LRB File No. 088-24

IN THE MATTER OF AN ADJUDICATION
PUSUANT TO SECTION 2-75 OF
THE SASKATCHEWAN EMPLOYMENT ACT

BETWEEN

Force Mechanical Ltd., Katherine Poncelet, being a Director of Force Mechanical Ltd., Logan Bender, being a Director of Force Mechanical Ltd., Kelly Armbruster, being a Director of Force Mechanical Ltd., Austin Dillon, being a Director of Force Mechanical Ltd.

(Appellants)

And

Director of Employment Standards and Dale Dmyterko

(Respondents)

Date of Hearing: January 13, 2025

Date of Decision: January 24, 2025

1. I was appointed to adjudicate LRB file number 088-24 by the Registrar of the Labour Relations Board on July 5, 2024.
2. LRB file number 088-24 relates to an appeal of Wage Assessment 1-000788 (the 'Wage Assessment') with 'Employer File' number 1-018781 dated April 10, 2024. The Wage Assessment is in the amount of $8,752.73. It orders Force Mechanical Ltd., Katherine Poncelet, being a Director of Force Mechanical Ltd., Logan Bender, being a Director of Force Mechanical Ltd., Kelly Armbruster, being a Director of Force Mechanical Ltd. and Austin Dillon, being a Director of Force Mechanical Ltd. (collectively the 'appellants') to pay this amount to Dale Dmyterko.
3. After being selected as the adjudicator I communicated by email with the Churchman Law Office, which represented the appellants. Unfortunately, the lawyer who prepared the appeal passed away. In due course a second law firm was appointed to represent the appellants. Prior to the date of the hearing however, this lawyer contacted me to advise me that she no longer represented the appellants.
4. The hearing was held on January 13, 2025 at 9:00 AM via Zoom. At the hearing Katherine Poncelet confirmed that she represented herself, the corporation and Logan Bender, who was not present. Kelly Armbruster was present and represented himself. Austin Dillon was also present and represented himself.
5. Employment Standards Officer Kelli Smith was the Director's delegate and represented the Director. She did not represent the employee respondent Dale Dmyterko. Dale Dmyterko was present and represented himself.
6. Ms. Smith previously provided a 72 page document which I marked as exhibit EE-1 and a 52 page document, which I marked as exhibit EE-2.

7. I marked a six page document previously filed by Churchman Law Office as exhibit ER-1. This document contains the appellants' letter of appeal as well as evidence of the delivery date of the letter and a $500 deposit cheque drawn on Ms. Churchman's trust account. Ms. Poncelet previously filed a one page email with a subject of '107 Woolf Bend'' which I marked as exhibit ER-2.
8. I reviewed the Wage Assessment. I also reviewed the delivery documentation from Canada Post, the appellants' Notice of Appeal and deposit cheque, and the Ministry's receipt for the deposit contained in exhibit ER-1, and am satisfied that sub-sections 2-74(6), 2-75(2) and 2-75(3) of *The Saskatchewan Employment Act* (the 'SEA) have been complied with, and that the appeal is properly constituted.
9. At the start of the hearing, all parties confirmed they had no preliminary objection as to my jurisdiction to hear this matter.
10. Ms. Poncelet, Mr. Armbruster and Mr. Dillon confirmed that Force Mechanical Ltd. ('Force') is a subsisting Saskatchewan corporation, and that they and Logan Bender are the directors. This fact was also established by the four page ISC 'Profile Report' relating to 'Force Mechanical Ltd.' filed at pages 5-8 of exhibit EE-2.
11. The major substantive issue in dispute is whether Mr. Dmyterko quit or was fired. Mr. Dmyterko, Ms. Poncelet, Mr. Dillon and Mr. Armbruster each gave evidence. The evidence given by each witness was very similar with respect to matters which are relevant to whether in law Mr. Dmyterko quit or was fired.
12. The Wage Assessment includes $7,819.25 relating to pay in lieu of notice and $451.17 annual vacation pay payable on those wages pursuant to

2-27 of SEA. In addition, the Wage Assessment includes $456.00 for 12 hours of wages which Mr. Dmyterko says are owed and $26.31annual vacation payable on those wages pursuant to 2-27 of SEA.

