of a VM-01's tasks. Otherwise, no one would respond or be able to respond to emergencies. The Agency's main goal is to ensure that Canada remains disease-free. Canada is an exporting country. If the day comes that it can no longer export, the agricultural industry will stop in its tracks. Emergency responses exist because they must be ready within 24 hours and be present at the location in need. It takes masses of people to respond effectively. Not all the VMs participate in emergency responses, but there are many VM-01s and inspectors. One group may consist of 5 or 6 people from animal health and the others from meat hygiene. There are approximately 30 employees and 60 to 70% are included in emergency responses. There are always more VM-01s and EGs than VM-03s and VM-04s because there are much fewer VM-03s and VM-04s than VM-01s. Participation in emergency responses does not require the participation of all VM-01s at once, but

when they are part of the group, it is assumed that they will intervene and participate. Her supervisor recommended that she be part of the team, which is clearly stated in her performance evaluations. The VM-01s have a choice, but the Agency strongly recommends that they take part in all emergency preparedness.

[230] Dr. Martel agreed that working in other districts is still voluntary. However, if no volunteers come forward, someone will be obligated to go. For her part, she stated that she knows that Quebec and Rimouski still collaborate, but there are also Mirabel and Lacolle, Quebec. For example, a VM-01 from Rimouski went to help in the Quebec district. The VM-01s are bound to move in animal health; they do not remain only in their districts.

[231] Dr. Martel also testified as to the VM-01s' mobility and their ability to work in both animal health and meat hygiene, which the Institute pointed out is a benefit to the Agency and did not exist before the merging of the duties in the new (and contested) job description. Dr. Martel stated that the VM-01s working in animal health were called on to perform meat-inspection duties in abattoirs outside their districts and that this mobility was included in her performance review. Again, the Institute referred to the Board's *PIPSC* decision. Again, for the reasons outlined earlier, I find that it is not relevant to the issue before me.

[232] In cross-examination, Dr. Martel agreed that the VM-01s can refuse to go to other districts but that never they refuse. They enjoy that work. In a hypothetical situation in which a manager asks a VM-01 to go to meat hygiene, the VM-01 has no choice. Somebody must do the work. In animal health, there is more flexibility; the risks are different. In slaughterhouses in meat hygiene, if no VM-01s are onsite, then the world stops.

[233] According to Dr. St-Hilaire, the VM-01s must investigate suspected incidents of reportable and other diseases reported in a district, and they must prepare reports for supervisors. They must do it "on the spot". He witnessed a situation of an animal park containing 20 bovines. If a VM-01 has doubts or suspects that maybe a cow has a disease, they will seek support. The VM-01 will contact their VM-02 and the veterinary officer involved; if they have any doubts, they must raise them. That is part of their responsibilities as VM-01s and inspectors. All Agency employees have laws that they must enforce, and the VM-01s do so where they work.

[234] According to Dr. St-Hilaire, the VM-01s may be asked to travel within Canada, exceptionally in emergency situations when a region requires additional support. The Agency must be able to manage such situations. For example, a tuberculosis situation arose in the west. There are national and regional teams and a team and operations, which are the same thing. When it comes to travelling to another country, the only case he could remember was when a VM-03 was called on to help England with a foot-and-mouth disease issue. That was the only case he remembered during the 2000s. International agreements are in place. People with a certain expertise were called on, including a specialist. Frontline employees do not travel because that can directly impact local operations. It is true that help will be offered to the extent that the Canadian system's integrity is not compromised, but Canadian operations continue, so frontline workers will not travel.

[235] Dr. St-Hilaire explained that at the operations level, the VM-01s have specific tasks, and that the VM-02 supervisor and the regional VM-03 also have a role. The VM-02 and VM-03 program specialists are connected. In case of a need for specialist reports, the VM-01s and VM-02s discuss the issues. The VM-02 decides what to do. If the VM-02 has all the information but requires more details, they will contact the specialist. It is very hierarchical. As for the VM-01 who spends their time on the ground, in a situation, the VM-01's work continues; they will not stop their work to prepare reports. Either the EG-05 or VM-02 will prepare the report. The VM-01 will report and notify, but their role stops there. They do not prepare reports for supervisors and program specialists.

[236] The Institute argued that while the Agency had argued that participating in emergency response work was purely voluntary, it had failed to explain how this essential activity could be performed without the participation of the VM-01s and without compromising the Agency's mandate. According to Dr. Girard's evidence, the Agency could require certain VMs to perform the work if there were an insufficient number of volunteers. The Institute pointed to the Performance Evaluation Reports ("PERs") of Drs. Martel and Cagna, which had been submitted in evidence, one of which stated that the incumbent could be called upon to work in other areas of the country or in other countries, be part of the emergency response team, or act as a replacement for the VM-02.

[237] The Institute refuted the Agency's position that Dr. Martel's testimony about her duties should be discounted because she was an exemplary employee who surpassed what was required of her. It pointed out that the objectives in her performance review were those of a VM-01 as it would have been inappropriate for the Agency to have required VM-02 duties of her while only paying her at the VM-01 group and level without either reclassifying her or paying her acting pay. It distinguished *Duffield* by arguing that in that case, the duty had only been added to the employee's training and development plan and had not been required of them as part of their objectives, as in this case.

[238] As for the work performed by the VM-01s as part of emergency response teams specifically, I reject the Agency's submission that as such work is voluntary, it is not required to be included in the job description. The evidence disclosed that this work is necessary and as such is already a Key Activity, albeit with a smaller geographic scope. The work would certainly not cease merely because the Agency found itself short of volunteers. If the Agency were to have this work accomplished by volunteers, given that it means being away from one's residence for different periods, this mere fact would not obviate its inclusion in the job description. Staffing required duties with volunteers does not, in and of itself, make the work voluntary.

[239] While the Board's jurisprudence makes it clear that truly voluntary duties are not to be included in a job description, I do not find that the proposed duty is voluntary in the sense found by prior Board jurisprudence. In *Batiot v. Canada Customs and Revenue Agency*, 2005 PSLRB 114, the adjudicator found that the duties were voluntary as the grievors had chosen to keep more complex files, for developmental or other purposes, rather than to turn them over to their team leader for reassignment. That is not so in this case. In *Currie 2008*, the adjudicator rejected the Agency's contention that the work was voluntary as he found that the grievors were given no choice as to whether to continue to work on higher-complexity files. I find that in this case, Drs. Martel and Cagna have proven that on the balance of probabilities, the duties, while assigned on a voluntary basis to minimize family issues, were not in and of themselves voluntary but were required to be performed and that they would have been performed on a mandatory basis had there been an insufficient number of volunteers.

[240] Having rejected the Agency's objection to including the duty based on its voluntary nature, the issue then becomes whether the evidence revealed that the proposed changes to this Key Activity should be included in the job description.

[241] A secondary issue is the date on which it should be included, given that the Institute's evidence indicates that the portion of the work on the emergency response teams related to work performed only since 2003, even though the Institute claims that all changes should go back to 2001. The only testamentary evidence on the date on which this duty was performed is from Dr. Coupal, who testified that she identified this work in 2003 and the emergency response team work discussed earlier. There is no other documentation on the other part of the proposed changes. The Agency presented no evidence to contradict Dr. Coupal's evidence. However, emergency response work has, the legislation discloses, always been a requirement, and the Agency acknowledged this when it included it as a Key Activity, even if such work increased in frequency only after about 2003.

[242] In its submissions, the Institute also argued that the proposed change was supported by the testimonies of its witnesses. It referred to Dr. Martel's performance review. I do not believe that performance evaluations should necessarily serve as the basis for drafting generic job descriptions. While performance reviews should reflect the duties required of an employee, they can also reflect the fact that employees sometimes go above and beyond what is required of them without having it be the case that this is required of all employees at that level. That is so in the case of, for example, Dr. Martel. While it might have been inappropriate or unfair of the Agency to have based her performance review on objectives that are in some cases those of a VM-02, it appears to be exactly what happened and was the result of her extraordinary competence and experience. On the other hand, the Agency did accept that the evidence of the three Institute witnesses applied to the bargaining unit as a whole. I have concluded that my decision on this aspect should be based on the evidence presented as a whole and that performance reviews are part of that evidence but are not determinative of the issue itself.

[243] Dr. Coupal testified to the work done during several outbreaks between 2003 and 2015 and testified that the VM-01s had traveled across the country, to direct teams. Both Drs. Martel and Cagna testified as to their personal experience in this respect, and both have had emergency response work done in other regions included

in their performance reviews. Dr. Martel testified that she was regularly required to work in other districts.

[244] The Agency argued that as the Agency is a national organization, the addition of “within the district, Canada” is superfluous. I reject this argument as it does not respond to the present wording of the job description, which restricts the scope of this duty to the VM-01’s own district. The Agency’s argument would apply only if the present wording did not restrict the geographic scope of the work as it presently does.

[245] However, the Agency’s primary argument rested on the fact that it maintained that as the work of assisting with outbreaks in other provinces was voluntary, it should not be included in the job description, which is an argument that I rejected earlier. Dr. Martel testified that if the VM-01s did, rarely (i.e., less than once per year), travel to other provinces to assist with outbreaks, it was voluntary on their part, and no VM-01 was required to. Nonetheless, although the Agency chose to assign the necessary work to volunteers, the Agency required the work to be done and asked the aggrieved employees to assist and perform this work in numbers sufficient to accomplish the work, failing which it would assign it on a mandatory basis.

[246] Dr. St-Hilaire testified that the VM-01s were not required to investigate in foreign countries as part of their regular duties. I note at this point that while the Institute’s witnesses gave concrete examples of travelling to other districts or provinces, none of them provided any evidence that international travel was involved in the duty, and the Institute’s argument on this front remains only theoretical.

[247] With respect to the Institute’s evidence on including this duty in performance reviews, the Agency noted that Dr. Martel, who is one of the employees for whom a job description was placed in evidence, was formerly a VM-02, that she had requested a demotion to a VM-01 position because she wanted to move to Quebec, where there were no other VM-02s at the time, and that her performance review noted that her performance regularly exceeded the expectations of her. On reading the objectives in the performance review, according to the Agency, it becomes evident that the objective referred to was one of growth and development. In *Duffield*, the Board found that an employee’s personal learning plan was not proof that the functions described had been authorized by the Agency.

[248] As for the remission of reports to the specialist, which the grievors requested as an addition, Dr. St-Hilaire stated that such reports were prepared by the supervisor but that he or she could delegate preparing them to the VM-01, but that the VM-02 remained responsible for them, even if the VM-01s did sometimes communicate directly with the specialist when this task was delegated to them. The Agency argued that the Institute had not proven that this task, as proposed, was an integral part of the VM-01s' work.

[249] The Institute acknowledged that this type of task might not occur on a regular basis but alleged that the Agency authorized such inquiries and required them. It pointed out that in *Jennings*, the Board had decided that even if the work involved constituted only a minor portion the work performed, nonetheless, it had to be included in the Key Activities section of a job description if its non-performance could result in serious consequences.

[250] The Institute again cited a passage from the Board's essential-services decision in *PIPSC* in support of its contention that such inquiries were of primordial importance and were an integral part of the work performed by the VM-01s. Again, I reiterate my decision on the relevance of this decision to the matter at hand.

[251] However, I find that the wording in the current job description does not fully reflect the work that is required of the VM-01s. The wording as proposed by the Institute provides a more accurate description of the duties required of and performed by the VM-01s. Dr. Martel provided detailed examples in circumstances in which she was required to investigate suspected and actual incidents of reportable, notifiable, and other diseases within the district and Canada. She provided examples of the types of reports she had been called upon to produce for her supervisors.

[252] I have concluded that the wording on geographic scope should be enlarged to include all of Canada. However, I have not been provided with evidence on which to conclude that such work can be conducted overseas such that it should be included in this Key Activity.

[253] On the issue of the preparation of specialist's reports, I find that the Institute has not met its burden of proving that this constituted a Key Activity. The evidence disclosed that the preparation of such reports was a VM-02 responsibility that could, on request by the VM-02, be delegated to the VM-01 level. While VM-01s do participate

in the preparation of reports by writing the initial drafts or providing information for them, it was the uncontradicted evidence of Dr. St-Hilaire that the VM-02s are responsible for the reports. I do not find that the evidence is sufficient to support the inclusion of this duty as a Key Activity.

4. Key Activity #5

[254] The fourth requested change to the job description involves training. As written at present in Key Activity #5, the duty states that the VM-01s provide "... training to CFIA inspection staff, private veterinarians and employees in other agencies on the delivery of Animal Health and Meat Hygiene Programs." The new wording proposed would change the duty to read that the VM-01s provide "**instructions, mentoring and training**" [emphasis in the original].

[255] Dr. Coupal explained that the concepts of providing instructions and mentoring are stronger than just training. For animal health VM-01s, the national headquarters develops new training programs, the "train the trainer" materials, and the mentorships. Each region sends its trainers to Ottawa, Ontario. They return to their districts and train the VM-01s and VM-02s responsible for delivering the training. The VM-03s used to lead the training. Several restructurings and losses of VM-03s have occurred over the years. The train-the-trainer tasks became commonplace among VM-01s, and no longer did the VM-03s deliver the training. Instead, she said that what she referred to as "unpaid acting substitutes" provided mentoring in their respective regions. Evening- and day-VM-01s, animal health VM-01s working on day shifts, slaughterhouse employees, and meat hygiene VMs have been mentoring since 2001. She did not know whether other levels of VMs carried out mentoring.

