KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 52**

Date: **2025 03 31**
Docket: KBG-SA-01251-2023
Judicial Centre: Saskatoon

BETWEEN:

MARCEL PELLETIER,

APPLICANT

- and -

TOUCHWOOD AGENCY TRIBAL COUNCIL INC.,

RESPONDENT

Counsel:

Walker A. Paterson	for the applicant
Neil C. Raas	for the respondent

JUDGMENT — ELSON J.
March 31, 2025

Introduction

[1] In this rather unusual application, a former employee of the respondent asks the Court to exercise jurisdiction – he presumes it to have – to quantify and award him damages arising from the termination of his employment. The applicant makes his request without the Court having found his dismissal to be unlawful. Rather, his request is based on a finding made by an occupational health officer [OHS officer] pursuant to Part III of *The Saskatchewan Employment Act*, SS 2013, c S-15.1 [*Act*]. In that finding,

the OHS officer concluded that the respondent's actions, in dismissing the applicant, amounted to discriminatory action, contrary to s. 3-35 of the *Act*.

[2] By the operation of s. 3-36 of the *Act*, such a finding obliges the OHS officer to serve a notice of contravention, requiring the employer to take certain action, including reinstatement of the worker and payment of wages the worker would have earned but for the wrongful discrimination. In the present case, the respondent has neither reinstated the applicant nor paid him the claim for lost wages.

[3] After an unsuccessful attempt to convince the Saskatchewan Labour Relations Board [Board] to quantify and award damages for his loss, the applicant posits that this Court possesses the jurisdiction to do so. He grounds this argument on the operation of s. 31(1)(a) as well as s. 114 (a) and (g) of *The Enforcement of Money Judgments Act*, SS 2010, c E-9.22 [*EMJA*].

[4] The respondent's opposition to the application is grounded on three premises. The first premise relies on a release the applicant gave to the respondent after his dismissal, but before the OHS officer's decision. The respondent contends that this release, and the consideration within it, barred the applicant from advancing any claim beyond the consideration he received.

[5] The second premise is that, based on the operation of s. 4-11(2) of the *Act*, there is no order this Court can enforce, whether through the *EMJA* or otherwise. In advancing this ground, the respondent contends that only an order made by an adjudicator may be enforced as an order or judgment of this Court.

[6] The third premise is that the applicant's claim for lost wages depends on a successful summary prosecution under s. 3-37 of the *Act*. As there was no prosecution in this case, the applicant's claim for lost wages cannot succeed.

[7] For the reasons that follow, I am satisfied that there is no basis under either the *EMJA* or the inherent jurisdiction of the Court, to grant the remedy sought by the applicant. Moreover, and although not specifically requested by the applicant, I make the observation that, having regard to the wording of s. 3-36(5) of the *Act*, as it existed in 2022, the OHS officer has the power to assess the amount of the applicant's wage loss.

Statutory Framework

[8] In my view, the statutory provisions that are relevant to this application are contained within the *Act*, as it read in 2022, and the *EMJA*. The relevant provisions of the *Act* are sections 3-35(b) and 3-36, which read as follows:

> **3-35** No employer shall take discriminatory action against a worker because the worker:
>
> …
>
> (b) seeks or has sought the enforcement of:
>
> (i) this Part or the regulations made pursuant to this Part; or
>
> (ii) Part V or the regulations made pursuant to that 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.
>
> (2) If an occupational health officer decides that an employer has taken discriminatory action against a worker for a reason mentioned in section 3-35, the occupational health officer shall serve a notice of contravention requiring the employer to:
>
> (a) cease the discriminatory action;
>
> (b) reinstate the worker to his or her former employment on the same terms and conditions under which the worker was

formerly employed;

(c) subject to subsection (5), pay to the worker any wages that the worker would have earned if the worker had not been wrongfully discriminated against; and

(d) remove any reprimand or other reference to the matter from any employment records maintained by the employer with respect to that worker.

(3) If an occupational health officer decides that no discriminatory action has been taken against a worker for any of the reasons set out in section 3-35, the occupational health officer shall advise the worker of the reasons for that decision in writing.

(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.