12 hours unpaid work

13. Mr. Dmyterko says he was not paid for 12 hours of work performed on January 18 and 19, 2024. The customer was 'Prairie Restoration'. Mr. Dmyterko testified that he did work for the customer for those 12 hours.

14. On December 24, 2024 at 10:47 AM Ms. Smith asked Travis Johnson of Prairie Restoration the following question "Can you please confirm that you informed Employment Standards that Dale Dmyterko completed work-related duties on January 18, 24, for 8 hours and January 19, 2024, for 4 hours at Prairie Restoration for Force Mechanical Ltd."

15. Mr. Johnson replied by email to Ms. Smith dated December 24, 2024 at 11:15 AM saying "Yes, I confirm Dale completed the work." The emails are page 72 of exhibit EE-1. Ms. Poncelet submitted that Mr. Johnson was simply confirming that the work was done, and was silent as to whether Mr. Dmyterko worked 12 hours. In the context of the question posed by Ms. Smith, an Employment Standards Officer doing an investigation, I conclude that the plain meaning of Mr. Johnson's reply is that Mr. Dmyterko did work the 12 hours in question.

16. An email from a person like Mr. Johnson, who is not present at the hearing would not be admissible in court, but the rules are different for an adjudication such as this. SEA subsection 4-4 (3) says:

An adjudicator is not bound by the rules of law concerning evidence and may accept any evidence that the adjudicator considers appropriate.

17. While I have accepted this email evidence, the fact that Mr. Johnson was not present goes to the weight of the evidence. This email supports Mr. Dmyterko's evidence. However, even without the email, I would accept the testimony of Mr. Dmyterko that he did work and was not paid for the 12 hours in question. He says he worked 8 hours on January 18, 2024 and 4 hours on January 19, 2024 on the Prairie Restoration job, and I accept this evidence as truthful and accurate. Mr. Dmyterko's wages for 12 hours are $456.00. The annual vacation pay on $456.00 is $26.31. I conclude that these amounts are properly included in the Wage Assessment.

18. An employer who terminates an employee without cause, but who later discovers wrongdoing by the employee, can sometimes use evidence of that wrongdoing as cause for the termination. This was not directly argued by the appellants. The appellants' position is that they did not terminate Mr. Dmyterko's employment. They submit that Mr. Dmyterko quit. Notwithstanding that, some of the questions asked of Mr. DD, and some of the evidence given by appellants' witnesses insinuates or suggests wrongdoing by Mr. Dmyterko related to two areas: a timecard and company property in his possession. I will deal with the evidence here, to make it clear that I have considered what effect if any the alleged misbehavior by Mr. Dmyterko has on my conclusions.

19. The testimony of both Mr. Dmyterko and Mr. Armbruster established that Mr. Dmyterko had never been disciplined during his work with the employer. The evidence of Mr. Dmyterko also establishes that he has never been charged with theft, nor has anyone from the company ever asked him to

return any company property. I accept all of this evidence as truthful and accurate.

Time Card

20. Ms. Poncelet asked Mr. Dmyterko about hours he had recorded for work done at a job on Woolf Bend. Mr. Dmyterko testified that along with some others, he did work for a former shareholder of Force at a house on Woolf Bend. When the former shareholder questioned the invoice, Mr. Dmyterko was told he would be 'back charged' and would have to collect for those hours from the former shareholder. Mr. Dmyterko admitted to making a mistake on the timecard. Despite Ms. Poncelet's reference to this as 'time card fraud', no fraud or dishonesty was established. I conclude that Mr. Dmyterko simply made an error, which has long since been corrected and for which he was not disciplined. In my view, the evidence regarding this error does not establish any wrongdoing by Mr. Dmyterko.

Retaining Company Property

21. Ms. Poncelet asked Mr. Dmyterko if he stored 'workplace materials' in his garage. He testified that he did, and that it was common practice at Force to retain items like plugs, switches and other small reusable items for use in future jobs. He also testified that others in the company did the same thing, and that it was accepted practice to do so. He testified that he had given Mr. Armbruster his garage door code so that Mr. Armbruster could grab some of these items for jobs when Mr. Dmyterko s garage was closer than the shop. Mr. Dmyterko testified he was never charged with theft, and no one ever asked for any of these items back.

