In the Matter of an Appeal to a Special Adjudicator / Adjudicator
pursuant to s. 56.3 of *The Occupational Health and Safety Act*
and *The Saskatchewan Employment Act*

BETWEEN:

E.D.

Appellant

- and –

SASKATOON PUBLIC LIBRARY

Applicant (Respondent)

For the Appellant: Self-represented
For the Respondent: Kevin Wilson, MacPherson, Leslie & Tyerman, LLP
Decision Appealed: Officer's Decision dated November 3, 2013
Hearing Date: June 10, 2014, July 2, 2014 (written submissions)

PRELIMINARY APPLICATION AND DECISION

INTRODUCTION

[1] This is a preliminary application arising from the appeal of a complaint submitted by the E.B. (the "Appellant") on September 3, 2013 against the Saskatoon Public Library (the "Respondent", "SPL") alleging harassment. An investigation was conducted by an Occupational Health Officer (The "Officer") which included interviews with the Appellant and representatives of the Respondent. In a letter decision dated November 12, 2013, the Officer indicated to the Appellant that the issues raised were not occupational health and safety matters within the scope of the definition of harassment and indicated that the file would be closed.

[2] On December 10, 2013, the Appellant filed an appeal to the Director which was directed to a special adjudicator pursuant to section 56.3 of *The Occupational Health and Safety Act, 1993*[1].

[3] The Respondent seeks to have the appeal dismissed on a preliminary basis for the following reasons:

(a) The appeal is not timely;
(b) The appeal is not within the jurisdiction of *The Saskatchewan Employment Act*;
    1) The grounds are prolix;
    2) The issues within the scope of the appeal are outside the jurisdiction of the Adjudicator
(c) The Appellant is no longer an employee of the Respondent; and
(d) The appeal is frivolous and vexations.

FACTUAL BACKGROUND:

[4] To set out the background facts, I have borrowed liberally from the parties' written submissions. In so doing, I make no findings of fact. However, for purposes of my decision, it is important to point out that pursuant to section 4-4 of *The Saskatchewan Employment Act*[2], an adjudicator may determine any question of fact that is necessary to the adjudicator's jurisdiction.

[5] The Appellant is a former unionized employee of the Saskatoon Public Library ("SPL", the "Applicant", the "Respondent") who commenced employment with SPL in 2010. Most recently, the Appellant was employed part-time as a page, responsible for re-shelving books and other clerical tasks.

[6] On or about November 27, 2012, the Appellant reported to the Respondent that she had been involved in an intimate relationship with a person she had met at a University night class who, by coincidence was also an SPL employee working at the Frances Morrison Central Public Library (the "FMCL"). The Appellant stated that a sexual encounter occurred between them at the FMCL on or about November 17, 2012, a location where the Appellant had visited as a patron, on her day off.

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[1] The Saskatchewan Employment Act was proclaimed into force on April 29, 2014. The relevant provisions of *The Occupational Health and Safety Act, 1993* have been slightly modified and are now found in Parts III and IV of The Saskatchewan Employment Act. Unless otherwise specified, references to the "Act" herein, are references to corresponding sections *The Saskatchewan Employment Act*.

[2] Formerly section 52(4) of *The Occupational Health and Safety Act*

[7] On December 20, 2012, the Appellant received an anonymous letter, described as hate mail, at her home address. The letter had been processed at Canada Post's 51st Street location, near her home. The letter made no reference to the Respondent or the workplace. The Appellant notified the Respondent of the alleged anonymous letter. The police were also made aware of the letter, but were unable to ascertain the sender's identity.

[8] On December 31, 2012, the Appellant informed a representative of the Respondent that the inappropriate sexual activity originally reported was not consensual but that she had not yet decided whether to report it to the police.

[9] The Appellant expressly denies making a complaint of harassment to the Respondent, formal or informal.

[10] The Respondent investigated the allegation with respect to inappropriate sexual activity at the FMCL as was originally reported by the Appellant; however, it could not be corroborated. When the Appellant's allegations changed to a non-consensual act of sexual assault, the allegations were reported to the Saskatoon Police Service.

[11] The Appellant's allegations of sexual assault were investigated by the Police, who concluded their investigation without criminal charges.

[12] While at work, the Appellant would access her personal email via the Respondent's network. The Appellant suspected the information contained in the hate mail letter was only obtainable if someone had read her personal email. The Appellant suspected her alleged assailant was responsible. The Respondent investigated the computer network, but could not determine any tampering with the Appellant's work computer.

