



Appeals

- by -

Gulf Coast Materials Ltd.  
("Gulf Coast")

- of Determinations issued by -

The Director of Employment Standards  
(the "Director")

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

**TRIBUNAL MEMBER:** Robert E. Groves

**FILE Nos.:** 2014A/11, 2014A/12, 2014A/13,  
2014A/14, 2014A/15, 2014A/16,  
2014A/17

**DATE OF DECISION:** January 6, 2015

## DECISION

### SUBMISSIONS

David Lunny

counsel for Gulf Coast Materials Ltd.

Amanda Clark Welder

on behalf of the Director of Employment Standards

### OVERVIEW

1. Gulf Coast Materials Ltd. (“Gulf Coast”) has filed appeals relating to seven determinations (the “Determinations”) issued by a delegate (“Delegate Welder”) of the Director of Employment Standards on December 23, 2013.
2. The Determinations were issued in respect of seven distinct periods of time from October 15, 2007, until September 17, 2010, for which the complainant, Dan Helgesen (“Helgesen”), claimed that he had not been paid wages by Gulf Coast.
3. The Delegate ordered that Gulf Coast pay Helgesen wages and interest totalling \$64,608.36. She also imposed two administrative penalties of \$500.00 for breaches of sections 17 and 18 of the *Employment Standards Act* (the “Act”).
4. I have before me the Determinations, Delegate Welder’s Reasons for the Determinations dated December 23, 2013, Gulf Coast’s Appeal Form, the record the Director has delivered to the Tribunal pursuant to section 112(5) of the *Act*, and submissions from Gulf Coast and Delegate Welder.
5. Pursuant to section 36 of the *Administrative Tribunals Act*, which is incorporated into these proceedings by section 103 of the *Act*, and Rule 8 of the Tribunal’s *Rules of Practice and Procedure*, the Tribunal may hold any combination of written, electronic, telephone and in person hearings when it decides appeals. I find that the matters raised in this appeal can be decided on the basis of a review and consideration of the materials now before me.

### FACTS

6. Gulf Coast operates a cement plant on Salt Spring Island. At all relevant times two brothers, Bhora Mayer and Mhinder Mayer, jointly owned all the shares in the company, and were its sole directors. Bhora Mayer also held the office of president, while Mhinder Mayer acted as secretary.
7. During the period engaged by these proceedings the Mayer brothers were embroiled in ongoing disputes with each other as to the corporate governance of several of their jointly-owned business concerns, including Gulf Coast.
8. Helgesen worked for various Mayer businesses for at least two decades. His principal connection appears, however, to have been with Mhinder Mayer. In 1998-2000, Helgesen worked for Gulf Coast as its manager, under the direction of Mhinder Mayer. He then left in order to manage a company called D&A Crushing Ltd. (“D&A”), a business owned by Mhinder Mayer’s wife, Kelly Mayer.

9. From April to October, 2007, Helgesen and other D&A employees performed work at Gulf Coast sites relating to the installation of a cement plant, under the direction of Mhinder Mayer. That work subsequently led to litigation between D&A and Gulf Coast.
10. On October 11, 2007, Bhora Mayer wrote to Mhinder Mayer advising, in part, that Gulf Coast would not be paying D&A invoices, and stating that Helgesen “should not be working for GCM.”
11. On October 13, 2007, D&A placed Helgesen on lay-off. Mhinder Mayer then offered Helgesen work at Gulf Coast’s Salt Spring Island plant, commencing on October 15, 2007. Mhinder Mayer completed a payroll request form for Helgesen at Gulf Coast, which he submitted to Bastion Management Ltd. (“Bastion”), the company responsible for processing Gulf Coast’s payroll. Bastion was controlled by Bhora Mayer’s son.
12. Bhora Mayer then wrote Mhinder Mayer another letter, on October 17, 2007. In it, he stated that Helgesen “will not be hired” by Gulf Coast, citing safety and security reasons. He also said that “either you tell Dan to leave immediately or I will give him formal notice to leave the premises.”
13. On October 18, 2007, Bhora Mayer delivered a letter to Helgesen, which said this:

This letter is to remind you that your are NOT an employee of Gulf Coast Materials, and that I will not authorize you to be hired by Gulf Coast Materials.

This is also a formal notice that, unless you receive written authorization from me, you are no longer allowed to enter our property at 345 Rainbow Road, Ganges. Should you fail to respect this notice, the appropriate authorities will be contacted and you will be charged with trespassing.
14. On the same day, Bhora Mayer contacted the RCMP to assist him in removing Helgesen from the Gulf Coast property. He was informed that it was not a police matter, and that no such assistance would be forthcoming.
15. Bhora Mayer also contacted Bastion. He informed it that Helgesen had not been hired by Gulf Coast, that no wages were owed to him, and that if time was submitted on his behalf it was not to be entered on the payroll for Gulf Coast.
16. On October 19, 2007, Bhora Mayer delivered a further letter to Helgesen, confirming again that he was not employed by Gulf Coast, that Mhinder Mayer had no authority to hire him, and that he should govern himself accordingly.
17. In November, 2007, Bhora Mayer sought, through counsel, to call a directors’ meeting for Gulf Coast, in order to “deal with the management of GCM on a going forward basis”. Mhinder Mayer declined the invitation. Counsel for Bhora Mayer advised counsel for Mhinder Mayer that the latter could not “manufacture a ‘deadlock’ by refusing to attend.” Counsel for Bhora Mayer also stated that if Mhinder Mayer refused to attend the meeting he had instructions to apply to court for directions and orders. No such application to court seems to have been made regarding this exchange, notwithstanding that Mhinder Mayer did not attend the meeting.
18. Delegate Welder found that despite the objections of Bhora Mayer, Helgesen attended at the Gulf Coast site and performed work under the direction of Mhinder Mayer from October 15, 2007, until September 17, 2010.