(5) The amount of money that an occupational health officer may require to be paid pursuant to clause (2)(c) is to be reduced by an amount that the officer is satisfied that the worker earned or should have earned during the period when the employer was required to pay the worker the wages.

[Repealed 2023, c 40, s. 9(2)]

(6) The employer has the onus of establishing the amount of the reduction mentioned in subsection (5).

[Repealed 2023, c 40, s. 9(2).]

[Emphasis added]

I pause the discussion simply to note that subsections 3-36(5) and (6) were repealed as

of May 17, 2023. They were, however, in force as of September 13, 2022, which, as this judgment will later note, is the date of the OHS officer's decision and the notice of contravention.

[9] The relevant provisions of the *EMJA* are s. 2(1)(aa), containing the definition of a "judgment", as well as the relevant provisions engaged by the applicant's jurisdictional argument, s. 31(1)(a)(iii) and s. 114(a) and (g). These provisions read as follows:

> **2**(1) In this Act:
>
> …
>
> (aa) **"judgment"** means a judgment that, in whole or in part, requires a person to pay money, including:
>
> (i) a subsisting judgment of the court, the Court of Appeal or the Supreme Court of Canada;
>
> (ii) a subsisting order, decree, certificate or other right for the payment of money that may be enforced as, or in the same manner as, a judgment of the court; and
>
> (iii) if the context permits, information that is authorized by the regulations to be electronically transmitted to the registry to effect a registration of a judgment;
>
> …
>
> **31**(1) A judgment creditor who wishes to initiate enforcement measures shall provide the following to the sheriff:
>
> (a) an enforcement instruction in the form required by the Director of Sheriffs …
>
> **114** On an application of a sheriff, a receiver, a judgment creditor, a judgment debtor, a dependant of a judgment debtor or a person with an interest in property affected by an enforcement measure pursuant to this Act, the court may make one or more

of the following orders:

> (a) any order that is necessary to ensure compliance with this Act or to facilitate enforcement of a judgment, including a binding declaration of a right and an order for injunctive relief;
>
> …
>
> (g) an order requiring a person to pay costs incurred in connection with actions performed or proceedings taken pursuant to this Act;
>
> [Emphasis added]

Background

[10] The factual setting of this case is presented through more material than was probably necessary. It includes supporting and reply affidavits deposed by the applicant as well as an affidavit deposed by the respondent's Director of Finance. The applicant's supporting affidavit exhibited five documents, including the letter from the OHS officer, dated September 13, 2022, setting out her decision.

[11] The record of information discloses that, on May 14, 2022, the Occupational Health and Safety Branch of the Ministry of Labour Relations and Workplace Safety [OHS] received a complaint [May 14 complaint] from the applicant, related to the termination of his employment with the respondent roughly two months earlier, on March 16, 2022.

[12] Although the May 14 complaint is not exhibited or otherwise produced in the material, the OHS officer quoted passages from the applicant's comments in the related questionnaire he completed. In those comments, the applicant stated that he had earlier submitted a letter in February 2022, followed by a formal complaint to the OHS on March 7, 2022. In that complaint, he alleged workplace harassment, which he said began shortly after he started his employment. After the respondent dismissed him from

his job on March 16, 2022, he filed the May 14 complaint, asserting that his employment was terminated because he filed the earlier harassment complaint.

[13] The OHS officer assigned to address the May 14 complaint issued a letter, dated September 13, 2022, that set out her decision, addressed to both the applicant and the respondent. Her letter also described the investigation that OHS began approximately two weeks after receiving the May 14 complaint. In that description, the OHS officer referenced communications between OHS and the parties. The relevant passage of her letter, in this respect, reads as follows:

> On May 31, 2022, Occupational Health and Safety ("OHS") sent documentation to Chief Buffalo, Chief Bitternose and Chief Wolfe of Touchwood Agency Tribal Council, requesting good and sufficient reason for the termination of Marcel Pelletier.
>
> On June 27, 2022, OHS received documentation from Kimberly Stonechild solicitor for Touchwood Agency Tribal Council requesting an extension to the good and sufficient response. An extension was granted and due by July 13, 2022. On July 28, 2022, OHS sent an email to Kimberly Stonechild confirming a response to the good and sufficient was not received and that a decision in this matter will be made on the documents received from Ms. Stonechild by July 29, 2022, at 4 p.m.
>
> On July 29, 2022, a good and sufficient response was received from Kimberly Stonechild. On August 9, 2022, OHS requested supporting documentation to the good and sufficient response received on July 29, 2022, by August 12, 2022. On August 12, 2022 and *(sic)* extension was requested to August 18, 2022.
>
> On August 19, 2022, additional documents to the good and sufficient response were received from Kimberly Stonechild that alleged there was poor performance on the part of Marcel Pelletier, complaints of co-workers in the workplace and meetings were requested to address these concerns.
>
> On February 4, 2022, Officer Selensky and Tallmadge met with Marcel Pelletier to review the above response from Touchwood Agency Tribal Council. Mr. Pelletier disagreed with the employer's response stating he was not aware of these concerns

> nor was he invited to meet therefore he never refused to meet. OHS confirmed the date he was on sick leave and when he filed the harassment complaint. The complaint was filed February 18, 2022, and he went on sick leave February 24 – April 11, 2022. The termination letter was dated March 16, 2022, showing registered mail. The termination letter requested an information package (assessment form to facilitate a return to work). Marcel Pelletier stated there was no package included with the termination letter and no communication with the employer after the termination letter was received.

[14] In the context of all the evidence presented to the Court, two notable observations arise from this passage. The first observation pertains to the last paragraph from the above-recited passage. If, as the letter stated, the respondent's response had not been received until the summer of 2022, the reference to the "February 4, 2022" date is obviously incorrect.

[15] The second – and more notable – observation is that the OHS officer's description of the investigation contained no mention of the respondent paying any money to the applicant after the May 14 complaint was filed. The significance of this omission depends on how one assesses the respondent's affidavit evidence. That affidavit reveals that, on June 16, 2022, the applicant signed a document which the respondent now says served as a settlement of all issues between the parties.

[16] The document it relies on in this respect is exhibited to the affidavit. It consists of a form agreement described as an "Employment Standards Wage Agreement Form" in which the applicant is described as the claimant and the respondent is described as the employer. It identifies a payment by the respondent to the applicant of $2,295.63, consisting of $1,538.46 pay instead of notice, $88.77 annual vacation pay and $668.40 identified as "other". Under the heading of "Claimant's Acceptance", the document contains the following passage:

> In consideration of the receipt by me of the aforementioned

> payment, my claim(s) under THE SASKATCHEWAN EMPLOYMENT ACT, S.S. 2013 c. S-15.1, for the period from 10/13/21 to 3/29/22, against the employer referred to above is (are) FULLY settled.

The document bears the applicant's signature as well as that of the respondent's representative. It is dated June 16, 2022. It also contains a reference that the completed document is to be sent to Lorne Deason, of the Moose Jaw office of Employment Standards.

[17] In his reply affidavit, the applicant admitted signing the form agreement. However, he expressly denied that it applied to the May 14 complaint. He explained that, when he signed the agreement, he relied on Lorne Deason's representation that it provided him only with the minimum statutory pay in lieu of notice. He went on to say that, if the agreement was to be regarded as a complete waiver and release of any claim, he would not have signed it. To support his position, the applicant exhibited a copy of the covering email message from Mr. Deason to which the form agreement was attached. In that message, Mr. Deason wrote that the form agreement had to do with the applicant's Employment Standards complaint and "nothing else".

[18] Returning to the OHS officer's letter of September 13, 2022, it set out her findings and her decision based on those findings. The findings are described in answers to three standardized questions, followed by her formal decision. As recited from the letter, the relevant passage reads as follows:

> If the first or second question is answered in the negative, it is not necessary to proceed with the remaining question(s), as the matter is not within the jurisdiction of the Act.
>
> 1. **Did the worker engage or participate in one of the activities described in section 3-35 that on its face could be the reason, even in part for the discriminatory action?**

Yes, Marcel Pelletier provided a compliant *(sic)* of harassment letter, dated February 18, 2022, to Chief Lloyd Buffalo, Chief Byron Bitternose, Chief Thomas Dustyhorn, and Chief Jamie Wolfe.