[256] As I wrote earlier in this decision, Dr. Coupal testified that VM-01s assigned to work either the evening or night shift shared similar main duties with the VM-02s. The VM-01s who receive the FSD for the evening shift are required to manage the program's application and advise the VM-02s. She also stated that the VM-01s may be called upon to give other VM-01s enhanced training. In Dr. Coupal's experience, a VM-02 will choose an experienced evening shift VM-01 and will put them in charge. The evening-shift VM-01 has the training to manage staff and is empowered to arbitrate, negotiate, and de-escalate conflictual situations.

[257] Dr. Martel testified that the VM-01s do more than train. She stated that she mentors and instructs personnel. As for emergency measures, she physically mentors. For example, she teaches others how to perform necropsies and how to sample research specimens and the clinical signs to look for. It is more than delivering training. Exhibits G-32 and G-33 contain two examples of her acting as a trainer. She had to supervise and then deliver the training to inspectors, VMs, human resources personnel, and certain people working in meat hygiene. She was also an emergency response trainer. Exhibit G-33 has a concrete example that she led her team. She created the training and delivered technical and theory training. Exhibit G-34 contains the same thing, training that she created for an investigation that she conducted in 2013 at a farm. She created that document. It was new training.

[258] Exhibit G-35 is official Agency training for the Diagnostic-Monitoring Group, which is a presentation that Dr. Martel delivered in January 2016 to the Equipe d'intervention d'urgence en Santé des animaux du Québec (EIUSA) diagnostic and monitoring team. She authored that presentation and was responsible for it. She trained all the participants at the theory and technical levels. As for the emergency response groups, each had to present on its unit. Those people are other VM-01s who do that type of work for their unit.

[259] Exhibit G-36 includes pictures that were part of the training that Dr. Martel delivered nationally. She was asked to provide images for the go kits. She had created the go kits over the years, with an inspector's help, and she developed a better structure for the material. When a call for a specific disease is received and is ready to go, they go to the farm. It is the go kit at hand for mammalian or avian diseases. The protocol is still in force today; the go kits are for the national level. Her 2009-2010 performance assessment (Exhibit G-21) recognized that she acted as a trainer for her colleagues for animal product and by-product export in the Quebec region.

[260] Dr. Cagna explained that the VM-01s instruct, mentor, and train. As a VM-02, on the Agency side, he always hopes to have more. It is not because they are veterinarians that the EGs are inspectors. Veterinary medicine does not teach how to look at a carcass and know whether it is edible. When they start at the Agency, they receive about six weeks of training followed by slaughterhouse chain training. Just because an inspector is a veterinarian does not mean they know what to do if they observe a certain pathology. Veterinarian training teaches how to heal animals, not how to

examine carcasses to decide whether they are safe for human consumption. When working with people who hold knives, some are poor at the work. One must know how to deal with it and be listened to. The whole inspection takes time to learn. New VMs cannot be left alone for post-mortems. More is required than just training them. A new VM or inspector requires time on the job, even if the VM is functional. The training fine-tunes people for the decisions that they will have to make. For example, when determining how to work with a company's employee in case of a breakdown in communication, one must be inventive and follow regulations. An aspiring VM must acquire that mentoring. As for the plant employee, for poultry, the new VM must be trained, and tests must be administered. At first, they work only on routine jobs, and during the rejection process, they must learn to examine the entire lot and the animal's injury. For example, in situations in which a lot is completely out of sorts, there are ways to adjust how problems are viewed. He explained that the VM-01s and VM-02s train the trainers. Sometimes, more than fine tuning is done. It is explained to them when they do not understand why the lot is good or not good. New VMs must know how to apply new scales. It is continuous learning that comes with experience. The VMs do more than just train; they mentor.

[261] Dr. Cagna stated that slaughterhouse employees must pass the tests for trainers that the VM-01s had themselves passed when they were trained. Those trainers train other detection employees. The VM-01s are onsite to instruct. When other employees make bad decisions, the VM-01s explain why they made a mistake and why it was wrong to do it that way. They work with humans, which is why correlation tests during a lot can take 40 to 45 minutes with them. The VMs observe, and employees ask questions. Mentoring is constant.

[262] Dr. Cagna explained that some inspectors watch pigs, cut ganglia, and look for injuries. The arriving work is to be sent to the company's employees. As for pigs, the VM examines the slow-speed production line to decide whether condemnation is warranted. The VMs must train company employees and inspectors because the number of VMs and EG inspectors are in decline. Sometimes, carcasses appear, and they discuss with their colleagues. The mentoring takes time, 1.5 to 2 months.

[263] The requested addition of the provision of instruction and mentoring to the fourth requested duty is a substantive change. I agree with the Agency and the

Institute that there is a significant degree of difference between providing training and the provision of instruction and mentoring.

[264] Aside from the contested duty being set out in Key Activity #5, the generic job description at issue also mentions training in two places. Under the “Leadership” section, the job description states that the VM-01s provide “professional advice and training” to the Agency’s inspection staff as well as to private veterinarians and employees of other agencies. The second mention is in the section entitled “Analysis and Problem Solving” and states that they assist in the training of inspection staff, private veterinarians, and employees of other agencies.

[265] The Institute’s submissions pointed to the testimony of Dr. Martel, who stated that she did this regularly, and to her testimony of her role, since 2008, on the national group related to emergency measures. As part of her duties in that respect, she was regularly asked for advice and information or for an analysis of emergency measures, and several times, she had also been a trainer. She explained that during training, there was considerable discussion among the group, and she was required to give explanations. She had described the training that she had developed and given to several parties, and her performance review noted that she trained her colleagues on exporting and that she organized a staff exercise in Winnipeg.

[266] On the animal health side, Dr. Martel testified that the VM-01s must train and mentor accredited veterinarians and that the performance reviews of such veterinarians include this duty. The Institute indicated that Dr. Cagna also testified that he trained new veterinarians and mentored them as well as performing a train-the-trainer role for the veterinarians who reject.

[267] The Agency argued that the Institute’s proposed change to the order of the words of this duty is not the Board’s role, which does not include correcting any formulation. The Agency noted that training was already included in Dr. Martel’s job description.

[268] As for the addition of the word “instructions” to a variety of actors, the Agency argued that the Institute had not proven that this was the case. According to Dr. St-Hilaire’s evidence, this was a task assigned to the VM-02s. He testified that the VM-01s and VM-02s, as well as the EG-03s and EG-05s, were expected to identify situations of non-conformity and to explain the measures to take to the establishment’s employee

and that this duty was included in the job description. He pointed out several phrases included in the job description such as, “Reviews non-compliance ... to evaluate corrective measures proposed by plant management ...”, “recommend appropriate courses of action”, “... explains new and existing directives and regulations ...”, and others. Dr. St-Hilaire testified that the VM-02s were expected to provide mentoring, and the Agency argued that having a seasoned employee respond to queries from new employees is not mentoring. Mentoring involves more than merely “explaining” things to new employees, and the Agency argued that the Institute’s evidence concerned training, which was already included in the job description, and not mentoring.

[269] On the issue of mentoring, the Agency cited the Board’s decision in *Public Service Alliance of Canada v. Treasury Board (Department of Employment and Social Development)*, 2014 PSLRB 38, in which the Board stated that responding to questions posed by new employees does not amount to training, coaching, or mentoring. I agree with this conclusion. An earlier decision of the Board in *Parker v. Treasury Board (Department of Human Resources and Skills Development)*, 2009 PSLRB 109, also held that mentoring implies the administration of a planned training and development program.

[270] For this reason, I find that while the evidence of Drs. Coupal, Martel, and Cagna clearly established that the Agency requires VM-01s to provide training, as the present job description states, I am not convinced that they act as mentors and find that the addition of “instruction” would be superfluous and wordsmithing. The type of “instruction” given by VM-01s has, in my opinion, been captured in Key Activity #1. The Institute, which bears the burden of proof in this case, has not provided me with sufficient detail to convince me that the duties they perform in participating in train-the-trainer duties or in training new employees on procedures goes beyond what is commonly described as training.

5. Key Activity #6

[271] Finally, the fifth requested change to the wording of the present job description concerns the duty that sets out reports that the VM-01s are asked to remit. The present wording reads as follows: “#6 Prepares statistical, operational, and compliance reports relating to the inspection activities at regulated parties.”

[272] The proposed change would make this duty read entirely differently, as follows: **“#6 Reviews situations of non-compliance, initiates enforcement actions and testifies as an expert witness in legal proceedings”** [emphasis in the original].

[273] As I see it, the change requested to the present job description focuses on the outcome of the report-writing duty in that the Institute requests the addition of wording about measures that are related to or follow the writing of reports, such as acting in situations of non-conformity and testifying in court proceedings.

[274] At present, the contested job description and duty in question refers only to the reports that the VM-01s are responsible for preparing. One is a compliance report. Under the Leadership section, the job description states that the VM-01s provide “guidance on cases of non-compliance”, and under the “Communications” section, it states that they prepare non-compliance reports for submission to the supervisory veterinarian and prepare statistical and operational reports that relate to the daily activities of the regulated establishments in which they work.

[275] In the Analysis and Problem Solving section, it states that a VM-01 “[r]eviews” reported deviations or situations of non-compliance to “... evaluate corrective measures proposed by plant management and negotiates implementation of proposed action plans.” Also, under Analysis and Problem Solving, it states that in clinical examinations, epidemiological investigations, and post- and ante-mortem inspections, the VM-01s “prepare reports” for submission to the Veterinary Supervisor.

[276] The overall section refers to the VM-01s, and the phrase on the issuance of non-compliance reports refers only to “veterinarians”, with no level being distinguished. Both the Institute’s chart and the document prepared for Dr. Coupal propose that the same amendments be made to the present language in the job description. The document, as it was prepared for the final-level grievance hearing, provides a further explanation to the proposal, refers to the types of actions taken in situations of non-compliance, and states that at one establishment, veterinarians had issued 35 non-compliance reports in 1 year, and those 2 veterinarians (Lajoie and Pelletier) had testified in court as expert witnesses in 2014. However, no level was provided for the veterinarians who testified in court, and I heard no testimony on this allegation from any Institute witness.

[277] It also alleges that the VMs working in animal health performed audits of small enterprises exporting to the European Union (EU) and issued certificates once the product followed the standards of the importing country. In addition, it states that the VMs performed audits in the “the cutting (processing) room” for transport, “*le prélèvement et la transformation des MRS (Matières à risques spécifiées)*” (“[translation] the sampling and processing of SRM (specified risk materials)”), and evaluated inspections performed by MAPAQ (the Quebec Ministère de l’Agriculture, des Pêcheries et de l’Alimentation) inspectors in the case of joint Agency-MAPAQ inspections. It alleges that they work with autonomy as they do not need to verify with their supervisors before ordering that those corrective measures be taken by a party in cases of significant deviation.

[278] Dr. Martel testified that she prepares reports about implementing emergency measures. If she witnesses a violation of the Agency’s regulations, it is necessary to take down as many details as possible to build a case, assess whether the file is complete, and consider whether a financial penalty is appropriate. It is much more than simply preparing a report. Action must be taken in a non-compliance situation. If she does not act, nothing is done.

[279] When regulations are violated, a case must be built that has proof of the violation. If the violator accepts fault, they pay a fine; otherwise, it is necessary to testify in court. When a violator does not want to admit to the violation, then it is necessary to go to court. All VM-01s are called on to prepare reports. For each violation, a report must be completed, and action must be taken. It does not mean that they must always testify in court. Indeed, the evidence led by the Institute was to the effect that the vast majority of cases were settled and did not proceed to court. However, she maintained that it is part of their regular duties. They must notify the veterinarians and follow regulations. When a violation occurs, in her follow-up, she adds tighter checks to her schedule. She must be sure that the violation will not recur.

[280] As an example, Dr. Martel mentioned a duckling import (Exhibit G-39). When the ducks arrived, problems were found with respect to humane transportation. Those that arrived at the Mirabel Airport had suffered a high mortality rate. The Agency could not return the animals as they showed signs of disease. It could not order that the remaining live ducks be returned because they could not bear another journey; they had died in large numbers. Some appeared to be dead with cut wings, and several were

weakened on the journey from France. She contacted a specialist. She requested a call with an import specialist. The Mirabel veterinarian stated that other issues had arisen in the past with this exporter. Given that the situation involved young birds, they could not humanely refuse them. The Mirabel veterinarian explained that the seal was not correct, and she provided expertise in humane transportation. The result was that the exporter was no longer permitted to export to Canada until it provided operational procedures to satisfy that it would never happen again. She prepared the non-compliance letter specifying the violations related to importing and exporting. She and a VM-01 from another district worked together. Had she not done the work, other birds would have arrived after suffering issues with humane transportation. They had to refuse to issue permits because of several violations. An additional step was blocked until a protocol was sent to rectify the situation. She has been doing this work since 2007, when she started with the Agency.

[281] As outlined earlier in this decision during my deliberation on Key Activity #1, Dr. Coupal testified that animal health VMs could be called on to testify as expert witnesses, but she gave no particulars with respect to this allegation, although the Agency did not cross-examine her on it either.

