

**DECISION OF ADJUDICATOR  
IN THE MATTER OF AN ADJUDICATION PURSUANT TO SECTION 27  
AND 4-6 OF *THE SASKATCHEWAN EMPLOYMENT ACT***

**APPELLANTS (RESPONDENTS):**      **BRI ENERGY SOLUTIONS LTD. o/a  
Vbine Energy and DARCY THIELE,  
DEL REIMER, DEBRA FAUL and  
GORDON LYNN ABRAHAMSON, as  
directors of BRI Energy Solutions Ltd.**

**RESPONDENT (COMPLAINANT):**      **THOMAS HANWELL**

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**APPELLANTS (RESPONDENTS):**      **BRI ENERGY SOLUTIONS LTD. o/a  
Vbine Energy and DARCY THIELE,  
DEL REIMER, DEBRA FAUL and  
GORDON LYNN ABRAHAMSON, as  
directors of BRI Energy Solutions Ltd.**

**RESPONDENT (COMPLAINANT):**      **DWIGHT SIMAN**

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**APPELLANTS (RESPONDENTS):**      **BRI ENERGY SOLUTIONS LTD. o/a  
Vbine Energy and DARCY THIELE,  
GORDON LYNN ABRAHAMSON, and  
ANDREW DENNIS, as directors of BRI  
Energy Solutions Ltd.**

**RESPONDENT (COMPLAINANT):**      **DAVID IRELAND**

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**Lorne Deason, Employment Standards Officer, Appearing for Respondents  
(Complainants), Thomas Hanwell, Dwight Siman and David Ireland**

**Anders Bruun, Barrister and Solicitor, Appearing for Appellants (Respondents), Darcy  
Thiele, Del Reimer, Debra Faul, Gordon Lynn Abrahamson and Andrew Dennis**

**DATE OF HEARING:**      **November 4 and 5, 2015**

**PLACE OF HEARING:**      **3rd Floor Boardroom  
1870 Albert Street  
Regina, Saskatchewan**

## I. INTRODUCTION

This is an appeal of two Wage Assessments brought by BRI Energy Solutions Ltd. operating as Vbine Energy (BRI or the Corporation) and four of its directors, Darcy Thiele, Del Reimer, Debra Faul and Gordon Lynn Abrahamson, relating to Thomas Hanwell and Dwight Siman. Wage Assessment No. 7106 directed them to pay \$5,676.92 to Thomas Hanwell and Wage Assessment No. 7096 directed them to pay \$18,692.30 to Dwight Siman.

This is also an appeal of a Wage Assessment brought by BRI and three of its directors, Darcy Thiele, Gordon Lynn Abrahamson and Andrew Dennis, relating to David Ireland. Wage Assessment No. 7108 directed them to pay \$28,384.61 to David Ireland.

On November 4 and 5, 2015, the following individuals were present at the hearing:

- Thomas Hanwell, former BRI employee
- Dwight Siman, former BRI employee and former BRI director
- David Ireland, former BRI employee
- Barry Ross Ireland, former BRI director and CEO
- Lana Siman, BRI shareholder and Dwight Siman's wife
- Lorne Deason, Employment Standards Officer
- Andrew Langaard, Employment Standards Officer
- Robin Brockett, Employment Standards Officer
- Anders Bruun, Lawyer for Darcy Thiele, Del Reimer, Debra Faul, Gordon Lynn Abrahamson and Andrew Dennis
- Gordon Lynn Abrahamson, current BRI director
- Andrew Dennis, current BRI director
- Darcy Thiele, current BRI director
- Del Reimer, former BRI director
- Debra Faul, former BRI director
- Robert Fisher, Chartered Professional Accountant, witness for the Appellants
- Werner Dyck, former BRI employee, witness for the Appellants

## II. PRELIMINARY MATTERS/OBJECTIONS

Because all three appeals relate to wages owing to former BRI employees, the parties agreed to have them heard together. The parties agreed the evidence and argument would apply to all three appeals.

The parties acknowledged that while the Wage Assessments were issued pursuant to the *The Saskatchewan Employment Act* (the new Act), the rules in place during the time period relevant to these proceedings were contained in *The Labour Standards Act* (the old Act).

Barry Ross Ireland is named as a director in all three Wage Assessments. He did not appeal. Accordingly, Wage Assessments No. 7106, No. 7096 and No. 7108 stand as against Barry Ross Ireland. He appeared at the hearing as a potential witness for the Respondents but was not called to testify.

Sheldon Firomski (I believe this is the correct spelling of his name so unless it is a direct quote, I will use this spelling) is named as a director in Wage Assessment No. 7108 relating to David Ireland (revised Wage Assessment issued June 9, 2015). He was served with a copy of the revised Wage Assessment on June 16, 2015 and did not appeal. Because he did not appeal, Wage Assessment No. 7108, as revised, stands against Sheldon Firomski.

In order to satisfy myself that all interested parties had notice of the hearing, I asked the parties in attendance whether they knew if Mr. Firomski knew about the hearing. Mr. Deason indicated Mr. Firomski told him during a telephone conversation that he did not intend to appeal. Barry Ireland said Mr. Firomski was dealing with an issue with his back in Regina but knew about the hearing and was not intending to come. Based on the information before me, I was satisfied that Mr. Firomski had notice of the hearing.

### **III. THE DISPUTE**

On February 2, 2015, the Director of Employment Standards issued three Wage Assessments representing unpaid wages, vacation pay and pay in lieu of notice for three former employees of BRI. The Appellants could either pay the amounts set out in the Wage Assessments or appeal pursuant to section 2-75 of the new Act. As mentioned, the Wage Assessment relating to David Ireland was revised on June 9, 2015 and subsequently served.

In Notices of Appeal dated March 12, 2015 and July 2, 2015, Mr. Bruun states Darcy Thiele, Del Reimer, Debra Faul, Gordon Lynn Abrahamson and Andrew Dennis are "outside directors" who "...had no part in the day to day operations of BRI Energy Solutions Ltd." He also identifies Barry Ross Ireland as the director, majority shareholder and chief executive officer who "controlled and directed all business operations of BRI." On behalf of his clients, Mr. Bruun asked for dismissal of the Wage Assessments on the following grounds:

1. The employees advancing wage claims did not discharge their duties as required under their contracts of employment or at all and are therefore not entitled to wages under Section 2-15 of the Saskatchewan Employment Act;
2. The outside directors did not authorize any payment to the employees for the period covered by the assessment notices. Any purported payment made to the claimants was made solely at the initiative of Barry Ross Ireland under circumstances where he knew that the payments in question could not and

would not be honoured by the bank upon which the payment cheques were drawn.

