

IN THE MATTER OF AN APPEAL TO AN ADJUDICATOR PURSUANT TO SECTIONS
3-53 AND 3-54 OF *THE SASKATCHEWAN EMPLOYMENT ACT*

A.B.

APPELLANT

- and -

TECHNICAL SAFETY AUTHORITY OF SASKATCHEWAN

RESPONDENT

Adjudicator: Larry B. LeBlanc, K.C.

For the Appellant: Kate Engel and Sarah Levine

For the Respondent: Michael J. Phillips

DECISION

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APPENDIX A

I. INTRODUCTION

[1] This matter concerns an appeal by the Appellant pursuant to sections 3-53 and 3-54 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1 (the “Act”) against a decision dated January 19, 2024 of two Occupational Health Officers (“OHS Officers”) from the Occupational Health and Safety Branch, Ministry of Labour Relations and Workplace Safety, regarding a discriminatory action complaint filed by the Appellant arising from the termination of his employment with the Respondent (“TSASK”) as an electrical inspector on February 23, 2023.

[2] The OHS Officers found in their decision that the termination of the Appellant’s employment was not prohibited by section 3-35 of the Act.

[3] On February 1, 2024, the Appellant gave Notice of appeal from the decision of the OHS Officers. Pursuant to section 4-3 of the Act, I was selected as adjudicator for the appeal on April 9, 2024. Following my selection as adjudicator, I received appeal material from the Director of Occupational Health and Safety pursuant to section 3-55 of the Act including “all information in the director’s possession that is related to the appeal”. Counsel for the parties were provided with copies of the appeal material prior to a pre-hearing conference call that was held on May 8, 2024.

[4] By email to counsel for the parties on May 8, 2024, following the pre-hearing conference call, I advised as follows:

Further to our pre-hearing conference call this morning, let me confirm the following:

1. The appeal will be conducted as a video hearing. I will follow up in due course regarding the mechanics, but I expect the hearing will be on the WebEx platform of the Labour Relations Board.
2. Subject to check by counsel on witness availability, we set two possible three-day blocks (one or the other) for the hearing, namely, August 27 to 29, 2024 inclusive or October 8 to 10, 2024 inclusive. Counsel will get back to me on dates.
3. If a party anticipates raising an objection or issue of a preliminary nature, they will endeavour to provide 30 days’ notice to the other party and the adjudicator, prior to the hearing, of the objection or issue they intend to raise.
4. As for the order of proceeding at the hearing, the party appealing [the Appellant] will proceed first with evidence, with the respondent (Technical Safety Authority of Saskatchewan) then presenting evidence from its side, followed by a right on the part of the appellant to respond to any new matters the respondent may have raised. Each party would then be asked to present final argument in support of their positions, in the same order as above. It is understood that who bears the onus of proof on what issue is another matter.
5. Counsel will work toward the preparation of an agreed statement of documents. We exchanged some thoughts in that regard.

Let me know if you see any inaccuracies in the above. Thank you.

[5] The appeal proceeded by videoconference for full or in some cases partial hearing days on August 27-28, 2024; February 24-28, 2025; and March 3, 6, 7, and 28, 2025. The parties asked me to “reserve on remedy” in the event of a finding that the termination of employment was in breach of the Act.

[6] For the reasons that follow, I have determined that the Respondent in terminating the Appellant’s employment was in contravention of section 3-35 of the Act.

II. DECISION OF OHS OFFICERS

[7] The appeal material forwarded by the Director of Occupational Health and Safety was entered into evidence at the appeal hearing as Exhibit 1 through a Joint Book of Exhibits in which the material is described as the “Record of Appeal of the Director of Occupational Health and Safety (496 pages)” (with page numbering added by consent of counsel).

[8] The bulk of Exhibit 1 consists of the record that was before the OHS Officers (pp. 007 to 496). The January 19, 2024 decision of the OHS Officers and a Notice of Appeal are also included in the exhibit.

[9] The appeal material includes a “Discriminatory Action Questionnaire” signed November 1, 2023 by which the Appellant initiated his discriminatory action complaint. It incorporates a timeline and numerous attachments such that the overall document spans pages 009 to 219 in Exhibit 1. In the form of questionnaire itself, in answer to the question “What was the health and safety concern you raised prior to the action taken against you”, the Appellant stated:

On April 15, 2021, I formally complained to my employer about threatening and aggressive actions against me by customers who I have interacted with during an inspection of a business property. This complaint eventually was brought to Occupational Health and Safety.

I brought two more complaints about threatening and harassing behaviour to the attention of my employer on September 8 and 21, 2022. David Pilon, Manager, Electrical Inspections North, ignored my complaint and directed me to “Stay focused on the task at hand which is inspecting the installation of electrical equipment and any electrical hazards to people or property”.

In addition to these complaints, I expressed ongoing concern about the hostility that Electrical Inspectors including myself were faced with in the course of our usual duties on the job.

[The response then lists certain documents and says additional may be found when referencing an included timeline]

[10] By letter to TSASK dated November 28, 2023, the OHS Officers advised TSASK of the allegation of discriminatory action and asked TSASK to provide written documentation identifying the reasons for termination of employment along with a copy of the current harassment policy.

[11] TSASK responded in a letter dated December 22, 2023 with eleven appendices. In the letter, TSASK, among other things, provided comments on the three specifically mentioned harassment complaints (April 15, 2021, September 8, 2022, and September 21, 2022). The letter also included the following paragraphs relating to the termination of employment:

This response and the corresponding attachments will show that [the Appellant] repeatedly failed to interact effectively with clients in his district. [The Appellant] frequently revealed his contempt for his managers and continued to have unnecessary, escalating conflicts with customers, some of whom refused to have him conduct any further inspections services at their homes or businesses. In such examples, [the Appellant] failed to follow explicit directions to refer challenging matters to either his in-scope supervisor or manager. His actions resulted in a number of customer complaints, which then involved significant amount of time and energy for all concerned before issues could be resolved. Ultimately, because of his poor customer relations practices, [the Appellant] failed to uphold professional standards that ended up damaging not only his reputation, but TSASK's as well.

...

The reason for [the Appellant's] dismissal was the result of a culminating event that occurred when a customer provided a written complaint regarding an attempted inspection by [the Appellant] on January 26, 2023 at her residence in Lloydminster. An investigation was conducted and a subsequent meeting with the Appellant and his union representative(s) was conducted on February 16, 2023. On February 22, 2023, [the Appellant], along with union representative and TSASK management met in Lloydminster to advise that [the Appellant] was terminated with cause; transition services were made available to assist [the Appellant]. Follow up was conducted that evening and additional services were accessed in the weeks following.

The reason for [the Appellant's] dismissal is unrelated to any allegation or claim filed with OHS. He was dismissed for repeated conduct that, despite a previous warning (see Appendix I) showed a level of contempt for customers that was increasing in frequency and severity. Further to this, his absence of any remorse or understanding of how this conduct impacts other destroyed any confidence we had regarding his ability to interact effectively with our customers. His conduct was escalating in intensity and was damaging not only to himself, but also to TSASK and our reputation to those we serve in the Lloydminster area.¹

[12] After further inquiries by the OHS Officers including a response from the Appellant regarding the TSASK letter, the OHS Officers issued their decision by letter dated January 19, 2024.

[13] In the decision the OHS Officers found that the Appellant engaged in a protected activity by making complaints of harassment on April 15, 2021, September 8, 2022, and September 21, 2022 but that TSASK had provided good and sufficient other reason, which was in regard to the Appellant's conduct with customers. The second and third of the paragraphs set out above (each beginning "The reason for") were quoted in the decision.

¹ It may be worthy of note that the written complaint from the affected homeowner in relation to the "culminating event" (an exhibit at the hearing) was not part of the record before the OHS Officers (only an email from another party concerning that event) nor was the written complaint from a contractor (an exhibit at the hearing) regarding an interaction that gave rise to the prior written warning.

III. DOCUMENTS AND WITNESSES ON THE APPEAL

[14] For the appeal hearing, the parties in advance filed a Joint Exhibit Book in which the appeal material from the Director is Exhibit 1 (as previously noted) and additional documents (or sets of documents) are Exhibits 2 to 27. The Joint Exhibit Book begins as follows:

The parties confirm that the exhibits listed in the attached List of Agreed on Exhibits are admitted into evidence by consent.

Exhibit 1 – Record of Appeal of the Director of Occupational Health and Safety (496 pages). Page numbers in the bottom right corner of Exhibit 1 were made by Counsel for the Appellant with consent of the Respondent.

Exhibits 2 to 27 are then listed.

[15] On the second day of the hearing of the appeal, August 28, 2024, during the examination in chief of the Appellant, counsel for the Appellant sought to introduce evidence of audio recordings of four meetings made by the Appellant using the recorder on his cell phone. Transcripts were being prepared. The Respondent objected. The issue was determined on a *voir dire* based on evidence to that point in the hearing proper, an affidavit from the Appellant (including attached recordings and transcripts), and written submissions with September 27, 2024 as the last due date. In a “Ruling Regarding Admissibility of Surreptitious Audio Recordings” dated October 7, 2024, I applied the common law test for admissibility and directed that the recordings and related transcripts be admitted into evidence at the hearing. The ruling is attached as Appendix A.

[16] Including the audio recordings and transcripts mentioned above (and one other recording and transcript for which there was no objection) further documents were entered during the hearing as Exhibits 28 to 44.

[17] In addition to the Appellant, two witnesses gave evidence as part of the Appellant’s case:

- Donald Craig – Mr. Craig took employment with SaskPower in 1992 as an electrical inspector in Kindersley, transferring to Yorkton in 1994, then to Saskatoon in 2004. Appointed as a training co-ordinator in 2010 or 2011, he was promoted in 2014 to in-scope supervisor at Saskatoon and continued in that position, including with TSASK after February 2021, until his retirement on May 31, 2024.
- Allan Murray – Mr. Murray was employed by SaskPower from 1985 to approximately 2021 in the power production part of the business. Following retirement from SaskPower, Mr. Murray was engaged by the International Brotherhood of Electrical Workers, Local 2057 (the “IBEW” or the “union”) as a consultant, specifically as Return-to-Work Coordinator, for a year and a half until August 2023.

[18] The Respondent called three witnesses:

- David Pilon – Mr. Pilon is the Manager, Electrical Inspections North, for TSASK. Mr. Pilon commenced employment with SaskPower in 2000 and held various positions in the corporation’s electrical inspection division including in-scope supervisor and training co-ordinator. He became an employee of TSASK in February 2021 with the

transition from SaskPower to TSASK and was appointed to his current position in April 2021.

- Michael Anderson – Mr. Anderson is the Chief Electrical Inspector for TSASK. He took employment with SaskPower as Chief Electrical Inspector in 2010, having previously been employed in that role by the City of Winnipeg, and continued with TSASK following the February 2021 transition.
- Terry Mann – Mr. Mann was the Manager of Human Resources for TSASK for 14 years ending with his retirement effective December 31, 2024. In that position, his work was that of a human resources generalist shifting more to the labour relations side of the role after TSASK took on gas and electrical inspections near the beginning of 2021.

[19] At the time of final argument, counsel for the parties filed written submissions that I have found helpful. A list of authorities cited in the respective submissions is attached.

IV. EVIDENCE

General Background

[20] The Appellant commenced employment with Saskatchewan Power Corporation (“SaskPower”) in November 2013 as an electrical inspector. Prior to his employment with SaskPower, the Appellant had worked as an electrical contractor. In February 2021, the Appellant’s employment as electrical inspector transferred from SaskPower to TSASK. During his employment with both SaskPower and TSASK, the Appellant has been part of a bargaining unit represented by the IBEW.

[21] TSASK is an industry-funded, not-for-profit corporation established under *The Technical Safety Authority of Saskatchewan Act*. It has safety-related responsibilities pertaining to boiler and pressure vessels, amusement rides, passenger and freight elevators and hoisting appliances, and gas, electrical and plumbing systems in Saskatchewan. TSASK became responsible for gas and electrical inspections in February 2021 upon inheriting the functions of the gas inspections division and the electrical inspections division of SaskPower.

[22] TSASK enforces electrical safety standards to ensure that electrical installations are certified, approved and comply with safety standards under the *The Electrical Inspection Act, 1993* (which adopts the *Canadian Electrical Code*) and *The Electrical Licencing Act*. In carrying out these functions, TSASK’s Electrical Inspection Division works with builders, contractors, owners and others involved in the installation of electrical works.

[23] The role of Electrical Inspector is carried out as part of the regulatory framework. A fundamental responsibility of an inspector is to enforce compliance with the *Canadian Electrical Code*. To secure compliance, an inspector will often be in a position to exercise a significant degree of discretion. An inspector will work with a contractor or owner and attempt to resolve any issues through discussion. If unsuccessful, among the available formal mechanisms, an inspector may issue a defect notice (directing necessary corrections within a reasonable time), take action on a

contractor's guarantee bond (causing corrective work to be done by another contractor and charging the cost against the amount of the bond), or initiate steps for the discontinuance of service to the premises by the electric utility. Where an inspector is refused access to premises or premises are not made accessible to an inspector, the legislation provides that the inspector shall give written notice of that fact to the owner or contractor and order the owner or contractor to allow or provide access within 30 days after the day on which the inspector attempted to gain access.

[24] The Electrical Inspections Division of TSASK includes approximately 45 inspections staff consisting of two electrical inspections managers, in-scope supervisors, electrical inspectors, two compliance officers, and a training coordinator. The electrical inspection positions are located throughout the province. With the transition to TSASK, physical offices for electrical inspectors were discontinued, except in Regina and Saskatoon, with "rural" inspectors working remotely. Otherwise, little changed.

[25] The process whereby permits are submitted and registered is generally handled by electrical contractors, with a small percentage by homeowners, using an online system (although permits can also be taken out in person). Once registered, permits are automatically assigned to inspectors in the various areas. Inspectors will arrange with contractors or owners for the conduct of inspections but will also do cold calls. Most inspectors handle 1,500 to 2,000 permits over a year, working out to 5 to 10 or more in a day depending on complexity and travel.

[26] When an electrical inspector conducts an inspection, there is room for disagreement over concerns that might be raised by the inspector. The interest of the inspector in a safe installation can create tension with the contractor or owner.

[27] A Training Guide for Electrical Inspectors that had been prepared by SaskPower provides guidance on dealing with potentially abusive or hostile situations. The measures include (i) requesting an scope supervisor or out of scope supervisor to intervene and make personal contact rather than the inspector, (ii) arranging for a two inspector or inspector/supervisor attendance, and (iii) after discussion by the inspector with supervision concerning a situation that could lead to harassment, abuse or an altercation, for the supervisor chief inspector to contact the RCMP or local police for assistance. An approach by management in some circumstances is to remove an inspector from a file.

April 14, 2021 Incident

[28] On April 13, 2021, the Appellant noticed what appeared to be unreported electrical work (not recorded on permits) in relation to lighting installations on a lot in an industrial park. The Appellant arranged to get access to the site for an inspection which he conducted in the presence of the owner of one of two businesses operating from the lot. During the inspection, the Appellant identified concerns with wiring methods and lack of an approval label in relation to a structure that was located on the lot.

[29] The Appellant testified that on April 14, 2021, in the morning, he called the office of the manufacturer of the structure and spoke with a staff person who indicated she would get back to the Appellant concerning various inquiries made by the Appellant.

[30] The Appellant testified that at 1:30 p.m. on April 14, 2021 he received a call from an individual associated with the manufacturer. In an email to Mr. Pilon and Mr. Anderson the following day, dated April 15, 2021, the Appellant stated that in the call the individual was angry and short tempered, demanding to know what was wrong with the structure, insisting that it was fine. The Appellant explained he would attempt to reinspect and issue a defect if necessary.

[31] The Appellant testified that later that afternoon, at 2:30 p.m., on April 14, 2021, he received a call from an individual who identified himself only by a first name and claimed to be the owner of the land on which the two businesses operated (hereinafter the “caller”). As recounted in the email on April 15, 2021, the Appellant was met with a screaming voice from an individual who made threats that he would “deal with me personally, pound sense into me, teach me what I needed to know”.

[32] The Appellant stated in the email that he contacted the RCMP following the call from that individual and went to the Lloydminster detachment to register a statement. He stated that he asked the constable what he could have done differently, with the constable recommending that he should have disengaged after one minute of abuse. The Appellant stated in the email that he thanked the constable for advice but explained that he was groomed in his profession to educate facility owners even when they are being abusive.

