



DECISION OF ADJUDICATOR

IN THE MATTER OF A HEARING PURSUANT TO PART IV of

THE SASKATCHEWAN EMPLOYMENT ACT, CHAPTER S-15, SS, 2013

IN RESPECT OF A MATTER ADVANCED PURSUANT TO SECTIONS 62.1 & 62.2 OF THE

LABOUR STANDARDS ACT, CHAPTER L-1, RSS, 1978 (AS AMENDED) (REPEALED)

PARTIES TO THE ADJUDICATION HEARING:

- a) **COMPLAINANTS:** (Employer) – D & S Homes Ltd. and Dennis Slater, being a Director of D & S Homes Ltd. As represented by Adam Touet (Lawyer, W Law Group) and Dale Hanley, (Director of Operations, D & S Homes Ltd.).
- b) **RESPONDENT:** (Employee) – Cheryl Thayer
- c) Shelley Stretch (Employment Officer) representing the Executive Director of Employment Standards
- d) Mike Luciak (Employment Officer), Observer

ADJUDICATOR: Maria Lynn Freeland

PLACE OF HEARING: Saskatoon, SK.

DATE OF HEARING: November 25, 2014

DATE OF DECISION: January 16, 2015

1. INTRODUCTION

This labour adjudication hearing was conducted on November 25, 2014 in Boardroom 4.3, Sturdy Stone Centre Building in Saskatoon, SK pursuant to the provisions of the *Labour Standards Act* and the *Saskatchewan Employment Act*.

The complainants (Employer) D & S Homes Ltd. and Dennis Slater, Director, own and operate a business in Saskatchewan that builds and sells new homes and vacant lots. The company is described on the "Profile Report, Corporate Registry", Information Services Corporation of Saskatchewan as, "Nature of Business: General Contractors and Builders, etc." (Exhibit E-5)

The respondent (Employee) Cheryl Thayer was employed as a sales associate for D & S Homes Ltd. from May 24, 2011 to June 6, 2013. The employer-employee relationship terminated on June 6, 2013 when Ms. Thayer tendered a letter of resignation to D & S Homes Ltd. (Exhibit R-2).

Subsequent to her resignation, Ms. Thayer made a wage claim to the Ministry of Labour Relations and Workplace Safety (Exhibit E-3). Pursuant to section 2-74 of the *Saskatchewan Employment Act* the Director of Employment Standards determined that the employer failed to pay wages to the employee in the amount of \$86, 667.92 (Wage Assessment No. 6841; Document A-1 and Exhibit E-4).

As a result of this wage assessment, the employer appealed the decision pursuant to section 2-75 of the *Saskatchewan Employment Act* (Document A-2). In accordance with the appeal provisions of the legislation, an adjudication hearing was conducted on November 25, 2014.

2. PRELIMINARY MATTERS

- a) Shelley Stretch (Employment Officer) advised that she represented the Director in the application and enforcement of the *Saskatchewan Employment Act*; she did not represent the employee. (Exhibit E-1).

- b) Ms. Stretch further advised that the amount of the wage assessment claim should be adjusted. Particulars of the required wage adjustment were detailed on Exhibit E-2 as follows:

“For the public holiday pay, Cheryl Thayer was sitting at open houses which was to her benefit and would not be entitled to premium pay for those public holidays. Any commissions she earned would compensate Cheryl Thayer for the public holidays she worked. The Wage Assessment should be reduced by \$519.23.

Cheryl Thayer agrees she took 3 weeks of annual holidays and the salary she received during those holidays would be considered annual holiday pay. The Wage Assessment should be reduced by \$2596.15 for this annual holiday pay. This is calculated as such: $\$1875.00 \times 2$ (payments per month) $\times 12$ (months)/52 (weeks) $\times 3$ weeks = \$2596.154

The amount of the Wage Assessment should therefore be \$83,522.58.”

- c) Ms. Stretch also advised that “pay-in-lieu-of-notice” was not an issue.
- d) Ms. Stretch asked if there were any objections for Mike Luciak (Employment Officer) to observe part of the proceedings. There were no objections. Mr. Luciak observed the initial portion of the proceedings.

