Saskatchewan
Labour Relations Board

MARCEL PELLETIER, Applicant v TOUCHWOOD AGENCY TRIBAL COUNCIL, Respondent

LRB File No. 061-23; July 11, 2023
Chairperson, Michael J. Morris, K.C. (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*

The Applicant, Marcel Pelletier: Self-represented

Counsel for the Respondent, Touchwood Agency Tribal Council: Neil Raas

Jurisdiction – Employee terminated by Employer – OHS officer determines termination was a discriminatory action contrary to s. 3-35 of *The Saskatchewan Employment Act* – Employer's appeal of OHS officer's decision to adjudicator dismissed for lack of jurisdiction – Employee files application requesting the Board order monetary and other relief.

Board lacks jurisdiction to order requested relief – Application does not engage the Board's appellate jurisdiction under Part IV – Application does not engage the Board's original jurisdiction under Part VI – Application dismissed pursuant to clauses 6-111(1)(o) and (q).

REASONS FOR DECISION

Background:

[1] **Michael J. Morris, K.C., Chairperson:** These reasons concern whether the Board has jurisdiction to grant relief sought in an application filed by Marcel Pelletier [Mr. Pelletier].

[2] Mr. Pelletier is a former employee of Touchwood Agency Tribal Council [Touchwood].

[3] The context in which the parties find themselves before the Board is as follows.

[4] On May 14, 2022, the Occupational Health and Safety Branch of the Ministry of Labour Relations and Workplace Safety [OHS] received a complaint from Mr. Pelletier, a former employee of Touchwood. Mr. Pelletier's complaint was that he had been terminated because he had made a complaint of workplace harassment.

[5] An OHS officer conducted an investigation and determined that Mr. Pelletier's complaint of discriminatory action was substantiated. The officer's brief written decision dated September 13, 2022 [September 13th Decision] concluded with the following:

> *It is not the role of the OHS officer in this circumstance to determine whether or not harassment took place, this is a claim of discriminatory action. The Officer's duty in this matter is to determine if in fact a health and safety concern was raised based on the legislation and if the worker was more likely than not, based on a balance of probabilities, terminated as a result of raising these concern(s).*
>
> *It is my decision that the employer, Touchwood Agency Tribal Council, has not provided good and sufficient reason for the dismissal of Marcel Pelletier and that the termination was an unlawful discriminatory action contrary to section 3-35 of The Saskatchewan Employment Act. Please contact Marcel Pelletier upon receipt of this decision to discuss his return to the workplace.*[1]

[6] Although the document is not in evidence before the Board, it is understood[2] that, along with the September 13th Decision, the OHS officer served a notice of contravention [Notice of Contravention] on Touchwood pursuant to s. 3-36(2) of *The Saskatchewan Employment Act* [Act].[3]

[7] On October 24, 2022, Touchwood filed an appeal of the September 13th Decision. An adjudicator, Ted Koskie [Mr. Koskie], was selected to hear the appeal pursuant to s. 4-3(3) of the Act.[4]

[8] As a preliminary issue, Mr. Pelletier contested Mr. Koskie's jurisdiction to consider Touchwood's appeal, noting that it had been filed more than 15 business days after Touchwood was served with the September 13th Decision, contrary to s. 3-53(2) of the Act. Mr. Koskie heard evidence and argument on this issue and reserved his decision.

[9] While Mr. Koskie's decision on the preliminary issue was on reserve, Mr. Pelletier filed an application with the Board. Mr. Pelletier's application was received by the Board on April 20, 2023. In part, it states:

> *It has now been more than 60 days that the adjudicator is allowed under S. 4-7(1)(a) and as such, I make this application for enforcement and remedy of the September 13th, 2022 decision.*
> …

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[1] The September 13th Decision was included as Appendix "A" to Mr. Pelletier's application to the Board.
[2] The reasons of Adjudicator Koskie, dated April 20, 2023, mention Notice of Contravention Number 1-00023266 being served on the Employer on September 16, 2022.
[3] *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [Act], s 3-36(2).
[4] The Board's registrar is required to select an adjudicator for appeals of decisions under Parts II, III and V of the Act, pursuant to s. 4-3(3).

The remedy I am seeking is as follows:

1. *The Power to enforce orders and decisions under S. 4-11(1) of the Saskatchewan Employment Act.*

2. *Immediate payment of all retroactive salary and monies owing as outlined in the information provided with this application including a spreadsheet with the bi-weekly payments and other monies outstanding as outlined in S. 3-37(1)(c)*

3. *A Demand on Third Party as outlined in S. 2-70 of the Saskatchewan Employment Act which would include the parties of Byron Bitternose, Lloyd Buffalo, Jamie Wolfe and Leanne Kehler.*

4. *Enforcement of maximum allowable penalties as outlined in S. 2-95(2) of the Saskatchewan Employment Act against each individual director of Touchwood Agency Tribal Council.*

5. *Enforcement of Additional Powers as outlined in S. 2-97(1) of the Saskatchewan Employment Act.*

6. *The immediate resignation and withdrawal of the directors of TATC including Byron Bitternose, Lloyd Buffalo, Jamie Wolfe and Leanne Kehler.*

7. *Compensation for damages in the amount of $200,000 as provided in case law including that of Dornan v. Province of New Brunswick, 2023 CanLII 10433 (NB LA).*

