EDEN BALTULIS, Appellant v. SASKATOON PUBLIC LIBRARY, Respondent & GOVERNMENT OF SASKATCHEWAN, EXECUTIVE DIRECTOR, OCCUPATIONAL HEALTH AND SAFETY, Interested Party

LRB File No. 090-15; October 5, 2015
Steven D. Schiefner, Vice-Chairperson (sitting alone pursuant to Section 6-95(3) of *The Saskatchewan Employment Act*)

For the Appellant:	Self Represented
For the Respondent Employer:	Mr. Kevin Wilson, Q.C.
For the Executive Director of Occupational Health and Safety	No one appearing

Appeal from Adjudicator appointed pursuant to *The Saskatchewan Employment Act* – Appellant alleges Adjudicator committed reviewable error in concluding that she did not have jurisdiction over the Appellant's complaint of harassment – Board reviews record of proceedings and impugned decision – Board finds no error on part of Adjudicator.

***The Saskatchewan Employment Act*, s. 4-8.**

REASONS FOR DECISION

Background:

[1] Steven D. Schiefner, Vice-Chairperson: This is an appeal taken by Ms. Eden Baltulis (the "Appellant") against a determination by an Adjudicator appointed pursuant to *The Saskatchewan Employment Act*, SS. 2013, c.S-15.1. The Adjudicator was appointed to hear an appeal from the findings of an officer in the Occupational Health and Safety Division of the Ministry of Labour Relations and Workplace Safety ("OH&S officer") who had been assigned to investigate certain occupational health and safety complaints made by the Appellant. The OH&S officer found that the issues raised by the Appellant did not meet the definition of harassment and were not matters falling within the scope of the applicable occupational health and safety legislation at that time; being *The Occupational Health and Safety Act* (now repealed). The Appellant appealed these findings and the Adjudicator was appointed to hear that appeal.

[2] On a preliminary motion, the Adjudicator dismissed the Appellant's appeal. Simply put, the Adjudicator concluded that the Appellant's appeal did not disclose any matters (i.e.: grounds for appeal) falling within the scope of the then current occupational health and safety legislation; being *The Saskatchewan Employment Act.* The Adjudicator also concluded that she had no jurisdiction to hear the Appellant's appeal and/or that the Appellant's appeal was moot because she was no longer an employee of the Respondent Employer and there was no basis to conclude that an on-going environment of harassment continued to exist in the workplace. Finally, the Adjudicator concluded that the Appellant's appeal was frivolous and vexatious.

[3] While the genesis of the Appellant's concern is her belief that an inadequate investigation was conducted into her claims (by both the Respondent Employer and the OH&S officer), the Applicant's Appeal was brought under section 4-8 of *The Saskatchewan Employment Act*, which permits appeals on questions of law to the Saskatchewan Labour Relations Board (the "Board") from decisions of adjudicators. In other words, in these proceedings, this Board must determine whether or not the Adjudicator erred in law; not whether the impugned investigations were adequate.

[4] Having considered the Appellant's material, having heard her submissions and having reviewed each of the grounds for appeal advanced by the Appellant (or inferred from her material), I find no basis to interfere with the decision of the Adjudicator. As a consequence, the Adjudicator's decision is affirmed and the Appellant's appeal is dismissed.

Facts:

[5] The facts relevant to the within appeal were summarized by the Adjudicator in her decision dated April 10, 2015 as follows:

> *[5] The Appellant is a former unionized employee of the Saskatoon Public Library ("SPL", the "Applicant", the "Respondent") who commenced employment with SPL in 2010. Most recently, the Appellant was employed part-time as a page, responsible for re-shelving books and other clerical tasks.*
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> *[6] On or about November 27, 2012, the Appellant reported to the Respondent that she had been involved in an intimate relationship with a person she had met at a University night class who, by coincidence was also an SPL employee working at the Frances Morrison Central Public Library (the "FMCL"). The Appellant stated that a sexual encounter occurred between them at the FMCL on or about November 17, 2012, a location where the Appellant had visited as a patron, on her day off.*