[33] The Appellant made a recording of the phone call. The audio recording and a transcript of it were entered as exhibits. The call lasts for just over 14 minutes from the point the Appellant started the recording after a brief delay which he indicates was while he was getting the recorder operational. Near the beginning of the call, the caller stated “I tell you what, I’ll meet you out in the yard there and you’ll get an old fashioned lickin”. This was followed by other statements as the call progressed such as throwing the Appellant off the property if he stepped on it again without an admissible slip.

[34] When asked in examination-in-chief what informed his approach in dealing with the caller, the Appellant stated that he kept trying to “ride the bull down” (an approach encouraged by a previous supervisor at SaskPower) and that it was his job to educate customers. Regarding his demeanor during the call, the Appellant stated that this was a function of wanting not to appear weak in the face of adversity, while inside feeling anxiety and discomfort.

[35] In cross-examination the Appellant agreed that keeping the caller on the phone gave opportunity for escalation. While suggesting that it also gave the caller a chance to defuse, the Appellant agreed that if he had to do it again, he would not allow the call to continue for 13 minutes after an initial threat. Clarifying what triggered the end of the call, the Appellant explained that when he found out the caller was “BS-ing” – which was when the caller’s effort to add another party to the call appeared to be fake – the Appellant cut the call. The Appellant also confirmed that he was not asked by TSASK to go back to the property after April 14, 2021.

[36] TSASK witnesses were also asked about the call. Just after his appointment to manager in April 2021, Mr. Pilon received phone calls from the caller and the Appellant. Using some expletive words, the caller said that TSASK needed to get the Appellant in line. Mr. Pilon testified that he ended that call right away. The Appellant in speaking with Mr. Pilon informed Mr. Pilon

that he had a nasty call with the caller which the Appellant had recorded. Mr. Pilon at some point listened to the recording. He testified in chief that what struck him is how long it went on. He noted as well laughter on the part of the Appellant. He was informed by the Appellant that it was nervous laughter, but Mr. Pilon thought it might not have been heard in that way. Mr. Pilon testified that he indicated to the Appellant that it was up to the Appellant if he wanted to report the call to the police, adding in cross-examination that he had only been manager for three weeks but that that is how it had always been done and what he had been taught. In Mr. Pilon's assessment, the Appellant in the call should have asked the caller to calm down and then, if the caller did not, hung up and ended the call. He said there is no expectation for an inspector to stay engaged in those circumstances. Mr. Pilon indicated that the Appellant should have known this from training sessions (although agreeing in cross-examination that he could not confirm specifically what the Appellant was trained in) and also from the two times per year get-togethers where as a division they talk about different situations. Broadly similar views about the recording were expressed by Messrs. Anderson and Mann.

[37] The April 15, 2021 email from the Appellant to Messrs. Anderson and Pilon was determined by the OHS Officers to be a complaint of harassment. TSASK at the hearing did not disagree that harassment can extend to action not only by an employee but also a customer.

[38] On May 12, 2021 the Appellant was asked by the RCMP constable where he would like to go in relation to the situation with the caller. The Appellant in turn emailed Mr. Anderson on May 19, 2021, with copies to Mr. Pilon, Allan Ohrt (Manager, Electrical Inspections South) and a union representative, asking if it is the department's or TSASK's intention to press charges. The Appellant states that he received no response to that question. By email on July 7, 2021 to the RCMP constable, copied to Messrs. Pilon, Ohrt and Anderson, the Appellant asked the RCMP to proceed with charges stating that "After much consideration and consultation with a psychologist, I've decided regarding these events and threats".

[39] The Appellant testified that he reported the matter to OHS by formal complaint on August 12, 2021 and became aware that OHS investigated the matter including by meeting with Mr. Pilon. It was put to the Appellant in cross-examination that there were no reprisals against him by TSASK after he made the complaint in August 2021. The Appellant responded that he could not recall (then revised his answer to state that the employer did so by the way they treated him which was causing trauma).

Mentorship and Period of Leave

[40] By letter dated August 17, 2021 to the Appellant, in follow up to a meeting between Mr. Pilon and the Appellant, Mr. Pilon wrote as follows regarding the April 14, 2021 client interaction, giving direction on how to handle instances of that nature in the future, and advising as to an intended mentorship for two months:

As per our discussion and follow-up meeting from your client interaction April 14, 2021, this letter is to clarify our expectations should you be faced with a similar instance in the future. We remain committed to ensuring our employees are provided with a safe and respectful workplace.

When a client infringes on this expectation that we have for our employees, the interaction needs to be handled using a different channel or method. Therefore, in this instance, please disengage and remove yourself from the situation or disconnect from the call. Contact me immediately, or alternatively the Chief, Electrical Inspections or the Human Resources Manager immediately, in order to explain the events leading to your removal from the circumstance.

One last point is that you must cease the practice of recording any phone calls without the consent of the second party. Such practices are unacceptable and not in keeping with our commitment to personal privacy, be it client or colleague.

In the interim, I will be providing you with a mentor and will follow up with you for the next two months on a regular basis to discuss any challenges that may arise, as well as to ensure this approach is working for you. I trust that this will help you in your dealings with customers and provide a safe method for you to proceed with accomplishing your tasks in your districts.

[41] At the time of the letter, four months after the incident, the Appellant was still struggling a little in Mr. Pilon's view. Mr. Pilon had already spoken to Donald Craig (as noted above, in-scope supervisor in Saskatoon) about taking on the role of mentor and Mr. Craig agreed. Mr. Pilon testified that mentoring is not something the electrical division had done to any degree, but in this case he felt that Mr. Craig's experience would help provide the Appellant with some tools he might be missing. The mentorship was to last two months as noted in the letter, but Mr. Pilon anticipated that the connection might be relied on by the Appellant after that.

[42] The Appellant testified that he was fine working for a time after the April 14, 2021 incident, but after getting no feedback from the union hall and a weak response from management, he needed time off and instituted a WCB claim on his own initiative. As a result of the WCB claim and, in addition, an approved claim for short-term disability benefits through insurer, Sun Life, the Appellant was off work on approved leave from late August 2021 to November 15, 2021.

[43] The Appellant referred in his evidence to a WCB form of "Worker's Initial Report of Injury" that he completed on July 22, 2021 which describes the injury as psychological injury. He also referred to a WCB form of "Physician's Initial Report" dated August 3, 2021 which contains a diagnosis of "acute stress disorder" and a comment about awaiting psychiatric review.

[44] In relation to the Appellant's subsequent coverage for disability benefits through Sun Life, Mr. Mann in cross-examination was directed to an "Attending Physician's Statement – Disability Claim" dated October 13, 2021. It contains a diagnosis of "Primary: Acute stress reaction" and "Secondary: Anxiety". It describes the treatment as consisting of a particular medication and psychiatric review; the symptoms as "Anxiety, PTSD, Trouble focusing"; the restrictions and limitations as "currently not fit for work – Review 31 Oct 2021"; and the prognosis as "good". Mr. Mann acknowledged that the document refers to the Appellant as having PTSD and anxiety at the time. He added that he was more focused on getting the coverage in place than on the detail of the diagnosis.

[45] The approved leave from late August 2021 to November 15, 2021 interrupted the Appellant's mentorship after two weeks. Mr. Craig testified that the mentorship had been for three workdays in the first week, excluding Monday for travel by the Appellant with Friday as a day off, and only two days in the second week for some reason. Mr. Craig testified that in the following

week, which had not been planned for mentoring in any event, he received a call from Mr. Mann who asked if the Appellant was ready to go back to work and who did not seem really happy with Mr. Craig's response that Mr. Craig had not had enough time with the Appellant. Mr. Craig testified that, in the call, Mr. Mann was interested in how the Appellant had interacted with customers.

Return to Work Plans – Mid-November through May, 2022

[46] The Appellant returned to work on November 15, 2021 under a "gradual return to work plan" through Sun Life which was to run with modified hours (three and then four-days per week) until return to work at full time hours on January 3, 2022.

[47] Upon his return in mid-November 2021, the Appellant was assigned to "plans review". Plans review is a role performed by an inspector which involves the review of plans, drawings and applicable Code provisions to assist a field inspector who will be attending at the site and to provide advance information to the parties. The Appellant continued doing plans review after January 3, 2022. Mr. Pilon testified that this came to his attention at the beginning of February. Mr. Pilon stated that he was away for all of January and part of February conducting inspections at mine locations throughout the province.

[48] By email on February 2, 2022, Mr. Pilon advised the Appellant to finish up on any plans and then start working back out in his district which Mr. Pilon said should meet the requirements of a full return to work.

[49] This was followed up with a meeting on February 24, 2022 and a letter from Mr. Pilon on that date confirming a return to full time field inspections for the Appellant effective March 1, 2022, with the ongoing mentorship with Don Craig to continue into the near future. The letter also set out return to work expectations. Mr. Pilon testified that the letter was not intended to be disciplinary. He testified that he and the Appellant had had a lot of discussion, and that the Appellant asked the information to be put in writing to assist him.

[50] In mid-March 2022, the Appellant required a further medical leave. Mr. Murray was involved at this point as return-to-work coordinator for the IBEW. He had been contacted by the union in early February 2022 in relation to the Appellant's return to work. He referred in his testimony to the Appellant having suffered a relapse. On March 17, 2022 Mr. Murray emailed Mr. Mann at TSASK and Colin Popoff at the IBEW regarding the establishment of a new RTW:

I would like to set up a meeting to discuss a RTW plan for [the Appellant's] return to work date Mar. 28th from his current leave. Due to unforeseen circumstances during [the Appellant's] first RTW plan, it has been established, that the plan did not have the required steps to give him a chance to be successful to return to the Electrical Inspector role. Due to these missed steps [the Appellant] suffered a relapse, therefore we need to make sure this does not happen again.

Would it be possible to schedule time next Wednesday, Mar. 23rd, and have the Sunlife rep, Dave Pilon and [the Appellant's] therapist attend. I believe they play a large role in this process. Please advise ASAP if we can make this work. I believe delaying the plan development will only delay [the Appellant's] return to full duties for the Electrical Inspector. I have requested Colin Popoff to attend this meeting, to keep the business office informed.

[51] As a result of the meeting among the above parties, a five-week return-to-work plan was established.

[52] The appeal file relating to this period contains various Sun Life material from March 2022 provided by the Appellant to OHS. Included is an “Attending Physician’s Statement of Disability Claim” dated March 18, 2022. Mr. Mann in cross-examination indicated he believes he received the document. It contains a diagnosis of “Primary: Anxiety” and “Secondary: PTSD”; describes the treatment as psychologist counselling and psychiatric review, and the symptoms as stress and anxiety; and provides the name of the relevant specialist with date of visit October 12, 2021. It refers to the need for “gradual return/mentoring” and gives a prognosis of “good”.

[53] In the first part of May 2022, TSASK informed inspectors that it would be holding a staff conference on May 17, 2022 in Elk Ridge (Waskesiu). Mr. Mann testified that these events take place a couple times per year on workdays with attendance being mandatory. He testified that he was surprised and frustrated upon learning that the Appellant did not want to participate in person with colleagues as it was an opportunity for the Appellant to brought up to speed on issues and reconnect with his peers.

[54] It was arranged for the Appellant to attend remotely, however. In that regard, the Appellant through Mr. Murray delivered medical note from a physician dated May 12, 2022 on the letterhead of a medical clinic stating:

To whom it may concern,

The above mentioned individual is recovering very well from his work related illness. He is currently on transitional return to work duties. It is expected that he will return to full duties in the near future. He has insight into situations that are potential triggers and can cause a recurrence of his illness. He is also aware of remedial approaches to mitigate potential situations.

It is advisable that he continues to avoid high stress environments including large gatherings where there is potential for heated discussions and conflict.

It is also advisable that he proceed on his planned holiday which will benefit is ongoing wellness and assist in his convalescence.

Although the note contained no information regarding the nature of the illness, it was attached to an email from Mr. Murray dated May 12, 2023 stating that the note “elucidates the necessary awareness of recovery from PTSD and anxiety”.

[55] The letter from the medical clinic was accepted by TSASK as the basis for the Appellant to attend the meeting remotely. Mr. Mann did not think that the meeting could be described as an environment with “potential for heated discussion and conflict” but testified that rest of the letter supported the request.

[56] In a string of emails with Mr. Murray on May 12 and 13, 2022, Mr. Mann referred to the pursuit of a “credible medical assessment”. In cross-examination, Mr. Mann indicated that this may have been due to oversight on his part if the medical clinic letter was not in hand at the time (but one would think, given the absence of information in the letter itself regarding the nature of the illness, that his oversight would relate more to the previous Sun Life material). Mr. Mann also

stated in the emails, “I am no longer convinced [the Appellant] has the skills or abilities we are looking for”. In this regard, he testified in chief and cross-examination that he was getting frustrated with the Appellant and the missed opportunity to participate; that there are technical and social sides to the role and, more than just technical expertise, interaction with others is critical in using influence to get compliance; and that he was concerned that the Appellant’s medical condition was affecting his ability to apply skills to the job.

[57] The return-to-work plan was in effect until reaching a conclusion on May 27, 2022. By email on May 27, 2022 from Mr. Murray to Messrs. Mann and Pilon at TSASK, to Mr. Poppoff at IBEW, and to a Sun Life representative, Mr. Murray advised as follows:

As set out in our April 20th meeting, [the Appellant’s] 5 week RTW plan has come to the scheduled end date. Feedback that I received through the process is that [the Appellant] has demonstrated he is capable of performing in field inspections. Interactions with Permit Holders and associated contacts were effective with positive outcomes. From the feedback, my opinion is that [the Appellant’s] RTW is complete. [The Appellant] has submitted medical documentation that he is cleared to return to full duties covering medical clearance. Feedback from TSASK is required for this process to move forward and I was hoping to have input so expectations/plans are in place for [the Appellant] before he starts his vacation.

July 4, 2022 Meeting

[58] The Appellant had made arrangements to be away on vacation for the month of June 2022. Prior to his departure, on May 27, 2022, the Appellant was in receipt of an email from Allan Ohrt, Manager, Electrical Inspections South. (Mr. Pilon at this point was on an extended vacation that he was required to take in order to exhaust accumulated credits.) Mr. Ohrt in the email asked the Appellant to come into the office in Saskatoon on Monday, July 4 to go through expectations from management and HR of TSASK and be provided with information to ensure he clearly understands the requirements of the role of an electrical inspector with TSASK. Mr. Murray testified that he had asked that such a meeting not take place until after the Appellant had been back to work for a week, which he thought was the understanding, and was critical in his evidence that TSASK proceeded as and when it did rather than waiting for the Appellant’s return to set up the meeting.

[59] At the meeting on July 4, 2022, the TSASK attendees (Messrs. Mann and Ohrt) were surprised find union representative, William Campbell, in attendance, as it was intended in their view to be non-disciplinary. Mr. Campbell was asked to step out until a discussion with the Appellant on work expectations was complete. After a break at one point for separate discussion between the Appellant and Mr. Campbell, Mr. Campbell joined the meeting for a final segment, which was followed by a further conversation between the Appellant and Mr. Campbell.

[60] As shown by the transcript of the audio recording, the meeting included discussion concerning the organization’s focus on service to clients, the role of an electrical inspector, and expectations for the job. There was also discussion on when an inspector needs to withdraw from a situation as with a client who is unwilling to cooperate and in particular for the inspector to remove themselves and inform a manager or supervisor if a party becomes aggressive or threatening.

[61] Following the July 4, 2022 meeting, the Appellant resumed full time regular duties as an electrical inspector.

Client Interactions – August and September, 2022

[62] There was evidence at the hearing concerning four client interactions in the August-September, 2022 time frame.

[63] With respect to the first of those interactions:

- On August 4, 2022 the Appellant emailed Kevin Blanchard (the Appellant’s in-scope supervisor based in North Battleford) and Mr. Pilon, copying Blaine Ganchar (Electrical Inspector, Compliance North), with respect to a call the Appellant received from employees of [Contractor 1] concerning a defect the Appellant had issued requiring the owner of a home to hire contractor to perform electrical work associated with a furnace change out. The Appellant reported in the email that he explained to the employees that he had spoken with bosses of [Contractor 1] at least three times since 2014 and asked them to stop performing electrical work, and further:

I explained I am done talking. Every owner that has unreported work by [Contractor 1] will receive an unreported notice and will have to hire another contractor and pay them to fix the issues.