8. *A minimum of five years of earnings in the amount of $892,200 as provided in case law including that of Dornan v. Province of New Brunswick, 2023 CanLII 10433 (NB LA).*

9. *Compensation in the amount of $5,000 per day retro-active to January 9th, 2023 for damages caused by the Saskatchewan Government and the adjudicator's negligence in not addressing this matter in a reasonably timely manner, which has caused extreme pain and suffering.*[5]

[10] Mr. Pelletier filed several documents along with his application to the Board. These included the September 13th Decision,[6] several email communications involving Mr. Pelletier and Mr. Koskie,[7] Mr. Pelletier's calculations regarding the money allegedly owed to him by Touchwood as of April 14, 2023,[8] his calculations regarding the money allegedly owed on a go-forward basis from that date,[9] and a copy of the decision in *Dornan v New Brunswick*, 2023 CanLII 10433 (NB LA)[10] [*Dornan*].

[5] Quoted from pages 1 and 2 of Mr. Pelletier's application to the Board.
[6] Appendix "A" to Mr. Pelletier's application.
[7] Appendices "B", "C", "D" and "H" to Mr. Pelletier's application.
[8] Appendix "E" to Mr. Pelletier's application.
[9] Appendix "G" to Mr. Pelletier's application.
[10] Appendix "F" to Mr. Pelletier's application.

[11] As it happened, Mr. Koskie released his decision [Koskie Decision] with respect to his jurisdiction to hear Touchwood's appeal on April 20, 2023,[11] the same day Mr. Pelletier's application to the Board was filed.

[12] In the Koskie Decision, Mr. Koskie concluded that he had no jurisdiction to hear Touchwood's appeal for the reason advanced by Mr. Pelletier: Touchwood had filed it beyond the statutory deadline. Accordingly, Mr. Koskie dismissed Touchwood's appeal.

[13] The dismissal of Touchwood's appeal has not affected Mr. Pelletier's determination to pursue his application before the Board.

[14] Mr. Pelletier's application was placed on the docket for the June 6, 2023 appearance day before the Board. On that date Mr. Pelletier expressed that he urgently required relief from the Board; effectively, an order requiring Touchwood to pay him compensation. Mr. Raas appeared as counsel for Touchwood, indicating that he had only recently been retained. The matter was set over to June 8th for a case management conference.

[15] On June 8th, Mr. Pelletier and Mr. Raas attended a case management conference with me. Because this matter had come before the Board in an unconventional manner – i.e., not as an appeal of an adjudicator's decision pursuant to s. 4-8 of the Act - I raised whether the Board had jurisdiction to entertain the application and the relief sought therein. After the case management conference concluded, I issued an order directing the parties to provide written submissions with respect to the Board's jurisdiction. The order indicated that the Board would also allow the parties to make oral submissions, if requested by either party.

[16] Mr. Pelletier and Touchwood each filed written submissions regarding the Board's jurisdiction. Neither asked to make oral submissions.

[17] The Director of Occupational Health and Safety was served with Mr. Pelletier's application, but has not participated in the proceedings before the Board in any manner.

Argument on behalf of Mr. Pelletier:

[18] Mr. Pelletier is clearly very frustrated with the (lack of) compliance by Touchwood since it was served with the September 13th Decision and Notice of Contravention. Mr. Pelletier believes

[11] LRB File No. 178-22: Decision of Adjudicator Koskie dated April 20, 2023.

the Board has jurisdiction to grant him the remedies he is seeking from it, and intimates that he has been directed to the Board by OHS, to pursue these remedies.

[19] Mr. Pelletier's application cites multiple provisions from different parts of the Act. According to him, these authorize the Board to grant him the relief he is seeking.

[20] First is s. 4-11, from Part IV (Appeals and Hearings re Parts II, III and V):

> ***4-11****(1) An order of an adjudicator, the board or the Court of Appeal pursuant to this Part may be enforced in the manner authorized by this Act.*
>
> *(2) An order of an adjudicator or the board may be filed in the office of a local registrar of the Court of Queen's Bench and enforced as a judgment of that court.*[12]

[21] Mr. Pelletier says that the Koskie Decision is an order that the Board can enforce.

[22] Mr. Pelletier next points to s. 3-37(c) from Part III (Occupational Health and Safety), which pertains to the powers of a convicting judge:

> ***3-37*** *If an employer is convicted of taking discriminatory action against a worker contrary to any provision of this Part, the convicting judge shall order the employer*:
>
> …
>
> *(c) to pay to the worker any wages the worker would have earned if the worker had not been wrongfully discriminated against;*[13]

[23] Mr. Pelletier also notes portions of ss. 2-70, 2-95 and 2-97 of Part II (Employment Standards), which pertain to the Director of Employment Standards' power to serve third party demands, and the powers of a convicting judge:

> ***2-70****(1) In this Division and in Division 5:*
>
> *(a) "employer" includes a corporate director of an employer who is liable for wages pursuant to section 2-68;*
>
> *(b) "third party" means a person who has been served with a demand;*
>
> *(c) "wages" includes interest calculated in accordance with the regulations made pursuant to this Part.*
>
> *(2) Subject to the regulations made pursuant to this Part, the director of employment standards may serve a demand on a person if the director has knowledge or reasonable grounds to believe or suspects that:*

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[12] Act, s 4-11.
[13] Act, s 3-37(c).

