LRB File No. 127-17

IN THE MATTER OF:

An Appeal of Wage Assessment Number 8619 pursuant to section 2-75 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1, as amended, (the "*SEA*");

A hearing pursuant to section 4-2 of the *SEA*

BETWEEN:

Marinel Manzuc $^{o}/_{a}$ Dymar Construction;

APPELLANT,

- and -

Oleksandr Zvirenko,

RESPONDENT (COMPLAINANT).

PRELIMINARY RULING
March 2, 2018

T. F. (TED) KOSKIE, B.Sc., J.D.

REPRESENTATIVES:

Appellant, Marinel Manzuc, Self Represented

Complainant (Respondent), Oleksandr Zvirenko, Self Represented

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1. INTRODUCTION

[1] Marinel Manzuc °/a Dymar Construction ("Dymar") appealed[1] (the "Appeal") Wage Assessment No. 8619[2] (the "Assessment") issued pursuant to section 2-74 of *The Saskatchewan Employment Act* (as amended)[3] (the "*SEA*") by the Director of Employment Standards (the "Director") on April 25, 2017.

[2] The Assessment directed Dymar to pay $13,843.60 to Oleksandr Zvirenko ("OZ").

[3] By Order dated October 18, 2017, the Labour Relations Board ("LRB") selected me to hear and determine the Appeal.

2. FACTS

[4] On April 26, 2017, Adam Farion ("Farion"), an Employment Standards Officer with the Saskatchewan Government Ministry of Labour Relations and Workplace Safety (the "Ministry"), forwarded the Assessment by registered mail to Dymar.[4] The mail was returned to the Ministry on May 16, 2017, as "unclaimed."[5]

[5] At 4:30 p.m. on May 29, 2017, Farion e-mailed the Assessment to Dymar.[6]

[6] At 9:45 a.m. on May 30, 2017, Dymar acknowledged receipt of the Assessment

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[1]Exhibit D-3, Appeal dated June 20, 2017

[2]Exhibit D-1, Wage Assessment No. 8619 dated April 25, 2017

[3]S.S. 2013, c. S-15.1

[4]Exhibit D-4, Registered Mail

[5]*Ibid.*

[6]Exhibit D-2, Affidavit of Adam Farion sworn October 26, 2017

and asked to be informed of his "deadline."[7]

[7] At 10:05 a.m. on May 30, 2017, Farion advised Dymar he was "eligible to . . . appeal the . . . Assessment, on or before 20-June-2017."[4]

[8] At some time on or before June 20, 2017, Dymar looked at the website hosted by the Ministry. A guide (the "Guide") appearing thereon explains how to "appeal a Wage Assessment."[5] It says:

> A letter indicating that . . . the employer . . . wishes to appeal the . . . Assessment must be sent to the Director . . . within 15 business days of the time when you received the . . . Assessment. . . . .
>
> . . .
>
> If you mail your notice of appeal, please send it by registered . . . mail so that you can prove the letter was delivered within the 15-business day time limit.
>
> If an employer appeals, he . . . must also include the amount of the Wage Assessment up to $500 . . . .

[9] Dymar testified he understood the Guide to mean his Appeal and funds (the "Funds")–$500.00–needed to be mailed by June 20, 2017.

[10] At 1:01 p.m. on June 20, 2017, Dymar sent–by registered mail–his Appeal and Funds to the Director.[6] It is worthy of note Dymar's cheque for the Funds was a "Canadian Dollar Draft" issued by Scotiabank on June 19, 2017.[7]

[11] The Director received the Appeal and Funds at 10:37 a.m. on June 21, 2017.