Mr. Ganchar commented that, according to what the Appellant had written, the contractor was a good candidate for a discipline notice as it seems he is a repeat offender.

- On September 12, 2022 the Appellant sent a photo by email to Messrs. Ganchar, Blanchard and Pilon, commenting “This is what I’ve seen parked behind my vehicles since August 4, 2022, the day I had to speak with [Contractor 1] about performing electrical work, which they don’t have a licence for”. The photo shows a truck with the logo of [Contractor 1] parked on the street behind the Appellant’s work and personal vehicles.
- The Appellant followed up on September 21, 2022 by submitting a formal complaint in an email to the same individuals, stating:

To help clarify the situation, I receive the actions of this contractor as harassment. This is a formal complaint.

Due to the proximity to which they have parked their vehicle, since I notified them to stop performing electrical work on August 4, they have impeded my ability to extract either vehicle I drive on more than one occasion. This has led me to increase distances between my work vehicle and my personal vehicle so I can extract the vehicles safely, without incident. The street is seldom full of parked vehicles. Prior to August 4, I have never had to deal with this behaviour.

- Mr. Pilon responded on September 23, 2022 with an email stating in part “Contractors may have staff that live all over the city and where they choose to park is up to them”.

[64] Mr. Pilon testified that he reviewed the complaint and related photos and was of the view that it was a matter of one vehicle parked behind another on a public street leaving sufficient access for the first vehicle to get out and that he would be hard pressed to direct [Contractor 1] not to park there. He did however forward the information to Mr. Mann.

[65] Mr. Mann stated in his evidence, “we can’t have intimidation of an inspector” and that there was an avenue that could potentially be pursued through a working relationship with a particular contractors association. However, there was no proof that the Appellant’s vehicle had been impeded. The [Contractor 1] vehicle appeared to be parked some distance away and would not have interfered with the Appellant’s ability to leave in his vehicle. TSASK thus decided not to pursue any conversation with a contractors association.

[66] Mr. Mann agreed in cross-examination that the Appellant, by reporting to his supervisors by email on August 4, 2022 regarding [Contractor 1], complied with the TSASK direction to the Appellant in the July 4, 2022 meeting. He confirmed that there was no formal investigation report prepared in relation to the complaint. Mr. Mann noted that building at the location is a multi-family residential building. Mr. Mann was referred to an August 5, 2022 email from Mr. Pilon to the Appellant requesting clarification regarding medical appointments on July 25, 2022 and denied a suggestion put to him that the request came the day after the parking matter because TSASK was frustrated with the Appellant and wanted to get information to use against him.

[67] On August 9, 2022, the Appellant conducted an inspection at a motel in Lloydminster and during a perimeter walk discovered damaged pedestals in the parking lot that required repair. As outlined in an email the Appellant sent to Messrs. Blanchard and Pilon on that date, the Appellant spoke to the receptionist who in turn contacted the manager and put the manager on the phone with the Appellant.

[68] During the call, according to the email, the manager, who the Appellant sensed was going to become aggressive, said that she did not appreciate the Appellant’s condescending tone that she did not appreciate the Appellant’s aggressiveness. The Appellant states that he then asked the receptionist if he sounded aggressive or condescending in the call, to which the receptionist said no, and that her manager gets like that often.

[69] Asked in examination-in-chief at the hearing what was done by TSASK in response to comments made by the manager, the Appellant responded that he was not sure what happened, other than that it was assigned to someone else and, in his view, swept under the rug as there was no report back to him.

[70] During a discussion with Dave Pilon at a coffee shop on November 8, 2022, which was a day of work observation, the Appellant described an incident with a representative of [Contractor 2] on August 25, 2022 and was asked by Mr. Pilon to write an email about it.

[71] The email which is dated November 17, 2022 describes a situation in which the Appellant scheduled a “rough-in inspection” at a residence and asked a representative of [Contractor 2] to attend. The contractor rep agreed but questioned why it was necessary. The Appellant indicated that he could not share the information. During the inspection the Appellant advised that he would need the contractor to see the installation through and notify the Appellant for final inspection. The contractor rep indicated that he would speak with the homeowner after the Appellant left. The email continues:

After inspection the contractor rep was visibly agitated. As we left the residence the contractor began to get critical of inspections and why this was necessary, and critical towards me. He said they have 200 or so permits on the system and here I am watching his guys hook up receptacles. I indicated I had concerns about this installation and could not share information for the sake of privacy.

Contractor rep did not defuse his escalated composure, despite my attempts at reassuring him. After a minute or so of experiencing this, I got into work vehicle and departed.

I notified Kevin about the interaction and indicated it was unacceptable to have to take the abuse from the contractor. Kevin agreed.

[72] Mr. Pilon testified that there was really nothing to enforce conduct-wise against the contractor although TSASK wants there to be a good relationship. By email on November 30, 2022, the Appellant asked for an update. Mr. Pilon was unsure whether there was anything by way of response.

[73] The Appellant testified in cross-examination that his concern with the installation related to the possible use of people from outside Saskatchewan with no evidence of licensing in the province.

[74] On September 8, 2022 the Appellant attended an inspection with another representative of [Contractor 2] at an energy company facility. During the inspection, the Appellant identified certain workstations that were powered up with electrical connections without an approval label on the equipment. The Appellant explained that the label is required even if they are plug and play.

[75] The inspection in the building concluded in the electrical room, with no apparent issues there.

[76] The Appellant then asked the contractor rep about any involvement in maintenance work at the facility. In an email dated September 8, 2022 to Mr. Pilon, the Appellant described that exchange and what followed:

At this time, I asked the contractor if they are performing the maintenance work at the facility. [The contractor rep] replied that they are hired under a property management company by contract and will perform the maintenance. He said he was going to pull an annual permit. I informed him that annual permits are for facility owners to obtain when their electrical staff perform the maintenance. I added that contractors cannot obtain annual permits. He replied, “Well that’s bullshit”. I responded, “That is what everyone else has to do ... It is in the act and regs and

contractors have to obtain regular permits for their work.” He said, “Well, I’ll just talk to your management and get something done about that”. At this point I knew this person’s temper was flaring because he simply didn’t like what he was hearing.

[77] The email continues by noting that, “As we exited the building I asked him when I can expect to get proof on approvals of the equipment”. This led to a further exchange during which “He closed his eyes and I saw his jaw flex. He was infuriated”. The discussion as described in the email ended with the representative turning his back as he said “fine, I’ll get you whatever you need” while walking into the parking lot.

[78] What then transpired is described in the email as follows:

At that point I was concerned for my safety as he got into his truck. I calmly walked towards my work truck down a lane. I could hear him start his truck. I intuitively felt concerned for my safety, and lightly looked over my shoulder as I could hear him hit the accelerator in his vehicle. I immediately started moving closer to the parked vehicles along the lane. This gentleman had alternatives to exit the parking lot. Instead, he came down my lane too fast for parking lot travel, not to mention he was doing so at one of his customers facilities. I hugged close to the vehicles to give him a wide berth and I could see him fuming in the cab as he drove past me.

[79] In a concluding sentence, the Appellant described the email as a formal complaint: “I am giving this formal complaint to you and request that it be dealt with accordingly and satisfactorily”.

[80] In cross-examination as to the issue of the contractor performing maintenance work at the facility, the Appellant agreed that while annual permits are for facility owners to obtain when their electrical staff perform the maintenance, it is within his discretion to allow a monthly permit for maintenance work by a contractor; however, in this case, as stated later in the email, “I will not allow them to obtain monthly permits for maintenance work at this facility”. The Appellant added in the email, “what good does it do me to always be helpful to a contractor that constantly harasses me and derides both me and my duties”.

[81] In cross-examination respecting the parking lot exit, the Appellant agreed in cross-examination that all of that company’s sites are regulated and that gunning a car in a parking lot would be a breach of their safety regulations. As to the events in the building, the Appellant testified that there was some confusion regarding the workstations, with the Appellant asking simple questions and the contractor rep being confrontational.

[82] Mr. Pilon also gave evidence regarding the situation. He testified in examination-in-chief that he spoke with Mr. Blanchard and the Appellant about the matter, and eventually to the contractor rep who stated in the conversation that you do not speed in that lot and that doing so could result in the loss of contractor work at the facility. The contractor rep did allow that he “probably got excited”. Mr. Pilon viewed the situation as one where the Appellant stayed aware of his surroundings and followed safe practices. To Mr. Pilon’s knowledge, this was the first time any difficulty had been expressed with the contractor rep.

[83] In cross-examination Mr. Pilon reiterated that, in his view, it was a situation of someone who saw a vehicle coming and kept himself safe, and that while it was a report by the Appellant of something that concerned the Appellant, “to be honest, I took it with a grain of salt”. Asked

whether the Appellant's psychological issues affected how he responded to the Appellant's email, Mr. Pilon responded "no, he's back to work".

[84] On September 13, 2022, Mr. Pilon emailed the Appellant and Mr. Blanchard, copying Messrs. Anderson and Mann, stating:

Kevin and I have spoken regarding this interaction with the contractor. We see nothing out of the ordinary in this inspection interaction. The contractor has responded with the required documentation and is moving forward on the requested changes.

While you are correct that a contractor cannot pull an annual permit as you stated, it is past and present practice for contractors to pull monthly permits on facilities they are performing maintenance at.

Situational awareness is also key to a safe interaction which you appear to have.

Please stay focused on the task at hand which is inspecting the installation of the electrical equipment and any electrical hazards to people or property.

[85] The Appellant acknowledged in cross-examination that within two months after he was back at work following the July 4, 2022 meeting, he was involved in four reportable exchanges with four individuals. As for why this kept happening after mentorship and seven years on the job and being told to deescalate, he stated that he now reports these situations and that all that changed is management getting more reports. The Appellant acknowledged that he had been counselled about customer interactions but stated that the employer was not effective in counselling and did not understand PTSD. Asked if it is his position is that management is at fault for interactions that keep escalating, he responded that it is the fault of people who cannot control themselves and that it was a case of just a few guys making his life miserable.

[86] Mr. Anderson in cross-examination testified generally that it is not regular for inspections to lead to confrontation; that he becomes aware of such a situation when a manager brings it to his attention; and that it is odd for him not to become aware. Mr. Anderson agreed that from early 2021 (when TSASK became employer of electrical inspectors) to early 2023, an inspector was expected to report to a manager if a customer became aggressive or violent. Mr. Anderson also agreed with a suggestion that the Electrical Inspection Act gives TSASK authority to proceed against obstructive or verbally abusive customers.²

Contractor Complaint – October 19, 2022 Inspection

[87] On October 24, 2022 Mr. Pilon received a complaint by email from [Contractor 3] concerning the Appellant's conduct during an inspection of an installation on October 19, 2022. The email stated:

As per our conversation, I had to end my phone call with [the Appellant] early, and when I called back, he did not answer.

² This possibly was in reference to section 29(1)(c) of the Act which makes it an offence punishable on summary conviction for a person to obstruct or hinder an inspector in the performance of an inspector's duties pursuant to the Act or regulations.

So I sent him the text messages arguing my case about the code rules he had referenced before our call ended.

He called me back: we both said hi, and continue the discussion in a civil manner, until he'd had enough, and then he said "I don't have time to explain how the fucking code book and fucking plans review work, you either fix what I've asked or I will defect you and you will have to fucking fix it anyway!" to which I replied "Ok, but if you send me a defect, you have to supply a code rule to go with it, right?" he said, " I will", I said, "What rule then?" he restated his argument and I restated mine, and then he said " Drive a fucking spike through that cable and see what happens! It's my job to make sure your shitty NMD is protected! Fix the issues or I will defect you!"

End of conversation. The next morning he defected me anyways.

This isn't the first time he has spoken to me like this, but it is the first time it has been directed at me. It is usually directed at my customers or contractors in general. Either way it is very unprofessional and most of the time makes me uncomfortable. Like in the past when he said "Now that I am with TSASK instead of Saskpower, I have way more power, if I catch somebody doing something wrong I can go balls deep on those mother fuckers!"

"Thats very graphic dude." Again making things very uncomfortable. I have also spoken to many of my colleagues in the area who have had similar experiences.

If can think of anything else I will let you know. Let me know if you need anything else as well. Thanks for your time.

[88] In a meeting on October 25, 2022 involving Mr. Mann, Mr. Pilon, the Appellant, and union representative Mr. Popoff, the matter of interacting with contractors was discussed in general terms, and more specifically the interaction in question including the use of profanity.

[89] On October 31, 2022, a disciplinary letter of warning was issued by Mr. Pilon to the Appellant stating as follows:

This is to confirm our discussion of October 25, 2022 concerning your interactions with a client on October 19, 2022 at 4:44pm. We discussed the challenges of dealing with a difficult customer and asserted the requirement that at no point is it acceptable to use profanity or engage in unprofessional conduct. The fact that you did not seek additional assistance from a colleague, your supervisor or your manager is also contradictory to what was discussed with you on July 4, 2022 when we covered workplace expectations.

As reiterated at the July 4th meeting, you are to remove yourself from client interactions that are becoming heated, or the conversations are a repeat of previous ones where the client is unwilling or unable to comply with your requirements. In these instances, call your colleague in Lloydminster or contact either your in-scope supervisor or your manager.

In order to impress upon you the seriousness with which the employer views this matter, you are hereby warned that further conduct like this, or of a similar nature will not be tolerated. This letter will be placed on your employee file in Human Resources. Additional instances like this will be subject to further disciplinary letter up to and including dismissal.

[90] In commenting on the complaint at the adjudication hearing (it was not provided to him on October 25, 2022), the Appellant stated that some words were taken out of context and twisted but acknowledged the main thrust and stated that he should have withdrawn from the interaction but blew up.

[91] Mr. Pilon testified that in a subsequent discussion with the Appellant on November 8, 2022 they concluded that the installation actually did meet Code and that Mr. Pilon suggested to the Appellant that he call the contractor representative informing of this and apologizing for the interaction.

Additional Harassment and Other Complaints by the Appellant

[92] Having submitted three previous harassment complaints (on April 15, 2021, September 8, 2022 and September 21, 2022), the Appellant on December 5, 2022 filed an omnibus harassment complaint again described as a formal complaint.

[93] The December 5, 2022 omnibus complaint alleges lack of follow up on the September 8, 2022 and September 21, 2022 complaints. It also adds three new matters of complaint, being with respect to (i) meeting with management on July 4, 2022, (ii) district restructuring, and (iii) interaction with a contractor representative on August 25, 2022.

[94] The Appellant was in contact with OHS concerning the omnibus complaint (and generally appears to have kept OHS apprised of all harassment complaints) and received an email from OHS on January 5, 2023 as follows:

We received a letter from your employer on Dec 22, 2022 stating they addressed your concern when it was raised and conducted an investigation, asking the customer to direct future contacts to the out of scope manager to avoid any further occurrences of that nature. Several other details were stated; however, we have requested for further documentation from your employer.

[95] On January 21, 2023 the Appellant filed an additional formal harassment complaint, this being in regard to the manner in which Mr. Pilon responded to a question asked by the Appellant during a meeting of the Northern Inspection Division on January 4, 2023 on the Teams application.

[96] Skipping ahead in the chronology, there was one further complaint by the Appellant alleging harassment. On February 14, 2023, the Appellant filed a formal complaint of harassment against TSASK Management and HR and Mr. Mann concerning the scheduling of a February 16, 2023 meeting (discussed below).

[97] The materials show that the Appellant also initiated a claim with the Saskatchewan Human Rights Commission regarding TSASK. This is mentioned in a January 25, 2023 email from the Appellant to OHS.

[98] In addition, I was advised that the IBEW on behalf of the Appellant filed a grievance under the applicable collective agreement against the termination of the Appellant's employment which has been scheduled for arbitration from June 23 to 26, 2025.

Homeowner Complaint – January 26 and 27, 2023 Inspection

[99] On January 26, 2023 Mr. Pilon received an email from the manager of gas Pat Nast, Manager, Gas Inspections North, relaying compliance concerns with respect to the electrical connection to a new furnace installation at an address in Lloydminster (residence of the “homeowner”). Mr. Pilon forwarded this to the Appellant by email on the same day asking the Appellant to have a look and gather all relevant information. The electrical inspection by the Appellant took place on January 26 and 27, 2023 as discussed below.

