

Federal Court



Cour fédérale

Date: 20120203

Docket: T-1060-11

Citation: 2012 FC 136

Ottawa, Ontario, February 3, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

JEFFREY MILLER

Applicant

and

**MINISTER OF LABOUR (CANADA),
MICHAEL PEARISO, SHELDON PENNER,
BRETT ROBISON, DAVID STAGG,
COLLEEN HANNAH, THOMAS THOMSEN,
PLAMEN VALCHEV, JAMIE D. BARRERA,
SUSAN TAYOR, KENNETH MEINTZER,
CARL FALCONER, SUSAN NAGEL,
PAMELA FRY, BLAIR MARTIN,
CRAIG MATTSON, MARGARET KEMP,
EGON SOUVARD, ROGER CROSS,
WILLIAM SCURR, JIM BAKER,
LUKE YANIK, ALVIN SLOAN,
DENISE SCHONFIELD, JAMIE FALCONER,
LISA NICHOLSON AND FIONA MALONE**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 for judicial review of a decision of Newton Eng, an inspector with Human Resources and Skills Development Canada – Federal Labour Program (HRSDC), dated May 20, 2011, to issue a Payment Order to a Director of a Corporation (the Payment Order) against the applicant pursuant to sections 251.1 and 251.18 of the *Canada Labour Code*, RSC 1985, c L-2 (the Labour Code). The applicant seeks a declaration that he tendered a valid written resignation on December 15, 2008, and an order setting aside the Payment Order, dated May 20, 2011, and referring the matter back for re-determination in light of the applicant's resignation.

[2] The only respondent who participated in these proceedings is the Minister of Labour (hereinafter referred to as the respondent).

Factual Background

[3] Corpac Canada Ltd. (Corpac) was a commercial airline that shut down operations in June 2009. The applicant, Jeffrey Miller, became an Officer and Director of Corpac in April 2007. The applicant claims that he attempted to resign as Officer and Director several times. He learned in the fall of 2008 that Corpac was in financial difficulties, but that it was continuing to meet its payroll obligations.

[4] The applicant states that he attended the Corpac offices to deliver his written resignation on December 15, 2008, but the Executive Vice President and General Manager, Mr. Roger Cross (Mr. Cross), was unavailable. The applicant states that he left a copy of the resignation on the desk of a

senior manager, Mr. Michael Hills, who according to the applicant later called to confirm receipt of the resignation.

[5] Between February and June 2009, Corpac terminated the employment of several employees. HRSDC received twenty-six complaints from former employees for unpaid wages, overtime, per diems, vacation pay, pay in lieu of termination, and severance pay. The matter was assigned to an inspector, who appears based on the Certified Tribunal Record to have worked on it for several months before it was transferred to Mr. Newton Eng (the Inspector). A corporate search indicated that the applicant was the sole director of Corpac.

[6] The Inspector contacted the applicant on January 7, 2011, and the respondent asserts that the applicant stated he had verbally advised the general manager of Corpac of his resignation but never filed the resignation with the Alberta Corporate Registration System (the Registry). The Inspector sent the applicant a letter dated January 18, 2011, indicating that \$397,784.56 were owing to former employees. Based on his preliminary findings, a Payment Order could be issued against the applicant. The letter invited the applicant to submit information to the Inspector to show that the conditions of section 251.18 of the Labour Code had not been met.

[7] The applicant responded through counsel by letter dated February 1, 2011, disputing that wages were owed, that recovery from Corpac was impossible, and that the entitlement arose while the applicant was an incumbent Director. The letter stated that the applicant had resigned on December 15, 2008, and a copy of the resignation letter was attached. The applicant's counsel also informed the Inspector that section 108(2) of Alberta's *Business Corporations Act*, RSA 2000, c B-

9 (the Alberta Business Act), which governed Corpac, states that a resignation is effective once it is sent to the corporation.

[8] Since the resignation letter was addressed to Mr. Cross, the Inspector contacted Mr. Cross, who confirmed in writing that he never received the resignation letter. The Inspector advised the applicant's counsel of Mr. Cross' information, and of his unfamiliarity with the Alberta Business Act. The respondent claims that the Inspector received no further information from the applicant despite repeated requests. The applicant asserts that his counsel was in regular contact with the Inspector, advising him that they were still gathering information to respond.

