**LRB File No. 262-18**

**In the matter of an appeal to an adjudicator pursuant to ss. 3-53 and 3-54 of *The Saskatchewan Employment Act***

**BETWEEN**

**Arch Transco Ltd., operating as Regina Cabs** **Appellant**

**-and-**

**Director of Occupational Health and Safety** **Respondent**

**Counsel for Regina Cabs: Calen Nixon**
**Counsel for the director: Alyssa Phen**
**Hearing conducted by Zoom August 9, 2022**

## DECISION

## I. INTRODUCTION

[1] Arch Transco Ltd. operates a taxi service as Regina Cabs ("Regina Cabs" or "the company"). The Director of Occupational Health and Safety ("the director") is an employee of the Saskatchewan Ministry of Labour Relations and Workplace Safety ("the ministry") appointed pursuant to s. 3-3 of *The Saskatchewan Employment Act* ("the Act"). The director has a variety of responsibilities under Part III of the Act, which addresses occupational health and safety, and has the right to appear and make representations on any appeal heard by an adjudicator.

[2] The Act also provides for the appointment of employees of the ministry as occupational health officers ("officers") for the purpose of enforcing Part III of the Act and the regulations enacted pursuant to that Part.

[3] On October 11, 2018, an occupational health officer issued a notice of contravention ("the 2018 NOC") directed to Regina Cabs requiring it to comply with provisions of the Act and regulations under the Act pertaining to violence and harassment policies.

[4] The company appealed that decision by letter dated December 5, 2018.

[5] On May 7, 2019, pursuant to s. 4-3(3) of the Act, I was selected by the registrar of the Labour Relations Board ("the board") as the adjudicator with respect to that appeal.

[6] United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW" or "the union") conducted a watching brief of the appeal proceedings, having applied for and been granted that limited status.

[7] No objections were raised with respect to my selection by the registrar or my jurisdiction to hear and determine the appeal.

## II. EVIDENCE

[8] The evidence to be considered consists of three components.

[9] First, pursuant to s. 3-55 of the Act, in the case of an adjudicator appeal, the director is required to forward to the adjudicator the notice of appeal, all information in the director's possession that is related to the appeal, and a list of the persons who have been provided with notice of the appeal. I received this material from the director on May 15, 2019, and I in turn provided the notice of appeal and the information in the director's possession to the parties prior to the hearing.

[10] Secondly, the parties jointly submitted an agreed statement of facts, along with 90 pages of agreed upon documents.

[11] Finally, oral testimony was provided in the August 9 hearing. Lynn Selensky testified on behalf of the director, and Sandra Archibald testified on behalf of Regina Cabs.

[12] Officer Selensky is, and was at all times material to this appeal, an occupational health officer working in the Occupational Health and Safety work area at the ministry. Her testimony primarily addressed the limited role she played in the investigation leading to the issuance of the 2018 NOC. The written submission filed on behalf of Regina Cabs lists the following "key points" it says emerge from Ms. Selensky's testimony:

> She was not involved with the October 11, 2018 Notice of Contravention, other than attending on Regina Cabs in an unannounced interview with Officer Gardner on June 27, 2018;
>
> She had not reviewed the December 21, 2017 Notice of Contravention issued by OHS Officer Mike Escott prior to that time;
>
> She was not and is not familiar with the taxi industry;
>
> She did not understand how taxicab owners hire Regina Cabs for dispatch services;
>
> She was not aware of the parallel labour disputes between USW and Regina Cabs in 2018, including applications before the Saskatchewan Labour Relations Board;
>
> She evidenced that she did not know that drivers were not employees of Regina Cabs;

She did not and does not know what "'Operator Cab Companies' (Taxi Licence Owners) and drivers that work jointly with Regina Cabs" (the "Alleged Taxi Categories") means, as it is described in the October 11, 2018 Notice of Contravention;

She could not identify when or how Regina Cabs was warned that it could be deemed the employer of the Alleged Taxi Categories;

She could not explain the authority, the reason or the logic behind the decision of Officer Gardner to deem Regina Cabs as the employer of the Alleged Taxi Categories;

She agreed that the October 11, 2018 Notice of Contravention was punitive;

She acknowledged that the reasoning of the October 11, 2018 Notice of Contravention was contrary to that of the December 21, 2017 Notice of Contravention, which provided that "Operator Cab Companies" that work jointly with Regina Cabs would also be required to create a violence policy for their work place;

She didn't know of any other inquiries made by OHS officers to any other taxi companies about the same issues in this matter;

She did not know what role the various correspondences from USW played in the matter;

She agreed that the October 11, 2018 Notice of Contravention acceded to the requests in USW's correspondence to OHS officers; and

She admitted that she would have handled the matter differently.

[13] Ms. Archibald is, and was at all times material to this appeal, the manager of Regina Cabs. She was the company's lead in the dealings the company had with officers at the ministry. Her testimony described the events leading up to and following the issuance of the 2018 NOC. She also described the nature of the taxi business in Regina and the relationships that exist among the various players who participate in the business. The written submission on behalf of Regina Cabs lists the following "key points" that it says emerge from her testimony:

Regina Cabs is a family business;

In 2018, it was involved in several fronts of labour disputes initiated by USW;

One of the fronts was a common employer application brought by USW by which it sought to expand the scope of the bargaining unit at Regina Cabs to another company operated by a family member;

In April of 2018, the Saskatchewan Labour Relations Board dismissed the common employer application;

Ms. Archibald handled all of the interactions with OHS officers in this matter;

Regina Cabs never received any of the various correspondences sent by USW to OHS officers and was never asked to respond to any of them;

Regina Cabs was never asked to respond to allegations of harassment;

The relationship that Regina Cabs has with taxicab owners is one of service provider;

Regina Cabs, a licensed broker, provides dispatch services;

Taxicab owners hire Regina Cabs for dispatch services;

Regina Cabs does not know who taxicab drivers may drive for on a day-to-day basis and taxicab drivers could move around from taxicab owner to taxicab owner;

Regina Cabs does not understand what "Operator Cab Companies" means;

Regina Cabs does not understand what the Alleged Taxi Categories means;

The City of Regina is the license issuer and the record keeper for the information of all categories of taxi licenses;

Regina Cabs did not and does not own any taxicab vehicle licenses or taxicab vehicles;

None of the OHS officers who met with Ms. Archibald or were involved in this matter warned Regina Cabs that failing to provide a list would result in a determination that it was the employer of the Alleged Taxi Categories;

Regina Cabs has been negatively impacted by of the decisions of Officer Gardner and the Director; and

As a family business, it has had to devote significant financial and administrative resources and has been subject to unnecessary business interruptions in order to fix these mistakes.