[100] On February 2, 2023, Mr. Anderson received a phone call from a representative of [Contractor 4] concerning the inspection, which was followed by an email from the contractor representative relaying concerns that had been expressed by the homeowner and adding that there had been a similar experience with the Appellant in relation to the representative’s own home.

[101] Mr. Anderson then spoke with the homeowner over the telephone. This was followed by an email from the homeowner to Mr. Anderson dated February 7, 2023 containing a written complaint by the homeowner about the Appellant. Mr. Anderson testified that he also received video footage from the homeowner which he reviewed.

[102] The homeowner’s complaint by email states “My experience with [the Appellant] is as follows” (the description that follows is contained in a single paragraph which I will break into three sections for convenience of reference):

A TSASK electrical inspector, unexpectedly knocked on my door at 10:17am on Thursday Jan 26 while I was in bed trying to fall asleep after working a 12-hour shift on top of ... driving. I answered the door to [the Appellant] who proceeded to tell me he was an electrical inspector and asked if I had a furnace recently installed. I responded with yes but now's not a good time as I'm working nights and this is like someone knocking on my door unexpectedly late at night to me, I then explained how the gas inspector had been there a day prior but he had called first and made a time, to which [the Appellant] said "I have several thousand permits to inspect we don't call first we just show up," he actually did call first I didn't know at the time because I don't answer calls from people I don't know when I'm working nights and going to bed. He then proceeded to ask when would work, I replied 3:30 pm any day for the next week. He said he didn't work that late to which I replied "well then I guess come back in a week when I'm on days off" to which he responded "is that right" and then threatened me with a notice of entry from his office and walked away. I have the interaction at the door on camera. I felt intimidated by [the Appellant]. When he threatened the notice of entry, I thought I should go out and get his card because the whole thing seemed off to me.

I went out to his truck and knocked on his window at the same time he was calling me from his truck. I asked for his card, I then proceeded to try and deescalate and explain that I'm not trying to have conflict or refuse entry I'm merely stating that now is not a good time. And also, that I'm tired I haven't slept all night because I was at work and wasn't prepared to deal with anyone at my door like that, to which he snappily responded he hadn't slept all night either and was very confrontational throughout the conversation. He asked me how old I was to which I responded ... and he then stated he was ... my age for whatever reason. He accused me of lying saying I wasn't going to sleep. He went on to explain that I wasn't in any trouble but I had unauthorized electrical work done. I was confused and I responded that I hired a main contractor in town to do the work. I

did what any home owner would do and hired a professional to replace my furnace, and the gas inspector came and did his inspection etc. so how could it be unauthorized? He went on to tell me that this is a common problem that "these guys" in town don't get the proper permits and now if something happens, I won't have house insurance etc. and it's not me that's in trouble it's them. I was upset and crying at this point and when I said to him that my house was broken into a couple months ago, 3 days prior to my furnace failing actually, and that the way he knocked on my door startled me and my dog and made me nervous about who was at the door. I'm tired and working nights and once again I'm not trying to argue just simply it's not a good time. He started to back off once I started crying and apologized and told me he understands and that he would work with me and would let me determine a time that worked. He really wanted to come back later that same day but I told him 3pm the following day as in my mind I know that after this confrontation there's no way I'm going to get proper sleep for work much less for him to come back the same day.

When he came the following day, I let him in and he started with explaining to me why they inspect and some other formality stuff. In between the 2 visits from [the Appellant], I went back and watched my camera footage because I thought based on the level of confrontation from [the Appellant] that I must have been rude to him or something for him to respond in the manner he did but I wasn't. I had mentioned that I wasn't rude to him the day before to which he snapped back "I thought we were not going to talk about yesterday" which was never actually said. I said "I don't remember that but fine" and I just shut up because he was not willing to hear anything from me but straight compliance. Keep in mind he is standing in my home and intimidating me every time I question him on anything. I told him I had contacted [Contractor 4] and they told me they didn't require an electrical permit to which [the Appellant] says they know they need one and that they've been issued warnings about this in the past and that they are lying to me. At this point I was convinced by him that maybe they were doing something wrong. He told me that they would be notified about all of this stuff. He gave me advice of how to go about not having to pay more and telling [Contractor 4] that they should know what was required for permits and I should not be on the hook for the cost. He shared with me that it's been typically playing out in the way that the contractor has been eating the costs to make it right and to not have a bad image. I let him do his inspection, actually even helped him with tools to get the furnace cover off etc. It felt as though most of the interaction was a dance between escalation and de-escalation. I felt like I was walking on eggshells with him in my home. While he was there he asked about a furnace switch and I said hadn't seen a light switch kind of one but the breaker box with the furnace breaker is in a separate room that you don't have to go past the furnace to get to it. He stated something along the lines of sometimes they consider that good enough but he likes to see them on the direct path from the exit to the house and the furnace and he was going to put that in the list to fix. He explained to me a couple things about permits and how I could pull a home owners permit myself and use ... a journeyman electrician or use an electrical contractor to do future electrical work and I could always call him for advice etc. He asked for copies of my quotes and invoices from [Contractor 4]. He told me that when he sends me the defects etc that there will be some stuff on there about threats of cutting off my power and that stuff is always on there but I needn't worry because my file is on his desk. As he was about to leave, I felt as though he was less confrontational at that point I asked if I could give him some feedback, he said yes. I then stated that he has a very authoritative demeanour that is intimidating. I stated that I understand that he would maybe have to have that approach at times with his job but as for these guys not getting proper permits I as the home owner don't know anything about that. I also don't know how to install a furnace and that's why I hired professionals and so I have no idea when he comes to the door what it's about outside of, I assumed it was the

same kind of routine thing like the gas inspector from the day before. I stated that I felt intimidated and threatened by him and that the last time someone knocked on my door like that ... I was also tired and I really just didn't feel comfortable about how the whole thing went down the day before. He apologized.

[103] The Appellant's evidence concerning the events in question was as follows. The Appellant testified in examination-in-chief that after receiving direction to handle the inspection, he phoned the residence and received no answer, so he decided to drive over. Upon arrival he knocked on the door, with no answer at first, then heard footsteps and a lady opened the door, with a weed smoke hitting his face. The Appellant testified that he then told the lady he was there to inspect the furnace. The lady was mad and swearing at him. The Appellant states that he tried to calm her down and tried to ask her for a time (for an appointment) but she was not working with him. He testified that they finally arranged a time for the next day.

[104] Continuing his testimony in chief, the Appellant stated that he was rattled by the homeowner's reaction and went out to his truck, was making notes, when the lady appeared and made a scene on the street crying. The Appellant stated that at some point after that, from the truck, he contacted his in-scope supervisor, Kevin Blanchard, who was not helpful, but did speak with Don Craig who told the Appellant that everything that happened was okay, and that the Appellant should go home and work there the rest of the day. Mr. Craig confirmed that call in his evidence at the hearing.³

[105] The Appellant testified that after the inspection the following day, the lady was fine, conveying that it was a routine inspection.

[106] In cross-examination, the Appellant was taken to the homeowner's complaint and agreed with much of the account as it relates to the interaction at the door (the first section of the complaint as I have separated the document above). The Appellant's points of disagreement or explanation concerning those facts included the following:

- the Appellant did not know that the night shift to which the homeowner referred was a 12-hour shift or if the homeowner in fact was in bed trying to fall asleep as stated in the first sentence;
- while the second sentence (beginning "I answered the door") is accurate as far as it goes, the Appellant offered his card which the homeowner refused to take at that point;
- the several lines from "I responded" down to "just show up" are accurate (as is the "he actually did call first");

³ Within the attachments to his complaint of discriminatory action, the Appellant provided an account indicating that at some point prior his discussion with Mr. Craig, he had contacted compliance officer, Blaine Ganchar. This was not flagged at the hearing and in any case would not be read as excluding a call to Mr. Blanchard as described by the Appellant.

- regarding the portion “He then proceeded to ask when would work, I replied 3:30 pm any day for the next week. He said he didn’t work that late”, the Appellant states that the homeowner did not suggest any day for the next week; and as to the 3:30 p.m. time, that he explained to the homeowner that he wraps up inspections by 3:30 p.m. and doesn’t schedule appointments after that;
- regarding the words “to which he responded ‘is that right’ and then threatened the notice of entry”, the Appellant testified that this was not a threat, but rather, in a situation where the homeowner was not helping schedule another time and being aggressive to him, it was to explain a next step procedure that is available if an appointment is difficult to schedule and to explain that that is his job.

[107] Regarding the encounter at the truck, the Appellant testified in cross-examination that he was startled to see the homeowner alongside. He testified that after some difficulty he rolled down the window and that the homeowner, as she slowly backed away, began complaining in very aggressive terms about him being on the phone in the truck and his having shown up at her house as he did. The Appellant testified that at that point the homeowner asked for and was given the Appellant’s card (agreeing that the complaint is accurate in stating “I asked for his card”). The Appellant testified that the homeowner then fell to her knees, crying and sobbing, which the Appellant in his evidence attributed to her “putting on an act”, but then said he was being too judgmental as it could have been a reaction to personal circumstances. He testified that after he was done calming her down, she was happy.

[108] Returning to the interaction at the door and questioned about the pronounced smell of marijuana, the Appellant stated that there were clouds rolling out the door, giving him an impression of someone having just exhaled, and that while the homeowner said she had been sleeping and maybe had gone to bed, “how long does smoke stay around”. He nevertheless maintained his denial of the homeowner’s statement that “He accused me of lying saying wasn’t going to sleep” (which the homeowner says occurred during the encounter at the truck). The Appellant testified that that did not happen.

[109] The Appellant agreed with the sentences (in the second section of the complaint as I have divided it) beginning “He went on the explain” all the way to an including the sentence beginning “I’m tired and working nights”. He disagreed however with the next sentence, “He started to back off once I started crying and apologized ...”, stating that there was no apology.

[110] Regarding the events of the following day, the Appellant stated that he did not snap back with the words “I thought we were not going to talk about yesterday”. Rather, he told the homeowner it was a new day with a new approach and explained the process (although the Appellant did indicate in his evidence that he did not want to discuss what had occurred). The Appellant recalls the homeowner stating that everything from the day before was recorded but says that she refused to record what was then happening. Generally, reading from the sentence beginning “I let him do his inspection, actually even helped him with his tools”, the Appellant stated that there are things twisted and misconstrued and that, while authoritative, he acts professionally and does not treat people in their homes in a revolting and disgusting manner as the

homeowner describes it. The Appellant said the homeowner makes it sound like a confrontation when it was pattern involving a quick flare up that would be gone right a way. The Appellant also denies having apologized, which the homeowner refers to again at the end of this portion of the complaint. It appears that at some point during the conversation on January 27th (although it could have been on January 26th) the homeowner recounted a difficult circumstance in which her door was knocked on hard like that, with the Appellant commenting in his evidence, “I do knock a bit harder”.

[111] Mr. Pilon in examination-in-chief was referred to the January 26, 2023 emails from Mr. Nast to Mr. Pilon, and from Mr. Pilon to the Appellant, and testified there was nothing out of the ordinary in that flow of communication. He testified that he received, through Mr. Anderson, a copy of the February 3, 2023 email from [Contractor 4] and subsequently the February 7, 2023 complaint submitted by the homeowner. He testified that Mr. Anderson did an investigation with the homeowner. Mr. Pilon further testified (including follow up in cross-examination) that he understood that Mr. Anderson had received camera footage showing the Appellant at the front door of the residence, which came to Mr. Pilon as an attachment to an email. The attachment he testified was displayed in tiny box from which it was hard to make out anything – he could not make out what was being shown and that it was hard to hear or understand what was being said – and that the attachment disappeared as though the system got rid of it.

[112] To digress briefly, the Appellant’s attendance at the homeowner’s residence would be classified as a “cold call” (although there was an attempt to call ahead). In that regard, as part of general testimony in chief, Mr. Pilon had stated that there are a lot of cold calls. An inspector will often run into “who are you and why are you here” but sometimes “who do you think you are – you have no right to be here”. If a customer refuses access, the inspector can issue a notice of entry, and the manager gets involved. Mr. Craig in his evidence testified that cold calls are one method by which an inspection occurs. He stated that in the case of a party continuing to avoid inspection, an inspector can send a notice of entry, and he gave an example from his experience of changing a customer’s attitude by advising that if not permitted access, he would issue a notice of entry.

[113] Mr. Anderson also gave evidence regarding the January 26-27, 2023 electrical inspection. In examination-in-chief, Mr. Anderson testified that he received a phone call from a manager of [Contractor 4] concerning the inspection, which was followed by the manager’s email of February 2, 2023; that he then spoke to the homeowner on the telephone, which was followed by the homeowner’s February 7, 2023 email complaint and video footage which Mr. Anderson reviewed. He testified that when he first read the complaint, it was quite extensive, although there could be another side to the story. As for what he learned from is conversation with the homeowner, Mr. Anderson commented that the Appellant was “a little too aggressive – triggered her to write the complaint” and that it was “significant enough to make me think, where are we going with all of this”. He testified that the written account from the homeowner lined up with what she had told him on the phone. He also stated that “this was the last straw – we had five or six complaints coming from different directions”.

[114] In cross-examination, Mr. Anderson testified that he viewed video footage (and listened to the audio) on his computer which footage he believes he obtained from the homeowner. He

testified that he no longer has the video; that he does not know what happened to it; and that on searching he has been unable to locate the video. Mr. Anderson testified that the video was of the inside of the house, panning what appeared to be a living room. At first Mr. Anderson was unable to say whether the footage related to the first day or the second day of the inspection, but upon further review agreed that, as the first visit involved interactions outside, the video must have been from the second day. Mr. Anderson testified generally that the words captured in the footage were fairly consistent with words provided in the email from the homeowner, but on being taken through the email indicated that consistency with the video starts with the sentence beginning “He asked for copies of my quotes” which is roughly 2/3 the way through the third section of the complaint as I have divided the document above.

[115] In reviewing the email complaint, Mr. Anderson testified that he could see how the interactions could put the homeowner in that state; that the Appellant wasn’t super-aggressive but a little aggressive in the conversation about cutting off power (coupled with a comment for the homeowner not to worry if there is something like that in a defect notice); and that in the conversations the Appellant used his authority on the aggressive side. As discussed further below, Mr. Anderson considered the incident in the context the prior warning and other customer relations issues.

February 16, 2023 Meeting

[116] On February 16, 2023 the employer met with the Appellant and union representatives. With regard to arrangements for that meeting, the following emails were exchanged, all on the afternoon of February 14, 2023:

- Mr. Pilon emailed the Appellant, copying Messrs. Anderson and Mann and two IBEW representatives, asking the Appellant to report to the Saskatoon office for a meeting at 2:30 p.m. on Thursday, February 16 and to adjust any appointments in order to be there at that time.
- The Appellant responded by stating that his EDO was the following day with appointments scheduled out of province; that he had appointments scheduled on Thursday, February 16 immediately after work; and that a “2:30 p.m. meeting is drastically alters my plans after work next Thursday. I cannot accommodate the meeting on this day.”
- Mr. Mann emailed “Not being available on a work day is unacceptable. I suggest we go to an on-line meeting where all parties can participate ...”
- The Appellant responded with an email claiming further harassment:

This is scheduling, and my time was already planned, and an EDO was moved to accommodate everything so I wouldn't have to take time off work.

Management created a meeting that plunked down right beside everything arranged.

And now you are saying what I've done is not acceptable?

I am working Thursday, to suggest am not available for work is incorrect. I am working Thursday.

I just cannot accommodate a meeting in Saskatoon at 2:30 if am to make all plans work thus far.

Your statement is unfair, unaccommodating, and further harassment. I have done everything I can to try to keep pace with all these changes you all keep throwing at me unfairly, despite my diagnosis of PTSD and anxiety. I am trying to accommodate everything, and you don't see that.

