

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Joseph A. Theriault
(the “Appellant”)

- of a Determination issued by -

The Director of Employment Standards

pursuant to section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

PANEL: James F. Maxwell

FILE No.: 2020/148

DATE OF DECISION: May 17, 2021

DECISION

SUBMISSIONS

Joseph A. Theriault	on his own behalf
Royal J. Morton	counsel for Lotus Desert Enterprises Ltd. carrying on business as Merritt Desert Inn
May Lee	delegate of the Director of Employment Standards

OVERVIEW

1. Joseph A. Theriault (the “Appellant”) has filed an appeal of a determination dated October 6, 2020 (the “Determination”), issued by a delegate of the Director of Employment Standards (the “Director”), pursuant to the *Employment Standards Act* (the “ESA”). The Director held that the Appellant had been employed by Jean-Paul Bruyere (“Bruyere”), and was entitled to receive, from Bruyere, sums for regular wages, overtime wages, statutory holiday pay, and annual vacation pay, together with interest accrued thereon. In addition, the Director assessed administrative penalties in the sum of \$2,000.00. The Director concluded that the total amount payable by Bruyere was \$17,297.40.

ISSUES

2. The following issues arise in this appeal:
 - a. Did the Director err in law in the making of the Determination?
 - b. Did the Director fail to observe the principles of natural justice in making the Determination?
 - c. Has new evidence come to light that was not available at the time that the Determination was made?

FACTS

3. The Appellant is an individual who, at all material times, resided in the Town of Merritt, British Columbia.
4. Bruyere is an individual who, likewise, resided at all material times in the Town of Merritt, British Columbia.
5. Between approximately March 3 and June 6, 2019, the Appellant undertook work at a motel property located at 2350 Voght Street, Merritt, British Columbia, which property is known as the Merritt Desert Inn (the “Motel”). The work consisted chiefly of renovations to suites within the Motel (the “Renovations”).
6. On July 11, 2019, the Appellant filed a complaint with the Employment Standards Branch (the “Complaint”). The Complaint alleged that the Appellant had not been paid all sums owing for work done on the Renovations. The Appellant alleged that sums were owing for regular wages, overtime, statutory

holiday pay, and annual vacation pay, as well as a sum for reimbursement of expenses. The Appellant alleged that \$25,900.00 was owing.

7. In the Complaint, the Appellant alleged that the monies were owed by Jagjit Hans, operating as Merritt Desert Inn/Muggal Indian Cuisine (“Hans”).

The Investigation

8. The Director undertook an Investigation into the Complaint. In addition to an examination of documents tendered by the parties, the Director’s investigation consisted of the following:
- a. telephone interviews of the Appellant;
 - b. a telephone interview of Bruyere;
 - c. an interview of Hans, and written submissions tendered by counsel for Lotus Desert Holdings. [Counsel caused confusion in this matter by first indicating that it represented Lotus Desert Holdings Ltd., and later stating that it acted for Lotus Desert Enterprises Ltd. carrying on business as Merritt Desert Inn. I will hereafter refer collectively to these corporate entities as “Lotus”];
 - d. an interview of an individual who was, at all relevant times, employed at the Motel (the “Housekeeper”);
 - e. an interview of an individual who completed the Renovations following the departure of Bruyere and the Appellant (the “Contractor”).
9. The following summarizes the information supplied by the Appellant:
- a. the Appellant stayed at the Motel for a time in early 2019. During that period, the Appellant met Bruyere, who was also staying at the Motel, and who was working at the Motel as a carpenter.
 - b. Bruyere introduced the Appellant to Hans. Hans allegedly asked the Appellant to work with Bruyere on the Renovations, and it was verbally agreed that the Appellant would be paid \$20.00 per hour, would pay rent for motel accommodation of \$800.00 per month, and would receive meals at the motel restaurant. No written employment agreement was executed. The Appellant began work on March 3, 2019, and continued to stay at the Motel during the currency of the Renovations.
 - c. the Appellant tendered a document which appears to be a handwritten estimate of the cost of the Renovations (the “Estimate”). The Estimate was purportedly “Written by Jean Paul Bruyere”. I reproduce the Estimate here in its entirety:

A) Room + Washroom + Baseboard	216, 214, 215, 212, 209, 207, 210
- Price \$1225.00 Each \$8575.00	
B) Washroom Flooring Shower	219, 224, 218, 201, 202, 203, 205
- Price \$975.00 Each \$6650.00	
C) Washroom Laminate Baseboard	208, 206, 217, 223
- Price Each \$1225.00 Each \$4900.00	

[additional illegible notes]

- d. the Appellant worked up to ten hours each day, including weekends. The Appellant kept track of hours worked. The Appellant provided a document which purports to be the record of hours that the Appellant worked.
- e. the Appellant alleged that Cheetan Dave was the manager of the Motel, and relayed messages from Hans regarding the work to be done.
- f. the Appellant supplied some of the tools for the work, while the rest were allegedly supplied by Hans and by Bruyere.
- g. the Appellant claimed that Bruyere performed little of the Renovations due to illness, but continued to reside at the Motel until about May 22, 2019. At that time, Bruyere was allegedly fired.
- h. the Appellant tendered a document which appeared to be a handwritten contract between the Appellant and Bruyere, dated May 22, 2019 (the “May 22 Contract”). I reproduce the document here in its entirety:

Date: May 22, 2019

Joseph Theriault his [sic] Hired to perform work at The Merritt Desert Inn. Located 2350 Voght St, Merritt B.C. V1K 1B8. Jean-Paul Bruyère. The Manager and owner gave work instruction directly to Joseph Theriault to perform The Renovations.

Conditions Work Employment:

- Hourly Rate of \$20 per hour paid in cash.
- Monthly Rate of \$800 including meals.
- Any Extra or Extra Task To Be Billed separatielly [sic] from manager and owner.

Joseph Theriault work from March 2019 to 22/May/2019 603 hours at Merritt Desert Inn. Joseph Theriault has never been paid. Jean-Paul Bruyere his [sic] leaving tools and personal items to Joseph Theriault. Consignment for payment.

