

IN THE MATTER OF:

An Appeal of Wage Assessment Number 8331 pursuant to section 2-75 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1, as amended, (the "SEA")

BETWEEN:

South Country Estates Development Corp., o/a Saskatoon Event Centre,
and Darren Hagen;

APPELLANTS,

- and -

Steven Bondy,

RESPONDENT (COMPLAINANT),

- and -

Director of Employment Standards, Ministry of Labour Relations and
Workplace Safety,

RESPONDENT.

ADJUDICATOR'S DECISION
July 27, 2017

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

REPRESENTATIVES:

Darren Hagen, for the Appellant, South Country Estates Development Corp.

Appellant, Darren Hagen, Self Represented

Complainant (Respondent), Steven Bondy, Self Represented

Dale Schmidt, Employment Standards Officer, for the Respondent, Director of
Employment Standards

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. FACTS	1
III. DISPUTE	5
IV. DECISION	5
V. REASONS	6
A. ACT	6
B. ANALYSIS	14
1. EMPLOYEE OR INDEPENDENT CONTRACTOR	14
a. Intention	15
b. Control over the Work	16
c. Ownership of Tools and Equipment	18
d. Chance of Profit and Risk of Loss	19
e. Conclusion	21

I. INTRODUCTION

[1] South Country Estates Development Corp. ("SCEDC") and Darren Hagen ("Hagen") appealed¹ (the "Appeal") Wage Assessment No. 8331² (the "Assessment") issued pursuant to section 2-74 of *The Saskatchewan Employment Act*, S.S. 2013, c. S-15.1 (as amended) (the "SEA") by the Director of Employment Standards (the "Director").

[2] The Assessment directed SCEDC and Hagen to pay \$1,134.37 to Steven Bondy ("Bondy").

[3] By Order dated December 1, 2016, the Labour Relations Board ("LRB") selected me to hear and determine the Appeal.

II. FACTS

[4] In May 2016, SCEDC signed a five-year lease for premises (the "Premises") at 1201 Alberta Avenue, Saskatoon, Saskatchewan. It intended to operate a business from there called the Saskatoon Event Centre. This would entail hosting a variety of private and special events. To do so, the facility needed, among other things, a liquor licence and to accommodate entertainment. That required the Premises to meet various governmental standards.

[5] At the time of signing the lease, the Premises were in rough shape. They not only needed a "major cleanup," but also significant leasehold improvements. SCEDC's agreement with its landlord was that the landlord would:

a) be responsible for the expense of the major work; and

¹Exhibit G-2, Appeal dated November 14, 2016

²Exhibit G-1, Wage Assessment No. 8331 dated October 17, 2016

- b) share the expense of other work with SCEDC.

[6] Bondy is a journeyman plumber and pipe fitter. He was out of work. A friend told him SCEDC “needed help.” Bondy testified:

- a) he went for an interview with Darren Minisofer (“Minisofer”) on or about June 9, 2016;
- b) the Premises were “under renovations”; and
- c) Minisofer told him:
 - i) what was needed—at first, fixing and repairing and, after that, maintenance; and
 - ii) the work was temporary, but was ongoing and there was “a lot of work.”

[7] Bondy testified:

- a) Minisofer “hired” him³;
- b) Minisofer agreed SCEDC would pay him \$55.00 per hour⁴; and
- c) no set time to work was scheduled—he was to work around the other trades.

[8] Bondy began work on June 10, 2016. He testified:

³Bondy testified Minisofer did not give him any “forms” to fill out and no written contract was signed.

⁴Bondy testified that a standard plumber’s wage was between \$35.00 and \$40.00 per hour. However, he testified Minisofer agreed to pay him more because he was not being hired full time and the \$55.00 per hour rate was still less than the rate that would be charged by a plumbing company.

- a) he had "19 to 23" toilets to repair;
- b) he needed to obtain "special parts" for the repairs⁵;
- c) he provided his own tools⁶;
- d) he has no GST number;
- e) he worked until June 18, 2016—working a total of 19.5 hours⁷;
- f) there was no manager on site while he was working; and
- g) he did not do any further work for SCEDC after June 18, 2016.⁸

[9] Bondy testified that:

- a) he expected to get paid every two weeks;
- b) he submitted his hours to Minisofer, but was not paid;
- c) SCEDC paid him \$500.00 to reimburse the cost of materials.⁹

⁵Bondy testified he purchased these parts "up front." He testified he asked for—and SCEDC gave him—some money up front for materials.