- By separate email to the group (but not part of the email string) the Appellant presented, as a stand-alone document, a “formal complaint of discrimination and harassment” regarding scheduling of the February 16, 2023 meeting.
- Within the email string, Mr. Mann emailed the Appellant, copying Mr. Pilon:

I suggest you make a time for a meeting to address your allegations of harassment! Not an option to opt out. Reschedule other appointments if you must but this matter is a priority and your lack of participation will be duly noted in our response to Labour Relations and Workplace Safety. You raised it and you have an obligation to participate. Proceed as you wish but [the email ends here]
- The Appellant’s next email which was to the whole group asked Mr. Mann, “Are you threatening me, Terry?” The Appellant noted that he had already accommodated his work schedule by moving his EDO and scheduling appointments to lie outside of work time, and he asked Mr. Mann to “Stop the games. You know I am trying to accommodate the meeting”.
- Mr. Mann repeated, by email to the Appellant copying Mr. Pilon, “Log into the Teams meeting at 1:30 p.m.” and added “No need to travel to Saskatoon but contact Dave if you need some help with assessing priorities for the day.”
- The Appellant then sent an email with specifics as to the work planned for Thursday (at a large facility) indicating that he could cancel it if Mr. Mann said so.
- Mr. Mann responded with an email to Mr. Pilon and the Appellant stating “Dave: this would be an operational decision that you will need to address between yourself and [the Appellant]. Let me know where you land and we will proceed accordingly.”
- Mr. Pilon emailed the Appellant and Mr. Mann stating that he would see if one of two other inspectors could keep the appointment.
- The Appellant emailed Messrs. Pilon and Mann advising Mr. Pilon that the other inspectors do not have any information respecting huge changeover that was occurring at the facility.
- The Appellant then emailed Messrs. Mann and Pilon stating that he was going to have to reschedule the inspection anyway, because the other two inspectors had no idea about the extent of what was occurring.
- The Appellant finally emailed Messrs. Mann and Pilon stating “You guys are screwing up all of my hard work. Thanks.”

[117] The meeting proceeded on February 16, 2023 as an on-line meeting involving Mr. Mann, the Appellant and two union representatives, as well as Mr. Pilon although Mr. Pilon did not speak. As appears from the transcript, Mr. Mann advised the meeting at the outset that TSASK had a complaint that it wanted to investigate further; that TSASK had a consent form it wanted to send to the Appellant; and that TSASK wanted to share the findings from the investigation of harassment complaints.

[118] On the first item, Mr. Mann said that a complaint was received on or around February 3 related to an interaction on Thursday, January 26 with a homeowner client who he named. The Appellant had not been shown a copy of the complaint. Asked to describe the interaction, the Appellant provided a barebones outline with limited detail. Mr. Mann then moved to the topic of forms of consent for the release of medical information, indicating that it had only been the Appellant who referred to PTSD. The Appellant suggested that the consent form was unnecessary as TSASK already had all the information.

[119] The meeting then adjourned, and the Appellant had a separate conversation with the two union representatives. Their guidance with respect to the customer complaint, basically, was for the Appellant to fully describe what happened.

[120] When the meeting reconvened, Mr. Mann asked if there was any additional explanation the Appellant wished to share about the customer interaction. The Appellant said he was going to tell everything. He proceeded to give a fairly detailed description of the interaction, which in the transcript spans some 11 or 12 pages.

[121] Regarding the medical consent forms, Mr. Mann explained that TSASK would need the information to consider the Appellant's request for accommodation. (As reflected in an email from the Appellant to OHS on February 17, 2023, the Appellant had requested TSASK to provide him with office space as accommodation for his medical issues, so that he would not have to work from home.)

[122] The discussion then proceeded to the outcome of three harassment complaints (district restructuring, the [Contractor 1] parking issue, and January 4, 2023 staff meeting on the Teams application) with Mr. Mann conveying that in each case there was no basis for a finding of harassment. An investigation into the complaint regarding the January 4, 2023 staff meeting and the complaint regarding district restructuring had been undertaken by an external investigator. In a report dated February 1, 2023, the investigator determined that neither complaint was substantiated. Mr. Mann reported verbally regarding the employer's review and determination regarding the [Contractor 1] parking issue. Mr. Mann also referred to an update in the harassment policy in relation to the notion of bad faith claims. Finally, the Appellant asked about the two harassment complaints against Mr. Mann and was told that a response would be forthcoming.

Employment Termination

[123] The ultimate decision maker on termination of employment was Mr. Anderson. Mr. Anderson testified that he discussed the January 26 and 27 inspection event with Mr. Pilon and Mr. Mann. The nature of their discussion, he testified, was that there were "a number of complaints

from a lot of people about [the Appellant's] nature" and that he was "off the rails – at what point do we say we are done here".

[124] Mr. Anderson continued by stating that there had been discussions with the Appellant to try to get him to deescalate, but there were a number of complaints in a short time; that TSASK had provided mentoring and other help, but "nothing is helping here"; and that it "seemed like we were spiralling in the wrong direction".

[125] As for who made the decision to terminate, Mr. Anderson stated that it was his authority in the end, although the communication could have come from Mr. Mann. Mr. Anderson testified that he was aware, at the time of the decision to terminate, that the Appellant had made safety-related and harassment complaints, and stated that those had nothing to do with the reasons to terminate.

[126] In cross-examination Mr. Anderson testified that the interaction with the homeowner was the straw that broke the camel's back. It was a collective decision. Mr. Anderson acknowledged that he had heard about harassment complaints by the Appellant against management but stated that was not his consideration. When asked if Mr. Mann stated that he took into account the harassment complaints, Mr. Anderson stated that he can't recall. Asked about awareness of PTSD and anxiety on the part of the Appellant, Mr. Anderson responded that the Appellant had returned to work and that Mr. Anderson left any medical considerations to Mr. Mann.

[127] Asked to identify the five or six complaints referred to in his evidence in chief, Mr. Anderson referred to the matters involving the motel, [Contractor 1], [Contractor 2] at the energy company facility, [Contractor 3], and the homeowner. He stated that these complaints were more than the employer would expect from an inspector who was back to work and who had been directed to deescalate. Asked specifically about the situation regarding [Contractor 1], Mr. Anderson agreed that that was not a complaint against the Appellant but was highly unusual – an escalation as a result of an escalation – that was not taken into account exactly but was part of the overall circumstances. The interaction with the representative of [Contractor 2] at the energy company facility was taken into account. Mr. Anderson stated that when deciding to terminate he did not consider PTSD and anxiety on the part of the Appellant and that there was no consideration of progressive discipline short of termination.

[128] Mr. Pilon testified that he was present at the February 16, 2023 meeting by video conference, and that he decided after the meeting, with the support of the Chief Electrical Inspector and HR, that "we had gone as far as we could" and that rather than improving, the Appellant's performance was going downhill. In Mr. Pilon's view, the Appellant had not been respectful but rather rude to the customer, and at the meeting was combative and not willing to respond until management stepped out and he conferred with his union representatives.

[129] In cross-examination Mr. Pilon testified that he concluded after the meeting that the homeowner's version was to be accepted over the Appellant's. It was suggested to Mr. Pilon that management took the homeowner's statement of events at face value and did not conduct any

credibility assessment with respect to her account. Mr. Pilon responded, “we listened to two stories, had a brief discussion, and decided what we decided”.

[130] Further in cross-examination, Mr. Pilon was asked if he had any concern based on the Appellant’s 11-page statement as contained in the transcript. He responded that after the negative interaction on the first day, the Appellant should have contacted the in-scope supervisor and considered a second inspector, adding that as far as he knew the Appellant had not contacted anyone (not being aware of the Appellant’s calls to Mr. Blanchard then Mr. Craig). Mr. Pilon did not mention any other concern in relation to the Appellant’s version. He also stated that if it happened as the Appellant explained, the homeowner would not have complained.

[131] Mr. Mann testified in examination-in-chief that the email from the homeowner and the preceding email from [Contractor 4] had been forwarded to him, and that he was surprised by the detail in the homeowner’s complaint and the short time that had elapsed since the Appellant’s written warning. He stated that an investigation was conducted leading to the meeting on February 16, 2023. Mr. Mann was shown a copy of the transcript of the meeting which he had not seen before. In his view, the Appellant’s account of the interaction showed a disconnect – he said it was a normal customer interaction and that he left the customer happy, when she was anything but happy in the end. Further, the Appellant said in the meeting that there was nothing to apologize for – there was no remorse on his part. Mr. Mann testified that there were no grounds for termination other than those stated in the letter of termination.

[132] In cross-examination Mr. Mann was directed specifically to the Appellant’s account as contained at pages 32 to 42 of the transcript of the February 16, 2023 meeting. He agreed that the Appellant had provided great detail, which he added was after the Appellant was prodded. Mr. Mann also agreed that the Appellant expressed empathy for the homeowner; and when it was suggested, “if we assume [the Appellant’s] version is true, then he did nothing wrong”, Mr. Mann paused and responded that the Appellant was empathetic (not taking exception to the suggestion and possibly signifying agreement). Asked if he played a role in weighing credibility and deciding who was more believable (as between the Appellant and the homeowner), Mr. Mann responded that the manager, the chief and himself talked about it and concluded that the Appellant was not credible. When questioned as to the basis for considering the Appellant to be less credible, Mr. Mann responded that the Appellant did not proceed as an experienced inspector should in connection with a customer who was a night shift worker. Mr. Mann denied that they made the decision to terminate before even meeting with the Appellant and said he would be surprised to hear that Mr. Anderson said that that was the case. (As a sidenote, Mr. Anderson at one point in cross-examination did make a comment about deciding to terminate before getting the Appellant’s version of events but it was unclear who he was referring to or exactly what he meant.) Asked whether they considered PTSD and anxiety, Mr. Mann responded that it was weighed, but that the Appellant had been cleared to return to full duties, adding in re-examination that there were no medical limitations on the Appellant’s ability to perform after the May 27, 2022 email regarding full return to work. He also stated that although they talked about a written warning, progressive

discipline was not considered given the escalation and a more serious incident in a short time frame.

[133] The letter of termination dated February 23, 2023 states:

Re: Termination With Cause

We have conducted a thorough assessment of our meeting with you on Thursday, February 16th regarding the most recent, detailed customer complaint submitted from [the homeowner]. After several attempts to have you provide your recollection of this specific encounter, you eventually provided us with some details that were contrary to the written complaint by [the homeowner]. You expressed no remorse during our meeting and suggested instead that you “left the customer happy”. Your explanation was evasive and lacked the credibility we would expect from an experienced Electrical Inspector.

Further to this, your conduct toward your manager and management leading up to the meeting was inappropriate and unacceptable. You repeatedly dismissed direction from your manager to attend the investigative meeting. Your tone towards the HR Manager during the same meeting was equally unprofessional and unacceptable.

We are not seeing any change in your behaviour since disciplinary action was taken against you in October 2022 in response to an earlier customer complaint of unprofessional conduct. Your repetition of this abusive misconduct within a brief period of time, and following earlier unequivocal notice to you that it was unacceptable, belies any purpose that might be served by further corrective action.

We have lost confidence that you have the ability to conduct yourself in a professional manner as an Electrical Inspector at TSASK; the need for a professional and customer-focused workforce was explained in detail to you on July 4, 2022. Your conduct is abusive, repeated, prejudicial to TSASK’s legitimate interests and inconsistent with your continued employment.

Accordingly, you are hereby terminated with cause from TSASK on Thursday, February 23, 2023.

We will need you to return all TSASK equipment (including phone, computer, iPad, vehicle) as well as access cards and key fobs.

We wish you well in your future endeavors.

Dave Pilon
Manager, Electrical Inspections – North

[134] The letter was delivered to the Appellant at a meeting on February 23, 2023.

V. STANDARD OF REVIEW

[135] Appeals of this nature have typically involved a type of *de novo* consideration that is described by the Labour Relations Board in *Nicholson v. Domsask Holdings Ltd.*, 2015 CanLII 43771 (SK LRB) as follows at para 29:

A *de novo* hearing, as the name suggests, requires that the person hearing the matter, must hear it afresh and consider only evidence presented to her at that hearing. In *Saskatoon Regional Health*

Authority and Johnson, the Court of Queen’s Bench concluded that a de novo hearing required that such a hearing is a fresh hearing, to be determined on the basis of the new record put before the arbitrator, which in this case is the Adjudicator. (emphasis added)

See also *Racic v. Moose Jaw Family Services Inc.*, 2015 CanLII 60822 (SK LRB) at para 21.

[136] Adjudicator Tegart in *Arch Transco Ltd. and Director of Occupational Health and Safety*, (Unreported), September 29, 2022, LRB File No. 262-18, stated as follows at para 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 investigation, the officer makes a decision to issue or not to 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 adverse parties. The hearing is based on the evidence introduced by the parties along with the material provided by the directors 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.

Similar comments appear in adjudicator decisions in *Taytopat v Saskatchewan Indian Gaming Authority Inc.* (unreported), September 16, 2015, LRB File No. 116-14, at paras 71 to 78 and *Hallbook Enterprises Ltd. v. Mullins*, (unreported), September 18, 2020, LRB File No. 051-19, at paras 13 to 17.

[137] In none of these decisions, however, is there a thorough analysis as to the type of review that should apply, based on recent case law, in an “appeal” of this nature.

[138] The decision of the Saskatchewan Court of Appeal in *Buchanan (Rural Municipality) and Veldman*, 2024 SKCA 111 (delivered after the present appeal was under way) concerned a Labour Relations Board decision in a case involving an appeal to an adjudicator from a notice of contravention in a discriminatory action matter under the present legislation.

[139] Caldwell J.A. (Kalmakoff J.A. and Kilback J.A. concurring) reached certain conclusions regarding the standard of review at each decision-making level, which Caldwell J.A. stated were for the purposes of the appeal before the Court and not an authoritative determination as the issue was raised but not argued in the appeal. In paragraph 11, subparagraph (b), the following appears:

Adjudicators conduct a *de novo* assessment of the issues raised in appeals from notices of contravention. This is because, *inter alia*, adjudicators may receive new evidence, hear argument, make findings of fact, draw conclusions based on the law and facts, and accordingly dismiss or allow the appeal, or vary the notice of contravention being appealed (*SEA*, ss. 4-4 to 4-7). The right to appeal under s. 3-53(1) is unrestricted, permitting an appellant to raise questions of law, fact and mixed fact and law related to a notice of contravention. Without limitation, the grounds of appeal could challenge an OHS officer’s finding that a provision of the *SEA* or *The Saskatchewan Employment (Labour Relations Board) Regulations*, S-15.1 Reg 1, had been contravened, the detail of the resultant actions required under s. 3-36(2), or both. As to the standards of review, adjudicators should not interfere with a notice of contravention unless the

appellant establishes that the decision is in error or that it has been overtaken by subsequent events. If an alleged error relates to the governing law, the standard of review is correctness. If an alleged error relates to the facts found by the OHS officer or that officer's application of the governing law to those facts, the standard of review would be palpable and overriding error (see *Vavilov* at para 37 *et seq.*). No standard of review would apply when, based on new evidence, the adjudicator is asked to determine whether a required action under a notice of contravention has been overtaken by subsequent events. In that circumstance, if the adjudicator is satisfied that the evidence before them raises the issue, they would decide it on a balance of probabilities based on the evidence (see *Yorkton (City) v Mi-Sask Industries Ltd.*, 2021 SKCA 43 at paras 29-34, [2021] 6 WWR 18).

[140] In the present case, I asked counsel for the parties to address the *Buchanan* decision in argument. Counsel for the Appellant adopted a broad interpretation of what for our purposes would qualify as new evidence, not subject to any standard of review. This included many areas in which, in the Appellant's contention, the evidence before the OHS Officers was inaccurate, misleading, false, or incomplete, and others in which the adjudicator was presented with additional evidence that was not before the OHS Officers. The overall result of the argument would be to leave little of consequence for review based on palpable and overriding error. Counsel for the Respondent noted that the *Buchanan* decision departed from the generally understood approach. He observed that the present appeal had not been dealt with as an appeal on the record. Counsel suggested that a palpable and overriding test could be applied to a finding based on material facts identical to those before the OHS Officers. But again, in the result, the *Buchanan* decision would not make a lot of difference for our appeal.

[141] In my view, for present purposes, it is important to look to the procedural direction that was given in this matter on May 8, 2024 in follow up to a case management call that morning. More fully set out above, it included the following paragraph which reflects a shared understanding (albeit not explicitly stated) for a *de novo* hearing of what had been the usual sort for appeals of this type:

As for the order of proceeding at the hearing, the party appealing [the Appellant] will proceed first with evidence, with the respondent (Technical Safety Authority of Saskatchewan) then presenting evidence from its side, followed by a right on the part of the appellant to respond to any new matters the respondent may have raised. Each party would then be asked to present final argument in support of their positions, in the same order as above. It is understood that who bears the onus of proof on what issue is another matter.