22. Mr. Dillon testified also that it was common and accepted practice to keep these small reuseable items, including electrical wire in a person's own garage or truck for use on subsequent jobs. He said this was often more efficient than returning to the shop to pick items up. Finally, Mr. Dillon testified that he did not personally see any workplace materials in Mr. Dmyterko s garage.

23. Mr. Dillon also testified that although employees used their personal tools on the job, if the tool broke on the job, the company would buy the employee a replacement. Therefore, any tool replaced in this manner would be the employee's personal property and not company property.

24. Mr. Armbruster testified that did see small reuseable items (which would be company property) in Mr. Dmyterko s garage. He also testified that he would sometimes go to Mr. Dmyterko s garage or truck to pick up small reuseable items including used breakers, rough in material and wire.

25. I accept the evidence of Mr. Dmyterko, Mr. Dillon and Mr. Armbruster as truthful and accurate. Their evidence was consistent on the relevant matters. Based on their evidence I conclude that Mr. Dmyterko did store some small reuseable items, which were company property, in his garage. I also conclude that he did nothing wrong by doing so. These items were stored with the knowledge and consent of at least Mr. Dilllon and Mr. Armbruster, and they were stored for use on future workplace jobs. In my view, the evidence regarding the company property stored in employee garages or trucks does not establish any wrongdoing by Mr. Dmyterko or others.

26. I now turn to the major substantive issue in this dispute, which is whether Mr. Dmyterko quit or was fired. If Mr. Dmyterko quit, he is not entitled

to any pay in lieu of notice. If the employer terminated his employment, he is entitled to notice or pay in lieu of notice pursuant to the SEA.

27. The parties agree that Mr. Dmyterko began working for Force in 2017. He did not work for Force after mid-January, 2024. These dates are indicated on Mr. Dmyterko's Record of Employment, which was completed by Ms. Poncelet, and is contained at page 6 of exhibit EE-1. Although the shareholders of Force changed, Mr. Dmyterko had no break in his service between the date he started with Force and January 19, 2024. When Mr. Dmyterko's employment ended, he was therefore an employee with between five and seven years of service. An employee with between five and seven years of service whose employment is terminated without cause is entitled to six weeks notice or pay in lieu of notice pursuant to SEA section 2-60.

28. At the date his employment ended Mr. Dmyterko was earning $38 per hour for an average wage of $1,562.85 per week.

29. Mr. Dillon and Mr. Armbruster both testified as to the type of work Force was doing. Force provided rough-ins and final fixture sets in new residential housing construction ('new build work'), as well electrical maintenance and renovation service work in existing buildings ('renovation work').

30. Mr. Dillon and Mr. Armbruster both testified that they preferred new build work. They testified that home builders typically paid Force's invoices for work done promptly. Some customers of renovation work were late paying their invoices, and some accounts receivable for these customers were beyond 90 days. It is clear from their evidence that Mr. Dillon, Mr. Armbruster and Ms. Poncelet wanted to move the company away from renovation work

and concentrate on new build work. It was their hope that Mr. Dmyterko would stay with Force but change to new build work.

31. Mr. Dmyterko testified that about 80% of his work was related to renovation work, and about 20% related to new build work. Mr. Dillon testified that Mr. Dmyterko wrote his own quotes for renovation work. He also did the work and the invoicing. Mr. Dillon testified that on two or three occasions he and Mr. Armbruster told Mr. Dmyterko that Force was not making enough money on the renovation work and that they would like him to work on new build work.

32. On January 10, 2024 at 9:03 PM, Ms. Poncelet sent an email to Mr. Dmyterko, with BCC to Mr. Dillon, Mr. Armbruster and Logan Bender. The title of the email was 'Immediate Change of Services Offered @ Force Mechanical Ltd. & Notice of Hourly Rate Decrease'. A copy is contained at page 70 of exhibit EE-1.

Did Mr. Dmyterko quit or was he constructively dismissed?