> *(a) an employer has failed or is likely to fail to pay wages to an employee as required by this Part; and*
>
> *(b) the person on whom the demand is served is or is about to become indebted to or liable to pay money to the employer.*
> *…*
>
> ***2-95****(1) No person shall:*
>
> *(a) in the case of an employer:*
>
> *(i) fail to pay an employee:*
>
> *(A) the wages owing to the employee in the time and manner required pursuant to this Part, the regulations made pursuant to this Part or any authorization issued pursuant to this Part; or*
>
> *(B) the total wages to which the employee is entitled in accordance with the employee's contract of employment or with a collective agreement that applies to the employee;*
>
> *. . .*
>
> *(2) Every person who contravenes a provision of subsection (1) is guilty of an offence and liable on summary conviction:*
>
> *(a) subject to clause (b), to a fine of not more than $10,000;*
> *…*
>
> ***2-97****(1) If an employer is convicted of failure to grant an employment leave or of failure to reinstate an employee in his or her former employment after the employment leave, the convicting court may, in addition to any other penalty imposed for the offence, order the employer:*
>
> *(a) if the conviction is for failure to grant an employment leave, to immediately grant to the employee the leave that the employer ought to have granted; or*
>
> *(b) if the conviction is for failing to reinstate an employee in his or her former employment after the employee has been granted employment leave:*
>
> *(i) to reinstate the employee in his or her former employment under the same terms and conditions in which he or she was formerly employed; and*
>
> *(ii) to pay to the employee his or her wages retroactive to the date that the convicting judge determines that the employee ought to have been reinstated in his or her former employment pursuant to this Part. …*[14]

[24] In his written argument, Mr. Pelletier mentions the following provisions from Part VI (Labour Relations):

> ***6-103****(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.*

[14] Act, ss 2-70, 2-95, 2-97.

(2) Without limiting the generality of subsection (1), the board may do all or any of the following:

…

(b) make orders requiring compliance with:

…

(iii) any board decision respecting any matter before the board;

(c) make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of this Act;

…

6-104 *…*

(2) In addition to any other powers given to the board pursuant to this Part, the board may make orders:

. . .

(e) fixing and determining the monetary loss suffered by an employee, an employer or a union as a result of a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board by one or more persons, and requiring those persons to pay to that employee, employer or union the amount of the monetary loss or any portion of the monetary loss that the board considers to be appropriate;

…

6-108*(1) The board may cause a certified copy of any board order or decision to be filed in the office of a local registrar of the Court of Queen's Bench.*

(2) On filing of the certified copy pursuant to subsection (1), the board order or decision is enforceable as a judgment of the Court of Queen's Bench.

…

(5) An application to enforce a board order or decision may be made to the Court of Queen's Bench by and in the name of the board, any union affected or any interested person.

(6) On an application to enforce a board order or decision, the Court of Queen's Bench:

(a) is bound by the findings of the board; and

(b) shall make any order that it considers necessary to cause every person with respect to whom the application is made to comply with the board order or decision.

(7) The board may, in its own name, appeal any judgment, decision or order of any court affecting any of its orders or decisions.[15]

[25] Mr. Pelletier submits that s. 6-104(2)(e), reproduced above, provides the Board with the statutory authority to make the damages awards he requests. He says that *Dornan*, a case

[15] Act, ss 6-103, 6-104, 6-108.

decided by an adjudicator under New Brunswick's *Public Service Labour Relations Act*,[16] suggests that he is entitled to a minimum of five years of earnings and aggravated (*Wallace*) damages.

[26] Mr. Pelletier suggests "[s]ection 6-104 of the [Act]" provides the Board's jurisdiction to award him "$5,000 per day retroactive to January 9th, 2023 for damages caused by the Saskatchewan Government and the adjudicator's negligence in not addressing this matter in a reasonably timely manner, which has caused extreme pain and suffering." No more specificity is provided other than the reference to s. 6-104, which pertains to the Board's powers with respect to applications dealing with collective bargaining and related rights.

[27] Finally, Mr. Pelletier suggests that the Board has the authority to compel "the resignation and withdrawal" of Touchwood's directors because they have failed to abide by the September 13th Decision.

Argument on behalf of Touchwood:

[28] Touchwood notes that the Board has no jurisdiction beyond that granted by the Act, and submits that none of the remedies sought in Mr. Pelletier's application are within the Board's jurisdiction.

[29] Touchwood submits that there is no order of an adjudicator for the Board to enforce. Mr. Koskie's decision dismissed Touchwood's appeal for lack of jurisdiction. Apart from this, it made no order and did not grant Mr. Pelletier any relief. As such, s. 4-11 of the Act is inapplicable, as there is no adjudicator's order (with accompanying relief) to enforce. Rather, the September 13th Decision and Notice of Contravention remain in place.

[30] Touchwood notes that the Board is not a convicting judge or justice able to make orders under the following provisions of the Act that Mr. Pelletier purports to rely upon: ss. 3-37, 2-95 and 2-97.

[31] Touchwood notes that the Board does not have the power to issue third party demands under s. 2-70 of the Act. This is a power conferred upon the Director of Employment Standards.

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[16] *Public Service Labour Relations Act*, RSNB 1973, c P-25 [*Public Service Labour Relations Act*].

[32] Touchwood notes that neither *Dornan* nor the New Brunswick statute grounding the adjudicator's authority in that case can ground the Board's authority, which must be derived from the Act.