⁶Bondy testified he used his own vehicle and only needed simple hand tools. He testified he did not keep his tools at the Premises. He took them home with him daily.

⁷Bondy testified this was the point at which his "main work" was finished.

⁸Bondy testified he thought he would go back to work for SCEDC "when they called him." He testified he did not know when this would be—he said "it could be weeks." He further testified he was looking for work "during this time."

⁹Bondy testified the cost of materials exceeded \$500.00. However, he did not tender any evidence as to the amount. Any such deficiency was not made an issue before me.

[10] Bondy took the position he was an employee of SCEDC and not self-employed. He claimed \$1,134.37, comprising \$1,072.50 for wages ($19.5 \times \$55.00$) and \$61.87 for holiday pay ($3 \div 52 \times \$1,072.50$).

[11] Hagen testified:

- a) he is the sole shareholder and director of SCEDC and, as such, is the directing mind of SCEDC;
- b) as for its regular operations, SCEDC contracted out its kitchen and, except for its Manager, only needed casual employees, such as servers and the like;
- c) Minisofer's role with SCEDC was a "buyer" of talent—he had no authority to hire employees (that was the role of SCEDC's Manager); and
- d) for renovations, SCEDC engaged tradespeople as independent contractors, not employees, on a casual basis and paid each on an hourly basis.

[12] Hagen testified it "defied common sense" for SCEDC to hire a plumber as an employee. He testified:

- a) SCEDC did not need daily or weekly plumbing services;
- b) even if SCEDC needed regular plumbing work, same would be primarily be at an unskilled level;
- c) it would make no sense to pay \$55.00 per hour for unskilled work—same would be in the \$15.00 range;
- d) if SCEDC considered Bondy an employee, it would have:

- i) arranged for him to complete a TD-1;
- ii) integrated him into the business environment;
- iii) expected regular attendance;
- iv) supervised and directed his work;
- v) expected proper time sheets; and
- vi) issued him a ROE when he left.

[13] Hagen took the position Bondy was an independent contractor.

III. DISPUTE

[14] The principal issue here is whether Bondy is an employee within the meaning of section 2-1(f) of the *ESA*.

[15] If I find Bondy to be an employee, the issue becomes the amounts, if any, owing by SCEDC and Hagen to Bondy for wages and holiday pay.

IV. DECISION

[16] I rule that Bondy is not an employee of SCEDC.

[17] I allow the appeal.

[18] I set aside the Assessment.

V. REASONS

A. ACT

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

Interpretation of Part

2-1 In this Part and in Part IV:

...

(f) "employee" includes:

- (i) a person receiving or entitled to wages;
- (ii) a person whom an employer permits, directly or indirectly, to perform work or services normally performed by an employee;
- (iii) a person being trained by an employer for the employer's business;
- (iv) a person on an employment leave from employment with an employer; and
- (v) a deceased person who, at the relevant time, was a person described in any of subclauses (i) to (iv);

but does not include a person engaged in a prescribed activity;

(g) "employer" means any person who employs one or more employees and includes every agent, manager, representative, contractor, subcontractor or principal and every other person who, in the opinion of the director of employment standards, either:

- (i) has control or direction of one or more employees; or
- (ii) is responsible, directly or indirectly, in whole or in part, for the payment of wages to, or the receipt of wages by, one or more employees;

...

(u) "vacation pay" means an amount of money that is payable to an employee pursuant to section 2-27;

(v) "wages" means salary, commission and any other monetary compensation for work or services or for being at the disposal of an employer, and includes overtime, public holiday pay, vacation pay and pay instead of notice;

...

Annual vacation periods and common date

2-24(1) Every employee is entitled:

- (a) subject to clause (b), to an annual vacation of three weeks after the completion of each year of employment with an employer; and
 - (b) to an annual vacation of four weeks after the completion of 10 years of employment with an employer and after the completion of each subsequent year of employment with that employer.
- (2) An employer may use a common date for calculating vacation entitlement of all employees but only if the common date does not result in a reduction of any employee's rights pursuant to this Subdivision.

...

Vacation pay

2-27(1) An employee is to be paid vacation pay in the following amounts:

- (a) if the employee is entitled to a vacation pursuant to clause 2-24(1)(a), three fifty-seconds of the employee's wages for the year of employment or portion of the year of employment preceding the entitlement to the vacation;
- (b) if the employee is entitled to an annual vacation pursuant to clause 2-24(1) (b), four fifty-seconds of the employee's wages for the year of employment preceding the entitlement to the vacation.