33. In "*Constructive Dismissal*" Justice Sherstobitoff, of the Saskatchewan Court of Appeal explained how a constructive dismissal comes about:

> *A constructive dismissal occurs when an employer makes a unilateral and fundamental change to a term or condition of an employment contract without providing reasonable notice of that change to the employee. Such action amounts to a repudiation of the contract of employment by the employer whether or not he intended to continue the employment relationship. Therefore, the employee can treat the contract as wrongfully terminated and resign which, in turn, gives rise to an obligation on the employer's part to provide damages in lieu of reasonable notice.*

34. The burden of proof to establish constructive dismissal is on the employee. In *Potter v. New Brunswick Legal Aid Services Commission*, [2005] S.C.J. No. 10 at para 31 the SCC said: *The burden rests on the employee to establish that he or she has been constructively dismissed. If the employee is successful, he or she is then entitled to damages in lieu of reasonable notice of termination.*

35. A substantial breach of the employment contract by the employer can lead to a finding that the employee has been constructively dismissed. For this to occur there must be a breach of the employment contract by the employer, and that breach must have substantively changed the terms of employment. The test is whether a reasonable person in the employee's situation would conclude essential terms of the employment contract were being substantially changed.

36. The textbook *'Employment Law in Canada'* explains it this way (§ 13.24):

> In *Potter v. New Brunswick Legal Aid Commission*, Wagner J. summarized the concept of constructive dismissal as follows:
>
> [30] When an employer's conduct evinces an intention to no longer be bound by the employment contract, the employee has the choice of either accepting that conduct or changes made by the employer, or treating the conduct or changes as a repudiation of the contract by the employer and suing for wrongful dismissal... Since the employee has not been formally dismissed, the employer's act is referred to as "constructive dismissal". The word "constructive" indicates that the dismissal is a legal construct: the employer's act is treated as a dismissal because of the way it is characterized by the law ...

Note that, in doing so, Wagner J. refers to acts as constituting both conduct and changes. This approach is reflected in the majority's view in *Potter* that there are two branches to the test for constructive dismissal:

1.Substantial breach of the employment contract

In this approach (referred to by Wagner J. as the "first branch" of the test for constructive dismissal), the first step is to determine if a breach of an express or implied term of the employment contract occurred. If so, then the second step is to determine if the breach is substantial. Wagner J. states that to avoid confusion, he prefers the use of "substantial breach" to refer to breaches that might otherwise in the *Farber v. Royal Trust Co.* nomenclature be referred to as a "fundamental breach".

Wagner J. states that the two-step process was consistent with *Farber* as, on the facts of that case, identification of a breach "required only a cursory analysis" and the emphasis was on the second step establishing the magnitude of the breach.

[footnotes omitted]

37.I note that the authorities provide that there are two branches to establishing constructive dismissal. This just means that constructive dismissal can be established in either of two ways. I am focusing on what is called the first branch, establishing a substantial breach of the employment contract. The second branch is relevant where the employer's conduct constitutes a series of acts that would lead a reasonable person to conclude the employer does not intend to be bound

by the contract of employment. I do not consider the second branch to be applicable to the facts in this case.

38. In this case, the employment contract included terms that Mr. Dmyterko would be paid $38.00 per hour. The employment contract also included what I find to be implied terms that Mr. Dmyterko would work as a journeyman electrician primarily doing what I described as renovation work in existing buildings, and that he would be responsible for quoting jobs, doing the work and invoicing customers for the work. The memo of January 10 unilaterally changed Mr. Dmyterko's wage by lowering it to $33 per hour. This was a breach of the employment contract. It also unilaterally changed his job by eliminating all renovation work, and replacing that work with what I called new build work. This too was a breach of the employment contract. Therefore, a breach of the employment contract, which the Chief Justice called the 'first step' of this branch to establish constructive dismissal has clearly been established. I now turn to the second step, which is to determine if the breach is substantial.

39. Although Mr. Dmyterko's job was doing renovation work for his employer, that was not his exclusive responsibility. He was also expected to help out on occasion with new build work. Similarly, employees who primarily worked doing new build work would occasionally assist Mr. Dmyterko with renovation work. Mr. Dmyterko estimated that about 80% of his time was spent doing renovation work. This was uncontradicted and I accept it as fact.