[9] The Inspector wrote to the applicant multiple times with updates regarding the amount owing, and heard nothing in response. On April 27, 2011, the Inspector sent the applicant and his counsel a letter noting they had not responded to his preliminary determinations, and indicating that if further information was not received within 15 days, a Payment Order could be issued against the applicant. After again hearing nothing in response, the Inspector made his final determination and issued the Payment Order against the applicant for \$408,830.63 on May 20, 2011. The applicant was served personally with the Payment Order on May 29, 2011. In his sworn affidavit, Mr. Hugh Slocombe states that the applicant called him on May 30, 2011, saying that he was served with this document that gave 15 days to "do something." Mr. Slocombe asked the applicant to fax the document, but there is no evidence that the applicant did so.

[10] The period to appeal the Payment Order ran for 15 days from that date, and therefore expired on June 13, 2011. The applicant did not file an appeal – he states that it was due to an

oversight on the part of his counsel, who only received the Payment Order by regular mail on June 10, 2011. Counsel requested an extension of the appeal period, and the Inspector and the Inspector's supervisor both informed the applicant's counsel that there was no provision in the Labour Code for extending the appeal period.

Issues

[11] Before the merits of the decision can be considered, the Court must decide the preliminary issue of whether to exercise its discretion to decline to hear the application because of the failure to pursue an adequate alternative remedy.

Statutory Provisions

[12] The applicable provisions of the *Canada Labour Code* and the *Alberta Business Corporations Act* can be found in the Annex following this decision.

Standard of Review

[13] The applicant submits that the Inspector erred in law by relying solely on the fact that the applicant was listed as a Director in the Registry. The applicant asserts that this is a question of law outside the Inspector's expertise, and is therefore to be reviewed on a standard of correctness. The respondent contends that, if the Court decides to hear the application on its merits, the Inspector's decision is to be reviewed on a standard of reasonableness, because the question of whether the applicant had submitted a legally valid resignation is a question of mixed fact and law (see *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190, at para 53).

[14] The Court agrees with the respondent that the question of whether the applicant was a Director at the time the entitlement arose is a question of mixed fact and law. Therefore, the standard of review of this question would be reasonableness.

Applicant's Arguments

[15] The applicant notes that three requirements must be met for a Payment Order to be validly issued: there must be an entitlement on the part of the employee; that entitlement must have arisen during the incumbency of the director; and recovery from the corporation must be impossible or unlikely (*Purewal v Ahmad*, [2010] CLAD No 387, 2010 CarswellNat 5515 (WL Can) at para 11). The applicant disputed in his response to the Inspector that the second requirement was met, because he resigned as Director on December 15, 2008. The applicant provided a copy of the letter of resignation to the Inspector.

[16] The applicant argues that, pursuant to section 108(2) of the Alberta *Business Corporations Act*, which governed Corpac, the resignation was effective when the written resignation was sent to the Corporation. The applicant submits that it does not matter to whom the letter is given, as long as the resignation is meaningfully communicated to the Corporation (*Hart v Lefebvre* (1999), 2 BLR (3d) 84, 1999 CarswellOnt 4678 (WL Can) (Ont SCJ), at para 5). The applicant further submits that the effectiveness of the resignation was not dependent on whether notice of the resignation had been filed with the Registry (*Netupsky v The Queen*, [2003] TCJ No 30, 30 BLR (3d) 46; *McCarthy v Nova Scotia*, 2001 NSCA 79, 193 NSR (2d) 301). Therefore, the Inspector erred by relying on the fact that the resignation was not filed with the Registry.

[17] The applicant notes that as held in *Brown v Shearer* (1995), 102 Man R (2d) 76, 19 BLR (2d) 54, at para 27, a director can validly resign even if it will leave the corporation without a director. Thus, the applicant submits the fact that he was the sole Director at the time does not render his resignation invalid.

[18] Regarding the lapse of the appeal period, the applicant acknowledges that the Labour Code does not allow for an extension of the appeal period (*Re Aviation Leclerc Inc.* (1997), 144 FTR 206, 1997 CarswellNat 2402 (WL Can) (TD) [*Re Aviation Leclerc Inc.*], at para 14). However, the applicant relies on the decision in *Actton Transport Ltd. v Canada (Minister of Labour)*, 2001 FCT 984, 211 FTR 188 (TD) [*Actton Transport Ltd.*], which held that Parliament did not intend to make the statutory appeal process the exclusive means of challenging a Payment Order. The applicant submits that, as in *Actton Transport Ltd.*, above, the Court should find that judicial review is appropriate in this case.

