NICKEY TYSDAL, NAVJOT BRAR and REGAN PEARSON, Appellants v PATTI CAMERON, Respondent and ALLIANCE HEALTH SASKATCHEWAN INC., Respondent

LRB File Nos. 182-24, 183-24, 184-24, 226-24, 227-24 and 228-24; January 16, 2025
Chairperson, Kyle McCreary (sitting alone pursuant to subsection 6-95(3) of *The Saskatchewan Employment Act)*
Citation: *Tysdal* v *Cameron*, 2025 SKLRB 1

For the Appellants, Nickey Tysdal, Navjot Brar and Regan Pearson:	Self-represented
For the Respondent, Patti Cameron:	Self-represented
For the Respondent, Alliance Health Saskatchewan Inc:	No one appearing

Appeal of an Adjudicator – Director's liability – Whether *The Saskatchewan Employment Act* imposes liability on *de facto* Directors – Found that Act does impose liability on *de facto* directors but test not met in this case.

Fresh evidence – *Palmer* criteria not met.

REASONS FOR DECISION

Background:

[1] **Kyle McCreary, Chairperson:** Nickey Tysdal, Navjot Brar and Regan Pearson ("the Appellants") appeal a decision of an adjudicator under Part IV of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 ("the Act") finding Patti Cameron not liable as a director of Alliance Health Saskatchewan Inc. ("the Employer").

[2] On January 23, 2024, the Director of Employment Standards issued a wage assessment against Ms. Cameron as a director of the Employer for unpaid wages. Ms. Cameron appealed this wage assessment to an adjudicator under Part IV of the Act.

[3] An adjudicator heard Ms. Cameron's appeal on August 20, 2024. Dr. Mark Lemstra and Ms. Camerson testified at the hearing. The Director of Employment Standards took no position on Ms. Cameron's liability.

[4] On September 7, 2024, the Adjudicator issued a decision dismissing the wage assessment. The adjudicator found that even though Ms. Cameron was a director in the corporate registry, she was not liable as a director because she had not consented to become a director relying on s. 9-7(10) of *The Business Corporations Act*, 2021, SS 2021, c 6 ("*The Business*

Corporations Act"). Further, the adjudicator found that Ms. Cameron was not liable pursuant to s. 9-10(4) of *The Business Corporation Act*, as she acted under the direction or control of a shareholder or other person.

[5] The Appellants filed the within appeals on September 23, 2024, and filed applications for the admission of fresh evidence on November 18, 2024.

[6] The Board dismisses the applications for fresh evidence in LRB File Nos. 226-24, 227-24 and 228-24, as the *Palmer* criteria for the admission of fresh evidence has not been met.

[7] The Board dismisses the appeals in LRB File Nos. 182-24, 183-24 and 184-24, as there is no reversible error of law. It would have been preferable if the adjudicator had considered whether Ms. Cameron was a director at common law, but the findings of fact are dispositive of any potential finding of directorship.

Relevant Statutory Provisions:

[8] A corporate director is defined for the purposes of Part II and IV in s. 2-1(a):

> ***2-1*** *In this Part and in Part IV:*
>
> *(a) "corporate director" means a director of a corporation that is an employer;*

[9] The liability of corporate directors for wages is set by s. 2-68 of the Act:

> ***Corporate directors liable for wages***
> ***2-68****(1) Subject to subsection (2), notwithstanding any other provision of this Act or any other Act, the corporate directors of an employer are jointly and severally liable to an employee for all wages due and accruing due to the employee but not paid while they are corporate directors.*
>
> *(2) The maximum amount of a corporate director's liability pursuant to subsection (1) to an employee is six months' wages of the employee.*
>
> *(3) Subject to subsections (4) and (5), a corporate director's liability pursuant to this section is payable in priority to any other unsecured claim or right in the corporate director's property or assets, including any claim or right of the Crown.*
>
> *(4) The payment priority set out in subsection (3) is subject to section 15.1 of The Enforcement of Maintenance Orders Act, 1997.*
>
> *(5) A corporate director who is an employee of the corporation is not entitled to the benefit provided to employees by subsection (3).*

[10] The Appellants' right of appeal is set out in s. 4-8 of the Act:

Right to appeal adjudicator's decision to board

4-8*(1) An employer, employee or corporate director who is directly affected by a decision of an adjudicator on an appeal or hearing pursuant to Part II may appeal the decision to the board on a question of law.*

(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.