3. The claimants David Ireland and Dwight Siman were during mid-October 2012, issued shares in BRI Energy Solutions Ltd. In lieu of unpaid wages by Barry Ross Ireland without the knowledge or approval of the outside directors in full satisfaction of such wage claims as they may have had.
4. The outside director, Debra Faul, resigned as director on April 25, 2012, and therefore has no liability from that date onwards.
5. The outside director, Del Reimer, resigned as director on May 22, 2012, and therefore has no liability from that date onwards.
6. To the extent that BRI Energy Solutions Ltd. owed amounts in respect of unpaid wages due to the claimants BRI was prevented from making such payments by the wrongful misappropriation of funds belonging to or intended for BRI Energy Solutions Ltd. by Barry Ross Ireland. Evidence to be produced at the Hearing of this matter will show that Barry Ross Ireland wrongfully transferred at least \$500,000.00 from the accounts of BRI Energy Solutions Ltd. during the time period from January 1, 2011 to late November, 2012. These misappropriations rendered the company insolvent and unable to pay its obligations including such obligations as may have existed to the claimants which is not admitted by denied.
7. To the extent that BRI Energy Solutions Ltd. owed amounts in respect of unpaid wages due to the claimants the assessments as issued are defective in that they fail to assert claims against Dwight Siman, one of the claimants herein and Sheldon Firmoski. Dwight Siman and Sheldon Firmoski were nominated to the position of director and elected to that position by virtue of Barry Ross Ireland's majority shareholder position at the Annual General Meeting of BRI Energy Solutions Ltd. held July 7, 2012. Mr. Siman did not resign as director until March 29, 2013. Sheldon Firmoski resigned as a director sometime after December 1, 2002. Dwight Siman and Sheldon Firmoski participated in meetings of the Board of Directors and in the decision making process during the term of their directorships.

There are two issues before me:

1. Are the Respondents owed wages in relation to their employment with BRI?
2. Are the Appellants responsible for outstanding wages?

#### **IV. THE FACTS**

At the beginning of the hearing, the parties agreed to the following basic set of facts:

- BRI was and is a registered business in Saskatchewan.
- BRI has been inactive since November 5, 2012.
- BRI has no money or business and has claims against it.
- David Ireland started working at BRI in 2010.

- Dwight Siman started working at BRI in 2009.
- Thomas Hanwell started working at BRI in June 2011.

The parties tendered evidence by way of sworn or affirmed testimony and documents. Six witnesses testified for the Appellants -- Gordon Lynn (Lynn) Abrahamson, Robert Fisher, Andrew Dennis, Debra Faul, Darcy Thiele and Werner Dyck. Three witnesses testified for the Respondents -- Dwight Siman, Thomas (Thom) Hanwell and David Ireland.

During the hearing the following exhibits were entered into evidence:

**Employer Exhibits (Appellants)**

- ER1 – Vbine Board Minutes from April 14, 2012 (2 pages);
- ER2 – Memo from Braun Developments dated April 13, 2011 regarding \$3,000,000 loan (1 page);
- ER3 – Payroll Summaries for Hanwell, Siman and Ireland prepared by Robert Fisher (9 pages);
- ER4 – Vbine AGM Minutes from July 7, 2012 (2 pages);
- ER5 – Debra Faul’s letter of resignation from Board dated April 25, 2012 (1 page);
- ER6 – Miscellaneous research regarding Kelso Energy (6 pages);
- ER7 – Facebook page for Kelso Energy (1 page);
- ER8 – Email dated March 26, 2013 from Barry Ireland to Dwight Siman regarding turbine purchase with attachments (6 pages);
- ER9 – Email chain regarding Ajay (4 pages);
- ER10 – Email dated March 29, 2013 from Greg Hanwell regarding Dwight Siman’s resignation from Board (1 page);
- ER11 – Email chain in October 2012 between Barry Ireland and Dwight Siman regarding potential customer (2 pages);
- ER12 – Email from Robert Fisher regarding shares issued on October 10, 2012 (1 page);
- ER13 – Email chain regarding Werner Dyck’s resignation and Dwight Siman’s trip (2 pages); and
- ER14 – Letter to David Ireland dated January 21, 2013 regarding SR&ED grant and wages (1 page).

**Employee Exhibits (Respondents)**

- EE1 – Payroll Summary for David Ireland (1 page);
- EE2 – Payroll Summary for Dwight Siman (1 page);
- EE3 – Payroll Summary for Thomas Hanwell (1 page);
- EE4 – Letter dated November 3, 2014 (and attached Dec. 3, 2014 letter) from Anders Bruun to Lorne Deason (2 pages);
- EE5 – List of emails showing Dwight Siman’s work after termination;
- EE6 – Dwight Siman’s Pay Stub #993 (1 page);

EE7 – Email to Lorne Deason from Dwight Siman attaching Rhonda McCann’s projection for Dwight Siman’s salary for 2012 via email (1 page);  
 EE8 – Email dated February, 21, 2012 to Dwight Siman from Barry Ireland regarding reduction of Dwight Siman’s salary (2 pages);  
 EE9 – Dwight Siman’s Statement of Claim for wages (1 page);  
 EE10 – Dwight Siman’s Employment Contract (5 pages);  
 EE11 – Dwight Siman’s uncashed paycheck dated March 22, 2012 (1 page);  
 EE12 – Email dated February 21, 2012 regarding reduction of Thomas Hanwell’s salary (1 page);  
 EE13 – David Ireland’s Back Pay Calculations (1 page);  
 EE14 – David Ireland’s 5 uncashed paychecks covering August 10 – October 5, 2012 (5 checks);  
 EE15 – David Ireland’s letter of termination dated Nov. 10, 2012 (1 page);  
 EE16 – Engineer’s Report dated May 16, 2012;  
 EE17 – Documentation of expenses paid by/owed to David Ireland (3 pages);  
 EE18 – Text message from Werner Dyck dated 2012-11-10 regarding David Ireland’s dismissal (1 page);  
 EE19 – Email request to David Ireland for customer assistance after his dismissal (1 page); and  
 EE20 – ISC documents for BRI Energy Solutions Ltd. (35 pages).

## **V. ARGUMENT**

At my request, the parties filed written arguments. I received submissions from both sides on December 7, 2015 and replies to submissions on December 11, 2015.

The Appellants’ argument is summarized as follows:

- BRI was incorporated in Saskatchewan on December 12, 2005 by Barry Ireland. The Corporation was intended to be a vehicle for the development of vertical axis wind turbines (VAWT) to be used for the production of electricity. The Corporation was to secure patents for concepts and ideas acquired by Barry Ireland and to develop working models and ultimately produce marketable VAWT’s which could be sold in the global marketplace. (Lynn Abrahamson’s evidence)
- The Corporation was also intended to be used as a fundraising vehicle to finance the development of the VAWT by selling shares to investors. The Corporation was structured so that Barry Ireland held 50% plus one of the voting shares thereby ensuring that he had full control over the activities of the Corporation. (Lynn Abrahamson)
- Although VAWT units were marketed, manufactured and installed, they did not perform as promised and suffered from design flaws. (Lynn Abrahamson)
- On April 14, 2012, the directors decided to shut down production and cease marketing efforts with a view to correcting the flaws (ER1).