[19] The applicant further submits that this is a highly exceptional set of facts, and the manner in which the Payment Order was delivered was irregular – the Payment Order stated that it was ‘Cc’ed’ to the applicant’s counsel, but they did not receive it until June 10, 2011. The applicant submits that because of this misunderstanding, the applicant is subject to a Payment Order for much more money than he rightfully owes, and thus the Court should intervene in the interests of fairness.

Respondent’s Arguments

[20] First, the respondent asks the Court to disregard parts of the affidavits submitted by the applicant. The respondent notes that judicial reviews are generally conducted based on the record

before the decision-maker, except in relation to questions of procedural fairness or jurisdiction. The respondent submits that the affidavits of the applicant and Mrs. Deirdre Malone, and paragraphs 3-12 of the affidavit of Mr. Hugh Slocombe, relate to the merits and procedure of the Inspector's decision, and are therefore irrelevant.

[21] Second, the respondent contends that the Court should exercise its discretion not to hear this application, because the applicant did not pursue an adequate alternative remedy. The respondent notes that, following the Supreme Court of Canada's decision in *Canadian Pacific Ltd. v Matsqui Indian Band*, [1995] 1 SCR 3, 177 NR 325 [*Canadian Pacific Ltd.*], the Court must consider several factors in deciding whether to exercise its discretion and decline to hear an application for judicial review when an alternative remedy exists. These factors include: the convenience of the alternate remedy; the nature of the error; the nature of the appellate body; and expeditiousness and cost of the alternate remedy.

[22] The respondent asks the Court to follow its decision in *Bissett v Canada (Minister of Labour)*, [1995] 3 FC 762, 102 FTR 172 (TD) [*Bissett*], which was also in relation to a Payment Order under the Labour Code. In that decision, Justice Rothstein reviewed the appeal process under the Labour Code, finding: referees have broad powers on appeal; the appeal is heard *de novo*; and referees can deal with the issue of whether a director was incumbent at the relevant time. Justice Rothstein concluded that the appeal constituted an adequate remedy, and declined to hear the application for judicial review.

[23] The respondent submits that the decision in *Actton Transport Inc.*, above, relied upon by the applicant, can be distinguished on several grounds: the decision in *Bissett*, above, was not considered, nor were some of the factors articulated in *Canadian Pacific Ltd.*, above; the applicant in that case challenged a legislative provision as void for uncertainty or *ultra vires*; and there was evidence that the appeal would take more than a week and would involve at least three witnesses. Thus, the respondent argues, the application was heard in order to avoid a lengthy and costly appeal that may have been decided pursuant to invalid legislation. The respondent submits that the decision in *Bissett*, above, is more closely akin to the present application and should be applied, rather than the decision in *Actton Transport Ltd.*, above.

[24] The respondent emphasizes that the fact that the applicant's counsel missed the appeal period does not render the alternative remedy inadequate. The applicant was personally served with the Payment Order, which indicated that he had fifteen days to appeal. The applicant has not presented any explanation for why the appeal period was missed beyond an assertion that it was 'by slip' of counsel. The respondent submits that if missing a limitation period rendered an alternative remedy inadequate, parties could deliberately miss limitations periods to avoid having to pursue a statutory right of appeal (*Lazar v Canada (Attorney General)*, [1999] FCJ No 553, 168 FTR 11, (TD) [*Lazar*], at para 18; *Jones v Canada (Attorney General)*, 2007 FC 386, 333 FTR 1, at para 38; *Saskatchewan (Minister of Agriculture, Food and Rural Revitalization) v Canada (Attorney General)*, 2006 FC 345, 289 FTR 237, at paras 58-59).

[25] The respondent argues that, if the Court decides to hear the application on its merits, the Inspector was reasonable to conclude that the applicant had not resigned, based on the evidence

presented. The respondent notes that the Alberta Business Act creates a rebuttable presumption that a director named in a notice filed with the Registry is the Director of a Corporation. The respondent submits that the only evidence the applicant provided of his resignation was a copy of the resignation letter addressed to Mr. Cross, but Mr. Cross denied in writing having ever received the letter. Since the applicant bore the burden of proving he had resigned, the respondent argues that the Inspector was reasonable to conclude that the applicant was a Director at the time the entitlements arose.

