LRB File 105-20

Wage Assessments 1-003409
1-004516

DECISION OF ADJUDICATOR
IN THE MATTER OF AN ADJUDICATION
PURSUANT TO SECTIONS 2-75 and 4-6 OF
THE SASKATCHEWAN EMPLOYMENT ACT

APPELLANTS:
(Employer) Adler Automotive Ltd., o/a A.V. Shuttle Cab
and
(Director) David Gersher

RESPONDENT: Roger Charles Gadzella
(Employee)

Irene Phan, Employment Standards Officer, appearing for Government of Saskatchewan, Ministry of Labour Relations and Workplace Safety, Employment Standards Division

DATE OF HEARING: August 12, 2020 1:00 p.m.

PLACE OF HEARING: Room 2.1
122 3rd Avenue North (Sturdy Stone Building)
Saskatoon, Sask.

I. INTRODUCTION

This is an appeal by the Employer, Adler Automotive Ltd. o/a A.V. Shuttle Cab, from two Wage Assessments in favour of the Employee, Roger Charles Gadzella: Wage Assessment 1-003409 in the amount of $2,174.59 and Wage Assessment 1-004516 in the amount of $1,122.68 for a total of $3,297.27.

The issue is whether Mr. Gadzella was an independent contractor or an employee of A.V. Shuttle within the definition of s. 2-1(f) of *The Saskatchewan Employment Act* and so entitled to the *Act's* protections. The relevant section of the *Act* states:

> 2-1 (f) **"employee"** includes:
> (i) a person receiving or entitled to wages;
> (ii) a person whom an employer permits, directly or indirectly, to perform work or services normally performed by an employee; ....

II. PRELIMINARY MATTERS

a) Adjournment

Late in the morning of the day set for the Hearing Mr. Gersher contacted the Employment Standards Officer, Irene Phan, requesting an adjournment of the Hearing from 1:00 p.m. to 2:00 p.m. as he was detained in Prince Albert. Ms. Phan contacted me (already en route to the Hearing) and I agreed to the adjournment.

b) Employee's Documents

At the request of the Employer, I issued an Order dated July 20, 2020 for the Employee Roger Gadzella to produce his 2018 and 2019 Income Tax returns and GST Remittance forms prior to the Hearing. These were provided by the Employee and forwarded to me and the Employer. At the Hearing Roger Gadzella requested I order these documents be used by the Employer for the purposes of this Hearing only. I agreed to this request.

c) Amended wage assessment

The day before the Hearing, the Employee advised the Employment Standards Officer he had not been paid by A.V. Shuttle for work completed August 6 - 9, 2019. At the Hearing, amended Wage Assessment 1-004516 was presented to include these amounts; the new total for that Assessment was $1,409.49.

Mr. Gersher agreed to search his company's records to see if payment had been made, and to provide this information within two days of the Hearing.

d) Perfection of appeal

The Ministry provided information confirming the Employer's appeal and appeal deposit were received within the time requirements in s. 4-4(4) and s. 4-5(1)(b) of *The Saskatchewan Employment Act*.

e) Role of Adjudicator

Prior to the commencement of the Hearing, Mr. Gersher said he had received bad advice from the Labour Board; at some point he had telephoned to ask whether his drivers were employees or independent contractors, and was told they were independent contractors. He wanted to know what I was going to do about this. I explained to Mr. Gersher that I was an independent Adjudicator, not an employee of the Labour Board, and would base my decision on the evidence presented during the Hearing.

III. EVIDENCE

a) Evidence Not in Dispute

Only David Gersher gave evidence on behalf of the Appellants. He was assisted by Ike Eli in the presentation of his case.

The Employee Roger Gadzella provided testimony and also called Jim Pravda, the former General Manager of A.V. Shuttle, as a witness.

A.V. Shuttle has been operating since approximately 2002 and was purchased by David Gersher in 2016. It provides specially equipped vehicles and drivers for wheelchair shuttle service for seniors, Social Services clients, school children and other special needs customers. At the time of the Hearing, three drivers were working for the company, but there had previously been up to fourteen different drivers during the period Mr. Gersher owned it.