[142] Accordingly, consistent with the previous direction, this appeal will continue to follow the approach for *de novo* consideration involving the hearing of a matter afresh and a decision based on evidence in the appeal hearing.

VI. ANALYSIS

A. Legislative Provisions

[143] The provisions of the Act relevant to this appeal include the following:

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

(i) “**discriminatory action**” means any action or threat of action by an employer that does or would adversely affect a worker with respect to any terms or conditions of employment or opportunity for promotion, and includes termination, layoff, suspension, demotion or transfer of a worker, discontinuance or elimination of a job, change of a job location, reduction in wages, changes in hours of work, reprimand, coercion, intimidation or the imposition of any discipline or other penalty, but does not include: ...⁴

...

(l) “**harassment**” means:

(i) any inappropriate conduct, comment, display, action or gesture by a person towards a worker:

(A) that either:

(I) is based on any prohibited ground as defined in *The Saskatchewan Human Rights Code, 2018* or on physical size or weight; or

(II) subject to subsections (4) and (5), adversely affects the worker’s psychological or physical well-being and that the person knows or ought reasonably to know would cause the worker to be humiliated or intimidated; and

(B) that constitutes a threat to the health or safety of the worker; or

(ii) any conduct, comment, display, action or gesture by a person towards a worker that:

(A) is of a sexual nature; and

(B) the person knows or ought reasonably to know is unwelcome;

...

(4) To constitute harassment for the purposes of subparagraph (1)(l)(i)(A)(II), either of the following must be established:

(a) repeated conduct, comments, displays, actions or gestures;

(b) a single, serious occurrence of conduct, or a single, serious comment, display, action or gesture, that has a lasting, harmful effect on the worker.

(5) For the purposes of subparagraph (1)(l)(i)(A)(II), harassment does not include any reasonable action that is taken by an employer, or a manager or supervisor employed or engaged by an employer, relating to the management and direction of the employer’s workers or the place of employment.

...

3-35 No employer shall take discriminatory action against a worker because the worker:

(a) acts or has acted in compliance with:

(i) this Part or the regulations made pursuant to this Part ...

(b) seeks or has sought the enforcement of:

⁴ Clause (i) was amended effective May 17, 2023, subsequent to the Appellant’s dismissal, by adding “or any person acting on behalf of an employer” after “employer”.

(i) this Part or the regulations made pursuant to this Part ...

3-36(1) A worker who, on reasonable grounds, believes that the employer has taken discriminatory action against him or her for a reason mentioned in section 3-35 may refer the matter to an occupational health officer.

...

(4) If discriminatory action has been taken against a worker who has acted or participated in an activity described in section 3-35:

(a) in any prosecution or other proceeding taken pursuant to this Part, there is a presumption in favour of the worker that the discriminatory action was taken against the worker because the worker acted or participated in an activity described in section 3-35; and

(b) the onus is on the employer to establish that the discriminatory action was taken against the worker for good and sufficient other reason.

[144] In addition, building on section 3-8 of the Act aimed at ensuring, insofar as reasonably practical, that workers are not exposed to harassment, section 25.1 of *The Occupational Health and Safety Regulations, 2020* requires an employer to develop a policy on harassment that includes various elements set out in the section and to implement that policy.⁵

B. Three-Part Test

[145] The above provisions have been interpreted to give rise to the following three part-test:

1. Did the employee engage in protected activities that come within the ambit of s. 3-35 of the Act?
2. Did the employer take discriminatory action against the employee within the meaning of s. 3-1(1)(i) of the Act?
3. If the first two questions are answered in the affirmative, was the discriminatory action taken for good and sufficient other reason within the meaning of s. 3-36(4)?

See the decision of the adjudicator in *Banff Constructors Ltd. v. Arcand*, (unreported), April 28, 2020, LRB File No. 184-19 [*Banff Constructors*] at para 46.

[146] The adjudicator in *Banff Constructors* disagreed with aspects of an approach taken in a 2016 adjudicator decision (which had been taken in other decisions as well) under which, as an additional element, there was an initial onus on the employee to establish a *prima facie* case of discrimination.

[147] The three-part test provides the analytical framework I will use in this case. It has been applied by other adjudicators and was referred to approvingly by the Labour Relations Board in *Simonson v Finning Canada and the Cat Rental Store*, 2020 CanLII 24719 (SK LRB) [*Simonson*] at paras 17-18 and 27 and *I.G. v. International Women of Saskatoon Inc.*, 2021 CanLII 24719 (SK LRB) [*International Women of Saskatoon Inc.*] at para 47.

⁵ Section 3-21.1 of the Act, in relation to this subject matter, did not come into force until May 17, 2023, after the termination of the Appellant's employment.

C. Application

1. Did the Appellant engage in a protected activity that falls within the ambit of section 3-35 of *The Saskatchewan Employment Act*?

[148] An employee who believes they have been harassed and makes a complaint of “harassment” will be considered to have sought the enforcement of the Act and regulations pertaining to harassment and will thus fall within the protection from discriminatory action afforded by clause 3-35(b)(i) of the Act. See *International Women of Saskatoon Inc.* at paras 46 to 52.

[149] The complaint on its face must contain allegations that, if established, would constitute “harassment”. The approach taken by the Labour Relations Board in *International Women of Saskatoon Inc.* was to assess the contents of the document against the definition of harassment in clause 3-1(1) of the Act as qualified by subsections (4) and (5).

[150] In the present case, with respect to at least most of the instances of reported harassment concerns (April 15, 2021, September 8, 2022, September 21, 2022, December 5, 2022, January 21, 2023 and February 14, 2023), the Appellant was engaging in a protected activity within the ambit of section 3-35 of the Act.

2. Did TSASK take discriminatory action against the Appellant within the meaning of section 3-1(1)(i) of the Act?

[151] The termination of the Appellant’s employment was “discriminatory action” within the meaning of that definition.

3. Was the discriminatory action (the termination of the Appellant’s employment) taken for good and sufficient other reason within the meaning of section 3-36(4) of the Act?

[152] By virtue of section 3-36(4) of the Act, if a worker has acted or participated in an activity described in section 3-35 (including seeking the enforcement of Part III of the Act or regulations thereunder) and discriminatory action (defined as including termination) has been taken against the worker, a presumption and reverse onus are triggered.

[153] Specifically, there is a presumption in favour of the worker that the discriminatory action was taken against the worker because the worker acted or participated in an activity described in section 3-35 of the Act, and the onus is on the employer to establish that the discriminatory action was taken against the worker for good and sufficient other reason.

[154] What this means for the present case is that:

- (i) there is a presumption that the Appellant’s employment was terminated because he engaged in a protected activity, and
- (ii) there is an onus on TSASK to establish that the action was taken for good and sufficient other reason.

Accordingly, if the employer in this case is unable to discharge that onus, the Act will be contravened.

[155] According to recent case law, for discriminatory action to be taken for good and sufficient other reason, it “must not be arbitrary and must be objectively reasonable” or, put another way, must be a “reasonable option”. At the adjudicator level in *International Women of Saskatoon Inc. v I.G.*, (unreported), May 6, 2020, LRB File No. 203-19, the adjudicator stated:

[68] The reverse onus in s. 3-36(4) doesn’t simply require the employer to rebut the presumption, but to do so by establishing “that the discriminatory action was taken against the worker for good and sufficient other reason”. What is “good and sufficient other reason”?

[69] It is not to be equated with “just cause” in relation to wrongful dismissal, although I suggest a dismissal for just cause would meet the test of good and sufficient other reason. However, I am not required to determine that here.

...

[71] For a discriminatory action, including termination, to have been taken for good and sufficient other reason, the action must not be arbitrary and must be objectively reasonable. This is not to say the decision made by the employer must be the same decision the adjudicator (or the occupational health officer in the original decision) would have made if placed in the employer’s position at that time. There may have been several options for action when the termination decision was taken that would have been objectively reasonable. The question is whether this is one of those options.

[72] I find that the termination based on the considerations advanced by the employer was a reasonable option and therefore good and sufficient reason within the meaning of the reverse onus.

(Emphasis added)

[156] On appeal, in *International Women of Saskatoon Inc.*, the Labour Relations Board in dismissing the appeal (with one point being remitted to the adjudicator) quoted paras 71 and 72 above, at paras 25 and 26 of the Board decision. In *Simonson*, in affirming an adjudicator’s decision, the Labour Relations Board referred at para 19 to the adjudicator’s application of this same test.

[157] The Appellant argues that the bar TSASK must overcome in this case in establishing “good and sufficient other reason” is raised by a clear temporal connection between the termination of employment on February 23, 2023 and the harassment complaints on December 5, 2022, January 21, 2023 and February 14, 2023. The Appellant refers in that regard to comments in *Banff Constructors* as adopted in *Northern Village of Buffalo Narrows v Hanson*, (unreported), November 29, 2022, LRB File No. 152-21 at para 59.

[158] This is offset, however, by the counterargument that the filing by the Appellant of a series of six harassment complaints on various matters over a space of 22 months, dating back to April 15, 2021 (advanced to OHS in August 2021), coupled with ongoing communication to OHS, tends to lower the likelihood that the termination of employment, when it occurred, was retaliatory to the exercise of a protected activity.

[159] The Respondent cites adjudicator decisions from 2015 in *Z.M. v London Drugs*, (unreported), May 7, 2015, LRB File No. 124-14 and *Taytopat v Saskatchewan Indian Gaming Authority Inc.* (unreported), September 16, 2015, LRB File No. 116-14 in support of a concept that an adjudicator should not second guess the judgment of the employer. The discussion in *Taytopat* quotes the following paragraph from *Lafrance et al. v Commercial Photo*, [1980] 1 S.C.R. 536 at 544 (which concerned legislation with a similar employer onus):

From the outset it has been held that this phrase means that the investigation commissioner must be satisfied that the other reason relied on by the employer is of a substantial nature and not a pretext, and that it constitutes the true reason for dismissal. Under this interpretation, it is not for the investigation commissioner to rule on the severity of the penalty as compared to the seriousness of the wrongful act in question, in other words, to substitute his judgment for that of the employer, in doing which he would be exceeding his jurisdiction. (Emphasis added)

[160] Speaking to what may or may not be relevant for purposes of a discriminatory action complaint, the adjudicator in *Banff Constructors* made the point at para 51 that “The issue I am called upon to determine is not whether the complaints made by the employee while he was employed by the employer would have been substantiated had a complete investigation been conducted, nor whether he was in fact subjected to harassment”. The Labour Relations Board in *International Women of Saskatoon Inc.* similarly observed at para 46 that “The issue was not whether the appellant had experienced harassment in the workplace”. In *Simonson* the Board agreed with the adjudicator that whether the employer properly investigated a complaint of harassment was relevant only to the limited extent that it might bring into question the employer’s sincerity in conducting the investigation.

[161] In the present case, in TSASK’s letter of December 22, 2023 to the OHS Officers, TSASK stated in part:

[The Appellant] repeatedly failed to interact effectively with his clients in his district. [The Appellant] frequently revealed his contempt for his managers and continued to have unnecessary, escalating conflicts with customers ... In such examples, [the Appellant] failed to follow explicit direction to refer challenging matters to either his in-scope supervisor or manager.

...

The reason for [the Appellant’s] dismissal was the result of a culminating event that occurred when a customer provided a written complaint regarding an attempted inspection by [the Appellant] on January 26, 2023 at her residence in Lloydminster.

...

He was dismissed for repeated conduct that, despite a previous warning (see Appendix I), showed a level of contempt for customers that was increasing in frequency and severity.

[162] As to the repeated failures to interact effectively (in addition to the encounter giving rise to the written warning and the culminating incident) the evidence at the hearing focused on four matters:

- interaction with employees of [Contractor 1] on August 4, 2022 (vehicle parking issue arising thereafter)
- telephone conversation with the motel manager on August 9, 2022

- attendance with a representative of [Contractor 2] during a rough-in inspection at a home on August 25, 2022
- interaction with a representative of [Contractor 2] during an inspection at an energy company facility on September 8, 2022 (followed by parking lot issue)

[163] The TSASK general concern regarding the four matters was that the Appellant’s approach, attitude and demeanour was giving rise to confrontational encounters (as reported by the Appellant himself). TSASK notes in particular:

- in relation to the August 4, 2022 interaction, “I explained I am done talking. Every owner that had unreported work by [Contractor 1] will receive an unreported notice and will have to hire another contractor and pay them to fix the issues”
- in relation to the August 9, 2022 telephone conversation with the manager of the motel, the assertions of the manager about “condescending tone” and “aggressiveness”
- in relation to the August 25, 2022 rough-in inspection with a representative of [Contractor 2], the visible agitation and escalated composure on the part of the contractor representative
- in relation to the interaction with a representative of [Contractor 2] on September 8, 2022 at the energy company facility, the determination of the Appellant, personalizing the situation, that “I will not allow them to obtain monthly maintenance work at this facility”

[164] Two of those cases involved circumstances that are the backdrop for harassment complaints brought by the Appellant. This raises an issue as to whether TSASK by considering those matters was taking action based on the protected activity of filing harassment complaints (as argued by the Appellant). I think not. My assessment of the evidence is that the focus of the employer decision-makers when considering discipline was on the front end of the interactions, with the harassment complaints viewed in effect as involving “an escalation of an escalation” as Mr. Anderson put it in respect of one of the cases. The Appellant, further in a similar vein, notes that TSASK became aware of the four incidents only because the Appellant followed TSASK’s direction from the July 4, 2022 meeting by reporting them to management and argues that it was unfair and unjust for TSASK to consider those incidents. However, in my view, the fact that the information came to light from reports by the Appellant himself would not prevent the employer from considering the interactions.

[165] The significance of these matters is diminished, however, by the fact that TSASK did not raise or address with the Appellant these employer concerns regarding the Appellant’s conduct (including with respect to the two matters on which there was response and dialogue).⁶ Further,

⁶ With respect to the September 8, 2022 interaction with the representative of [Contractor 2] at the energy company facility, Mr. Pilon in his email of September 13, 2022 stated “We see nothing out of the ordinary in this inspection interaction” while also pointing out, however, the practice regarding monthly maintenance permits for a contractor. In the discussion regarding the [Contractor 1] vehicle parking issue, Mr. Pilon in his email on September 13, 2022 did not speak to the inspection interaction itself (and in preceding emails from Mr. Blanchard and Ganchar concerning the inspection interaction there is no criticism of the

the circumstances of the four matters were known to TSASK at the time of the discipline letter of October 25, 2022 such that TSASK may or could have factored them into the written warning or corrective action at that time.

[166] The incident on October 19, 2022 was clearly deserving of discipline. The Appellant's conduct in the telephone exchange with the representative of [Contractor 3] was unacceptable and unprofessional as stated in the discipline letter. The written warning reiterated "you are to remove yourself from client interactions that are becoming heated". The written warning was not grieved.

[167] The "culminating event" then occurred on January 26 and 27, 2023. An investigation meeting took place on February 16, 2023. It was only after a break in the proceedings, during which the Appellant took advice from two union representatives, that the Appellant was forthcoming in providing a description of the incident.

[168] TSASK notes in argument that the Appellant's account of the interaction differed in some material respects from the homeowner's (which is apparent from a comparison of the transcript of the meeting against the complaint) and that TSASK, following investigation, rejected those aspects of the Appellant's account that conflicted with the homeowner's account. On the latter point, Mr. Pilon and Mr. Mann testified that, in their determination, the homeowner's version was to be accepted over the Appellant's version (which they also discussed with Mr. Anderson who was not present at the meeting). The letter of termination itself states that the Appellant's explanation lacked credibility.

[169] The fundamental question at this time, however, is whether, on the whole of the evidence at the adjudication hearing, TSASK has established "good and sufficient other reason". In that regard, in relation to the culminating incident, I have before me the written complaint from the homeowner, on the one hand, and sworn testimony from the Appellant, tested by cross-examination, on the other hand.⁷

[170] There may be an issue as to whether the homeowner's statement was corroborated to some extent by evidence of Mr. Pilon and Mr. Anderson concerning their viewing of certain now lost video/audio footage received by email from the homeowner. However, Mr. Pilon could not make out anything from the tiny box of an email attachment he viewed, and Mr. Anderson testified that what he did see corresponded only with the last portion of the homeowner's statement from the return visit on the second day. Any corroboration would therefore be inconsequential. Further, absent proof of a technical effort to recover deleted computer files or of steps to obtain the footage for a second time from the homeowner if still available, in an effort to make better evidence (the footage) available for the hearing, it would be problematic to give effect to impressions of what a witness watched and heard on a computer in February 2023.