2. Did the employer take discriminatory action against the worker?

Yes, the employer effectively terminated the employment of Marcel Pelletier by way of letter dated March 16, 2022.

3. Is it more likely than not that the good and sufficient other reason provided by the employer is the real and only reason for the discriminatory action?

Through the investigation process, it was determined that the employer's reasons for terminating the working relationship could not be supported. In the response from the employer, there is documentation indicating performance concerns and not completing a probationary period. The employer could not provide supporting documentation to indicate the harassment complaint was acknowledged or investigated nor any disciplinary measures which may include a probationary term being extended.

Decision:

It is not the role of the OHS officer in this circumstance to determine whether or not harassment took place, this is a claim of discriminatory action. The Officer's duty in this matter is to determine if in fact a health and safety concern was raised based on the legislation and if the worker was more likely than not, based on a balance of probabilities, terminated as a result of raising these concern(s).

It is my decision that the employer, Touchwood Agency Tribal Council, has not provided good and sufficient other reason for the dismissal of Marcel Pelletier and that the termination was an unlawful discriminatory action contrary to section 3-35 of *The Saskatchewan Employment Act*. Please contact Marcel Pelletier upon receipt of this decision to discuss his return to the workplace.

[19] A copy of the notice of contravention was entered on the court file. It bears the same date as the OHS officer's decision. Under the heading of "Compliance Required" it reads "Re-instate Marcel Pelletier pursuant to Act 3-36 Subsection (2), (3), (4), (5), and (6)."

[20] The material on the court file indicates that the respondent did not reinstate the applicant to his former job, nor did it provide him with any further compensation for wage loss attributable to its discriminatory action. Instead, on October 24, 2022, it filed an appeal pursuant to s. 3-53(1) of the *Act*. The Adjudicator assigned to that appeal dismissed it on April 20, 2023. In doing so, he found that it had been served and filed outside the time limit specified in the *Act*. Accordingly, he concluded that he had no jurisdiction to hear the appeal.

[21] I digress from the narrative at this point to note that the Court was not provided with a copy of the respondent's appeal document. That said, in his decision, the Adjudicator briefly reviewed the evidence he heard from the respondent's senior operations manager. According to the Adjudicator, and not disputed by the respondent, the senior operations manager testified that the respondent decided to appeal the OHS officer's decision because: (1) there had been a breakdown of the relationship between the parties; and (2) it was "not viable" to bring the applicant back to work. Notably, and if the Adjudicator's review is accurate, the senior operations manager's explanation for the appeal said nothing about the purported settlement of the May 14 complaint – tending to support the applicant's contention about the form agreement he signed on June 16, 2022.

[22] Another notable event in the aftermath of the OHS officer's decision surrounds the applicant's application to the Board, which he filed while the respondent's appeal was on reserve. In that proceeding, the applicant asked the Board,

among other things, to order the respondent to pay the compensation that followed from the OHS officer's decision. The Board's decision on that application is cited as *Pelletier v Touchwood Agency Tribal Council*, 2023 CanLII 61388 (Sask LRB). In that decision, authored by Chairperson Michael J. Morris, K.C. (as he then was), the Board held, correctly in my view, that its limited appellate jurisdiction did not afford it the authority to make any of the orders the applicant sought, including an order directing compensation.

[23] I make one final observation about the aftermath of the OHS officer's decision. Unlike my other observations, this is not about an event – but, rather, the absence of one. In this regard, I find it noteworthy that the filed material revealed nothing about any efforts made by the applicant or his counsel to seek quantification of his compensation from the OHS officer, herself. Moreover, there is no evidence of any inquiries he or his counsel may have made to determine whether there was any avenue within the Ministry of Labour Relations and Workplace Safety by which he could seek quantification and enforcement of his wage loss. The significance of this will become apparent later in this judgment.

Issues

[24] In my view, there are essentially two questions for the Court to address. The first question, which is central to the applicant's submission, is whether the *EMJA* provides this Court with jurisdiction to grant the applicant the relief he seeks.

[25] The second question, which I will address in the alternative, as a form of *obiter dictum*, is posed in the event of a negative answer to the first question. This question addresses whether the *Act* presents a jurisdictional means by which the applicant can achieve the remedy he seeks.