[282] At the hearing, Dr. Coupal explained that the VM-01s not only prepare reports but also carry out the proposed activities. The big difference for animal health VM-01s is that they verify products, e.g., duvets. For example, they certify that the products are feather or down duvets. The VM-01s inspect the operator, identify product non-compliance, and issue reports, and they may refuse to sign an export certificate if the product does not meet the importing country's requirements. The VM-01 is autonomous and performs this task alone. If they refuse to sign an export certificate, no one can force them to.

[283] Dr. Coupal explained that sometimes, the VM-01s must testify as expert witnesses in legal proceedings involving animal health and meat hygiene. When animals are weakened upon arrival, only the VM present examines them. The person who was present may testify in court. Even if it is the day shift VM-02 who arrives on the next day, the VM-01 who observed the animals weak upon arrival must testify. Unfortunately, this main activity is not in the VM-01s' tasks, even though they have been doing it forever. It applies equally to VM-01s working in either meat hygiene or animal health.

[284] Dr. Coupal explained that Exhibit G-13 is a draft generic job description written with the Agency in 2003 to remedy the 2001 grievance. Point 6, in bold, which states, “... **testifies as an expert witness in legal proceedings**” [emphasis in the original], applies to all day or evening-VM-01 positions, in both high- and slow-speed establishments. According to the Institute, as early as 2003, the Agency recognized that the VM-01s perform that work.

[285] Dr. Cagna commented on the proposed Activity #6 in Exhibit G-1, Tab 4, on preparing reports. The VM-01s must review non-compliance situations, initiate implementation actions, testify as experts in legal proceedings, and write reports. For anything that occurs outside the previously certified framework, normality, or compliance, the type of report will depend on what is being dealt with. Anything out of the ordinary, including unsafe and inedible products, can be problematic, including the inhumane treatment of animals. In short, any non-compliance situations can lead to a report being written. When non-compliance occurs, the VM must act and prepare a report.

[286] Dr. Cagna provided a specific example of a situation in which he testified as an expert due to a non-compliance report that he had prepared. He recalled an evening in which chickens had fallen during transportation and been crushed. The company did nothing to pick them up; he determined that inhumane treatment occurred. He prepared a report. The Agency wanted to sue and to go to court. The only person who may testify is the one who prepared the report and saw what happened. No one else could testify for him. He had the expertise. The veterinarian is the expert, with years of study and experience; the VM who bears witness to animal suffering must testify. He has been carrying out this work since 2001. Reviewing non-compliance issues happens regularly and runs between the extremes of unloading animals, post-mortems, and ante-mortems. Being onsite enables them to manage things; it is part of their tasks.

[287] According to Dr. Girard, “Review situations of non-compliance” is vague and does not involve acting as such and conducting a thorough analysis; it is not explicit and is not engaging. It seems to mean looking into a non-compliance situation and then doing nothing. That is vague and not relevant to a position description. The VM-01s are asked to do much more than review non-compliance issues. According to him, the wording of the job description in Exhibit G-1, Tab 2, page 5, which states “conducts ... inspections”, goes much further than the wording in Tab 4, Activity 6. The term

“initiates” is not enough; it is reductive and does not provide the entire implementation perspective. It is not accurate to state “Reviews situations of non-compliance”; the VMs do much more than a review. The VM-01 must follow up and reach the goal. In his view, in the original job description (Exhibit G-1, Tab 2, paragraph 2), under a heading of analysis and problem solving, the definition is much clearer and more precise because a goal is mentioned.

[288] Dr. Girard stated that the VM-01s are very rarely called upon to testify. They do not testify as experts but more so about facts of non-compliance and things that were seen, but not as experts. It is always only the VM-03s who are called to testify as experts in some cases because they are the experts in the operations or groups and programs. Exhibit G1, Tab 4, Activity 6, as proposed by the Institute, has no similarity or connection between the two activities. He did not understand how one could replace the other because he did not see the connection.

[289] The Institute argued that the evidence proved that the reports issued by the VM-01s were proof that they reviewed situations of non-conformity. As the VM-01s have a legal obligation to intervene in non-conforming situations, they prepared non-conforming reports and warning letters and testified as experts about live-animal transportation violations. Both Drs. Martel and Cagna, the Institute argued, testified on the requirement for them to intervene in non-conforming situations, advise the violator of possible penalties, and amass evidence or documents to prove the violation. Dr. Martel testified that it had been part of her work since 2007. The report, the Institute argued, was merely the final product in the process, and the process had to be included in the job description to adequately describe the duty.

[290] I note that while the jurisprudence clearly states that a job description need not set out the process of accomplishing different duties, such a process might have to be included when the exclusion of that process means that the duty is not adequately described. The Institute argued that to give this duty its full import, this change is needed.

[291] With respect to the animal health side of the VM-01s’ work, the Institute argued that they perform audits on small businesses that export to the EU, verify procedures to validate conformity to importing countries’ regulations, impose corrective measures, and issue certifications. This was captured in Dr. Martel’s evidence. For meats going to

export, Drs. Cagna, Coupal, and Martel all testified that they verify that policies and procedures have been followed, issue export certificates, and communicate with establishment management or export brokers.

[292] The former job description that applied to the VM-01s working in animal health included the requirement to “testif[y] as an expert”. The VM who caught the infraction must testify. The Institute pointed out that Dr. Cagna testified to a time in 2005 when he had testified in a case of the application of a financial penalty and that nobody else could have done it.

[293] The Agency pointed out that the Institute had submitted that while it agreed with the wording of this duty, its proposal better described this activity. The Agency argued that it was not up to the Board to decide which proposal was the better fit if the Agency’s wording adequately described this duty. The Institute denied that the change that it proposed was wordsmithing. It stated that the job description as presently written did not mention the important functions performed by a VM-01 in cases of non-conformity.

[294] The Agency argued that the jurisprudence held that a job description need not list how a duty is accomplished or the steps in accomplishing it. A detailed list of all activities is not required, as was held in *Belliveau v. Treasury Board (Department of Agriculture and Agri-Food)*, 2013 PSLRB 69. The Agency argued that the task as proposed by the Institute was already included in the VM-01 job description in a more complete fashion, citing the paragraph that it felt included this duty. As for the proposed addition of testifying as an expert, Dr. Girard’s evidence was to the effect that only regional veterinary officers classified at the VM-03 group and level testified as experts and that other employees from a variety of classifications could indeed be called upon to testify in court, but not as experts. Furthermore, the Agency argued that Drs. Cagna and Martel testified to having testified once each, which failed to support an allegation that this was an integral part of a VM-01’s duties.

[295] Lastly, the Agency argued that as the status of an expert witness is determined by the courts, it would not be appropriate to include it in a job description. This argument runs counter to the Agency’s other argument to the effect that expert-witness testimony on behalf of the Agency was given only by VM-03s. While it is true that the courts accord a witness expert status, it is still possible for the Agency to

include such a duty in a job description if it expects an employee to testify in court and have their testimony accepted as that of an expert, which it apparently does with respect to the VM-03s. Therefore, whether this duty is to be included in the job description is to be decided on the usual grounds, and its inclusion is not exempted merely because the status of expert witness is accorded by the courts and not the Agency.

[296] The preponderance of the oral and documentary evidence as presented by Dr. Coupal and Dr. Martel demonstrated that the VM-01s are called upon to review non-compliance situations and initiate remedies. While the grievors maintained that they could be called to testify as expert witnesses in court proceedings, I have concluded that the Institute has not met its burden of proof on this issue. While I understand that it is theoretically possible that such an event might occur, given that they were the ones to witness certain situations, there was no evidence that this was so such that it warrants inclusion as a Key Activity in a generic job description. The evidence was such that VM-01s do not have to perform that work every day or even on occasion. Dr. Cagna's testimony was to the effect that he had seen it occur on one occasion. The fact that it was, at one point in time, included in a draft job description merely confirms that the addition of this duty was either proposed or considered, but it is not evidence that the work in question is performed. As argued by the Agency, only a court can recognize a witness as an expert, so that even if it were to be included as a Key Activity, the use of the word "expert" would not be accurate.

6. New Key Activity #7

[297] I now turn to the five new or additional duties proposed by the Institute.

[298] The first such new duty would read as follows: "#7 (NEW/NOUVEAU) Reviews, certifies and endorses official and accredited veterinary certificates governing animals and animal products for import, export and domestic purposes."

[299] While veterinary certificates are not referred to in the Key Activities portion of the contested job description, they are mentioned in the "Skills" section, under the "Knowledge" rubric, where it states that the VM-01s recommend "... the delivery of accredited veterinary certificates governing animals and animal products for import, export and domestic purposes".

[300] Dr. Coupal stated that the VM-01s and VM-02s have always performed those tasks. The onsite VM issues export certificates. There is no difference in terms of the classification of veterinarians who issue export certificates. In each slaughterhouse, veterinarians sign export certificates. All the VMs perform those shared tasks.

[301] In the national market, federal establishments sell their products across Canada. Some establishments may sell their products only in-region. Approving products means that they may be sold across Canada. In animal health, the VMs certify the statement that the products are disease-free. The VMs have in the past refused to export a particular product to some provinces.

[302] According to Dr. Coupal, there is no difference between a VM-01's and a VM-02's work in that respect. She agreed that examining veterinarians carry out certifications. Exhibit G-5, page 2, point 5, is Dr. Coupal's VM-02 job description, which was signed by George Étienne on September 9, 2016, and was in effect from May 1, 2001. This job description refers to her responsibility to examine, certify, and endorse official veterinary certificates for the import, export, and national markets. The VM-01s, she stated, perform that work.

[303] According to Dr. Martel, she performs this task 70 to 80% of the time in terms of export and import certificates, which is a significant part of her work. Certification documents are checked daily. She must review them and ensure that they are the correct ones. Each country has different rules. Agreements are in place with some countries, and none are in place with others. They look at the products, to determine whether claims are to be made about certain tests or diseases with respect to the country in question. Many evaluations are done. An import search system is used when an individual wishes to import products or by-products. Almost all products can be selected and import instructions can be given. That work is done regularly. A certificate must be under a VM-01's supervision to have status.

[304] Exhibit G-40 is an example of a certificate that she must fill out regularly. Several steps must be followed. She must ensure that all donor steps are correct and review all the steps necessary for certification. Many errors must be reviewed. She has identified issues in the certificates. She informs veterinarians of errors and deficiencies. She must review all the supporting evidence that goes with the document. Donors must be isolated for a time. She must verify that everything is compliant. If the

documentation provided is insufficient, additional documents must be requested. If the Agency does not endorse it, the certificate is invalid. For example, a potential consequence may be that embryos remain trapped in the destination country. They will ask for corrections, and there is no room for error.

[305] Dr. Martel explained that research is done from file to file, depending on the file. If a country has not exported often, research must be done to inform the client of the correct procedure to follow and to instruct the clients as to what they should do and the deadlines to meet. Otherwise, she cannot endorse the certificate and cannot certify animals if the standards are not respected. It is a main activity for the VM-01s; it is 70 to 80% of the work. This work is carried out daily. She has been carrying out that work since 2007.

[306] Dr. Martel stated that the documents in Exhibit G-41 represent a complete import record. Sometimes, some of the documentation is completed at the airport. In this example of a file, a person wanted to bring their rabbit from France. The documentation details that she informed the person of the requirements. If the premises are non-compliant, she cannot approve the importation of the animal. Before travelling to the premises, she discusses and provides very clear instructions. She checks as to whether the instructions were followed. Then, she approves the premises, authorizes the permit, and verifies the documentation. If a breach occurs, she tells the client what must be done, for example, a vaccination, etc. She gives instructions. Once everything is compliant, and once the animal arrives, the VM-01 from Mirabel conducts the arrival inspection and verifies all the official documents. A quarantine is imposed, and one visit is made to the premises where the quarantine starts and ends; each step is part of the time frame for the permit. If the VM-01 does not perform their job well, the person may be forced to return the animal if there are unverified documents. If the animal does not have the required vaccines, it must return to its country, which is worse than the animal arriving with a disease. That creates an obligation to disclose disease because of the risk of contaminating animals in Canada.

[307] As stated earlier in this decision, Dr. Martel explained that the Agency must certify artificial insemination centres. Approval was required for insemination in the EU, which was new to the organization, so the person in charge of the insemination centre was directed to meet all the EU's standards, to be approved in the end. Many exchanges took place with the centre's manager and the veterinary practitioner. They

must be directed and helped because often, European legislative requirements are difficult to achieve as standards.

[308] Dr. Cagna explained that every day, the VM-01s regularly review, certify, and endorse accredited official veterinary certificates governing animals and animal products for import. For pork, 80% of production is exported internationally. To certify with a certificate, certification must be obtained that complies with the foreign country's legislation. Depending on the slaughterhouse, typical cases are always increasing. In Saint-Esprit, recently, in the past few months, the EG-05 prepared the monthly invoice for the slaughterhouses, including the overtime, etc., which they had to pay. It went from 100 to 200 to 300 per month. It is not just export certificates. In pig slaughterhouses, gelatin must be traceable, which the producing company must mention. It is an international application for certification. Schedules are used to transfer products to warehouses. Certificates are signed and then sent to production. Finished products must be sent to cold storage to be exported.