3. THE ISSUES

The issues to be determined are as follows:

- a) Is the employee Cheryl Thayer owed any money for unpaid commissions?
- b) Is the employee Cheryl Thayer owed any money for annual holiday pay?

4. THE FACTS

a) Evidence of the Employee

The employee, Cheryl Thayer, testified that she worked for D & S Homes Ltd. from May 24, 2011 to June 6, 2013. Her employment terminated when she submitted a letter of resignation dated June 6, 2013 directed to Duane Slater, Vice-President of D & S Homes Ltd. (Exhibit R-2). Ms. Thayer testified that she

was a “New Homes Sales Consultant” for D & S Homes Ltd. Her duties included meeting with prospective new home buyers and/or prospective vacant lot purchasers; preparing an agreement for sale for the parties; and doing “walk-throughs” of custom built homes with the purchasers as the work progressed. According to Exhibit E-2, sitting at open houses was also part of her regular duties. On cross-examination, Ms. Thayer confirmed that part of her regular sales associate duties was to market homes and that this included activities such as preparation of advertisements, staging of homes, etc. These duties were part of the overall “marketing” of the properties for sale.

Ms. Thayer testified that her salary was on a commission basis: 2% on initial sale price of a “new-home-build”; \$1000.00 for the sale of a new lot; and a special arrangement for the Greenbyre development. This commission arrangement was not disputed by D & S Homes Ltd. Ms. Thayer testified that she was paid \$1875.00 on the mid and last day of each month for a total of 24 pay periods per year. She testified that she was usually at the office from 9 am to 3 pm Monday to Thursday with most Fridays “off”. Exhibit E-6 was produced by the employee indicating her final pay stub that showed gross salary of \$1875.00 for the pay period 31/05/2013. She testified that most paystubs were similar to exhibit E-6. The employee testified that she worked 5 additional days after her final paycheck for which she did not receive additional compensation.

Although Ms. Thayer was hired as a “new-homes-sales-consultant”, she started to do office administration duties approximately two weeks after commencing employment. She completed these duties at the request of Duane Slater, a Director of D & S Homes Ltd. Ms. Thayer testified that she was prepared to complete these duties since she wanted to be a successful sales associate; she was eager to learn more about the “ins-and-outs” of the business. Ms. Thayer clearly appeared to be a hard-working and ambitious “go-getter” who was prepared to do the work, the learning, complete the hours and apply considerable dedication and commitment to be personally and financially successful as a sales consultant. (This commitment and effort is reflected in her sales results: \$8.2 million in 2 years) (Exhibit E-3).

These administrative duties are listed as #1 – 29 “Additional Administrative Tasks” (Exhibit E-10). They did not involve answering the phones. The testimony of Cheryl Thayer on cross-examination confirmed that some of these “extra” duties were actually part of the regular role as a sales associate.

There was no discussion between the parties regarding the amount, if any, that Ms. Thayer would be paid for completing these additional administrative duties. There was also no discussion as to how

much time Ms. Thayer should spend on these extra duties or whether there should be any recording or accounting of them. The parties did not have a written or verbal agreement.

Ms. Thayer also testified with respect to annual holiday pay and the vacations she took during the course of her employment. She indicated that she asked Gail Brown, comptroller, if Ms. Thayer would receive annual holiday pay. According to Ms. Thayer, Ms. Brown advised that Ms. Thayer was not entitled to annual holiday pay. No further explanation was provided. Ms. Thayer advised that over the two year duration of employment, she did take holidays of approximately 2 weeks in Europe, 5 days in Las Vegas and one week in the mountains. She testified that she received her regular pay of \$1875.00 bi-monthly when she was on vacation leave. The employee testified that she never received an accounting or statement indicating the amount of annual holiday pay she had accumulated and the amount, if any, that was owing.