Law and Analysis

The Court's Jurisdiction to Quantify the Applicant's Wage Loss

[26] As already mentioned, the applicant's argument in support of the Court's jurisdiction to assess his wage loss is premised solely on the two provisions of the *EMJA* that I have earlier recited. He relies on no other basis. In effect, the applicant asserts that the OHS officer's decision, and the associated notice of contravention, clothed him with all but one of the essential indicia of a judgment creditor – the only absent indicium being a quantified sum of compensation for his wage loss. In his view, it remains only for this Court to assess the amount of his loss and thereby crystallize his judgment.

[27] Respectfully, I cannot accept the applicant's argument. In my view, the applicant's assertion betrays a misunderstanding about the true purpose and effect of the *EMJA*. I will explain.

[28] The Legislature's purpose in enacting the *EMJA* was to create a modernized framework for the enforcement of money judgments, replacing what had earlier been described as an "uncoordinated collection of rules" from a bygone era. See Tamara M. Buckwold & Ronald C. C. Cuming, *Modernization of Saskatchewan Money Judgment Enforcement Law: Final Report*, (Saskatoon: University of Saskatchewan, College of Law, 2005), online: King's Printer (Saskatchewan) <https://publications.saskatchewan.ca/#/products/108928> (31 March 2025) at page 1. To accomplish this task, the Legislature, among other steps, repealed five then existing statutes related to certain pre-judgment and post-judgment proceedings intended to address enforcement of civil money judgments.[1]

[1] *EMJA*, s. 249 – *The Absconding Debtors Act*, RSS 1978, c A-2 (rep).
EMJA, s. 250 – *The Attachment of Debts Act*, RSS 1978, c A-32 (rep).
EMJA, s. 251 – *The Creditors' Relief Act,* RSS 1978, c C-46 (rep).
EMJA, s. 252 – *The Executions Act*, RSS 1978, c E-12 (rep).
EMJA, s. 253 – *The Exemptions Act*, RSS 1978, c E-14 (rep).

[29] The end result of the Legislature's efforts is a statute that, at its core, is principally focused on circumstances that pertain to or impact the enforceability of *quantified* money judgments. As such, and except for the preservation order remedy in Part II of the statute, the *EMJA* is deferential to the processes that lead to the creation of quantified money judgments. This understanding is well reflected by the observations of Ronald C. C. Cuming & Donald H. Layh in *The Saskatchewan Enforcement of Money Judgments Act: Commentary and Analysis* (Regina: Office of the Queen's Printer, 2012), where the authors wrote the following at p. 14:

> **A. Pre-Enforcement Requirements**
> The EMJA tracks, as much as is feasible, the steps involved in the enforcement of a prospective or existing money judgment. The EMJA, although a code to enforce prospective or existing money judgments, is deferential to other legal processes that must be satisfied before it offers up its judgment enforcement remedies. It assumes that all measures, such as intervention by the Mediation Board as provided by *The Mediation Board Act*, R.S.S. 1978, c. P-33, or by the Queen's Bench Court as provided by section 81 of *The Queen's Bench Act, 1998*, c. Q-1 have been addressed. While the Act provides for a pre-judgment asset preservation remedy, it leaves to the *Queen's Bench Rules of Court* and other relevant legislation, such as *The Arbitration Act, 1992*, S.S. 1992, c. A-24.1, *Inter-jurisdictional Support Orders Act*, S.S. 2002, c. I-10.03, *The Reciprocal Enforcement of Judgments Act, 1996*, S.S. 1996, c. R-3.1, *The Enforcement of Canadian Judgments Act*, S.S. 2002, c. E-9.1001, *The Enforcement of Foreign Judgments Act*, S.S. 2005, c. E-9.121, *The Enforcement of Arbitral Awards Act*, S.S. 1996, c. E-9.12 or *The International Commercial Arbitration Act*, S.S. 1988-89, c. I-10.2 all matters involved in obtaining the judgment or having an order or judgment of a tribunal or foreign court registered as a judgment of the Queen's Bench Court.