> *[7] On December 20, 2012, the Appellant received an anonymous letter, described as hate mail, at her home address. The letter had been processed at Canada Post's 51st Street location, near her home. The letter made no reference to the Respondent or the workplace. The Appellant notified the Respondent of the alleged anonymous letter. The police were also made aware of the letter, but were unable to ascertain the sender's identity.*
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> *[8] On December 31, 2012, the Appellant informed a representative of the Respondent that the inappropriate sexual activity originally reported was not consensual but that she had not yet decided whether to report it to the police.*
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> *[9] The Appellant expressly denies making a complaint of harassment to the Respondent, formal or informal.*
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> *[10] The Respondent investigated the allegation with respect to inappropriate sexual activity at the FMCL as was originally reported by the Appellant; however, it could not be corroborated. When the appellant's allegations changed to a non-consensual act of sexual assault, the allegations were reported to the Saskatoon Police Service.*
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> *[11] The Appellant's allegations of sexual assault were investigated by the Police, who concluded their investigation without criminal charges.*
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> *[12] While at work, the Appellant would access her personal email via the Respondent's network. The Appellant suspected the information contained in the hate mail letter was only obtainable if someone had read her personal email. The Appellant suspected her alleged assailant was responsible. The Respondent investigated the computer network, but could not determine any tampering with the Appellant's work computer.*
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> *[13] The Appellant met with representatives of the Respondent and others on December 31, 2012 and again on January 14, 2013. The meetings were for the purposes of communicating with the Appellant, as a library patron and not an employee, regarding her allegations of a sexual encounter (and subsequent allegation of sexual assault) and the alleged computer tampering.*
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> *[14] On January 18, 2013, for medical reasons, the Appellant took leave of the workplace. Over the course of several months, until late August, 2013, the Appellant continued to interact with various SPL staff on issues pertaining to her medical leave and prospective return to work which were not resolved.*

[6] On or about September 3, 2013, the Appellant complained (by submitting a harassment questionnaire) to the Occupational Health and Safety Division of the Ministry of Labour Relations and Workplace Safety. The substance of the Appellant's complaints were that she was sexually assaulted in the workplace by a co-worker; that she had received threatening mail at her home; that someone had tampered with her work computer and installed "*tracking*" software on it; that medical information had been requested by her employer; and that her employer had failed to adequately investigate her complaint of a sexual assault.

[7] The Appellant's complaint was assigned to an OH&S officer, who investigated the Appellant's complaints and met with the Appellant. The findings of the OH&S officer were contained in a letter dated November 12, 2013:

> *In regards to the employer investigating your complaint of sexual assault, OHS cannot direct them to conduct an investigation (reasons stated above) as you had entered a public place as a member of the public on your day of rest. That being said your employer informed us that they accepted your complaint and because of the nature of the complaint required you to report it to the Saskatoon Police for investigation. Based on the review of the Police investigation, the employer determined that there was no need to further investigate the allegations.*
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> *The complaint that you received a letter at your home address would not be a matter that OHS or your employer would be required to address. As stated above, the letter was not sent or received in the workplace and the source cannot be determined. However your employer did pursue this concern you raised, to ensure this did not occur at the workplace*
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> *Your concerns regarding medical documentation, required by the employer is not something that can be addressed by OHS and is beyond the scope of the legislation.*
>
> *Be advised that upon review of your file material, I have determined that your complaint/concerns do not meet the definition of harassment according to OHS legislation.*

[8] On December 10, 2013, the Appellant filed an appeal of the findings of the OH&S officer and the Adjudicator was appointed to hear that appeal.

[9] By way of a preliminary motion, the Respondent Employer asked the Adjudicator to dismiss the Appellant's appeal for the following reasons:

1. The appeal of the OH&S officer's findings was not timely.
2. The appeal was prolix and did not disclose identifiable grounds for appeal.
3. The appeal did not disclose any issues falling within the jurisdiction of *The Saskatchewan Employment Act*.
4. The appellant was no longer an employee of the Respondent Employer at the time of the hearing before the Adjudicator and thus her issues no longer fell within the jurisdiction of *The Saskatchewan Employment Act*.
5. The appeal was frivolous and vexatious.