[13] The Appellant met with representatives of the Respondent and others on December 31, 2012 and again on January 14, 2013. The meetings were for the purposes of communicating with the Appellant, as a library patron and not an employee, regarding her allegations of a sexual encounter (and subsequent allegation of sexual assault) and the alleged computer tampering.

[14] On January 18, 2013, for medical reasons, the Appellant took leave of the workplace. Over the course of several months, until late August, 2013, the Appellant continued to interact with various SPL staff on issues pertaining to her medical leave and prospective return to work which were not resolved.

[15]

[16] On or about August 22, 2013, the Appellant completed a Harassment Confidential Questionnaire, which she subsequently submitted to the Occupational Health and Safety Harassment Unit on September 3, 2013.

[17] An Officer investigated, and rendered his letter decision dated November 12, 2013.

ARGUMENT

[18] The Respondent seeks to have the appeal dismissed on a preliminary basis for the following reasons:

(a) The appeal is not timely;
(b) The appeal is not within the jurisdiction of *The Saskatchewan Employment Act;*
    1) The grounds are prolix;
    2) The issues within the scope of the appeal are outside the jurisdiction of the Adjudicator
(c) The Appellant is no longer an employee of the Respondent; and
(d) The appeal is frivolous and vexations.

(a) Timeliness

Position of the Applicant (Respondent)

[19] There is no dispute that the Officer's decision was sent on November 12, 2013 for delivery by registered mail. The Respondent submits that it is reasonable to conclude the Appellant was effectively served between November 12 and November 15. Accordingly, based on the calculation of time provisions in section 24 of *The Interpretation Act,* the Respondent submits the final day for filing an appeal was December 6, 2013. The Respondent argues that the Appellant's appeal, filed on December 10, 2013, is therefore out of time.

Position of the Appellant

[20] The Appellant acknowledges receipt of a registered mail notification card from Canada Post, but did not say when she received it. In any event, she did not claim the registered mail because it was addressed to "Ed" rather than "Eden", and she assumed the mailman had made a delivery mistake. She did not know who sent the registered mail because that information is not included on the Canada Post notification cards. The Appellant states that it is a federal offence to open

another person's mail. Finally, the Appellant submits the *employer* had been made aware of the Appellant's inability to pick up registered mail.

[21] On November 20, 2013, the Appellant learned that the [unclaimed] registered mail had been the Occupational Health Officer's decision letter. She made arrangements to pick up (and sign for) a copy from the Saskatoon offices of Labour Relations and Workplace Safety (LRWS), and did so on Monday, November 25, 2013. The Appellant says that due to the "clerical error", she subsequently requested and was "granted a two week extension" from that date within which to file an appeal. The Appellant submits that she filed her appeal via email, at 3:30 p.m. on December 9, 2013 and argues, therefore, that the appeal was filed in time.

Is the appeal untimely?

[22] Under *The Occupational Health and Safety Act 1993*[3] and *The Saskatchewan Employment Act*[4], the statutory time period for filing an appeal of the decision of an occupational health officer is 15 business days after the date of service..

[23] Service is addressed in section 56.4 of *The Occupational Health and Safety Act, 1993*, now repealed:

> 56.4 (3) A document or notice served by registered mail or certified mail is deemed to have been received on the fifth business day following the day of its mailing, unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive the document or notice.

[24] Section 35(1)(e) of *The Interpretation Act* provides that where an enactment is repealed and a new enactment is substituted for it, the procedure established by the new enactment shall be followed as far as it can be adapted in relation to the matters that happened before the repeal. Under *The Saskatchewan Employment Act* the service provision has been slightly modified as reflected below:

> 9-9 (4) A document or notice served by registered mail or certified mail is deemed to have been received on the fifth business day following the day of its mailing, unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive the document or notice **or received it at a later date.**
>
> [emphasis added]

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[3] Section 56.3
[4] Section 3-53(2)

[25] It is not disputed that the Appellant received the Officer's decision at a later date—when she signed for it at the LRWS office in Saskatoon on November 25th. The Appellant's subsequent request for an "extension" of the time to file an appeal due to a "clerical error" is, in essence, a claim that she received the document at a later date through no fault of her own.