(3) A person who intends to appeal pursuant to this section shall:

> *(a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and*
>
> *(b) serve the notice of appeal on all parties to the appeal.*

(4) The record of an appeal is to consist of the following:

> *(a) in the case of an appeal or hearing pursuant to Part II, the wage assessment or the notice of hearing;*
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> *(b) in the case of an appeal pursuant to Part III, any written decision of an occupational health officer or the director of occupational health and safety respecting the matter that is the subject of the appeal;*
>
> *(b.1) in the case of an appeal pursuant to Part V, any written decision of a radiation health officer or the director of occupational health and safety, respecting the matter that is the subject of the appeal;*
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> *(c) the notice of appeal filed with the director of employment standards pursuant to Part II or with the director of occupational health and safety pursuant to Part III or Part V, as the case may be;*
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> *(d) any exhibits filed before the adjudicator;*
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> *(e) the written decision of the adjudicator;*
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> *(f) the notice of appeal to the board;*
>
> *(g) any other material that the board may require to properly consider the appeal.*

(5) The commencement of an appeal pursuant to this section does not stay the effect of the decision or order being appealed unless the board orders otherwise.

(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.*

Analysis and Decision:

Jurisdiction and Standard of Review

[11] Appeals to the Board under Part IV of the Act are restricted to questions of law pursuant to s. 4-8 of the Act. The standard of review to be applied by the Board to questions of law is one of correctness. That is the Board must consider whether the adjudicator has correctly decided questions of law. The Board does not have jurisdiction to consider appeals that raise questions of fact or questions of mixed fact and law.

[12] The Court of Appeal discussed the standards of review applicable to adjudicator appeals to the Board in *Buchanan (Rural Municipality) v Veldman*, 2024 SKCA 111 (CanLII):

> *[11] The standards of review to be applied at each decision-making level are determined by examining the roles the Legislature intended each decision maker to fulfill (see Vavilov; E.Z. Automotive Ltd. v Regina (City), 2021 SKCA 109 at paras 66–73, [2022] 4 WWR 55; and Affinity Holdings Ltd. v Shaunavon (Town), 2022 SKCA 83 at paras 10–20, 474 DLR (4th) 71). Because this issue was raised but not argued in this appeal, the following discussion is not an authoritative determination of the applicable standards of review. Applying the principles of statutory interpretation (see The Legislation Act, SS 2019, c L-10.2), I conclude, for the purposes of this appeal, that:*
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> > *(a) OHS officers make findings of fact on a balance of probabilities and, if they find discriminatory action has occurred, they are required by law to serve the employer with a notice of contravention directing the employer to take the specific actions set out under s. 3-36(2) of the SEA. The details of the actions required under that subsection are left to the OHS officer's discretion to determine based on the facts of the contravention.*
> >
> > *(b) Adjudicators conduct a de novo assessment of the issues raised in appeals from notices of contravention. This is because, inter alia, adjudicators may receive new evidence, hear argument, make findings of fact, draw conclusions based on the law and facts, and accordingly dismiss or allow the appeal, or vary the notice of contravention being appealed (SEA, ss. 4-4 to 4-7). The right to appeal under s. 3-53(1) is unrestricted, permitting an appellant to raise questions of law, fact and mixed fact and law related to a notice of contravention. Without limitation, the grounds of appeal could challenge an OHS officer's finding that a provision of the SEA or The Saskatchewan Employment (Labour Relations Board) Regulations, S-15.1 Reg 1, had been contravened, the detail of the resultant actions required under s. 3-36(2), or both. As to the standards of review, adjudicators should not interfere with a notice of contravention unless the appellant establishes that the decision is in error or that it has been overtaken by subsequent events. If an alleged error relates to the governing law, the standard of review is correctness. If an alleged error relates to the facts found by the OHS officer or that officer's application of the governing law to those facts, the standard of review would be palpable and overriding error (see Vavilov at para 37 et seq.). No standard of review would apply when, based on new evidence, the adjudicator is asked to determine whether a required action under a notice of contravention has been overtaken by subsequent events. In that circumstance, if the adjudicator is satisfied that the evidence before them raises the issue, they would decide it on a balance of probabilities based on the evidence (see Yorkton (City) v Mi-Sask Industries Ltd., 2021 SKCA 43 at paras 29–34, [2021] 6 WWR 18).*