[309] Dr. Cagna explained that the last signer is responsible. The inspectors put together a verification worksheet, but the VM re-verifies everything. First, the product must be eligible for export to the country in question. Once the quantity listed, final weight, seals, and typos are all verified, then one may certify. If the VM certifies a few things and the export is blocked, the products remain in cold storage until the situation returns to normal. If something goes wrong or a mistake is made or there is no report, ultimately, the VM is responsible.

[310] The Institute argued that this task should be included in the Key Activities section as, according to the evidence of Dr. Martel, it represented approximately 70 to 80% of the work of a VM-01 and was their primary responsibility and the focus of their work.

[311] In its submissions, the Institute argued that the VM-01s examine and support official veterinary certificates for the import and export markets, direct that corrective measures be taken, and can refuse to sign certificates until such measures are implemented. Drs. Coupal and Cagna testified that there was no distinction between the work of a VM-01 and that of a VM-02 in this respect. Dr. Martel testified that this duty represented 70 to 80% of her daily work in animal health and that she examines export certificates daily.

[312] As part of that work, she is required to explain policies and conditions to private veterinarians and owners and to be prepared to support certificates issued by those veterinarians. She testified to the possible complexity of this task in her description of a case of the importation of a rabbit from Korea. Dr. Cagna testified that lately, at his establishment, 200 to 300 certificates were issued monthly and that any error on his part could lead to substantial losses for the industry. The Institute cited the Board's *PIPSC* decision. Again, I repeat that that decision is not relevant to the determination to be made in this case.

[313] Dr. Girard testified that the term "accredited ... certificates" makes no sense. Despite this viewpoint, I note that the Agency itself included this term in the Skills section of the disputed job description under the Knowledge section. He testified that the disputed job description, at Exhibit G-1, Tab 2, page 2, is clearer; the second main activity is much more specific.

[314] The Agency argued that while Dr. Girard had confirmed that this duty was expected of the VM-01s, it was already contained elsewhere in the job description, citing a paragraph to the effect that the VM-01s must ensure that the public and industry act in conformity with the law and regulations to ensure the adequate certification of products for the export, import, and national markets. The Agency alleged that Dr. Martel's evidence in fact supported this argument and that the evidence of Dr. Cagna on this point concerned his work as an interim VM-02 and not as a VM-01.

[315] The evidence presented by Drs. Coupal, Martel, and Cagna established on a balance of probabilities that the VM-01s are required to review, certify, and endorse official and accredited veterinary certificates governing animals and animal products for import, export, and domestic purposes. The Agency's witness, Dr. Girard, confirmed this, although he objected to the inclusion of the word "accredited" in the Institute's proposal, even though it had been used by the Agency itself elsewhere in the collective agreement. While accredited veterinary certificates are mentioned in the job description and in the Skills section, under the Knowledge rubric, it is not identified by the Agency as a Key Activity. The Agency's argument on this proposed change was not to deny that the work was performed but to argue that the changes were contained elsewhere in the collective agreement. The evidence presented overwhelmingly established that this is in fact a Key Activity that could represent a substantial portion

of a VM-01s work that is not captured in its full essence in the position description. I accept the Institute's contention that it should be included as described by it.

7. New Key Activity #8

[316] The second additional duty for inclusion in the job description concerns attendance at meetings. The proposed addition reads as follows: "#8 (NEW/NOUVEAU) Participates in meetings and committees and directs regional/national working groups as needed for the development of new national procedures/directives."

[317] The present generic job description refers to meetings only under the Communications section and states that the VM-01s attend meetings with the employees of regulated establishments to discuss issues related to current and proposed regulations and protocols and that in those meetings, they defend the Agency's position. The Institute's proposal would enlarge the duty by specifically recognizing the work performed by those who participated on committees related to emergency response and the development of national procedures and directives.

[318] Dr. Coupal stated that this task concerns animal health VM-01s who are part of the emergency response team. To respond to outbreaks of reportable diseases, the Agency allocates a budget to organize the VM-01s and to respond effectively. They had to allocate several hours, and they participated by webinar. Each region had a response team that had a work unit under a national network. Each was responsible for issuing instructions and for writing recommendations to assess past mistakes and to ensure better management when reporting reportable diseases.

[319] Dr. Coupal provided as an example a poultry coop where on arrival one morning, all the chickens were dead. The response team would be called and separated into six parts. An animal destruction group would be responsible for getting them out. It assesses how to do it, which depends on the establishment. The next step is quarantine. Every vehicle on the ground is tracked (i.e., was it brought to other coops). Quarantine areas sometimes must be changed. Tracing is done. Once the birds are destroyed, the team is disinfected, and the extraction team and all the teams come together. Supervisors coordinate the steps. The VM-01s are asked to be on committees and to work on procedures in the event of disease outbreaks. They write documents and instructions that did not exist but that will apply in the future.

[320] Dr. Coupal added that emergency response work is carried out across Canada and that it has been regularly since 2003. They are regular tasks. Supervisors must release the VM-0 participants from their tasks for approximately 1 hour and 30 minutes each week. It represents a VM-01's regular work. Although responding to an outbreak is not a regular task, preparing for outbreaks in emergency situations is done by webinar regularly, every week.

[321] Dr. Martel explained that emergency measures are very broad. The basic principle is the need to prepare for the possibility of a disease spreading to Canada. It started in 2003 with mad cow disease. When she arrived, her supervisor recommended that she be part of the emergency response team, which was basically several working groups for the different items to be controlled when a disease breaks out, including an epidemiology group, transportation permits, disinfection to cleaning, and site control. Those groups do everything to manage emergencies and prepare themselves in the event of a reportable disease to contain it because it could impact exports. This could create a holdup everywhere else, especially exotic diseases. Borders will be closed, and action must be taken quickly to demonstrate that the Agency has the situation under control Canada-wide, to protect the industry.

[322] Dr. Martel reiterated that in animal health, at the beginning, when she started in 2007, there was great urgency, so the Agency asked her to be part of a group. She chose to participate in the Surveillance Monitoring and Diagnostic group. She has significant experience with exotic animals, so she could not refuse had the Agency asked her to intervene, and she would have had to act.

[323] Dr. Martel referred to Exhibit G-21 and page 2 of her 2009-2010 performance evaluation, which mentions emergency measures at item 2. She participated in several meetings and trainings, and in item 1 (key performance objectives and measurable criteria for the next fiscal period) was strongly encouraged to continue her activities and field experience in emergency measures. In Exhibit G-22, her 2011-2012 performance evaluation, at item 5 on page 2 is a reference to the work she carried out in the monitoring and diagnosis group, revising procedures, etc.

[324] Dr. Martel stated that emergency measures involve multiple categories of people, including the VM-01s, some VM-02s, EG inspectors, the VM-03s, specialists, and a variety of people at the operational and management levels. Emergency measures

cover many things, including almost all sectors combined. The work is divided into emergency measures, procedures to develop and correct, and developing the work, skills, or knowledge. She was often assigned to the operational level of how to do things, through her experience in real emergency cases; truly, it was based on everyone's knowledge and skills. She did not often work alone but usually with at least two or three people to ensure that she did not forget anything and then a small subgroup and on to a review by a large group.

[325] Dr. Martel said that it was difficult to quantify the percentage of time spent carrying out that task. Some years, it consumed 50% of her time. In 2013 and 2014, major brainstorming took place to reshape, redo, and improve the protocols. Sometimes, there were only monthly calls. The time officially listed is a half-day per week or a full day per month.

[326] Dr. Martel referred to Exhibit G-23, which is the directory of people in the Animal Health Response Team. It shows each VM level. They are all VMs working in animal health, except for one who works in meat hygiene. A unit head is responsible for managing the team's responsibilities. Initially, Dr. Martel was a substitute, and then she oversaw the unit. As the unit head, she assigned work, divided it between the members, and then assessed it, to make it stick.

[327] Dr. Martel referred to page 3 of Exhibit G-23. It lists the people available for an emergency response and forms an extended team. An emergency response cannot be carried out by 20 people; it takes people who will go into the field, staff to act on the ground, and the extended team to help with the emergency response. It represents the Quebec team. But there are other teams across the country. She went to Manitoba to help train its team. It has a breakdown of VM-01s, VM-02s, and EGs. She also referred to Sonja Laurendeau's email in Exhibit G-24. Ms. Laurendeau is an emergency response specialist classified at the VM-03 group and level. In her email, she explained the expectations that the VMs must meet when deciding to be part of an emergency response team, to explain the team members' roles.

[328] Dr. Martel stated that the VM-01s who are part of the team must participate in national working meetings at the national or provincial emergency-response-group level. At the national group level, she was involved in developing the "Common Procedures Manual", to determine how to do things. The manual was reviewed because

it became obsolete. During her first years in emergency response, she worked on all of Section 4. The manual comprised several documents. At the provincial group level, not many new procedures were made; it was more about updates.

[329] Dr. Martel referred to Exhibit G-42, which is an email dated 2010 that details the assignment of tasks with respect to developing national documents for the Agency's emergency response intervention. The national groups' work continued until 2015, or until specialized groups were formed. For Dr. Martel, this work represented half a day per week. It was an operational organization. It meant one or two intense days in the schedule, ideally once per month. Intense periods arose during outbreaks, but still, emergency response was part of her regular office work even without outbreaks. She regularly participated in meetings on the online Webex videoconferencing platform, drafted national procedures, trained the VMs, and developed a national emergency plan for the Agency.

[330] The Institute's written submissions on this focused on the work performed by the VM-01s who work on the EIUSA and the 12 related working groups. It pointed to the work performed in Webex meetings, drafting a national plan for the unit, drafting national procedures, and participating in annual training. For Dr. Martel, this duty was performed all year long and was included in her performance review, which outlined the projects that she had accomplished over the year for the group.

[331] The Coupal document and Dr. Coupal's testimony confirm that the Institute's argument on this proposed addition had to do entirely with the participation of some veterinarians who work in animal health on the EIUSA. Dr. Coupal testified that in 2012, five VM-01s were each responsible for a work unit and as such participated in a national working group and attended its meetings via Webex. Using the Coupal document, she explained the work performed by the working group, the specific accomplishments of four of the five veterinarians who participated in the national working group, and their responsibilities with respect to the EIUSA's annual meeting and yearly three-day training session. Dr. Coupal explained that at least 40% of veterinarians working in animal health are part of the EIUSA and that 10% of their working time is spent on their duties related to it.

[332] In her testimony, Dr. Coupal referred to Exhibit G-5, page 7, which is a VM-02-level job description, under the Communications section, to explain that there was no

difference between the VM-01s' and the VM-02s' work in this respect. The VMs selected the emergency committee in which they wished to participate, which was either the destruction or the quarantine procedure committee. Dr. Coupal explained that at that time, it was really a case of what each person wished to do.

[333] One of the documents submitted in evidence was the "Performance Feedback and Review Record" (PFR) for a veterinarian. In their objectives for the coming year, their supervisor indicates that they must ("*doit*") continue their participation on this team.

[334] The Agency alleged that Dr. St-Hilaire's evidence confirmed that this duty was not required of the VM-01s, that it was in fact a duty assigned to the VM-03s, and that the VM-01s were only invited to attend.

[335] The Agency also argued that this new proposed duty already existed in the job description, citing the paragraph in the Communications section that states that the VM-01s attend meetings with employees of establishments to discuss cases and to defend the Agency's interests.

[336] The Agency also argued that participating on the emergency response team was voluntary and was not restricted to the VM classification and that the addition of the words, "If needed" indicated that this duty was not an integral part of the VM-01s' duties. I find that this is not a persuasive argument. The wording the Agency relies upon dates to 2001.

[337] With respect to the issue of a duty not being restricted to any one classification group, I find that it is not necessary for a duty to be restricted in terms of classification for it to be included in a job description. The collective agreement requires that all duties required to be performed be included in a job description and not just those that are performed by one classification or classification level.

[338] The work performed by the VM-01s in directing working groups and participating in meetings and committees and directing regional or national working groups for the development of new national procedures and directives in the EIUSA is not captured in the job description as a Key Activity. Although the Agency, through Dr. St-Hilaire's evidence, attempted to diminish the scope of this activity by stating that the VM-01s are not required to perform these duties, that these duties are performed

by the VM-03s, and that the VM-01s are only invited, the evidence presented by Drs. Coupal and Martel completely contradicted this position. I find that some VM-01s perform this work and that they have been performing these duties at least since 2003. The Institute and the Agency was staffed on a voluntary basis; however, it was clear from the evidence that if there are no volunteers, the Agency could require VM-01s to accomplish this work as part of the Agency's emergency preparedness mandate.

[339] The Institute stated that the basis of its request on this Key Activity was the work performed by the VM-01s who had volunteered to be part of the emergency response team and the project of drafting new plans and procedures for the Agency. Testimony to the effect that the emergency response work at the regional and national levels was performed on a weekly basis meets the evidentiary burden necessary to warrant a change to the job description.

[340] Although the inclusion of voluntary duties in the PER of an employee does not necessarily transform them into required duties that must be reflected in the Key Activities portion of the job description, Dr. Coupal's evidence as a VM-02 who supervises VM-01s is persuasive. She stated that supervisors are required to liberate VM-01s on a weekly basis to participate in emergency response meetings and committees. The VM-01s contribute to the drafting of policies and procedures to address any potential outbreaks at the regional and national levels.