19. On January 8, 2008, Helgesen filed a complaint with the Employment Standards Branch, as he had received no wages from Gulf Coast. Helgesen subsequently filed five other complaints, covering most of the period from January 8, 2008, until he ceased to perform work at the Gulf Coast site on September 17, 2010.
20. While Helgesen received no wages from Gulf Coast during this period, Kelly Mayer paid him bi-weekly sums equivalent to what he had been told he would receive for the work he performed there. These payments were characterized by Kelly Mayer as a “loan” that Helgesen was to repay once he received his wages from Gulf Coast.
21. On February 24, 2009, a delegate of the Director issued a determination concerning the first of Helgesen’s complaints. The determination ordered Gulf Coast to pay Helgesen wages.
22. Helgesen appealed that determination, claiming that he was entitled to more wages than Gulf Coast had been ordered to pay. Bhora Mayer also filed an appeal, on behalf of Gulf Coast, asserting that the determination should be cancelled because Helgesen was never an employee of Gulf Coast.
23. In its decision BC EST # D077/99, issued on July 20, 2009, the Tribunal dismissed Bhora Mayer’s appeal. It allowed Helgesen’s appeal, and referred the matter back to the Director for a re-calculation of the wages owed to him, on the basis that the determining delegate had misapplied section 80(1)(a) of the *Act*, which limits the amount of wages that the Director may order an employer to pay to a person who delivers a complaint.
24. Gulf Coast applied for a reconsideration of the Tribunal’s decision. In decision BC EST # RD123/09, dated November 23, 2009, the Tribunal denied Gulf Coast’s application and confirmed its decision BC EST # D077/99.
25. Gulf Coast then applied for a judicial review. On August 20, 2010, the Supreme Court of British Columbia, per Davies J., issued its decision regarding the application – see *Gulf Coast Materials Ltd. v. Helgesen* 2010 BCSC 1169 (the “Review Decision”).
26. The court decided that the February 24, 2009, determination, the appeal decision BC EST # D077/99, and the reconsideration decision BC EST # RD123/09 should be set aside on the basis that they had all applied an incorrect interpretation of the scope of the limitation appearing in section 80(1)(a), and so they were patently unreasonable. The court concluded that the section restricted the wages that Gulf Coast might be required to pay to Helgesen to the amount of wages that became payable to him in the six-month period before he filed the complaint that was the subject of the February 24, 2009, determination. The court then referred the matter back to the Director for further investigation.
27. Another matter referred to in the Review Decision was the fact that Bhora Mayer and Mhinder Mayer had also litigated the question of the corporate governance of Gulf Coast in a concurrent proceeding in the Supreme Court. In that proceeding, Burnyeat J. rendered a decision on July 31, 2009, which confirmed that the articles of Gulf Coast provided that Bhora Mayer, as president of the company, had a second and casting vote in the event of a deadlock.
28. The reconsideration panel had declined to admit new evidence of the articles of Gulf Coast, and the Burnyeat J. judgment, on the basis that it was not probative of the issues before it. This conclusion was based primarily on the fact that the delegate had decided that Helgesen was entitled to rely on the directions of Mhinder Mayer, a director and joint owner of the shares of Gulf Coast, to the effect that he had been hired by the

company and should continue to perform work for it, regardless of the strict legal authority of Mhinder Mayer to bind the company in that way.

29. The court in the Review Decision took a different view. Davies J. said this:

[184] I disagree with the Reconsideration Tribunal's conclusion that neither the articles of Gulf Coast nor the order and judgment of Burnyeat J. are "significant or probative of the issues raised in this application."

[185] In my opinion, those documents create an entirely different legal framework against which to assess both Mr. Helgesen's claims and Mhinder Mayer's actions. As such, they are at least highly significant and potentially conclusively probative of a lack of ability of Mhinder Mayer to bind Gulf Coast, either statutorily or at common law, to any obligation to pay wages to Mr. Helgesen.

30. The court also declined to set aside the finding in the February 24, 2009, determination, confirmed in the Tribunal's appeal and reconsideration decisions, that Gulf Coast was Helgesen's employer. Upon a review of the record, and after considering the submissions of the parties, the court decided that the delegate's determination on the point, affirmed by the Tribunal decisions, was not irrational.

31. Upon return of the matter to the Director, a second delegate ("Delegate Wall") took conduct of the file. Following further investigation, Delegate Wall wrote to Gulf Coast and to Mhinder Mayer on March 1, 2013. In that letter, Delegate Wall set out his preliminary findings. In particular, the letter said that:

- Mhinder Mayer, personally, was Helgesen's employer;
- Any monies Helgesen had received from Kelly Mayer could not be considered to be wages;
- Mhinder Mayer personally owed Helgesen wages for the period from October 15, 2007, to September 17, 2010, in the amount of \$201,217.63.