[26] I am aware of no provision of the *Act* allowing for an extension of the 15-day time period within which to submit a Notice of Appeal. Nor, for that matter, is "two weeks" the recognized time period. The mandatory time period is 15 *business* days. The issue here is whether service is deemed effective on the fifth business day following the day of its mailing or whether the Appellant established that *through no fault of her own* she received the document on a later date.

[27] I do not find the Appellant's explanations compelling. Even if I accept that there was a clerical error on the notification card ("Ed" rather than "Eden), the card bore the Appellant's correct (and not common) surname. It was delivered it to the correct apartment number at the correct street address. Registered mail generally connotes a delivery of some importance. In the circumstances, one would expect a reasonable person to make some attempt to resolve the question of the truncated forename, which might have been resolved simply by seeing the envelope. The Appellant made no effort to do so. The Appellant's reasons for an "inability" to pick up registered mail strike me as inconveniences, rather than an inability, particularly in view of the fact that the Appellant was able to pick up the document at LRWS during regular business hours. I find the Appellant's explanations to be disingenuous, and falling well short of establishing that she received the documents on November 25 through no fault of her own.

[28] Neither do I accept the Respondent's calculation of time. Even though it may be reasonable to conclude the Appellant received notification between November 13 and November 15, receipt of the Canada Post notification card is not effective service of the Officer's decision.

[29] By the operation of the statutory service provisions, the Officer's decision served by registered mail is deemed to have been received on the fifth *business* day following the day of its mailing. Accordingly, I find that deemed service of the Officer's decision letter was effected on **November 19, 2013**. In accordance with the *Act,* the Appellant had 15 *business* days within which to file an appeal. By that measure, the last day for filing an appeal was December 10, 2013. The Appellant delivered a Notice of Appeal via email on December 9, 2013.

[30] Based on the foregoing, I cannot conclude the Appellant's appeal was untimely.

(b) Jurisdictional Issues

1) ***Whether the grounds of appeal are prolix***
2) ***Whether the issues within the scope of the appeal are outside the jurisdiction of the adjudicator***

Position of the Applicant (Respondent)

[31] The Respondent argues that in order to be a proper appeal within the jurisdiction of occupational health and safety legislation, the appeal must comply with the procedures applicable at the time of the appeal under section 50(2) of *The Occupational Health and Safety Act*. For purposes here, the Respondent's position is that the Appellant has not satisfied section 50(2)(c), which specifically requires an appellant to set out the grounds of appeal. The Respondent submits the Appellant has not satisfied this requirement because the grounds of appeal are prolix, or simply incomprehensible.

[32] Further, based on the purpose of the legislation and additional guidance provided by Occupational Health and Safety in its Harassment Confidential Questionnaire, the Respondent argues that the issues appealed do not meet the following jurisdictional requirements:

i. The appeal must concern harassment as defined in the Act;
ii. The appeal must relate to a worker engaged in the service of an employer; and
iii. The worker must still be employed, or if the worker is no longer employed, a harassment environment must still exist.

[33] The Respondent submits that the scope of the appeal can only be characterized by the relief requested by the Appellant. Re-framed as questions, the scope of the appeal as it corresponds to the relief requested by the Appellant is therefore:

1. Did the Respondent perform an adequate investigation into the alleged receipt of hate mail at her home?

2. Was the Appellant sexually harassed or harassed on other protected grounds in meetings held on December 31, 2012 and January 14, 2013?

[34] The Respondent submits that based on the relief requested by the Appellant, the factually relevant time period of the appeal is between November, 2012 and January 14, 2013.

[35] With both the jurisdiction and the scope of the appeal in mind, the Respondent submits that the appeal is not within the jurisdiction of *The Saskatchewan Employment Act*. Further, the Respondent submits reasons why each issue on appeal is not within occupational health and safety jurisdiction.

Position of the Appellant

[36] The Appellant takes the position that the grounds of appeal are not prolix and that the scope of the appeal is the length of time described in the original complaint, the majority of which, she alleges, went unaddressed by the Officer during his investigation. It is the Appellant's position the relevant time period for purposes of the appeal begins in November, 2012 and ends at the start of September, 2013 [when she submitted her complaint (the Harassment Confidential Questionnaire) to the Ministry of Labour Relations and Workplace Safety.