[10] On April 10, 2015, the Adjudicator granted the Respondent Employer's preliminary application and dismissed the Appellant's appeal of the OH&S officer's findings. While the Adjudicator was satisfied that the Appellant's appeal was timely and disclosed identifiable grounds for appeal, the Adjudicator dismissed the Appellant's appeal for essentially

two (2) reasons. Firstly, she concluded that the issues identified by the Appellant in her appeal did not fall within the scope of *The Saskatchewan Employment Act*. Secondly, the Adjudicator concluded that she had no jurisdiction to hear the Appellant's appeal and/or that the Appellant's appeal was moot because she was no longer an employee of the Respondent Employer and there was no basis to conclude that an on-going harassment environment continued to exist in the workplace. Although *obiter*, the Adjudicator also found that the Appellant's appeal was frivolous and vexatious.

[11] On May 13, 2015, the Appellant filed an appeal of the Adjudicator's decision with this Board. The Appellant's grounds of appeal as set out by the Appellant in her material are as follows:

> ***Jurisdictional Issues***
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> *1. I believe that the Special Adjudicator error in her decision that the meetings were outside the jurisdiction of The Saskatchewan Employment Act. While the main topic of the two meetings did relate to a non-workplace incident that both the Workers Compensation Board and the Office of the Saskatchewan Information and Privacy Commissioner have found the employer did not have the authority to question me on or to share that personal information with others. The two meetings were presented to me, the union, Workers Compensation Board, and the Saskatoon Police Service as workplace meetings between management and an employee and the circumstances of these meetings support this.*
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> *2. The meetings took place at the locations where I was working (at the Alice Turner library—connected to Technical Services where I was employed full time for the December 31, 2012 meeting, and at the Rusty McDonald branch where I was employed part time for the January 14, 2013 meeting). I was considered to be at work during the time the meetings happened as they occurred during my working hours and I was paid my hourly wage appropriate for my position (cataloguer/Acquisitions staff on Page) for the time I was forced to be present at those meetings. An employee is defined in the Act as "a person receiving or entitled to wages;" and an employer is defined as someone who "is responsible, directly or indirectly, in whole or in part, for the payment of wages, or the receipt of wages by, one or more employees" and I have pay stubs and emails from the Respondent confirming that I'd been told I would be "paid to attend" the meetings and I was indeed paid my position-appropriate wage for being present at them.*
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> *3. I had been informed by the Respondent's Acting Manager for Human Resources that I would have my union present to represent me and as such I would not be allowed counsel or a support person. I was informed by my union that I had to attend those meetings since management had told me to attend them. I was at work doing my job and earning a wage when I was pulled away from my workstation and brought into a room by my employer and individuals from the City of Saskatoon and CUPE on two separate occasions and interrogated about a crime committed by one of their on duty employees against me while I was a patron. When the meetings were finished I was told to return to my work and neither of my supervisors raised any concerns that I had been abducted from the workplace for the majority of those two shifts. There was no concern because it*

was understood, based on the story presented to them by upper management for my employer, that these meetings were related to the workplace and were taking place between employer and employee and the union.

Scope of the Appeal

4. *My original complaint was about the harassing conduct of the employer during the two meetings but this was not addressed by the investigating officer in his November 2013 decision. The scope of the appea explained with why I was dissatisfied with the decision by the Officer as he overlooked what my complaint actually was and ignored material evidence for his conclusion. I was told by the Harassment Union to write in my appeal why I disagreed with the Officer's decision and that is what I did—I explained what aspects of it I disagreed with it and provided documentation to support my reasoning.*

The Appellant no longer an Employee

5. *I am no longer an employee solely as a result of harassment from the Respondent during the two workplace meetings. I went on sick leave to escape this environment and this is supported by medical documentation and the Workers Compensation Board's finding that the conduct of the employer during the meetings caused me to suffer a psychological injury that arose out of and in the course of employment.*