Subsequent to her resignation from the company, Cheryl Thayer made a claim to the Executive Director for unpaid wages for earned sales commissions and unpaid annual holiday pay. Ms. Thayer's position was that the \$1875.00 she received bi-monthly was for the administrative duties she completed and that over the course of her 2 years' employment she never received any payment for commissions earned other than the three bonuses received in the combined amount of \$20,000.00.

b) Evidence of the Employer

Dale Hanley testified on behalf of D & S Homes Ltd. He was (and is) Director of Operations. His duties were described by him as "fairly broad" and included, *inter alia*: overseeing staff, interviewing new staff candidates, assisting with advertising, sitting in on meetings, going through the full process of selling a house, contract for sale/purchase, estimated cost of house, all of the credits and extras throughout the house build, determining the final price at the conclusion of the project, overseeing portions of advertising, attending hearings, etc. He testified he had been employed in that capacity for 3 years and employed by the company for 9 years.

With respect to the marketing of homes and lots, Mr. Hanley indicated that the company utilized numerous mediums, including, *inter alia*: open show homes, internet site, newsprint advertising (the Star-Phoenix and homebuilding magazines), and direct advertising such as buses, benches, radio, etc. The company did not have a marketing department, *per se*, but everyone took a role and participated.

Thus, all parties took part in some administrative office tasks and ongoing marketing and promotion. The sales associates had no set hours except for sitting of show homes. Furthermore, there was no limit on the amount of holidays an employee could take but employees were asked to give notice to the company.

Mr. Hanley further testified that the sales commission structure was 2% of new home builds and \$1000.00 for new lot sales. These commissions were put into an account referred to in their vernacular as a "slush-fund". The employee was given a draw twice per month from the fund. When there was a large positive balance in favour of the employee in the fund, (i.e. more commissions were earned than draws received) then either the employee would ask for payment (referred to by the parties colloquially as a "bonus" but it was actually money earned by the employee for sales commissions and owed to the employee rather than a gratuitous payment as an incentive and/or reward for past or future performance) or a "catch-up" payment would be made to the employee at the initiative of the company to balance the account.

The company representative testified that this system was put in place because otherwise a new sales associates would "bleed" for a while at the start of their employment until they has some sales. In addition, sales associates did not receive commissions until the home purchase was completely closed (often 8 months later). Thus, this payment structure was used in order to support and retain staff. Mr. Hanley testified that other home builders also used this system; it was customary in the industry.

Mr. Hanley testified that the company did keep a record of draws and earned commissions. The balance payable was readily available to the employee upon request. Furthermore, sales associates had the option of requesting that their draw be increased or decreased in order to keep money received more closely reflective of commissions earned (i.e. so not to under draw or over draw their commission income account). Not surprisingly, Ms. Thayer also testified that she "kept track" of her commissions earned and fees paid.

With respect to Ms. Thayer's claim for payment of commissions earned in addition to payment for administrative office duties, Mr. Hanley testified that he had no knowledge of any arrangement between Ms. Thayer and the company on this issue. That is reasonable testimony on his behalf given that Ms. Thayer testified that there was no discussion whatsoever between the parties with respect to compensation of additional office tasks; there was no verbal agreement for any compensation; and that there was no written agreement for any compensation. Mr. Hanley testified that according to the

company's calculations, Ms. Thayer earned commissions in the amount of \$94, 504.83 and she was paid \$110,937.50. Thus, the position of D & S Homes Ltd. is that no money is owing to Ms. Thayer and that she was actually overpaid in the amount of \$16,432.83.

5. LEGISLATION

The following provisions of the *Labour Standards Act* are applicable to this hearing and decision:

2 (a) "annual holiday pay" means an amount of money to which an employee is entitled pursuant to subsection 33(1) or section 35;

2 (d) "employee" means a person of any age who is in receipt of or entitled to any remuneration for labour or services performed for an employer;

2 (e) "employer" means any person that employs one or more employees and includes every agent, manager, representative, contractor, subcontractor or principal and every other person who either:

- (i) has control or direction of one or more employees; or
- (ii) is responsible, directly or indirectly, in whole or in part, for the payment of wages to, or the receipt of wages by, one or more employees;

2(l) "pay" means remuneration in any form;

2(m) "rate of wages" means the basis of calculation of wages;