Analysis

[26] Before the Court can consider the application on its merits, it must first decide whether to exercise its discretion not to hear the application, because the applicant failed to pursue an adequate alternative remedy, specifically the appeal under section 251.11 of the Labour Code. In the Court's view, this was an adequate alternative remedy, and the applicant's failure to pursue it within the specified appeal period does not render it inadequate. Therefore, the Court finds that it should exercise its discretion not to hear the application, and the application must be dismissed.

[27] In *Canadian Pacific Ltd.*, above, the Supreme Court of Canada noted that the prerogative writs are discretionary in nature, and set out the relevant factors to consider when determining whether an applicant is precluded from seeking judicial review because of a failure to pursue internal appeal rights. Chief Justice Lamer stated at para 37:

[37] On the basis of the above, I conclude that a variety of factors should be considered by courts in determining whether they should enter into judicial review, or alternatively should require an applicant to proceed through a statutory appeal procedure. These factors include: the convenience of the alternative remedy, the nature of the error, and the nature of the appellate body (i.e., its investigatory,

decision-making and remedial capacities). I do not believe that the category of factors should be closed, as it is for courts in particular circumstances to isolate and balance the factors which are relevant.

[28] This Court previously considered the adequacy of the appeal process under section 251.11 of the Labour Code in *Bissett*, above. In that case, the applicants did commence appeal proceedings, but at the same time applied for judicial review of the inspector's decision and sought a stay of the appeal pending judicial review. Thus, while the context of this case was different because the applicants were not out of time to pursue the appeal, this decision is nonetheless relevant because it analyzes the adequacy of the referee appeal as an alternative remedy.

[29] The Court recalls that Justice Rothstein found that the referee's powers are broad, providing for a full hearing *de novo*. He found that the referee could fully address the applicants' ground of appeal – which, as in this case, was that they were not directors at the relevant time. He also noted that time and cost considerations favoured the appeal process over judicial review. He concluded that this process would allow for a full consideration of the applicants' arguments and could provide the remedies the applicants sought.

[30] The Court adopts the reasoning of Justice Rothstein, and agrees with the respondent that an appeal to a referee constitutes an adequate alternative remedy: a referee has the power to hear all the evidence, including additional evidence that was not presented to the inspector; a referee can confirm, vary or rescind a Payment Order, and award costs. As Justice Rothstein found, the factors of time and cost favour the appeal to a referee. Finally, the Court also agrees with the respondent that the error alleged by the applicant – that the Inspector wrongly concluded he was a Director at the relevant time – could have been adequately addressed by a referee on appeal.

[31] The applicant does not directly dispute the adequacy of the appeal process; rather, he suggests that because the appeal period lapsed, and therefore this remedy is no longer available to him, he is entitled to seek judicial review. In support of this argument, the applicant seeks to rely on *Actton Transport Ltd.*, above, in which Justice O’Keefe decided to hear an application for judicial review before the applicant pursued an appeal to a referee. The Court agrees with the respondent, however, that this case can be distinguished: Justice O’Keefe agreed to hear the application in order to resolve a dispute over a legislative definition, so that the parties would not have to go through a lengthy appeal, which would ultimately be quashed if the definition were found to be invalid. The circumstances of that decision are far different from the one under review, and it does in no way stand for the proposition that judicial review is available where an applicant fails to file an appeal within the prescribed period.

[32] As the respondent submits, the failure to pursue an alternative remedy within a limitation period does not render that remedy inadequate. The British Columbia Court of Appeal addressed this issue in *Adams v British Columbia (Workers’ Compensation Board)* (1989), 42 BCLR (2d) 228, 18 ACWS (3d) 256 (BCCA), and held at para 4:

[4] The decision by the commissioners was a medical decision. Accordingly, the appellant then had the right to elect within 90 days to have the decision reviewed by a medical review panel pursuant to s. 58 of the Act. She did not avail herself of that right and the time has now expired. It would not be appropriate to exercise the powers granted by the Judicial Review Procedure Act, R.S.B.C. 1979, c. 209, in these circumstances, thereby indirectly circumventing the effect of the time limitation, no satisfactory explanation having been given as to why the election was not made.