6. *After two physicians cleared me as fit to return to work the employer would not allow me to return. The employer then terminated my employment while I was on medical leave after being struck by a motor vehicle. The circumstances of my termination have resulted in a formalized complaint being served on the employer by the Saskatchewan Human Rights Commission.*

7. *Had the meetings—which were the purpose of my complaint in September 2013—been the focus of the Harassment Officer's investigation rather than the circumstances giving rise to those meetings the Appellant would likely still be an employee today. My work record with the Respondent prior to my discussing the sexual assault and my ongoing fear of him with the Deputy Director on November 27, 28, 2012 was exemplarily and unmarred by complaint or reprimand.*

8. *The list of other complaint avenues created by the Respondent is outside the jurisdiction of The Saskatchewan Employment Act and presented to distract from the Appellant's complaint of workplace harassment committed by her employer. Successful complaints where the Respondent is a party include the Workers Compensation Board deciding in the Appellant's favour and finding that the Respondent was outside their authority to question the Appellant on a matter outside of her employment, and a decision by the Office of the Saskatchewan Information and Privacy Commissioner that the Respondent was outside of their authority in contacting the police and collecting and sharing the Appellant's personal information. The Commissioner provided a lengthy list of recommendations to the Saskatchewan Public Library and hopefully they will choose to conduct themselves in accordance with privacy laws in the future.*

Prolixity

9. *Verbosity, to be prolix in speech and/or writing, is a well-document characteristic of Autism. In recognition of the communication difficulties my disability brings I have tried to be proactive in lessening the effect of this lifelong*

> *neurodevelopmental disorder. More than once I have attempted to accommodate the Special Adjudicator and the Respondent by offering to rewrite my appeal and/or the complaint itself so that these documents appear more normal and less like they were written by someone with a deficit in communication, but my offers received no response.*
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> ***Claim of Frivolous and Vexatious***
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> *10. As the appeal is unable to be understood by the Special Adjudicator since she feels it is prolix, I disagree that she could accurately find it to be frivolous and without value. If a document cannot be understood—as a result of the creator's disability or for any other reason—it is illogical to claim that an accurate assessment of the seriousness of its purpose has fairly been made.*
>
> *11. The Special Adjudicator was unable to infer malice. A vexatious complaint is one initiated maliciously; since there is no malice in the appeal it cannot be considered vexatious.*

Relevant statutory provision:

[12] The statutory provisions relevant to the Appellant's appeal to this Board are contained in *The Saskatchewan Employment Act* and read as follows:

> ***Right to appeal adjudicator's decision to board***
> ***. . .***
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> *4-8(2) A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III may appeal the decision to the board on a question of law.*
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> *. . .*
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> *(6) The board may:*
>
> > *(a) affirm, amend or cancel the decision or order of the adjudicator; or*
> >
> > *(b) remit the matter back to the adjudicator for amendment of the adjudicator's decision or order with any directions that the board considers appropriate.*

Standard of Review:

[13] As noted, s.4-8 of *The Saskatchewan Employment Act* does not grant appellants wishing to challenge the decisions of adjudicators a general right of appeal. Rather, appeals are limited to questions of law.

[14] In *Barbara Wieler v. Saskatoon Convalescent Home*, [2014] CanLII 76051 (SK LRB), LRB File No. 115-14 (one of the first cases dealing with this Board's jurisdiction under s.4-8), Chairperson Love concluded that questions of fact, as well as questions of mixed fact and

law, could be reviewable as errors of law in certain circumstances. Drawing on judicial jurisprudence, Chairperson Love concluded, for example, that to apply an incorrect law to the facts would amount to a reviewable error of mixed fact and law. Chairperson Love also concluded that errors of fact could also become reviewable as questions of law where the adjudicator's findings were unreasonable in the sense that they ignored relevant evidence or where the adjudicator took into account irrelevant evidence, mischaracterized relevant evidence, or made irrational inferences on the facts.