[14] The major portion of the agreed statement of facts provides a reasonably complete narrative. I have chosen to set that out here. Where it seems to be helpful to round out the narrative, I have included my observations in square brackets following the numbered paragraphs.

**Agreed Statement of Facts**

Background

1. Regina Cabs is subject to a certification order of the Saskatchewan Labour Relations Board made pursuant to Part VI of *The Saskatchewan Employment Act*, the scope of which includes, *inter alia*, "all taxi drivers employed by Regina Cabs, except those persons who own, control, or lease two or more taxi cabs". United Steelworkers ("USW') is the bargaining agent for the in-scope employees. Attached as Tab 1 is a copy of the certification order.

2. Regina Cabs and USW entered into a collective agreement, terms of which were set by an arbitrator appointed by the Saskatchewan Labour Relations Board. The term of the

collective agreement expired in 2019. Since on or about August 12, 2020, Regina Cabs and USW have been in a labour dispute.

[Ms. Archibald testified that the union is presently locked out.]

3. The taxi industry is heavily regulated, including particularly at the municipal level of government.

4. On or about December 21, 2017, Occupational Health and Safety Officer Mike Escott issued a Notice of Contravention to Regina Cabs regarding the establishment of a workplace OHS Committee, posting a harassment policy in the workplace and introducing a violence policy (the "December 21, 2017 Notice of Contravention"). It applied to Regina Cabs' office staff. Taxicab drivers were excluded from its scope as stated in the Observation section on the first page. A copy of the December 21, 2017 Notice of Contravention is attached as Tab 2.

5. The preliminary portion of the December 21, 2017 Notice of Contravention states that, "I am also requiring the employer to provide me a list of 'Operator Cab Companies' that work jointly with Regina Cabs as they will also be required to create a violence policy for their work place." The Notice of Contravention did not elaborate further on the meaning of the requirement.

6. Between on or about March 6 and March 14, 2018, Sandy Archibald, Manager of Regina Cabs, and Officer Escott exchanged correspondences regarding Arch Transco's cooperation with fulfilling the requirements of the December 21, 2017 Notice of Contravention. Attached as Tab 3 are copies of the following documents:

a) Email chain between March 6 and March 14, 2018 regarding OHS Progress Report;
b) Progress Report on Notice of Contravention, March 5, 2018;
c) Arch Transco Ltd. Harassment Policy 2018;
d) Memo to all personnel regarding Safety & Security Protocol, January 15, 2018;
e) What to Do During and After a Robbery;
f) Suspect and Vehicle Identification Report;
g) Violent Incident Report Form; and
h) Arch Transco Ltd. Violence Policy and Prevention Plan 2018.

7. On or about April 17, 2018, Occupational Health and Safety Officer Jason Serviss began investigating a separate and unrelated incident relating to an alleged stabbing of a taxicab driver in a taxicab owner's taxicab. Officer Serviss contacted Ms. Archibald about connecting with the owner of the taxicab workplace where the alleged incident occurred. Ms. Archibald contacted the owner of the taxicab, Manpreet Singh, and provided Mr. Singh with Officer Serviss' contact information and encouraged him to contact the Officer. Attached as Tab 4 are copies of Officer Serviss' handwritten investigation notes

dated between April 17 and April 27, 2018 which indicate that Mr. Singh and Officer Serviss did connect.

8. On or about April 24, 2018, Patrick Veinot, USW Staff Representative for District 3, sent a letter to Officer Serviss as representative for Mr. Singh. A copy of the April 24, 2018 letter is attached as Tab 5.

9. On or about April 27, 2018, Stephen Hunt, USW Director, sent a letter to Susan Boan, Supervisor of the Harassment and Violence Prevention unit of the Occupational Health and Safety Department in the Ministry of Labour Relations and Workplace Safety. The April 27, 2018 letter referenced a telephone call earlier that week about Regina Cabs and the letter advocated that members of USW were workers of Regina Cabs. The letter was not copied to Regina Cabs. A copy of the April 27, 2018 letter is attached as Tab 6.

[Mr. Hunt's letter appears to have been intended to convince the ministry that Regina Cabs exercised a type of control over drivers that should lead to the conclusion that the drivers were Regina Cabs' workers. Ms. Archibald testified that the letter was "riddled with mistruths" and that the company did not exercise the type of control the letter says it did.]

10. On or about June 15, 2018, Mr. Veinot sent a letter to Ms. Boan following up to the April 27, 2018 letter. The June 15, 2018 letter requested a response "about the next steps to establishing a violence prevention policy at Regina Cabs" and was also not copied to Regina Cabs. A copy of the June 15, 2018 letter is attached as Tab 7.

11. In an unscheduled visit on or about June 27, 2018, Occupational Health and Safety Officers Ian Gardner and Lynn Selensky met with Ms. Archibald at Regina Cabs' office. A copy of Officer Selensky's handwritten notes from June 27, 2018 are attached as Tab 8.

[As noted earlier in relation to Officer Selensky's testimony, she played a very limited role and was not able to shed much light on the interview itself or what went before or after.]

12. On or about June 29, 2018, Ms. Boan sent an internal email to Officer Serviss. In the email, Ms. Boan indicated that Officers Gardner and Selensky met with Ms. Archibald on or about June 27, 2018 and that Ms. Archibald "agreed to provide a list of drivers to OHS". A copy of the June 29, 2018 email is attached as Tab 9.

[Ms. Archibald's testimony contradicts Officer Boan's assertion that she had agreed to provide a list of drivers.]

13. Between on or about July 5 and July 24, 2018, Ms. Archibald and Officer Gardner exchanged emails regarding the City of Regina Taxi Bylaw and the nature of relationships between Regina Cabs and categories of "Taxi Cab Brokers", "Taxicab

License Owners", "License Owners", "Drivers" and "vehicle Owners/Operators." A copy of the email exchange is attached as Tab 10.

14. In the final email in the exchange between Ms. Archibald and Officer Gardner dated July 24, 2018, Ms. Archibald clarified to Officer Gardner that Regina Cabs understood that "In these circumstances taxi License Owners do not have the attributes of being an 'Employer'."