32. Delegate Wall then advised that if a party disagreed with the preliminary findings, the party should provide written reasons and supporting evidence by a fixed date, failing which he would issue a determination.

33. Mhinder Mayer subsequently disputed Delegate Wall's preliminary findings.

34. Thereafter, Delegate Wall departed from the Branch, and Delegate Welder assumed responsibility for the investigation. Her Reasons state that she notified the parties of her intention "to take a fresh view of the submissions to date and to request specific evidence and argument from the parties as deemed necessary."

35. In the months that followed, the parties provided several submissions in response to specific questions posed by Delegate Welder. One of those questions asked the parties to identify who Helgesen's employer was for the purposes of his complaints under the *Act*.

36. The Determinations Delegate Welder issued on December 23, 2013, rested on the conclusion that Gulf Coast was Helgesen's employer at the relevant times. That conclusion was based in large part on a reading of the definition of "employee" in section 1 of the *Act*, which says that the term "includes... (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee".

37. At the same time, Delegate Welder determined that the "loan" payments Helgesen received from Kelly Mayer, in the amount of \$142,640.00, were, for the purposes of the *Act*, wages, and so they must be deducted

from the gross amount of wages Delegate Welder found that Gulf Coast owed to Helgesen. No appeal has been brought in respect of this aspect of the Determinations.

38. In the result, Delegate Welder found that Gulf Coast owed Helgesen net wages of \$64,608.36, inclusive of interest in respect of all the complaints Helgesen had filed relating to the period between October 15, 2007, and September 17, 2010.

## ISSUES

39. Gulf Coast challenges the Determinations on the grounds set out in subsections 112(1)(a) and (b) of the *Act*, which read:

- 112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
- (a) the director erred in law;
  - (b) the director failed to observe the principles of natural justice in making the determination....

40. More specifically, Gulf Coast asserts six grounds of appeal, expressed as follows:

1. The Director erred in law by reaching inconsistent findings relating to the issue of whether the claim should be dismissed as an abuse of process under section 76(3) of the *Act*;
2. The Director erred in law by misinterpreting the common law “indoor management rule”;
3. The Director erred in law by misinterpreting section 80(1) of the *Act*;
4. The Director failed to observe the principles of natural justice by ignoring and rejecting the preliminary findings of Delegate Wall set out in his letter of March 1, 2013;
5. The Director failed to observe the principles of natural justice by failing to grant Gulf Coast an oral hearing when a key issue is the credibility of Helgesen and key witnesses;
6. The Director failed to observe the principles of natural justice by failing to determine the complaints in a timely manner.

## ANALYSIS

41. Section 115(1) of the *Act* sets out the jurisdiction I may exercise on an appeal. It reads:

- 115 (1) After considering whether the grounds for appeal have been met, the tribunal may, by order,
- (a) confirm, vary or cancel the determination under appeal, or
  - (b) refer the matter back to the director.

42. I will deal with the Gulf Coast grounds of appeal in the order presented.

**1. *The Director erred in law by reaching inconsistent findings relating to the issue of whether the claim should be dismissed as an abuse of process under section 76(3) of the Act.***

43. Gulf Coast submits, properly, that the Director may, pursuant to section 76(3) of the *Act*, refuse to accept, review, mediate, investigate or adjudicate a complaint if the complaint “is frivolous, vexatious or trivial or is not made in good faith.”
44. Gulf Coast argues that it is inconsistent, and therefore an error of law, for Delegate Welder to find that Helgesen was employed by Gulf Coast, and then determine that the “loan” payments made to him by Kelly Mayer were actually “wages” paid for the work he performed at the Gulf Coast site.
45. Gulf Coast says that the necessary corollary to a decision that the “loan” payments were, in fact, “wages”, is that Helgesen was employed by Mhinder Mayer, or Kelly Mayer, or both, and not by Gulf Coast.
46. It also submits that Delegate Welder’s conclusion supports its theory that Mhinder Mayer and Kelly Mayer are attempting to use the complaints machinery under the *Act* as a “collections agency”.
47. Gulf Coast asserts further that Delegate Welder’s finding is proof that Helgesen acted in league with Mhinder Mayer and Kelly Mayer to cause harm to Gulf Coast and to Bhora Mayer “by forcing them to spend money on legal fees to defend a frivolous claim that has falsely maligned Gulf Coast as a company that purportedly does not pay its workers.”
48. Gulf Coast goes on to say that Delegate Welder’s inconsistent findings leave it “with an illogical and unsustainable mish-mash, which should be set aside and the complaints dismissed.”
49. I disagree.
50. In my view, it was not inconsistent for Delegate Welder to have found that the “loan” payments must be characterized as “wages” for the purposes of the *Act*, and that Helgesen was employed by Gulf Coast.
51. Neither is it a necessary corollary to a finding that the “loan” payments were “wages” that Helgesen must have been an employee of Mhinder Mayer or Kelly Mayer, or both, and not Gulf Coast.
52. The principal issue raised in Helgesen’s complaints was whether he was an employee of Gulf Coast. Delegate Welder’s answer to that question was in the affirmative. The fact that a third party may have paid sums to Helgesen in respect of his work at the Gulf Coast site that Delegate Welder determined were “wages” under the *Act* is of interest, but it does not lead inexorably to a conclusion that Helgesen was not employed by Gulf Coast.
53. Delegate Welder made no finding that Helgesen was employed by either Mhinder Mayer or Kelly Mayer, or both. Instead, she determined that Helgesen was employed by Gulf Coast. Delegate Welder reached this conclusion because she found, on the whole of the evidence, that Helgesen performed work that was normally performed by employees of Gulf Coast, and from which it derived a benefit.
54. Delegate Welder also found that it was Mhinder Mayer who supervised Helgesen’s work, and that Mhinder Mayer was, *de facto*, the controlling and directing mind of Gulf Coast at the relevant time.
55. Delegate Welder also decided that the “loan” payments made by Kelly Mayer were “wages” for the purposes of the *Act*, not because Kelly Mayer was Helgesen’s employer, but because, as per the definitions of “wages”