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[7] *Ibid.*

[4] *Ibid.*

[5] Exhibit E-1, Ministry Guide, p. 46

[6] Exhibit E-2, Canada Post Customer Receipt and credit card payment confirmation; Exhibit D-3, Canada Post Tracking Information

[7] Exhibit D-3, Affidavit of Patricia Meyerhoffer sworn November 9, 2017;

The Director deposited the Funds on June 21, 2017.[8]

3. ISSUES

[12] The issues herein are as follows:

a) Did Dymar appeal the Assessment within the statutory time limit set forth within the SEA?

b) If not, do I have the ability to extend the time limit in the circumstances of this case?

4. DECISION

[13] I rule:

a) Dymar did not appeal the Assessment within the statutory time limit set forth within the SEA;

b) I do not have the ability to extend the time limit in the circumstances of this case; and

c) I have no jurisdiction to hear the Appeal of the Assessment.

[14] I dismiss the Appeal.

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[8] *Ibid.*; *supra, footnote 6*

5. REASONS

5.1 LEGISLATION

[15] The relevant provisions of the *SEA* are as follows:

Interpretation
1-2(1) In this Act:

. . .

(b) "business day" means a day other than a Saturday, Sunday or holiday;

. . .

Wage assessments
2-74(1) In this Division, "adjudicator" means an adjudicator selected pursuant to subsection 4-3(2).

(2) Subject to subsection (4), if the director of employment standards has knowledge or has reasonable grounds to believe or suspects that an employer has failed or is likely to fail to pay wages as required pursuant to this Part, the director may issue a wage assessment against either or both of the following:

(a) the employer;

(b) subject to subsection (3), a corporate director.

(3) The director of employment standards may only issue a wage assessment against a corporate director if the director has knowledge or has reasonable grounds to believe or suspects that the corporate director is liable for wages in accordance with section 2?68.

(4) The amount of a wage assessment that the director of employment standards may assess is to be reduced by an amount that the director is satisfied that the employee earned or should have earned during the period when the employer or corporate director was required to pay the employee the wages.

(5) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (4).

. . .

Wage assessments
2-74(1) In this Division, "adjudicator" means an adjudicator selected pursuant to subsection 4-3(2).

(2) Subject to subsection (4), if the director of employment standards has knowledge or has reasonable grounds to believe or suspects that an employer has failed or is likely to fail to pay wages as required pursuant to this Part, the director may issue a wage assessment against either or both of the following:

(a) the employer;

(b) subject to subsection (3), a corporate director.

(3) The director of employment standards may only issue a wage assessment against a corporate director if the director has knowledge or has reasonable grounds to believe or suspects that the corporate director is liable for wages in accordance with section 2 68.

(4) The amount of a wage assessment that the director of employment standards may assess is to be reduced by an amount that the director is satisfied that the employee earned or should have earned during the period when the employer or corporate director was required to pay the employee the wages.

(5) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (4).

(6) If the director of employment standards has issued a wage assessment pursuant to subsection (2), the director shall cause a copy of the wage assessment to be served on:

(a) the employer or corporate director named in the wage assessment; and

(b) each employee who is affected by the wage assessment.

(7) A wage assessment must:

(a) indicate the amount claimed against the employer or corporate director;

(b) direct the employer or corporate director to, within 15 business days after the date of service of the wage assessment:

(i) pay the amount claimed; or

(ii) commence an appeal pursuant to section 2-75; and

(c) in the case of a wage assessment issued after money has been received from a third party pursuant to a demand issued pursuant to Division 4, set out the amount paid to the director of employment standards by the third party.

(8) The director of employment standards may, at any time, amend or revoke a wage assessment.

. . .

Commencement of appeal to adjudicator

2-75(1) Any of the following may appeal a wage assessment:

(a) an employer . . . who disputes liability or the amount set out in the wage assessment;

. . .

2-75(2) An appeal pursuant to this section must be commenced by filing a written notice of appeal with the director of employment standards within 15 business days after the date of service of a wage assessment.

. . .

(4) If the appellant is an employer or a corporate director, the employer or corporate director shall, as a condition of being eligible to appeal the wage assessment, deposit with the director of employment standards the amount set out in the wage assessment or any other prescribed amount.