- i. the May 22 Contract is purportedly signed by Bruyere and by the Appellant.
- j. the Appellant tendered a document which appeared to be a handwritten record of hours worked between March 3 and June 6 (the “Record of Hours”). That document, entitled (in French) “Heure Travaillée au Merritt Desert Inn”, reflects the following totals:

March 3 – 31, 2019	200.5 hours
April 1 – 30, 2019	237.5 hours
May 1 – 30, 2019	148 hours
June 1 – 6, 2019	19 hours

- k. during the currency of the Renovations, the Appellant received only two cheques as payment, one issued March 8, 2019 by “Lotus Desert Enterprises Ltd. DBA Merritt Desert Inn” in the sum of \$500.00, and the second issued April 1, 2019 by the same company in the sum of

\$420.00. Both cheques are inscribed with the notation “Paul’s [or “Paul”] Invoice”. The Appellant received no monies from Bruyere.

- i. the Appellant ceased work on the Renovations on or about June 6, 2019, because the Appellant was not being paid.

10. The following summarizes the information supplied by Bruyere:

- a. Bruyere worked on the Renovations at the Motel in late 2018 and early 2019. Bruyere claimed that there was a verbal agreement with Hans by which Bruyere would do the Renovations for a fixed price. Bruyere also told the Director that “Mr. Hans paid for food and rent and allowed him to ‘get stuff from the liquor store’”.
- b. Bruyere claimed to have personally hired the Appellant to work on the Renovations. This was a verbal agreement by which the Appellant would be paid \$20.00 per hour and “\$800.00 to stay at the Motel”.
- c. Bruyere performed little in the way of work after sometime in March 2019 because Hans was unable to pay. Bruyere allegedly “quit” the Renovations, and left the Motel approximately May 20, 2019. Bruyere has no knowledge of what took place at the Motel thereafter.
- d. Bruyere claims to have been paid about half of the agreed sum for the Renovations.
- e. Bruyere asked Hans to issue the cheques of March 8 and April 1 to the Appellant, but did not recall what work the cheques were for.
- f. Bruyere disputed the number of hours that the Appellant claims to have worked, but did not keep track of the Appellant’s hours.
- g. Bruyere claimed that the Appellant had been fully paid.

11. The following summarizes the information supplied by Hans and by Lotus:

- a. Hans denied that he employed the Appellant, but acknowledged that the Appellant did some work at the Motel and Hans provided the Appellant the cheques of March 8 and April 1, 2019. Hans claimed that the Appellant’s claim is fraudulent.
- b. Lotus stated that it reached a verbal agreement with Bruyere in December 2018, pursuant to which Bruyere would renovate several rooms at the Motel, in exchange for the sum of \$7,500.00 cash. The Renovations were to be complete within 2 months.
- c. in support of its contention that Lotus had entered into a verbal contract with Bruyere for the Renovations, Lotus tendered a document which it described as “a handwritten note summarizing the work performed at the Motel, his agreement with Lotus, and payments received” (the “Bruyere Note”). I reproduce here the relevant portions of that document dealing with the alleged arrangement between Bruyere and the Appellant:

... After talking Alain last night he is ready to finish the project whit [sic] me, he is ready to wait me, as long as I pay him an amount of \$800.00 on the last invoice he give me for the hours of March 12th to March 28th, 137.5 hours x \$20,00 = \$2750.00 plus the hours to come, its sa [sic] means I’ll be going out whit out whit [sic] a \$5000.00 bill ...

- d. Lotus claimed that it later learned that Bruyere had hired the Appellant to assist with the Renovations.
- e. Lotus claimed that on two occasions it requested that Bruyere undertake repairs to the roof of the Motel. Bruyere allegedly sent the Appellant to perform this work, and it was for this that Lotus issued the cheques of March 8 and April 1, 2019.
- f. Lotus denied that Cheetan Dave was ever an employee of Lotus. Rather, Mr. Dave was only an acquaintance of Hans. Lotus claims that Hans was both the owner and manager of the Motel.
- g. Lotus alleged that in the Bruyere Note, Bruyere referred to “the work performed at the Motel ... and payments received.” I reproduce here the relevant portions of that document:

...

I calculate about \$4000.00 Liquor Store, \$2400.00 Rent plus another \$800.00 for Alain I do not intend to pay you.

...

I have renovated 20 Room for one amount \$7500 which means 375.00 each Room, plus 2 appartement \$1200.00 each.

- h. Lotus tendered a separate document which it described as a “handwritten invoice (titled “Bill Whit Jag”) from Mr. Bruyere [to Lotus] for the Renovation Work performed from January to February 2019” (the “Bruyere Invoice”). I set out the content of that document in its entirety, partially in English and partially in French (French is Bruyere’s first language) as follows:

Bill Whit Jag

- Fees hans	= \$180.00 December
	= \$180.00 Janvier
	= \$180.00 Fevrier
- Rent	= \$1200.00 Janvier
	= \$1200.00 Fevrier

Well Fair on the way

- Liquor Store	\$1200.00
- alain work	\$500.00
- Paul	\$140.00

\$2380.00

+540 Chetan

- i. Lotus claimed that it learned, in early May 2019, that Bruyere was leaving to undertake other work, and would return in a few weeks to complete the Renovations. Lotus stated that in order to avoid further delays, it retained the Contractor to complete the work.

12. The following summarizes the information supplied by the Housekeeper:
- a. The Housekeeper began work at the Motel in March 2019, having been hired by Hans.
 - b. When the Housekeeper started, Bruyere was working on the Renovations.
 - c. She believed that Bruyere hired the Appellant.
 - d. During the entire time that the Appellant worked on the Renovations, Cheetan Dave was the Motel manager. The Housekeeper is not sure who instructed the Appellant.
 - e. Bruyere left in late May, 2019.
 - f. The Renovations were complete in June or July, 2019 by other workers.

13. The following summarizes the information supplied by the Contractor:
- a. The Contractor was engaged to undertake the completion of the Renovations, in June or July, 2019.
 - b. The Appellant was not present when the Contractor completed the Renovations.