[33] This reasoning has later been applied in cases of this Court, for instance in *Lazar*, above, at para 18:

[18] ...the fact that an applicant is out of time to exercise a statutory right of appeal to an administrative tribunal or, for that matter, to a court, does not necessarily render the remedy inadequate: *Adams v. British Columbia (Workers' Compensation Board)* (1989), 42 B.C.L.R. (2d) 228 (B.C. C.A.). It would surely be anomalous if, by the simple expedient of failing to appeal in time, an applicant were able to avoid having to use a statutory right of appeal before invoking the Court's supervisory jurisdiction.

[34] The decision in *Re Aviation Leclerc Inc.*, above, although cited by the applicant, supports this conclusion. The facts of that case are somewhat similar to this application: the applicant failed to file an appeal of the Payment Order, because of an erroneous belief that the corporation's trustee should have received the Payment Order. When the Payment Order was filed with this Court, the applicant made a motion for revocation of the judgment enforcing the order. The Court denied the motion, and stated at paras 10 and 14:

[10] It is clear from the applicant's argument that he is vigorously challenging the merits of Mr. Bissonnette's claim. It is also clear that he wants to obtain a revocation of the judgment so as to be able to challenge this claim in the Federal Court. In my opinion, that is not possible since this Court has no jurisdiction as to the issue of the validity of Mr. Bissonnette's claim...

[14] The purpose of registration of the payment order is to allow its execution. Unfortunately for the applicant, the appeal period has expired and he cannot obtain an extension of the time for appeal since the Code does not allow for an extension. Counsel for the applicant argued that his client would be wronged if the motion for revocation were not allowed, since he had not had an opportunity to be heard. In my opinion, there is no merit in this submission since the applicant received a copy of the payment order issued against him and was notified that he had 15 days in which to appeal this order. He did not do so. That is why the applicant finds himself with a payment order that has become enforceable against him. In my view of the clear provisions in the Code, I am unable to grant the revocation requested by the applicant.

[35] Similarly, the Court finds that the applicant was personally served with the Payment Order, which clearly stated that he had fifteen (15) days to appeal (Certified Record, Tab 3). For reasons that remain ambiguous and unsupported by the evidence, the period lapsed before an appeal had been filed. While Mr. Slocombe asked the applicant to fax the document, there is no evidence that the applicant did so and the applicant's affidavit is silent regarding the phone call between the applicant and applicant's counsel on May 30, 2011. The fact of the matter is that Mr. Miller was notified of the Payment Order in the amount of \$408,830.63 and the evidence is clear that he knew he had fifteen (15) days "to do something". (Affidavit of Hugh Slocombe, Applicant's record, p 53).

[36] The applicant argued that because of an unusual set of circumstances, and how long it took for the applicant's lawyer to receive the Payment Order, the Court should exercise its discretion to avoid unfairness. However, pursuant to section 251.1(3) of the Labour Code, the Inspector was only obligated to serve the Payment Order on the applicant – the Court cannot find any legal obligation to send it to the applicant's lawyer. The evidence is that the applicant received the Payment Order on May 29, 2011, and was asked to fax it to his lawyer on May 30, 2011. Again, there is no evidence that the Payment Order was indeed faxed to the applicant's lawyer and the applicant has not provided any explanation why he did not do so.

[37] As a result, however meritorious the applicant's appeal may have been, the Payment Order is now enforceable against the applicant, and he cannot seek from this Court what he failed to seek through the appropriate process under the Labour Code.

[38] Despite able argument from counsel for the applicant, the Court is not satisfied, on the basis of the material before it, that the circumstances of this case are exceptional as to warrant exercising its discretion to consider the application for judicial review on its merits.

[39] Therefore, the application is dismissed.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed with costs.

“Richard Boivin”

Judge

ANNEX*Canada Labour Code, RSC 1985, c L-2**Recovery of Wages**Recouvrement du salaire*

Payment order

Ordre de paiement

251.1 (1) Where an inspector finds that an employer has not paid an employee wages or other amounts to which the employee is entitled under this Part, the inspector may issue a written payment order to the employer, or, subject to section 251.18, to a director of a corporation referred to in that section, ordering the employer or director to pay the amount in question, and the inspector shall send a copy of any such payment order to the employee at the employee's latest known address.

251.1 (1) L'inspecteur qui constate que l'employeur n'a pas versé à l'employé le salaire ou une autre indemnité auxquels celui-ci a droit sous le régime de la présente partie peut ordonner par écrit à l'employeur ou, sous réserve de l'article 251.18, à un administrateur d'une personne morale visé à cet article de verser le salaire ou l'indemnité en question; il est alors tenu de faire parvenir une copie de l'ordre de paiement à l'employé à la dernière adresse connue de celui-ci.