(5) The amount mentioned in subsection (4) must be deposited before the expiry of the period during which an appeal may be commenced.

. . .

Adjudicator – duties
4-2 An adjudicator shall:

(a) hear and decide appeals pursuant to Part II and conduct hearings pursuant to Division 5 of Part II;

(b) hear and decide appeals pursuant to Division 8 of Part III; and

(c) carry out any other prescribed duties.

Selection of adjudicator
4-3(1) The director of employment standards and the director of occupational health and safety shall inform the board of an appeal or hearing to be heard by an adjudicator.

(2) On being informed of an appeal or hearing pursuant to subsection (1), the board shall select an adjudicator.

Procedures on appeals
4-4(1) After selecting an adjudicator pursuant to section 4-3, the board shall:

(a) in consultation with the adjudicator and the parties, set a time, day and place for the hearing of the appeal or the hearing; and

(b) give written notice of the time, day and place for the appeal or the hearing to:

(i) in the case of an appeal or hearing pursuant to Part II:

(A) the director of employment standards;

(B) the employer;

(C) each employee listed in the wage assessment or hearing notice; and

(D) if a claim is made against any corporate directors, those corporate directors; and

(ii) in the case of an appeal or hearing pursuant to Part III:

(A) the director of occupational health and safety; and

(B) all persons who are directly affected by the decision being appealed.

(2) An adjudicator may determine the procedures by which the appeal or hearing is

to be conducted.

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

(4) An adjudicator may determine any question of fact that is necessary to the adjudicator's jurisdiction.

(5) A technical irregularity does not invalidate a proceeding before or by an adjudicator.

(6) Notwithstanding that a person who is directly affected by an appeal or a hearing is neither present nor represented, if notice of the appeal or hearing has been given to the person pursuant to subsection (1), the adjudicator may proceed with the appeal or the hearing and make any decision as if that person were present.

(7) *The Arbitration Act, 1992* does not apply to adjudications conducted pursuant to this Part.

Powers of adjudicator

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

(a) to require any party to provide particulars before or during an appeal or a hearing;

(b) to require any party to produce documents or things that may be relevant to a matter before the adjudicator and to do so before or during an appeal or a hearing;

(c) to do all or any of the following to the same extent as those powers are vested in the Court of Queen's Bench for the trial of civil actions:

(i) to summon and enforce the attendance of witnesses;

(ii) to compel witnesses to give evidence on oath or otherwise;

(iii) to compel witnesses to produce documents or things;

(d) to administer oaths and affirmations;

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

(f) to conduct any appeal or hearing using a means of telecommunications that permits the parties and the adjudicator to communicate with each other simultaneously;

(g) to adjourn or postpone the appeal or hearing.

(2) With respect to an appeal pursuant to section 3-54 respecting a matter involving harassment or a discriminatory action, the adjudicator:

(a) shall make every effort that the adjudicator considers reasonable to meet with the parties affected by the decision of the occupational health officer that is being appealed with a view to encouraging a settlement of the matter that is the subject of the occupational health officer's decision; and

(b) with the agreement of the parties, may use mediation or other procedures to encourage a settlement of the matter mentioned in clause (a) at any time before or during a hearing pursuant to this section.

Decision of adjudicator

4-6(1) Subject to subsections (2) to (5), the adjudicator shall:

(a) do one of the following:

(i) dismiss the appeal;

(ii) allow the appeal;

(iii) vary the decision being appealed; and

(b) provide written reasons for the decision to the board, the director of employment standards or the director of occupational health and safety, as the case may be, and any other party to the appeal.

(2) If, after conducting a hearing, the adjudicator concludes that an employer or corporate director is liable to an employee or worker for wages or pay instead of notice, the amount of any award to the employee or worker is to be reduced by an amount that the adjudicator is satisfied that the employee earned or should have earned:

(a) during the period when the employer or corporate director was required to pay the employee the wages; or

(b) for the period with respect to which the employer or corporate director is required to make a payment instead of notice.