The Determination

14. The Director considered the information provided by the Appellant and all of the other parties, and, on October 6, 2020, issued the Determination.
15. The Director addressed the following questions:
- a. who was the Appellant's employer? and
 - b. is the Appellant entitled to unpaid wages and if so, in what amount?
16. The Director considered the corporate identities of parties associated with the Motel. The Director found that:
- a. the property which consists of the Motel and the land upon which it is situated are owned by Lotus Desert Holdings Ltd. Hans is the sole director of Lotus Desert Holdings Ltd.;
 - b. the Motel is operated by Lotus Desert Enterprises Ltd. carrying on business as Merritt Desert Inn. Hans is the sole director of Lotus Desert Enterprises Ltd. carrying on business as Merritt Desert Inn.
17. The Director accepted that the Appellant performed the Renovations on the Motel.
18. The Director considered all of the information supplied by the parties and witnesses, and evaluated the credibility of those persons. The Director found that there were significant inconsistencies in the version of events described by the Appellant, Bruyere, and Hans and Lotus. The Director concluded that the oral evidence provided by each of them was unreliable, due to these inconsistencies.
19. Because the Director found the evidence of the parties to be unreliable, the Director placed more weight upon the documentary evidence, and the evidence of the independent witnesses (the Housekeeper and

the Contractor). The Director stated: “I prefer Mr. Hans and Mr. Bruyere’s version of events, as it is logically cohesive and corroborated by contemporaneous documentary evidence submitted.”

20. The Director held that “what matters is the actual agreement as set out in the handwritten note between Mr. Bruyere and Mr. Hans”, and concluded that “Mr. Bruyere entered an independent contractor [sic] with Lotus to perform renovation work.”
21. The Director found that the content of the undated Bruyere Note, referencing the Appellant’s willingness to continue with the Renovations, supported the conclusion that the Appellant had been hired by Bruyere.
22. The Director did not agree that the issuance of the cheques by Lotus to the Appellant on March 8 and April 1, 2019 demonstrated that the Appellant was Lotus’ employee. Rather, the Director accepted that this was done simply because Bruyere did not have funds to pay the Appellant, and requested that Lotus do so directly.
23. The Director rejected the Appellant’s assertion that Hans and his companies were the Appellant’s employer, and concluded that Bruyere was the employer. The Director accepted that Bruyere “entered an independent contractor agreement for renovations to be done at the Motel and Mr. Bruyere hired Mr. Theriault to assist with the renovations at the Motel”.
24. The Director stated that “[i]n my view, all the documentary evidence submitted supports that Mr. Theriault entered an agreement to perform work at the Motel with Mr. Bruyere. Mr. Bruyere was responsible for hiring Mr. Theriault and paying wages.”
25. The Director acknowledged that the Renovations were not complete when Bruyere “left” the project. The Director held that while the Appellant continued with the Renovations after the departure of Bruyere, “I find that Mr. Theriault continued to perform renovations as agreed by Mr. Bruyere and Mr. Hans in the initial contracted agreement. ... I find Mr. Theriault continued to complete work as an employee of Mr. Bruyere after May 22, 2019 until Mr. Theriault left his employment on June 6, 2019.”
26. Referencing section 95 of the *ESA*, the Director considered the suggestion that Bruyere and Lotus were associated employers. The Director considered the test for determining if businesses are associated, and concluded that “there is insufficient evidence to determine that there was common control or direction between Lotus and Mr. Bruyere. There is no evidence Mr. Bruyere was involved in control or direction of the business of the Motel or that Mr. Hans or Lotus had any control or direction over Mr. Bruyere’s renovation business.”
27. The Director thus concluded that “Lotus is not an associated employer.”
28. The Director found that Bruyere had failed to pay sums owing to the Appellant for regular wages, overtime, annual vacation pay, and statutory holiday pay. The Director accepted that the Record of Hours was the best evidence as to the time that the Appellant spent on the Renovations. The Director concluded that Bruyere owed to the Appellant the sum \$14,636.54, plus accrued interest. The Director did not consider whether the Appellant had been deemed to be terminated as a result of non-payment of wages, or was entitled to receive Compensation for Length of Service.

29. The Director found that Bruyere had breached sections 17, 18, 27 and 28 of the *ESA*, by failing to pay the amounts owing. For these breaches of the *ESA*, the Director assessed administrative penalties in the sum of \$2,000.00.

The Appeal

30. On November 2, 2020, the Appellant filed, within the statutory appeal period, an appeal of the Determination (the “November 2 Submission”). Included in the filing were the completed Appeal Form, written reasons and arguments in support of the appeal, supporting documents, the Determination, and the Reasons for the Determination.
31. In the Appeal Form, the Appellant indicated that the grounds for the appeal of the Determination were that the Director erred in law, that the Director failed to observe the principles of natural justice in making the Determination, and that new evidence has become available that was not available at the time that the Determination was made.
32. The office of the Tribunal requested that the Director provide a complete copy of the documentary record (the “Record”) which was before the Director at the time that the Determination was made. The Record was supplied by the Director on December 10, 2020, and was cross-disclosed to the Appellant.

The Submissions

(i) The Appellant’s Submissions

33. In addition to the November 2 Submission, on November 24, 2020 the Appellant tendered a further, unsolicited submission, described as an “Update to existing file” (the “November 24 Submission”). Appended to this submission were documents apparently related to an application made by the Appellant to Service Canada, and a letter from the a Director of the Canada Revenue Agency advising the Appellant that correspondence that the Appellant directed to the Minister of National Revenue had been referred to the British Columbia Minister of Labour.
34. On December 15, 2020, the Appellant tendered a further, unsolicited email, which states: “Looks like Mr. Hans paid free trip to [the Director] to delay the investigation by 6 months. ... Question can your office investigate any bribery” (the “December 15 Submission”).
35. On January 5, 2021, the Appellant tendered 5 further, unsolicited emails, including a total of 26 attachments totalling 63 pages of material (the “January 5 Submission”). When contacted by the office of the Tribunal about the January 5 Submission, the Appellant advised that it was “a submission clarifying the content of the Record”.
36. On March 17, 2021, the Appellant tendered a submission in final reply to the submissions tendered by the Director and by counsel for Lotus (the “Final Reply Submission”).
37. The materials tendered by the Appellant are voluminous, and include much material which has previously been provided to all parties by way of cross-disclosure. In addition, the Appellant tendered lengthy

written submissions in support of the Appeal. Many of the Appellant's arguments are verbose and extremely difficult to comprehend. I will endeavour to summarize those submissions herein.