[341] I agree with the Agency that a learning and development plan is not evidence that the duties are part of the work of employees that warrants inclusion as a Key Activity in a generic job description. However, Dr. Martel's PER is persuasive in explaining the scope of the duties that she was required to perform and is indicative that VM-01s can be called upon by the Agency to perform these duties, depending on their expertise. As a VM-01, she was expected to continue her duties with the emergency response team in the coming year. It was not only for the purpose of her performance evaluation, at which Dr. Martel excelled. None of the Agency's witnesses contradicted Dr. Martel when she stated that even if she did not volunteer, the Agency could require her to participate in these meetings and committees to direct regional or national working groups, should the need arise. The Agency presented no evidence to contradict this testimony; nor did it present evidence to show that it was only a small subset of VM-01s who performed this work.

[342] The Agency, as a new entity, faced the need to develop an emergency response plan, and it cast its net widely for volunteers who had an interest in such a project and had expertise to contribute. Even though participating on the committee was entirely voluntary, it was not restricted to only VM-03s, as claimed by the Agency. While emergency response work is an ongoing obligation for VM-01s and is offered on a voluntary basis for reasons of staff morale and health, the evidence that work on these committees and meetings occurred is sufficient to establish the fact that it was required by the Agency. VM-01s were expected to volunteer for something such that they could not refuse to participate in a committee, working group, training team, or whatever. For those reasons, I find that the Institute has met the burden of establishing that this duty is required of VM-01s and therefore should be added to their position description.

8. New Key Activity #9

[343] The third proposed addition would see a duty involving the protection of the Agency's interests and would read as follows: "#9 (NEW/NOUVEAU) Represent the Agency's interests in public and government forums to promote disease control measures, ensure product safety and promote export markets."

[344] In its explanation of the Institute's proposal in this respect, the Coupal document states that the VM-01s gave talks at conferences and met with provincial and importing country representatives to explain programs and their application to these representatives.

[345] The Institute submitted that the VM-01s gave talks at conferences and in meetings with provincial governments and during visits by importing countries. Dr. Coupal testified that there was no difference between a VM-01 and a VM-02 in this respect. Dr. Martel testified to her work with two organizations related to milk and cows and her presentations to them and to a simulated outbreak to which she had invited them; she acted as the Agency's representative in doing so.

[346] As outlined in the section concerning Key Activity #8, the present generic job description refers to the VM-01s defending the Agency's interests only in meetings with the personnel of regulated establishments. The Institute's proposal goes much further than the duty as presently written.

[347] Dr. Coupal explained that VM-01s represent the Agency's interests on different topics. The VM-01s or VM-03s, depending on their expertise, represent the Agency's interests in public and other government forums for promoting animal disease control, product safety, and exports. She referred to her statement of duties at the VM-02 level in Exhibit G-5, page 7, the last point under "Communications". Among other things, it states that VM-02s represent Agency interests in the media and other public forums. In her view, the VM-01s and VM-02s perform this activity.

[348] Dr. Martel testified that occasionally, the Agency has asked her to represent its interests. In 2017, it asked her to present to the Fédération des producteurs de lait du Québec and Les Producteurs de bovins du Québec. She participated and presented on her emergency response experience. She presented the Agency's actions on critical issues in an emergency response to help producers better prepare in their area. It was an emergency management workshop; specifically, an exercise took place that simulated a major outbreak in the area. The goal was to help groups and producers in the area better prepare for health emergencies and to improve knowledge of what such a response requires. Her participation benefitted the Agency because it created an opportunity to forge ties with associations in a disease-control situation and to make contacts with federations.

[349] The Agency argued that the VM-01s were frontline and entry-level workers for the Agency and that the task of representing its interests fell to those at a higher level, pointing out that Dr. St-Hilaire testified to having furnished information to an EX-02 with respect to the latter's attendance at an international conference. Dr. St-Hilaire was clear in his testimony that while some VM-01s had attended a convention of veterinarians in Quebec City one year, they had done so as observers and were not there to promote the Agency's interests or policies.

[350] Dr. St-Hilaire stated that as for employee participation in a simulation, it had been performed voluntarily as part of the employee's participation in emergency responses. The Agency suggested that I accord little credence to Exhibit G-8, which the Institute stated proves that the VM-01s accomplish the task as proposed, stating that none of the veterinarians listed testified. I agree with the Agency's perspective on this and have not considered that Exhibit G-8 proves that any particular duties were required or performed. This document was simply an aide-memoire for Dr. Coupal, and I have considered it as such.

[351] I have concluded that the Institute has failed to convince me that on a balance of probabilities, this Key Activity should be included in the generic job description. All employees are, in some way, expected to represent their employers' interests. For example, employees working in call centres would be expected to do so in their interactions with clients who call and seek information. However, such situations do not rise to the level of the present proposal, which goes further than this and is of a higher order. The Agency's evidence was categorical in this respect, stating that only more senior veterinarians and executives are given the responsibility. The Institute's evidence concerned Dr. Martel's participation in simulated outbreaks for industry organizations, and her evidence described her work in this area as occurring on an "occasional" basis, and in her testimony, she described only one such incident, when she led a workshop in 2017 as part of her work on the emergency response team. Such evidence does not meet the test for inclusion as a Key Activity in a generic job description.

9. New Key Activity #10

[352] The fourth proposed addition would see the addition of the following duty:

...

#10 (NEW/NOUVEAU)

Supervises directly or through subordinates a team of one veterinarian and inspectors, provides instruction and training, manages assigned resources; issues veterinary certificates; and compiles operational and legislative compliance reports for use by CFIA at the regional and national level.

...

[353] While the provision of instruction and training is included elsewhere in the generic job description at Key Activity #5 and under the Leadership section, the proposed addition goes much further in adding the supervision of a team, the managing of resources, the issuance of veterinary certificates, and the compilation of reports.

[354] According to Dr. Coupal, the VM-01s in high-speed facilities carry out the direct or indirect supervision function of the VMs and inspectors. A pig or cattle inspection requires several VMs and EGs to perform the work at high speed. She mentioned as an example establishment 129, which has a day shift VM-02, two VM-01s, an EG-05, and

six day shift EG-03 inspectors. When the evening schedule begins, two VM-01s, one EG-05, and six EG-03s are there. The evening shift VM-01, who receives the FSD, has functional supervision over the other VM-01 and the other employees. These establishments process over 9000 carcasses per hour.

[355] Depending on the frequency in establishment 129, two VM-01s are required each evening. The collective agreement allows the VM-01s to rotate, which is voluntary. The VM-01s share the differential equitably. The Agency routinely puts a surplus of VM-01s in the establishment, which has an evening and a night schedule, but sometimes, a shortage of veterinarians arises, which happened recently. At that time, two VM-01 rotations were required of two weeks on days and two weeks on evenings. According to the “Meat Inspection Manual” or the *Meat Inspection Regulations, 1990*, the official evening shift VM-01 provides the instructions. That is the wording used in those regulations. The operator and the inspector receive oral and written instructions from the VM-01. If a dispute or any emergency occurs, the supervising VM-01 must make the decisions.

[356] In terms of training, the VM-01s are the resource persons. The VM-01s who work with industry employees and inspectors are required to explain the Agency’s programs and regulations and the directive. The VM-02 tells the evening shift VM-01 to inform them about the directive, which is the new way of doing things that came from Ottawa. They must ensure that the inspectors and the other evening-VM-01s are up to date and follow the directions as given by Ottawa to the VM-02.

[357] In addition, Dr. Coupal explained that the VM-01s deliver the program entitled “Compliance Verification System” (CVS), which includes all the slaughterhouse’s tasks and its process, ante-mortems, post-mortem tagging, water quality, the establishment’s cleanliness, carcass procedure from beginning to end, and humane transportation. In the task described in the VM-02s’ statement of duties (Exhibit G-5, page 2), the evening shift VM-01s perform the second main activity.

[358] According to Dr. Martel, as a VM-01, she is called on to supervise a team of subordinates of veterinarians and inspectors during emergency responses. Every time she had to be a site coordinator, she had to manage the site, the inspectors, the schedule, and everything taking place, including all procedures. She was responsible for all the emergency response obligations.

[359] Dr. Martel referred to Exhibit G-47 and the Health Emergency Response Team (HERT), which became the new name for the emergency response team. The document describes the members' duties. They had to devote one or two days per week and were obligated to participate. They had to act as a team leader in the field or provide tactical or strategic advice up to the operations level. Exhibit G-30 is an email detailing her role as a veterinarian in charge at the VM-01 level of two VM-02s in Newfoundland. She had to compile reports on what took place and send all the information to the Agency. Everything that happened onsite had to be reported to the cost centre, and all issues had to be reported.

[360] She had to report health-and-safety cases. As the site coordinator, she managed the people who came and went. For example, a VM felt sick after travelling the only way, which was three-and-a-half hours by boat, and she was not sure whether she could take Gravol because she was pregnant. In terms of safety, the site was dangerous. On that day, she was the veterinarian responsible for the health and safety of all involved. She had to expose the situation of the pregnant VM while keeping her manager informed. It was over 30 degrees centigrade. She had to wear a raincoat. It was very hot, and several risks were posed to the health of the pregnant VM. She had to contact the director of operations and had to send the pregnant VM back because the site was too dangerous for her health. Afterward, she had to review her aquatic document and the health-and-safety measures for boats.

[361] According to Dr. Cagna, directly or through subordinates, the VM-01s supervise a team made up of a veterinarian and inspectors. They provide training instructions, manage assigned resources, and compile operational and legislative compliance reports. The VM-01s supervise the VMs. The EGs supervise the inspection team and all machinery and mechanics. When a problem comes up, the VM-01s give instructions on what to do. Training is provided to new VMs. Training is provided to industry personnel on rejecting and managing resources when no EG is present. In their absence, the task falls to the onsite VM. If two production inspectors are missing, then the VM must find personnel and rearrange their staff while waiting for new personnel and getting back on their feet. For the evening shift VM-01, a slaughterhouse with a rejection project will have only one VM. Usually, no EG-05s are onsite in the evenings. As the VM-01 is the head of the pyramid, the rest in meat hygiene are the EG-03s or EG-05s. With respect to responsibilities in relation to that structure, the VM must make sure that everything is okay, that the staff are fine, and that the inspectors do their

jobs well. Between the inspector and the VM is the staff-management side. They must ensure that the slaughterhouse runs both ante-mortem and post-mortem. The VM manages food-safety issues and the humane treatment of animals. The onsite evening shift VM-01 makes the decisions.

[362] Dr. Cagna added that he is the VM-01s' manager. As an example, he mentioned Dr. André Gauthier, who has 30 years of working with the Agency. For now, he is an acting VM-02 and hierarchically is below him. He works the day and night shifts. He receives the differential 6 months per year. Since there are 2 VM-01s, he splits the differential with Dr. Patenaude. He works only evenings for 6 months at a time. He explained that they all work with the industry 40 hours per week, up to 8 hours per day. Their evening tasks involve ante-mortems and post-mortems, disease detection, and determining whether a carcass is edible. They manage staffing problems between the company people, between VMs and the company foreman, and between EGs and themselves. Sometimes, they are involved in detecting exotic animal diseases. Evening functional supervision in a pig slaughterhouse includes staff management, taking sight of a disease, and dealing with company complaints against EGs. Sometimes, the VM-01s must manage serious spats between employees and the regulated party. Sometimes, plans must be changed, including the configuration or the modification of some part of the slaughter plans, which the VM-02 handles. The VM-01s will manage resources and compliance reports and deal with staff-management issues. They must manage all that while ensuring that the company can operate.

[363] The Institute's arguments on this focused primarily on those VM-01s who worked the evening or night shift and received the FSD. I will deal first with the exceptions to this, which concern roles during emergency responses and training. Dr. Martel testified as to her site-leader role during emergency measures in Newfoundland, where she had directed the inspector and company employees during a euthanasia process. I find that this testimony alone does not have the weight required to support inclusion in the job description. Testimony to the effect that this duty was performed on, at best, a sporadic basis, does not constitute the evidentiary burden necessary to warrant a change to the job description.

[364] However, the focus of the Institute's submissions centred on the work performed during the evening or night shift. It referred to Drs. Coupal and Cagna having testified that the VM-01s working such shifts must be autonomous. Dr. Cagna

testified that the two VM-01s at his establishment supervise seven EG-03s, one EG-05, and a VM-01, who I presume is the other VM-01 on duty but who does not receive the FSD for that shift. He stated that he managed personnel with respect to absences and replacements, gave instructions on the implementation of regulations, ensured risk management, and exercised constant supervision for disease.

[365] The Institute again referred to *PIPSC*, at para. 50, which refers to the VM-01s supervising EG inspectors in abattoirs. As mentioned, this is not evidence of the kind required for me to find that the VM-01s perform a particular duty that requires reflection in the job description.

[366] The Institute also referred to the decision in *Katchin v. Canadian Food Inspection Agency*, 2011 PSLRB 70, which found that the FSD should be paid to one VM-01 on duty on each shift for which a VM-02 is not on duty. It argued that the FSD clause, as well as the laws and regulations, indicated that the duties of a VM-02 were, in large part, assumed by the VM-01. I find this decision of little value other than to confirm the evidence that the VM-01s working evening or night shifts often receive the FSD. It does not address the issue before me, which is whether the Agency requires such duties to be performed and that they are of such a scope as to warrant inclusion in the job description.