- Barry Ireland managed BRI's day-to-day operations. In addition to being a director, he was the majority shareholder and CEO. Members of his family occupied key positions in the Corporation including the accounting. The other directors were located across Manitoba, Saskatchewan and Alberta and met most times by conference call. Barry Ireland controlled the flow of information. (Lynn Abrahamson)
- In 2008, directors attempted to obtain more control over BRI. They wanted to gain some control over BRI's financial affairs by bringing in a manager for the business side of the operation. Barry Ireland protested and convinced the employees to threaten to quit if his responsibilities were altered in any way. Without its employees, BRI would be destroyed so the directors backed down. (Lynn Abrahamson)
- Each director testified they were given only minimal information about BRI's financial status.
- Barry Ireland convinced the directors that BRI had a substantial value. At a board meeting on April 14, 2012, he presented a letter from a potential investor (ER2) showing that Braun Investments was willing to purchase a portion of BRI for \$3,000,000. The impression that BRI's value was substantial was a false one.
- At a director's meeting on November 5, 2012, the board passed a resolution removing Barry Ireland as CEO and directing he surrender all Vbine assets. This resolution passed by vote of 3 to 2. The directors seeking to remove Barry Ireland had a majority due to Dwight Siman's absence.
- After terminating Barry Ireland, the directors appointed an executive committee to manage the affairs of the Corporation. They discovered BRI's bank accounts contained a total of \$82.00. (Lynn Abrahamson)
- Robert Fisher, a professional accountant, was hired to conduct a review/forensic audit of BRI's records, accounts and other documents. He testified that Barry Ireland purported to sell shares of BRI in transactions (8 separate share sales) structured to make it appear that the amount invested was being placed in BRI's accounts for BRI's benefit. Barry Ireland sold shares owned by the Ireland Family Trust or Glen Leary Farms Ltd. (corporate entities owned and controlled by Barry Ireland and his wife, Carolyn Ireland) and those entities received the share sale proceeds instead of BRI which should have received the proceeds.
- Robert Fisher also established the sum of \$80,000 was improperly transferred on Claudia Ireland's direction from BRI's bank account to an account maintained by the Ireland Family Trust on December 5, 2011.
- Barry Ireland, as controlling director and CEO, caused BRI to pay rent on facilities owned by Glen Leary Farms Ltd. (a corporation owned and controlled by his wife, Carolyn Ireland) while neglecting other claims, including the wage claims of the claimants. This rent amounted to \$6,000 per month and was paid until November of 2012. (Robert Fisher)

- Robert Fisher's review also revealed cheque kiting that led to the same dollar amounts being double-counted in BRI's financial statements. BRI's financial position was improperly enhanced as a result.
- Robert Fisher also testified that Barry Ireland withdrew substantial amounts of money from BRI's accounts by way of cash withdrawals on credit cards that were then reimbursed by BRI. Robert Fisher estimated that approximately \$500,000 was removed improperly from BRI from late 2011 to November 5, 2012, when Barry Ireland's position as CEO was terminated. The wrongful misappropriation of funds from BRI by Barry Ireland made it impossible for BRI to pay wages claimed by the Claimants.
- BRI's current directors have not placed the company in bankruptcy. They are considering legal action against Barry Ireland for improper misappropriation and diversion of funds.
- The purpose of making directors liable for wages due to employees is in part to ensure that directors do not make gains or reduce their personal losses by causing the Corporation to not pay wages when it is failing. The director who controlled the wage payment process, who concealed the fact of non-payment of wages, who misappropriated substantial amounts of money from BRI for his personal benefit, namely Barry Ireland, in fairness, should carry the burden of these claims.
- The claims are flawed in that no assessment was made against Dwight Siman for monies claimed by David Ireland although according to evidence he served as a director from July 7, 2012 to March 29, 2013 (ER4 and ER10). This should at a minimum make his claim invalid.
- Barry Ireland and Sheldon Firomski did not appeal and their liability should be confirmed.
- Robert Fisher's testimony established that each of the claimants received one cheque that was returned NSF. The net amount of these cheques were subsequently paid to the claimants.
- Cheque no. 1662 payable to Thomas Hanwell in respect of gross pay of \$1,600, net pay of \$1,294.30, was replaced by cheque no. 1759 for the net amount only. Thomas Hanwell then received two additional cheques and his evidence was that he was asked by his supervisor, Dwight Siman, not to cash them. He said he left the cheques with Dwight Siman for safekeeping. They were never presented to his bank for negotiation.
- Dwight Siman received cheque no. 1656 as payment for gross salary of \$3,000, net pay of \$2,030.85. after it was returned NSF, he received cheque no. 1758 for the net amount. Dwight Siman then received six additional cheques in the net amount of \$12,200.04 which were never presented to his bank for payment.
- David Ireland received cheque no. 1949 in respect of gross pay of \$3,000 in the net amount of \$2,020.97. When it was returned NSF, it was replaced with cheque no. 2071 for the net amount. David Ireland then received seven



additional cheques for gross pay of \$21,000, net pay of \$15,328.40, that were never presented to his bank for payment.

- Each of the claimants was paid within the meaning of the applicable legislation (s. 49(1) of the old Act and section 2-35(1) of the new Act). NSF cheques were replaced. They received cheques which met the statutory requirement. There is no evidence the cheques the claimants did not present to the banks for payment would have been dishonored if they were. The evidence shows cheques in excess of a net value of \$24,000 were received and cashed by David Ireland between June 12 and September 12, 2012 (ER3).
- Dwight Siman and Thomas Hanwell's claims merit particularly close scrutiny because they both agreed with Barry Ireland to work on a commission-only basis from about April 30, 2012 onwards. They negotiated a change in terms of their employment in the hope that BRI's business would improve and they were not in fact terminated.
- Dwight Siman went on to accept election to the board of directors at BRI's annual general meeting held July 7, 2012 and held that position until March 29, 2013. He testified that during his tenure as a director, he never advised directors of any concern regarding unpaid wages which he subsequently advanced against them. It appears Dwight Siman failed to advise Employment Standards Division that he was a director for the period of David Ireland's claim.
- Robert Fisher's audit revealed that while no payments were made to Dwight Siman or Thomas Hanwell after April 30, 2012, payments totalling \$24,101 were made to David Ireland during the period from June 12, 2012 to September 12, 2012.
- Robert Fisher's evidence established a share was issued to Dwight Siman and David Ireland on October 12, 2012 and that nothing was paid to BRI for the shares. Barry Ireland had previously been selling shares at \$20,000 per share (ER12).
- The liability of directors is joint and several. The Ministry of Labour Relations and Workplace Safety is in a position to enforce the wage claims of Hanwell, Siman and Ireland against Barry Ireland. The Ministry is also in a position to enforce the Wage Assessment relating to David Ireland against Sheldon Firomski.
- Liability should rest solely on Barry Ireland because he presumably reached secret agreements with the claimants to not present their cheques for payment while his son continued to receive payments in excess of \$24,000. It is unfair and absurd to hold the Appellants liable for wages in this matter.
- Robert Fisher's testimony established that Barry Ireland withdrew approximately \$500,000 from BRI rendering it unable to pay wages.
- After secret agreements were made with some employees to not present their cheques for payment, BRI continued to pay rent in the amount of \$6,000 per month to Glen Leary Farms. Ltd.
- Because liability is joint and several, it is open to an adjudicator to rule that liability should rest with Barry Ireland. This would be fair in this matter.