[33] Touchwood notes that nothing in the Act authorizes the Board to compel the resignation of its directors. Touchwood also notes that Mr. Pelletier has not anchored his claim for damages against Mr. Koskie or the Government of Saskatchewan in any provision of the Act which would grant the Board jurisdiction over same.

Analysis and Decision:

[34] At the outset, it is important to highlight the reason Mr. Pelletier has filed his application with the Board. He is before the Board, apparently, because the September 13th Decision and Notice of Contravention have not caused Touchwood to pay him.

[35] While the Board is not privy to the Notice of Contravention, pursuant to the September 13th Decision and s. 3-36(2) of the Act, the Notice of Contravention was required to contain certain provisions, including a provision requiring Touchwood to pay Mr. Pelletier lost wages (emphasis added):

> ***3-36*** *…*
>
> *(2) If an occupational health officer decides that an employer has taken discriminatory action against a worker for a reason mentioned in section 3-35, the occupational health officer shall serve a notice of contravention requiring the employer to:*
>
> *(a) cease the discriminatory action;*
>
> *(b) reinstate the worker to his or her former employment on the same terms and conditions under which the worker was formerly employed;*
>
> *(c) pay to the worker any wages that the worker would have earned if the worker had not been wrongfully discriminated against; and*
>
> *(d) remove any reprimand or other reference to the matter from any employment records maintained by the employer with respect to that worker.*[17]

[36] While s. 3-36 is found in Division 5 of Part III, Division 6 contains more detail on notices of contravention, including setting deadlines for remedying them and progress reports on remedial action (emphasis added):

> ***3-38****(1) An occupational health officer shall act pursuant to subsection (2) if the occupational health officer is of the opinion that a person:*

[17] Act, s 3-36(2).

…

> *(b) has contravened any provision of this Part or the regulations made pursuant to this Part in circumstances that make it likely that the contravention will continue or will be repeated.*

(2) In the circumstances mentioned in subsection (1), the occupational health officer shall:

…

> *(b) serve a notice of contravention on the person.*

(3) For the purposes of subsection (2):

…

> *(b) a notice of contravention must:*
>
> > *(i) cite the contravened provision of this Part or of the regulations made pursuant to this Part;*
> >
> > *(ii) state the reasons for the occupational health officer's opinion; and*
> >
> > *(iii) require the person to remedy the contravention within a period specified by the occupational health officer in the notice of contravention.*

…

***3-39** A notice of contravention may include directions as to the measures to be taken to remedy the contravention to which the notice relates, and the directions must, if practicable, give the person on whom the notice is served a choice of different ways of remedying the contravention.*

…

***3-43**(1) Within five business days after the end of the period specified in a compliance undertaking or notice of contravention within which a contravention is to be remedied, the person who entered into the compliance undertaking or on whom the notice of contravention is served:*

> *…*
>
> *(b) shall provide the occupational health officer who received the compliance undertaking or who served the notice of contravention with a written report of the progress that has been made towards remedying each contravention of this Part or the regulations made pursuant to this Part that is stated in the compliance undertaking or notice of contravention.*

(2) A written report mentioned in subsection (1) must include any prescribed information.[18]

[37] Apart from being served with a notice of contravention and being required to submit a written report on remedial action, an employer may be prosecuted for taking discriminatory action.

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[18] Act, ss 3-38, 3-39, 3-43.

Amongst other orders arising from a conviction, a convicting judge must order the employer to pay a worker any wages the worker would have earned had they not been wrongfully discriminated against.[19]

[38] The Board is not privy to whether Touchwood has been required to provide a written report to OHS with respect to the Notice of Contravention, or whether any prosecution has been initiated against Touchwood.[20]

[39] At this point, it is helpful to recap how Mr. Pelletier's application came before the Board. The September 13th Decision and Notice of Contravention were served on Touchwood. Touchwood filed an appeal, and Mr. Pelletier argued that Mr. Koskie had no jurisdiction to hear it because it was late-filed. Unhappy with the amount of time Mr. Koskie was taking with the issue, Mr. Pelletier filed his application with the Board. That same day, the Koskie Decision dismissed Touchwood's appeal due to it being late-filed.

[40] In applying to the Board, Mr. Pelletier has in effect asked the Board to assess the compensation which should be paid pursuant to the Notice of Contravention, and to award other remedies.

[41] The Board is a creature of statute and only has the jurisdiction bestowed upon it by the Act. Because of this, the Board must look to the Act to determine whether it has jurisdiction to award Mr. Pelletier any of the relief sought in his application.

[42] The Board is typically asked by employees to adjudicate matters arising under Part III of the Act (Occupational Health and Safety) as an appellate body, pursuant to ss. 4-8(2) and (6) of the Act:

> ***4-8****…*
>
> *(2) A person who is directly affected by a decision of an adjudicator on an appeal pursuant to Part III or Part V may appeal the decision to the board on a question of law.*
> *…*
>
> *(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.*[21]

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[19] Act, ss 3-36(4) and 3-37(c).
[20] The Board notes that failure to comply with any term or condition imposed by a notice of contravention is an offence under s. 3-78(a) of the Act, punishable under ss. 3-79(3) and (4).
[21] Act, ss 4-8(2) and (6).