[367] Dr. Girard completely disagreed that directly or through subordinates, the VM-01s supervise a team composed of a veterinarian and inspectors. He also disagreed that the VM-01s instruct and train, manage resources, and compile operational and legislative compliance reports for Agency officials. The VM-01s have no delegation of authority. They are in entry-level positions at the Agency and have no supervisory duties, subordinates, and no VM-01 veterinarians as subordinates. They do not have the VM-02s' delegation authority. They cannot supervise the team. During day shifts, the VM-02s supervise. The evening or night shift VM-01s' duties do not include supervising staff. There is no delegation of order. The evening or night shift VM-01 is not responsible for human or budgetary resources. The EG-05s supervise the EG-03 day shift inspectors. The EG-05s are responsible for supervision. The VM-02s manage the VM-01s and EG-03s. The night shift does not involve staff supervision. During evening and night shifts, the VM-02s handle human resources issues.

[368] Dr. Girard was firm in his testimony that the VM-01s do not give instructions during the day shift. He did not see how the VM-01s give training instructions. If something is within the training framework, the VM-01 can instruct on conducting procedures, the objectives, and so on. In his view, the term should be defined. He felt that it is a question of definition, not a specific order or direction, because this function still belongs to the VM-02 in charge. He does not know in what situation they would give training instructions. For the evening shift, at times, the VM-01s must give training instructions, and they may be called on to do it. Exhibit G-1, Tab 2, Activity 5, corresponds to the VM-01s' work.

[369] Evening or night shift VM-01s have no delegation to manage resources allocated to ensure the smooth running of the operation. They cannot grant requested leave. They do not manage staffing issues or relationship issues between work teams. All those duties are reserved to the VM-02 in charge, who carries out all resource planning.

[370] Dr. Girard acknowledged that the VM-01s must draft reports on operational and legislative compliance; doing so is part of their regular duties. Reports are issued based on daily operations and on compliance with the *Safe Food for Canadians Act*.

[371] The Agency argued that the Institute's argument in support of this addition arose solely from the fact that on evening or night shifts, when no VM-02 was scheduled, they were called on to perform this duty. The Agency stated that the FSD, added as of January 1, 2006, compensated them for this task, meaning that it need not be included in the job description. I have already rejected this argument as a basis for the exclusion of a duty from the job description.

[372] In reply, the Institute argued that it often occurred that no VM-02 was present, that therefore, it fell to a VM-01 to direct operations and give instructions, and that the present wording did not do justice to the importance of the leadership that the VM-01s exercised during the evening and night shifts. It stated that in 2011, at least 42.8% of the VM-01s had received the FSD, signifying that this task was an important one, performed on a regular basis.

[373] It argued that it was obvious that the VM-01s who received the FSD gave directions to industry representatives (who were always present in abattoirs) and performed human resources functions in terms of reorganizing personnel, ensuring modifications, and slowing down the production line when necessary. It pointed out

that the VM-02 job description stated that the VM-02s ensured supervision either directly or through subordinate supervisors, which infers that the VM-01s could equally perform supervisory duties.

[374] The Agency argued that there was no hierarchical relationship between the VM-01s and other employees and that the VM-02s held supervisory positions but not the VM-01s. It stated that the evidence did not show that the VM-01s were authorized to give instructions as supervisors or that this task formed an integral part of their duties. While the *Meat Inspection Regulations, 1990* stipulate that a VM can give instructions in certain cases, the evidence did not disclose that the VM-01s provide such instructions on a broad basis, and the *Meat Inspection Regulations, 1990* contain specific parameters that the Institute's proposal does not reflect. Furthermore, the Agency argued that the provision of training was addressed elsewhere in the job description, as has already been set out.

[375] On the proposed language concerning the management of resources and the issuance of compliance reports, the Agency denied that the VM-01s performed this function as this was VM-02 or EG-05 work and that any issues that arose on the evening or night shifts could wait until the return of the VM-02 the next morning. As for the reports, Dr. Girard testified that the VM-01s prepared such reports for the VM-02s and that this duty was already included elsewhere in the job description, where the Key Activity number refers to the preparation of statistical and operational reports and those related to conforming with regulations. It stated that the Institute had indicated its agreement with this formulation elsewhere in the job description.

[376] The preponderance of the evidence demonstrates that directly or through subordinates, the evening and night shift VM-01s supervise a team made up of a veterinarian and inspectors. Drs. Martel and Cagna provided multiple concrete examples of the circumstances in which they are required to instruct and sometimes train and of the circumstances in which the VM-01s may be required to manage assigned resources and compile operational and legislative compliance reports for Agency officials. However, the Institute did not meet its burden of demonstrating that the reports are destined for the regional and national levels. Despite this fact, I have serious concerns with the Institute's proposal, for reasons that will be outlined.

[377] I have concluded that this proposal is largely a repeat of other proposals. This proposed Key Activity has five components: supervising a team, providing instruction and training, managing resources, issuing certificates, and compiling reports. They seem to be disparate duties that have already been addressed elsewhere in some way, and I do not see the justification for repeating them here. For example, Key Activity #5, which deals with mentoring and training, would include the present proposal with respect to instructions and training. Also, there has been reference made to the issue of managing inspectors and supervising a team elsewhere, in prior proposals. As for the issuance of certificates, it has been covered in Key Activity #7 and need not be repeated here.

10. New Key Activity #11

[378] The final proposed additional duty would see the addition of the following phrase: “Mediates, negotiates and resolves disputes that may occur between inspection staff and the management of registered establishments.”

[379] At present, this duty is not found in Key Activities section, but it is arguably present in other sections of the job description. For example, in the Skills section, under Knowledge, the job description states that the VM-01s must understand private-sector operations as well as the concerns of importers, exporters, and farmers, to “establish and maintain productive working relationships”. Under the Analysis and Problem Solving section, when taking enforcement measures, the VM-01s are to consider the impact on the industry of their decisions. In the “Effort” section, under “Psychological Effort”, the job description refers to the need for calm, professionalism, and tact when dealing with representatives of regulated establishments who disagree with decisions or enforcement actions. While it also states that such situations “occur sporadically” it goes on to state, “Such contacts may extend over three to five hours each week”.

[380] Dr. Coupal said that before 2006, the evening shift VM-01s performed this task without being paid for it. They were then paid through the FSD. Occasionally, the evening shift VM-01s must decide disagreements between an inspector and a company. They must de-escalate the situation, prepare a report, and determine whether the slaughter can continue, depending on the test outcome. During the day, the VM-02s perform that task. In the nights and evenings, the VM-01s are responsible for it. The evening shift VM-01 cannot wait for the day shift VM-02 to return. Otherwise, the

company could be impacted significantly. In that respect, she explained that there was no difference between the VM-01s and VM-02s.

[381] Dr. Coupal testified that with respect to Exhibit G-16, the draft job description written by the Agency for the animal health position of the Regional Foreign Animal Disease Officer mentioned earlier, in terms of communication, animal health VMs had to perform all the tasks listed on page 4 under the title, “Responsibility for Communication”, every day. They could be called as expert witnesses or called upon to persuade third parties, such as the slaughterhouse owners, and through mentoring and explanations. Animal health VMs are responsible for enforcing the legislation. They must negotiate, and they do not work only under a VM-02’s supervision. They oversee their program. They must work with different groups to be able to implement their programs; this demonstrates that the VM-01s must negotiate to fulfil their mandate. This document was written jointly with the Agency in 2003.

[382] The Agency stated that Dr. Girard’s testimony had proven that this task was the responsibility of the VM-02s. While the VM-01s were expected to “put out fires”, mediation was done by employees from human resources, and conflicts that arose on an evening or a night shift would be addressed the following day by the VM-02 or others but not by the VM-01.

[383] Dr. Martel testified that sometimes, she has had to arbitrate, negotiate, and resolve disputes that arise between inspection staff and that of the regulated establishment. In animal health, there are not many regulated establishments; there are more in meat hygiene, where she had to negotiate more often than she did in animal health. Sometimes, she had to negotiate the acceptability of the situation. She remembers being told this: “[translation] No, you will never come here.” She had to explain that it was a regulatory control measure and that they had to work with them. Emergency measures are slightly more difficult. Often, once people arrive to help the local team, they are more burned out by the situation, and sometimes, the welcome is not very warm. She must be diplomatic with them because often, they do not accept what they are asked to do. For example, when asked to clean and disinfect boats to lift a quarantine, there should be no organic matter left to disinfect. The employees work on their boats, and it is often very hot on the water in a raincoat or when completely covered to avoid being infected. The situation was not compliant. Tired employees do not want to work. When she negotiated by speaking with them, she made them

understand that they had to clean their boats and respect the Agency's protocols to legally release the products.

[384] Dr. Cagna recognized that the VM-01s must arbitrate, negotiate, and resolve disputes that may arise between inspection staff and that of the regulated establishment. Much of their work is to ensure a good relationship with the company. To do it, the VM-01s must arbitrate. The VM-01 must be possible to mediate and to be capable of seeing both sides, the inspector's and the companies. The VM-01 makes the decisions. He provided an example of a problem of a dispute between inspectors, in context. A slaughter line is rolling, but difficulties arise. As a day shift VM-02, he takes the lead, but in the evening, the VM-01s will not wait until the next day to solve serious problems. They solve them on the spot because they cannot wait until the next day. It can go as far as dismissing the problem employee. According to him, this work has been done since 2001.

[385] Dr. Cagna provided as an example his work on the response and destruction teams. If an exotic animal disease emerges, his team is the first to go. He is the co-lead. He trains on cleaning and destruction. With the emergence of global diseases, exotic animal diseases must not occur here. The VM-01s have been involved in developing a way to distribute CO2 for destroying chickens, so that they fall asleep before dying, as opposed to the old method of freezing chickens to death.

[386] According to Dr. Cagna, the problem is the classification level. There are VM-01s and VM-02s performing essentially the same duties. There is such a high need for VM staff. If no one volunteered for emergency response, big problems would ensue, but finding volunteers is never a problem because veterinarians like events that are out of the ordinary.

[387] The evening shift VM-01s supervise employees. The EG-05s' overall role is as a senior inspector. For their establishment, Dr. Cagna stated that her EG has several years of experience and is classified EG-05. When the EG-05 is onsite, it enables her to free the VM from administrative tasks. The EG group is so large that someone has been designated to keep the EGs' taken leave up to date. When conflicts arise, she resolves them with the EGs. When a problem is serious or there is a major conflict, the VM-01 becomes involved. For even larger problems, at the time, the VM-02 will take care of the situation the next day. Usually, all conflicts are discussed on the spot and cannot

wait until the following day. The EG-05's role is to take charge of the mechanical side of management. The EG-05s supervise the EG-03s.

[388] Dr. Girard did not understand the proposed paragraph. In most cases, the work climate is supposed to be pleasant and normal, so he did not see the relevance of adding this paragraph to the job description. During the day shift, the VM-01 is not called upon to arbitrate; that task is not assigned to a VM-01. The same is true for the evening or night shift VM-01s. He did not know what the Institute meant when it stated that the word, "Mediates" should be added to the position description. Between the inspection staff and that of the regulated establishment, it is difficult for him to determine who should arbitrate. The word "Mediates" is strange and does not fit into the responsibilities of the VM-01s or even the VM-02s.

[389] The term "negotiates", according to Dr. Girard, is vague. According to him, he did not see how it is part of the VM-01s' tasks. According to him, they are human resources tasks. If the subject is negotiating with the company, it means talking about human resources, which rests with the VM-02s. The same is true for the evening or night shift; that duty is solely the VM-02s' responsibility.

[390] Dr. Girard stated that it was difficult for him to answer whether the VM-01s are to "[translation] resolve disputes between inspectors"; if he is involved in a dispute, he is responsible for settling it. However, if the VM-01 is not involved, it is not his responsibility. The evening shift VM-01 receiving the differential must ensure that operations run smoothly. If a dispute arises between the company's staff and the Agency, the VM-01 must ensure only that operations run smoothly and has only to take note of the dispute and report to it the supervisor. The next morning, the VM-02 will take charge of the dispute between the Agency and the establishment's staff.

[391] Dr. Girard agreed that emergency measures at the Agency are a fundamental part of his mandate to ensure the timely detection of diseases and outbreaks and animal health in food for the export trade and for imports. He still hopes that he will not have to implement emergency measures. However, he must ensure that the staff has all the necessary tools to detect a reportable disease in a timely manner.

[392] The frequency of emergency response is relatively rare. Although there have been a few in recent years in terms of avian influenza in the west and tuberculosis outbreaks, the staff centre in Quebec has not had to intervene in terms of emergency

measures in recent years. It is quite rare, but from time to time, they must intervene in terms of emergency measures.

[393] For the emergency response teams, in the event of an emergency response, there is always a local team, depending on the size of the area or the number of livestock that may be affected by the emergency response, along with human resources and equipment. Usually, it is always local. The National Emergency Operations Centre may intervene. If it grows, if a task becomes huge such that the local teams are not enough to handle it, then the Agency must call on neighbouring staff or on the other operational centres. Other centres' staff may participate.