(3) The employer or corporate director has the onus of establishing the amount by which an award should be reduced in accordance with subsection (2).

(4) If, after conducting a hearing concerned with section 2-21, the adjudicator concludes that the employer has breached section 2-21, the adjudicator may exercise the powers given to the Court of Queen's Bench pursuant to sections 31.2 to 31.5 of The Saskatchewan Human Rights Code and those sections apply, with any necessary modification, to the adjudicator and the hearing.

(5) If, after conducting a hearing concerned with section 2-42, the adjudicator concludes that the employer has breached section 2-42, the adjudicator may issue an order requiring the employer to do any or all of the following:

(a) to comply with section 2-42;

(b) subject to subsections (2) and (3), to pay any wages that the employee has lost as a result of the employer's failure to comply with section 2-42;

(c) to restore the employee to his or her former position;

(d) to post the order in the workplace;

(e) to do any other thing that the adjudicator considers reasonable and necessary in the circumstances.

. . .

Service

. . .

9-9(2) Unless otherwise provided in this Act, any document or notice required by this Act or the regulations to be served on any person other than the director may be served:

(a) by personal service on the person by delivery of a copy of the document or notice;

(b) by sending a copy of the document or notice by registered or certified mail to the last known address of the person or to the address of the person as shown in the records of the ministry;

(c) by personal service at a place of employment on the person's manager, agent, representative, officer, director or supervisor;

(d) by any method set out in *The Queen's Bench Rules* for the service of documents; or

(e) by delivering a copy to the person's lawyer if the lawyer accepts service by endorsing his or her name on a true copy of the document or notice indicating that he or she is the lawyer for that person.

[16] The relevant provisions of *The Queen's Bench Rules* are as follows:

Personal Service

. . .

(5) A commencement document is deemed to have been personally served if the person to be served has delivered a statement of defence or taken any action that is necessary to participate in the proceeding.

. . .

(6) A document is deemed to have been personally served if an acknowledgment of service that complies with rule 12-3 is filed.

. . .

Requirements for acknowledgement of service
12-3(1) An acknowledgement of service must be in Form 12-3.

(2) An acknowledgement of service must:

(a) be signed by the person to be served, or by his or her lawyer or an authorized person as provided in rules 12-5 to 12-9;

(b) set out the date of service;

(c) clearly identify the document served; and

(d) include an address for service of the person to be served.

(3) A commencement document must be accompanied by:

(a) an acknowledgement of service;

(b) a request that the person served return the signed and completed acknowledgement of service without delay; and

(c) a postage prepaid envelope addressed to the person serving the document, except where service is effected by fax or electronic transmission.

. . .

Service by alternative modes
12-4(1) If expressly authorized by enactment, an order of the Court or these rules, service of a document may be effected by an alternative mode, including:

. . .

(d) electronic transmission.

. . .

(7) In the case of service by electronic transmission:

(a) the document must be electronically transmitted to the electronic transmission address shown in the address for service of the person to be served; and

(b) the electronic transmission must set out all of the following information:

(i) the sender's name, address, telephone number, electronic transmission address and the sender's fax number if there is one;

(ii) the name of the person to be served;

(iii) the date and time of transmission;

(iv) the electronic file name of the document being transmitted, the style of cause, name and date of the document being transmitted and the total number of hard copy pages of the document;

(v) the name and telephone number of a person to contact in the event of transmission problems;

(vi) confirmation that the original document has been signed, that the original signed document has been or will be filed with the Court and that the original signed document is available for inspection at the place and times specified.

. . .

Effective date of service
12-13(1) Notwithstanding the following subrules, service of a document by any mode where a signed acknowledgment of service has been received is effective on the date specified in the acknowledgment of service.