and “work” in section 1, they represented “money...payable by an employer to an employee for...” “labour or services an employee performs for an employer...”

56. As I have stated, Delegate Welder’s conclusion that the “loan” payments were “wages” has not been challenged on appeal by any party. Nor has anyone seen fit to question her decision that the “wages” Helgesen received from Kelly Mayer must be deducted from the amounts found owing to him by Gulf Coast.
57. I have no doubt that Gulf Coast is acting on the basis of firm belief when it submits that Mhinder Mayer and Kelly Mayer are using the machinery of the *Act* as a “collections agency”, and that they are acting in malicious concert with Helgesen to prosecute frivolous claims. However, it is implicit in Delegate Welder’s Reasons for the Determinations, and the conclusions that she drew, that she declined to accept those allegations. In her submissions on appeal, Delegate Welder has advised that the evidence tendered simply did not support such findings.
58. In reaching these conclusions, Delegate Welder has made findings of fact. It is trite to say that the Tribunal cannot interfere with a delegate’s findings of fact unless it can be shown that the findings reveal an error of law. Errors of fact do not amount to errors of law unless the errors can be said to be palpable and overriding.
59. Gulf Coast invites the Tribunal to infer that the Helgesen complaints were delivered in bad faith, and so they constitute an abuse of process. Apart from presenting these allegations as a fundamental part of its theory of the case, I do not discern in the evidentiary record proof of facts that persuade me Delegate Welder made a palpable and overriding error when she found, as a fact, that these allegations were unproven.

***2. The Director erred in law by misinterpreting the common law “indoor management rule”.***

60. Gulf Coast argues that Delegate Welder erred in law because she failed to draw the correct legal conclusion from the fact that Mhinder Mayer did not have the corporate authority to bind the company to a contract of employment with Helgesen. It submits that Mhinder Mayer’s lack of authority means that Gulf Coast cannot be obligated to pay wages for the work that Helgesen performed for the benefit of the company over the period of nearly three years covered by Helgesen’s complaints.
61. Gulf Coast argues further that Helgesen cannot rely on the “indoor management rule”, to the effect that a party is entitled to rely on the authority of a person who is an officer or director of a company, and need not examine the articles of the company, or seek a corporate resolution providing the officer or director with the requisite authority, in order to be satisfied that the person actually does have the authority to bind the company. Gulf Coast submits that the rule is inapplicable because Helgesen either knew or ought to have known that Mhinder Mayer did not have the requisite authority.
62. I am unable to accept Gulf Coast’s argument on this point.
63. Delegate Welder made no finding that Helgesen knew, or ought to have known, that Mhinder Mayer had no corporate authority to hire him on behalf of Gulf Coast.
64. In my view, this conclusion is consistent with the views expressed by the court in the Review Decision, at paragraphs 157-169.
65. True, the court stated that the findings, implicit in the February 24, 2009, determination, the appeal decision, and the reconsideration decision that there was a “corporate deadlock” over the hiring and continuing



employment of Helgesen by Gulf Coast “are difficult, if not impossible, to rationalize with [the] actual corporate governance structure of Gulf Coast that vests a deciding or casting vote in Bhora Mayer as its president that is now known.”

66. However, the court went on to say that the actual corporate governance structure “does not...necessarily make the finding that Mr. Helgesen was Gulf Coast’s employee an irrational one.” The basis for the court’s drawing this conclusion was that all parties, including Bhora Mayer and Gulf Coast “assumed there was a corporate deadlock” at the relevant times. Why, then, should Helgesen be expected to have been better informed?

67. It was perhaps for this reason that the court also stated:

[162] It can now be fairly said that the present knowledge of the actual corporate governance situation strengthens Gulf Coast’s submissions that since Mhinder Mayer could not hire him, Mr. Helgesen could not be its employee.

[163] I am, however, not satisfied that Mhinder Mayer’s lack of corporate hiring authority vitiates the entirety of the Director’s Determination that Mr. Helgesen was an employee of Gulf Coast during the period alleged in the Certificate.