(2) With respect to an employee who is entitled to a vacation pursuant to section 2-24 but who does not take that vacation, the employer shall pay the employee's vacation pay not later than 11 months after the day on which the employee becomes entitled to the vacation.

(3) The employer shall pay vacation pay to the employee in an amount calculated according to the length of vacation leave taken:

- (a) at the employee's request, before the employee takes the vacation; or
- (b) on the employee's normal payday.

(4) An employer shall reimburse the employee for any monetary loss suffered by the employee as a result of the cancellation or postponement of the vacation if:

- (a) the employee has scheduled a period of vacation at a time agreed to by the employer; and
- (b) the employer does not permit the employee to take the vacation as scheduled.

(5) A monetary loss mentioned in subsection (4) is deemed to be wages owing and this Part applies to the recovery of that monetary loss.

...

Payment of vacation pay on ending of employment

2-29(1) If the employment of an employee ends, the employer shall pay to the employee the vacation pay to which the employee is entitled pursuant to this Part within 14 days after the day on which the employment ends.

(2) If the employment of an employee ends, the employee is entitled to vacation pay calculated in accordance with section 2-27 on the wages earned by the employee with

respect to which the employee has not previously been paid vacation pay.

(3) Subsection (2) applies whether or not an employee has completed a year of employment.

...

Statement of earnings required

2-37(1) An employer shall provide a statement of earnings to an employee:

- (a) on every payday; and
 - (b) when making payments of wage adjustments.
- (2) A statement of earnings required pursuant to subsection (1) must:
- (a) clearly set out:
 - (i) the name of the employee;
 - (ii) the beginning and ending dates of the period for which the payment of wages is being made;
 - (iii) the number of hours of work for which payment is being made for each of wages, overtime and hours worked on a public holiday;
 - (iv) the rate or rates of wages;
 - (v) the amount paid for each of wages, overtime and public holiday pay and work on a public holiday, vacation pay and pay instead of notice;
 - (vi) the employment or category of employment for which payment of wages is being made;
 - (vii) the amount of total wages;
 - (viii) an itemized statement of any deductions from wages being made; and
 - (ix) the actual amount of the payment being made; and
 - (b) be in a form that:
 - (i) is separate from, or readily detachable from, any form of cheque or other type of voucher issued in the payment of wages; or
 - (ii) if an employee is provided with an electronic statement, permits the employee to print off a copy of the statement of earnings.

(3) Unless the contrary is established, wages and other amounts that are not included in a statement pursuant to subsection (2) are deemed not to have been paid.

Employer to keep record of wages, hours worked, etc.

2-38(1) No employer shall fail to keep:

- (a) records showing the particulars of every unwritten contract dealing with wages or other monetary benefits to which any employee is entitled;

- (b) a copy of every written contract or other document dealing with wages or other monetary benefits to which any employee is entitled; and
- (c) records showing the following with respect to each employee:
 - (i) the full name, sex, date of birth and residential address of the employee;
 - (ii) the name or a brief description of the job or position of the employee;
 - (iii) the rate of wages of the employee expressed in terms of wages per hour, day, week, month or other period;
 - (iv) the total wages paid to the employee for each week or other pay period;
 - (v) the time when the employee's work begins and ends each day and the time when any meal breaks allowed to the employee each day begin and end;
 - (vi) the total number of hours worked by the employee each day and each week as well as the total number of hours each day and each week that the employee is required to be at the disposal of the employer;
 - (vii) every deduction made from the wages of the employee for any purpose whatever and the purpose for which each deduction was made;
 - (viii) the date of each payment of wages to the employee;
 - (ix) the date of commencement of the employee's employment and, if applicable, the date the employment ends;
 - (x) the date on which the employee becomes entitled to each vacation;
 - (xi) the dates on which each vacation period is taken by the employee;
 - (xii) the amount paid to the employee with respect to each vacation to which the employee is entitled and the date of payment;
 - (xiii) the amount paid to the employee with respect to each public holiday and the date of payment;
 - (xiv) if applicable, the amount paid to the employee on the ending of the employment and the date of payment;
 - (xv) any other prescribed matters or matters that the minister may require.
- (2) Every employer shall provide the records mentioned in subsection (1) to an employment standards officer when requested by the officer.
- (3) Every employer shall keep a register of every employee whose work is ordinarily performed at home setting out:
 - (a) the address where that work is performed; and
 - (b) the portion of the work performed by the employee that was performed at home.

(4) The records that an employer is required to keep pursuant to this section respecting an employee must cover the most recent five years of the employee's employment.