Where complaint unfounded

Plainte non fondée

(2) Where an inspector concludes that a complaint of non-payment of wages or other amounts to which an employee is entitled under this Part is unfounded, the inspector shall so notify the complainant in writing.

(2) L'inspecteur qui conclut à l'absence de fondement d'une plainte portant que l'employeur n'a pas versé à l'employé le salaire ou une autre indemnité auxquels celui-ci a droit sous le régime de la présente partie avise le plaignant par écrit de sa conclusion.

Service of documents

Signification

(3) Service of a payment order or a copy thereof pursuant to subsection (1), or of a notice of unfounded complaint pursuant to subsection (2), shall be by

(3) L'ordre de paiement ou sa copie ainsi que l'avis de plainte non fondée sont signifiés à personne ou par courrier recommandé ou certifié; en cas

personal service or by registered or certified mail and, in the case of registered or certified mail, the document shall be deemed to have been received by the addressee on the seventh day after the day on which it was mailed.

de signification par courrier, ils sont réputés avoir été reçus par le destinataire le septième jour qui suit leur mise à la poste.

Proof of service of documents

Preuve de signification

(4) A certificate purporting to be signed by the Minister certifying that a document referred to in subsection (3) was sent by registered or certified mail to the person to whom it was addressed, accompanied by an identifying post office certificate of the registration or certification and a true copy of the document, is admissible in evidence and is proof of the statements contained therein, without proof of the signature or official character of the person appearing to have signed the certificate.

(4) Le certificat censé signé par le ministre attestant l'envoi par courrier recommandé ou certifié soit de l'ordre de paiement ou de sa copie, soit de l'avis de plainte non fondée, à son destinataire, et accompagné d'une copie certifiée conforme du document et du récépissé de recommandation ou de certification postale est admissible en preuve et fait foi de son contenu sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire.

Appeal

Appel

251.11 (1) A person who is affected by a payment order or a notice of unfounded complaint may appeal the inspector's decision to the Minister, in writing, within fifteen days after service of the order, the copy of the order, or the notice.

251.11 (1) Toute personne concernée par un ordre de paiement ou un avis de plainte non fondée peut, par écrit, interjeter appel de la décision de l'inspecteur auprès du ministre dans les quinze jours suivant la signification de l'ordre ou de sa copie, ou de l'avis.

Payment of amount

Consignation du montant vise

(2) An employer or a director

(2) L'employeur et

of a corporation may not appeal from a payment order unless the employer or director pays to the Minister the amount indicated in the payment order, subject to, in the case of a director, the maximum amount of the director's liability under section 251.18.

l'administrateur de personne morale ne peuvent interjeter appel d'un ordre de paiement qu'à la condition de remettre au ministre la somme visée par l'ordre, sous réserve, dans le cas de l'administrateur, du montant maximal visé à l'article 251.18.

Appointment of referee

Nomination d'un arbitre

251.12 (1) On receipt of an appeal, the Minister shall appoint any person that the Minister considers appropriate as a referee to hear and adjudicate on the appeal, and shall provide that person with

251.12 (1) Le ministre, saisi d'un appel, désigne en qualité d'arbitre la personne qu'il juge qualifiée pour entendre et trancher l'appel et lui transmet l'ordre de paiement ou l'avis de plainte non fondée ainsi que le document que l'appelant a fait parvenir au ministre en vertu du paragraphe 251.11(1).

- (a) the payment order or the notice of unfounded complaint; and
- (b) the document that the appellant has submitted to the Minister under subsection 251.11(1).

Powers of referee

Pouvoirs de l'arbitre

(2) A referee to whom an appeal has been referred by the Minister

(2) Dans le cadre des appels que lui transmet le ministre, l'arbitre peut :

- (a) may summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the referee deems necessary to deciding the appeal;

- a) convoquer des témoins et les contraindre à comparaître et à déposer sous serment, oralement ou par écrit, ainsi qu'à produire les documents et les pièces qu'il estime nécessaires pour lui permettre de rendre sa décision;