[164] There can, I think, be little doubt that the totality of the facts known to the Delegate are capable of supporting a finding that Mr. Helgesen was an employee of some employer at Gulf Coast’s Salt Spring Island plant during the currency of the Certificate. The only real issue of dispute was, and is, whether that employer was Gulf Coast alone or some combination of Mhinder Mayer, Kelly Mayer and D&A Crushing alone, or possibly together with Gulf Coast.

[165] While there can now be little doubt that Mhinder Mayer had no corporate authority to hire Mr. Helgesen on behalf of Gulf Coast, there remains the fact of the representations made by him to Mr. Helgesen that he had such authority. There also remains the fact that Mhinder Mayer told Mr. Helgesen to ignore Bhora Mayer, and directed Mr. Helgesen’s work at the Gulf Coast plant.

[166] The facts found by the Delegate with which I must not interfere, establish that Mr. Helgesen relied on those representations and directions of Mhinder Mayer.

[167] It may be that Mhinder Mayer is responsible to Gulf Coast for purporting to exercise authority he did not have, but that was not the issue that could have been addressed by the Delegate or the Tribunal, given the positions taken by the parties during the Delegate’s investigation of the Complaint, and the Tribunal’s hearing of the appeal of the Director’s Determination.

[168] I find that in all of those circumstances, the facts then known and the positions advanced by all concerned, that the Director’s finding that Gulf Coast was Mr. Helgesen’s employer was not irrational.

[169] While that finding might be irrational if examined in the light of the now-known facts, those were not the facts upon which the impugned decisions were made.

68. I do not discern from these comments that the court was of the view that a determination as to the actual corporate governance structure at Gulf Coast, which was delivered after the relevant events had, for the most part, already occurred, inexorably leads to a conclusion that Helgesen could not have been an employee of that company. To be sure, the court expresses the view that this could be the conclusion to be drawn. Indeed, in a passage in the Review Decision to which I have already referred, and which is referred to in the submissions of Gulf Coast, the court goes on to say that the governing corporate law was “at least highly significant and potentially conclusively probative of a lack of any ability of Mhinder Mayer to bind Gulf Coast, either statutorily or at common law, to any obligation to pay wages to Mr. Helgesen.” Nowhere, however, does the court say that this must be the inevitable legal result.

69. In her Reasons, Delegate Welder pays heed to the actual corporate governance structure at Gulf Coast, and to the comments of the court in the Review Decision. However, Delegate Welder determined that Helgesen was an employee of Gulf Coast. The grounds supporting Delegate Welder's determination are captured in the following excerpts from her Reasons:

249. While I recognize Gulf Coast's argument that Mhinder Mayer did not have corporate authority under Gulf Coast's Articles of Association to hire Dan Helgesen on behalf of Gulf Coast, this does not nullify the fact that Mhinder Mayer was physically present at Gulf Coast on a day to day basis and was performing actions and making decisions that affected Gulf Coast and its employees.

250. Although Bhora Mayer made efforts at the beginning of Dan Helgesen's employment to prevent him from working at Gulf Coast, he was keenly aware that these efforts had not had the desired effect because Dan Helgesen continued to work at the Gulf Coast site. Gulf Coast received the benefit of Dan Helgesen's labour from October 15, 2007 until September 17, 2010. As set out in the definition of "employer" in the Act, an employer includes a person who is or was responsible, directly or *indirectly*, for the employment of an employee (emphasis added). Dan Helgesen was not stopped from doing the work he did and Gulf Coast received the benefit of that work. While Gulf Coast may argue that it was not directly responsible for Dan Helgesen's employment, the facts support a finding that Gulf Coast was, at the least, indirectly responsible for his employment.

251. The disagreement between Gulf Coast's directors is one of a corporate nature and not within the jurisdiction of the Director to address, although I have given consideration to all of the evidence regarding the corporate governance. The corporate dispute between Mhinder Mayer and Bhora Mayer does not prevent the Director from exercising her jurisdiction under the Act and applying the statutory requirements of the Act to ensure any and all employees of Gulf Coast receive minimum standards provided for by the legislation.

252. Justice Davies, in paragraph 77 of his decision, asks how it could be that a company that refused to hire a person, told the person he would not be employed by it, attempted to have the person forcibly removed and never paid the person, would be required to pay wages. It is because the issue of whether Dan Helgesen was an employee is governed by the Act and that issue must be determined by applying the definitions of "employee", "employer" and "work" found in the Act. It is because the object and purpose of the Act include employees being entitled to basic standards of compensation and conditions of employment. It is because corporate governance disputes between directors of a company do not allow an employer to refuse to pay an employee who has performed work for that employer. In spite of Bhora Mayer's objections to Dan Helgesen's employment, Gulf Coast did not get an injunction or in any other way prevent Dan Helgesen from performing work that benefitted Gulf Coast. All of the corporate governance issues that form the backdrop of Dan Helgesen's complaint, while important, do not determine his employment status and entitlements under the Act.

253. I find that Dan Helgesen performed work normally performed by an employee and as such was an employee for the purposes of the Act. The labour and services he performed were for Gulf Coast and he was directed, along with other employees of Gulf Coast, by Mhinder Mayer who was effectively controlling and directing the daily affairs of the business. Gulf Coast received the benefit of his work, along with the work of the individuals he worked alongside who Gulf Coast does not dispute were its employees. I find Gulf Coast was responsible for Dan Helgesen's employment and was his employer for the purposes of the Act.