> *(c) The LRB acts as a true appellate decision maker, reviewing only questions of law arising from adjudicator decisions (s. 4-8(2)); there is no right to appeal an adjudicator's decision to the LRB on a question of fact or mixed fact and law. An appeal to the LRB is taken on the record before the adjudicator, which is described under s. 4-8(4). The LRB is empowered to affirm, amend or cancel an adjudicator's decision, or it may remit the matter to the adjudicator with any directions it considers appropriate (s. 4-8(6)). Consistent with the LRB's supervisory appellate role and the limitations on the right of appeal, the LRB should review the questions of law properly placed before it on the standard of correctness (Vavilov at para 37 et seq.).*

[13] Later in the decision, the Court of Appeal noted that questions of fact are only reviewable if the error amounts to an error of law. To commit an error of law, an adjudicator must err in principle in consideration of the evidence and not just in terms of sufficiency or relative weight:

> *[69] As noted above with respect to the right of appeal from an adjudicator's decision to the LRB, the LRB has no jurisdiction to consider allegations of factual error in an adjudicator's decision. As the LRB recognised (at paragraph 57 of its decision), questions involving the facts as found by an adjudicator are reviewable by the LRB only if they amount to questions of law. In P.S.S. Professional Salon Services Inc. v Saskatchewan (Human Rights Commission), 2007 SKCA 149, [2008] 5 WWR 440, this Court wrote:*
>
> > *[68] It follows that a tribunal cannot reasonably make a valid finding of fact on the basis of no evidence or irrelevant evidence. Nor can it reasonably make a valid finding of fact in disregard of relevant evidence or upon a mischaracterization of relevant evidence. To do so is to err in principle or, in other words, to commit an error of law. (In addition to the cases referred to above, see Toneguzzo-Norvell v. Burnaby Hospital, 1994 CanLII 106 (SCC), [1994] 1 S.C.R. 114 at p. 121; Wade & Forsyth, Administrative Law (7th ed.) (Oxford: Clarendon Press, 1994) at pp. 316-20; Jones & de Villars, Principles of Administrative Law (4th ed.) (Toronto: Thomson Carswell, 2004) at pp. 244-43 and 431-36; and Hartwig and Senger v. Wright (Commissioner of Inquiry), et al, 2007 SKCA 74 (Sask C.A.)). Nor can a tribunal reasonably make a valid finding of fact based on an unfounded or irrational inference of fact.*
> >
> > *[69] The all-important point is that to make a finding of fact on any of these bases is to error in principle by offending the implicit requirements of the statute, as well as the common law duty of procedural fairness perhaps. To suppose otherwise is to suppose the legislature intended, in conferring power upon a human rights tribunal to determine facts in controversy much as judges do, to empower the tribunal to engage in unfounded, unreasonable, or arbitrary fact-finding. The fact-finding process, or method by which facts in controversy are to be determined in this quasi-judicial setting, does not permit of this, either in its statutory or common law conception.*
> >
> > *[70] Having regard for all of this, it becomes apparent that even though the right of appeal is confined to a question of law, and even though the appeal comes down to the tribunal's findings of fact, the appellant's case gives rise to a question of law and rests, therefore, on a tenable ground. It is not as though the question is whether the tribunal's findings of fact are unreasonable or unsupported by the evidence in the sense of the sufficiency and weight of the evidence. Rather, the question is whether the findings of fact are unreasonable in the sense the tribunal*

> *erred in principle by disregarding, overlooking, or mischaracterizing evidence material to its findings of fact. …*

[14] As noted by the Court of Appeal, the Board can only review decisions on matters that are questions of law. On questions of fact and questions of mixed fact and law that do not rise to errors of law, the jurisdiction for review those questions lies with the Court of King's Bench by way of judicial review. This is in accordance with *Yatar v TD Insurance Meloche Monnex*, 2024 SCC 8 (CanLII); and *Payne v Saskatoon Housing Authority*, 2024 SKKB 92 (CanLII).

Did the Adjudicator err in law in the test for director that was used?

[15] The Board finds that the Adjudicator did err in not considering the test for *de facto* director as part of the director's liability analysis. However, considering the findings of fact made by the Adjudicator, the Board finds that Ms. Cameron does not meet the test for a *de facto* director and therefore the adjudicator did not commit an error of law in reversing the wage assessment.