Applicant's (Respondent's) Submissions

[37] The Respondent submits the materials in the appeal book are difficult to interpret and manage. The initial complaint is 87 pages, not counting supporting documentation and the appeal, with additional evidence, is 47 pages long. The Respondent submits the material in the appeal goes into copious yet scattered details about many interactions that simply have no relevance to the appeal, including extensive accounts about interactions with the police, her union, various people with the City of Saskatoon and a variety of other organizations.

[38] Adopting the language of Justice Goldenberg[5] expressing his frustration in finding a definable cause of action cited in *A.L.* v. *Saskatchewan* 2008 SKQB 115, the Respondent submits the appeal wanders through a morass of allegations of fact and it is impossible to distill any of those wanderings into coherent grounds for the purposes of an occupational health and safety appeal.

[39] The Respondent submits that the appeal is prolix, with no identifiable grounds of appeal. The appeal is therefore outside the jurisdiction of *The Saskatchewan Employment Act.*

[5] *Amendt* v. *Canada Life Assurance Company*, [1999], S.J. NO 157 at paras. 13 and 19

Appellant's Submissions,

[40] The Appellant further submits there are no guidelines for the submission of appeals apart from those outlined in section 50(2) of the Act.

[41] The Appellant suggests the Respondent is being "deliberately difficult" in claiming her 10 page notice of appeal is simply incomprehensible. She further submits that it is misrepresentation to re-count the evidence submitted with her notice of appeal as additional, since much of it had been part of the evidence previously submitted in support of her original complaint.

[42] As for the original complaint, the Appellant submits that she was guided both by Ministry publications to write everything down, keep records and include every last detail, and by the advice of the Harassment Prevention Unit Officer who told her to "include everything" in her original complaint. The Appellant states that she is an autistic savant who is hyperlexic (an exceptional ability to read, write and use language creatively). She submits that taking instructions literally ("include everything") is characteristic of autism and being a hyperlexic savant causes verbosity in her writing.

[43] The Appellant submits that neither her appeal nor the original complaint is prolix. She argues that the material is detailed, but not without structure. It requires close and careful reading, but it does not follow that a document is incomprehensible simply because it is complex.

[44] The Appellant submits that if her appeal is found to be prolix, verbosity is a characteristic of her disability (autism) and dismissing the appeal on that basis would be discrimination under the *Saskatchewan Human Rights Code Act* [sic].

[45] As for the scope, the Appellant submits that the relevant time period is the length of time described in her original complaint, the majority of which was unaddressed by the Officer. As such, the relevant time period begins in November 2012 and ends at the beginning of September 2013 [when the Appellant submitted her complaint to Occupational Health and Safety].

Are the grounds of appeal prolix? What is the scope of the appeal?

[46] At the outset, it is important to be clear that I make no finding about the Appellant's representations as to her cognitive disability or the nature and characteristics thereof, other than to take into consideration that such representations were made.

[47] The appeal process pursuant to the *Act* is intended to be accessible to workers. I have taken into account that the Appellant is unrepresented and drafted her notice of appeal without the assistance of counsel. With those thoughts in mind, I will disregard the Appellant's ill-conceived submission that a dismissal of this appeal based on a finding of prolixity would constitute discrimination under *The Saskatchewan Human Rights Code* and, in particular, the shocking and unconscionable implication that my decision herein could or would be guided or influenced by such a submission.

[48] In point of fact, I have no reservations in that regard. The Appellant's appeal materials are prolix. Length is not necessarily a critical factor, although, in my view, the Appellant underplays the length of her notice of appeal that is 10 closely typed (single-spaced) pages. Together with the underlying information (the originating document and supplementary material submitted as evidence), the appeal material goes into copious, excruciatingly tedious and tangential detail about events and interactions that are superfluous and manifestly irrelevant. In my view, counsel for the Respondent demonstrates remarkable restraint in limiting his submissions in that regard to a few representative examples.

[49] I grant that the Appellant has taken a structured approach in her notice of appeal. The Appellant submits that the document requires close and careful reading, but it does not follow that a document is incomprehensible because it is complex. Adopting the Appellant's language, neither does it follow that structure imparts coherence. The Appellant's appeal wanders through a morass...and it is impossible to distill any of those wanderings into coherent grounds for the purposes of an occupational health and safety appeal. In the resultant quagmire, the Appellant's grounds of appeal are not readily identifiable.