70. I am not persuaded that it was an error for Delegate Welder to have drawn these conclusions. Gulf Coast became Helgesen's "employer" for the purposes of the *Act* because it was responsible, indirectly, for his employment. Gulf Coast was responsible, indirectly, for Helgesen's employment, and he became an "employee" within a meaning ascribed to that word in section 1, because it allowed him, directly or indirectly, to perform work normally performed by an employee of the company.

71. It follows that I am also in agreement with the position expressed by Delegate Welder that, in the circumstances of an apparent corporate deadlock that were presented, it was insufficient to nullify a finding that Gulf Coast had employed Helgesen for Bhora Mayer to express, however clearly, and for Helgesen therefore to have known, that the company refused to hire him, that he was not an employee of Gulf Coast, and that he should not attend at the Gulf Coast site. Notwithstanding these communications, Helgesen continued to attend at the Gulf Coast site, and he continued to perform work of benefit to the company under the day to day direction of Mhinder Mayer, an officer of Gulf Coast. Bhora Mayer, who it was later determined had been the controlling principal of Gulf Coast throughout, allowed this to occur. That being so, Helgesen became an “employee” of Gulf Coast as per the definition of that term found in section 1 of the *Act*.

**3. *The Director erred in law by misinterpreting section 80(1) of the Act.***

72. Section 80(1) of the *Act* reads as follows:

- 80 (1) The amount of wages an employer may be required by a determination to pay an employee is limited to the amount that became payable in the period beginning
- (a) in the case of a complaint, 6 months before the earlier of the date of the complaint or the termination of the employment, and
  - (b) in any other case, 6 months before the director first told the employer of the investigation that resulted in the determination,
- plus interest on those wages.

73. Helgesen filed six complaints in respect of wages he alleged were owed during the time he was employed by Gulf Coast, from October 15, 2007, until September 17, 2010. Delegate Welder, however, identified two periods between these dates that were not captured by the six month limitation period established by section 80(1)(a). Those periods ran from January 9, 2008, until June 16, 2008, and from June 3 to 15, 2009.

74. Delegate Welder determined that she could require wages to be paid for the periods falling outside the scope of Helgesen’s complaints by applying section 80(1)(b). She stated that on April 8, 2008, another delegate of the Director informed Gulf Coast of an ongoing investigation regarding wages alleged to be owed to Helgesen. She also stated that this investigation, insofar as it was conducted in respect of periods that were not captured by Helgesen’s complaints, was carried out pursuant to the jurisdiction granted to the Director under section 76(2), which reads:

- 76 (2) The director may conduct an investigation to ensure compliance with this Act and the regulations, whether or not the director has received a complaint.

75. Delegate Welder concluded that, from April 8, 2008, onward, Gulf Coast was aware of an ongoing investigation regarding claims of unpaid wages owed to Helgesen, and so it was open to her to issue the Determinations covering the entire period of his employment to September 17, 2010, whether that entire period fell completely within the scope of his complaints or not.

76. Gulf Coast argues that the issue of the six month limitations prescribed in section 80(1) was squarely before the court in the Review Decision, and the court decided that the capture period for wages to be paid ends with the triggering events described in each of subsections (a) and (b). For an investigation under section 76(2) that engaged section 80(1)(b), Gulf Coast says that the amount of wages it might be required to pay is limited to the amount that became payable before, but not after, the Director first informed it of the investigation which resulted in the Determinations.

77. On this interpretation Gulf Coast asserts, in essence, that if Delegate Welder wished to capture, for wage payment purposes, the periods of Helgesen's employment that fell outside the six month limits ascribed to each of his complaints, the Director needed to issue a section 80(1)(b) notification to Gulf Coast no later than six months after the beginning of each such period. To the extent the Director failed to do that, Gulf Coast submits, the Determinations must be said to reveal errors of law. Gulf Coast's position is set out in this excerpt from its February 12, 2014, submission:

38. The jurisdiction of the Director to make awards for unpaid wages is limited by s.80(1). Delegate Clark Welder exceeded this jurisdiction when she determined, at para. 226, that the Director retained jurisdiction over the entire period of the alleged employment and could simply fill in the gaps in the complaint periods because this was an ongoing investigation of which the employer had notice. This directly contradicts s.80(1) and the purposive interpretation given to it by Mr. Justice Davies. The very concept of a so-called "ongoing" investigation renders s.80(1)(a) and (b) meaningless.

39. In order to retain jurisdiction over the entire period of Dan Helgesen's alleged employment, either Dan Helgesen would have needed to [make] successive complaints covering the entire period in six-month intervals, or the Director would have needed to issue and re-issue notices under s.76(2) to Gulf Coast every six months. As neither of these occurred in the case of the gaps, the Director exceeded its jurisdiction in concluding that it could simply fill in the gaps and make orders for unpaid wages covering the entirety of each six month period of Dan Helgesen's alleged employment....

78. In a reply submission delivered for the purposes of this appeal, Delegate Welder addresses these arguments in the following way:

In a case such as the one at hand where there is an ongoing investigation of an alleged ongoing contravention, it would not be consistent with the purposes of the Act to allow an employer to avoid the payment of wages for certain periods of an ongoing contravention. The notice the Appellant argues the Director was obligated to provide is not a requirement of the Act.