[16] In *Pawlachuk v Saskatchewan (Finance)*, 2016 SKQB 41 (CanLII), the Court found that it was reasonable for the Board of Revenue Commissioners to conclude that director's liability under *The Revenue and Financial Services Act*, SS 1983, c R-22.01, was not limited to *de jure* directors but also included *de facto* directors. In finding the decision reasonable, the Court reviewed some of the relevant principles:

> *[31] The limitation period defence has given rise to a body of case law that has determined if, and when, a director has ceased to be a director. The majority of that case law has dealt with s. 227.1 of the Income Tax Act, RSC 1985, c 1 (5th Supp) and s. 323 of the Excise Tax Act, RSC 1985, c E-15. A review of it establishes the following principles:*
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> > *1. When the taxing statute does not define "director" (which is the case in this Act), before imposing personal liability on a director, it is appropriate to look to the corporations incorporating legislation for guidance to determine the scope of that term. Wheeliker v Canada (1999), 1999 CanLII 9297 (FCA), 172 DLR (4th) 708 (Fed CA) [Wheeliker], leave to appeal to the Supreme Court of Canada denied [2000 CarswellNat 679 (WL) (SCC)];*
> >
> > *2. When determining the meaning of "director" in a taxing statute, resort can also be had to the common law when the question is holding oneself out to be a director as opposed to having the qualifications necessary to be a director. McDougal v R, 2000 CarswellNat 2684 (WL) (Tax Ct);*
> >
> > *3. If a person lacks the qualifications to be a director e.g. does not own a share in the company as in Wheeliker, the person will not be permitted to raise the lack of qualification as a defence on the principle that a person cannot take advantage of his or her own wrong: Wheeliker, per Noël J.A. at para. 19;*
> >
> > *4. Even if a person has resigned as a director, the fact that the person continues to act as a director prevents the person from availing himself or herself to the limitation period defence: Syed v R, 2014 TCC 307 at para 57 [Syed];*

> *5. The effect of a proper resignation is negated if the person continues to act as a de facto director. In those circumstances the person will not have ceased at any time to be a director. Milani v R, 2011 TCC 488 at paras 58 and 59 [Milani].*

[17] The Alberta Court of King's Bench discussed the principles of *de facto* director similarly in *Montague v Pelletier*, 2018 ABQB 1047 (CanLII):

> *[78] Judicial determinations as to when a person will be found to be a de facto director and what obligations flow from that finding have not been uniform. The criteria required to hold a person as a de facto director varies and there is no established bright-line test. What is universal is that who is or is not a de facto director is highly fact-driven.*
>
> *[79] The ABCA contemplates the possibility of de facto directorships in section 1(o), which defines a "director" as a "person occupying the position of director of a corporation by whatever name called". The concept of de facto directorships has not received significant judicial consideration in Alberta. However, the concept has at least been tacitly accepted in prior decisions of this Court: Agbi v Durward, 1998 ABQB 1108 (CanLII) at paras 32-34; Oliver v Elliot (1960), 23 DLR (2d), 1960 CarswellAlta 14 (WL Can) (Alta SC); Clareview Rental Project (Edmonton) Ltd v Dockery (1990), 1990 CanLII 5607 (AB KB), 78 Alta LR (2d) 106, 1990 CarswellAlta 207 at para 41 (WL Can) (Alta QB); Conway v Zinkhofer, 2006 ABQB 453 (CanLII) at para 10.*
>
> *[80] An early Manitoba case held that statutory liability for unpaid wages could be imposed on a person found to be a de facto director: Macdonald v Drake (1906), 1906 CanLII 161 (MB CA), 4 WLR 434, 1906 CarswellMan 74 (WL Can) (Man CA).*
>
> *[81] De facto directorships have been considered by the federal courts in a number of tax cases. Persons who act as directors in conformity with the will of the shareholders are not permitted to point to technicalities or a lack of qualifications to escape liability imposed on directors under the Income Tax Act, RSC 1985, c 1 (5th Supp): Wheeliker v R, 1999 CanLII 9297 (FCA), [1999] 3 FC 173, 1999 CarswellNat 417 at para 19 (WL Can) (Fed CA). Courts should protect against undue expansion of the concept by limiting a finding of de facto directorship to only those persons who hold themselves out as such to third parties: R v MacDonald, 2014 TCC 308 (CanLII) [MacDonald TCC] at para 39. A de facto director cannot be a person who did not subjectively believe they were a director and never thought they had any authority to influence or control the company: Perricelli v R, 2002 GTC 244, 2002 CarswellNat 1346 (WL Can) (TCC); Scavuzzo v R, 2005 TCC 772, 2005 CarswellNat 4238 (WL Can).*
> *…*
>
> *[83] What is clear from these authorities is that no individual factors are determinative in assessing whether an individual is a de facto director.*

[18] A corporate director is not defined in s. 2-1(a) of the Act other than as a director of a corporation. The Act does not limit the definition of corporate directors to directors as defined by incorporating statute and therefore includes directors at common law as well. Similarly, the definition of director in s. 1-2(1) of *The Business Corporation Act* is broad and includes any person occupying the position of director. The Board finds that director's liability under wage assessments is not limited to *de jure* directors but also includes *de facto* directors. Put another

way, the liability for wage assessments applies not only to directors within the meaning of *The Business Corporations Act* or other corporate statutes but also applies to directors as defined by the common law.