15. On September 10, 2018, Mr. Veinot sent a letter to Ms. Boan. The letter referenced a previous conversation between Ms. Boan and Mr. Veinot. The letter stated that "I have tried to work with the employer to establish that a Violence Prevention Policy be establish [sic] but have yet to see a written copy of the policy." Regina Cabs was not copied on the letter and was provided no opportunity to reply to it. A copy of the September 10, 2018 letter is attached as Tab 11.

16. On or about November 2, 2018, Mr. Veinot sent a follow-up letter to Ms. Boan and requested an "update/status of your investigation into the Saskatchewan Health and Safety Regulations for Taxi drivers." It was received by the Occupational Health and Safety Department on November 8, 2018. It was not copied to Regina Cabs. A copy of the November 2, 2018 letter is attached as Tab 12.

17. None of the USW letters that were directed to the Director's office or the Officers (including the April 24, 2018, April 27, 2018, June 15, 2018, September 10, 2018 and November 2, 2018 letters) were copied to Regina Cabs.

The October 11, 2018 Notice of Contravention

18. On or about November 15, 2018, Officer Gardner hand-delivered a copy of the Notice of Contravention with File Number 1-00002633, dated October 11, 2018, to Ms. Archibald.... A copy of the October 11, 2018 Notice of Contravention is attached as Tab 13.

19. In the preliminary portion of the October 11, 2018 Notice of Contravention, it states that:

> In a prior Notice of Contravention that was issued to Regina Cabs, report #16496, dated December 21, 2017, the Officer had requested a list of the names of "Operator Cab Companies" (Taxi License Owners) and drivers that work jointly with Regina Cabs as they will also be required to create a violence policy for their workplace.
>
> The request for this information was repeated in the inspection, and further correspondence was sent by email on July 5, 2018. To date, this information has not been provided to our offices.

As this information has not been provided, Regina Cabs (Arch Transco) is deemed to be the employer of the taxi drivers and must create and implement a Harassment policy and Violence policy for all workers affiliated with Regina Cabs, inclusive of Taxi License Owners/Vehicle Operators and drivers for Regina Cabs (Arch Transco).

20. The October 11, 2018 Notice of Contravention identifies three grounds of noncompliance with Part III of *The Saskatchewan Employment Act*. These are:

a) Contravention of 3-8(e) of *The Saskatchewan Employment Act* by failing to cooperate with an officer exercising a duty with respect to failing to provide a list of '"Operator Cab Companies' (Taxi License Owners) and drivers that work jointly with Regina Cabs as they will also be required to create a violence policy for their workplace";

b) Contravention of s. 36 of *The Occupational Health and Safety Regulations, 1996* with respect to failing to have a harassment policy that encompasses the drivers for Regina Cabs and all workers affiliated with Regina Cabs, inclusive of Taxi License Owners/Vehicle Operators and drivers for Regina Cabs; and

c) Contravention of s. 37 of *The Occupational Health and Safety Regulations, 1996* with respect to failing to have a violence policy that encompasses the drivers for Regina Cabs and all workers affiliated with Regina Cabs, inclusive of Taxi License Owners/Vehicle Operators and drivers for Regina Cabs. It is noted that the Notice of Contravention incorrectly refers to "harassment policy" and to s. 36 of *The Occupational Health and Safety Regulations 1996* on page 4.

21. Neither Officer Gardner nor another representative of the Director:

a) responded to Ms. Archibald's email dated July 24, 2018 (Tab 9) prior to issuing the October 11, 2018 Notice of Contravention; or

b) presented Ms. Archibald or Regina Cabs with the April 27, 2018 letter from USW (Tab 6), or any other letter from USW, for the purposes of obtaining a response.

Relevant Appeal and Procedural History

22. On or about December 5, 2018, Regina Cabs delivered its notice of appeal of the October 11, 2018 Notice of Contravention (the "Notice of Appeal") on the Director. A copy of the Notice of Appeal is attached as Tab 14.

23. Officer Gardner modified the October 11, 2018 Notice of Contravention by handwriting on it that it was hand delivered on Ms. Archibald and not delivered via registered mail.

24. On or about December 17, 2018 the Director's office sent letters to Ms. Archibald and to Mr. Veinot notifying USW that Regina Cabs had appealed the October 11, 2018 Notice of Contravention and indicating that the Director was fotwarding the appeal to an adjudicator pursuant to s. 3-54 of *The Saskatchewan Employment Act*. Copies of the December 17, 2018 letters are attached as Tab 15.

25. On or about December 18, 2018 the Director sent a letter to the Saskatchewan Labour Relations Board indicating that the Director was forwarding the appeal to an adjudicator pursuant to s. 3-54 of The Saskatchewan Employment Act and that USW received notice of the appeal. A copy of the December 18, 2018 letter is attached as Tab 16.

26. Beginning on or about June 7, 2019, Regina Cabs objected to the procedural decision made by the Director in referring the matter to an adjudicator pursuant to s. 3-54 as opposed to following the procedure under s. 3-53 in three written correspondences sent to the Director. In response, the Director denied that the procedure followed was improper. Copies of the following correspondences are attached as Tab 17:

a) June 7, 2019 letter from Regina Cabs to the Director;
b) June 10, 2019 letter from Regina Cabs to the Director;
c) June 14, 2019 letter from Seiferling Law to the Director; and
d) June 17, 2019 letter from Director to Seiferling Law.

27. USW was removed as a party to this matter pursuant to the reasons articulated in *Arch Transco Ltd. (Regina Cabs, Appellant) v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Sewice Workers International Union (United Steelworkers)*, 2020 CanLII 100542 (SK LRB).

Subsequent Legislative Changes

28. Effective on or about April 1, 2021 Saskatchewan Legislature replaced *The Occupational Health and Safety Regulations, 1996* with *The Occupational Health and Safety Regulations, 2020*. Under the former regulations, sections 36 and 37 primarily dealt with harassment and violence policy requirements, respectively. Under the new regulations, sections 3-25 and 3-26 deal with harassment and violence policy requirements, respectively.

29. Effective on or about January 1, 2022, Saskatchewan Legislature amended section 3-1 of *The Saskatchewan Employment Act*. Relevant for this matter, Legislature broadened the definition of "worker" with respect to employers' harassment obligations to include independent contractors and certain other categories of workers. To the knowledge of the parties, these changes have not yet received judicial commentary.

## III. RELEVANT LEGISLATION

[15] As noted in paras. 28 and 29 of the agreed statement of facts, *The Occupational Health and Safety Regulations,* 1996 ("the 1996 regulations"), which were the regulations in effect at the time the 2018 NOC was issued, were repealed and replaced in 2021 by *The Occupational Health and Safety Regulations, 2020*, which are currently in effect.