[43] If an employee is dissatisfied with the decision of an adjudicator, the Board is the next port of call for them. However, appeals to the Board under s. 4-8(2) are restricted to questions of law. The Board has carried out this appellate function since the Act entered into force on April 29, 2014. The analogous function under *The Occupational Health and Safety Act, 1993* (repealed) was previously carried out by the Court of Queen's Bench (as it was then known).[22]

[44] The Board is clearly not being asked by Mr. Pelletier to sit as an appellate body on an appeal of the Koskie Decision. The Koskie Decision was favourable to Mr. Pelletier. He obtained the result he sought; Touchwood's appeal was dismissed based on the point of law Mr. Pelletier raised. Accordingly, s. 4-8 is not engaged by Mr. Pelletier's application.[23]

[45] Because the Board is not sitting as an appellate body pursuant to s. 4-8, it must examine whether any of the provisions relied upon by Mr. Pelletier provide it with original jurisdiction to grant him the relief he seeks.

[46] In interpreting the Act, the Board is guided by s. 2-10 of *The Legislation Act*:

> ***2-10****(1) The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.*
>
> *(2) Every Act and regulation is to be construed as being remedial and is to be given the fair, large and liberal interpretation that best ensures the attainment of its objects.*[24]

[47] As aforementioned, the Act entered into force on April 29, 2014. It replaced twelve statutes, which were repealed with its proclamation. Amongst others, these included *The Labour Standards Act*,[25] *The Occupational Health and Safety Act, 1993,* and *The Trade Union Act.*[26] The successor provisions to these three (repealed) statutes are primarily found in Part II (Employment Standards), Part III (Occupational Health and Safety) and Part VI (Labour Relations), respectively.

[48] The Board did not exercise any original jurisdiction under either *The Labour Standards Act* or *The Occupational Health and Safety Act, 1993*. As explained below, this remains the case

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[22] *The Occupational Health and Safety Act, 1993*, SS 1993, c O-1.1 [*The Occupational Health and Safety Act, 1993*], s 56.
[23] Parenthetically, appeals pursuant to s. 4-8(2) are filed using Form 1 of *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021*, pursuant to s. 4 of the said regulations.
[24] *The Legislation Act*, SS 2019, c L-10.2, s 2-10.
[25] *The Labour Standards Act*, RSS 1978, c L-1 [*The Labour Standards Act*].
[26] *The Trade Union Act*, RSS 1978, c T-17 [*The Trade Union Act*].

with respect to Part II (Employment Standards), Part III (Occupational Health and Safety) and Part V (Radiation Health and Safety) of the Act.

[49] The Board is not mentioned at all in Part III (Occupational Health and Safety) or Part V (Radiation Health and Safety). It is mentioned in ss. 2-77 and 2-87 of Part II (Employment Standards). However, these provisions describe the Director of Employment Standards' standing in wage assessment appeals before the Board,[27] and the Director's ability to issue a certificate setting out the amount of wages owed after a wage assessment appeal to the Board.[28] In other words, they do not evince any original jurisdiction being bestowed upon the Board.

[50] The appellate jurisdiction which formerly resided with the Court of Queen's Bench under *The Labour Standards Act* and *The Occupational Health and Safety Act, 1993* now resides with the Board under Part IV of the Act (Appeals and Hearings re Parts II, III and V).

[51] Under Part IV, the Board can hear appeals from adjudicators' decisions under Parts II, III or V pursuant to sections 4-8 and 4-10. Section 4-8 has already been discussed. Section 4-10 applies to appeals by the Director of Employment Standards or the Director of Occupational Health and Safety, neither of which are applicable in the circumstances before the Board.

[52] In addition to its appellate jurisdiction under Part IV, the Board has what might be termed limited "supervisory" jurisdiction when an adjudicator is tardy in rendering their decision on an appeal. Adjudicators must provide their decisions within specified time frames, pursuant to s. 4-7(1). When they fail to do so, under s. 4-7(2) a party to the appeal or the Director of Employment Standards or the Director of Occupational Health and Safety, as the case may be, may apply to the Board for an order directing the adjudicator to provide their decision. Pursuant to s. 4-7(3), the Board may do one or more of the following:

> *(a) direct the adjudicator to provide the decision;*
>
> *(b) establish the period within which the decision is to be provided;*
>
> *(c) set aside the adjudicator's selection and direct the registrar to select another adjudicator to hear the appeal;*
>
> (d) *make any other order the board considers appropriate.*[29]

[27] Act, s 2-87(1)(a)(i).
[28] Act, s 2-77(1)(b).
[29] Act, s 4-7(3).

[53] The Board's remedies in this regard are akin to a superior court issuing a writ of mandamus with respect to an administrative decision-maker, and they are intended to ensure that an adjudicator's decision is rendered within a reasonable time frame. Clause 4-7(3)(d) does not allow the Board to replace the adjudicator as decision-maker with itself, as doing so would conflict with the Board's role within Part IV as the next-level appellate body *after* an adjudicator's decision is rendered.[30]

[54] The Board had original jurisdiction under *The Trade Union Act* and continues to have original jurisdiction under Part VI of the Act (Labour Relations). The Board has previously described the objects of Part VI as the facilitation and promotion of collective bargaining rights.[31] Generally, Part VI pertains to the regulation of collective bargaining and related rights.

[55] In summary, the Board has original jurisdiction under Part VI of the Act (Labour Relations). It has no original jurisdiction under Part II (Employment Standards), Part III (Occupational Health and Safety) or Part V (Radiation Health and Safety).