(2) Service of a document by any mode between 4:00 p.m. and midnight or on a Saturday, Sunday or holiday is effective on the next day that is not a Saturday, Sunday or holiday.

. . .

(6) Service of a document by electronic transmission is effective on the date set out in the electronically transmitted acknowledgment of receipt or, if no date is specified, on the date the sender receives the acknowledgment of receipt.

[17] The relevant provisions of *The Interpretation Act* are as follows:

General definitions
27(1) In an enactment:

. . .

"holiday" means:

(a) Sunday;

(b) New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Saskatchewan Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day, and when one of those dates, other than Remembrance Day or Boxing Day, falls on a Sunday, it includes the following day;

(c) any day appointed by an Act of the Parliament of Canada or by proclamation of the Governor General or Lieutenant Governor as a public holiday; («jour férié»)

. . .

Calculation of time

. . .

24(3) In the calculation of time not expressed as a number of clear days, weeks, months or years or as "at least" or "not less than" a number of days, weeks, months or years:

(a) the first day shall be excluded; and

(b) the last day shall be included.

5.2 ANALYSIS

5.2.1 Was the appeal of the wage assessment filed within the statutory time limit?

[18] The evidence establishes that the Director forwarded the Assessment to Dymar:

a) to both of his last known addresses by registered mail on April 26, 2017; and

b) to his email on May 29, 2017 at 4:30 p.m.

Though the registered mail was returned on May 16, 2017, as unclaimed, Dymar acknowledged by e-mail dated May 30, 2017, that he had received the Assessment forwarded by e-mail on May 29, 2017.

[19] Section 9-9(2) of the *SEA* provides that the Director may serve the Assessment by, *inter alia*:

a) sending same by registered mail to the last known address of the person or to the address of the person as shown in the records of the ministry; or

b) by any method set out in *The Queen's Bench Rules* for the service of documents.

[20] *The Queen's Bench Rules*:

a) allow for service of a document by e-mail;

b) provide a document is deemed to have been served if an acknowledgment of service is filed–effective the date of the said acknowledgment; and

c) provide a document is deemed to have been served if the person to be served has taken any action that is necessary to participate in the proceeding.

[21] The Director argues the Assessment was properly served on Dymar:

a) when he sent the Assessment by registered mail on April 26, 2017; and

b) alternatively, when on May 30, 2017, Dymar acknowledged receipt of the Assessment by e-mail.

[22] Without having to decide the first leg of the Director's argument, I am satisfied that May 30, 2017, was the latest date Dymar was served.

[23] The Appeal and Funds were received by the Director on June 21, 2017–sixteen business days after Dymar's acknowledgement of receipt of the Assessment.

[24] Section 2-75(1)(a) of the *SEA* allows an employer to appeal a wage assessment. The time for the appeal is set by section 2-75(2). It says:

> An appeal pursuant to this section must be commenced by filing a written notice of appeal with the director of employment standards within 15 business days after the date of service of a wage assessment.

[25] In the case of an appeal by an employer, sections 2-75(4) and 2-75(5) impose additional requirements:

> (4) If the appellant is an employer . . ., the employer . . . shall, as a condition of being eligible to appeal the wage assessment, deposit with the director of employment standards the amount set out in the wage assessment or any other prescribed amount.
>
> (5) The amount mentioned in subsection (4) must be deposited before the expiry of the period during which an appeal may be commenced.

[26] According the relevant provisions of *The Interpretation Act*, reproduced above, Dymar had until June 20, 2017, to file the Appeal. The Appeal and Funds were not received within the fifteen business day period required by the *SEA*.

[27] Dymar correctly points out that once he had mailed the Appeal and Funds, the issue of when they would arrive was out of his control. However, the *SEA* requires that the materials be received within the fifteen-day appeal period. Although the Appeal and Funds had been mailed before the expiry of the deadline, they were not received until June 21, 2017.