[16] Also noted, the Act was amended effective early January of 2022 to amend the definition of "worker" in Part III.

[17] The parties are in agreement that the relevant legislation is that which was in effect at the time the 2018 NOC was issued.

### Excerpts from the Act as it existed in 2018

3-1(1) In this Part and in Part IV:...

> (j) "employer" means, subject to section 3-29, a person, firm, association or body that has, in connection with the operation of a place of employment, one or more workers in the service of the person, firm, association or body;...
>
> (m) "notice of contravention" means a notice of contravention served pursuant to section 3-38;...
>
> (gg) "worker" means:
>
> (i) an individual, including a supervisor, who is engaged in the service of an employer; or
>
> (ii) a member of a prescribed category of individuals;
>
> but does not include an inmate, as defined in *The Correctional Services Act, 2012*, of a correctional facility as defined in that Act who is participating in a work project or rehabilitation program within the correctional facility;...
>
> (v) "place of employment" means any plant in or on which one or more workers or self-employed persons work, usually work or have worked....

...

(2) In this Part:

> (a) if a provision refers to any matter or thing that an employer is required to do in relation to workers, the provision applies to workers who are in the service of that employer, unless the context requires otherwise; and
>
> b) if a provision refers to any matter or thing that an employer is required

to do in relation to a place of employment, the provision applies to every place of employment of that employer, unless the context requires otherwise.

...

3-8 Every employer shall:

(a) ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer's workers;...

(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;

(e) cooperate with any other person exercising a duty imposed by this Part or the regulations made pursuant to this Part....

...

3-21(1) An employer operating at a prescribed place of employment where violent situations have occurred or may reasonably be expected to occur shall develop and implement a written policy statement and prevention plan to deal with potentially violent situations after consultation with:

(a) the occupational health committee;

(b) the occupational health and safety representative; or

(c) the workers, if there is no occupational health committee and no occupational health and safety representative.

(2) A policy statement and prevention plan required pursuant to subsection (1) must include any prescribed provisions.

...

3-38(1) An occupational health officer shall act pursuant to subsection (2) if the occupational health officer is of the opinion that a person:

(a) is contravening any provision of this Part or the regulations made pursuant to this Part; or

(b) has contravened any provision of this Part or the regulations made pursuant to this Part in circumstances that make it likely that the contravention will continue or will be repeated.

(2) In the circumstances mentioned in subsection (1), the occupational health officer shall:

(a) subject to subsection (4), require the person to enter into a compliance undertaking; or

(b) serve a notice of contravention on the person.

...
(3) For the purposes of subsection (2):...

(b) a notice of contravention must:

(i) cite the contravened provision of this Part or of the regulations made pursuant to this Part;
(ii) state the reasons for the occupational health officer's opinion; and
(iii) require the person to remedy the contravention within a period specified by the occupational health officer in the notice of contravention.

...
3-53(1) A person who is directly affected by a decision of an occupational health officer may appeal the decision.

...
(4) Subject to subsection (10) and section 3-54, an appeal pursuant to subsection (1) is to be conducted by the director of occupational health and safety.

....
(10) Instead of hearing an appeal pursuant to this section, the director of occupational health and safety may refer the appeal to an adjudicator by forwarding to the adjudicator:

(a) the notice of appeal;
(b) all information in the director's possession that is related to the appeal; and
(c) a list of all persons who are directly affected by the decision.

3-54(1) An appeal mentioned in subsection 3-53(1) with respect to any matter involving harassment or discriminatory action is to be heard by an adjudicator in accordance with Part IV.

(2) The director of occupational health and safety shall provide notice of the appeal mentioned in subsection (1) to persons who are directly affected by the decision.

3-55 In the case of an appeal mentioned in subsection 3-53(10) or section 3-54 that is to be heard by an adjudicator, the director of occupational health and safety shall forward to the adjudicator:

(a) the notice of appeal mentioned in subsection 3-53(2);
(b) all information in the director's possession that is related to the appeal; and
(c) a list of all persons who have been provided notice of the appeal pursuant to clause 3-53(5)(a) or subsection 3-54(2).

...
3-63(1) Subject to subsection (4), an occupational health officer may enter any premises, place of employment, worksite or vehicle and conduct an inspection for the purpose of:

(a) preventing work-related incidents, injuries or illnesses;
(b) ascertaining the cause and particulars of a work-related incident, injury or illness or of an incident that had the potential to cause a work-related incident, injury or illness;
(c) making an inquiry in response to a complaint concerning occupational health and safety; or
(d) determining whether there is compliance with this Part, the regulations made pursuant to this Part, a compliance undertaking, a notice of contravention or an order issued pursuant to a prescribed Act or regulation.

...
(3) When conducting an inspection in accordance with subsection (1), an occupational health officer may do all or any of the following things:

(a) make any inquiry the officer considers appropriate;
(b) require the use of any machinery, equipment, appliance or thing located at the place or premises to be demonstrated;
(c) conduct any tests, take any samples and make any examinations that the officer considers necessary or advisable;
(d) take one or more persons to any place to assist the officer and make arrangements with the person in charge of the place for those persons to re-enter the place to perform specified duties;
(e) require the production of, inspect and make copies of any books, records, papers or documents or of any entry in those books, records, papers or documents required to be kept by this Part or the regulations made pursuant to this Part;
(f) require the production of, inspect and make copies of any existing records related to training workers on matters related to occupational health and safety;
(g) subject to subsection (5), remove any books, records, papers or documents examined pursuant to this section for the purpose of making copies where a copy is not readily available, if a receipt is given;
(h) require any person whom the officer finds in or at a place of employment to provide the officer with any information the person has respecting the identity of the employer at that place of employment;
(i) require any person to provide the officer with all reasonable assistance, including using any computer hardware or software or any other data storage, processing or retrieval device or system to produce information;
(j) in order to produce information and records mentioned in this subsection, use any computer hardware or software or any other data storage, processing or retrieval device or system that is used by the person required to deliver the

information and records.

...

3-64(1) For the purpose of obtaining any information that is required to determine compliance with this Part or the regulations made pursuant to this Part or is otherwise required for the performance of the duties or the exercise of the powers of the director of occupational health and safety, an occupational health officer, the chief occupational medical officer or the chief mines inspector, the director of occupational health and safety may direct any person to provide the director with any information in any form and manner and within any time that the director may specify.

...