Appellant's approach). It does not appear that there was any feedback concerning the August 9, 2022 telephone conversation with the motel manager (although the Appellant understands that Mr. Pilon was assigned to the file) or the August 25, 2022 rough-in inspection.

⁷ There are also two "out-of-court" statements from the Appellant. One was provided orally (subsequently transcribed) at the meeting on February 16, 2023. The other is in writing and appears in the OHS record as part of an attachment to the Appellant's complaint of discriminatory action.

[171] An adjudicator under Part IV of the Act has statutory discretion to accept and weigh hearsay evidence. Section 4-4(3) of the Act provides that an adjudicator is not bound by the rules of law concerning evidence and may accept any evidence that the adjudicator considers appropriate. Section 4-5(1)(e) similarly provides that in conducting an appeal or hearing pursuant to Part IV, an adjudicator has power 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.

[172] In the present case, an “out-of-court” statement by a third party (the homeowner) in the form of her email complaint to Mr. Anderson has been admitted into evidence by consent pursuant to an agreement between the parties. Standing against this is the sworn testimony of the Appellant. In this context, the weight to be attached to the complaint as relates to the truth of its contents is for my determination.

[173] The approach set out in case law discussed in *Ryerson Students’ Union v Canadian Union of Public Employees, Local 1281*, 2021 CanLII 130306 (ON LA) (which is among the decisions cited by the Appellant) is that a tribunal with discretion to accept hearsay evidence should not rely exclusively or substantially on hearsay in sustaining an employer’s reasons for discipline particularly where there is no showing of necessity to rely only on hearsay (see paras 73-74 and 91-93). I believe this accords with general views concerning reliance on hearsay by a tribunal with statutory authority as here.

[174] In the present case, the only witness evidence regarding the culminating incident is that the Appellant. The homeowner did not testify.

[175] Set out below is a reasonably complete statement of the Appellant’s evidence regarding his attendance at the homeowner’s residence on the first of the two days, which incorporates those portions of the homeowner’s written complaint that the Appellant accepted in his testimony:

- After receiving direction to handle the inspection, the Appellant phoned the residence and received no answer, so he decided to drive over. Upon arrival, he knocked on the door, with no answer at first, then heard footsteps and a lady opened the door, with marijuana smoke hitting his face. The Appellant told the homeowner that he was an electrical inspector, offered his card which the homeowner refused, and asked if the homeowner had a furnace recently installed. The homeowner responded that she had, but that it was not a good time for an inspection as she works nights, and this was like someone knocking on the door unexpectedly late at night. The homeowner stated that the gas inspector had been there a day prior but had called first, to which the Appellant said he has several thousand permits to inspect so they just show up, although he had in fact called first with no answer. The Appellant proceeded to ask when would work and the homeowner suggested a 3:30 p.m. time without more (and did not suggest a 3:30 p.m. on any day for the next week.) The Appellant explained to the homeowner that he wraps up inspections by 3:30 p.m. and doesn’t schedule appointments after that. As the homeowner was not helping him schedule another time and was being aggressive to him, the Appellant referred to a “notice of entry”. This was not conveyed

as a threat but was for the purpose of explaining a next step procedure that is available if an appointment is difficult to schedule and to explain to the homeowner that this was the inspector's job.

- The Appellant then walked away, rattled by the homeowner's reaction, and went out to his truck. He was making notes in the truck when the homeowner appeared alongside, startling him. The Appellant rolled down the window with some difficulty. The homeowner began aggressively complaining about the Appellant being on the phone in the truck and about him having shown up at the house as he did. At that point she asked the Appellant for his card which he gave to her. The homeowner then fell to her knees, crying and sobbing. The Appellant denies that he accused the homeowner of having lied about going to sleep. The Appellant went on to explain to the homeowner that she was not in any trouble, but that unauthorized electrical work had been done. The homeowner asked how the work could be unauthorized as she had hired the main contractor in town to do the work. The Appellant stated that it was a common problem for the contractors in town not to get proper permits. He said it could mean no house insurance if something happens. He said again that it's not the homeowner that's in trouble but them. The homeowner was upset and crying and told the Appellant that her house had been broken into a couple months before and that the way the Appellant knocked on the door startled her and her dog and made her nervous about who was at the door. The Appellant did not apologize. They arranged for an appointment for 3:00 p.m. the following day. While the Appellant was in the parked truck, the Appellant telephoned Kevin Blanchard, who the Appellant found not to be helpful, and then Don Craig who indicated that everything that happened appeared okay and directed the Appellant to go home and work there the rest of the day.

[176] In evidence at the hearing concerning the inspection on second day, the Appellant conveyed that the process was not far from the ordinary although in this case with him providing explanations to the homeowner all along the way. To repeat the factual portion of the summary of the Appellant's testimony previously provided in these reasons:

... The Appellant stated that he did not snap back with the words "I thought we were not going to talk about yesterday". Rather, he told the homeowner it was a new day with a new approach and explained the process (although the Appellant did indicate in his evidence that he did not want to discuss what had occurred). The Appellant recalls the homeowner stating that everything from the day before was recorded but says that she refused to record what was then happening. Generally, reading from the sentence beginning "I let him do his inspection, actually even helped him with his tools", the Appellant stated that there are things twisted and misconstrued and that, while authoritative, he acts professionally and does not treat people in their homes in a revolting and disgusting manner as the homeowner describes it. The Appellant said the homeowner makes it sound like a confrontation when it was pattern involving a quick flare up that would be gone right a way. The Appellant also denies having apologized, which the homeowner refers to again at the end of this portion of the complaint. It appears that at some point during the conversation on January 27th

(although it could have been on January 26th) the homeowner recounted a difficult circumstance in which her door was knocked on hard like that, with the Appellant commenting in his evidence, “I do knock a bit harder”.

[177] I have some hesitation regarding the Appellant’s “did not happen” assertion regarding the statement in the complaint that “he accused me of lying saying I wasn’t going to sleep”. However, despite significant doubt raised by cross-examination (including an answer at one point “how long does smoke stay around”), the Appellant’s denial at the hearing was still plausible and, on the approach discussed above, is to be accepted in preference to unsworn and untested statements in the complaint.

[178] The account provided by the Appellant in the meeting of February 16, 2023 with respect to the interactions on January 26 and 27, 2023 was presented to some witnesses for the purpose of questioning on the Appellant’s version of the events. That account was reasonably close in its main substance to the evidence of the Appellant at the hearing. One difference regarding the first of the two days is that the Appellant made no mention at the February 16 meeting of phone calls to Mr. Blanchard and Mr. Craig, which were in the aftermath of the customer interaction. There is also a small point of difference concerning context in which there was mention of a notice of entry.⁸ As for the second day, the Appellant at the meeting covered the same territory as in his evidence at the hearing but with greater detail (e.g. allowing the homeowner to vent about the day before, explaining the ins and outs of the inspection as the homeowner looked on, providing reassurance that he was there looking out for the homeowner’s safety as well as others who might be impacted).

[179] The Appellant submits in written argument that “TSASK agreed that if [the Appellant’s] version of events was accepted, then he had done nothing wrong”, and challenges TSASK’s reliance on the homeowner’s version as objectively unreasonable. In oral argument counsel supplemented this by making the point that, as the homeowner did not testify, the only direct evidence in the hearing is that of the Appellant.

[180] Mr. Pilon has substantial experience as an electrical inspector and in the supervision of electrical inspectors. As previously reviewed, he was asked in cross-examination if he had any concern based on the Appellant’s 11-page statement as contained in the transcript of the February 16, 2023 meeting. He responded that after the negative interaction on the first day, the Appellant should have contacted the in-scope supervisor and considered adding a second inspector, indicating that as far as he knew the Appellant had not contacted anyone (although the Appellant in fact had done so, which Mr. Pilon would not have known).⁹ Mr. Pilon did not mention any other concern. He also stated that if it happened as the Appellant explained, the homeowner would not have complained (an indication that, on the Appellant’s version, there would be no reason for

⁸ The Appellant at the meeting said that in the discussion about when to return to conduct the inspection, the homeowner suggested the next day, but was not cooperating and would not give a time of day, with the Appellant saying that if she wanted to refuse access the next day, he would have to get a notice of entry.

⁹ Mr. Pilon would have been unaware (as it was not mentioned in the February 16, 2023 meeting) that the Appellant on January 26, 2023 had reached out to Mr. Craig about the situation, after an initial call to Mr. Blanchard, and was not advised to stand down or arrange for a second inspector.

complaint). Mr. Mann when questioned on the Appellant's version of events, also as previously reviewed, agreed that the Appellant expressed empathy for the homeowner; and when it was suggested, "if we assume [the Appellant's] version is true, then he did nothing wrong", stated again that the Appellant was empathetic (not taking exception to the "nothing wrong" suggestion and possibly signifying acceptance of it). Mr. Anderson was not asked to comment on the Appellant's version. The comments he made in his evidence concerned the Appellant's conduct as portrayed by the homeowner.

[181] In my view, on the Appellant's version of events, which is to be accepted at least in substantial part, there is little room to find disciplinable conduct in relation to the January 26 and 27, 2023 inspections.

[182] It might have been better for the Appellant on January 26, 2023, even on his own version of events, to have simply left his card and said he would follow up later. Yet the homeowner seemed ready to engage the Appellant in the uncomfortable conversation they had at the doorstep, and the Appellant's desire to schedule a time for a return visit, to complete the task that had been assigned to him, is understandable. It might also have been better for the Appellant to have refrained from any mention of a notice of entry. However, it appears to be a judgment call on whether and when to mention the availability of that tool in situations where it appears access might be problem, and the Appellant's mention of a notice of entry was not singled out by employer witnesses as a concern (at least not in the context of the Appellant's version). The fact that the Appellant returned the following day to conduct the inspection without having contacted the in-scope supervisor was identified by Mr. Pilon as a concern, but as noted, the fact is that that contact had taken place was unknown to Mr. Pilon. Further, it is hard to be critical of how the Appellant handled himself during the very strange situation at the truck. As for what occurred on January 27, 2023, while the inspection was not entirely smooth, it is not possible on the Appellant's version to fault the Appellant for any negative customer reaction.

[183] The termination letter also states (referring to the meeting of February 16, 2023) that "your conduct toward your manager and management leading up to the meeting was inappropriate and unacceptable" and that "[y]our tone towards the HR Manager during the same meeting was equally unprofessional and unacceptable". In that regard:

- The conduct leading up to the meeting is reflected in the email exchange on February 14, 2023 as set out above in this decision. It is not surprising that the Appellant's approach would come across as difficult and combative in tone (even though he argues that the employer was unaccommodating). At one point in the exchange the Appellant advanced a claim of harassment relative to the disagreement. Whether the complaint would withstand scrutiny as disclosing on its face a claim of "harassment" need not be determined, as it is sufficient to say that the introduction of the complaint into the discussion did not, in my view, make it objectionable for the employer to consider all aspects of the behavior other than the fact of a complaint.
- Regarding conduct during the meeting, the unprofessional and unacceptable tone asserted by TSASK would include the Appellant's reference, at a heated moment, to

“power-hungry human resources manager” upon being directed to sign and return certain documents.

TSASK acknowledges, however, that these were secondary contributing factors.

[184] More significant is the written warning from October 2022 coupled to some degree with customer relations issues from before then. However, there must still be proof of a culminating event substantial enough to make termination an objectively reasonable option (even though there may have been other reasonable options).

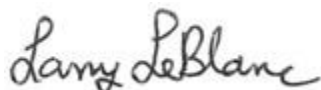
[185] On the whole of the evidence before me at this hearing, I have concluded, based on the absence of any significant blame attributable to the Appellant with respect to the January 26 and 27, 2023 inspections and interactions, that the termination of the Appellant’s employment was not objectively reasonable and that TSASK has failed to establish “good and sufficient other reason” for the termination.

[186] The Appellant in argument advanced various other lines of attack on the termination decision that are unnecessary for me to consider given the conclusion above.

VII. DETERMINATION

[187] For the above reasons, I find that the Respondent, in its termination of the Appellant’s employment, contravened section 3-35 of the Act. The parties asked that I “reserve on remedy” in the event of such determination and accordingly I retain jurisdiction in that regard.

DATED at Regina, Saskatchewan this 6th day of May, 2025



Larry B. LeBlanc, K.C., Adjudicator

CASE LAW CITED IN FINAL ARGUMENTS

Appellant Authorities

Saskatchewan Polytechnic Students' Association v Ryan Benard, 2021 CanLII 31416 (SK LRB)
Saskatchewan Polytechnic Students' Association v Ryan Benard, (unreported), April 13, 2020, LRB File No. 124-14
Britto v University of Saskatchewan, 2016 CanLII 74280 (SK LRB)
Simonson v Finning Canada and the Cat Renewal Store, 2020 CanLII 103929 (SK LRB)
Simonson v Finning Canada and the Cat Renewal Store, (unreported), June 22, 2020, LRB File No. 006-20
I.G. v International Women of Saskatoon Inc., 2021 CanLII 103929 (SK LRB)
Northern Village of Buffalo Narrows v Hanson, (unreported), November 29, 2022, LRB File No. 152-21
Banff Constructors Ltd. v Lance Arcand, (unreported), April 28, 2020, LRB File No. 184-19
Gillespie v Life Force Home Health Care Inc., (Unreported), March 4, 2022, LRB File No. 150-19
Town of Regina Beach v Corey, (unreported), January 27, 2020, LRB File No. 141-19
S.D. v. Criminal Injuries Compensation Board, 2010 ONSC 2562
Snider v Karpinski, 2009 SKQB 394
Holiday Inn Express & Suites, Yorkton v Strocen, (unreported), April 24, 2023, LRB File No. 015-22
R v Whitson, 2022 SKKB 255
656621 B.C. Ltd. v David Moerman Painting Ltd., 2022 BCSC 1683
Agricultural Financial Services Corporation v Trentham, 2020 ABQB 681
Ryerson Students' Union v Canadian Union of Public Employees, Local 1281, 2021 CanLII 130306 (ON LA)
Westfair Foods Limited v UFCW, Local 1400, 2005 CanLII 78412 (SK LA)

Respondent Authorities

Banff Constructors Ltd. v Arcand, (unreported), April 28, 2020, LRB File No. 184-19
Simonson v Finning Canada and the Cat Rental Store, 2020 CanLII 103929 (SK LRB)
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International Women of Saskatoon Inc. v Ivette Gonzalez, (unreported), May 6, 2020, LRB File No. 203-19
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Pintiliciuc v SaskEnergy Incorporated, 2016 CanLII 105541 (SK LA)
S.C. v Mamwetan Churchill River Regional Health Authority, (unreported), July 7, 2015, LRB File No. 135-15
Z.M. v London Drugs, (unreported), May 7, 2015, LRB File No. 124-14

APPENDIX “A”

LRB File No. 031-24

IN THE MATTER OF AN APPEAL TO AN ADJUDICATOR PURSUANT TO SECTIONS
3-53 AND 3-54 OF *THE SASKATCHEWAN EMPLOYMENT ACT*

BETWEEN

A.B.

APPELLANT

- and -

THE TECHNICAL SAFETY AUTHORITY OF SASKATCHEWAN

RESPONDENT

Adjudicator: Larry B. LeBlanc, K.C.

For the Appellant: Sarah Levine and Kate Engel

For the Respondent: Michael J. Phillips

RULING REGARDING ADMISSIBILITY
OF SURREPTITIOUS AUDIO RECORDINGS

BACKGROUND

[1] The Appellant, [A.B.], appeals pursuant to sections 3-53 and 3-54 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1 against a decision of Occupational Health Officers dated January 19, 2024 finding that the termination of [the Appellant’s] employment on February 23, 2023 by the Respondent, The Technical Safety Authority of Saskatchewan, was not an unlawful discriminatory action contrary to section 3-35 of the Act.

[2] Prior to February 23, 2023, [the Appellant] had been employed by the Respondent as an electrical inspector.