79. I agree with Delegate Welder that the *Act* does not expressly require the Director to give notice of an ongoing investigation every six months. I also find compelling her contention that it would be acting in a manner that is inconsistent with the purposes of the *Act* to allow an employer to avoid the payment of wages for work performed during a period of ongoing contravention of the *Act* where the Director has given prior notice to the employer that an investigation is being conducted. The same might also be said about a requirement that an employee must file a new complaint every six months in circumstances where a contravention is ongoing, the employee has already filed an initial complaint regarding the contravention, and he or she is awaiting the issuance of a determination.

80. However, in paragraph 210 of the Review Decision, Davies J. stated that:

...

- 1) In their grammatical and ordinary sense, the provisions of s.80(1)(a) of the Employment Standards Act refer only to past, not future, periods of employment.
- 2) Section 80(1)(a) of the Employment Standards Act limits the period of recovery to the amount that became payable in the period beginning six months before the earlier of the date of the complaint or the termination of employment.
- 3) Similarly, s.80(1)(b) limits the period of recovery to the amount that became payable in the period beginning six months before the Director first told an employer of the investigation that resulted in a determination.

- 4) Although s.80(1)(b) does not apply in this case of the filing of the Complaint, the two provisions should be read harmoniously, and the inclusion of the word “before” in s.80(1)(b) reinforces the plain grammatical meaning of s.80(1)(a) as applying to limit recovery in any single complaint to past periods of employment. ...

81. Given these statements, which I am bound to follow for the purposes of this case, it is clear that Helgesen may only recover wages for periods no more than six months prior to the dates on which his complaints were filed, or the Director advised Gulf Coast that an investigation was being conducted. To the extent, therefore, that the Determinations require Gulf Coast to pay wages to Helgesen pursuant to section 80(1)(b), it must be demonstrated that the wages became payable in a period no more than six months before the Director told Gulf Coast of the investigation(s) that led to those Determinations.

82. To that end, I note that in paragraphs 221 and 222 of her Reasons for the Determinations Delegate Welder refers to correspondence from the Director to Gulf Coast dated April 8, 2008, and July 25, 2008, in which, it is said, the original delegate advised Gulf Coast that he was investigating whether wages were owed to Helgesen to those dates. However, copies of those communications do not appear to have been included in the record provided by the Director.

83. Later, at paragraph 224 of her Reasons, Delegate Welder states that Gulf Coast was “notified on a number of occasions” concerning the Director’s investigation regarding the wages potentially owed to Helgesen. Delegate Welder then refers the reader to the documents she identified earlier relating to the history of the matter, and set out in the Introduction to her Reasons. Particulars of the specific documents to which she is referring with regard to the application of section 80(1)(b) are not provided, however.

84. In the end, it is unclear to me whether the Director has complied with the provisions of section 80(1)(b) of the *Act*, so as to give assurance that all of the wages the Determinations state are owed to Helgesen are, in fact, properly payable by Gulf Coast. In my view, the matter of the determination of the amount of wages payable by Gulf Coast to Helgesen pursuant to section 80(1)(b) must, therefore, be referred back to the Director.

**4. *The Director failed to observe the principles of natural justice by ignoring and rejecting the preliminary findings of Delegate Wall set out in his letter of March 1, 2013.***

85. As I have stated, Delegate Wall issued preliminary findings dated March 1, 2013, which posited, *inter alia*, that it was Mhinder Mayer who was Helgesen’s employer at the relevant times.

86. Subsequently, Delegate Welder took conduct of the file, and advised the parties that she proposed to consider the complaints anew. She requested, and received, submissions from the parties regarding the potential resolution of several questions, including the question whether Helgesen had been employed by Gulf Coast. She then issued the Determinations.

87. Gulf Coast says that it was not open to Delegate Welder, and constituted a failure of natural justice, for her to depart from the preliminary findings of Delegate Wall without explaining why it was proper to do so. It argues that Delegate Welder’s commencing the investigation anew, when Delegate Wall’s investigation of the facts had been completed, delayed the issuance of the Determinations. It also asserts that the new investigation resulted in prejudice to Gulf Coast because the Determinations that emerged from it incorporated factual conclusions that departed substantially from the findings made by Delegate Wall in the March 1, 2013, letter.