2(q) "total wage", in respect of any period of employment of an employee, means all remuneration that an employee is paid or entitled to be paid by his employer, whether or not payment is actually made during that period of employment, in respect of the labour or services that he performs for his employer during that period of employment, and includes:

- (i) sums deducted from such remuneration for any purpose whatsoever;
- (ii) remuneration in respect of overtime work that he performs for his employer during that period of employment;

- (iii) remuneration of any annual or special holiday that his employer permits him to take during that period of employment;
- (iv) the cash value of any board or lodging received by the employee as part payment of wages during that period of employment;

2(q.1) "wage assessment" means a wage assessment issued by the director pursuant to section 60;

2(r) "wages" means all wages, salaries, pay, commission and any other compensation for labour or personal services, whether measured by time, piece or otherwise, to which an employee is entitled;

30(1) Every employee to whom this Act applies is entitled:

- (a) subject to clause (b), to an annual holiday of three weeks after each year of employment with any one employer;
- (b) to an annual holiday of four weeks after the completion of ten years of employment with one employer and after the completion of each subsequent year of employment with that employer

31(1) Where an employee is entitled to an annual holiday under section 30:

- (a) the employer shall permit the employer to take the entire annual holiday to which he is entitled within 12 months after the date on which he becomes entitled to it;

33(1) An employee is entitled to receive annual holiday pay in the following amounts:

- (a) if the employee is entitled to an annual holiday pursuant to clause 30(1)(a), three fifty-seconds of the employee's total wages for the year of employment immediately preceding the entitlement to the annual holiday;

33(1.1) With respect to an employee who is entitled to an annual holiday pursuant to section 30 but does not take that annual holiday, the employer shall pay to the employee the employee's annual holiday pay not later than 11 months after the day on which the employee becomes entitled to the annual holiday;

35(1) If the employment of an employee terminates, the employer of the employee shall, with fourteen days after the effective date of the termination, pay to the employee the annual holiday pay to which he or she is entitled pursuant to this Act

35(2) If the employment of an employee terminates, the employee is entitled to annual holiday pay calculated in accordance with section 33 with respect to all total wages earned by the employee with respect to which the employee has not previously been paid annual holiday pay

35(3) Subsection (2) applies whether or not an employee has completed a year of employment.

Section 10 of the *Interpretation Act*, Chapter I-1.2, SS, 1995 provides:

10. Every enactment shall be interpreted as being remedial and shall be given the fair, large and liberal construction and interpretation that best ensure the attainment of its objects.

6. DECISION

a) Is the employee Cheryl Thayer owed any money for unpaid commissions?

Ms. Thayer claims that the \$1875.00 she received on the mid and end of each month were for the administrative and extra duties she provided to the company and that she is owed the amount of total commission sales (less the \$20,000.00 bonuses received) in addition to the monthly amounts already received as well as unpaid annual holiday pay. According to Exhibit E-9 "Copy of Employment Standards Amended Assessment" Ms. Thayer's claim is for \$83522.58. This amount includes a claim for annual holiday pay of \$2596.154

I do not accept Ms. Thayer's claim for unpaid wages for the following reasons:

1. When Ms. Thayer was hired as a new homes sales associate, it was agreed between the parties that she would receive a draw of \$1875.00 twice per month. There was no discussion or completion of extra administrative tasks at this time. The evidence was undisputed that when initially hired, the agreement was that Ms. Thayer would receive \$3750.00 per month as an advance for future commissions earned. The sales commission agreement was not disputed at the hearing by either party; all evidence was consistent in this regard. According to the testimony of Ms. Thayer, it was approximately two weeks after commencement of employment that the company asked her to do additional duties with no discussion regarding any additional direct compensation. Thus, the bi-monthly draw of \$1875.00 was agreed upon by the parties and put into place prior to any discussion of additional duties. Clearly, it was not intended to be compensation for extra duties that were not even yet discussed between the parties.
2. There were no set days or hours of work, time keeping or accountability for these duties. Ms. Thayer was not told when to be in the office. She was not told what hours, if any, that she was required to work. She was not told how many hours to work on these extra duties. She was not required to record her hours of work. She could be absent from the office whenever she wanted, and take off any days or holidays she chose without any prior approval from anyone. Essentially, Ms. Thayer could "come-and-go" as she pleased. This arrangement is more consistent with that of a commission sales person than a salaried office administrator.
3. The parties did not have a written or verbal agreement. This is unfortunate given the significant amount of money being claimed by the employee: \$83, 522.58 (as adjusted pursuant to amended particulars detailed in Exhibit E-2). When asked to do additional duties, there was no discussion whatsoever with respect to financial compensation for these duties. There was no verbal agreement. There was no written agreement. There was no change in the amount of Ms. Thayer's monthly draw. This leads to the conclusion that neither party expected additional compensation for these extra duties to be paid but that the duties were part of Ms. Thayer's and the company's goal for both parties to be successful. Hours of work and financial compensation are matters that are discussed at the commencement of an employee-employer relationship

and also when there is a change in the employer-employee relationship. The fact that important amended terms were not discussed is consistent with the conclusion that there were no set hours required, no minimum hours required, and no additional compensation payable. Furthermore, some of these duties such as marketing, preparation of ads, promotion of the company and its products, were not “extra” duties but were part of the regular duties of a sales associate.

4. Completion of these additional duties provided both direct and indirect advantages to Ms. Thayer for increased future sales and commissions. In particular:
 - a) A significant advantage to Ms. Thayer of being present in the office was the interaction with new potential customers from “cold-calls” and “walk-ins” (general inquiries to the office that were not directed to a particular person). The priority system in place was that if a sales associate was in the office, they would be first in line to receive the cold call and deal with the unrepresented walk in clients (similar to “floor days” in realtor offices). Thus, there was a considerable advantage to the sales associate to be present in the office in order to attract new clientele, make additional contacts and interact with potential purchasers.
 - b) Ms. Thayer also had considerable influence in promotion and advertising of the company that in turn would hopefully result in increased success and sales for the company and Ms. Thayer.
 - c) Furthermore, by being in the office and doing these duties, Ms. Thayer was able to work towards her goal of learning more about the business in order to achieve increased personal and financial success.

5. One important question must be addressed, *viz.*, “Why would Ms. Thayer wait 2 years (including filing of 2 years’ income tax returns) and final completion of employment to ask for over \$80,000.00 that she felt was owing in commissions?”

When asked why she continued to work for 2 years without being paid for her sales commissions, Ms. Thayer replied the reason was because she was being paid bonuses. She frankly acknowledged that she never asked for unpaid commissions over the course of the 2 year employment history (including the window of time to report “earnings” to Revenue Canada/Central Revenue Agency) but only raised the issue after she resigned from the company.

Ms. Thayer presented herself as a personable, skilled, and aggressive sales person. She did not appear as a person who would be too timid or shy to ask for money owing. This is evidenced by her testimony that at one stage of the employment she requested (and received) a \$10,000.00 bonus. In addition, at the conclusion of the employee-employer relationship, Ms. Thayer contacted the Department of Labour, informed herself of the legislative provisions and availed herself of the available remedies by submitting a claim pursuant to the legislation (Exhibit E-3). It is simply not realistic to suggest and accept that Ms. Thayer worked for 2 years without receiving \$80,000.00 in earnings that she now claims to be owing and never received. If all of the draws were attributable to the administrative duties, then Ms. Thayer would have been paid over \$80,000.00 over a 2 year period for working approximately 20 hours per week doing office tasks with no set hours or days of work. Essentially she would have “worked for free” (other than the bonuses received) with respect to any sales commissions owing. I do not find this absence of a request for payment of alleged money earned consistent with action (or inaction) of a top producer who generated \$8.2 million in sales in 2 years. (This should not be interpreted as penalizing an employee for being personable, aggressive and pursuing goals of being successful for herself and the company).