[15] In *Barbara Wieler v. Saskatoon Convalescent Home*, *supra*, Chairperson Love went on to consider the appropriate standards of review to be used by this Board in reviewing the determinations made by adjudicators. In this decision, the Board adopted the following standards of review for questions of law, questions of mixed law and facts, and factual questions which may be reviewable as errors of law:

1. Errors of Law will be reviewed on the "*correctness*" standard.
2. Errors of Mixed Law and Fact will be reviewed on the "*reasonableness*" standard.
3. Errors of Fact which may be reviewable as questions of law will be reviewed on the "*reasonableness*" standard.

Analysis:

Issues arising out of the Appellant's appeal:

[16] The Appellant's appeal does not readily identify or particularize the errors of law that the Adjudicator is alleged to have committed; rather, much of the Appellant's appeal involves assertions or restatements of fact. Nonetheless, having reviewed the Appellant's material, I am satisfied that the following errors on the part of the Adjudicator are either alleged by the Appellant or may be inferred from her material:

1. That the Adjudicator erred in law in concluding that the absence of an ongoing employment relationship deprived the Adjudicator of jurisdiction to hear the Appellant's appeal.

2. That the Adjudicator erred in law in concluding that the Appellant's claim was vexatious in the absence of any inference of malice or an ulterior motive.
3. That the Adjudicator committed reviewable error in concluding that the two (2) meetings the Appellant had with the Respondent Employer were not related to the Appellant's employment or to occupational health and safety in any way.
4. That the Adjudicator committed reviewable error in concluding that none of the issues raised by the Appellant involved matters falling within the jurisdiction of *The Saskatchewan Employment Act*.

Issues to be reviewed on the Standard of Correctness**:**

[17] Of the errors that have been alleged by the Appellant (or inferred from her material), two (2) attract the standard of correctness. Firstly, whether or not the Adjudicator erred in law in concluding that an essential element for her to have jurisdiction over the Appellant's complaint of harassment was an ongoing employer/worker relationship and that the absence of such a relationship at the time of the hearing deprived the Adjudicator of jurisdiction to hear the Appellant's appeal. Secondly, whether or not the Adjudicator erred in law in concluding that the Appellant's claim was vexatious in the absence of any inference of malice or ulterior motive. I will deal with each issue in turn.

The Requirement for an Ongoing Employer/Worker Relationship:

[18] The Adjudicator found at para. 87, that the legislative framework governing occupational health and safety in Saskatchewan is meant to protect workers at work. At para. 90, the Adjudicator noted that neither party disputed the fact that the Appellant was no longer employed by the Respondent Employer at the time of the appeal. At para. 91, the Adjudicator concluded that the absence of an ongoing employment relationship deprived her of jurisdiction to hear an appeal relating to the Appellant's complaint of harassment. At para. 92, the Adjudicator also concluded that the absence of an ongoing employment relationship rendered the Appellant's appeal moot and concluded that no practical purpose would be served by hearing her appeal. Finally, at para. 93, the Adjudicator concluded that the circumstances mitigated against any conclusion that an ongoing harassment environment continued to exist in the workplace.

[19] In her appeal to this Board, the Appellant takes the position that the Adjudicator erred in her conclusion that she had no jurisdiction because of the absence of an ongoing employment relationship. Simply put, the Appellant asserts that she does continue to have a relationship with the Respondent Employer. Firstly, she argues that she is "*no longer an employee solely as a result of the harassment from the Respondent*" and that, had her complaints been adequately investigated, she would still be an employee today. In the alternative, the Applicant states that she may someday wish to return to work for the Respondent Employer.

[20] In my opinion, the Adjudicator did not err in law in her interpretation of Saskatchewan's occupational health and safety legislation. Her conclusion with respect to the import of the relevant provisions of *The Saskatchewan Employment Act* and *The Occupational Health and Safety Regulations, 1996*, c.O-1.1, Reg. 1, is reasonable and correct. She supported her conclusion with regard to secondary material including the guidelines published by the Ministry of Labour Relations and Workplace Safety for completing a harassment questionnaire. While the Appellant may wish that Saskatchewan occupational health and safety legislation had a broader application, the Adjudicator's conclusion that it was meant to protect workers at work is not assailable. I agree with the Adjudicator's findings that, in the context of harassment investigation, an ongoing employment relationship is an essential element of jurisdiction. In the absence of an ongoing employment relationship, to maintain jurisdiction, there must be evidence and/or some basis to conclude that an ongoing environment of harassment exists in the impugned workplace.