[50] That said, the failure to set out identifiable grounds of appeal is not necessarily a defect fatal to the appeal regardless of its merits. In *Lundrigan* v. *Claude Resources Inc.*, 2004 SKQB 239 (CanLII; [2004] SJ No 391 (QL); 250 Sask R 59[6]. the grounds of appeal were stated simply as "the Executive Director erred in fact and law". Chicoine J rejected the suggestion that the requirement to state the grounds of appeal in section 50(2)(c) is imperative rather than directory. He held that while stating grounds of appeal as "erred in fact and law" is not good practice, there was sufficient compliance with section 50 of the *Act* and the appeal was properly constituted. He stated: "...while there may have been imperfect compliance with s.

[6] Para 31-35

50 of the *Act* in this instance, the failure to strictly comply did not deprive the adjudicator of jurisdiction to hear the appeal".

[51] In *Lundrigan*, Chicoine, J reasoned that, having regard to the nature of an appeal to an adjudicator under the *Act*, the stated grounds ("erred in fact and law") were sufficient to put the applicant on notice that all of the issues dealt with by the occupational health officer and the director which led, in effect, to the decision being appealed, would be reviewed by the adjudicator. As I have reasoned below, such are not the circumstances here, and on that ground, *Lundrigan* is distinguishable.

[52] In this case, with uncharacteristic clarity and brevity, the Appellant clearly states the scope of the appeal. At paragraph (b) on page 1 of her notice of appeal, the Appellant identifies and states the decision appealed against as follows:

> The decision that the employer performed an investigation of the letter's origins that was thorough and the decision that I was not a victim of harassment from the employer.

At page 10, the Appellant states correspondently in the request for relief:

> I wish to appeal the decision that the employer performed an adequate investigation into my receipt of hate mail originating from an attack executed over their networks. ("The Computer Network Issue"); and
>
> I also wish to appeal the decision that I have not been subjected to sexual harassment and harassment that is based on the protected grounds of sexual orientation, marital status, and sex as it is defined under OHS legislation during the meetings of December 31, 2012 and January 14, 2013. ("The Meetings Issue").

[53] I find that the applicant (Respondent) was put on notice as to the scope of this appeal as characterized by the "relief" sought by the Appellant. The preliminary issue that remains is whether the matters so identified by the Appellant are within the jurisdiction of the *Act*.

(a) The Computer Network Issue:

Respondent's submissions

[54] The Respondent submits that the first appeal issue, whether an adequate investigation into the receipt of an anonymous hate letter had been conducted is outside the jurisdiction of the *Act*.

[55] The Appellant maintains that there is a connection between her alleged sexual assault and the receipt of an anonymous hate letter at her home linked to the workplace.

[56] The Respondent submits that the circumstances of the alleged sexual assault are entirely unrelated to occupational health and safety. The alleged events occurred on a day that the Appellant

was not working, in a public building where the Appellant does not work and never has worked, and were entirely unrelated to any employment duties of the Appellant.

[57] The Respondent submits that the Officer reached the same conclusion Moreover, the Appellant has agreed at pages 1-2, 9 and 10 of her appeal that the alleged sexual assault did not arise out of her employment or the employer/employee relationship.

[58] The Respondent further argues the anonymous letter does not address any aspects of the Appellant's employment, was not received or sent during or at work, and the source cannot be determined. The Respondent submits Occupational Health Officer reached the same conclusion.

[59] The Respondent submits the Appellant believes that her alleged assailant monitored and intercepted her personal emails [via the employer's computer network]. The Respondent argues it was not part of the Appellant's work duties to utilize her work computer for personal emails. Though the Respondent did investigate, it is not under any occupational health and safety duty to investigate alleged breaches of a computer network where personal, non-work-related emails and information are alleged to have been compromised. The Respondent submits the Appellant's personal emails simply do not relate to her employment.

[60] The Respondent argues it is complete speculation on the Appellant's part that any personal information in relation to her was accessed through her personal emails on her work computer and that there are a multitude of other avenues where someone could have determined her home address.

[61] If this did, somehow, occur, it does not constitute harassment under the Act. The harassing conduct, if any, was the alleged letter, which has no connection to the workplace since it was mailed from a post office directly to the Appellant's home address. It was not relayed to her as a "worker".

[62] Further, the Appellant has recognized in her appeal that the alleged assailant was a person whom she knew from her personal life, and was unrelated to the workplace or the working relationship. In such circumstances, even if this co-worker did send the letter, it would be off duty misconduct.