4-4...(3) An adjudicator is not bound by the rules of law concerning evidence and may accept any evidence that the adjudicator considers appropriate.

...

4-5(1) In conducting an appeal or a hearing pursuant to this Part, an adjudicator has the following powers:...

(e) to receive and accept any evidence and information on oath, affirmation, affidavit or otherwise that the adjudicator considers appropriate, whether admissible in a court of law or not....

...

4-6(1) Subject to subsections (4) and (5), the adjudicator shall:

(a) do one of the following:

(i) dismiss the appeal;
(ii) allow the appeal;
(iii) vary the decision being appealed....

**Excerpts from the 1996 Regulations**

36(1) An employer, in consultation with the committee, shall develop a policy in writing to prevent harassment that includes [*various stated contents*].

(2) An employer shall:

(a) implement the policy developed pursuant to subsection (1); and

(b) post a copy of the policy in a conspicuous place that is readily available for reference by workers.

37(1) In this section, "violence" means the attempted, threatened or actual conduct of a person that causes or is likely to cause injury, and includes any threatening statement or behaviour that gives a worker reasonable cause to believe that the

worker is at risk of injury.

(2) On and after January 1, 1997, places of employment that provide the following services or activities are prescribed for the purposes of subsection 14(1) [*of The Occupational Health and Safety Act, 1993, replaced by s. 3-21 of the Act*]:...

(l) taxi services....

(3) A policy statement required by subsection 14(1) of the Act must be in writing and must include:

(a) the employer's commitment to minimize or eliminate the risk;

(b) the identification of the worksite or worksites where violent situations have occurred or may reasonably be expected to occur;

(c) the identification of any staff positions at the place of employment that have been, or may reasonably be expected to be, exposed to violent situations;

(d) the procedure to be followed by the employer to inform workers of the nature and extent of risk from violence, including, except where the disclosure is prohibited by law, any information in the employer's possession related to the risk of violence from persons who have a history of violent behaviour and whom workers are likely to encounter in the course of their work;

(e) the actions the employer will take to minimize or eliminate the risk, including the use of personal protective equipment, administrative arrangements and engineering controls;

(f) the procedure to be followed by a worker who has been exposed to a violent incident to report the incident to the employer;

(g) the procedure the employer will follow to document and investigate a violent incident reported pursuant to clause (f);

(h) a recommendation that any worker who has been exposed to a violent incident consult the worker's physician for treatment or referral for postincident counselling; and

(i) the employer's commitment to provide a training program for workers that includes:

(i) the means to recognize potentially violent situations;
(ii) procedures, work practices, administrative arrangements and engineering controls that have been developed to minimize or eliminate the risk to workers;
(iii) the appropriate responses of workers to incidents of violence,

including how to obtain assistance; and
(iv) procedures for reporting violent incidents.

(4) Where a worker receives treatment or counselling mentioned in clause (3)(h) or attends a training program mentioned in clause (3)(i), an employer shall credit the worker's attendance as time at work and ensure that the worker loses no pay or other benefits.

(5) An employer shall make readily available for reference by workers a copy of the policy statement required by subsection 14(1) of the Act.

(6) An employer shall ensure that the policy statement required by subsection 14(1) of the Act is reviewed and, where necessary, revised every three years and whenever there is a change of circumstances that may affect the health or safety of workers.

**Excerpts from the City of Regina Taxi Bylaw No. 9635**

2. In this Bylaw unless the context otherwise requires, the expressions:

"Taxicab Broker" means a person receiving calls for taxi service and dispatching taxicabs;
"Taxicab Driver" means any person in de facto charge of the operation of a taxicab, whether he or she is the owner of the taxicab or is an agent, licensee or employee of the owner;
"Taxicab Owner" means any person that has the control, direction and maintenance of a taxicab, and the benefit of the collection of revenue derived from the operation of the taxicab, whether as registered owner, licensee or in possession under any conditional sale, chattel mortgage or hire-purchase agreement;
"Taxicab Owner's Licence" means a decal which bears the period during which the licence is valid and the City licence number, issued by the Licence Inspector....

...
32. (1) A person who contravenes any of the provisions of this Bylaw or fails to comply therewith commits an offence and is liable to the penalties as herein provided.

(2) Notwithstanding the generality of subsection (1), it is an offence:

(a) for a taxicab broker to knowingly have in his or her employ or dispatch for calls:

(i) a taxicab driver who does not hold a valid taxicab driver's licence; or
(ii) a taxicab driver driving a vehicle not bearing a valid taxicab owner's licence;

(b) for a taxicab owner to permit or allow an unlicensed taxicab driver to use his or her taxicab for hire;

(c) for a taxicab driver to use for hire a vehicle not licensed pursuant to this Bylaw;

(d) for a person to carry on or be engaged in business of a broker, owner or driver of taxicabs unless and until that person has first obtained a licence to do so and paid the licence fee as set out in Schedule "A"....

## IV. ANALYSIS AND REASONS

[18] The parties agreed through the agreed statement of facts that there are eight issues I am called upon to consider. I accept the parties' description of the issues. However, before turning to those eight issues, it is necessary to address a preliminary matter.

[19] The agreed statement of facts states that "[t]he parties agree that the applicable standard of review is *de novo*". At the close of the presentation of evidence at the hearing, I asked both parties to explain their understanding of what that means in the context of this appeal. I sought this because this is an unusual type of appeal.

[20] The typical appeal employing a *de novo* consideration of the matter involves an initial disagreement or dispute between parties that is taken before someone with authority to consider the matter and decide the dispute. If an appeal is authorized from that person's decision, the appellate body can consider the matter in different ways depending primarily on the legislative framework for the appeal. The appeal might, for example, be limited to a question of law with the hearing based on the record of evidence presented when the matter was considered in the first instance. However, it isn't uncommon for an appeal to be heard *de novo*, meaning anew, or as if the first decision had not been made.

[21] The most common appeals heard by adjudicators under Part III arise from notices of contravention issued by officers under s. 3-36, or decisions by officers to not issue notices. Those cases begin with a worker effectively making a complaint to an officer, alleging that the employer has taken discriminatory action against the worker contrary to s. 3-35. After an investigation, the officer makes a decision to issue or not issue a notice of contravention. That decision can be appealed to an adjudicator, and the appeal proceeds *de novo*, with the worker and employer as the two adversarial parties. The hearing is based on evidence introduced by the parties along with the material provided by the director pursuant to s. 3-55 of the Act. The adjudicator's decision is based on the evidence and argument in the appeal hearing, and is not limited by the reasons or decision of the officer who issued the notice of contravention or by the conduct of the officer in gathering the evidence leading to the decision.