Mr. Gersher has been in the taxi business since 1984 and operates a cab company in addition to the shuttle service. He did not oversee the day-to-day operations of A.V. Shuttle. During the time Roger worked as a driver, Jim Pravda, then later Kelly Rapko, were responsible for managing it.

Roger Charles Gadzella started driving a shuttle for the company in 2012 and continued after the purchase by David Gersher. He worked until August 9, 2019 when he had to take medical leave. He resigned effective March 5, 2020.

The parties agreed on many basic aspects of the work performed. Drivers were provided a shuttle van with the logo 'A.V. Shuttle' on it. They were assigned fares by A.V. Shuttle's office, then picked up and delivered their fares. After completing a route, the driver completed a form indicating the customer name, kilometers travelled and the pick-up charge. The form was given to A.V. Shuttle. The driver was also responsible for inputting the information into a computer program. From this information, A.V. Shuttle generated a document labelled "Tax Invoice" every two weeks in the name of the driver, and paid the driver for the trips taken. Drivers were paid 50% of the amount the company received from the customer. So, for example, if the School Board paid $20 to have a wheelchair-bound student driven to school, then the driver would be compensated $10 and the company would retain the other $10.

On the "Tax Invoices" adjustments were also made for any gas not already paid for. Gas expenses were also split 50/50. Drivers sometimes received tips, which they kept.

b) Employer Testimony

Mr. Gersher testified that his company:

- purchased the shuttle vans and equipped them for wheelchair access;
- paid for licence plates;
- maintained liability insurance on the vehicles;
- was responsible for ongoing vehicle maintenance and repairs;
- provided a replacement vehicle if the driver's shuttle van broke down;
- booked all trips and assigned drivers to them;
- dispatched drivers;
- paid for gas;
- received all payment for the trips, except for tips paid to the drivers;
- did all accounting work and generated the "Tax Invoices" from which drivers were paid;
- had a Training Manual which is provided to all drivers, including Roger; and,
- disciplined Roger several times for unsatisfactory performance.

He also stated:

- the shuttle vehicles were leased to his drivers;
- apart from being told when to pick up passengers and where to take them, no direction was given to the drivers;
- the vehicles remained with the drivers at all times, except when brought in for maintenance or repairs;
- drivers were required to have a GST number, and could claim for GST paid on gas;
- drivers could work for another transportation company while employed by A.V. Shuttle;
- drivers could pick up other fares even when not sent by dispatch; and,
- drivers were not required to submit mileage records.

He summed up by characterizing the relationship between A.V. Shuttle and its drivers as a vehicle lease, which provided the drivers everything required to do the job. He compared the shuttle drivers to the taxi drivers who worked for another of his companies; when provided with a vehicle both types of drivers could expand or minimize their income based on their own efforts.

Mr. Gersher acknowledged he was not closely involved in daily management of the shuttle service, but said he heard Roger was not the best employee, that Roger sometimes went home early, and he had glimpsed Roger driving around the City in the shuttle when he did not have an A.V. Shuttle fare.

c) Employee Testimony

Roger testified that:
- his usual working hours were between 8:00 a.m. and 5:00 p.m. although he sometimes worked in the evenings or on a holiday;
- he could not choose which hours he worked, or fares he handled, but was assigned them by the company through Jim Pravda;
- he could not use the shuttle van for customers not provided by A.V. Shuttle;
- he could not sub-lease the van or hire any assistants;
- if he was sick or wanted time off work he had to advise one of his supervisors: Jim, the "road man", or Kelly Rapko, the "office man";
- if he were not scheduled for a trip he was required to be available with the van, which he kept with him at all times;
- he received a copy of the company Training Manual;
- he was disciplined by Jim Pravda, his manager, for poor performance on more than one occasion;
- he was required to provide his own cell phone and Bluetooth; and,
- he was able to use the van for personal use, as long as he drove it within the city, and kept track of his mileage.