40. The employer had two aspects to its work. It would do renovation work which I conclude is significantly different than new build work. The new build work was described as doing rough-ins and final fixture sets in new residential housing. The renovation work was described as electrical maintenance and renovation service

work in existing buildings. Mr. Dmyterko's position is that these job functions are very different. This position was not seriously challenged, and I accept it to be true.

41. Mr. Dillon testified that when he bought into the company the financial numbers "did not look good". Mr. Dillon testified he was focused on the new build work. It was more profitable and had higher volume. Mr. Dillon said that his view was that the maintenance and renovation side of the business was not making enough money.

42. In this context, the employer unilaterally chose to change Mr. Dmyterko's remuneration and job responsibilities. The changes were communicated to Mr. Dmyterko in a memo dated January 10, 2024, delivered by email at 9:03 PM. The change in remuneration was effective January 19, 2024. The memo instructed Mr. Dmyterko to "wrap up any Renovations/Services/Retros" by January 12, 2024. It clearly stated that the employer would not allow Mr. Dmyterko to accept any such work on their behalf or allow the employee to make any purchases on the employer's supplier accounts after that date, except for purchases connected with new residential housing doing rough-ins and final fixture sets.

43. It was a term of the employment contract that Mr. Dmyterko would be paid wages of $38 per hour. The January 10 memo informed Mr. Dmyterko that after January 19 his wage would be lowered to $33. This is a 13.16% reduction in salary. The January 10 memo, written by Ms. Poncelet said "We can appreciate that this is a substantial hourly rate decrease from your service hourly rate, but for which is inline with Current New Residential Housing Hourly Rates"[sic].

44. In *Farquhar v. Butler Brothers Supplies Ltd., 1988 CanLii 185 (BCCA)* the employer unilaterally reduced the employee's wages by 30%, in addition to cutting some

other benefits. The court held that "the question of salary goes to the very root of the contract. So the 30% reduction was an anticipatory breach of a fundamental term and, thus a repudiation of the whole contract". I take from this case that a substantial change in remuneration, imposed unilaterally and without proper notice can, without more, be considered constructive dismissal. Any unilateral reduction in salary which is not authorized by the contract is a breach of that contract.

45. In order to be a repudiation of the contract bringing about constructive dismissal, the reduction must be significant. The January 10 memo communicated to this employee that the employer unilaterally decided to impose a wage reduction of $5 per hour on him. This represents a wage cut of more than 13%. I conclude this is a substantial breach of the employment contract within the meaning of the *Farquhar* case, and is sufficient to constitute constructive dismissal in the context in which it occurred.

46. Like Force, the employer in *Farquhar* argued that the reduction in salary was necessary because of the company's financial position. They argued that without the changes, the company might go out of business. Mr. Justice Lambert accepted that it might be correct that the company needed to reduce wages in order to stay financially viable. He said that might be a persuasive reason why employees might agree to a salary cut, but the financial position of the company does not justify the employer making a unilateral change to the contract of employment (see *Farquhar* page 4).

47. I conclude that Mr. Dmyterko has established on a balance of probabilities that he was constructively dismissed as a result of the reduction to his wage communicated to him in the January 10 memo.

48. However, this wage reduction was not the only change which constituted a breach of contract and supports a finding of constructive dismissal. I also find that the change in job function was significant enough to warrant a finding of constructive dismissal. Mr. Dmyterko's job involved spending about 80% of his time of his time working with what I described as renovation work. After the changes unilaterally imposed by the January 10 memo, Mr. Dmyterko would spend all his time doing what I described as new build work.

49. The wage reduction combined with the change in work function in my view clearly establish a finding of constructive dismissal.

50. Mr. Dillon and Mr. Armbruster both testified that they wanted Mr. Dmyterko to stay and work on new build work at a reduced wage. I believe this to be true. However, the fact is that the employer sent the employee a memo by email which for the reasons I have given breached the employment contract and constituted constructive dismissal.