- It will be fundamentally unfair if the Appellants must discharge liabilities to a family member and current business associates of Barry Ireland primarily because he misappropriated funds from the employer in amounts that vastly exceeded the amounts of the wage claims.
- On the facts of this matter, the fair and just resolution will be for the Wage Assessments that were not appealed to be enforced in accordance with the legislation and for the Appellants' appeals to be granted.

The Respondents' argument is summarized as follows:

- Although these appeals are brought under the new Act, the services were performed and the wages were earned under the rules of the old Act.
- The evidence establishes the three claimants were employees of BRI. Dwight Siman and Thomas Hanwell worked in sales and David Ireland worked in research and development. (Evidence of Werner Dyck, Lynn Abrahamson, Dwight Siman, Thomas Hanwell, Barry Ireland)
- For purposes of these complaints, the former employees chose not to include claims for commissions and expenses and instead focussed on unpaid wages and pay in lieu of notice.
- BRI's financial struggles started showing in the spring of 2012 when employees were not reimbursed for expenses and several paychecks were returned NSF. The evidence establishes paychecks were issued to these three employees but they were asked not to cash them until they were told they could clear the bank.
- The fact paychecks were issued shows work was done during the period they were asked to hold on to their paychecks. For Dwight Siman and Thomas Hanwell it was March and April of 2012 and for David Ireland it was August to November of 2012. They also testified and provided documentary evidence of their work.
- Werner Dyck, GM, testified he signed the cheques and asked them to hold on until he was sure the cheques would clear. He admitted knowing the cheques would not clear when he signed them.
- Any suggestion that it was the employees' fault (it was "on them") for not presenting the cheques for payment is false, misleading and contrary to the evidence.
- Robert Fisher's audit identifies several NSF cheques replaced by alternate cheques. The claimants concede that if and when the amount of two cheques is exactly the same then it is reasonable to conclude it is a replacement cheque. However, where the amounts differ, it is more likely a cheque for commission or expenses.
- The evidence establishes the employees worked and were not paid all of their wages.
- The evidence establishes the employment of the claimants eventually came to an end when the company was no longer viable. There is no evidence of poor work performance or just cause for dismissal.

- The evidence establishes Thomas Hanwell and Dwight Siman were terminated when they were told there was no money for product development, meaning they no longer had a product to sell, and their salaries were reduced to straight commissions. They went from receiving NSF cheques to receiving no cheques. A salesman working on commissions without a product to sell has been constructively dismissed.
- David Ireland's employment came to an end when he received a registered letter signed by the GM dated November 10, 2012 indicating his employment was over immediately due to shortage of work.
- Section 44(2) of *The Labour Standards Act* provides for pay in lieu of notice. In the absence of just cause, all three employees were entitled to written notice their employment was coming to an end, along with the chance to work out the notice period. None of the employees received written notice.
- More than two months after David Ireland was terminated, he was contacted by Lynn Abrahamson on January 21, 2013 and asked to help BRI with the SR&ED grant application. He was told he might get some of money owed to him if he helped. David Ireland testified he had already moved on to a new job so did not help. The employer's right to ask David Ireland for assistance ended when they terminated his employment.
- The evidence of the directors showed they often conducted meetings by conference call and that they had varying degrees of involvement with the company. They were not all that involved with the day-to-day affairs of the corporation.
- There was testimony suggesting the directors could not have known the Corporation would take a sudden turn for the worse financially, implying that since they had done their due diligence, it would be unfair to hold them liable for unpaid wages.
- In Saskatchewan, directors are liable for wages while they are directors. The liability is absolute. Liability cannot be avoided by claiming you were a passive director and did not know the company was failing. Neither can liability be avoided by showing you were an active director who did all he or she could in terms of due diligence. Prior to April 29, 2014, the statutory authority for director's liability was the old Act and after this date it is the new Act.
- There are federal and provincial statutes with similar language regarding director's liability including the *Canada Business Corporations Act* (s. 119) and *The Business Corporations Act* (R.S.S., s. 114).
- Section 63(1) of the old Act states that directors are jointly and severally liable to an employee of the corporation for all debts due for services performed for the corporation, not exceeding six months' wages, while they are directors.
- Subsection (1.1) of this section says that 'debts due for services performed for the corporation' includes wages, annual holiday, public holiday pay and pay in lieu of notice.

- Information Services Corporation's website also provides clear information about the obligations a corporate director can be liable for and specifically mentions liability for unpaid employees' wages under *The Labour Standards Act* and for unpaid withholdings on those wages under the *Income Tax Act (Canada)*. While due diligence is a defence in relation to unpaid withholdings, "[t]his defence is not available to unpaid wages under The Labour Standards Act; liability is absolute insofar as it relates to unpaid wages."
- Regarding allegations that one of the directors may have absconded with or misappropriated funds of the Corporation, even if this were true, it is not a defence available to the directors in order to avoid liability for wages. Whether Barry Ireland misappropriated funds is irrelevant to these appeals. Allegations of theft should be taken to the appropriate authorities.
- Director's Liability Insurance is available to directors who have concerns regarding liability.
- Cases heard before other adjudicators in Saskatchewan have upheld the principle of director's liability regardless of the nature of the director's role in the company (see Doug Surtees' April 15, 2003 decision relating to Peter Klaptchuk as director of 597383 Saskatchewan Ltd. Operation as Peter's Sewer Service).
- In a case where joint and several liability applies, a claimant may pursue a debt obligation against any one or more liable parties. It then becomes the responsibility of the defendants to sort out their respective proportions of liability and payment.
- According to the information contained on the ISC database that was printed and filed as an exhibit, the directors named in the Wage Assessments were directors at the time the employees' wages went unpaid (March and April 2012 for Thomas Hanwell and Dwight Siman and August to November 2012 for David Ireland). If the evidence shows any of the directors were not directors when the wages went unpaid, then the Wage Assessments against that director should not stand.
- On the other hand, because liability is joint and several, if a director does not appear on a Wage Assessment when he should have, this does not affect the validity the Wage Assessments. Adjudicator Surtees, in a February 19, 2008 adjudication involving Jim Tomas as a director for 101072435 Saskatchewan Ltd. o/a Poverino's Pasta Grill, states: "[T]he entire amount of the wage assessment may be recovered from any one director."
- Each and every one of the directors is liable for the whole of the obligation.
- Regarding principles of natural justice and procedural fairness, every party who wanted to be heard was heard by an unbiased adjudicator. Testimony was sworn or affirmed in an attempt to get at the truth. No relevant evidence was excluded and, in fact, the adjudicator erred on the side of caution in allowing testimony that may have been irrelevant. Everybody had the chance to be heard.
- The Wage Assessments ought to be upheld subject to the following revisions:

- The cheques identified as uncashed should be recognized as unpaid wages.
- Where the adjudicator accepts that a replacement cheque (for the same amount) was issued in lieu of an NSF cheque or an uncashed cheque, and where the adjudicator also accepts that the replacement cheque was cashed/deposited, the employer should receive credit for that payment.
- Dwight Siman's wage was reduced from \$1,500 to \$1,000 per week at the time his employment ended and the portion of the Wage Assessment relating to pay in lieu should be amended to reflect that change.

## VI. ANALYSIS AND DECISION

At one time, everybody involved in these proceedings believed BRI had the potential to become incredibly successful on both a local and global level. At least seven of the nine witnesses were shareholders in BRI and had a vested interest in its success. Despite these vested interests, and now conflicting interests, I found the testimony of all nine witnesses to be credible. Any differences in facts or versions of events were minor in nature and easily understandable given the passage of time and their different roles and levels of involvement with BRI and its operations.

Thomas Hanwell, Dwight Siman and David Ireland were BRI employees who eventually stopped working. Aside from taking the position they are not responsible for payment of outstanding wages, the Appellants argue the wages claimed are not owing and/or inflated for a number of reasons. Whether or not the Appellants are responsible for outstanding wages will be dealt with under Issue 2. The first issue is whether the Respondents are entitled to wages and if so, how much?

### Issue 1: Are the Respondents owed wages in relation to their employment with BRI?

The former employees chose not to pursue unpaid commissions (Thomas Hanwell and Dwight Siman) and unreimbursed expenses as part of their claims. They instead focussed on unpaid wages, vacation pay and pay in lieu of notice. The starting point for each of these appeals is the Wage Assessment. Typically, an Employment Standards Officer prepares a worksheet outlining the calculation for wages forming the basis of a Wage Assessment. The worksheets for these claims contained the following information:

#### **Thomas Hanwell – Wage Assessment No. 7106 for \$5,676.92**

Jack Fleming's Labour Standards Inspection Summary breaks down the outstanding wages as follows:

Wage Category	Quantity (Units)	x	Rate	=	Amount Owed
REG WAGES	8 WK(S)		\$600.00		\$4,800.00

ANNUAL HOL PAY	0.057692 (3 WKS %)	\$4,800.00	\$276.92
PAY IN LIEU	1 WK(S)	\$600.00	<u>\$600.00</u>
		Total Amount Assessed	\$5,676.92

**Additional Explanations**

Claim filed within 1 year of termination. EE not paid wage of \$600.00 per week from March 4, 2012 to April 28, 2012, owed 8 weeksx\$600.00=\$4,800.00; a.h.p.pay \$276.92 owed on the wage; ee dismissed without notice; pay in lieu 1 week \$600.00 owed with ee having less than 1 year of service.

**Dwight Siman – Wage Assessment No. 7096 for \$18,992.30**

Jack Fleming's Labour Standards Inspection Summary breaks down the outstanding wages as follows:

Wage Category	Quantity (Units)	x	Rate	=	Amount Owed
REG WAGES	8 WK(S)		\$1,000.00		\$8,000.00
COMMISSION					\$32,751.00
ANNUAL HOL PAY	0.057692 (3 WKS %)		\$40,751.00		\$2,351.01
PAY IN LIEU	4 WK(S)		\$1,000.00		<u>\$4,000.00</u>
		Total Amount Assessed			\$47,102.01

**Additional Explanations**

Wages owed March 4, 2012 to April 28,2012 eight weeks @ \$1,000.00 per week=\$8,000.00. Unpaid commission \$32,751.00. Annual holiday pay owed on wage & commission=\$2,351.01; employee dismissed without notice, 4 weeks pay in lieu \$4,000.00 is owed because employee's length of service was more than 3 years but less than 5.

As previously indicated, prior to issuance of Wage Assessment No. 7096, Dwight Siman decided not to pursue his claim for unpaid commission via this avenue. The amount claimed in the Wage Assessment was reduced accordingly.

**David Ireland – Wage Assessment No. 7108 for \$28,384.61**

Jack Fleming's Labour Standards Inspection Summary breaks down the outstanding wages as follows:

Wage Category	Quantity (Units)	x	Rate	=	Amount Owed
REG WAGES	16 WK(S)		\$1,500.00		\$24,000.00
ANNUAL HOL PAY	0.057692 (3 WKS %)		\$24,000.00		\$1,384.61
PAY IN LIEU	2 WK(S)		\$1,500.00		<u>\$3,000.00</u>
		Total Amount Assessed			\$28,384.61

#### Additional Explanations

Wages owed July 22, 2012 to and including November 9, 2012 amounts to 16 weeks at \$1,500.00 per week (\$3,000.00 bi-weekly). Annual holiday pay at 3/52<sup>nd</sup> on the unpaid wages. Employment terminated without 2 weeks notice; therefore pay in lieu of notice is owed

#### **Thomas Hanwell and Dwight Siman**

Thomas Hanwell's claim is comprised of wages of \$600 per week for the months of March and April of 2012, vacation pay and pay in lieu of notice. He testified he was a shareholder who began working for Vbine (the marketing arm of BRI) in June of 2011 and worked until April 30, 2012. As Vbines's Business Development Manager, he was responsible for signing up individuals and dealers – for selling the product. He answered to Dwight Siman and the two of them covered separate territories. He initially earned \$800 per week plus commission. On February 21, 2012, he received an email from Barry Ireland stating his base salary would be reduced to \$600 per week as of March, 2012 (EE12).