[21] In my opinion, the Adjudicator did not commit a reviewable error in concluding the fact that the Appellant no longer worked for the Respondent Employer (a fact that was not disputed by either party before the Adjudicator) deprived her of jurisdiction to hear the Appellant's appeal of the findings of the OH&S officer. Similarly, the Adjudicator's conclusion that the Appellant's appeal was moot in light of the absence of an ongoing employer/worker relationship was also reasonable and correct.

[22] The Appellant in these proceedings argues that she would still be an employee but for the conduct of the Respondent Employer or, in the alternative, that she might like to return to the workplace at some point in the future. In my opinion, the Appellant is now seeking to

assert new facts and/or to advance an alternate theory to her case in these proceedings. In the material before the Adjudicator, it was an undisputed fact that the Appellant was no longer an employee of the Respondent Employer at the time of her appeal. Furthermore, the matter of the Appellant's dismissal was not an issue before the Adjudicator. In light of the positions taken by the Appellant in her appeal, the Adjudicator correctly concluded that the Appellant was no longer in an employment relationship with the Respondent Employer.

[23] In my opinion, the Adjudicator's conclusion that the absence of an employment relationship at the time of the hearing deprived the Adjudicator of jurisdiction to hear the Appellant's appeal was both reasonable and correct.

Was the Appellant's Claim Vexatious?

[24] The Adjudicator found at para. 97, that the Appellant sought a remedy that was not related to occupational health and safety. At para. 79, the Adjudicator concluded that neither the alleged breach of security of the Respondent's network nor the alleged failure of the Respondent Employer to protect the Appellant's personal email from intrusion nor the issue of the alleged "*hate mail*" were matters failing with the jurisdiction of occupational health and safety-related legislation. At para. 85, the Adjudicator concluded that neither of the two (2) meetings between the Appellant and Respondent Employer were work-related and both meetings fell outside of the jurisdiction of *The Saskatchewan Employment Act*. In other words, in her decision, the Adjudicator concluded that none of the issues raised by the Appellant fell within the jurisdiction of the applicable occupational health and safety legislation. As a consequence, at para. 97, the Adjudicator concluded that the Appellant's appeal was frivolous. At para. 98, the Adjudicator concluded that the Appellant's appeal was also vexatious in light of the prolix material filed by the Appellant and the lack of a discernable occupational health and safety issue.

[25] The Appellant notes that at para. 98, the Adjudicator concluded that she was unable to infer malice or ulterior motives fueling her proceedings. The Appellant argues that, in the absence of any inference of malice or ulterior motives, the Adjudicator erred in law in finding that her appeal was vexatious.

[26] In my opinion, I need not answer this question. The Adjudicator's conclusion that the appeal was vexatious was *obiter*. The Appellant's appeal was dismissed on other grounds. In

light of my conclusions regarding these other grounds for appeal, I need not answer this question.

Issues to be reviewed on the Standard of Reasonableness**:**

[27] As noted by the Supreme Court of Canada in *Dunsmuir v. New* Brunswick, [2008] 1 SCR 190, 291 DLR (4th) 577,2008 SCC 9 (CanLII), a "*reasonableness*" assessment requires the reviewing body to consider whether the decision-making process meets the standards of justification, transparency and intelligibility and whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasure Board)*, [2011] 3 SCR 708, 340 DLR (4th) 17, 2011 SCC 62 (CanLII), the Supreme Court of Canada provide the following analysis of the reasonableness standard in the context of an administrative tribunal:

> *[12] It is important to emphasize the Court's endorsement of Professor Dyzenhaus's observation that the notion of deference to administrative tribunal decision-making requires "a respectful attention to the reasons offered or which could be offered in support of a decision". In his cited article, Professor Dyzenhaus explains how reasonableness applies to reasons as follows:*
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> > *"Reasonable" means here that the reasons do in fact or in principle support the conclusion reached. That is, even if the reasons in fact given do not seem wholly adequate to support the decision, the court must first seek to supplement them before it seeks to subvert them. For if it is right that among the reasons for deference are the appointment of the tribunal and not the court as the front line adjudicator, the tribunal's proximity to the dispute, its expertise, etc, then it is also the case that its decision should be presumed to be correct even if its reasons are in some respects defective. [Underlining added by Abella J.]*
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> > *(David Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in Michael Taggart, ed., The Province of Administrative Law (1997), 279, at p. 304)*
>
> *…*
>
> *[17] **The fact that there may be an alternative interpretation of the agreement to that provided by the arbitrator does not inevitably lead to the conclusion that the arbitrator's decision should be set aside if the decision itself is in the realm of reasonable outcomes. Reviewing judges should pay "respectful attention" to the decision-maker's reasons, and be cautious about substituting their own view of the proper outcome by designating certain omissions in the reasons to be fateful**.*
>
> *[18] Evans J.A. in Canada Post Corp. v. Public Service Alliance of Canada, 2010 FCA 56 (CanLII), [2011] 2 F.C.R. 221, explained in reasons upheld by this Court (2011 SCC 57 (CanLII), [2011] 3 S.C.R. 572) that Dunsmuir seeks to "avoid an unduly formalistic approach to judicial review" (para. 164). He notes that **"perfection is not the standard" and suggests that reviewing courts should ask whether "when read in light of the evidence before it and the nature of its statutory task, the Tribunal's reasons adequately explain the bases of its decision"** (para. 163). I found the description by the Respondents in their Factum particularly helpful in explaining the nature of the exercise:*

> ***When reviewing a decision of an administrative body on the reasonableness standard, the guiding principle is deference. Reasons are not to be reviewed in a vacuum – the result is to be looked at in the context of the evidence, the parties' submissions and the process****. Reasons do not have to be perfect. They do not have to be comprehensive. [para. 44]*
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> *(**Bold** emphasis added, <u>underline</u> emphasis in original)*

[28] In my opinion, two (2) grounds for review alleged by the Appellant (or inferred from her material) attract the standard of reasonableness on the basis they involve questions of fact or questions of mixed fact and law. Firstly, whether or not the Adjudicator committed a reviewable error in concluding that the two (2) meetings the Appellant had with the Respondent Employer (the first on December 31, 2012 and the second on January 14, 2013) were not related to the Appellant's employment or to occupational health and safety in any way. Secondly, whether or not the Adjudicator committed a reviewable error in concluding that none of the issues raised by the Appellant involved matters falling within the jurisdiction of *The Saskatchewan Employment Act*.

The Adjudicator's Conclusions with Respect to the Status of the Meetings

[29] As indicated, at para. 85, the Adjudicator found that the two (2) meetings the Appellant had with the Respondent Employer (the first on December 31, 2012 and the second on January 14, 2013) were both outside the jurisdiction of *The Saskatchewan Employment Act*. The Adjudicator found, based on the Appellant's own submissions, that these meetings involved the Appellant as a library patron; not as an employee; and that they involved allegations not relating to her employment. At para. 84, the Adjudicator wrote:

> *"As convoluted as the Appellant's submissions are in regard to the meetings, it is clear on the face of the appeal, that the Appellant asserts her role in the meetings in that regard as being a patron, a member of the public, and not as an employee."*

[30] The Appellant argues that the Adjudicator committed a reviewable error when she concluded that the two (2) meetings the Appellant had with the Respondent Employer were not related to the Appellant's employment or to occupational health and safety in any way. To the contrary, the Appellant, in her appeal to this Board, asserts that both of these meetings were employment-related. In support of her appeal to this Board, the Appellant now asserts that she was paid to attend both of these meetings; that they occurred during normal working hours for

her; that she was represented by her union at both meetings; and that the meetings took place at locations where she had worked or was working at the time.