38. As in the original Complaint, the principal argument in this Appeal is that the Appellant was employed by Lotus, and that the Director erred in finding Lotus was not liable for unpaid wages in respect of the Appellant's work on the Renovations.
39. In the Appellant's November 2 Submission, the Appellant presented the following arguments:
- a. the Director erred in law by:
 - i. "endors[ing] false representations" made to the Appellant, contrary to section 8 of the *ESA*, by Hans, Bruyere, Lotus Desert Holdings Ltd., and Harcharan and Jaswinder Sekhon [these latter two persons had not previously been identified in any of the proceedings];
 - ii. incorrectly referring to Lotus Desert Enterprises Ltd. d.b.a. Merritt Desert Inn, instead of Lotus Desert Holdings Ltd.; and
 - iii. incorrectly assessing the quantum of the amounts owing to the Appellant.
 - b. the Director failed to observe the principles of natural justice by:
 - i. delivering the Determination more than six months after the last day of the Appellant's employment, contrary to the provisions of the *ESA*; and
 - ii. failing to obtain evidence from Mr. Cheetan Dave, contrary to the *Temporary Foreign Worker Protection Act*, S.B.C 2018, c. 45 and the *Canadian Charter of Rights and Freedoms*.
 - c. new evidence has become available that was not available at the time that the Determination was made:
 - i. information related to income assistance payments made to Bruyere during the currency of the Appellant's employment; and
 - ii. information related to a separate Employment Standards complaint filed by the Appellant regarding a home located in Logan Lake, British Columbia, which property is allegedly associated with the parties herein.
40. In the Appellant's November 24 Submission, the Appellant presents the following arguments:
- a. the Director erred in law by failing to recognize that the *ESA* is superseded by *Employment Insurance Act*, S.C. 1996, c. 23, and associated Regulations. I find that there is no merit to this argument, and summarily dismiss it;
 - b. failing to obtain evidence from Mr. Cheetan Dave, contrary to the *Temporary Foreign Worker Protection Act*;
 - c. failing to recognize that wages paid to the alleged manager of the Motel discriminated against the Appellant on the basis of nationality. I find that matters alleging discrimination on the basis of nationality are outside of the mandate of this Tribunal, and I dismiss this argument.

41. In the Appellant's December 15 Submission, the Appellant makes an unsupported allegation that Hans bribed the Director to delay the investigation of the Complaint. This allegation is unsupported by any evidence, and I dismiss it.
42. In the Appellant's January 4 Submission, the Appellant appears to present the following new arguments (in addition to repeating many of the arguments advanced in earlier submissions):
- a. a significant number of individuals and corporations should be added as respondents in the within appeal. The Appellant has presented no evidence or cogent argument in support of the request to add these parties, and I dismiss this request;
 - b. the Director erred in law by delivering documents to the Appellant in the form of the Record tendered by the Director, contrary to the *ESA*, the *Canadian Charter of Rights and Freedoms*, and the *Canadian Human Rights Code* [sic]. I find that delivery of the Record to the Appellant was consistent with the provisions of the *ESA* and the procedures of this Tribunal, and I dismiss this argument;
 - c. the Director erred in law by accepting as part of the Record an audio recording of a voicemail message left by the Appellant to Hans on or about May 10, 2020, which recording allegedly violated s.8 of the *Canadian Charter of Rights and Freedoms*. The message was left by the Appellant on the voicemail system of Hans, with the Appellant's knowledge and apparent consent. Hans disclosed this file to the Director in the course of these proceedings, and I find that it was properly part of the Record. In any event, I have not referred to this recording, created long after the conclusion of the Appellant's work, as part of these deliberations. For these reasons, I dismiss this argument.

(ii) *The Director's Submissions*

43. In response to this Appeal, the Director filed the following submissions:
- a. documents filed by the Appellant in this Appeal, but related to a separate complaint related to property in Logan Lake, British Columbia, do not constitute new evidence in this matter;
 - b. the Director fully addressed the issues raised by the Appellant, and afforded the Appellant, and the other parties, all of the benefits of natural justice, prior to issuing the Determination.

(iii) *The Submissions of counsel for Lotus*

44. In response to this Appeal, counsel for Lotus tendered the following submissions:
- a. the submissions of the Appellant in support of the within appeal are "unintelligible" and "not relevant", and do not support interfering with the Determination;
 - b. the Director was correct in concluding, upon the evidence, that Bruyere was contracted by Lotus, and that the Appellant was employed by Bruyere;
 - c. the Director correctly concluded that Bruyere had no direction or control over Lotus' motel business, and that Lotus had no direction or control over Bruyere's renovation business;
 - d. the Appellant's credibility should be evaluated in light of the content of a voicemail message that the Appellant left for Hans on or about May 10, 2020.

(ii) *The Appellant's Final Reply Submissions*

45. In the Appellant's Final Reply Submission, the Appellant repeated many of the arguments advanced in earlier submissions, and advanced further arguments, as follows:
- a. Lotus Desert Enterprises Ltd. does not exist. In light of the fact that the Director undertook a corporate search that established the existence of this entity, I dismiss this argument;
 - b. the Director erred in law by failing to consider evidence of renovations undertaken to a home located in Logan Lake, British Columbia. It is my understanding that the issue related to this property is the subject of a separate complaint filed by the Appellant, and which is not before me in this matter. For this reason, I dismiss this argument;
 - c. a repeat of the argument that Bruyere, Hans and Lotus violated s.8 of the *ESA* by misrepresenting the nature of the work to be done by the Appellant;
 - d. an argument that the Appellant is entitled to receive punitive damages, pursuant to s.68 of the *ESA*, for an unsubstantiated claim that the Appellant was poisoned. I find that there was no evidence or argument before the Director related to an alleged poisoning, and for this reason, I dismiss this argument;
 - e. referencing s.87 of the *ESA*, the Appellant requests that this Tribunal enforce the provisions of a Builders Lien purportedly filed by the Appellant against Lotus Desert Holdings Ltd., in the sum of \$95,666.00. I find that matters related to the *Builders Lien Act* were not before the Director, and I dismiss this argument;
 - f. the Director erred in not finding that Harcharan and Jaswinder Sekhon were, pursuant to s.95 of the *ESA*, associated employers with Hans and Lotus. This allegation appears to relate to a separate Employment Standards complaint filed by the Appellant related to property in Logan Lake, British Columbia. This matter was not before the Director in the present action, and I dismiss this argument;
 - g. the Director breached the provisions of the *Employment and Assistance Act*, SBC 2002, c.40, by failing to find that Bruyere could not be the Appellant's employer because Bruyere was receiving compensation pursuant to this legislation. I find that there is nothing in this legislation that supports the Appellant's argument, and I dismiss this argument;
 - h. vague and inarticulate arguments related to Federal jurisdiction, including the Canada Revenue Agency, the *Employment Insurance Act*, and various benefits administered by Federal agencies. I find that these matters of Federal jurisdiction are unrelated to the within appeal, and I dismiss these arguments.