Roger confirmed he was paid every two weeks, with the calculations set out in the "Tax Invoices" generated by A.V. Shuttle from the information Roger provided. He noted the description of the work on the "Tax Invoice" changed from "Transport Services" to "Vehicle Lease" beginning April 2, 2018. He added he had a GST number because Dave Gersher told him he needed it. Although Roger requested T4 tax slips from A.V. Shuttle they were not provided to him. Roger did not keep any additional time or employment records.

d) Testimony of Jim Pravda

Jim Pravda testified for the Employee. He has 18 to 20 years of experience in the taxi and shuttle industry. Mr. Pravda was the General Manager of A.V. Shuttle for many years under the previous owner and he continued as such when Mr. Gersher bought the business in 2016. Mr. Gersher later brought in his son-in-law, Kelly Rapko, to manage the business along with Jim; Jim's employment with A.V. Shuttle ended in February 2019.

Jim described the many duties he performed for the company, including dispatching, scheduling and answering phones. He was also responsible for training the shuttle drivers. He wrote a detailed Training Manual (Employee Exhibit #3) setting out the procedures for transporting customers. Drivers were expected to know the manual and were tested on it before being allowed to drive for the company. The manual was provided to Roger, and Jim enforced the rules and procedures drivers had to follow.

Jim testified that drivers for A.V. Shuttle were not allowed to work for another transportation company while working for A.V. Shuttle, not allowed to solicit their own fares, not allowed to refuse a fare, and could not sub-lease the vehicle. Drivers could be fired or disciplined for any of these offences, and could also be disciplined by suspension or firing for poor performance. Jim stated that he had on occasion disciplined Roger for poor performance by suspending him from work. The amount of work a driver received also depended on their performance. Jim told his drivers that if they did a good job, they would get more trips booked. A driver could request more trips, but that did not necessarily mean they would receive them.

If Roger was sick he had to contact Jim. If he wanted time off he had to provide notice in writing one month in advance. Jim also arranged Roger's schedule, which varied from day to day. As Roger frequently required medical treatment (dialysis) in the morning, he would sometimes work into the evening hours. Jim noted that if Roger was not working he could be called at short notice for a trip. He was expected to drop everything and attend within twenty minutes; this is why the van remained with Roger at all times.

Jim set the fares, and the driver was expected to collect them, and enter the trip information into the company computer program.

e) CRA Proceedings

Roger testified he was never sure how to label his employment status, whether he was an employee or a sub-contractor.

The issue arose in 2013 (under the former owner of the company) when the Canada Revenue Agency issued a ruling that for the period under review Roger was an employee, was eligible for EI and CPP, and was therefore required to pay EI and CPP premiums.

Apparently the owners of the company at that time appealed the decision and lost.

Despite the decision, Roger claimed his employer never produced proper T4s, and told him that when asked he should say he was a contractor.

It appears that in 2018 the new ownership of A.V. Shuttle asked Canada Revenue to review the status of its drivers. It initially found they were employees. Mr. Gersher appealed this decision. On appeal, CRA found "this employment was not pensionable and not insurable" i.e. drivers were not employees.

Roger in turn appealed this decision to the Tax Court of Canada, and a Consent Judgment was entered into in August 2019 for the period January 1, 2017 to January 31, 2018, which essentially held Roger was an employee for that period. (Employee Exhibit #2 - documents related to CRA matters)

Prior to Mr. Gersher's 2018 appeal to the Tax Court, drivers were asked to sign an agreement titled "Independent Contractor Agreement". At the Hearing the Employer produced a copy of this Agreement dated March 27, 2018 (Employer Exhibit #1). This document resulted in a great deal of blustering, swearing and finger-pointing during the Hearing. Roger Gadzella said he had never signed this agreement and had never seen it before. David Gersher produced an original copy with hand-written signatures of Roger Charles Gadzella and Phung Ha (Roger's wife) as a witness. Roger admitted that was his signature but claimed Mr. Gersher had "cut and pasted" the signatures onto the document. Jim Pravda stated in his testimony that he believed the contract was drafted by Kelly Rapko and all drivers were given it to sign; Jim's wife was a driver and she signed it.