[22] In the present appeal there is no similar starting point. There is no dispute between parties that leads to a complaint or similar initiating action requiring an officer to take up the matter and ultimately deliver a decision. Here the officers themselves initiated inquiries and

officer Gardner made the decision to issue a notice of contravention. Consequently, the circumstances of the investigation and the decision itself become a necessary aspect of the appeal. This is reflected in the case presented by Regina Cabs, which focusses significantly on the conduct of the investigation and the specifics of the 2018 NOC. It is also reflected in the agreed statement of facts, which devotes considerable space to the conduct of the investigation.

[23] The director's written submission (at paras. 3 and 4) describes the *de novo* nature of this hearing as follows:

> 3. The parties have agreed that the appropriate standard of review is *de novo*, such that the substantive issues are reviewed in a hearing of the first instance. The Director of Occupational Health and Safety (the "Director") is of the view that, in conducting a *de novo* hearing, the Adjudicator has the ability to admit as evidence the Agreed Statement of Facts and Agreed Documents, as well as any materials forwarded by the Director of Occupational Health or Safety or any other materials before the Adjudicator, pursuant to section 4-4 of the Act.
>
> 4. The Director would submit that in the *de novo* hearing, the onus is on the Director to establish the contraventions outlined in the NOC on a balance of probabilities.

[24] The written submission of Regina Cabs ( at paras. 19 to 21) suggests the following:

> 19. The main thrust of *Abouhamra* is that a hearing *de novo* is not simply a review of the decision at issue. It is a new decision. The previous decision at issue is relevant as part of the determination as to its correctness in whole or in part. The appeal body assumes the role of the first adjudicator: see paragraphs 66 and 73 and of Abouhamra. No matter what, no deference is owed to the decision. Even if the old record is the physically or substantially the same, a new record is a new decision with new findings of fact; it is still a new record.
>
> 20. The parties also agree that the onus rests with the Director to prove the grounds relied on in the October 11, 2018 Notice of Contravention that are under review. Onus is connected to standard of review, or the absence thereof, that is applicable in this kind of case: see paragraph 84(f) of *Abouhamra*.
>
> 21. Because the matter is *de novo*, there is no presumption that the October 11, 2018 Notice of Contravention stands and the Director must prove the factual allegations and the legal positions that underpin it. The October 11, 2018 Notice of Contravention is not entitled to deference. This is the fundamental meaning of a *de novo* hearing.

[25] These two submissions are largely consistent and I accept the principles they advance.

[26] One final preliminary matter. While Regina Cabs agrees that the material forwarded by the director pursuant to s. 3-53(10) or 3-55 of the Act can be considered part of the record on the appeal in a broad sense, it takes the position that the contents of those documents cannot stand for the truth of those contents, other than as agreed to by the parties or as evidenced in testimony at the hearing.

[27] Ss. 4-4(3) and 4-5(1)(3) of the Act give an adjudicator broad powers with respect to the nature of evidence provided in a hearing, including the power to consider evidence that would otherwise be excluded by the rules of law concerning evidence. Whether or not an adjudicator

applies these principles will depend on various factors. However, it can't be said that the contents of documents provided by the director under the Act cannot be considered for the truth of their contents. Whether they are or are not depends on a ruling made by the adjudicator.

[28] In this case the question is largely hypothetical. The documents attached to the agreed statement of facts provided by the parties contain many of the same documents contained in the director's file, including the two notices of contravention, and I have seen no need to rely on the truth of the contents of any of the documents not reference in the agreed statement of facts or oral evidence.

[29] Now to the eight issues agreed to by the parties. I've restated them in slightly modified form to conform with the terminology I've adopted in the rest of these reasons.

**1. Was the decision of the officer in the 2018 NOC in which he deemed Regina Cabs as the employer of taxi license owners/vehicle operators and drivers as workers, inconsistent with the applicable legislation and/or did the officer exceed his statutory authority?**

[30] Notices of contravention are issued pursuant to s. 3-38 of the Act. In order to issue a notice of contravention an occupational health officer must be "of the opinion that a person:

> (a) is contravening any provision of this Part or the regulations made pursuant to this Part; or
>
> (b) has contravened any provision of this Part or the regulations made pursuant to this Part in circumstances that make it likely that the contravention will continue or will be repeated.

[31] Notices of contravention appear to follow a common format. The 2018 NOC begins with a listing of factors that identify the subject matter of the notice – the employer's name and address, the place where the contraventions occurred, the inspection date, the report date, and the name of the officer issuing the notice.

[32] Following this there is a heading "Details" and four paragraphs that appear to provide background or context for the three contraventions contained in the notice.

[33] The notice then sets out each of the three contraventions. Each is organized in similar fashion. They begin with an "observation", which provides a brief description of the contravention, followed by a recitation of the legislation contravened, a date by which the contravention is to be remedied and a brief statement of the compliance required.

[34] As set out in para. 19 of the agreed statement of facts, the "details" portion of the 2018 NOC includes the following statements:

> In a prior Notice of Contravention that was issued to Regina Cabs, report #16496, dated December 21, 2017, the Officer had requested a list of the names of "Operator Cab Companies" (Taxi License Owners) and drivers that work jointly with Regina Cabs as they will also be required to create a violence policy for their workplace.

> The request for this information was repeated in the inspection, and further correspondence was sent by email on July 5, 2018. To date, this information has not been provided to our offices.
>
> *As this information has not been provided, Regina Cabs (Arch Transco) is deemed to be the employer of the taxi drivers* and must create and implement a Harassment policy and Violence policy for all workers affiliated with Regina Cabs, inclusive of Taxi License Owners/Vehicle Operators and drivers for Regina Cabs (Arch Transco). (*Emphasis added.*)

[35] The term "deemed" is used in more than one way in ordinary language. It is often equated with "considered", in the sense that the deeming or considering is based in fact. However, it can also be used in a manner that suggests there are no objectively determined facts that support the conclusion. Consider an example phrase provided in one dictionary: "Anyone not paying the registration fee by 31 March is deemed to have withdrawn from the offer." Legislation commonly uses the term in similar ways, i.e. where an objective consideration of the matter might lead to a different conclusion than the one that is deemed.