ANALYSIS

46. The Appellant claims that the grounds for the appeal of the Determination were that the Director erred in law, that the Director failed to observe the principles of natural justice, and that new evidence has become available that was not available at the time that the Determination was made.

47. Especially given that the Appellant is unrepresented by counsel and untrained in the law, I am guided by the decision of this Tribunal in *Re Triple S Transmission Inc.* BC EST #D141/03, wherein the Tribunal stated that a “large and liberal view” should be taken of the arguments advanced by an appellant:

While some appellants are represented by legal counsel or otherwise obtain legal advice prior to filing their appeal, the vast majority of appellants do not have any formal legal training and, in essence, act as their own counsel. ...

Although most lawyers generally understand the fundamental principles underlying the “rules of natural justice” or what sort of error amounts to an “error of law”, these latter terms are often an opaque mystery to someone who is untrained in the law. ...

... When adjudicating an appeal, I believe it is appropriate for the adjudicator to first inquire into the nature of the challenge to the determination (or the process that led to it being issued) and then determine whether that challenge, *prima facie*, invokes one of the statutory grounds. In making that assessment, I also believe that **adjudicators should take a large and liberal view of the appellant’s explanation as to why the determination ought to be varied or cancelled or why the matter should be returned to the Director.** [*emphasis added*]

Did the Director err in law in making the Determination?

48. In the appeal submissions the Appellant alleges that the Director committed errors of law in making the Determination.

49. This Tribunal has adopted the following definition of “error of law” set out by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275 (B.C.C.A.):

1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment Act*];
2. a misapplication of an applicable principle of general law;
3. acting without any evidence;
4. acting on a view of the facts which could not reasonably be entertained; and
5. adopting a method of assessment which is wrong in principle.

50. To determine whether the Director erred in law in making the Determination, I must examine the findings of the Determination. The Director held in the Determination that:

- a. the oral evidence provided by the Appellant, Bruyere, Hans and Lotus, was not reliable, as each of these parties provided inconsistent and contrary information;
- b. the evidence of Bruyere and Hans was preferred because it is “logically cohesive and corroborated by contemporaneous documentary evidence submitted;
- c. “Mr. Bruyere entered an independent contractor [sic] with Lotus to perform renovation work”;
- d. “...all the documentary evidence submitted supports that Mr. Theriault entered an agreement to perform work at the Motel with Mr. Bruyere” [*emphasis added*]; and

- e. Bruyere and Hans were not ‘associated employers’ with respect to the work performed by the Appellant.

51. I will examine each of these findings in turn to assess whether the Director erred in law in concluding that Bruyere, and not Lotus, was the Appellant’s employer. I will also examine the Appellant’s other allegations of error of law.

The oral evidence provided by the Appellant, Bruyere, Hans and Lotus, was not reliable, as each of these parties provided inconsistent and contrary information.

52. The duty of this Tribunal “is not to re-weigh or second guess the Delegate respecting findings of fact, such as matters of credibility, or the weight to be given certain evidence”: *Re Takhar Electric Ltd.*, BC EST # D052/08. It is not open to me to question the Director’s conclusion that the oral evidence of the Appellant, Bruyere, Hans and Lotus was unreliable on these issues.

The evidence of Bruyere and Hans was preferred because it is “logically cohesive and corroborated by contemporaneous documentary evidence submitted.”

53. Given that the Director found that the oral evidence of Bruyere and Hans was unreliable, I will examine the Director’s conclusions that the oral evidence of Bruyere and Hans is corroborated by contemporaneous documentary evidence.

“Mr. Bruyere entered an independent contractor [sic] with Lotus to perform renovation work.”

54. The Director held that because there were serious issues of credibility with respect to the information supplied by all of the parties, “I am giving significant weight to the contemporaneous documentary evidence and independent witness evidence when making my findings.” The Director concluded that “[t]here was a verbal agreement with Mr. Hans for a fixed price to do renovation work at the Motel, and Mr. Hans would also provide room and board.”

55. Bruyere stated that “he did renovations for Mr. Hans at the Motel at the end of 2018 and into 2019”. Bruyere contended that “Mr. Hans paid for food and rent and allowed him to get stuff from the liquor store”. Counsel for Lotus stated that Lotus entered into an oral contract with Mr. Bruyere for the Renovation Work, whereby the parties agreed Mr. Bruyere would complete the Renovation work within two months for \$7,500.00 payable in cash.

56. I am unable to see how the “contemporaneous documentary evidence” supports a conclusion that Bruyere had entered into an independent contract to perform the Renovations:

- a. the Estimate lists 18 rooms and certain renovations. The total estimated cost of this work is in excess of \$20,000.00. There is no reference in this document to work that will cost \$7,500.00. There is nothing in this document that refers to a deadline for completion of the work. Neither Bruyere nor Lotus were, apparently, questioned about the Estimate, or what negotiations flowed from it;
- b. the Bruyere Note is not contemporaneous with the alleged verbal agreement for the Renovation Work, as it was clearly created sometime after March 28, 2019, and simply

alleges that Bruyere renovated 20 rooms at a cost of \$7,500.00, but does not establish that this was agreed beforehand;

- c. the Bruyere Invoice does not reflect the payment of \$7,500.00 cash for the Renovations. In fact, it is wholly unclear what this document represents. It does not appear that Bruyere was questioned as to the significance of this document;
- d. records of payments made to Bruyere, or some form of accounting, which might have served as some evidence supporting the alleged independent contractor agreement, were never produced by Bruyere or Lotus, and were apparently not requested.

57. I find nothing in the notes of Bruyere's interview that describe the terms of the alleged verbal agreement for the Renovations. I find nothing in the notes of Bruyere's interview that suggest that Bruyere was asked about the total price of the Renovations, the time period in which the Renovations were to be undertaken, the terms of payment, or any other terms that would normally form part of a contract, verbal or written.

58. I find no contemporaneous documents which demonstrate that Bruyere was paid \$7,500.00 in cash for the work performed. In fact, I find no contemporaneous documentary evidence that satisfies me that Bruyere was paid at all. It does not appear, from the Record, that either Bruyere or Lotus were asked to provide records of payments made to Bruyere in satisfaction of the work performed on the Renovations.