6. Another important question that needs to be addressed is the intention and expectation with respect to the 3 bonuses totaling \$20,000.00 over the course of the 2 year relationship. It is my conclusion that the three “bonuses” totaling \$20,000.00 over 2 years were to reconcile the amount earned in commissions’ vis-à-vis the draws and advances already received. They were not bonuses in the sense of additional pay over and above what was already earned or a gratuitous payment for approximately 20 hours per week of office tasks. Rather, I conclude that these significant bonuses were a top up against the money already received by the employee as advance draws in order to balance the amount earned in commissions. Clearly, the \$20,000.00 paid was to settle up what was already received by the employee compared to the amount earned by the employee. They were not performance incentives or rewards or gratuitous extra income payments not otherwise owing to the employee.
7. In accordance with the consistent testimony of both witnesses, I find that both the employer and employee kept track of commissions earned, advance draws paid out, the amount of bonuses paid and the amount owing to one party or the other in the commission account. No

Income Tax / Central Revenue Agency "T-4s" were produced at the hearing. No "Record of Employment" was produced at the hearing.

(b) Is the employee Cheryl Thayer owed any money for annual holiday pay?

According to the evidence of Cheryl Thayer, she took 3 weeks' vacation during her 2 year term of employment. She received her regular advance during this time. According to the applicable provisions of the legislation, the employee was entitled to 6 weeks' vacation over the 2 year period or annual holiday pay of 3/52 for each 12 month period. Thus, the employee is entitled to a further 3 weeks' pay for annual holiday pay. Based on income (including both advances and bonuses) over the 2 year period in the amount of \$94,504.83 (this amount is consistent with evidence by both parties in Exhibits E-9 and R-3), I calculate unpaid vacation pay in the amount of \$2,726.10 ($[\$94,504.83 \text{ divided by } 2 = \$47,252.43 \text{ per year average income}] \times 3/52 = \$2,726.10$).

CONCLUSION

Based on the *viva voce* evidence from both parties at the hearing and the documentary evidence submitted, I conclude as follows:

- a) Ms. Thayer was paid \$110,937.50 over the period of employment, including \$20,000.00 of bonuses (Exhibits E-9, R-1 and R-4);
- b) Ms. Thayer earned \$94, 504.83 in sale commissions over the course of the employment including any commissions earned as a result of the 5 days worked subsequent to the final pay period (Exhibits E-9 and R-3);
- c) There were no additional wages owed to Ms. Thayer for the additional administrative duties that she completed;
- d) Ms. Thayer was entitled to 6 weeks' of annual holiday leave. She utilized 3 weeks' annual holiday leave over the course of the employment;
- e) Ms. Thayer was entitled to pay for unused annual vacation leave in the amount of \$2,726.10;
- f) The total amount owed to Ms. Thayer over the course of the employment was \$97,230.93 ($\$94,504.83 + \$2,726.10 = \$97,230.93$);
- g) Ms. Thayer therefore was overpaid in the amount of \$13,706.57 ($\$110,937.50 - \$97,230.93 = \$13,706.57$).

Accordingly, I find that no further money is owed to Ms. Thayer for wages or annual vacation pay.

Thus, the appeal of the Employer (COMPLAINANTS) D & S Homes Ltd. and Dennis Slater, being a Director of D & S Homes Ltd. is allowed.

The parties have the right to appeal the decision of the adjudicator to the LABOUR RELATIONS BOARD pursuant to the *SASKATCHEWAN EMPLOYMENT ACT*.

APPENDICES

1. LIST OF PARTICIPANTS IN THE ADJUDICATION HEARING

2. LIST OF EXHIBITS AND ADDITIONAL DOCUMENTS

- 1.1 Exhibits filed on behalf of the employee (E-1 to E-13)
- 1.2 Exhibits filed on behalf of the employer (R-1 to R-4)
- 1.3 Additional documents (A-1 to A-4)

3. LIST OF WRITTEN ARGUMENTS RECEIVED AND CONSIDERED

4. SECTIONS 4-8, 4-9 & 4-10 OF THE *SASKATCHEWAN EMPLOYMENT ACT* REGARDING THE PARTIES' RIGHT TO APPEAL

The parties have the right to appeal the decision of the adjudicator to the LABOUR RELATIONS BOARD pursuant to the *SASKATCHEWAN EMPLOYMENT ACT*.