[3] On the second day of the hearing of the appeal, August 28, 2024, during the examination-in-chief of [the Appellant], counsel for [the Appellant] sought to introduce into evidence audio recordings made by [the Appellant] of certain meetings, with those at issue now being:

- a. July 4, 2022 meeting between [the Appellant], Terry Mann (human resources manager), Allan Ohrt (south electrical inspection manager) and, beginning later in the meeting, William Campbell (union representative)
- b. October 25, 2022 meeting between [the Appellant], Colin Popoff (union assistant business manager), Terry Mann, and David Pilon (north electrical inspection manager)
- c. January 25, 2023 meeting between [the Appellant], Angela Vos (external human resources consultant for the respondent), Colin Popoff, and Pat Nast (northern region gas manager)

- d. February 16, 2023 meeting between [the Appellant], Colin Popoff, Terry Mann, and Eric Sweeney (union representative)

The four recordings in their totality run for close to four hours.

[4] The audio recordings (and it appears a few other such recordings) were made by [the Appellant] surreptitiously. He captured the audio secretly with the recorder on his cell phone.

[5] The Respondent objected to the admissibility of the audio recordings.

[6] After discussion as to process, it was agreed that the issue would be determined on a *voir dire* based on an affidavit [the Appellant] appending the audio recordings and transcripts thereof, cross-examination if any on the affidavit, and evidence to that point in the hearing proper. It was further agreed that counsel would make submissions in writing due on September 13, 2024 (Appellant), September 20, 2024 (Respondent), and September 27, 2024 (should the Appellant wish to reply).

[7] The transcripts (as well as the recordings) have now been attached to an affidavit sworn by [the Appellant] on August 29, 2024. Other than identification of [the Appellant] himself, the transcripts refer to individuals participating in the meetings as person 1, person 2, and so on. This is supplemented, however, with identification information in the affidavit, making it possible to fully identify all persons shown in the transcripts as speaking at the meetings.

[8] In broad terms:

- a. the July 4, 2022 meeting coincided with a return to work by [the Appellant] following a period of leave and included discussion about work expectations going forward (67-page transcript)
- b. the October 25, 2022 meeting included discussion of relationships with contractors and a particular interaction [the Appellant] had with a contractor (35-page transcript)
- c. the January 25, 2023 meeting included discussion of a complaint of harassment submitted by [the Appellant] regarding the manner of response by Mr. Pilon to a question or questions asked by [the Appellant] at a staff meeting (49-page transcript)
- d. the February 16, 2023 meeting concerned the investigation of a customer complaint related to an interaction between [the Appellant] and the customer and, in addition, employer findings regarding harassment complaints by [the Appellant] regarding district restructuring and encroachment by a contractor on [the Appellant's] parked vehicle (62-page transcript)

[9] There has been no dispute as to the authenticity of the audio recordings or that the transcripts provide a substantially accurate representation of what is contained on the recordings.

[10] [The Appellant] states in his August 29, 2024 affidavit that he audio recorded the meetings “as I was concerned I would not be believed about what was said during the meetings should whatever was said during those meetings ever come up again in the course of issues relating to my employment with TSASK.”

SUBMISSIONS

[11] The parties submitted thorough written arguments that I have found very helpful. The authorities relied upon by the parties are listed in Appendix “A” to this ruling.

Appellant

[12] After noting a requirement for authentication of an audio recording, the Appellant addresses section 184(2)(c) of the *Criminal Code* concerning interception of communications, submitting that it is lawful to audio record a communication so long as the party recording the communication is a party to the communication, but that in a non-criminal proceeding whether evidence is obtained improperly or even illegally is irrelevant to admissibility.

[13] Reference is made in that regard to *Propp v Propp*, 2014 SKCA 5 in which one of the grounds of appeal concerned the trial judge’s admission of certain documents obtained by the respondent under questionable circumstances. In finding that the trial judge did not err in admitting the documents, the Saskatchewan Court of Appeal applied the common law principle set out in *The Law of Evidence in Canada* (Markham: LexisNexis, 2009) quoted at paragraph 41 of the judgment:

The manner in which evidence is obtained, no matter how improper or illegal, is not an impediment to its admission at common law. The point was put starkly by Crompton J. in England in the 19th century: “It matters not how you get it; if you steal it even it would be admissible in evidence”. This position remains the common law of both England and Canada.

[14] On the question of weighing probative value and prejudicial effect of evidence, the Appellant cites *Rooney v. GSL Chevrolet Cadillac Ltd.*, 2022 ABKB 813 for the proposition that prejudicial effect is defined as the propensity of evidence to “distort or undermine the fact-finding process” and is focused on trial fairness, and that the balance between probative value and prejudicial effect “only balances factors internal to a trial” and does not consider matters external to a trial.

[15] The Appellant goes on to refer to two labour arbitration awards, namely, *British Columbia Government and Service Employees’ Union v British Columbia Public Service Agency*, 2016 CanLII 77600 (BC Arb, Dorsey) and *Jazz Aviation LP v Canadian Airline Dispatchers’ Association*, 2014 CanLII 39814 (Can Arb, Burkett), which reflect a presumptive view to exclude surreptitious recordings for policy reasons in labour arbitration, but with exceptions that consider whether surreptitious recording was warranted to deal with a power imbalance and objectively establish credibility in the face of being accused a perpetrator or liar or some such circumstance.

[16] The Appellant presents detailed argument as to admissibility, meeting by meeting, submitting in each case that “admitting the evidence would have no prejudicial effect on the fairness of the arbitration, but if it is found that there is prejudicial effect, the evidence shows [the Appellant] was justified in recording the meeting” (as something of a footnote, rather than “arbitration” the accurate term would be “hearing of the appeal”).

[17] In addition, noting an adjudicator’s discretion under provisions of the legislation concerning the acceptance of evidence, the Appellant makes an argument based on the procedural efficiency

of having the transcripts admitted in evidence for potential use in cross-examination of witnesses on prior inconsistent statements.

Respondent

[18] In objecting to the admissibility of the audio recordings, the Respondent begins with a submission that the recordings were not only made surreptitiously, but also over a caution contained in a letter of August 17, 2021 from the Respondent to the Appellant (at page 107 of Exhibit 1) which stated: “One last point is that you must cease the practice of recording any phone calls without the consent of the second party. Such practices are unacceptable and not in keeping with our commitment to personal privacy, be it client or colleague.”

[19] The Respondent bases its objection principally on the policy consideration of fostering frank, open and transparent discussion of working conditions consistent with the trust inherent in an employment relationship and on prejudicial effect that the admission of the surreptitious recordings would have on this, outweighing any probative value in the Respondent’s view,

[20] The Respondent notes that the recordings were made during meetings at which the Appellant had union representation (which was the case save for the first portion of the first meeting) and accordingly, in the Respondent’s submission, were wholly unnecessary to redress any power imbalance or buttress future credibility. The Respondent further submits that the evidence being tendered is inherently self-serving, and that the Appellant, with other participants being unaware of the recording, used the meetings as an invitation to attempt to create support for his escalating complaints.

[21] The Respondent comments specifically on the meetings of July 4, 2022, October 25, 2022 and January 25, 2023 referring to the “chilling effect” that surreptitious recordings can have on the discharge of relevant statutory obligations.

[22] In support of its position in relation to the above submissions, the Respondent cites the following decisions:

- *B.C. Ferry Services Inc. and BCMWU*, [2015] B.C.C.A.A.A. No 34 (BC Arb, McEwen)
- *BC Public Service Agency and BCGEU*, 2016 CarswellBC 306 (BC Arb, Dorsey)
- *HCN-Revera Lessee (Waverly/Rosewood) LP and USW, Local 90074*, 2016 CarswellMan 220 (Man LRB)
- *Teamsters, Local 31 v. D.H.L. International Express Ltd.*, 1995 CarswellNat 1607 (Can LRB)
- *Greater Niagara General Hospital v. O.P.S.E.U., Local 215*, 1989 CarswellOnt 3847 (Ont Arb, Joyce)

[23] The Respondent also states that the existence of the recordings sought to be admitted was not known to the Respondent until 12 days prior to the hearing, on August 15, 2024, when they were produced as part of efforts to conclude a joint exhibit book. In support of the proposition that late disclosure is a factor to be considered in determining whether surreptitiously recorded

evidence can be admitted, the Respondent refers to *Teamsters, Local 31 v. D.H.L. International Express Ltd.*, *supra*, at para 47.

DECISION

[24] The participants in the four meetings are recorded as discussing circumstances that relate to matters now in question in the discriminatory action complaint and this appeal (among other matters). While statements made by a participant during a meeting (as opposed to witness testimony tested by cross-examination) may be of limited value, if any, in my determination of the facts of a matter that was under discussion, what was said at the meetings, in itself, appears to be material in various respects. For example, in a warning letter to the Appellant dated October 31, 2022 (Exhibit 12 to the Affidavit of [the Appellant]) the Respondent refers to points of discussion at the meetings of October 25, 2022 and July 4, 2022; in a termination letter to the Appellant dated February 23, 2023 (pages 212-13 of Exhibit 1) the Respondent refers to points of discussion at the meetings of February 16, 2023 and July 4, 2022; and in a letter from the Respondent to the Ministry's Occupational Health Officer dated December 22, 2023 (pages 258-60 of Exhibit 1), which was sent by way of response to allegations of discriminatory action by the Appellant, the Respondent comments on discussions at the July 4, 2022 meeting and attaches notes from the July 4, 2022 meeting (pages 279-80 of Exhibit 1).

[25] The recordings and transcripts are thus relevant for some purposes and, if not outweighed by prejudicial effect (discussed below), will provide the most accurate and reliable record and likely the best evidence of what was said at the meetings.

[26] Although most of the direct testimony remains to be heard, there could be some benefit (from the standpoint of efficiency) in having exhibited transcripts available for potential use in cross-examination on a prior inconsistent statement. Even if the recordings and transcripts were ruled inadmissible for one reason or another, there might still be room for argument (not necessary to consider here) that their use by a cross-examiner for this specific purpose, following the normal process, should be permitted.

[27] Importantly, in the end, the weight to be given to the recordings (and transcripts), if admitted, would be for my determination considering all circumstances.

[28] As for whether probative value is outweighed by prejudicial effect, the court in *Rooney v. GSL Chevrolet Cadillac Ltd.*, *supra*, in the context of a civil action for constructive dismissal, applied the traditional common rule, under which the element of prejudicial effect only considers factors internal to the proceeding and its fairness.

[29] At issue in *Rooney* was the admissibility of surreptitious recordings made by the plaintiff of conversations with his supervisors. The court held at para 18:

What is weighed by the court is the probative value of the evidence, which is its propensity to help the trier of fact decide a matter in issue, and the prejudicial effect of the evidence on the trier of fact, which is its propensity to distort or undermine the fact-finding process. The weighing of probative value and prejudicial effect is a matter of trial fairness and only balances factors internal to the trial. The Court in weighing the probative value and prejudicial effect does

not consider matters external to a trial such as a public policy interest in maintaining positive workplace relations. The approach to admissibility outlined by the arbitrator in *British Columbia Government and Service Employees' Union v British Columbia Public Service Agency* where probative value is weighed against public policy concerns is not appropriate for a court.

[30] The approach in labour arbitration under collective agreements is otherwise. The general view of labour arbitrators, subject to exceptions, has been to exclude evidence of surreptitious recordings on the basis that their admission could harm an ongoing collective bargaining relationship or negatively impact harmonious industrial relations between the parties. See in that regard:

- *Greater Niagara General Hospital v. O.P.S.E.U., Local 215*, *supra*, at paras 19, 24, and 29
- *Jazz Aviation LP and Canadian Airline Dispatchers' Association*, *supra*, at page 15
- *BC Public Service Agency and BCGEU*, *supra*, at para 13 (referring to workplace relationships and future workplace cooperation)
- *B.C. Ferry Services Inc. and BCFMWU*, *supra*, at para 28

[31] Labour Relations Boards generally have been of the same view and consider the exclusion of surreptitious recordings as being necessary to avoid a prejudicial labour relations effect and to promote effective labour relations among parties who typically will continue in an ongoing labour relations relationship with one another. See the following decisions:

- *Teamsters Local 31 v. D.H.L. International Express Ltd.*, *supra*, at paras 35, 41 and 52
- *HCN-Revera Lessee (Waverly/Rosewood) LP and USW, Local 9074*, *supra*, at paras 9 and 10

In contrast, as discussed in *Jazz Aviation* and *D.H.L. International*, the Labour Relations Board in Ontario appears to have more readily admitted evidence of surreptitious recordings where there was no established collective bargaining relationship currently in place between the parties at the material time.

[32] The courts in family law cases have often taken a similar approach that looks to wider policy concerns when weighing probative value against prejudicial effect. See *R.D.R. v. K.D.N.*, 2024 SKKB 72 at paras 20 to 32.

[33] Even so, it is worthy of note that the Saskatchewan Court of Appeal, in a family law context in *O.M.S. v. E.J.S.*, 2023 SKCA 9 (discussed in the *R.D.R.* case), commented at para 17 that the appeal was not “an appropriate occasion to consider what discretion, if any, exists to exclude relevant evidence” because the evidence was highly relevant and, if discretion is involved, the chambers judge did not err by refusing to exclude it.

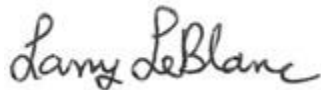
[34] The present case is not a grievance arbitration under a collective agreement between an employer and a union nor does it involve a labour-management dispute of any other kind. The Appellant’s union is not a party to the proceeding. The proceeding concerns a complaint of discriminatory action brought by an individual complainant under applicable legislation. Concerns

of prejudicial effect on a collective bargaining relationship or on union-management relations, as considered by labour arbitrators and labour relations boards, are not in play here in my view.

[35] Counsel for the Respondent submits that the circumstances of our case are analogous to those of the labour arbitration and labour relations board cases that have excluded surreptitious recordings; and that, in a case such as the present, a practice of surreptitious recording will have a chilling effect on the capacity of parties to address working conditions and resolve complaints in the discharge of obligations under the applicable legislation. However, the case law containing this idea is limited to prejudicial impacts on parties in an ongoing labour-management relationship. The applicable approach in this case, in my view, is to apply the common law test.

[36] On this basis, as the proposed evidence is relevant and there would be no prejudicial effect from its admission on the appeal hearing itself and its fairness, I direct that the four audio recordings and related transcripts be admitted into evidence at the hearing.

DATED at Regina, Saskatchewan on October 7, 2024



Larry B. LeBlanc, K.C., Adjudicator

NOTE: The ruling as originally delivered to the parties has been edited in this document by anonymizing the name of the Appellant and correcting the LRB File Number.

APPENDIX “A”

Appellant Authorities

Van de Sype v Saskatchewan Government Insurance, 2020 SKCA 18

Director of Employment Standards, Appellant v Streamline Oilfield Services Ltd., 2019 CanLII 107309 (SK LRB)

R v Bulldog, 2015 ABCA 251

Section 184(2)(a) of the *Criminal Code*, RSC, 1985, c C-46 5

Propp v Propp, 2014 SKCA 5

Rooney v GSL Chevrolet Cadillac Ltd., 2022 ABKB 813

Canadian Pacific Railway Company v Saskatchewan, 2022 SKQB 28

Desjardins v Deputy Head (Shared Services Canada) and Treasury Board (Shared Services Canada), 2020 FPSLREB 43

Jazz Aviation LP v Canadian Airline Dispatchers' Association, 2014 CanLII 39814 (CA LA)

RDR v KDN, 2024 SKKB 72

British Columbia Government and Service Employees' Union v British Columbia Public Service Agency, 2016 CanLII 77600 (BCLA)

Canada Evidence Act, RSC 1985, c C-5, Section 10(1)

Child Find Saskatchewan Inc. v M.K., LRB 119-15, June 4, 2015

United Food and Commercial Workers, Local 1400 v Westfair Foods Ltd., 2006 CanLII 80570 (SK LA)

Respondent Authorities

B.C. Ferry Services Inc. and BCMWU, [2015] B.C.C.A.A.A. No 34

BC Public Service Agency and BCGEU, 2016 CarswellBC 306 [cited by the Appellant as *British Columbia Government and Service Employees' Union v British Columbia Public Service Agency*, 2016 CanLII 77600 (BCLA)]

HCN-Revera Lessee (Waverly/Rosewood) LP and USW, Local 90074, 2016 CarswellMan 220 (Man. LRB)

Teamsters, Local 31 v. D.H.L. International Express Ltd., 1995 CarswellNat 1607 (Can. L.R.B.)

Greater Niagara General Hospital v. O.P.S.E.U., Local 215, 1989 CarswellOnt 3847