59. I am not satisfied that the evidence establishes that Bruyere and Lotus entered into a contract for the Renovations. As a general principle of law, certain indicia will normally evidence the formation of a contract, including offer, acceptance, and certainty of terms. Certainty of terms is an essential element of the validity of a contract, and I am not convinced that the Estimate, or the rest of the documentary evidence, establishes the necessary certainty required to establish that an independent contractual agreement was formed.

60. I find that the Director's conclusion that the documentary record evidences that Bruyere was an independent contractor amounted to a misapplication of the general law of contract.

61. Even if I was satisfied that the documentary evidence demonstrated that an independent contract had been formed between Bruyere and Lotus, that does not end the question of whether this was truly an independent contractual relationship that satisfies the provisions of the *ESA*.

62. In *Re Regent Christian Academy Society, carrying on business as Regent Christian Online Academy*, BC EST # D011/14 ("*Regent*"), this Tribunal recognized that the question of whether an individual is an employee, or an independent contractor, will turn upon the provisions and the objectives of the *ESA*, and may be assisted by reference to accepted common law tests:

Finally, with regard to the question whether the Complainant was an employee, or an independent contractor, it must be remembered that a decision as to a person's status is based on an application of the provisions of the *Act*. It is trite to say that the *Act* casts a wider net for employment than does the common law (see *North Delta Real Hot Yoga Ltd.*, BC EST # D026/12, and the cases referred to therein). Part of the reason for this is to be found in the policy objectives of the *Act*. As stated in *Machtiger v HOJ Industries Ltd.* [1992] 1 SCR 986, concerning the employment standards legislation in Ontario, but in terms equally applicable to the *Act*:

...an interpretation of the Act which encourages employers to comply with minimum requirements of the Act, and so extends its protection to as many employees as possible, is favoured over one that does not.

Another reason for the subordination of the common law tests is the expansive language used to describe what an “employee” and an “employer” are defined to mean in the Act. In section 1, “employee” is defined to include, among other things, a person “receiving or entitled to wages for work performed for another” and a person “an employer allows, directly or indirectly, to perform work normally performed by an employee”. An “employer” is defined as including a person “who has or had control or direction of an employee”, or “who is or was responsible, directly or indirectly, for the employment of an employee”.

Still, the common law tests are of assistance in determining questions of status. They can provide some useful criteria for determining the manner in which the statutory definitions should be applied.

In the case of *671122 Ontario Ltd. v Sagaz Industries Canada Inc.* [2001] 2 SCR 983, a case involving an issue of vicarious liability, the Supreme Court of Canada stated that there is no single, conclusive test that can be universally applied to determine if a person is an employee or an independent contractor. Instead, there are several factors which need to be considered including:

- the level of control over the worker’s activities that is exercised by the employer;
- whether the worker supplies tools;
- the degree of financial risk undertaken by the worker;
- the degree of responsibility for investment and management resting in the hands of the worker; and
- the worker’s opportunity for profit or loss arising from the work.

63. The Director in the present case concluded that the Renovations were not work that would normally be undertaken by an employee. However, the Director did not consider whether Lotus was, *vis-à-vis* Bruyere, a person “who has or had control or direction of an employee”, or “who is or was responsible, directly or indirectly, for the employment of an employee”. The Director did not apply the common law tests for distinguishing between an employee and an independent contractor.

64. The Tribunal in *Regent* characterized a failure to apply the common law tests for distinguishing between an employee and an independent contractor as a breach of the principles of natural justice; I would also characterize it as an error of law.

65. I find that the Director erred in law in concluding that Bruyere was an independent contractor. As the preliminary question of the nature of the relationship between Bruyere and Lotus was pivotal to the ultimate finding of liability to the Appellant for wages for work performed, the Director’s conclusion on this point is pivotal to the balance of the Director’s conclusions.

“...all the documentary evidence submitted supports that Mr. Theriault entered an agreement to perform work at the Motel with Mr. Bruyere”

66. The Director found that the Appellant was employed by Bruyere, and rejected the Appellant's assertion that Lotus was the employer.
67. The Appellant alleges that "false representations" were made to the Appellant, by Hans, Bruyere, Lotus Desert Holdings Ltd., and Harcharan and Jaswinder Sekhon, contrary to section 8 of the *ESA*, and that the Director erred in law by "endorsing" these misrepresentations. (The Appellant's reference to Harcharan and Jaswinder Sekhon appears to relate to a separate Employment Standards complaint filed by the Appellant, which is not part of these proceedings, and I will disregard it.)
68. Section 8 of the *ESA* provides that:
- 8 An employer must not induce, influence or persuade a person to become an employee, or to work or to be available for work, by misrepresenting any of the following:
 - (a) the availability of a position;
 - (b) the type of work;
 - (c) the wages;
 - (d) the conditions of employment.
69. In the original Complaint, the Appellant contended that it was represented that the Appellant was "to be paid in cash 20 dollars hourly. Stay in motel can have as many meals that I wanted pay monthly rent 800\$ taken of [sic] the wages owed." The Appellant did not specify who made these representations, or when. In the November 2 Submission, the Appellant contended that "Joseph A. Theriault was induce, influence, and lied too becoming employee for Lotus ..., Mr. and Mrs. Hans, Jean-Paul Bruyere ...[sic]".
70. The Director found that the Appellant's oral evidence that the Appellant had been hired and supervised by Lotus was unreliable. I turn, then, to the question of whether, as the Director asserted, the documentary evidence supports the conclusion that Bruyere hired the Appellant as an employee.
71. While the May 22 Contract purports to be an agreement between Bruyere and the Appellant pursuant to which the Appellant would work on the Renovations, the document is problematic because:
- a. it does not specify who hired the Appellant;
 - b. it is not contemporaneous with the commencement of the work performed by the Appellant;
 - c. when questioned about this document, Bruyere denied ever seeing the document, or signing it;
 - d. there is no record that the Appellant was questioned about how this document came into existence.
72. I do not find that the May 22 Contract establishes that Bruyere hired the Appellant.
73. The Estimate contains no information referring to the hiring of the Appellant.
74. The Bruyere Note, which was apparently prepared after March 28, 2019, does allude to the fact that the Appellant had insisted that Bruyere pay for hours worked by the Appellant, both prior to and after the

date of the document. However, this does not evidence that Bruyere hired the Appellant to undertake the Renovations. There is no record that either Bruyere or the Appellant were questioned about how this document came into being.