Appellant's Submissions

[63] The Appellant submits that checking personal emails online at work was an accepted practice in the workplace.

[64] The Appellant submits that the contents of the anonymous letter reflected information that could only be known to someone who had monitored her work station and read her personal email. The Appellant further argues the employer has an obligation to safeguard its networks from unauthorized access and intrusion.

[65] The Appellant submits that the most likely sender of the letter is her alleged assailant whom she further alleges abused the authority of his operational role by accessing the employer's networks to stalk her online, monitor her computer activities and steal files from her computer, all of which, the Appellant submits, constitutes harassment related to the workplace.

[66] The Appellant argues her alleged assailant, who had been pursuing her sexually, had both motive (anger due to the Appellant's act of telling the assailant's wife that he was cheating on her), and opportunity (via the nature of his IT role and skills) to monitor her computer activities at work, and is the most likely sender of the anonymous letter.

[67] The Appellant submits there is evidence to support her position, but the employer would not allow her to present it.

[68] The Appellant argues the issue is not the communications [the anonymous email]. Rather, the issue is the unauthorized surveillance and cyberstalking of the Appellant by an employee of the Respondent. The Appellant further submits it is not unreasonable to consider that her alleged assailant has acted inappropriately with other staff or patrons.

[69] The Appellant argues her alleged assailant is an internal security threat, and the employer's computer networks are the only place where this security breach and theft of personal health information could have occurred. The Appellant submits that this is workplace related and therefore within the jurisdiction of *The Saskatchewan Employment Act.*

Is the issue whether an adequate investigation into the receipt of an anonymous letter had been conducted a matter within the jurisdiction of The Saskatchewan Employment Act?

[70] The significance of my findings to the life of this appeal on this, and the remaining issues appeal, calls for some consideration of the merits of the appeal, and/or such findings of fact as may be necessary to determine my jurisdiction.

[71] In her notice of appeal, the Appellant says that she notified the Respondent in November, 2012 that "she suspected a co-worker might try to do something to try and upset [her] after [she] ended the affair following his misconduct". A few weeks later, the Appellant received the anonymous letter ("hate mail").

[72] It is not disputed that the Appellant notified the Respondent about the letter. The Appellant states she informed the Respondent that the letter had not been sent from work but had been processed at a postal facility near her home. Neither did the Appellant receive it at work, for it was delivered to her home address. From the Appellant's own notice of appeal, it is apparent that, as a patron of the library system, the Appellant's home address is accessible to almost every one of the library's 250 employees via the patron database.

[73] As for other personal information in the hate mail (which may have included personal health information and the use of a nickname allegedly known by few), I agree with the substance of the Respondent's submission that there undoubtedly are avenues by which such information could have been determined other than the one suspected by the Appellant, including dissemination by the original intended recipients.

[74] On the face of it, neither an alleged breach of the Respondent's network security nor an alleged failure on the part of the employer to protect the Appellant's personal email from intrusion are matters within the jurisdiction of occupational health and safety-related legislation. Nonetheless, the Respondent did conduct an investigation. The adequacy of the Respondent's investigation of a non-health and safety-related complaint is not within the purview of the Act or within my jurisdiction as an adjudicator.

[75] The connection to the workplace alleged by the Appellant (Written submissions, page 27, #55) is that "stalking someone online via the workplace networks....*is* harassment". The threshold question in that regard is whether the Appellant's work computer had been compromised. As noted, the Respondent conducted an investigation and found that it had not.

[76] On the face of the appeal, the Appellant's focus is on the security (alleged breach) of the Respondent's network, not an allegation of harassment. Her position is that the Respondent, the union and the IT manager lacked the technical know-how to conduct a proper investigation. I have dealt with that aspect above. The Appellant's continued speculation as to the "most likely" identity of the perpetrator is further qualified at page 2 of notice of appeal, where the appellant states:

> "My employer continues to ignore the evidence that indicates my activities on their network were monitored—either by someone internally—or by someone external to the network..."

[77] The more important point, however, is there is no reference to harassment. The Appellant's concern on appeal is confined to the (in)adequacy of the Respondent's investigation of the perceived security breach. I note, as well, that the at page 45 of the original complaint, the Appellant states:

> I did not allege that it happened, nor did I file any complaints (formal or informal) about the rape, the letter, or the spyware.