[19] This interpretation also fits with the purpose of the act of promoting the protection of workers. Whether an individual is a director by statute or common law, if they control a business and take risks that lead to unpaid wages, they should be liable for the payment of the wages.

[20] While the adjudicator did not consider the test for *de facto* director, the Board finds that the findings of fact in the decision is dispositive of the question of *de facto* director, in particular the finding that Ms. Cameron was merely an employee disposes of the *de facto* director question. As the adjudicator found:

> *Under this section, Patti Cameron was not a director of Alliance – she did not consent to become one. She was merely an employee, with no real ability to make major decisions that could change the direction or the financial survival of the company.*

[21] The adjudicator also found based on accepted testimony that Ms. Cameron lacked knowledge of her appointment and did not understand the legal implications of being named a corporate director:

> *Ms. Cameron testified she did not know she had been added as an Officer and Director by Scott Schuler until she was served with the Wage Claims. She stated she had no idea of the legal and financial implications of such a role, and would never have consented if she had been advised of them. I believe her evidence.*

[22] While it would have been preferable if the adjudicator had considered the question directly of whether Ms. Cameron was a *de facto* director, the Board finds that the adjudicator's conclusion that Ms. Cameron was merely an employee without the ability to make decisions on the direction of the business is conclusive of the *de facto* director analysis. If Ms. Cameron was merely an employee, she was not controlling the business or acting as a director.

[23] As noted in *Montague v Pelletier*, the finding of *de facto* director will always be fact dependent. The factors that may matter will vary on the circumstances including the level of knowledge of the individual of their position, representations to third parties, and the exercise of management and control. While the degree of management to show directorship can be slight, see for example: *Snively v. The Queen*, 2011 TCC 196 (CanLII), there must be evidence of management and control of the corporation to make a finding of a *de facto* directorship. Considering the finding of being merely an employee alongside the finding that Ms. Cameron had

not consented to or realized the obligations she has assumed, the test for finding Ms. Cameron a *de facto* director could not be met and the failure to consider the broader definition of a corporate director does not constitute an error of law.

Does the Adjudicators finding that Ms. Cameron was not acting as a director amount to an error of law?

[24] The Adjudicator found that Ms. Cameron was not acting as a director of the Employer based on the evidence that was presented and the provisions of *The Business Corporations Act*. This is a finding of mixed fact and law. The Board can only review this finding if it rises to the level of being an error of law. The Board finds that the Adjudicator referred to relevant evidence and legal principles to reach conclusions and the analysis does not contain a palatable or overriding error.

[25] The appeal on this ground is focused on sufficiency of the evidence and whether the adjudicator weighed the evidence correctly or reasonably. The Appellants also argue that the adjudicator should have considered other evidence that was not presented. These are not questions within the Board's jurisdiction. The Board finds that the decision of the adjudicator as it relates to Ms. Cameron's level of control of the business does not amount to an error of law.

Should the Proposed Fresh Evidence be Admitted?

[26] The Appellants have brought applications to adduce fresh evidence on their appeals. The Fresh Evidence that is sought to be admitted into evidence is a statement from a Mr. Schuler, text messages between various parties from before the date of the appeal before the adjudicator, and information related to another business.

[27] The Board applies the four-part *Palmer* criteria to the admission of fresh evidence on appeals before it: *Lapchuk v Government of Saskat*chewan, 2020 CanLII 97896 (SK LRB). In *Jonathan Aschenbrener v Saskatchewan Health Authority*, 2023 CanLII 61453 (SK LRB), the Board raised a concern of whether the *Palmer* criteria might need to be altered in certain circumstances.