Thomas Hanwell's testimony about earning \$600 per week in March and April of 2012 as a salesman is uncontroverted. He says he stopped working at the end of April when Dwight Siman told him they were out of business. When he was advised they were on commission only, he says this was the same as being fired because he could not afford to work strictly on commission. He says he had no prior notice of this change and that he actively tried to sell turbines up to the last day of April. He does not believe he was paid for March and April of 2012.

Dwight Siman's claim is comprised of wages of \$1,000 per week for the months of March and April of 2012, vacation pay and pay in lieu of notice. He testified he was a shareholder who began working in 2009 as Sales Manager for BRI. He was a board member before becoming an employee but resigned when he was hired by BRI. As Sales Manager he was responsible for all things sales including the hiring of sales staff. He initially earned \$1,500 per week plus commissions. On March 1, 2012, his salary was reduced to \$1,000 per week (EE8) due to BRI's precarious financial position.

Dwight Siman admits he worked beyond April of 2012 but says he did so in an attempt to keep the company alive. Aside from being a shareholder, he had also convinced friends and family to invest in BRI. He says he had no chance of earning an income beyond April when he moved to commission only because he did not have anything to sell. Reducing him to commission only was a nice way of saying he was fired. He did not receive written notice. He worked in March and April but the last paycheck he received was dated March 22, 2012 and he was asked not to cash it.

Most of the Appellants testified they had no involvement with the day-to-day operations of BRI. They were unfamiliar with the particular circumstances of Thomas Hanwell, Dwight Siman and Barry Ireland's employment and were unaware of any unpaid wages.

Darcy Thiele had a bit more knowledge of BRI's operations than some of the other directors. He testified that due to cashflow problems, Dwight Siman and Thomas Hanwell were laid off at the end of April. He believed it would have been Barry Ireland's responsibility to lay them off. He does not know if Barry gave them written notice or not.

Werner Dyck, who became GM in March of 2012, testified that he was aware of Dwight and Thom's frustration in being put on commissions only. It was mid-April when they decided BRI would concentrate on research and development and not sell any more turbines until the problems were fixed and proper data was obtained. According to Werner, the salesmen stayed on but had nothing to sell.

The Appellants argue Thomas Hanwell and Dwight Siman were not terminated because they negotiated a change to their employment contracts by agreeing to work on commission from April 30 onwards. However, I find no evidence to suggest Thomas Hanwell and Dwight Siman were a party to any negotiations to change the terms of their employment. While I accept they were hopeful the company would bounce back and that they still promoted BRI's concept and potential at every opportunity, there is no evidence they were willing or able to work without pay. As shareholders, they had a vested interest in the viability of the company but as employees, they could not afford to work on straight commission – especially without a product to sell.

Based on the evidence, the reduction of Thomas Hanwell and Dwight Siman's salary was a fundamental and unilateral change to their employment contracts. I find that Thomas Hanwell and Dwight Siman were constructively dismissed when their salary was reduced to zero at the end of April of 2012. They were not given notice of termination or allowed the opportunity to work during the notice period.

The Appellants also take the position that because some of Thomas Hanwell and Dwight Siman's paychecks were not presented to the bank for negotiation (cheques no. 1837 and 1838 for Thom and no. 1748, 1829 and 1830 for Dwight), they cannot now claim they were not paid. It was their responsibility to negotiate their paychecks. Because David Ireland was still being paid at this time, Thomas Hanwell and Dwight Siman should also have been able to cash their paychecks. Robert Fisher, professional accountant, does not know why any employee would get a cheque and not present it to the bank. The Appellants suggest a "secret agreement" between Barry Ireland and the claimants to not present their cheques for payment. According to the Appellants, Thomas Hanwell and Dwight Siman were paid within the meaning of the Act(s) and it was their choice not to cash the cheques.



I do not know what the uncashed cheques no. 1837, 1838, 1829 and 1830, all issued on April 30<sup>th</sup>, represent. No evidence was led in this regard. Due to the amounts, none of them represent a bi-weekly paycheck. They may have been issued in order to catch up on some of the unpaid weeks and/or commissions and/or vacation pay but, without hearing from the person in charge of payroll (Claudia Ireland), I do not know. In any event, the parties agree these cheques were not cashed.

Thomas Hanwell said his paychecks were forwarded to Dwight but before Dwight would hand them over, Dwight would confer with main office to see if they could be cashed. He remembers receiving faxes and emails from Winkler advising them to delay depositing their cheques until further notice. He is not sure if these communications were from Barry Ireland, Claudia Ireland or Werner Dyck. He was not overly concerned because when he was asked to hold cheques in the past, they eventually cleared. He left some paychecks on Dwight Siman's desk (when they were on hold) because he had a tendency to lose things. He may still have some of the cheques in issue but they are in his home and because of a nasty divorce, he does not have access to the home.

Dwight Siman says both Barry Ireland and Werner Dyck told him not to cash his cheques because the company had no money. They told him he would have to ask before cashing them. He produced a copy of an uncashed paycheck dated March 22, 2012 in the amount of \$1,450.43 representing \$2,000 gross pay for pay period ending March 18, 2012 (EE11). He says Lynn Abrahamson was aware of the uncashed paychecks.

With respect, I do not agree with the Appellants' position regarding the uncashed paychecks. Thomas Hanwell says he was asked to hold his paychecks and that this was not the first time this had happened. Dwight Siman says Barry Ireland and Werner Dyck told him not to cash his cheques. Other evidence supports these statements.

Lynn Abrahamson admitted that although he did not have access to the bank accounts, BRI was short on cash. Robert Fisher testified about NSF cheques. Werner Dyck said he was one of the people who signed the cheques and he knew there was no money in the account when he wrote some of the paychecks. Before he became GM, there were signs of financial troubles but once he became GM he realized the severity of the financial situation. He knew people were asked to hold their cheques. He is not sure who told the employees to hold their cheques but it may have been Barry Ireland. He admitted he was aware employees were not cashing their paychecks.

The evidence establishes employees were asked to hang onto their cheques and to check with the office before depositing them. There was a history of NSF cheques. I find it was reasonable for Thomas Hanwell and Dwight Siman to hold their paychecks until they were told it was okay to cash them. Unfortunately, that day never came. There is no evidence of a secret agreement between Barry Ireland, Thomas Hanwell and Dwight Siman. The employer asked some of its employees to hold onto their paychecks

due to a lack of funds and these employees followed directions. The cheques were not cashed and wages were not paid with the meaning of the Act(s).

The evidence suggests Claudia Ireland was in charge of payroll and yet she was not called as a witness. Barry Ireland, BRI's former CEO, may have had evidence to offer regarding payroll but he did not testify either. The Appellants, after firing Barry Ireland in November of 2012, gained access to some, but not all, of BRI's records. Given BRI's financial difficulties leading to NSF cheques and the holding of paychecks, and a lack of evidence from those who may have been able to shed light on payroll issues, it is extremely difficult for us to know for sure what was and was not paid. Ultimately, it is the employer's responsibility to keep clear and accurate payroll records (new Act s. 2-38, old Act s. 70).