5.2.2 If it was not filed within the statutory time limit, is any relief available?

[28] Sections 2-75(2), 2-75(4) and 2-75(5) of the *SEA* contain mandatory provisions that must be met to perfect an appeal. An adjudicator appointed pursuant to the *SEA* only has the authority delegated within the *SEA* itself. Any power to extend or waive the time permitted to file an appeal would need to arise from the provisions of the *SEA*.[9]

[29] This issue was considered in *Brady* v *Jacobs Industrial Services Ltd.*,[10] a recent decision that addressed the time for appeal of an occupational health and safety report under the *SEA*. Although that decision addressed the time to appeal under sections 3-53 and 3-54, the analysis is relevant here:

> There is no express provision anywhere in the Saskatchewan Employment Act that gives authority to the adjudicator or to anyone else to extend or waive the time limits for an appeal. s. 4-4(2) says an adjudicator may determine the procedures by which an appeal or hearing is to be conducted. This provision deals only with an adjudicator's ability to control procedural matters in an appeal hearing and does not allow an adjudicator to extend the time for filing the appeal. A delegated power that allows a decision-maker to make rules of practice and procedure does not extend to allowing the decision-maker to alter a statutory time limit: Bassett v. Canada (Government) et al., 1987 CanLii 4873 (SK CA).
>
> s. 4-4(5) says a technical irregularity does not invalidate a proceeding before or by an adjudicator. Failure to comply with a statutory time limit, however, is not a technical irregularity. It is a substantive matter that goes to jurisdiction: Baron Metal Industries Inc. [1999] OLRB Rep May/June 363. Furthermore, at the point the appeal is filed, it is an appeal filed with the Director, so at that point it is not yet a proceeding before or by an adjudicator.
>
> When the Saskatchewan Employment Act came into effect, the case law was clear that time limits are interpreted as mandatory and relief against failure to meet a time limit is not available unless expressly stated in the Act. If the legislature intended there be any relief from the time limit for appeal in s. 3-53(2), it could easily have included an express provision. Indeed, where the legislature intended to provide jurisdiction to waive or extend time limits, it did do so expressly. For example, s.6-49(3)(f) gives an arbitrator power to relieve against breaches of time limits in collective agreements. Similarly, s. 2-93 grants specific authority for the Court of Queen's Bench to extend the time for making an application to set aside an order or judgment. The legislature did not give any similar power to an adjudicator or to anyone else in the case of an appeal under s. 3-53,

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[9] *Jordan v. Saskatchewan (Securities Commission)*, SK CA, March 21, 1968

[10] *Brady v Jacobs Industrial Services Ltd.*, 2016 CanLII 49900 (SK LA)

and I have no authority to imply such authority.[11]

[30] As was the case with the provisions at issue in *Brady*, there is no express provision in the *SEA* that would permit an adjudicator to extend or waive the time limit created by sections 2-75(2) and 2-75(5).

[31] It was Dymar's testimony that he relied on the Guide posted by the Ministry on its web site in concluding that, if the materials were sent by registered mail before June 20, 2017, that his appeal would be accepted. After having reviewed the Guide, I conclude that this was a reasonable belief. The materials state that an appeal "must be *sent* to the Director within 15 business days" (emphasis added). The Guide goes on to say that the appellant will need to prove that the appeal was "*delivered* within 15 days" (emphasis added). This ambiguity was unfortunate and appears to have led to significant prejudice to Dymar in the present case.

[32] Because of the potentially confusing statements contained in the Guide, and Dymar's reliance on it, I have considered whether the application of estoppel or officially induced error can operate to prevent the Director from relying on the time limit established by the *SEA*. I note that the decision by Adjudicator Surtees in *DSR Custom Carpentry*, referred to me in this case, declined to comment on the applicability of these principles.[12] I further considered whether the existence of a legitimate expectation–that the Appeal would be accepted if it were mailed before June 20, 2017–would have any effect.