[28] The continuing applicability of the *Palmer* criteria to the admission of fresh evidence on was affirmed by the Supreme Court of Canada in *Barendregt v. Grebliunas*, 2022 SCC 22 (CanLII), [2022] 1 SCR 517. The Supreme Court also clarified that *Palmer* did not apply to issues of trial fairness or whether original relief is being sought on an appeal:

> *[29] Appellate courts have the discretion to admit additional evidence to supplement the record on appeal: Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.), 1994 CanLII 83 (SCC), [1994] 2 S.C.R. 165, at p. 188; United States of America v. Shulman, 2001 SCC 21, [2001] 1 S.C.R. 616, at para. 43. Whether in criminal or non-criminal matters (May v. Ferndale Institution, 2005 SCC 82, [2005] 3 S.C.R. 809, at para. 107), courts have typically applied the four criteria set out by this Court in Palmer when parties seek to adduce evidence on appeal:*
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> > *(i) the evidence could not, by the exercise of due diligence, have been obtained for the trial (provided that this general principle will not be applied as strictly in a criminal case as in civil cases);*
> >
> > *(ii) the evidence is relevant in that it bears upon a decisive or potentially decisive issue;*
> >
> > *(iii) the evidence is credible in the sense that it is reasonably capable of belief; and*
> >
> > *(iv) the evidence is such that, if believed, it could have affected the result at trial.*
>
> *[30] Palmer applies when evidence is adduced on appeal "for the purpose of asking the court to review the proceedings in the court below": Shulman, at para. 44. Palmer does not, however, apply to evidence going to the validity of the trial process itself (R. v. Taillefer, 2003 SCC 70, [2003] 3 S.C.R. 307, at paras. 76-77), nor to evidence adduced "as a basis for requesting an original remedy in the Court of Appeal", such as a stay of proceedings for an abuse of process (Shulman, at paras. 44-46).*
>
> *[31] The Palmer test is purposive, fact-specific, and driven by an overarching concern for the interests of justice. It ensures that the admission of additional evidence on appeal will be rare, such that the matters in issue between the parties should "narrow rather than expand as [a] case proceeds up the appellate ladder": Public School Boards' Assn. of Alberta v. Alberta (Attorney General), 2000 SCC 2, [2000] 1 S.C.R. 44, at para. 10.*
>
> *[32] The test strikes a balance between two foundational principles: (i) finality and order in the justice system, and (ii) reaching a just result in the context of the proceedings. The first criterion seeks to preserve finality and order by excluding evidence that could have been considered by the court at first instance, had the party exercised due diligence. This protects certainty in the judicial process and fairness to the other party. The remaining criteria — that the evidence be relevant, credible and could have affected the outcome — are concerned with reaching a just result.*
>
> *[33] While the interest in the finality of a trial decision and order in the justice system must sometimes give way to reach a just result, as I will explain, a proper application of Palmer reflects and safeguards both principles, as well as fairness to the parties.*
>
> *[34] For the reasons that follow, I conclude that the Palmer test applies to all evidence tendered on appeal for the purpose of reviewing the decision below. In my view, the Palmer test ensures the proper balance and is sufficiently flexible to respond to any unique concerns that arise when considering whether to admit evidence regarding facts or events that occurred after the trial.*

[29] Although not applicable to this case, based on the Supreme Court of Canada' guidance, when procedural fairness fresh evidence applications are brought, they likely should be considered with similar factors as trial fairness fresh evidence applications.

[30] Turning to this case, the fresh evidence the Appellants seek to adduce fail the first stage of the *Palmer* test. The evidence all relates to documents and events that pre-dated the date of the appeal before the adjudicator. While the due diligence requirement can be waived in exceptional circumstances, the Board does not find any of the circumstances to be exceptional in this case. In particular, the Adjudicator noted on the lack of testimony from Mr. Schuler, his testimony was relevant at the time and should have been introduced before the Adjudicator. The text messages and the perspective of Mr. Schuler should have been put forward at first instance and should not be raised for the first time on appeal.

[31] As the evidence does not meet the first stage of the *Palmer* analysis, the Board dismisses the applications to adduce fresh evidence.

Conclusion:

[32] In conclusion, the questions of law raised in the appeal do not lead the Board to reach a different result and therefore the appeals are dismissed. The fresh evidence applications are dismissed for not meeting the *Palmer* criteria.

[33] As a result, with these Reasons, Orders will issue that the Appeals in LRB File Nos. 182-24, 183-24 and 184-24 are dismissed. The applications for the Admission of Fresh Evidence in LRB File Nos. 226-26, 227-24 and 228-24 are also dismissed.

[34] The Board thanks the parties for the helpful submissions they provided, all of which were reviewed and considered in making a determination in this matter.

DATED at Regina, Saskatchewan, this **16th** day of **January, 2025.**

LABOUR RELATIONS BOARD

Kyle McCreary
Chairperson