[31] The Respondent Employer takes the position that the Appellant is now trying to assert new factual allegations contrary to the assertions she made to the Adjudicator. The Respondent Employer notes that in both her original complaint (i.e.: the harassment questionnaire) and in her submissions to the Adjudicator, the Appellant had taken the position that neither of the subject meetings were work-related. As a consequence, the Respondent Employer argues that the Adjudicator did not err in law in relying on the factual assertions of the Appellant. Furthermore, the Respondent Employer cautions this Board that it would be inappropriate to now permit the Appellant to assert facts inconsistent with the facts she asserted in her original complaint and in her submissions to the Adjudicator.

[32] In my opinion, the Respondent Employer's arguments are well founded. The Adjudicator did not mischaracterize the Appellant's submissions or otherwise make irrational inferences from the pleadings. While the Appellant's material would have presented a challenge for the Adjudicator because of the copious and often extraneous information contained therein, her conclusions regarding the nature and purpose of the two (2) meetings are both reasonable and correct in light of the material before her. In her appeal, the Appellant asserted that she was not involved in the two (2) meetings because she was an employee or because of her employment relationship. Rather, the Appellant asserted in her material that she was involved in these meetings as a patron of the library; presumably, because she had relevant information about alleged wrong doing on the part of another employee. With the benefit of hindsight, the Appellant now seeks to re-characterize her involvement in these meetings and asserts new factual allegations in an effort to reformulate her appeal.

[33] In my opinion, it is not open to the Appellant to change the position she took before the Adjudicator and re-litigate her failed application in the guise of an appeal to this Board. In light of the Appellant's own submissions to the Adjudicator, the Adjudicator's conclusions fell well within an acceptable range of outcomes.

Matters not falling within the scope of applicable occupational health and safety legislation:

[34] The essence of the Appellant's appeal is that the Adjudicator committed reviewable error in concluding that none of the issues raised by the Appellant involved matters

falling within the jurisdiction of the applicable occupational health and safety legislation; being Part III of *The Saskatchewan Employment Act*.

[35] In summary, the Adjudicator concluded that for her to maintain jurisdiction pursuant to *The Saskatchewan Employment Act*, the onus was on the Appellant to demonstrate the following:

1. That the substance of the appeal must concern "*harassment*" as defined by *The Saskatchewan Employment Act*; and
2. That the appeal must relate to a worker engaged in the service of an employer or, if the worker is no longer employed at the place of employment, that the environment of harassment continues to exist.

[36] As I have already noted, in my opinion, the Adjudicator did not err in law in her interpretation of Saskatchewan's occupational health and safety legislation.

[37] As noted, the Adjudicator concluded that neither the alleged breach of security of the Respondent's network nor the alleged failure of the Respondent Employer to protect the Appellant's personal email from intrusion nor the issue of the alleged "*hate mail*" were matters failing with the jurisdiction of Part III of *The Saskatchewan Employment Act*. The Adjudicator also concluded, based on the Appellant's own submissions, that neither of the two (2) meetings between the Appellant and Respondent Employer were work-related. Simply put, the Adjudicator concluded that none of the issues raised by the Appellant fell within the jurisdiction of the applicable occupational health and safety legislation. In my opinion, each of the Adjudicator's conclusions regarding the nature and substance of the Appellant's appeal fell within the range of possible, acceptable outcomes. In each case, the Adjudicator asked the correct question and, in light of the material before her, came to conclusions that were supportable based on that material. The Adjudicator did not take irrelevant considerations into account, mischaracterize the Appellant's submissions or otherwise make irrational inferences from her material. Her analysis was transparent and her reasons adequately explained and supported her conclusions. In light of the Adjudicator's expertise in this particular field, deference is unquestionably owed to her findings and conclusions as to whether or not the substance of the Appellant's appeal concerned "*harassment*" within the meaning of the applicable occupational health and safety legislation.

Conclusions:

[38] For the above reasons, the decision of the Adjudicator is affirmed. The Appellant's appeal is dismissed.

DATED at Regina, Saskatchewan, this **5th** day of **October, 2015.**

LABOUR RELATIONS BOARD

Steven D. Schiefner,
Vice-Chairperson