[36] The context in which the term was used in the 2018 NOC leads me to conclude that the officer's statement that Regina Cabs was the employer of the taxi drivers was not based on a reasoned examination of the facts and an application of the legislation to those facts. It appears he concluded Regina Cabs would be considered the employer in the absence of ascertained facts, based simply on the company's failure to provide the information officers were seeking. The director's written submission acknowledges this (at para. 22) where it states that "it appears that [the officer] determined that [the company] was an employer of taxi drivers, based on the absence of information".

[37] I am mindful that the Part III obligations imposed on employers in relation to their workplaces generally focus on "workers" rather than "employees", and I agree with the position of the director that the definition of "worker" in the Act as it existed in 2018, and in fact as it presently exists, doesn't equate directly with the common law definition of an "employee". However, there was little if any evidence presented in the hearing to support a conclusion that Regina Cabs employed the drivers in any sense. There is the April 27, 2018, letter from a representative of the union to officer Boan asserting certain facts that the union apparently maintained suggested an employment relationship between Regina Cabs and drivers. However, the only further evidence introduced to explain that letter came through Ms. Archibald, who stated that it was riddled with mistruths. She denied the company exerted the kind of control over drivers the letter suggested, and said that it did not employ drivers.

[38] As a result, there is not sufficient evidence for me to conclude that Regina Cabs drivers were workers in relation to the company. This is not to say that such evidence does not exist; rather, it wasn't part of the evidence presented on this appeal.

[39] It's unnecessary for me to comment on the effect the amendments to the Act, in particular to the definition of "worker" in s. 3-1(gg), might have on a future consideration of issues similar to those we're dealing with here.

[40] Finally, there is no legislative authority for an officer to "deem" a person to be the employer of another person in the narrow sense of that word, i.e. in the absence of objectively defensible facts to support such a conclusion.

[41] Consequently, I find that the officer's decision was inconsistent with the applicable legislation and exceeded his authority under that legislation.

**2. Was the decision of the officer unreasonable and/or contrary to the principles of natural justice and procedural fairness?**

[42] For the reasons that follow, I find it unnecessary to address this issue.

**3. On a balance of probabilities, is the director able to prove that Regina Cabs contravened section 3-8(e) of the Act as it was in effect on November 15, 2018, as stated in the 2018 NOC observation?**

[43] This relates to the first contravention set out in the notice. The observation related to that contravention refers to the request for information in the notice of contravention issued in October of 2017 ("the 2017 NOC) and continues:

> The request for this information was repeated in the inspection, and further correspondence was sent by email was sent *(sic)* on July 5, 2018. To date this information has not been provided to our offices. The employer has failed to cooperate with an officer exercising a duty imposed by *The Saskatchewan Employment Act and Regulations*.
>
> This contravenes section 3-8(e) of *The Saskatchewan Employment Act*.

[44] S. 3-8(e) reads:

> 3-8 Every employer shall: ...
>
> > (e) cooperate with any other person exercising a duty imposed by this Part or the regulations made pursuant to this Part....

[45] The compliance required by the notice is: "The employer shall comply with section 3-8 of [the Act]".

[46] To uphold this part of the notice requires me to conclude that the requests for information set out in the 2017 NOC and repeated during the June 27, 2018, inspection and in subsequent correspondence placed a legal obligation on the company to provide the information requested, and that by not providing the information the company failed to cooperate with officers in the exercise of their duties under the legislation, thereby contravening s. 3-8(e).

[47] Regina Cabs argues that this aspect of the 2018 NOC is defective and non-compliant with the requirements for notices of contravention under the Act. It points to the imprecise nature of the list requested from the company and the fact the officers did not identify their legislative

authority to demand the information. It further argues that there is nothing in Part III that requires an employer to provide information about another employer to an officer.

[48] I do not agree that there is a requirement in the Act that officers identify their authority to carry out their responsibilities each time they do that, including when they seek information from an employer. More specifically, assuming for the moment that the officers who requested the information the company failed to provide did have the authority to demand it and to consequently make the company legally responsible to provide it, a failure to state that the demand was made pursuant to the specific legislative source of that authority would not nullify its effect. However, there remains the question of whether the officers had the authority to compel the company to provide the information, or whether they could simply request it. If only the latter, there then remains the further question of whether the company's failure or refusal to comply with the requests amounted in these circumstances to a contravention of s. 3-8(e).

[49] I'll deal first with whether the legislation provides officers with authority to make a formal demand for information of the type requested here that directly creates a legal obligation on the part of the employer to provide that information. The director's submissions point me to ss. 3-63 and 3-64 of the Act. S. 3-64 does not appear to assist the director's case. Subs. (1), which is set out earlier, provides broad authority to direct any person to provide information. It would appear to have application in the present circumstances. However, the scope of the subsection is narrower than one might think on first reading, perhaps because of its complicated structure. If we take the words contained in the subsection and reorganize them in a different drafting style, it reads as follows:

> 3-64(1) For the purpose of obtaining any information that:
>
> > (a) is required to determine compliance with this Part or the regulations made pursuant to this Part: or
> >
> > (b) is otherwise required for the performance of the duties or the exercise of the powers of the director of occupational health and safety, an occupational health officer, the chief occupational medical officer or the chief mines inspector:
>
> the director of occupational health and safety may direct any person to provide the director with any information in any form and manner and within any time that the director may specify.

[50] This, I believe, is the proper interpretation to be given to the provision, i.e. that the exercise of the power belongs to the director alone, and not to officers. This power to compel the production of information is obviously important and potentially relevant to the ministry's apparent desire to obtain information of the type and in the circumstances involved in this appeal. However, it does not support the notion that the request for information was anything more than that – a request.

[51] There is no doubt s. 3-63, which is set out above, is intended to equip officers with broad authority to conduct inspections and obtain information through those inspections. However, the authority is not without limits. First, the inspections are limited to the purposes set out in subs. (1), which I'll repeat here:

(a) preventing work-related incidents, injuries or illnesses;
(b) ascertaining the cause and particulars of a work-related incident, injury or illness or of an incident that had the potential to cause a work-related incident, injury or illness;
(c) making an inquiry in response to a complaint concerning occupational health and safety; or
(d) determining whether there is compliance with this Part, the regulations made pursuant to this Part, a compliance undertaking, a notice of contravention or an order issued pursuant to a prescribed Act or regulation.

[52] This does not provide authority to conduct inspections for the general purpose of obtaining information required to carry out duties and powers under the Act, similar to the authority provided to the director in s. 3-64. The related powers in subs. (3) that can be exercised "when conducting an inspection" are similarly limited, as they can only be exercised when the inspection is being conducted for one of the stated purposes.