Robert Fisher attempted to reconstruct what happened in terms of payroll and created a 2012 payroll summary document (ER3). This was not an easy task. He testified that one NSF cheque was issued to Thomas Hanwell, cheque no. 1662 dated February 24, 2012 in the gross amount of \$1,600, net \$1,294.30, and that this cheque was later replaced by "extra" cheque no. 1759 in the amount of \$1,294.30. Mr. Fisher also testified that one NSF cheque was issued to Dwight Siman, cheque no. 1656 dated February 24, 2012 in the gross amount of \$3,000, net \$2,030.85, and that this cheque was later replaced by "extra" cheque no. 1758 in the amount of \$2,030.85. Mr. Fisher's review of cancelled cheques revealed the replacement cheques were not issued through payroll but were instead issued through accounts payable.

In addition to the replacement cheque, Mr. Fisher said Thomas Hanwell received "extra" cheque no. 1779 in the amount of \$1,003.72 dated March 30, 2012, which happens to be the net amount of a bi-weekly paycheck for March/April. He said Dwight Siman received "extra" cheque no. 1778 in the amount of \$1,450.43 dated March 30, 2012 which happens to be the net amount of a bi-weekly paycheck for March/April. He concluded these cheques were net pay for one of their cheques. These cheques were also issued through accounts payable instead of payroll.

Although I accept Mr. Fisher's evidence with respect to the replacement and extra cheques, I find that ER3 has the potential to be misleading. Just because the summary shows a paycheck having cleared the bank during a certain month, does not mean the employee received that money. For example, according to page 6, Thomas Hanwell's cheque no. 1662 appears to have cleared the bank in February of 2012 even though it shows up on page 7 as NSF. Likewise, at page 3, Dwight Siman's cheque no. 1656 appears to have cleared the bank in February of 2012 even though it shows up on page 4 as NSF.

Further, extra cheques 1779 and 1778 appear out of nowhere. In other words, the summary contains no corresponding NSF cheque to which they clearly relate. Mr. Fisher testified that on March 30<sup>th</sup> Thomas Hanwell received an extra cheque for \$1,003.72

and Dwight Siman received an extra cheque for \$1,450.43, each representing net pay for one of their cheques. According to the summary, however, each of Thom's cheques in the amount of \$1,200 gross (\$1,003.72 net) cleared the bank. The summary also makes it look like each of Dwight's cheques in the amount of \$2,000 gross (\$1,450.43) cleared except for his uncashed March 22<sup>nd</sup> cheque. The only one of Thom's cheques issued prior to March 30<sup>th</sup> for this exact amount was the March 22<sup>nd</sup> paycheck. Therefore, it makes the most sense to me that the March 30<sup>th</sup> accounts receivable cheques were meant to replace the uncashed March 22<sup>nd</sup> payroll cheques. If Thom's March 22<sup>nd</sup> cheque actually cleared as the summary indicates then why was an extra cheque in the same amount issued to him on March 30, 2012? Also, I find it hard to believe that Thomas Hanwell's cheque dated March 22<sup>nd</sup> cleared the bank when Dwight Siman was told to hold onto his March 22<sup>nd</sup> cheque (EE11) due to a lack of funds.

Thomas Hanwell and Dwight Siman both testified they were not paid for March and April of 2012. Mr. Fisher did the best he could with what he had but he became involved after the fact and did not have access to all of the information. Without Claudia Ireland and Barry Ireland's cooperation, he was left to piece things together as best he could. Based on the totality of evidence, I believe that Thomas Hanwell and Dwight Siman were each paid for two weeks in March by way of an extra cheque paid out of accounts payable. BRI was in financial trouble and I do not believe they were paid anything else for March and April. I find that Thomas Hanwell and Dwight Siman are owed 6 weeks' pay each, plus vacation pay and pay in lieu of notice.

#### **David Ireland**

David Ireland's claim is comprised of wages of \$1,500 per week for the 16 weeks from July 22, 2012 to November 9, 2012, plus vacation pay and pay in lieu of notice. He testified he began working for BRI in 2010 as an Assembly Supervisor but eventually moved into Research and Development where his duties included checking and logging data and working on a different style of blade. Essentially, he was trying to make the turbine work. His last day of work was November 9, 2012. He was terminated by Werner Dyck due to shortage of work (EE15).

David Ireland's testimony about earning \$1,500 per week in 2012 is uncontroverted. He provided uncashed paychecks (EE14) no. 1965 (\$2,059.40), 1981 (\$2,180.45), 1992 (\$2,217.71), 2030 (\$2,217.71) and 2043 (\$2,217.71). These cheques cover pay periods ending August 5 to September 30, 2012 and are the only cheques he has in his possession. He did not cash them because he was asked not to. He would check with Werner Dyck periodically and was told, "not today." He testified he is owed his wages for October and part of November (to November 9) as well. He says he never received cheques no. 2064 and 2075. He calculates the net dollars owed to him at \$17,187.63. This does not include vacation pay or pay in lieu of notice.

According to Mr. Fisher's evidence, David Ireland's cheque no. 1949 issued July 27, 2012 for \$3,000 gross, \$2,020.97 net was returned NSF. It was replaced by extra cheque no.

2071 for the net amount on October 26, 2012. David Ireland agreed his NSF cheque was made good by another cheque.

Werner Dyck acknowledged that David Ireland moved into research and development in mid-April. He did not know whether David was a competent employee but there was no money and most of them were twiddling their thumbs as a result. He did not take any steps towards progressive discipline with David. David was Barry Ireland's son so he did not feel he had the power to do anything. Aside from feeling powerless to fire him, they all thought the money was coming. They just had to hold on.

As previously explained, I do not accept the Appellants' position that the employees were paid within the meaning of the Act(s) because they chose not to negotiate their paychecks. I accept that David Ireland was told there was no money and that he had to hold onto his cheques until the money materialized. Based on the evidence, David Ireland is owed 16 weeks' pay at the rate of \$1,500 per week plus annual vacation pay and pay in lieu of notice.

With respect to Dwight Siman and David Ireland's claims, the Appellants argue that a BRI share was issued to each of them on October 10, 2012 (ER12), that they did not pay for these shares, and that the value of each share was \$10,000. Accordingly, any claim for wages must be discounted by this amount.

Even if shares were issued in exchange for unpaid wages, I cannot take the value of the shares into account as payment for wages. Both Acts say that an employer must pay all wages to an employee in Canadian currency by cheque or deposit to the employee's account and that any agreement allowing for payment of wages in any other manner is void (section 2-35 of new Act and section 49 of old Act). The issuance of BRI shares has no bearing on these appeals.