IV. ARGUMENTS

Mr. Gersher argued throughout his testimony that A.V. Shuttle drivers were independent contractors, and expressed frustration at the conflicting advice he said he received from government agencies about this status. He claimed that when he purchased the company he was told by the Labour Board that he could treat drivers as independent contractors, and so he did. He was also frustrated at what he perceived as CRA's flip-flop on the issue.

Mr. Gersher demanded to know how he was supposed to provide a valuable service – wheelchair-accessible transportation – at the limited sums paid to him by various clients (hospitals, school boards, Social Services), cover all his expenses, and pay his drivers as employees. He felt the 50/50 fare split between driver and company supported the driver's status as an independent contractor.

His representative, Ike Eli also communicated the disappointment felt by the company, which treated drivers and other employees well, provided a good service to the community, then get "screwed" by employees who leave.

Roger Gadzella's position was that he had no control over how he did his work as a driver and so should be considered an employee.

V. ANALYSIS

The CRA and Tax Court rulings are not determinative in the case before me. Even if the same issue was under consideration – whether or not Roger Gadzella was an employee – the CRA proceedings were examining the impact of the Canadian *Income Tax Act* and related legislation, while this Hearing is to determine whether Roger's status falls within the definition of employee pursuant to *The Saskatchewan Employment Act*. Furthermore, I do not know what evidence was presented in the CRA proceedings, although some of the material provided in Employee Exhibit #2 conflicts with the evidence given during this Hearing. My decision is based on the evidence presented during the Hearing.

The leading cases on the test for determining whether a worker is an employee or independent contractor are the Federal Court of Appeal's decision in *Wiebe Door Services Ltd. v. M.N.R.*, [1986] 3 F.C. 553 (C.A.) and the Supreme Court of Canada's decision in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 SCR 983, 2001 SCC 59 (CanLII). In *Sagaz Industries* Justice Major stated "[a]lthough there is no universal test to determine whether a person is an employee or an independent contractor... [t]he central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account". He went on to note that factors to be considered included:

1. the level of control the employer has over the worker's activities;
2. whether the worker provides his or her own equipment;
3. whether the worker hires his or her own helpers;
4. the degree of financial risk taken by the worker;
5. the degree of responsibility for investment and management held by the worker; and
6. the worker's opportunity for profit in the performance of his or her tasks.

The Court added:

> It bears repeating that the above factors constitute a non-exhaustive list, and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.

Applying the factors outlined by the Supreme Court of Canada to the evidence presented in the Hearing I conclude that Roger was not a "person in business on his own account", but an employee of A.V. Shuttle.

1. Control. The Employer controlled the Employee's work day. Roger was assigned fares by the dispatcher. Some were regular, others came up on a day-to-day basis. He needed to provide notice of an intention to take holidays and had to advise a supervisor if he was ill and could not perform assigned tasks that day. He was subject to discipline by A.V. Shuttle and was suspended for poor performance at least once. Although Roger kept the shuttle at all times, it was not for his personal convenience and use but so that he could be available on short notice to take on additional fares.
2. Equipment. The Employer provided the work tool essential to Roger's job: a fully-equipped wheelchair-accessible van. The Employer paid for plates, liability insurance, maintenance and repairs. Roger had only to provide a cell phone and blue-tooth capability.

3. Helpers. Both Roger and former General Manager Jim Pravda testified that Roger could not sub-lease the van or hire helpers. Jim stated this would result in a driver being fired. Mr. Gersher's assertion to the contrary was not believable, especially given he was not responsible for the daily operations of the shuttle service.

4. Financial risk. Roger did not take on any financial risk. He had very little risk of loss. He was paid bi-weekly and always paid 50% of the fares. The Employer was responsible for the vast majority of the expenses related to the operation of the shuttle. Roger's only risk if he performed poorly was suspension or loss of his job.