51. An employee faced with constructive dismissal has a choice. They can accept the change, often referred to as acquiescing, and continue in the employment, or they can accept the constructive dismissal. As Mr. Justice Lambert said in *Farquhar* (at page 6):

> *The legal position in a constructive dismissal is that the employer commits a present breach or an anticipatory breach of a fundamental term of the employment contract, and the employee thinks it over and decides to accept the immediate termination of the contract. He must notify the employer of his decision to do so within a reasonable time. Often he does so simply by leaving the place of employment and failing to return, but he can do so in any other way.*

52. In this case, Mr. Dmyterko testified that after receiving the memo, he sought advice about his position. He says he was told that if he continued to work, he may be taken as accepting the change in wage and the change in job duties. As a result, he did not return to work at Force after January 19, 2024. Mr. Dmyterko received good advice. Mr. Dmyterko did not acquiesce in the changes to the contract of employment. Rather, he considered his options and decided to accept the termination of the contract. He communicated this decision to the employer by failing to return to his employment after January 19, 2024.

53. Mr. Dillon testified that he and the other directors were not trying to fire Mr. Dmyterko. They wanted him to stay with the company and transition into a different job. That different job came with a reduced wage. Mr. Dillon testified that he considers Mr. Dmyterko a friend. He wished that Mr. Dmyterko would have responded to the memo, so that they could have tried to work the issues out. I believe this to be true. However, as I have explained, the January 10 memo was a breach of the employment contract which constituted constructive dismissal. This put Mr. Dmyterko in the position where he had to either accept the changes to his job and wage, or accept the constructive dismissal. He accepted the constructive dismissal. The result is that under SEA, he was entitled to six weeks' notice or pay in lieu of notice, which is five weeks more than he received.

54. The appellants contend that Mr. Dmyterko quit because he did not return to work after January 19, 2024. In this case, no evidence of Mr. Dmyterko quitting was presented other than the fact that Mr. Dmyterko did not return to work after January 19, 2024. Not returning to work will, in many circumstances, constitute quitting. However, in this case Mr. Dmyterko did not return to work because the

January 10 memo constituted constructive dismissal, and after consideration Mr. Dmyterko decided to accept the constructive dismissal and not acquiesce in the unilaterally implemented change to his job and to his wage. Therefore the Wage Assessment correctly states the amount of pay in lieu of notice, and associated vacation pay, which is owed to Mr. Dmyterko.

Decision

Wage Assessment 1-000788 dated April 10, 2024 is confirmed in the full amount of $8,752.73

Dated at the City of Saskatoon, in the Province of Saskatchewan this 24th day of January, 2025.

Doug Surtees
Adjudicator

The Parties are 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 viewed 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.

(2) A person who is directly affected by a decision of an Adjudicator on an appeal pursuant to Part III may appeal the decision to the board on a question of law.

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

(a) file a notice of appeal with the board within 15 business days after the date of service of the decision of the adjudicator; and

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

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

(a) in the case of an appeal or hearing pursuant to Part II, the wage assessment or the notice of hearing;

(b) in the case of an appeal pursuant to Part III, any written decision of an occupational health officer or the director of occupational health and safety respecting the matter that is the subject of the appeal;

(c) the notice of appeal filed with the director of employment standards pursuant to Part II or with the director of occupational health and safety pursuant to Part III, as the case may be;

(d) any exhibits filed before the Adjudicator

(e) the written decision of the adjudicator;

(f) the notice of appeal to the board;

(g) any other material that the board may require to properly consider the appeal.

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

(6) The board may:

(a) affirm, amend or cancel the decision or order of the adjudicator; or

(b) remit the matter back to the Adjudicator for amendment of the adjudicator's of the adjudicator's

decision or order with any directions that the board considers appropriate.

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 or the director of occupational health and safety, intending to make an appeal to the Court of Appeal shall apply for leave to appeal within 15 business days after the date of service of the decision of the board.

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

Right of director to appeal

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

(a) to appear and make representations on:
(i) any appeal or hearing heard by an adjudicator; and

(ii) any appeal of an adjudicator's decision before the board or the Court of Appeal; and

(b) to appeal any decision of an Adjudicator or the board.