[53] It's noteworthy that several of the clauses setting out those powers authorize the officers to "require" that someone do something, whereas clause (a), which is arguably a broader authority that might apply in relation to the information requested from Regina Cabs, only allows officers to "make any inquiry".

[54] The original request in the 2017 NOC wasn't made "when conducting an inspection", although it was made very shortly after the onsite inspection was done. Also, the fact it was set out in a notice of contravention does not invest it with additional authority. In fact, it should not be thought of as a formal part of that notice of contravention, since there was no contravention alleged that would connect logically with the request. It appears to be more of an afterthought or an add-on to the three contraventions that were included in the notice. Those three contraventions related to the company's office and retail workers.

[55] Neither were the requests made in correspondence subsequent to the June 2018 inspection made "when conducting an inspection". Of course, any request made during the June 2018 inspection would obviously meet this requirement.

[56] Whether or not s. 3-63 empowers officers to issue a legally binding directive to produce information, including information related to workers who are not the employer's workers, beyond what is implicitly included in the powers set out in clauses (3)(b), (e), (f), (i) and (j), I am not satisfied that the several requests for information made by officers here imposed a legal obligation on the company to provide the information requested. I conclude that they were just that – requests – and were not in the nature of a directive intended to give rise to a legal obligation based simply on those requests. I reach this conclusion notwithstanding the 2017 NOC used the expression "I am also *requiring*" in relation to the request for information there. We heard no evidence that would explain what the officer here was intending, and I am not satisfied this was intended to be a legally binding directive.

[57] That then leaves me to consider whether the company's failure or refusal to provide the requested information amounts to a failure to cooperate more generally with the officers as they

exercised their duties under the Act or regulations. As a starting point, I am satisfied the officers had, and may still have, a legitimate interest in gathering information about the identity of the various licensed persons who make the taxis dispatched by Regina Cabs run, and that it was acceptable for them to ask the company to provide some or all of the information the officers sought, whether or not the company stood in the position of employer in relation to any of those persons. While the company may have been overly defensive, and even evasive, in responding to the requests, Ms. Archibald gave a fairly complete explanation of the reasons for the company's reluctance. Perhaps the ministry and the company could have reached an understanding with a bit more good will on both sides, but I am not prepared to conclude that the company's conduct amounted to a failure to cooperate with the officers within the meaning of s. 3-8(e).

[58] In reaching this conclusion I am again mindful of the broad authority given to the director in s. 3-64 of the Act to direct that information be provided.

[59] For these reasons, I find that s. 3-8(e) was not contravened and that this portion of the 2018 NOC was therefore issued in error.

**4. On a balance of probabilities, is the director able to prove that Regina Cabs contravened s. 36 of the 1996 regulations, as they were in effect on November 15, 2018, as stated in the 2018 NOC observation?**

[60] This engages the second contravention set out in the 2018 NOC. The observation portion of the notice states in part:

> Regina Cabs ... must create and implement a Harassment policy for all workers affiliated with Regina Cabs, inclusive of Taxi Licence Owners/Vehicle Operators and drivers for Regina Cabs....

[61] According to the notice, the contravened legislative provision is s. 36 of the 1996 regulations, which requires an employer to develop and implement a harassment policy. While the provisions in the section don't expressly say so, it's obvious given the language of the section and the context within which this provision is set that it contemplates a policy for the benefit of the employer's workers, rather than workers in general. This becomes even more clear when we consider the companion provisions in the Act, such as s. 3-8(d), which requires employers to ensure that their workers are not exposed to harassment with respect to matters arising out of their employment.

[62] Additionally, s. 3-1(2) of the Act provides that "if a provision refers to a matter ... that an employer is required to do in relation to workers, the provision applies to workers who are in the service of that employer, unless the context requires otherwise".

[63] In the discussion and reasons related to the first issue, set out above, I stated there was not sufficient evidence presented to support a conclusion that drivers were workers in relation to the company in any sense. The same is true for owners and operators.

[64] Consequently, I find that there was no basis on which to conclude that Regina Cabs had an obligation to create and implement a harassment policy for the owners, operators or drivers as set out in the 2018 NOC, and that portion of the NOC was issued in error.

**5. On a balance of probabilities, is the director able to prove that Regina Cabs contravened s. 37 of the 1996 regulations as they were in effect on November 15, 2018, as stated in the 2018 NOC observation?**

[65] This engages the last contravention set out in the 2018 NOC.

[66] S. 3-21 of the Act requires employers operating at prescribed places of employment to develop and implement written violence policies. Places of employment that provide taxi services were prescribed in the 1998 regulations. Following the issuance of the 2017 NOC, the company established a violence policy for its office and retail workers. The 2018 NOC identifies as a contravention the company's failure to have a policy that encompasses drivers.

[67] S. 3-21 requires the employer to consult with the occupational health committee or the occupational health and safety representative. If neither exists, the employer must consult with the workers. S. 3-22, which requires that occupational health committees be established, makes it clear that this committee is comprised of workers working at the employer's place of employment.

[68] Similarly, s. 3-24, which provides for the designation of an occupational health and safety representative, makes it clear that the representative represents the workers at the employer's place of employment.

[69] Therefore, an employer's obligation under s. 3-21 is to create a violence policy for places of employment where its workers work. I find additional support for this conclusion in s. 3-1(2), which was referenced earlier.

[70] For reasons similar to those set out in relation to the fourth issue, I find that there was not sufficient evidence presented to allow me to conclude that the drivers were workers for Regina Cabs in any sense. Consequently, it has not been established that Regina Cabs was required to establish a violence policy that encompassed drivers. The third portion of the 2018 NOC was therefore issued in error.

**6. Are any of the alleged contraventions moot as a result of the subsequent legislative changes to the applicable statute and regulations?**

[71] Given the conclusions I've reached in relation to the previous issues, I don't find it necessary to address this issue.

**7. Did the director err in referring this matter to an adjudicator pursuant to s. 3-54 as opposed to following the procedures set out under s. 3-53 of the Act?**

[72] Again, I don't find it necessary to address this issue.

## 8. What is the appropriate remedy pursuant to s. 4-6 of the Act?

[73] This is addressed under the conclusion.

## V. CONCLUSION

[74] The appeal is allowed in its entirety. The notice of contravention dated October 11, 2018, is set aside.

Dated at Regina, Saskatchewan this 29th day of September, 2022.

"Gerald Tegart"
Gerald Tegart, Adjudicator