75. The Bruyere Invoice contains no reference to the hiring of the Appellant, other than an obscure reference to “Alain work \$500.00”. Bruyere was not questioned about this document.

76. During the Investigation, Bruyere alleged that the Appellant had been fully paid. There is nothing in the Record that suggests that Bruyere was asked to produce records evidencing the payments to the Appellant. Such records, if they existed, might have constituted some evidence in support of the allegation that Bruyere hired the Appellant.

77. I am not satisfied that, as a principle of general law, “...all the documentary evidence submitted supports that Mr. Theriault entered an agreement to perform work at the Motel with Mr. Bruyere”.

78. The Director did not mention section 8 of the *ESA* in the Determination. I am unable to say whether the Director correctly applied this section, or even considered it, with respect to the allegation that the Appellant had been hired and supervised by Lotus.

79. Bruyere stated that he quit the Renovations sometime in May 2019, and thereafter knew nothing of what took place at the Motel. Contrary to this evidence, Lotus claimed that after May it was expecting Bruyere to return to complete the Renovations. After Bruyere left the project, the Appellant continued to work on the Renovations. With respect to the work performed by the Appellant after Bruyere’s departure, the Director held that:

In the absence of any documentary evidence to support that Mr. Hans or Lotus engaged Mr. Theriault in extra renovation work after May 22, 2019 or were providing direction or control over his work, I find Mr. Theriault continued to perform renovations as agreed by Mr. Bruyere and Mr. Hans in the initial contracted agreement.

80. In my view, the Director failed to adequately investigate the nature of the Appellant’s employment after May 22, 2019, in the face of contradictory evidence from Bruyere and Lotus. In my view, it is not a correct application of the law of contract to simply conclude that “in the absence of documentary evidence” the Appellant must have been continuing to work, after May 22, 2019, pursuant to the terms of Bruyere’s original agreement with Lotus.

Bruyere and Hans were not ‘associated employers’ with respect to the work performed by the Appellant.

81. The Appellant argued that Lotus and Bruyere should be treated as associated employers, both liable for the Appellant’s unpaid wages.

82. Section 95 of the *ESA* provides that two or more entities may be considered “associated employers” for purposes of the obligations to employees:

95 If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,

- (a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one employer for the purposes of this Act, and
- (b) if so, they are jointly and separately liable for payment of the amount stated in a determination, a settlement agreement or an order of the tribunal, and this Act applies to the recovery of that amount from any or all of them.

83. This Tribunal considered the purpose of this statutory provision in *Re Astrolabe Marine Group Ltd. and AstroPrint Inc.*, BC EST # D303/03:

One of the purposes of the *Act* is to ensure employees in the province receive the basic standards of compensation and conditions of employment (section 2). Section 95, which provides a remedy to employees for unpaid wages, is a part of the *Act's* comprehensive enforcement scheme. As the Tribunal noted in *Invicta*, the enforcement provisions include the power of the director to make the one employer declaration for the purpose of facilitating the collection of wages owing under the *Act*.

84. In the present case, there is no dispute that the Appellant performed the Renovations. It is entirely within the purposes of the *ESA* that the Appellant be compensated for this work.

85. In *Re Invicta Security Systems Corp.*, BC EST #D349/96, the Tribunal identified that test that must be satisfied to conclude that two entities are associated for the purposes of section 95:

This statutory provision allows the director to pierce the corporate veil and look behind the legal structure, or form, of a business to the relationships of various entities that in reality comprise the substance of the business. There are four preconditions to an application of Section 95 to the circumstances of any matter before the director:

1. There must be more than one corporation, individual, firm, syndicate or association;
2. Each of these entities must be carrying on a business, trade or undertaking;
3. There must be common control or direction; and
4. There must be some statutory purpose for treating the entities as one employer.

...

The third precondition is directed toward the manner in which the various entities inter-relate within the common enterprise. One entity may have financial control, another may have operational control and yet another may have *de facto* control through majority shareholding or control of the Board of Directors. These examples are not meant to be exhaustive, but illustrative of how control may be demonstrated. Similarly, direction may be demonstrated in a variety of ways, but generally it will normally be found in an entity which makes significant decisions respecting how the business, trade or undertaking has been, is, or will be, run.

The final precondition identifies the need for a statutory purpose. One of the purposes of the *Act* is to ensure employees in the province receive the basic standards of compensation and conditions of employment. The *Act* not only sets the basic standards of compensation and conditions of employment but also provides a comprehensive scheme for the enforcement of the

Act, including some collection procedures such as claims of lien, court order enforcement and seizure of assets in appropriate circumstances. It is in the enforcement provisions of the *Act* where Section 95 has been placed. The statutory purpose requirement is met if the one employer determination is for the purpose of enforcing basic standards of compensation and conditions of employment. It is not inconsistent with that purpose to make the one employer declaration for the purpose of facilitating the collection of wages owing under the *Act*.

86. In *Re 0708964 B.C. Ltd.*, BC EST # D015/11, this Tribunal expanded upon this test:

My review of the relevant authorities suggests that the following propositions emerge when dealing with section 95:

- there must be at least two separate entities that are being “associated”;
- the nominal employer is not particularly relevant and there is no need that a formal contract of employment subsist as between the employee and the entities that are being “associated”;
- the entities must be jointly carrying out some business, trade or other activity although the business, trade or activity in question need not necessarily be the only one that each entity is carrying on;
- “common control or direction” may be determined based on financial contributions from one entity to another (although this factor, standing alone, is not determinative); ...

87. The Director stated that “there is insufficient evidence to determine that there was common control or direction between Lotus and Mr. Bruyere. There is no evidence Mr. Bruyere was involved in control or direction of the business of the Motel or that Mr. Hans or Lotus had any control or direction over Mr. Bruyere’s renovation business.” The Director held that “I find the preconditions for an association under section 95 of the *Act* have not been met. Accordingly, I find Lotus is not an associated employer.”

88. During the investigation conducted by the Director, the Appellant contended that the Renovations were directed by Hans personally, or by way of messages conveyed by the Motel manager, Cheetan Dave. The Appellant alleged that for much of the time that the Renovations were under way Bruyere was not present.