### **Summary of Outstanding Wages**

Vacation pay is calculated in accordance with sections 2-27 and 2-29 of the new Act and sections 33 and 35 of the old Act. Pay in lieu is calculated in accordance with sections 2-60 and 2-61 of the new Act and sections 43 and 44 of the old Act. The total wages owed to the Respondents are calculated as follows:

#### **Thomas Hanwell**

Regular wages for 6 weeks x \$600 per week = \$3,600

Vacation pay at 3/52 = \$207.69

Pay in lieu for 1 week x \$600 per week = \$600

**Total wages: \$4,407.69**

#### **Dwight Siman**

Regular wages for 6 weeks x \$1,000 per week = \$6,000

Vacation pay at  $3/52 = \$346.15$

Pay in lieu for 4 weeks x \$1,000 per week = \$4,000

**Total wages: \$10,346.15**

**David Ireland**

Regular wages for 16 weeks x \$1,500 per week = \$24,000

Vacation pay at  $3/52 = \$1,384.61$

Pay in lieu for 2 weeks x \$1,500 per week = \$3,000

**Total wages: \$28,384.61**

## **Issue 2: Are the Appellants responsible for outstanding wages?**

Even if wages are outstanding under the Act(s), the Appellants claim it would be unfair to hold them responsible under the circumstances. According to them, fairness dictates that Barry Ireland is responsible because he was the CEO who controlled the information and finances. Ultimately, they say he left BRI without money to cover its obligations and debts by transferring funds out of the company. If it were not for Barry's actions, the wages would have been paid.

A good portion of the Appellants' evidence establishes that Barry Ireland was the person in charge of BRI and that he quickly thwarted any attempts to interfere with his control. The evidence paints a picture of a charismatic idea man who failed to ensure adequate technical work (testing and improving of the product) was done before taking the turbines to market. Barry Ireland was skilled at creating interest in the product and attracting investors. The evidence suggests he was not so skilled at dealing with BRI's day-to-day operations and ensuring things were being done properly and transparently. Part of Robert Fisher's evidence was directed at showing that Barry Ireland moved some of BRI's money to his personal companies. Barry Ireland was present at the hearing but did not testify.

According to the Respondents, directors are liable for the wages of employees while they are directors, without exception. Liability cannot be avoided either by claiming an individual was a passive, outside director or by claiming an individual was an active director but acting in a duly diligent manner.

I feel for the Appellants. They seem like good, business-savvy people who took their role on BRI's board seriously. They did their best to stay on top of things but generally stayed out of the day-to-day operations of the company. Most of them learned only what they were told by Barry Ireland. The evidence suggests Barry Ireland tightly controlled the information flowing to the board. As Werner Dyck testified, Barry wanted all information presented to the board to be "rosey." When it became clear to them that BRI was in trouble, they initially took action by deleting salaries and firing

most of the staff and eventually by firing all remaining staff, including Barry Ireland, except Werner Dyck who later resigned. Unfortunately, these actions were too late to save the company. By this time, BRI had no viable product to sell and owed money to creditors, CRA and several employees.

As I explained to Mr. Bruun at the beginning of the hearing, the unfairness of holding the Appellants responsible for outstanding wages given Barry Ireland's actions cannot factor into my decision. My authority comes from the Act. Both *The Saskatchewan Employment Act* and its predecessor provide that directors of a corporation are jointly and severally liable to an employee for all debts due for services performed, not exceeding six months' wages, while they were directors (section 2-68 new Act and section 63 old Act). The Acts also provide that "wages" includes vacation pay and pay in lieu of notice.

I respectfully disagree with the Appellants' position that I have the authority to rule that liability should rest solely with Barry Ireland. I do not control who is or is not named in a Wage Assessment. The Director of Employment Standards makes that decision. With respect to director's liability, the legislation is clear. I am bound by the legislation. Lack of involvement in the corporation is not a defence. Due diligence is not a defence. The misappropriation of funds by one of the directors or secret agreements between him and employee(s) is not a defence. When it comes to unpaid wages, there is no defence.

The only way a director is not liable for wages is if he or she was not a director when the wages were earned. The evidence establishes all named directors were directors during the relevant time period. The only director with reduced liability is Debra Faul. According to the evidence, she resigned as director on April 25, 2012 (ER5). Therefore, she is not responsible for any portion of David Ireland's wages or for the portion of Thomas Hanwell and Dwight Siman's wages covering April 25 to April 30, 2012. The decision to reduce Thom and Dwight's salary to zero was made mid-April. Debra was still part of the board at this time, although she had not been actively involved since February of 2012. I find she is liable for pay in lieu of notice for both employees. In the end, liability is joint and several but Debra Faul's liability is reduced by 1 weeks' pay for Thomas Hanwell and Dwight Siman.

The Appellants also argue Dwight Siman and/or David Ireland's claims are flawed because Dwight Siman is not named as a director on David Ireland's Wage Assessment when he was clearly a director at that time (ER4 and ER10). The Respondents argue the claims are not flawed due to joint and several liability. As long as one director is liable, the claims are valid.

The evidence establishes Dwight Siman was a director from July 7, 2012 to March 29, 2013. I accept the Appellants' argument that fairness dictates he should have been named as a director in David Ireland's claim. For some reason, Employment Standards chose not to name him. While I agree he should have been named, the fact he was not

named, does not invalidate any of the claims because liability of directors is joint and several.

## VII. CONCLUSION

The appeals are allowed in part. The Wage Assessments as they relate to the Appellants are varied as follows:


Wage Assessment 7106 for Employee Thomas Hanwell  
Outstanding Wages: \$4,407.69

Wage Assessment 7096 for Employee Dwight Siman  
Outstanding Wages: \$10,346.15

Wage Assessment 7108 for Employee David Ireland  
Outstanding Wages: \$28,384.61

The Appellants, as directors of BRI, must pay the Respondents their outstanding wages.

DATED in Regina, Saskatchewan, this 2<sup>nd</sup> day of February, 2016.

  
 Jodi C. Vaughan  
 Adjudicator

The Parties are hereby notified of their right to appeal this decision pursuant to Sections 4-8, 4-9 and 4-10 of *The Saskatchewan Employment Act* (the "Act").

The information below has been modified and is applicable only to Part II and Part IV of the Act. To view the entire sections of the legislation, the Act can be accessed at [www.saskatchewan.ca](http://www.saskatchewan.ca).

### **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.

(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 pursuant to Part II, the wage assessment or the notice of hearing;
- (c) the notice of appeal filed with the director of employment standards pursuant to Part II;
- (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

#### **Appeal to Court of Appeal**

- 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, 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.

#### **Right of director to appeal**

4-10 The director of employment standards has 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 any decision of an adjudicator or the board.