[394] An incident command system is in place, along with an entire range of administrative and logistical procedures. An ensemble of groups and staff is in place, depending on the type of emergency response. The VMs at all groups and levels may participate.

[395] It is always voluntary. There is no doubt that in the event of a significant and harmful outbreak, the Agency may require more staff to participate; it must try to meet its accommodation obligations. He has never seen VMs be required to participate. If the situation so requires it, the Agency may request that individuals participate in an emergency response.

[396] The testimonial evidence relating to the extent of the addition of the proposed activity provided clear and detailed examples of the circumstances in which the VM-01s must resolve disputes that may arise between inspection staff and that of the regulated establishment, on all shifts. The resolution of such disputes was the necessary outcome of the VM-01s' other duties, related to verification work. I accept Dr. Cagna's testimony that there is significant overlap in the tasks performed by the VM-01s and VM-02s. I also accept as true that the reason is either the lack of VM-02 staff or an excessive workload. I do not find the evidence of Drs. Girard and St-Hilaire particularly useful in that respect. The Agency's evidence was often vague and did not respond in any way to the examples of the work done by Drs. Martel and Cagna. From what I can conclude, there is a lack of consistency across the different establishments and the different sectors that makes it more likely than not that the VM-01s have been performing part of the same tasks as have the VM-02s, and for several years. However, the Institute has not proven that the VM-01s either arbitrate or negotiate. There is a

significant difference between resolving disputes and mediating or arbitrating, both of which are terms of art whose inclusion in the generic job description has not been sufficiently established by the Institute. Drs. Coupal and Martel testified that they had to mediate only on occasion or “sometimes”, which would not warrant inclusion. As stated earlier, I see this request as simply the outcome of them performing their other duties. In addition, this proposed duty has already been discussed in several other sections, particularly Key Activity #1 and #3.

11. Additional duty

[397] As stated earlier in this decision, the Coupal document appears to add a proposal to the changes requested by the Institute. At present, the duty reads as follows: “Ensures public and industry compliance with the Health of Animals Act and the Meat Inspection Act and associated regulations and policies to ensure proper certification for export, import and domestic purposes.”

[398] The change proposed in the document would change the word “ensure” to “verifies”, presumably to strengthen it, and would also add the words “to deliver” to the phrase “to ensure proper certification”.

[399] The Institute supported this change by arguing that veterinarians are the final authority on import and export certificates and that if all conditions are not met, they can refuse to sign a certificate and require changes and that they must be able to justify their actions since such actions can have important economic consequences on the industry. I find that this conclusion is implicit in the present version of the job description and that it is not my role to make changes purely based on a proposed wording that the Institute argued is more detailed or better captures the essence of the duty. I find that the Institute has not met its burden of proof on this issue.

[400] With respect to the addition proposed to the second duty in the Coupal document, I find that this change was not requested before me. The Institute’s chart, prepared for the hearing, clearly states that no change to Key Activity #2 is proposed, which the Agency’s argument also echoes. To contemplate a change to this Key Activity without having heard any evidence from the Institute, and after the Institute stated that it was not seeking a change to this activity, would be unfair to the Agency. In any event, I would have found that the change of the word “ensure” to “verify” and the

addition of the word “delivery” to the phrase “to ensure proper certification” is wordsmithing.

F. Retroactivity to May 1, 2001

[401] The issue of the retroactivity of the requested remedy to 2001 arises only if I find that the job description is found to be in violation of the collective agreement. As I have found that some amendments are required, I must now decide the issue of the retroactive date of the changes to the job description outlined earlier.

[402] There are two issues in play. First is the overall argument that based on the history and agreements dating back to 2001, retroactivity should go back to 2001. The second issue arises if I find that the intention of the parties was to have all changes go back to 2001, based on the documentary evidence before me, specifically the MOU and the email exchange between the Agency and the Institute. I find that there was an implicit agreement to have an effective date of 2001. Although some of the duties were performed only after 2001, the Agency did not present any evidence to contradict that of the Institute, which maintained that implicitly through its conduct, the Agency agreed to 2001 as per the MOU.

[403] This issue of the creation of the generic VM-01 job description, as the Institute argues, long predates the 2011 grievance campaign and has been ongoing since the Agency’s creation. The failure of the efforts to integrate both animal health and meat hygiene duties into one generic job description that satisfies the VM-01 group has resulted in this situation before the Board. There are some differences that may warrant a different position description for both. That is not under my purview, but it is up to the Agency to decide as it sees fit whether there should be two generic position descriptions.

[404] Along the way, delays were caused by efforts to implement a new classification standard, which was scrapped as a result of budgetary cutbacks. I find that both parties made good-faith efforts to resolve the issue of the accuracy of the job description. The Agency argued that even had it dated the 2011 job description with an effective date of May 1, 2001, any redress should be limited to the 25 days preceding the filing of the grievances, in accordance with the Federal Court of Appeal’s decision in *Canada (National Film Board) v. Coallier*, [1983] F.C.J. No. 813 (C.A.)(QL), and the Board’s decision in *McKenzie v. Treasury Board (Correctional Service of*

Canada), 2017 FPSLREB 15, as well as the Federal Court of Appeal's recent decision in *Canada (Attorney General) v. Duval*, 2019 FCA 290. This latter decision, as does *Coallier*, distinguishes between the ability to file a continuing grievance outside the applicable time limit in cases of continuing grievances and the ability of a grievor to seek redress beyond the applicable time limit. The Agency argued that it was not contesting the grievors' ability to file these grievances, only their ability to seek redress beyond the 25-day period prescribed in the collective agreement.

[405] In its submissions, the Institute noted that the Agency made its assertion on remedy only on the last business day before these grievances were heard at adjudication. Its final argument in its submissions was that the Agency was precluded from raising this issue by virtue of the application of s. 63 of the *FPSLR Regulations*. I reject this argument as on a plain reading, s. 63 addresses the issue of the timeliness of the "presentation" or filing of grievances and does not apply to remedial issues. No jurisprudence was submitted on this issue to convince me otherwise. While raising the issue at the last minute was not a best practice by the Agency, doing so did not violate s. 63.

[406] The Agency's primary argument on the issue of remedy rested on the fact that this hearing concerned only the 2011 grievances, not those filed in 2001 and 2009. The Agency also argued that at the final level, it had partially accepted the grievances filed in 2001 and 2009 and that in accordance with that decision, it had issued the job description that now forms the basis of the grievances before me between March and July of 2011. According to the Agency, this was in accordance with the MOU signed in June of 2004, which established a method of calculating the effective date that was followed, and the date of May 1, 2001, was established. It pointed out that this MOU concerned only the 2001 and 2009 grievances but not those now before me. It alleged that the MOU signed in November 2016 ("the 2016 MOU") governed these grievances at adjudication.

[407] In reply to the Agency's argument, the Institute pointed out that the only job description issued by the Agency was that issued in 2011, and therefore, this was the first opportunity that any VM-01 had had to contest their new job description within the Agency. It argued that the grievors should not be penalized by the Agency's inaction over the span of many years.

[408] The Institute also argued first that by reviewing all the parties' signed MOUs, its understanding of the application of the new generic job description was captured by Allison Tomka's email to the Agency of January 19, 2016, which references the 2001 grievances and gives the Agency a deadline within which to raise any issues it sees with respect to this understanding, which the Agency did not do until the eve of the hearing and well past the deadline in the email.

[409] As for the Institute's reliance on Ms. Tomka's January 19, 2016, email, the Agency argued that it concerned only her suggestion on how the grievances would be managed only at the final level and that it was not proof of any agreement as to how the grievances would be treated in the future. The 2016 MOU does not state that the date of May 1, 2001, will serve as the retroactive date for all changes or redress and does not refer to the 2001 or 2009 grievances. The 2016 MOU refers solely to the grievances filed in 2011, in which the parties agreed that Annex A constituted the official record of the grievances to which any decision on the matter would apply and that no effective date was agreed upon.

[410] The Institute countered the Agency's arguments on the issue of remedy by stating that the Agency's argument was based on an incorrect and overly technical interpretation of the MOUs that the parties had signed and that the effective date of the job description should be May 1, 2001. It refuted the Agency's contention that the MOU of July 2010 was limited to the third-level reply as paragraph 11 of the MOU states that all changes to the job description would apply as of that date. The amended job descriptions, the 2011 grievances, and the decisions on them, as well as the Board's decision, would constitute the changes referred to in the MOU and must take effect as of May 1, 2001. The Institute argued that I should reject the Agency's extreme but inexact reading of the MOUs and apply a more modern and practical interpretation to the issue, citing the Board's decision in *Fehr v. Canada Revenue Agency*, 2017 FPSLRB 17. It argued that the evidence was consistent as to the intent of the parties to resolve this long-standing dispute and pointed to the numerous MOUs that they have signed, all of which agree to an effective date of 2001. Why, it questions, did the Agency provide an effective date of 2001 in the MOUs if it did not agree to provide a remedy back to that date?

[411] The Institute argued that if I were to find that the MOUs were unclear, estoppel would apply, as it had relied to its detriment on proceeding with the 2011 grievances

rather than all three grievance campaigns together. It stated that all the evidence pointed to an effective date of 2001, and it pointed out that the Agency's present assertion on this was raised only the day before the hearing began. The Institute argued that this case is like *Kullar v. Treasury Board (Correctional Service of Canada)*, 2011 PSLRB 3.

[412] The Institute argued that Dr. Coupal had, according to the testimony, presented all the grievances to the Agency in 2016 on the understanding that the evidence and substance that she provided in her presentation would apply to all grievors, per Ms. Tomka's email.

[413] As the Institute pointed out, the Agency's response at the final level never stated that insufficient evidence had been presented on the matter, only that no change was required because the FSD was now applied. The Agency's decision accepted the Institute's submissions on effective date and never raised the issue of *Coallier* in its reply.

[414] The Agency denied that estoppel applies as it had not made clear representations that led the Institute to rely on its word, as in *Kullar*.

[415] The Institute rejected the Agency's recommendation that I render a decision in this case but also hold hearings for the 2001 and 2009 grievances. It argued that the Board had already heard probative evidence on the actual and prior duties of the VM-01s and that holding such hearings would be a waste of resources that would run contrary to the MOU and the intention of the parties. The Agency never presented that argument orally at the hearing.

[416] I find that the Agency's last-minute about-face on the issue of remedy failed to continue that standard, for the reasons outlined later in this decision. The process of amalgamating the VM-01s into the Agency, which resulted in the grievances presently before me, has been beset by issues from the beginning. Two of the most important issues appear to have been the task of amalgamating 2 separate sectors into 1 job description and the task of changing the type of job description from position-specific to generic. The sheer volume of grievances that were filed and that accumulated during the 15 years it took for the first generic job description to materialize represented a large administrative burden for both sides. As well, the work involved in the writing process, including the failed attempt at a new classification standard, and the breadth

of the issues led the parties to conclude a series of MOUs to allow the grievances to be dealt with fairly and sensibly.

[417] In 2001, the Agency presented a work plan to the Institute in which it stated that it would work toward writing a generic job description. That job description was given to the grievors only in 2011. For their part, a significant portion of the VM-01s undertook a grievance campaign to protect their interests. Further to the filing of the 124 grievances in 2001, an MOU was signed to place them in abeyance pending the creation of a new SP&V classification, which was halted in 2009 when the *Expenditure Restraint Act* was passed.

[418] As a result, a new series of grievances was filed in 2009 and 2010, and an MOU on how to process both the 2001 and 2009 grievances was signed on June 4, 2010. The MOU provides for one final-level hearing for all VM levels with one representative grievor at each level. The Agency committed to hearing the grievances on or before June 30, 2010, and indicated that any changes would have an effective date of May 1, 2001. Following the final-level hearing, the Agency committed to issuing a generic job description shortly.

[419] In December 2010, anticipating that a new round of grievances would follow the issuance of a new generic job description, the parties signed another MOU, agreeing that all new grievances filed following the referral to adjudication of the existing grievances would be placed in abeyance.

[420] On June 14, 2011, the parties signed yet another MOU concerning how to deal with the anticipated classification grievances that would be filed once the generic job description was released, which was the result of the 2001, 2009, and 2010 grievance campaigns. The focus of this MOU was the expedition of any classification grievances (as opposed to job-description grievances) resulting from the issuance of the new generic job description. It again provided for one representative grievor and one response. No mention of the effective date of any classification decision is made in the document.

[421] In 2011, 10 years after its first promise to write a job description, and 1 year after it committed to doing so at the final level of the grievance process, the Agency issued the first generic VM-01 job description. The Agency issued it in 2011, and the resulting 242 job-description grievances are before me. The evidence disclosed that in

June and December of 2012, the parties drafted two uncompleted MOUs about the 2011 grievances before me, and both documents indicate an effective date of May 2001. While the Institute signed the documents, the Agency did not. No evidence was presented by either party as to why the Agency did not sign them.

[422] In 2015, the parties concluded an MOU on a joint consultation process on the present grievances, which included an effective date of May 2001. In June 2016, the grievance process related to the present grievances concluded with the Agency issuing a grievance reply indicating that no change would be made to the job description. Yet another MOU was signed in 2016, which dealt exclusively with the management of these grievances at adjudication to minimize the administrative burden on all parties in a fair manner.

