

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

AMANDEEP WARAICH	)	D. A. Johnston
	)	<i>for the Applicant</i>
	)	<i>(via teleconference)</i>
<i>(Claimant) Respondent</i>)	
- and -	)	A. Waraich
	)	<i>on her own behalf</i>
	)	<i>(via teleconference)</i>
DIRECTOR OF EMPLOYMENT STANDARDS)	
	)	<i>Chambers motion heard:</i>
<i>(Defendant) Applicant</i>	)	July 30, 2020
	)	<i>Decision pronounced:</i>
	)	August 11, 2020

COVID-19 NOTICE: As a result of the COVID-19 pandemic and pursuant to r 37.2 of the Manitoba, *Court of Appeal Rules*, Man Reg 555/88R, all appeals are heard remotely by videoconferencing until further notice.

PFUETZNER JA

[1] The defendant, Director of Employment Standards (the Director), seeks leave to appeal a decision of the trial judge in a proceeding under *The Court of Queen’s Bench Small Claims Practices Act*, CCSM c C285 (the *Act*). Should leave to appeal be granted, the Director seeks an interim stay of the decision under appeal.

[2] Section 15(1) of the *Act* provides a limited opportunity for an appeal of a judge’s decision under the *Act* to this Court. Such an appeal can proceed only with leave of a judge of this Court and only on a question of law or jurisdiction. As this Court has previously noted, it is not sufficient merely to raise a question of law or jurisdiction. A party seeking leave to appeal must

also demonstrate that the proposed appeal has arguable merit and that the question of law or jurisdiction is of sufficient importance to merit the attention of a full panel of the Court. See *Canadian Multicultural Disability Centre Inc v Director, Child and Family Services*, 2017 MBCA 29 at para 2; and *Yarmie v Anderson et al*, 2017 MBCA 90 at paras 18-19.

Factual Background

[3] In December 2016, five employees filed complaints under *The Employment Standards Code*, CCSM c E110 (the *Code*) that their employer had not paid wages owing to them.

[4] An employment standards officer investigated the complaints and issued five payment-of-wages orders to “Amandeep Litt, trading as Burj Litt Cleaning Company”. The claimant, Amandeep Waraich, is also known as Amandeep Litt.

[5] The claimant requested the referral of two of the orders to the Manitoba Labour Board pursuant to section 110(1) of the *Code*. These orders were resolved prior to a hearing before the Board. She did not request a referral to the Manitoba Labour Board of the remaining three orders nor did she voluntarily pay the amounts owing under the orders.

[6] After the expiry of the time within which the claimant could request a referral of the remaining three orders, the Director filed certificates in the Court of Queen’s Bench under the *Code* with the result that the orders became enforceable as judgments of the court. Ultimately, the Director collected the amounts owing of approximately \$5,500 by way of a third-party demand to the claimant’s bank. The claimant subsequently filed a small claim against the Director in the Court of Queen’s Bench seeking the return of the funds.

[7] The claimant's position at trial and on this motion is that the employment standards officer should not have issued the payment-of-wages orders to her personally as the employees were employed by a corporation rather than directly by her. The claimant maintains that she wanted to refer the payment-of-wages orders to the Manitoba Labour Board, but could not afford to deposit with the Director the approximately \$5,500 owing under the orders as was required under section 111(1) of the *Code*.

[8] Following the trial, the trial judge granted the claim in part and ordered the Director to pay \$2,359.14 to the claimant. The trial judge quashed two of the three orders, finding that they had been issued by the employment standards officer without jurisdiction. Key to her reasoning is the following finding of the trial judge (at para 4):

While these appeal mechanisms are set out in the legislation and generally where a right of appeal exists, the parties are required to avail themselves of those procedures, I find that there is nothing in the legislation which expressly prevents me from exercising my inherent jurisdiction of judicial review where the actions of the Director are determined to be *ultra vires* his jurisdiction and an appeal may not be available.

Analysis

[9] The Director has raised seven proposed grounds of appeal. In my view, there is duplication in the grounds raised. However, they can be combined into two fundamental issues. First, did the trial judge commit an error of procedural fairness by dealing with the matter as a judicial review when it was not pleaded or argued as such? Second, did the trial judge err in law in quashing two payment-of-wages orders issued under the *Code*?

[10] The first issue questions the fairness of the procedure chosen by the

trial judge in hearing this small claim. The Director argues that it was procedurally unfair for the trial judge to convert a civil action into a judicial review without notice to the parties or to the affected employees and then to consider evidence outside the record of the decisions under review.

[11] While issues of procedural fairness are questions of law, I am not persuaded that the issue raised in this case is arguable or of sufficient importance to warrant consideration by a panel of the Court. Proceedings in small claims are typically informal in nature. The *Act* allows for the normal rules of evidence to be relaxed (see section 8.4(1)). The decisions made by the trial judge as to procedure and admission of evidence are discretionary matters within her purview as a judge presiding over a small claims hearing.

[12] The second issue raised by the Director is a different matter. The Director argues that the trial judge erred in law in how she disposed of what had become a judicial review of the payment-of-wages orders issued by the employment standards officer. The Director submits that the trial judge erred by characterising the issue as a true question of jurisdiction and applying a correctness standard of review when it was really a matter of the interpretation of the *Code*, (the employment standards officer's home statute) to which a reasonableness standard of review should have applied. Moreover, the Director argues that the trial judge erred in law by quashing payment-of-wages orders issued under the *Code* after the claimant failed to use the appeal procedure provided for in the *Code*. The Director submits that this raises questions of *res judicata*, issue estoppel and collateral attack upon those orders.

[13] In my view, the Director has raised an arguable case of substance that the trial judge failed to apply the correct legal test in quashing the two

payment-of-wages orders issued under the *Code*. On a preliminary look at this question, I am satisfied that a more thorough examination is required. I am persuaded that the question is sufficiently important to warrant review by this Court despite the relatively small amount at stake. The question raises important issues about the finality of court orders and about the roles and jurisdiction of the Manitoba Labour Board and the Court of Queen's Bench under the *Code*.

[14] As a result, I will grant the Director's motion for leave to appeal, but only on the following question:

Did the trial judge fail to apply the correct legal test in quashing two payment-of-wages orders issued under *The Employment Standards Code*?

[15] The Director also seeks a stay of the trial judge's decision pending the appeal. A stay request should be made initially to the trial judge (see *Child and Family Services of Western Manitoba v KB*, 2006 MBCA 48 at para 37). The Director has not sought a stay from the trial judge. Accordingly, the motion for a stay is dismissed.

[16] In the circumstances, there will be no order of costs on this motion.

"Pfuetzner JA"