[56] With the foregoing established, the Board will proceed to examine the provisions of the Act that Mr. Pelletier's application purports to rely upon: ss. 4-11, 2-70, 2-95, 2-97 and 3-37.

[57] The first provision is s. 4-11. This provision comes from Part IV, from which the Board's appellate jurisdiction originates. Section 4-11 states that an order of an adjudicator, the board or the Court of Appeal pursuant to Part IV may be enforced in the manner authorized by the Act, and that such orders from adjudicators or the Board may be enforced as judgments of the Court of King's Bench. This provision does not clothe the Board with any ability to grant Mr. Pelletier relief. It simply establishes that if the Board makes an order under Part IV, in the exercise of its appellate authority, it may be enforced as a judgment of the Court of King's Bench. An adjudicator's order pursuant to Part IV may be similarly enforced.

[58] Several of the provisions that Mr. Pelletier relies upon may be grouped together as powers of a convicting judge, court, or justice under Parts II and III: ss. 2-95, 2-97 and 3-37. The Board has no jurisdiction to adjudicate prosecutions under these provisions, and consequently no jurisdiction to grant relief under them. The Board is not a judge, a court, or a justice for the purposes of any prosecution, and it cannot act pursuant to ss. 2-95, 2-97 or 3-37. Parenthetically,

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[30] Under either s. 4-8 or s. 4-10.
[31] *Saskatoon Co-Operative Association Limited v Craig Thebaud*, 2020 CanLII 35487 (SK LRB), at para 43.

while private prosecutions may theoretically be possible under the Act,[32] the Board would generally expect prosecutions to be brought by the Crown in the name of His Majesty the King.

[59] Mr. Pelletier also relies upon s. 2-70, which concerns the Director of Employment Standards' power to serve third party demands to satisfy an employee's unpaid wages. This power is not one which is bestowed upon the Board, and it cannot act pursuant to it.

[60] Based on the above, none of provisions mentioned in Mr. Pelletier's application provide the Board with jurisdiction to make the orders he seeks.

[61] As aforementioned, the Board possesses original jurisdiction under Part VI. However, this jurisdiction is with respect to applications pertaining to collective bargaining and related rights.

[62] Mr. Pelletier has not suggested that his dispute with Touchwood arises in the context of collective bargaining or related rights, nor is there any indication from the material before the Board that it does. For example, Mr. Pelletier does not assert that he has any rights under Part VI which have been breached because of Touchwood's conduct, or that Touchwood has committed an unfair labour practice under s. 6-62. Nor has Mr. Pelletier filed his application by using any of the forms in *The Saskatchewan Employment (Labour Relations Board) Regulations, 2021* [Regulations] that are prescribed for applications under Part VI of the Act.

[63] Mr. Pelletier cites s. 36 of the Regulations in his application, which states:

> ***36****(1) If an employer, union, labour organization or other person intends to apply to the board respecting a matter that the Act authorizes or requires to be submitted to the board and no Form is prescribed in these regulations for making the application, the employer, Union, labour organization or other person shall file a written document that sets out all of the following with reasonable particularity:*
>
> > *(a) the nature of the application being made and the facts relied on by the applicant;*
> >
> > *(b) the name of the applicant and of any other employer, union, labour organization or person directly affected by the application;*
> >
> > *(c) the relief being sought;*
> >
> > *(d) the provisions of the Act on which the applicant relies to make the application.*
>
> *(2) If an employer, union, labour organization or other person intends to apply to the board respecting a matter that the Act authorizes or requires to be submitted to the board and more than one Form is prescribed in these regulations for making that application, the*

[32] See, for example, *Taking Workers' Rights Seriously: Private Prosecutions of Employment Standards Violations*, 2008 CanLIIDocs 15.

> *employer, union, labour organization or other person may combine the information required by those Forms into one application.*

[64] Notably, s. 36 of the Regulations is not a provision which confers jurisdiction on the Board. It requires the applicant to identify those provisions of the Act relied upon to make their application. The portion of Mr. Pelletier's application quoted at paragraph 9 of these reasons contains the provisions he identifies as grounding his requests for relief. None of those provisions are contained in Part VI of the Act, and as previously discussed, none of them confer jurisdiction on the Board to grant the relief Mr. Pelletier seeks.

[65] Though not referenced in his application, in his written argument to the Board Mr. Pelletier references portions of ss. 6-103, 6-104 and 6-108 of the Act. He suggests that these provisions provide the Board with the jurisdiction to grant him the relief he seeks. Accordingly, they will be examined in turn.

[66] First, Mr. Pelletier references the following provisions from s. 6-103:

> ***6-103****(1) Subject to subsection 6-97(3), the board may exercise those powers that are conferred and shall perform those duties that are imposed on it by this Act or that are incidental to the attainment of the purposes of this Act.*
>
> *(2) Without limiting the generality of subsection (1), the board may do all or any of the following:*
>
> …
>
> *(b) make orders requiring compliance with:*
>
> …
>
> *(iii) any board decision respecting any matter before the board;*
>
> *(c) make any orders that are ancillary to the relief requested if the board considers that the orders are necessary or appropriate to attain the purposes of this Act;*
>
> …

[67] A similar section existed in *The Trade Union Act*:

> ***42*** *The board shall exercise such powers and perform such duties as are conferred or imposed on it by this Act, or as may be incidental to the attainment of the objects of this Act including, without limiting the generality of the foregoing, the making of orders requiring compliance with the provisions of this Act, with any regulations made under this Act or with any decision in respect of any matter before the board.*[33]

[33] *The Trade Union Act*, s 42.