89. The Housekeeper stated that Cheetan Dave was the manager, and was present at the Motel during the whole of the period of the work performed by the Appellant. Contrary to this evidence, counsel for Lotus submitted that “Mr. Dave was never employed by Lotus”, but “was an acquaintance of Mr. Hans”.

90. The evidence that could be supplied by Mr. Dave on the question of what direction was given to the Appellant by Lotus is crucial to the question of “common control or direction” relative to s.95 of the *ESA*. There is also the question of who directed the Appellant after the departure of Bruyere in May 2019. Mr. Dave was never interviewed as part of the Director’s investigation.

91. The Appellant claimed that the salary was to be \$20.00 per hour and “rent at the Motel at \$800.00 and was provided meals”. Bruyere claimed that the Appellant was to be paid \$20.00 per hour and “\$800.00 to stay at the Motel”. If it was truly the case that the Appellant was offered employment by Bruyere, it is

unclear what authority Bruyere had to grant accommodation or meals at the Motel. If Bruyere was in a position to offer this to the Appellant, it suggests a measure of involvement on the part of Bruyere in the business of the Motel. There is no evidence that Bruyere was questioned about this issue.

92. In my view, it is an error of law to conclude that “there is insufficient evidence to determine that there was common control or direction between Lotus and Mr. Bruyere” when that absence of evidence is the result of insufficiencies in the investigation.

The Director allegedly incorrectly referred to Lotus Desert Enterprises Ltd. d.b.a. Merritt Desert Inn, instead of Lotus Desert Holdings Ltd.

93. I am satisfied that the Director correctly identified the respective roles of these corporate entities.

The Director allegedly incorrectly assessed the quantum of the amounts owing to the Appellant

94. In my view, the Director did not err in the method of calculating the quantum of monies owing to the Appellant.

Summary regarding alleged error of law

95. In *Regent, supra*, this Tribunal considered a determination in which the issue of control of work was a key issue (albeit in a different context in that case). The Tribunal found that it was unclear that the Director had considered all relevant facts on the issue, or had failed to fully canvas the facts that supported the Director’s conclusion. The Tribunal held that in those circumstances, “the appropriate remedy is to cancel the Determination and refer the matter back to the Director so that the complaint may be considered afresh and a further determination issued, having regard to the reasons given in this decision.”

96. I likewise find here that the appropriate remedy is to refer this matter back to the Director. I find that the Director did not fully consider relevant provisions of the *ESA* in making the Determination, including section 8 and section 95 of the *ESA*. I find that the Director’s investigation was inadequate to support the conclusions of general law reached by the Director. I find that the Director’s investigation failed to fully canvas the facts of this case.

97. Based upon the foregoing, I find that the Director erred in law in making the Determination, and that the appropriate remedy is to refer the matter back to the Director to undertake a further and better investigation.

Did the Director fail to observe the principles of natural justice in making the Determination?

98. In its appeal, the Appellant alleges that the Director failed to observe the principles of natural justice in making the Determination. More specifically, the Appellant alleged that:
- a. the Director failed to observe the principles of natural justice by:
 - i. delivering the Determination more than six months after the last day of the Appellant’s employment, contrary to the provisions of the *ESA*; and

- ii. failing to obtain evidence from Mr. Cheetan Dave, contrary to the *Temporary Foreign Worker Protection Act*, S.B.C 2018, c. 45 and the *Canadian Charter of Rights and Freedoms*.

99. In *Imperial Limousine Service Ltd.*, BC EST # D014/05, the Tribunal addressed the principles of natural justice that must be addressed by administrative bodies, as follows:

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the *Act*, and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party. (see *BWI Business World Incorporated* BC EST #D050/96).

100. Natural justice thus requires the Director to provide certain procedural protections to both parties, and to conduct investigations in an unbiased and neutral manner.

101. As part of my consideration of error of law, I have addressed the Director's failure to obtain evidence from Mr. Cheetan Dave. In *Regent, supra*, the Tribunal held that a failure to consider all relevant facts on the issue of control of work, or a failure to fully canvas, in the Reasons, the facts that supported the Director's conclusion, amounted to a failure to observe the principles of natural justice. In the present case, I am not satisfied that the Director considered or canvassed all of the facts germane to the issue of control or direction, and I find that the appropriate remedy is to refer the matter back to the Director.

102. There is no merit to the Appellant's assertion that the Director was required to deliver the Determination within six months of the end of the Appellant's employment, or that failing to do so amounted to a failure to observe principles of natural justice.

Has new evidence come to light that was not available at the time that the Determination was made?

103. The Appellant argues that new evidence has become available that was not available at the time that the Determination was made. That new evidence allegedly consists of:

- i. information related to income assistance payments made to Bruyere during the currency of the Appellant's employment; and
- ii. information related to a separate Employment Standards complaint filed by the Appellant regarding a home located in Logan Lake, British Columbia, which property is allegedly associated with the parties herein.

104. I find that this alleged evidence is not relevant to these proceedings under the *ESA*, and I dismiss this ground of appeal.

CONCLUSION

105. This is a case in which an individual did work that ultimately benefited a commercial enterprise, but has not yet been paid. This is a case that demands a rigorous investigation, and a thorough legal analysis, to determine the identity of the Appellant’s employer. That has not yet happened here.
106. I find that the Director committed errors of law in making the Determination. I am not satisfied that the “contemporaneous documentary evidence” supports the legal conclusions reached by the Director, or that the Director’s investigation was sufficient to support those conclusions. I am not satisfied that the Director sufficiently examined the question of common control and direction as between Bruyere and Lotus in order to arrive at the conclusion that Bruyere and Lotus were not associated employers for the purposes of the work performed by the Appellant.
107. I find that the Director failed to fully investigate or consider facts related to the question of control or direction of the Appellant’s labours, and find that this constitutes a failure observe the principles of natural justice in making the Determination.
108. I do not find that there is new evidence available that was not available at the time that the Determination was made.
109. For the reasons set out herein, I cancel the Determination, and refer this matter back to the Director so that the “complaint may be considered afresh and a further determination issued”.

ORDER

110. Having reviewed the Determination, the Appellant’s submissions, the submissions of the Director and counsel for Lotus, and the Record, I grant this appeal in part, cancel the Determination, and refer the matter back to the Director, pursuant to section 115(1) of the *ESA*.

James F. Maxwell
Member
Employment Standards Tribunal