5. Investment of Management. Roger had no investment in the company or responsibility for management.

6. Opportunity for Profit. Roger did have an opportunity for increased profit; if he performed well, he would be assigned more fares, which would result in more income. He could request more work, but, as Jim Pravda testified, that did not necessarily mean he would get it. That situation, however, is no different from any other commissioned employee; if they do their work well, they should be able to increase their earnings. Roger could not, however, affect the rates charged to the customers; that was decided by agreement between his employer and the customer. The clients that he drove were not Roger's clients – they were A.V. Shuttle's. Mr. Gersher's assertions that Roger could and did drive other customers was not supported by any evidence.

The process to determine whether a worker is an employee or an independent contractor was clarified by the Federal Court of Appeal in *1392644 Ontario Inc. v. M.N.R.,* 2013 FCA 85 (CanLII):

> Under the first step, the subjective intent of each party to the relationship must be ascertained. This can be determined either by the written contractual relationship the parties have entered into or by the actual behavior of each party, such as invoices for services rendered, registration for GST purposes and income tax filings as an independent contractor.
>
> The second step is to ascertain whether an objective reality sustains the subjective intent of the parties.... In other words, the subjective intent of the parties cannot trump the reality of the relationship as ascertained through objective facts.

Mr. Gersher attempted to rely on the 2018 contract to establish Roger was a contractor, not an employee. The timing of this contract, in the midst of an appeal to the CRA, suggests it was an effort by the Employer to bolster its position in those proceedings. The contract was not a true reflection of the relationship between the parties. It was also around this time the Employer changed the description on the "Tax Invoices" it provided to the drivers with their bi-weekly pay cheques from "Transport Services" to "Vehicle Lease", even though nothing had changed in the relationship.

Roger Gadzella vigorously denied ever having signed the contract. I do not find it necessary to make a ruling on whether or not he did so. The contract, even if signed, would not be determinative of the relationship. The actual relationship between Roger and the company, which remained unchanged since he started with it in 2012, would supersede any contractual descriptions.

The method by which Roger's pay was calculated – a 50/50 split of the fare- was also not proof that he was an independent contractor. Many employees are paid on commission. A pay plan alone does not determine employment status.

I find the "objective reality" of the relationship between Roger Gadzella and A.V. Shuttle was that of an employee working for an employer, not an independent contractor.

Mr. Gersher's question as to how he is to cover expenses, much less make a profit providing wheel-chair accessible shuttles, if he is required to pay drivers as employees, is a business question. He has to make decisions for the economic well-being of his company, but he cannot do so by ignoring or trying to circumvent the rights and duties set out in *The Saskatchewan Employment Act*.

VI. DAMAGES

Wage Assessment 1-003409 includes vacation pay, public holiday pay and overtime payable in the one-year period prior to the date the complaint was registered by Employment Standards on August 19, 2019. It totals $2,174.59.

Wage Assessment 1-004516 (as amended at the Hearing) covers the annual vacation pay owing from the one-year period prior to the date of Roger's resignation on March 23, 2020 not covered by the first claim, as well as the unpaid commissions and public holiday pay for August 6-9 2019. It totals $1,409.49.

In communications subsequent to the Hearing, Mr. Gersher acknowledged that Roger Gadzella had not been paid for work August 6-9, 2019. He said Roger was owed $208.40 but provided no basis for this sum. The computer records produced by Roger at the Hearing, presumably available to the Employer, and used by the Employment Standards Officer in her calculations, show a figure of $260.50, plus public holiday pay for a total of $270.92 (Employee Exhibit #5). I accept the Employee's figures for this period and the amended Wage Assessment.

The two Wage Assessment (as amended), total $3,584.08. To aid the Employer in understanding how the Employment Standards Officer arrived at these figures, I have summarized below the legislative basis for her calculations.