(5) If an employee's employment ends, the employer shall retain the records mentioned in subsection (4) for a period of two years after the date on which the employee's employment ended.

(6) An employee's employment is deemed not to have ended for the purposes of subsection (5) if the employee is employed again by the employer within six months after the date on which the employment of the employee ended.

(7) The records required by this section may be incorporated in any wage record that the employer is required to keep pursuant to any other Act.

...

Corporate directors liable for wages

2-68(1) Subject to subsection (2), notwithstanding any other provision of this Act or any other Act, the corporate directors of an employer are jointly and severally liable to an employee for all wages due and accruing due to the employee but not paid while they are corporate directors.

(2) The maximum amount of a corporate director's liability pursuant to subsection (1) to an employee is six months' wages of the employee.

(3) Subject to subsections (4) and (5), a corporate director's liability pursuant to this section is payable in priority to any other unsecured claim or right in the corporate director's property or assets, including any claim or right of the Crown.

(4) The payment priority set out in subsection (3) is subject to section 15.1 of *The Enforcement of Maintenance Orders Act, 1997*.

(5) A corporate director who is an employee of the corporation is not entitled to the benefit provided to employees by subsection (3).

...

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.

...

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.

B. ANALYSIS

1. EMPLOYEE OR INDEPENDENT CONTRACTOR

[20] I have reviewed the jurisprudence governing this issue in my decision in *10119093 Saskatchewan Ltd. v Selimos*.¹⁰ There is no one conclusive test that can be applied uniformly to every case to decide whether an individual is an employee or an independent contractor. However, the central question that must be answered in each case is whether the person who is performing services is truly an individual in business on his or her own account.

[21] To answer this central question, we ought to follow a two (2) step process. The

¹⁰LRB No. 101-15; see also *Director of Labour Standards v Acanac Inc*, 2013 SKQB 21 (CanLII); *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 SCR 983, 2001 SCC 59 (CanLII); *Canadian Union of Public Employees, Local 3911 v Athabasca University*, 2014 ABQB 292 (CanLII); *Wood v. Enbridge Gas Distribution Inc., et al*, 2011 ONSC 5494 (CanLII)

first is to determine the intention of the parties to ascertain what type of relationship the parties intended to create. The second involves an analysis of the facts of the case to determine if the objective reality reflects that intention. The factors to consider in this second step are control over the work, ownership of tools and equipment, the chance of profit and the risk of loss. However, the relative importance accorded to each factor will be dependent upon the facts and circumstances presented in each case.

a. Intention

[22] The Appellants argue:

- a) there is no written contract to examine that would help in determining the intention of the parties when they reached their agreement;
- b) the only evidence tendered as to a common understanding between the parties was the immediate plumbing work required and the hourly rate to be paid for same;
- c) Bondy was in control of his hours and unsupervised in his work;
- d) SCEDC had no need to, and did not, engage tradespeople as employees;
- e) Bondy was not "integrated" into SCEDC's business and treated as an employee.

[23] The Appellants argue that the logical conclusion is that Bondy knew he was an independent contractor and agreed to same. They argue the "intention" is clear.

[24] Bondy does not dispute:

- a) he had no written contract with SCEDC;

- b) he understood the nature of his work; and
- c) the level of autonomy he would enjoy.

[25] However, Bondy argues he did not agree to be an independent contractor and believed he was an employee.

[26] I am satisfied SCEDC considered Bondy to be an independent contractor.

[27] I am satisfied Bondy wanted to be an employee.

[28] The real question in this matter is what the parties genuinely intended.

[29] Other than the facts already enumerated, Bondy tendered no evidence that he discussed the specifics of an employment arrangement and came to an agreement in that regard with SCEDC.

[30] On the evidence, I am satisfied Bondy believed he was performing his services as an employee. I am equally satisfied SCEDC believed it retained Bondy as an independent contractor. I find the parties were not *ad idem* as far as motivation was concerned. I am not persuaded the intention of both parties was such that SCEDC was hiring Bondy as an employee or engaging him as an independent contractor.

b. Control over the Work

[31] From the authorities,¹¹ we can glean the following about control:

- a) the difference between the relations of a principal and agent and of employer and employee is a principal has the right to direct what the agent has to do, but

¹¹*Supra*, footnote 12

an employer has not only that right, but also the right to say how it is to be done;
and

- b) inadequacies with the control test can surface when, for example, in the case of:
 - i) an independent contractor, we see a contract contain detailed specifications and terms for the task in question is to be carried out—this could cause greater control with an independent contractor, as would be the normal expectation in a contract with an employee, even though a literal application of the test might find the actual control should be less; or
 - ii) highly skilled and professional employees who possess skills far beyond the ability of their employers to direct.