[30] In my view, it follows from these observations that, to the extent the *EMJA* clothes this Court with any jurisdiction, it is only to address the pre-judgment and post-judgment measures devoted to the enforcement of – but not the creation or quantification of – a money judgment. Stated more directly to the context of this

application, I see nothing in the *EMJA* to support the view that it furnishes the Court with jurisdiction to quantify damages from an order to pay unquantified compensation.

[31] This understanding is reinforced by the definition of a "judgment" in s. 2(aa) of the *EMJA*. As I read it, this definition is premised on the existence of a requirement to "pay money". In the context of an exercise to enforce this requirement, it has no meaningful significance unless the amount of money to be paid is specifically known or ascertained. An unquantified judgment is, by definition, unenforceable. On this point, I accept and adopt the view expressed in *Antares Shipping Corp. v The "Capricorn"*, [1976] 2 FC 367 at 368, that an "enforceable judgment" is "one which may in itself be the object of execution proceedings."

[32] In the present case, the OHS officer's decision and associated notice of contravention clearly stipulates a requirement to pay the applicant a sum of money equal to the wages he would have earned but for the respondent's discriminatory actions. That said, without specific quantification of that amount, I am satisfied that neither the decision nor the notice of contravention can be regarded as an enforceable "judgment" within the meaning of the *EMJA*.

[33] It necessarily follows that the application, to the extent it is confined to an exercise of jurisdiction under the *EMJA*, must be dismissed.

[34] Although not raised in the materials before me, I might also express my view that there is no basis, within its inherent jurisdiction, for the Court to assess the applicant's wage loss. While there is no doubt that the Court possesses inherent jurisdiction, there is equally no doubt about its limited application, particularly where there may be a statutory basis for a court or another entity to exercise jurisdiction. Several Canadian courts, including the Supreme Court of Canada, have addressed the nature of a superior court's inherent jurisdiction and the limitations that come with it.

A concise description of this was penned by Cromwell J. in *Endean v British Columbia*, 2016 SCC 42 at paras 23-24, [2016] 2 SCR 162:

> [23] The inherent powers of superior courts are central to the role of those courts, which form the backbone of our judicial system. Inherent jurisdiction derives from the very nature of the court as a superior court of law and may be defined as a "reserve or fund of powers" or a "residual source of powers", which a superior court "may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them": I. H. Jacob, "The Inherent Jurisdiction of the Court" (1970), 23 *Curr. Legal Probs.* 23, at p. 51, cited with approval in, e.g., *R. v. Imona-Russell*, 2013 SCC 43, [2013] 3 S.C.R. 3, at para. 20; *R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78, at para. 24; and *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725, at paras. 29-31.
>
> [24] The courts have recognized that, given the broad and loosely defined nature of these powers, they should be "exercised sparingly and with caution": *Caron*, at para. 30. It follows that courts should first determine the scope of express grants of statutory powers before dipping into this important but murky pool of residual authority that forms their inherent jurisdiction: see, e.g., *Ted Leroy Trucking Ltd., Re*, 2010 SCC 60, [2010] 3 S.C.R. 379, at paras. 63-68. As The Honourable Georgina Jackson and Janis Sarra write, "[i]t is only where broad statutory authority is unavailable that inherent jurisdiction needs to be considered as a possible judicial tool to utilize in the circumstances": "Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters", in J. P. Sarra, ed., *Annual Review of Insolvency Law 2007* (2008), 41, at p. 73.
>
> [Emphasis added]

[35] As I explain in the next subheading, I think there is a statutory basis for an entity, other than this Court, to address and rule on the applicant's request for a remedy.

Jurisdiction to Assess Wage Loss under The Saskatchewan Employment Act

[36] There is a general understanding, if not an admonition, that judges should do no more than is asked of them in any application or proceeding. In the present case, I have decided to disregard this understanding and address what I believe to be the jurisdictional basis for the applicant to obtain an assessment of his wage loss.