As an employee within the meaning of *The Saskatchewan Employment Act*, Roger was entitled to the rights and benefits of that relationship, including annual vacation pay (Subdivision 6) and public holiday pay (Subdivision 7). Relevant sections of the *Act* are:

> **2-1 (v) "wages"** means salary, commission and any other monetary compensation for work or services or for being at the disposal of an employer, and includes overtime, public holiday pay, vacation pay and pay instead of notice;
>
> **Vacation pay**
> **2-27** (1) An employee is to be paid vacation pay in the following amounts:

(a) if the employee is entitled to a vacation pursuant to clause 2-24(1)(a), three fifty-seconds of the employee's wages for the year of employment or portion of the year of employment preceding the entitlement to the vacation;

...

(2) With respect to an employee who is entitled to a vacation pursuant to section 2-24 but who does not take that vacation, the employer shall pay the employee's vacation pay not later than 11 months after the day on which the employee becomes entitled to the vacation.

Time limits for claims to director of employment standards

2-89 (1) A claim pursuant to this Part with respect to unpaid wages must be made to the director of employment standards:

(a) within 12 months after the last day on which payment of wages was to be made to an employee and the employer failed to make the payment; or

(b) if employment with the employer has ended, within 12 months after the last day on which any final payment of wages was to be made to the employee.

(2) Recovery of wages pursuant to this Part is limited:

(a) to wages that became payable in the 12 months preceding the day on which the claim was made to the director of employment standards; or

(b) if the employment with the employer has ended, to wages that became payable within the last 12 months of employment with that employer.

(3) Other than with respect to a claim mentioned in subsection (1), a complaint respecting an alleged contravention of this Part, the regulations made pursuant to this Part, any authorization issued pursuant to this Part or any Acts or regulations mentioned in subsection 2-81(1) must be made to the director of employment standards within 12 months after the date on which the complainant knew or, in the opinion of the director, ought reasonably to have known about the alleged contravention.

To summarize:

- wages include holiday and annual vacation pay.
- as an employee, Roger can claim for unpaid wages for the 12 month period prior to his complaint. His initial complaint to Employment Standards was August 29, 2019.
- the unpaid wages for the 12 months prior to August 29, 2019 includes unpaid annual vacation pay for the previous year (i.e. 2017-2018).

I requested Irene Phan to clarify why her calculations for public holiday pay used the figure of 4% instead of 5% as set out in section 2-32 of the *Act*. She replied:

> In order to calculate the 5%, I would need to have records breaking down the employee's earnings in the 28-day periods prior to each public holiday. For example, to calculate the employee's public holiday pay for July 1/19, I would need a record of his earnings during the period of June 3-30/19 (excluding overtime).
>
> The employer did not provide any payroll records during the investigation. The employee's records were partial. I was unable to determine the employee's earnings in each of the 28-day periods.

The 4% calculation is prescribed in *The Employment Standards Regulations* for hourly-paid construction workers. It is also a PHP workaround our Division uses when proper payroll records are absent in other industries and occupations. The 5% is calculated only when there is a public holiday and only when there are wages earned in each of the 28-days, whereas the 4% is calculated on all wages earned during the year (excluding overtime and vacation pay). The 5% requires pay stubs and timesheets or similar, whereas the 4% requires only pay stubs. I was able to use the "tax invoices" submitted by the employee to calculate his PHP using the 4%.

In our experience, both calculation methods result in a similar amount outstanding.

I accept this method of calculation.

VII. CONCLUSION

I dismiss the appeal and order the Appellants to pay to the Employee the amount of the Wage Assessments, as amended: **$3,584.08**.

I also order the Employer to destroy at the conclusion of these proceedings the 2018 and 2019 Tax and GST forms received from Roger Gadzella.

Dated at North Battleford, Saskatchewan: August 31, 2020

Original signed by
Karen C. Ulmer
Adjudicator

EXHIBITS – Employer

1. Contract between A.V. Shuttle and Roger Gadzella dated March 27, 2018
2. "Tax Invoices" from February 2, 2019 to June 16, 2020, 10 pp.

EXHIBITS – Employee

1. "Tax Invoices" August 7, 2017 to July 22, 2019
2. CRA appeal documents 2013-2019
3. A.V. Shuttle Training Manual
4. Roger Gadzella's 2018 and 2019 Tax Returns and 2019 GST rebate
5. Computer records from 2019

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.

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.