[33] The principles underlying equitable estoppel are well known. The essential elements include:

a) a clear and unequivocal representation that may be made by words or conduct or in some circumstances may result from silence or acquiescence;

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[11] *Ibid* at para 51-53

[12] *DSR Custom Carpentry v Director of Employment Standards,* 2017 at para. 22

b) intended to be relied on by the party to whom it was directed, although that intention may be inferred from what reasonably should have been understood; and

c) some reliance in the form of some action or inaction; and detriment resulting therefrom.[13]

As I have already indicated, Dymar relied upon the representations made in the Guide when determining what his obligations were under the *SEA*. This resulted in his claim being filed after the time for the Appeal had elapsed.

[34] Even if the facts support a finding of equitable estoppel, it would not resolve the issue. Estoppel is not available if its effect would be to suspend the operation of a statutory time limit.[14] Where the legislation in question provides a mandatory deadline, the parties are not able to extend that time through their words or conduct. Providing this kind of relief would require overriding the clear terms of the statute.

[35] The doctrine of officially induced error is commonly raised in the context of criminal and regulatory prosecutions. The elements of this defence include that:

a) an error of law or mixed fact and law was made;

b) the person who committed the act considered the legal consequences of his or her actions;

c) the advice obtained came from an appropriate official;

d) the advice was reasonable;

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[13]Brown & Beatty, *Canadian Labour Arbitration*, 3rd Edition, at para. 2:2211

[14]*Tamglass American Inc. v. Richter, Allen & Taylor, Inc.*, 2005 AB CA 341 (CanLII)

e) the advice was erroneous; and

f) the person relied on the advice in committing the act.[15]

[36] Although conceptually similar to the facts in the present case, officially induced error is more appropriately confined to prosecutorial proceedings. This issue was addressed in *Tedesco* v. *Joe Bone's Grill Inc.*,[16] which concluded that such analysis had little relevance to civil proceedings that are not concerned with the commission of an illegal action. As a result, the framework established in officially induced error cases cannot be translated to the present case.

[37] The doctrine of legitimate expectation does have application in civil cases. Generally speaking, it holds that where a government official provides a person with "clear unambiguous and unqualified" advice about how a matter will be processed, fairness may demand that process be the one that is followed. It is intended to ensure fairness in cases where the exercise of discretionary authority would lead to an unjust result. However, the decision not to accept Dymar's appeal was not discretionary, but was, in fact, required by the *SEA*. In addition, an expectation cannot be considered legitimate where it contradicts a clearly established statutory obligation.[17] As a result, Dymar's expectation, although reasonable, cannot extend the time available to file the Appeal.

[38] Although I am sympathetic to Dymar's position, I have concluded that the time limit established by the *SEA* is mandatory and cannot be waived or extended in the absence of an enabling provision within the *SEA* itself. Equitable considerations cannot operate to confer jurisdiction that I would otherwise lack. If I were empowered to exercise discretion in this matter, I would choose to do so.

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[15] *R. v. Bédard*, [2017] 1 SCR 89, 2017 SCC 4 (CanLII)

[16] *Tedesco v. Joe Bone's Grill Inc.*, 2007 CanLII 48380 (ON LRB)

[17] *C.U.P.E. v. Ontario (Minister of Labour)*, [2003] 1 SCR 539, 2003 SCC 29 (CanLII) at para. 131

[39] Although I have no jurisdiction in this matter, I would urge the Director to clarify the Guide and any other publically available materials to prevent such misunderstandings in the future. It is in the best interests of all parties that appellants are correctly apprised of relevant deadlines. Where the Director communicates such information, he must take care that the information is clear and correct.

[40] For the reasons above, I conclude that no relief is available to remedy the late filing of the Appeal in this case. Accordingly the Appeal is dismissed.

Dated at Saskatoon, Saskatchewan, on March 2, 2018.

T. F. (TED) KOSKIE, B.Sc., LL.B.,
ADJUDICATOR