

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



Leslie Hande, et. al

COMPLAINANT/EMPLOYEES

-AND-

Alliance Health Saskatchewan Inc., and Patti Cameron, Director

APPELLANT/EMPLOYER

LRB FILE:	No. 175-23
WAGE ASSESSMENT:	No. 1-000714

INTRODUCTION

This matter was scheduled to be heard in Regina, Saskatchewan; however, before the hearing took place the Employment Standards Officer, Christine Rusnak raised the issue of Jurisdiction.

Ms. Christine Rusnak represented the Department of Employment Standards and no one represented the Corporation. Patti Cameron was representing herself as Director.

The Wage Assessment was prepared pursuant to the Saskatchewan Employment Act s.s.2014 c.s-15.1, herein after referred to as "The Act" is for \$24,783.48.

I. PRELIMINARY MATTERS

Ms. Rusnak, on behalf of the Department of Employment Standards, raised a preliminary objection that the writer, as adjudicator, did not have jurisdiction to hear the appeal. Section 2-75(2) *The Employment Standards Act* states, "that an appeal pursuant to this section must be commenced by filing a written notice of appeal with the Director of

Employment Standards within 15 business after the date of service of The Wage Assessment."

Section 2-75(4)(5) states that:

(4) If the appellant is an employer or a corporation director, the employer or corporate director shall, as a condition of being eligible to appeal the wage assessment, deposit with the director of employment standards the amount set out in the wage assessment or any other prescribed amount.

(5) The amount mentioned in subsection (4) must be deposited before the expiry of the period during which an appeal may be commenced.

It is clear and unambiguous from the wording of section 2-75(2) and subsection (5) must be complied with.

The department argues that the wage assessment was served on the corporation and Ms. Cameron on November 16, 2023 by service to the

address of the corporation and director as set out in the corporate registry documents' address for service.

There is email correspondence between Ms. Rusnak and Ms. Cameron in which, Ms. Cameron, confirmed that she had received Ms. Rusnak's wage assessment documentation.

Ms. Rusnak received Ms. Cameron's Notice of Appeal on November 30, 2023 from Ms. Cameron. No deposit was or has been forwarded to Employment Standards by Ms. Cameron.

The Corporation did not file a Notice of Appeal nor pay the required deposit.

II. ANALYSIS/DECISION

Section 2-75(2) of The Saskatchewan Employment Act, states that, an Appeal to a Wage Assessment must be commenced by filing a written Notice of Appeal with the Director of Employment Standards within 15

business days after the date of service of a Wage Assessment. This Section has been reviewed in *Pruden v. Olysky Ltd. (2018)*, SKCA 75.

The authorities are clear that a person's right to Appeal expires if not brought within the statutory time limitation, and that, in the absence of a statutory provision providing authority to extend the time for an appeal, there is no authority to extend the time period.

See:

Jordan v. Saskatchewan Securities Commission (1968), 64 WWR 121 (Sask CA);

Houston v. Saskatchewan Teachers Federation, 2009 SKCA 70;

Brady v. Jacobs Industrial Services Ltd, 2016 CanLII 49900 (Sask LRB);

Egware v. Regina (City), 2016 SKQB 388 (CanLII);

Pruden v. Olysky Ltd, 2018 SKCA 75.

Ms. Cameron filed the appeal within the time frame set out in section 2-75(2). However, section 2-75(4) states that, as a condition of being eligible to appeal the wage assessment, a deposit must be made to the Director of Employment Standards in the amount set out in the wage assessment or any other prescribed amount. The prescribed

amount in this case is \$500.00. This amount must be deposited before the expiry of the period during which an appeal may be commenced.

The object of the statute is to ensure that the wages owing to employees are paid. The deposit is intended to discourage appeals that have little or no merit, or that are brought as a means of delaying recovery of an amount owing. The consequences of the finding of a nullity is monetary; the prejudice caused by the delay is also monetary. It is now abundantly clear that section 2-75 sets out a mandatory requirement to deposit the required amount prior to the expiry of the appeal period. The effect of a failure to strictly comply with this requirement is a nullity of the appeal.

(83) Finally, the authorities are clear, that a person's right to appear expires, if not brought, within the statutory time limitation and that, in the absence of a statutory provision providing authority to expend the time for an appeal, there is no authority to extend the time period.

SEE previously cited cases.

The effect of the failure to strictly comply with the requirements to deposit the amount, before the expiry of the appeal period, results in a nullity of the appeal.

III. CONCLUSION

As the case law states, the deposit must be filed within the required time frame and, the time frame cannot be extended. I conclude that I do not have jurisdiction to hear this Appeal.

The Appeal is dismissed and the Wage Assessment in the amount of \$24,783.48 is upheld.

Dated at Moose Jaw, in the Province of Saskatchewan, this 12th, of February 2024.


Clifford B. Wheatley
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 <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.