[32] The Appellants argue:

- a) short of pointing out to Bondy the fixtures and the like that needed repair, SCEDC exerted no control over the manner in which the work was to be performed—I infer the only requirement was to ensure the work was completed according to appropriate building codes;
- b) Bondy chose the times to carry out the work—working around other contractors working at the Premises;
- c) Bondy acquired the materials he required to complete his work¹² and the invoices were addressed to Bondy, not SCEDC; and
- d) SCEDC did not restrict Bondy in working for others.

¹²See Exhibit C-1, Frontier Plumbing & Heating Supply invoices

[33] The Appellants argue Bondy had as much control as an independent contractor could have under the circumstances.

[34] In response, the Respondents argued SCEDC did exert control over the manner in which the work is to be performed. They argued SCEDC “told Bondy when to come in” to work. I cannot accept that argument. The Respondents tendered no evidence to support it.

[35] On the issue of control, the evidence points to Bondy carrying out the duties one would expect of an independent contractor. The Respondents have not persuaded me the evidence points to control consistent with what is expected for an employee.

c. Ownership of Tools and Equipment

[36] The authorities¹³ say an examination of the ownership of tools and equipment is a long-standing conceptual element to be considered by the trier of fact in determining whether or not there is employee status.

[37] The Appellants argued Bondy supplied all of the tools and equipment to carry out his work. Consequently, they argue this issue must be resolved in their favour.

[38] The Respondents do not dispute Bondy supplied all of the tools and equipment to carry out his work, but argued “there was no great requirement for same.” Consequently, they argue this issue must be resolved in Bondy's favour.

[39] I have difficulty with the Respondents’ argument. The undisputed evidence is that Bondy supplied all of the tools and equipment to carry out his work. Regardless of whether there was any great requirement for same, no evidence was tendered that if there was a greater requirement, that the parties understood SCEDC would supply

¹³*ibid.*

any required tools and equipment.

[40] I prefer and accept the Appellants' argument.

d. Chance of Profit and Risk of Loss

[41] The Appellants argued:

- a) Bondy was not salaried, but rather paid on an hourly basis¹⁴—they say this is consistent the manner in which independent contractors are retained;
- b) Bondy could choose to—or not to—work for others and earn more—or no more—money elsewhere;
- c) Bondy controlled his own ability to increase or decrease his profit and thereby exercised control over his own chances of profit and loss when performing his work; and
- d) the success of Bondy's work did not benefit SCEDC and did not affect the amount SCEDC paid to Bondy.

[42] The Respondents argued:

- a) all aspects of the business are owned by SCEDC;
- b) Bondy made no capital investment;
- c) Bondy's income came from hourly wages, not a business invoice;

¹⁴I am satisfied payment on an hourly basis was reasonable and appropriate for the nature of the work Bondy was engaged to do.

- d) Bondy had no chance of profit;
- e) Bondy had no liability for the business; and
- f) Bondy had no risk of loss.

[43] I rule the Respondents' arguments are not supported by the evidence.

[44] On the evidence, I am satisfied:

- a) Bondy was not limited exclusively to the service of SCEDC¹⁵;
- b) aside from establishing the repairs it needed, SCEDC did not control or supervise Bondy's work; and
- c) there was no evidence before me that SCEDC:
 - i) had an investment or interest in the tools relating to Bondy's service;
 - ii) had undertaken any risk in the business sense, including the expectation of profit and loss, associated with the delivery of Bondy's services; and
 - iii) is a part of Bondy's services.

[45] I am satisfied on the evidence that Bondy had risk from performance of his services. His income came from his hourly charges. There was a chance of profit and loss in the traditional business sense.

¹⁵Though not conclusive on its own, it is a factor to take into account.

e. Conclusion

[46] In addressing the two steps, including the fourfold test for the latter, and, more to the point, in determining the debate in this matter, it is necessary to view the totality of the relationship between Bondy and SCEDC from an “above the forest” perspective. In that context and on a focused examination of the true nature of the components of the relationship between Bondy and SCEDC, the analysis leads me to the conclusion that Bondy was not, in real terms, an employee of SCEDC.

[47] I allow the appeal.

[48] I set aside the Assessment.

Dated at Saskatoon, Saskatchewan, on July 27, 2017.



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