[68] Section 42 of *The Trade Union Act* was interpreted by the Court of Appeal in *Dairy Producers*.[34] The issue there was whether the Board had authority under s. 42 to issue an interim order enjoining conduct alleged to constitute an unfair labour practice, in spite of the Board not otherwise having such authority expressly conferred by the statute.[35]

[69] The Court concluded that the Board had such authority under s. 42. In doing so, the Court noted that the Board could only have those powers conferred upon it by its constituent statute, either expressly or, having regard to the express provisions, by implication.[36] The Court noted that the Board clearly had jurisdiction over the underlying dispute - whether an unfair labour practice had occurred - and concluded that s. 42 of *The Trade Union Act* could be reasonably interpreted as conferring upon the Board the power to make an interim order in the context of the underlying dispute. In coming to this conclusion, the Court distinguished its decision in *Tholl's case*,[37] noting that *Tholl's case* turned on the Board having no jurisdiction with respect to the underlying dispute.[38]

[70] During the course of its reasons, the Court referred to the Supreme Court's decision in *Syndicat des employés de production du Québec v CLRB* [*Syndicat*],[39] which interpreted an analogous provision in the *Canada Labour Code*. The Court quoted from *Syndicat* and acknowledged that there were limits to the implied powers which could be found in s. 42 (emphasis added):

> *[65] In delivering the judgment of the Supreme Court, Beetz, J. (at p. 432), said this:*
>
> > *"Interpretation of s. 121 of the Code is not facilitated by its loose wording. Nonetheless, however liberal a construction it should be given, it cannot be read, as Pratte, J., properly observed, so as to render unnecessary the other provisions of the Code including ss. 183 and 183.1(1)(a), which set forth the Board's powers. This would be the result of the argument made by counsel for the Board. By rendering unnecessary the other provisions setting forth the Board's powers, that proposition not only infringes the rules of interpretation but at the same time eliminates the limitations inherent in those provisions and is contrary to the intent of the legislator who enacted them. The interpretation proposed by counsel for the Board has even more extreme consequences, which counsel for the Syndicat correctly described as follows:*

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[34] *Burkart et al v Dairy Producers Co-operative Ltd.*, 1990 CanLII 7774 (SK CA) [*Dairy Producers*].
[35] The underlying dispute arose from the employer's decision, following the termination of collective bargaining agreements between the parties, to unilaterally alter the wages of the employees affected by the agreements: *Dairy Producers*, at para 2.
[36] *Dairy Producers*, at para 60.
[37] *Regina v Saskatchewan Labour Relations Board, Ex Parte Tholl*, 1969 CanLII 660 (SK CA) [*Tholl's case*].
[38] *Dairy Producers*, at para 55.
[39] *Syndicat des employés de production du Québec v CLRB*, 1984 CanLII 26 (SCC), [1984] 2 SCR 412 [*Syndicat*].

> *[Translation] '… adopting the argument made by counsel for the Board in their submission as to the powers conferred on the Board by s. 121 of the Canada Labour Code in conjunction with the preamble to Part V of the said Code would amount to a recognition that the Board has complete power and authority in the field of labour relations in Canada (except for powers specifically conferred on other bodies or jurisdictions), even powers which the legislator has not conferred on it, and make the said preamble a source of power and authority.'*
>
> *"The legislator intended that the Board's powers should be extensive; he did not intend that they should be practically unlimited.*
>
> *"It is quite possible that s. 121 covers only the powers necessary to perform the tasks expressly conferred on the Board by the Code, as Pratte, J., indicated. Nevertheless, I consider that even if it covers autonomous or principal powers, like that of ordering a reference to arbitration, and not merely incidental or collateral powers, it cannot cover autonomous powers designed to remedy situations which the Code has dealt with elsewhere, and for which it has prescribed specific powers, as is the case with unlawful strikes. Here, the legislator has not only specified the principal powers of the Board in s. 182, but its collateral powers as well in s. 183.1. These two sections contain an exhaustive description of the Board's authority over unlawful strikes and cover it completely."*
>
> *[66] Taking the scope of s. 42 to be thus limited, it will be seen that even then -- in the context and to the extent we are here concerned with it -- the provision could be taken as conferring the power at issue without exceeding the scope of the section. It is not as though the section, should one construe it to endow the Board with such power, would render any of the Board's s. 5 powers unnecessary; or would confer "practically unlimited" power on the Board to do anything consistent with achieving the objects of the Act, however general; or would bestow upon the Board an autonomous or principal power as distinct from a merely incidental or collateral power. That is unclear without elaboration. Instead, the section so construed would merely supplement the Board's s. 5(e) remedial power enabling it to more effectively perform its duties and attain the specific and obvious objects of s. 11(1)(m) and (j). It will be recalled that these subsections respectively render it an unfair labour practice for an employer to unilaterally alter rates of pay, hours of work, or other conditions of employment where no collective bargaining agreement is in force, and to do so, or to "threaten" to do so, while any application is pending before the Board.*

[71] As indicated above, the Court held that s. 42 of *The Trade Union Act* granted the Board an implied incidental power to order interim relief,[40] but that this implied power was incidental to the Board's express power to order relief in s. 5(e).