Dated at the City of Saskatoon, this 16th day of January, 2015.

ADJUDICATOR – Maria Lynn Freeland, BA, JD, Mediator, LLM (Candidate)

APPENDICES

1. LIST OF PARTICIPANTS IN THE ADJUDICATION HEARING

- a) COMPLAINANTS: (Employer) – D & S Homes Ltd. and Dennis Slater, being a Director of D & S Homes Ltd. as represented by Adam Touet (Lawyer, W Law Group) and Dale Hanley, (Director of Operations), D & S Homes Ltd.)
- b) RESPONDENT: (Employee) – Cheryl Thayer
- c) Shelley Stretch (Employment Officer) representing the Executive Director of Employment Standards
- d) Mike Luciak (Employment Officer), Observer
- e) Adjudicator: Maria Lynn Freeland

2. LIST OF EXHIBITS AND ADDITIONAL DOCUMENTS

2.1 Exhibits Filed On Behalf of the Employee

- E-1 Introduction and Issues
- E-2 Preliminary Matters
- E-3 Copy of Formal Complaint Form
- E-4 Copy of Wage Assessment
- E-5 Corporation Documents
- E-6 Copy of Pay Stub
- E-7 Copy of Pay History
- E-8 Copy of Employment Standards Assessment & Inspection Summary
- E-9 Copy of Employment Standards Amended Assessment
- E-10 List of Additional Administrative Tasks
- E-12 Sections of the *Labour Standards Act*
- E-1 *R. v. Carpet Warehouse [Saskatoon] Ltd.* (1978) Unreported (Sask. Mag. Ct.)

2.2 Exhibits Filed on Behalf of the Employer (R-1 to R-4)

- R-1 Employee Detail outlining gross pay and deductions for Cheryl Thayer for periods 01/05/2011 to 30/09/12 and 01/10.12 to 18/07/2014 **(CHECK DATES)**
- R-2 Resignation letter dated June 13, 2013 directed to Duane Slater from Cheryl Thayer
- R-3 Employer's Calculation of money owing to Cheryl Thayer, as amended
- R-4 Copy of 3 pay stubs

2.3 Additional Documents and Correspondence

- A-1 Notice of Wage Assessment #6841 by Executive Director
- A-2 Notice of Appeal
- A-3 Copy of correspondence from Greg Tuer, Executive Director addressed to the Independent Adjudicator
- A-4 Copy of Adjudicator's reply to the Executive Director correspondence

3. LIST OF WRITTEN SUBMISSIONS

- A-5: Written argument on behalf of Cheryl Thayer
- A-6: Written submission on behalf D & S Homes Ltd.
- A-7: Written rebuttal to submission of D & S Homes (Document A-6) on behalf of Cheryl Thayer

4. SECTIONS 4-8, 4-9 & 4-10 OF THE SASKATCHEWAN EMPLOYMENT ACT REGARDING THE PARTIES' RIGHT TO APPEAL

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 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 persons mentioned in clause 4-4(1) (b) who received the notice setting the appeal or hearing.

(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;

(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;

(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, as the case may be;

(d) any exhibits filed before the adjudicator;

(e) the written decision of the adjudicator;

(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.

4-9(1) With leave of a judge of the Court of Appeal, an appeal may be made to the Court of Appeal from a decision of the board pursuant to section 4-8 on a question of law.

(2) A person, including the director of employment standards or the director of occupational health and safety, intending to make an appeal to the Court of Appeal shall apply for leave to appeal within 15 business days after the date of service of the decision of the board.

(3) Unless a judge of the Court of Appeal orders otherwise, an appeal to the Court of Appeal does not stay the effect of the decision being appealed.

4-10 The director of employment standards and the director of occupational health and safety have the right:

(a) To appear and make representations on:

- (i) Any appeal or hearing heard by an adjudicator; and
- (ii) Any appeal of an adjudicator's decision before the board or the Court of Appeal; and
- (b) To appeal the decision of an adjudicator or the board.