



**Ombudsman  
Saskatchewan**  
*Promoting Fairness*

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## Investigation Report

**Complaint About a Saskatchewan Employment Act  
Adjudicator**



**November 2019**

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## THE COMPLAINT AND THE ISSUE

*The Complainant's name has been changed to protect her privacy.*

Olivia contacted our Office because she believed she had been waiting too long for an appeal decision from Mr. Timothy Rickard, an adjudicator under *The Saskatchewan Employment Act* (SEA). Mr. Rickard heard the appeal on September 9, 2016 but has still not rendered his decision. The sole issue is the adjudicator's failure to render a decision as required by the SEA.

## FACTS

Olivia was terminated by her employer in 2013. She complained to the Occupational Health and Safety branch of the Ministry of Labour Relations and Workplace Safety. On October 9, 2013, an occupational health officer issued a notice of contravention stating that her termination was a discriminatory action that contravened what was then *The Occupational Health and Safety Act, 1993* and ordered her reinstatement. Her employer appealed. On November 13, 2013, Olivia was notified that the appeal had been forwarded to Mr. Rickard for adjudication.

On February 26, 2014, Mr. Rickard suspended the Notice of Contravention, which meant that Olivia was not reinstated to her position pending the outcome of the appeal.

The appeal hearing was held on September 9, 2016.

On February 16, 2018, Olivia and the employer's lawyer jointly sent a letter to Mr. Rickard stating, "Given that over one year has transpired since conclusion of the matter we would appreciate an update as when we might expect to receive your decision." Mr. Rickard told us that he responded to the employer but not to Olivia.

On April 25, 2019, Olivia brought her complaint to our Office.

On June 4, 2019, Mr. Rickard confirmed to us that he had not delivered the decision yet. He told us he had been dealing with some personal matters over the last few years. However, he also told us that there was nothing particularly difficult in this case, and he planned to have the decision ready within two months. Two months later, on August 6, 2019, we contacted Mr. Rickard again. He said he would need an additional month. When we contacted him again one month later, on September 30, 2019, he called to explain that because of new personal matters, he had still not completed the decision, but that it was three quarters finished.

As of November 27, 2019, he has still not issued a decision.

## ANALYSIS AND FINDINGS

The original notice of contravention against Olivia's employer was issued, the employer's appeal launched, Mr. Rickard's appointment to hear the appeal, and his interim suspension of the notice of contravention, were all done under *The Occupational Health and Safety Act, 1993*. Two months later, the OHS Act was repealed when *The Saskatchewan Employment Act* came into force.

According to *The Interpretation Act, 1995* that was in force at the time (now *The Legislation Act*) any proceeding commenced under a repealed Act is to be continued pursuant to and in conformity with the new enactment as far as it is consistent. Therefore, the relevant provisions of *The Saskatchewan Employment Act* apply to Mr. Rickard's hearing and decision.

Clause 4-7(1)(b) of the SEA states:

4-7(1) Subject to the regulations, an adjudicator shall deliver the written reasons for the decision required pursuant to clause 4-6(1)(b) within the following periods:

...

(b) with respect to an appeal pursuant to Part III:

(i) subject to subclause (ii), 60 days after the date the hearing of the appeal is completed; and

(ii) with respect to an appeal pursuant to section 3-54, the earlier of:

(A) one year after the date the adjudicator was selected; and

(B) 60 days after the date the hearing of the appeal is completed.

In our view, there is an argument that paragraph 4-7(b)(ii)(A) should not apply in this case, since Mr. Rickard was not selected for this case under the SEA, but rather the appeal was forwarded to him under the OHS Act. Also, we accept his submission that some of the delay in conducting the hearing was not caused by him. If paragraph 4-7(b)(ii)(A) did apply, however, then Mr. Rickard's decision would be five years late, since he took responsibility for conducting the appeal six years ago.

In any event, under paragraph 4-7(b)(ii)(B), he was required to deliver his written decision on November 8, 2016 – 60 days after the hearing. This means his decision is, as of November 27, 2019, a little more than 3 years late.

This extraordinary delay in rendering a decision is extremely unfair to Olivia and her employer. We acknowledge that Mr. Rickard told us that he had personal matters to deal with. However, this does not fully explain why he twice failed to meet the deadlines he imposed on himself when we asked him when he expected to deliver the decision.

## **RESPONSE TO THE FINDINGS**

On October 27, 2019, Mr. Rickard provided us with a 4-page explanation of why he had not met the deadline. He said:

I acknowledge the very lengthy delay in getting the decision completed. [...] The delay was not arrived at by a lack of concern on my part and it has been at the front of my mind on a daily basis. I am still committed to issuing the decision as if not, it would be the first time in my life that I have committed to a task and failed to complete my duty.

## **RECOMMENDATION**

Given Mr. Rickard's acknowledgement that he has failed in his duty, accepting his statement that he remains committed to meeting it by completing the decision, and acknowledging Olivia's and her employer's interest in having a decision, we recommend that:

**Mr. Timothy Rickard, adjudicator under *The Saskatchewan Employment Act*, delivers a final decision in the appeal of the occupational health officer's October 9, 2013 Notice of Contravention to the complainant's employer by no later than December 27, 2019.**

## **REFERENCES**

### **STATUTES, REGULATIONS AND BYLAWS**

*The Interpretation Act, 1995, c I-11.2 SS 1995 (repealed)*

*The Legislation Act, c L-10.2 SS 2019*

*The Occupational Health and Safety Act, 1993, c O-1.1 SS 1993 (repealed)*

*The Saskatchewan Employment Act, c S-15.1 SS 2013*

## ABOUT US

The Ombudsman is an independent officer of the Legislative Assembly of Saskatchewan. Under *The Ombudsman Act, 2012*, one of our roles is to investigate complaints about administrative actions and decisions of provincial ministries, agencies of the government, publicly-funded health entities, municipal entities, and their council members, board members, officers and employees. After an investigation, we can make recommendations to a government entity if the Ombudsman is of the opinion the government entity or officials:

- Have made a decision, an omission or a recommendation to a minister, or has acted in a way that appears to be: contrary to law; wrong, unreasonable, unjust, oppressive, improperly discriminatory, based on a mistake of law or fact; or was made or done in accordance with a law or a practice that is unreasonable, unjust, oppressive or improperly discriminatory.
- Have exercised a power, duty or function conferred or imposed on them by an Act for an improper purpose, on irrelevant grounds, or by taking into account irrelevant considerations.
- Should have given reasons for a decision, action, omission or recommendation that was the subject-matter of the investigation.

Ombudsman Saskatchewan does not advocate for the people who complain to us nor for the government entities and officials we investigate. We are neutral, impartial and independent from the government entities and officials we oversee. Our mission is to promote and protect fairness and integrity in the design and delivery of provincial and municipal government services.