[72] For the purposes of Mr. Pelletier's application, the Board's ability to exercise any incidental powers under subsection 6-103(1) must be tethered to it having duties imposed by the Act with respect to his application.

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[40] Presently, clause 6-103(2)(d) of the Act expressly empowers the Board to grant interim relief in the context of a dispute over which it otherwise has jurisdiction.

[73] Subsection 6-103(1) cannot be so loosely interpreted so as to render other provisions of the Act which empower the Board unnecessary,[41] to confer the Board with "practically unlimited" power to do anything consistent with achieving the objects of the Act, however general,[42] or to "cover autonomous powers designed to remedy situations which the [Act] has dealt with elsewhere, and for which it has prescribed specific powers[.]"[43]

[74] Because Mr. Pelletier's application does not allege a dispute in relation to which the Act imposes duties on the Board (and accordingly, jurisdiction), the Board cannot rely upon s. 6-103(1) to exercise any incidental powers with respect to it.

[75] Subclause 6-103(2)(b)(iii) does not confer jurisdiction on the Board with respect to Mr. Pelletier's application. It simply allows the Board to make orders requiring compliance with its decisions, provided the Board has jurisdiction to make those decisions in the first place.

[76] Clause 6-103(2)(c) addresses ancillary relief, but like incidental relief in s. 6-103(1), ancillary relief can only be ordered if the Board has underlying jurisdiction with respect to an application.

[77] Mr. Pelletier references clause 6-104(2)(e), which is a specific power given to the Board (emphasis added):

> ***6-104*** *…*
>
> *(2) In addition to any other powers given to the board pursuant to this Part, the board may make orders:*
>
> *. . .*
>
> *(e) fixing and determining the monetary loss suffered by an employee, an employer or a union as a result of a contravention of this Part, the regulations made pursuant to this Part or an order or decision of the board by one or more persons, and requiring those persons to pay to that employee, employer or union the amount of the monetary loss or any portion of the monetary loss that the board considers to be appropriate;*

[78] As is clear by the underlined words, above, the Board's authority to make an order requiring the payment of money to Mr. Pelletier pursuant to this provision is not unbounded. The Board's jurisdiction to make such an order requires a finding that a party has caused another

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[41] *Dairy Producers*, at para 66.
[42] *Dairy Producers*, at para 66.
[43] *Syndicat* at p 432, cited in *Dairy Producers* at para 65. As discussed earlier in these reasons, Mr. Pelletier's application requests relief grounded in provisions of the Act which are enforced by actors other than the Board, such as the Director of Employment Standards or judges of convicting courts.

monetary loss by contravening Part VI, the regulations pursuant to Part VI, or an order or decision of the Board. Mr. Pelletier's application contains no such allegation.

[79] Mr. Pelletier also mentions s. 6-108 in his written argument, but s. 6-108 does not assist him. It provides that a certified copy of a Board order or decision may be filed with the Court of King's Bench and enforced as a judgment of the Court.

[80] Now, a few tag ends from Mr. Pelletier's arguments must be addressed.

[81] Mr. Pelletier's reliance on *Dornan* is misplaced. The Board's jurisdiction cannot be derived from a New Brunswick statute. The statute in *Dornan* specifically conferred jurisdiction on the adjudicator in that case.[44]

[82] The Act provides the Board with no authority to compel the resignation of Touchwood's directors, as requested by Mr. Pelletier.

[83] The Act similarly provides the Board with no authority to award Mr. Pelletier damages for the alleged negligence of Mr. Koskie or the Government of Saskatchewan in not addressing his dispute with Touchwood in a timely manner.

[84] In light of all of the foregoing and in sum, the Board concludes that it lacks jurisdiction to grant Mr. Pelletier any of the relief requested in his application. The Board appreciates that Mr. Pelletier will find this disappointing. However, the Board cannot exercise jurisdiction it does not possess. The Board's decision does not, of course, preclude Mr. Pelletier's ability to pursue relief against Touchwood in another forum, such as through a civil action.[45] That said, any litigant contemplating a civil action should be mindful of limitation periods which may apply to their claim.[46]

[85] Mr. Pelletier's application is dismissed pursuant to clauses 6-111(1)(o) and (q) of the Act.

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[44] *Public Service Labour Relations Act*, s 100.1.
[45] See *Kolodziejski v Auto Electric Service Ltd.*, 1999 CanLII 12264 (SK CA), discussing the statutory remedies in *The Labour Standards Act*, at paras 27 and 29: "[27] In my opinion, the intention of the Legislature was not to restrict the remedies available to an employee. … [29] The intervenor advised the Court that as a matter of practice, prosecution is no longer used as a means of collecting outstanding wages. He also advised that the wage assessment remedy contained in ss. 60 to 62.4 is not adequate in all cases. For example there is no assurance the Director will even pursue an employee's claim filed with the Labour Standards Branch. … It is obvious that if the appellant is not allowed to pursue his claim through a civil action the wage assessment process outlined in the *Act* is for him a non-existent remedy."
[46] See, for example, *The Limitations Act*, SS 2004, c L-16.1, s 5.

[86] An appropriate order will issue.

DATED at Regina, Saskatchewan, this **11th** day of **July, 2023.**

LABOUR RELATIONS BOARD

Michael J. Morris, K.C.
Chairperson