- (b) may administer oaths and

- b) faire prêter serment et

solemn affirmations;	recevoir des affirmations solennelles;
(c) may receive and accept such evidence and information on oath, affidavit or otherwise as the referee sees fit, whether or not admissible in a court of law;	c) accepter sous serment, par voie d'affidavit ou sous une autre forme, tous témoignages et renseignements qu'à son appréciation il juge indiqués, qu'ils soient admissibles ou non en justice;
(d) may determine the procedure to be followed, but shall give full opportunity to the parties to the appeal to present evidence and make submissions to the referee, and shall consider the information relating to the appeal; and	d) fixer lui-même sa procédure, sous réserve de la double obligation de donner à chaque partie toute possibilité de lui présenter des éléments de preuve et des observations, d'une part, et de tenir compte de l'information contenue dans le dossier, d'autre part;
(e) may make a party to the appeal any person who, or any group that, in the referee's opinion, has substantially the same interest as one of the parties and could be affected by the decision.	e) accorder le statut de partie à toute personne ou tout groupe qui, à son avis, a essentiellement les mêmes intérêts qu'une des parties et pourrait être concerné par la décision.
Time frame	Délai
(3) The referee shall consider an appeal and render a decision within such time as the Governor in Council may, by regulation, prescribe.	(3) Dans le cadre des appels que lui transmet le ministre, l'arbitre dispose du délai fixé par règlement du gouverneur en conseil pour procéder à l'examen du cas dont il est saisi ou rendre sa décision.
Referee's decision	Décision de l'arbitre
(4) The referee may make any order that is necessary to give effect to the referee's decision and, without limiting the generality of the foregoing, the referee may, by order,	(4) L'arbitre peut rendre toutes les ordonnances nécessaires à la mise en oeuvre de sa décision et peut notamment, par ordonnance :
(a) confirm, rescind or vary, in	a) confirmer, annuler ou

whole or in part, the payment order or the notice of unfounded complaint;

(b) direct payment to any specified person of any money held in trust by the Receiver General that relates to the appeal; and

(c) award costs in the proceedings.

modifier — en totalité ou en partie — un ordre de paiement ou un avis de plainte non fondée;

b) ordonner le versement, à la personne qu'il désigne, de la somme consignée auprès du receveur général du Canada;

c) adjuger les dépens.

Copies of decision to be sent

Remise de la décision

(5) The referee shall send a copy of the decision, and of the reasons therefor, to each party to the appeal and to the Minister.

(5) L'arbitre transmet une copie de sa décision sur un appel, motifs à l'appui, à chaque partie ainsi qu'au ministre.

Order final

Caractère définitif des décisions

(6) The referee's order is final and shall not be questioned or reviewed in any court.

(6) Les ordonnances de l'arbitre sont définitives et non susceptibles de recours judiciaires.

No review by certiorari, etc.

Interdiction de recours extraordinaires

(7) No order shall be made, process entered or proceeding taken in any court, whether by way of injunction, certiorari, prohibition, quo warranto or otherwise, to question, review, prohibit or restrain a referee in any proceedings of the referee under this section.

(7) Il n'est admis aucun recours ou décision judiciaire — notamment par voie d'injonction, de certiorari, de prohibition ou de quo warranto — visant à contester, réviser, empêcher ou limiter l'action d'un arbitre exercée dans le cadre du présent article.

Civil liability of directors

Responsabilité civile des administrateurs

251.18 Directors of a corporation are jointly and

251.18 Les administrateurs d'une personne morale sont,

severally liable for wages and other amounts to which an employee is entitled under this Part, to a maximum amount equivalent to six months' wages, to the extent that (a) the entitlement arose during the particular director's incumbency; and (b) recovery of the amount from the corporation is impossible or unlikely.	jusqu'à concurrence d'une somme équivalant à six mois de salaire, solidairement responsables du salaire et des autres indemnités auxquels l'employé a droit sous le régime de la présente partie, dans la mesure où la créance de l'employé a pris naissance au cours de leur mandat et à la condition que le recouvrement de la créance auprès de la personne morale soit impossible ou peu probable.
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Alberta Business Corporations Act, RSA 2000, c B-9

Ceasing to hold office

108. (1) A director of a corporation ceases to hold office when

- (a) the director dies or resigns,
- (b) the director is removed in accordance with section 109, or
- (c) the director becomes disqualified under section 105(1).

(2) A resignation of a director becomes effective at the time a written resignation is sent to the corporation, or at the time specified in the resignation, whichever is later.

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE: Jeffrey Miller v Minister of Labour (Canada) et al

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