[37] Earlier in this judgment, I noted the absence of any evidence of the applicant or his counsel seeking the assistance of the OHS officer to assess the amount of his wage loss. My observation should not be taken as a criticism. I say this because the way the *Act* has addressed this issue is rather bewildering, if not somewhat Kafkaesque. For some unknown reason, the Legislature did not see fit to set out a simple and straightforward statutory framework for assessing the quantum of an employee's wage loss under s. 3-36(2)(c). The absence of such a framework seems to have confounded all the events in the aftermath of the OHS officer's finding. It also seems to have informed the respondent's patently unsupportable position that a claim for lost wages depends solely on a successful prosecution under s. 3-37 of the *Act*.

[38] The confounding nature of this aspect of the *Act* also seems to have revealed itself in the proceedings leading up to the Saskatchewan Court of Appeal judgment in *Buchanan (Rural Municipality) v Veldman*, 2024 SKCA 111. In this judgment, the Court of Appeal reversed the Board's decision which, in turn, set aside the decision of the assigned Adjudicator (See *Veldman v Rural Municipality of Buchanan No. 304*, 2023 CanLII 183 (Sask LRB)). Like the present matter, the case involved an assessment of a worker's wage loss following discriminatory action in the termination of his employment. As I read the decisions of the Adjudicator, the Board and the Court of Appeal, it seemed there never was any assessment of wage loss by an OHS officer. Rather, the only assessment of wage loss was one made by the Adjudicator, which the Court of Appeal reinstated on appeal. Curiously, none of the

decisions explained how an appeal to the Adjudicator could be taken from an OHS officer's decision which, if my deduction is correct, did not include a quantified assessment of wage loss.

[39] Having said all the above, I think the applicant has ignored the wording of s. 3-36(5), as it read at the time of the OHS officer's decision. Despite the overall lack of clarity I have observed, the then wording of s. 3-36(5) expressly recognized an OHS officer's role to assess the amount of a worker's wage loss. In my view, the recognition of an OHS officer's duty to require money to be paid under s. 3-36(2)(c), and then subtract therefrom an amount for mitigation of that loss, supports no other conclusion.

[40] Despite the repeal of s. 3-36(5) in 2023, I think the recognition of an OHS officer's duty to assess wage loss still holds. I say this for two reasons. First, there is a compelling argument for the proposition that the repeal should not have retrospective effect. Secondly, and perhaps more importantly, if the repeal is found to have retrospective effect in this case, I am firmly of the opinion that the repeal did not do away with an OHS officer's duty to assess wage loss under s. 3-36(2)(c). This view is reinforced by the comment of the then Minister of Labour on Second Reading of the Bill (No. 91), which included the repeal of sections 3-36(5) and (6) of the *Act*. In specifically addressing this aspect of the Bill, the Minister said the following:

> **Hon. Mr. Morgan:** – …. We will also discontinue the practice of reducing the amount of money owed to workers by the amount of money earned in an alternate employment. This will ensure that workers who have suffered discriminatory action will receive the full amount of wages that the worker would have earned. [2]

[2] Saskatchewan, Legislative Assembly, *Debates and Proceedings (Hansard)* 29th Leg, 3rd Sess (7 November 2022) at 2781 (Hon. Mr. Morgan)]

It follows that, at least as far as the then Minister was concerned, an OHS officer's duty to assess wage loss remains intact. While I would have preferred a more straightforward description of this duty, I agree with that perspective.

Conclusion

[41] In the result, the application is dismissed.

[42] On the question of costs, I am satisfied that each party shall cover their own costs. I say this for two reasons. The first reason relates to the overall lack of clarity in the *Act* on the question of assessing wage loss due to discriminatory action. While I have found the applicant's attempt to engage the *EMJA* was very much ill-advised, I am confident that such an attempt would not have been pursued if the *Act* contained, as it should have done, a clearer statutory framework for assessing wage loss.

[43] The second reason relates to the respondent's submissions, which I found generally unhelpful. I have already made my views clear about the respondent's submission that a wage claim depends solely on a s. 3-37 prosecution. As for the other two submissions, they lacked any persuasive force. If I had concluded that the *EMJA* afforded the Court jurisdiction to grant the applicant the relief he sought, I would not have given any merit to either of the respondent's remaining submissions.

[44] Finally, given the disposition of this application, Rule 10-4 of *The King's Bench Rules* is waived.

J.

R.W. ELSON