[78] I believe the inference can reasonably be drawn with regard to the foregoing that "the letter" refers to the anonymous letter described as hate mail, and "spyware" is a broad reference to the means by which the Appellant's work computer may have been (allegedly) monitored.

[79] Based on the foregoing, I find that the "computer issue", which encompasses the "hate mail" received by Appellant, are not matters within the jurisdiction of *The Saskatchewan Employment Act.* It follows that neither is this an issue within my jurisdiction as an adjudicator to hear on appeal.

(b) The Meetings Issue

[80] The second appeal issue relates to meetings that took place on December 31, 2012 and January 14, 2013. The Respondent argues that the meetings were not related to the Appellant's employment or to occupational health and safety in any way, and are therefore outside the jurisdiction of *The Saskatchewan Employment Act.*

[81] It is submitted that the Respondent was faced with the serious issue of the Appellant, as a patron and not as an employee, having alleged a sexual encounter in a public library. The Appellant recognized that the meetings did not occur as between an employer and an employee, but were between SPL and a library patron. The purpose of the meetings were unrelated to work, and instead dealt with a very serious allegation relating to matters outside of work, as well as the aforementioned computer issue. The meetings did not relate to occupational health and safety and the previously argued jurisdictional requirements are not satisfied in this issue either.

[82] Over the span of two prolix and ultimately pointless single-spaced pages (written submissions, pp 29-31) the Appellant vigorously argues and repeatedly states *in agreement with the Respondent's position* that "the issues" were **not** employment-related, although "other agencies" told her that they were. The Appellant's argument is that the Respondent misrepresented the issues as employment-related, (allegedly) maintaining that façade for many months in order to restrict the Appellant's ability to obtain outside aid.

[83] The Appellant states on page 9 of her notice of appeal that the "set agenda [for the December 31 meeting] was to discuss the hate mail". She alleges that the Respondent brought up the topic of her complaint of sexual assault, which she refused to discuss. In that regard, the Appellant states:

> The employer continues to say I made a complaint when I did nothing of the sort and the **email and incident are unrelated to the workplace** and the employer-employee relationship as I was not working for SPL when the attack occurred...
>
> ...
>
> In bringing the topic up, the employer-employee relationship changed from to that of the Saskatoon Public Library and a member of the public.

[84] The Appellant alleges that she was bullied and harassed by representatives of the Respondent and their (allegedly) intrusive questions with regard to the sexual encounter reported by the Appellant, which the Appellant did not want to discuss. To the extent that it is necessary for me to do so for purposes of my jurisdiction, I find, based on the Appellant's own submissions, that the Appellant did not make, and did not intend to make, a formal or informal complaint of sexual harassment against her alleged assailant. As convoluted as the Appellant's submissions are in regard to the meetings, it is clear on the face of the appeal, that the Appellant asserts her role in the meetings in that regard as being a patron, a member of the public, and not in as an employee.

[85] **For these reasons, I find that the meetings on December 31, 2012 and January 14, 2013 dealt with allegations not relating to employment but occurring between the Saskatoon Public Library and a library patron. As such, the meetings are not within the jurisdiction of *The Saskatchewan Employment Act*.**

The Appellant is no longer an Employee of the Respondent

[86] The legislative framework of occupational health and safety legislation is meant to protect workers at work. The statutory authority of occupational health officers and the jurisdiction of adjudicators relate to the protection of workers at work.

[87] In the context of harassment, workers have a right to request the assistance of an occupational health officer to resolve a complaint of harassment[7]. The assistive role of the occupational health

[7] *The Occupational Health and Safety Regulations, 1996, section 36(1)(g)*

officer is to ensure compliance with the Act and regulations specifically, for purposes here, the employer's compliance with its general duty pertaining to harassment:

> **General duties of employers**
> 3 Every employer shall:
> ...
> (d) ensure, insofar as is reasonably practicable, that the employer's workers are not exposed to harassment with respect to any matter or circumstance arising out of the workers' employment;

[88] The process for a worker seeking assistance from an officer begins with the completion of a Harassment Confidential Questionnaires. Guidelines to the questionnaire include the following:

> 1. An Occupational Health Officer will review your complaint to determine whether the conduct complained of could fall within the definition of the harassment contained in the Act. **If the matters complained of do not fall within the definition, the Officer will notify you of this decision.**
>
> ...
>
> 10. **Occupational Health and Safety attempts to resolve harassment complaints where the workers is still employed.** Where the worker is no longer employed or no longer exposed to the harassment conditions, the officer may direct the complainant to the Human Rights Commission, to the WCB or to the police as is appropriate.
>
> 11. **Where it appears that the harassment environment may still exist although the complainant has left the place of employment, the officer will take action to ensure current compliance with the Act and regulations.**
>
> [Emphasis added]

[89] While not framed in terms of Occupational Health and Safety's jurisdiction in relation to harassment, the foregoing provides workers with a plain language guide. Re-framed in terms of an appeal:

i. The appeal must concern harassment as defined by the Act;
ii. The appeal must relate to a worker engaged in the service of an employer; and
iii. If the worker is no longer (employed) at the place of employment, the harassment environment must still exist.

[90] I accept the Appellant's submission that she was an employee at the time of the Officer's investigation and decision and at the time the appeal was filed. It is not disputed that the Appellant is no longer employed by the Respondent. The matter of the Appellant's dismissal is not an issue

before this Tribunal. In these particular circumstances, the Appellant no longer meets an essential jurisdictional requirement: the Appellant is no longer engaged in the service of the Respondent.

[91] In my view, the foregoing reasons are sufficient to deprive me of jurisdiction to hear an appeal relating to the Appellant's complaint of harassment. My reasons apply equally to the question whether I should expand the scope of appeal.

[92] While mootness was not raised, on my own motion I considered it as part of my deliberations. In my opinion, in the absence of an on-going employer/worker relationship, the issues in this appeal are rendered moot. No practical purpose is served by allowing this matter to proceed to a hearing, when even in a best case scenario (for the Appellant) an occupational health officer would have no authority or jurisdiction to assist a worker who is not engaged the service of the Respondent.

[93] I have not over-looked the Appellant's submission invoking the third jurisdictional element [para. 87 above], suggesting that the harassment environment still exists. For the record, although the Appellant's submission in this regard is brief, much of it is egregiously inflammatory, if not defamatory and scandalous, and I decline to reproduce it. I find that the circumstances giving rise to the issues herein are unique to the Appellant, triggered by a relationship and events that occurred more than two years ago. The Appellant has not been in the workplace for more than a year. While the passage of time alone mitigates the suggestion that an on-going harassment environment exists, the more important point is that the Appellant's reasons are wholly speculative.

[94] For all of the reasons aforesaid, I am satisfied the Applicant/Respondent has established grounds for dismissal of the Appellant's appeal.

(c) **Frivolous and Vexatious**

[95] Citing definitions found in recent Saskatchewan authority[8], the Respondent submits that the appeal is vexatious inasmuch as it is brought to deliberately cause annoyance and for the ulterior purpose of pursuing further remedies that do not relate to occupational health and safety legislation or maintaining a harassment free workplace. The Respondent submits the appeal has no grounds or substance and is therefore frivolous.

[96] The Respondent submits the Appellant's true purpose for pursuing the appeal is to assist her with other claims with respect to the alleged sexual assault, the anonymous letter and the Police

[8] Paulsen v. Saskatchewan (Ministry of Environment), 2013 119

investigation, all of which are completely unrelated to her employment. To demonstrate the Appellant's true intention, the Respondent submits a list of the many complaint avenues utilized by the Appellant, apparently without success.

[97] Consistent with my previous determinations, I agree that the Appellant seeks a remedy that is not related to occupational health and safety. Whether she realizes that or not is questionable. Given my determinations, and the reasons therefor, I must also find that the appeal is frivolous, being without grounds or substance.

[98] Seldom is it possible to know the mind of an Appellant. For that reason, and viewing objectively the other complaint avenues pursued by the Appellant, I am unable to infer malice or that her true intentions were to fuel other proceedings. Having read and re-read (and re-read) the prolix appeal materials, I remain hard-pressed to discern what occupational health and safety issue the Appellant sought to remedy. On the whole, I find the prolix appeal to be "frivolous and vexatious". Though it may not be necessary for me to do so, having regard to determinations previously made, I would dismiss the appeal as frivolous and vexatious.

[99] I affirm the decision of the Occupational Health Officer.

Dated at Regina, Saskatchewan this 17 day of April, 2015

Rusti-Ann Blanke
Special Adjudicator/Adjudicator

Right to appeal adjudicator's decision to board

4-8 (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.

. . .

(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