[423] On reviewing those facts, I conclude that throughout this process, the parties have recognized that the issues between them date back to 2001 and that each successive grievance wave in effect piggybacked on the prior one. The evidence, particularly with respect to the MOUs that the parties signed, indicates a willingness to apply all solutions to every member classified at the VM-01 group and level back to May 2001. Each MOU indicates a willingness to deal with all VM-01 job-description grievances as a whole, and none of the documentation before me indicates any indication on the part of either party to depart from this long-standing approach.

[424] The Agency relied on the fact that the 2016 MOU does not mention an effective date of May 2001. Firstly, the MOU indicates that it was negotiated further to the Board's request that "... the parties to agree on an approach to managing the potential administrative burden ..." that would occur, given the large number of grievances before the Board. The MOU then details how the grievances would be treated and presented and what document would serve as the official record of all the grievances. The 2016 MOU deals with the purely administrative elements of the grievances before me and does not in any way touch their substantive elements, including their retroactive date.

[425] The issue of the retroactive date of the grievances before me is not an administrative but a substantive issue. The 2016 MOU does not state that it supersedes the prior signed MOUs that deal, at least in part, with the substantive issue of the retroactive date to be applied. I have also been presented with no evidence to the effect

that the Agency communicated any change in approach to the issue of the effective date at any point in these proceedings to alert the Institute that this issue between the parties should be addressed once again. I have been presented with no evidence to the effect that the Agency believed the 2016 MOU to be an all-encompassing MOU that was meant to deal with both administrative and substantive issues.

[426] I find that the email of January 19, 2016, from Ms. Tomka, the acting manager of classification at the Institute, confirms the Institute's clear understanding of issues related to applying the eventual job description to all the grievances. Her email begins by asking for hearing dates, and then, the second paragraph sets out the Institute's understanding that with respect to the outcome of the 2011 job-content grievances, the Agency had agreed to issue and apply any revised job description to all incumbents, former incumbents who had retired or been appointed to other positions, and all present incumbents of VM-01 positions. The email concludes that unless the Agency were to object by January 26, 2016, the Institute would proceed on the basis that the Agency agreed with what it had outlined. The email makes no mention of an effective date, but it does clearly refer to the 2001 grievances being englobed in their discussion, and all along in their discussions, both parties had incorporated a 2001 effective date as the date on which changes would be effective. This email does not change that effective date or confirm it, but it does confirm that the parties were proceeding based on prior agreements.

[427] The parties have long agreed that any remedy to this issue should be applied as of May 2001. The Agency's interpretation of the 2016 MOU is, as the Institute suggests, overly technical. I also find that this sudden about-face, based on the wording of an MOU that dealt only with process and the administrative burden, without notice to the Institute that it also considered that this MOU would apply to the substantive issue of remedy, and in an entirely new fashion than had been applied for the last 16 years between the parties, also supports the Institute's argument on estoppel.

[428] I further find the Agency's citation of *Coallier* unconvincing. The Federal Court of Appeal in *Duval* addressed the issues of timeliness, damages, and continuing grievances and stated that limiting damages to the time limits prescribed in the relevant collective agreement with respect to continuing grievances served a labour relations purpose in encouraging the quick resolution of conflicts and in discouraging

one party from delaying in the exercise of their rights to the detriment of the other party.

[429] I find that in this case, there is a labour relations purpose to be served by recognizing and upholding the agreement between the parties with respect to the issue of the effective date that supersedes the principle enunciated in *Coallier*. The Institute never delayed in the exercise of its rights and has, to the Agency's full knowledge, pursued those rights since the outset. In no respect has the Institute ever signalled that it renounced its claim to an effective date of 2001.

[430] It is disturbing that the Agency raised this on the eve of the hearing. Although there is no deadline to raise a legal issue, all the MOUs on the effective date, and the entire context of the situation, is evidence that the Agency acted all along as if it waived any application of *Coallier* if not directly, then certainly by inference. Therefore, I find that by virtue of this, it is estopped from raising this argument.

[431] The ASF and the documentation submitted cited several food safety regulations, the one cited in the ASF being the regulations, which describes the requirements for slaughter and processing plants. Among the regulations cited were ones dealing with ante-mortem and post-mortem inspections and examinations, condemnation, and inedible meat products. I find that as in *PIPSC*, they support the Institute's arguments about the legal requirement that certain duties be performed. However, these regulations do not speak to which level of VM is required to perform them. It remains the Agency's prerogative to assign those duties to the level of VM it determines, and it remains the Institute's burden to prove that such duties are required of the VM-01s. In the circumstances that the Institute was able to establish it, I have indicated that it was so.

[432] The evidence has proven that as a result of the creation of the Agency, new job descriptions were required. The Agency itself has, in documentation filed in evidence, outlined its intention to update the VM job descriptions, whether that be in the context of the present classification system or another new one, and repeatedly set a date of 2001 as the effective date of such a job description. All the draft job descriptions exchanged by the parties refer to a date of 2001, and all MOUs refer to a retroactive date of 2001. The Institute's email of January 19, 2016 is critical to my conclusion as it discloses that the Agency did not deny the Institute's statement that the hearing in this

case would apply to all grievances, back to 2001. Further, its objection to the retroactive date was raised only at the last minute. And the evidence before me goes back to that date. To limit the remedy to 2011 forward and force the hearing of other grievances on the same issue and with the same evidence would be a waste of resources and contrary to good labour relations as well as the parties' stated intentions.

G. Conclusion

[433] The grievances are allowed in part. I find that the Agency has violated clause E1.01 of the collective agreement which reads, in part, as follows: "Upon written request, an employee shall be entitled to an official, complete and current statement of duties and responsibilities of his position ...". As outlined in the decision, some of the duties proposed by the Institute are not properly reflected in the current generic job description and should be sufficiently detailed to describe the work being performed. I have identified in the Order the duties and responsibilities that should be reflected in the generic job description and the proper descriptors to be added where necessary. All other proposed additions and modifications have not been proven on a balance of probabilities or are already captured elsewhere in the job description and therefore are denied.

[434] Finally, I acknowledge the fact that many of the Institute's proposals relate to duties performed that attract the payment of the FSD, but rather than being grouped into one Key Activity, they have instead been "sprinkled" throughout the proposals. Although the parties did not raise this issue before me, I have a concern that such sprinkling could give more importance to these tasks than is warranted and could violate the basic principles of job-description writing which is not the role of the Board in cases such as this. In any event, the issue does not arise here as I have not considered it given the diversity of the duties I have allowed.

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

(The Order appears on the next page)

V. Order

[436] The VM-01 job description in issue working in both the animal health and meat hygiene programs should include the following duties and responsibilities:

- 1) Key Activity #1 to be amended to add the word “direction” and the phrase “... evaluates technical and operational changes proposed by industry to ensure their compliance with regulatory requirements”, as proposed by the Institute.
- 2) Key Activity #3 to be amended to add the word “Leads” as proposed by the Institute.
- 3) Key Activity #4 to be amended to add the phrase “within the district, Canada” as proposed by the Institute.
- 4) Key Activity #6 to be amended to read as follows: “Reviews situations of non-compliance, prepares statistical, operational and compliance reports relating to the inspection activities at regulated parties and initiates enforcement actions.”
- 5) Key Activity #7: The job description should be amended to reflect the addition of this new duty, as proposed by the Institute: “Reviews, certifies and endorses official and accredited veterinary certificates governing animal products for import, export and domestic purposes.”
- 6) Key Activity #8: The job description should be amended to reflect the addition of this new duty proposed by the Institute: “Participates in meetings and committees and directs regional/national working groups as needed for the development of new national procedures/directives.”

[437] All other remaining proposals and changes are denied.

[438] The position description is retroactive to May 1, 2001.

November 20, 2023.

**Chantal Homier-Nehmé,
a panel of the Federal Public Sector
Labour Relations and Employment Board**

APPENDIX A

The grievors, alphabetically by first name:

Adarsh Gupta	Emad Girgis	Karthi Basgaran
Addul Salem Shoukath Ali	Emilie Gauvin	Kathy Harrison
Aime Kombe	Emmanuel Alexanders	Kazimierz Pietucha
Akshey Sharma	Emmanuelle Charpentier	Kim Knight-Picketts
Alan Kruger	Evelyne Vachon	Kithsiri Perera
Allan Almost	Fatima Hussein	Krista Mitchell-Robert
Allison Danyluk Ross	Fazle Azim	Kuldip Saini
Amelie Denoncourt	France Gaudry	Larry Spitzke
Amrinder Brar	Francois Saulnier	Laureen Nelson
Andre Gauthier	Frank Wilkie	Lina Johannson
Andre Mireault	Gagandeep Sekhon	Line Pelletier
Andre Morissette	Gary Boose	Loan Ciprian Tuc
Andrew Gomulka	Genevieve Comeau	Louis Abraham
Anil Nichani	Genevieve Toupin	Louis Fortin
Armaan Sandhu	George Komban	Luc Lachapelle
Atal Bahadur	Gilles St-Denis	Lucian Gross
Atijas Branislav	Ginette Patenaude	Lucie Gagnon
Balwant Singh Kheeva	Gita Malik-Dahiya	Lyn Couture
Bharatkumar Patel	Guramrit Kamboj	Lynn Brooks-Holtz
Boily France	Gurcharan Preet Gabba	Madjid Nameen
Boubacar Sidibe	Gurcharan Sandhu	Maher Zaytoun
Brian Wormald	Gurmeet Makkar	Makhlouf Lounis
Brigitte Flibotte	Harnarinder Singh Nagra	Marc Bertrand
Bruno Godin	Harpreet Sran	Marie-Claude Simard
Carl Gagnon	Hasmukhray Merja	Marius Dumitru
Carlos Diaz	Hassnaa Laggoune	Martin Rodrigue
Carolyn Small	Helen Metner Jermey	Mathieu Lajoie
Chander Deol	Hélène Girard	Matthew Crooker
Chantal Belleau	Ingrid Hildebrandt	Maude Charron-Langlois
Chantal Besner	Isabelle Belanger	Max Popp
Charles Paquin	Jagpal Pandher	Megan Bergman
Cheick Sidibe	Jagtar Jhajj	Mehdi Hassanzadeh
Chia-Hsin Sun	Janina Wojciechowska	Melanie A Buhr
Chinna Chegiredy	Jeanne Dufour	Melissa Paradis
Christa Wallace	Jeanne Sinclair	Michael Backx
Christiane Vanasse	Jennifer Lloyd-Smith	Michel Couillard
Claude Favreau	Jerome Katchin	Michel Morier
Claude Goyer	Jessie Hopper	Mohammed El Farsi
Dalbir Hans	Jessie Hopper	Mohan Matharoo
Dalbir Malik	Jocelyne Gauthier	Moussa Chaka Coulibaly
Daniel Colas	Jocelyne Thibaudeau	Muhammad Haque
Daniele Leclerc	Jodie Clark	Muhammad Nadeem Qasim
David Cartledge	Joelle Bertrand	Naresh Joshi
David Orr	Johanne Marcotte	Nasib Randhawa
Denitsa Milusheva-Todorova	John Goldie	Natalie Tessier
Dominique Cecyre	John Ochieng-Mitula	Nathalie Dumont
Dorian Sylvestre	Julie Gervais	Nicole Cormier
Driss Haitof	Julie Nagel	Nicole Gravel
Duane, Ian Boyd	Kamal Laghzaoui	Noel Ritson-Bennett
Elene Ferland	Karima Kassam	Nora Hassissene
Elham Guirguis	Karine Nadeau	Normand Lariviere

APPENDIX A

Ellen Rae Melvin-Walsh	Karine Perreault	Palwinder Singh
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The grievors, alphabetically by first name (continuation):

Parul Sharma Patel Rameshbhai Patrick Poulin Paule Belec Peter Brassel Peter Donald Bertram Petru Cristea Pierre Lafortune Pritam Dhaliwal Pushproop Singh Brar Rachel Martel Rachid Berkane Rajwinder Kahlon Ranjit Malhans Ravi Sankar Ravinderpal Rai Ray Fletcher Raymond Le Heiget Real Bilodeau Rena Spevack Richard Leclerc Samir Wanis Samira Belaissaoui Sarah Jean MacLean	Satishkumar Desai Sebastien Pion Serghei Galatonov Sharen Thompson Shilton Cheriaparambil Shiwani Khullar Simon Villeneuve Simrat Tak Sinder Singh Jhajj Sivaram Arumugam Sonja Laurendeau Sophie Daoust St-Denis Gilles Stefano Cagna Stephane Fortin Sudagar Sohi Sukhpal Gill Suneel Sharma Sunita Rani Suresh Khatkar Surinder Saini Susy Laberge Suzanne Beaulieu-Sparks	Sylvie Langlois Sylvie Normand Taralyn Meredith Tehal Singh Gill Theodore Shwaluk Timothy McQuaid Upendra Parmar Upendra Parmar Valerijan Vukovic Varinder Kamboj Victor Grichtchenko Vladimir Brozek Waheed Haneef Waheguru Pal Singu Bhullar Wanda Mann Yousif Yousif Yvan Lessard Yves Belanger Yves Lamothe Yves Vaillancourt Yvonne Dolbec Zena Poustie Zoe Stacey
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