88. Delegate Welder responds that the March 1, 2013, letter was not binding on her. It was merely a statement of Delegate Wall's preliminary findings, and not a determination for the purposes of the *Act*. Delegate Wall did not delineate the mode of analysis, or any specific reasons, supporting his preliminary findings. The letter also invited the parties to submit additional evidence and arguments prior to the issuance of any determination and so, Delegate Welder says, it cannot be inferred that the letter marked the end of the investigatory process. The parties did provide further material in response to the letter, and to later requests from Delegate Welder.
89. As for Gulf Coast's natural justice submission, Delegate Welder says this:
- The notion that I was required to be bound by Mr. Wall's preliminary assessment of the case would be tantamount to requiring my discretion to be fettered by my former colleague's incomplete investigation. To accept such a premise would be inconsistent with the principles of natural justice.
90. I agree with the approach to this issue that has been expressed by Delegate Welder.
91. The mode of proceeding the Director selects when investigating a complaint involves the exercise of a discretionary power. Once an investigation is commenced, there is nothing in the *Act* which directs how it should be conducted. To the extent that a preliminary assessment like the March 1, 2013, letter constitutes a decision, it is not a determination that is capable of being the subject of an appeal to the Tribunal, because it is, in substance, interlocutory (see *Re R. J. Somers Enterprises Ltd.*, BC EST # D050/04).
92. It is, of course, true that the manner in which investigations under the *Act* are conducted are subject to scrutiny by the Tribunal on natural justice grounds, once a determination has been issued (see *D. Kendall & Son Contracting Ltd.*, BC EST # D107/09, at paragraph 33). I reject, however, the submission of Gulf Coast that it was a failure to adhere to the principles of natural justice for Delegate Welder to decline to be bound by the preliminary findings offered in Delegate Wall's March 1, 2013, letter. Until a determination was issued, Delegate Welder was entitled to agree or disagree with those conclusions, to change her mind about them, or to take the investigation in a different direction entirely.
93. Nor am I persuaded that Delegate Welder's pursuit of the investigation afresh was conducted in a way that was unfair. Delegate Welder delivered detailed questions in writing to the parties, which clearly set out the areas of concern that she sought to have clarified. One of the important issues noted in those communications was Delegate Wall's preliminary finding that Helgesen had been employed by Mhinder Mayer and not by Gulf Coast. In her letter to Gulf Coast of May 28, 2013, Delegate Welder identified as her very first issue the question: "Who employed Dan Helgesen for the purposes of his complaints under the *Act*?"
94. In response, Gulf Coast provided detailed submissions to Delegate Welder supporting its argument that Helgesen was not its employee. There can be no suggestion, therefore, that Gulf Coast was taken by surprise, or that it was lulled into a misapprehended view of the posture being taken by the Director as a result of the comments made by Delegate Wall in the March 1, 2013, letter, once Delegate Welder took over conduct of the file.
95. It may be, as Gulf Coast asserts, that Delegate Welder's continuation of the investigation resulted in a delay in the issuance of the Determinations. Even so, and accepting for the moment that there was perhaps a delay, Gulf Coast has provided no particulars of circumstances supporting its contention that the delay caused it prejudice, apart from stating that it was prejudicial for Delegate Welder, after her investigation was

completed, to have drawn different conclusions from those that Delegate Wall offered by way of a preliminary assessment on March 1, 2013.

96. Delegate Welder has provided a detailed explanation in her Reasons why she came to different conclusions than those set out in Delegate Wall's March 1, 2013, letter. In the circumstances, I am not persuaded that the mere fact she disagreed with Delegate Wall's findings means that she failed to observe the principles of natural justice.

**5. *The Director failed to observe the principles of natural justice by failing to grant Gulf Coast an oral hearing when a key issue is the credibility of Helgesen and key witnesses.***

97. During the investigation that led to the issuance of the Determinations, Gulf Coast requested that Delegate Welder convene an oral hearing so that counsel for Gulf Coast might cross examine Helgesen, Mhinder Mayer, and Kelly Mayer. Delegate Welder declined to do so.

98. Gulf Coast's position regarding this issue is summarized in this passage from its February 12, 2014, submission:

47. A key part of Gulf Coast's defence is that Mhinder Mayer, Kelly Mayer, and Dan Helgesen worked in concert to cause financial harm to Gulf Coast and its president, Bhora Mayer. This was carried out by Mhinder Mayer purporting to hire Dan Helgesen on behalf of Gulf Coast, and extending the length of time Dan Helgesen would be able to continue that "employment" without receiving paycheques by having Kelly Mayer give money directly to Dan Helgesen. If these facts are established – as they have been in this case – the unpaid wages claims by Dan Helgesen are improper and an abuse of process.

99. Gulf Coast refers to the poorly documented terms and conditions of the "loan" arrangement between Helgesen and Kelly Mayer, and alleged instances of inconsistent statements by Helgesen and Kelly Mayer to support its assertions that it should have been permitted an opportunity to examine them in order to attempt to expose what it submits were acts of collusion and abuse of process in their dealings with Gulf Coast.

100. The February 12, 2014, submission then goes on to state:

53. Rejecting Gulf Coast's theory of the case without allowing Gulf Coast to test the complainant's evidence resulted in a failure to observe the principles of natural justice. At the very least, the Director erred by accepting the complainant's evidence on this point when some or all of it was false or inconsistent. Due to the serious credibility issues of the complainant, Mhinder Mayer, and Kelly Mayer, the Director ought to have ordered a cross-examination of them to test their evidence or at least resolve flagrant inconsistencies in that evidence.

101. In her response submission, Delegate Welder states that an oral hearing was unnecessary to resolve the complaints. She points to the fact that the parties had, over a period of years, and with the assistance of counsel, examined and re-examined all the relevant evidence that relates to the substantive issues in dispute.

102. Delegate Welder then goes on to say:

The parties had extensive opportunities to address inconsistencies that they perceive in the evidence of others. The Appellant alleges that with cross examination they would be able to tease out some scintilla of evidence that would, in a best case scenario, give some life to the conspiracy that they allege in appeal ground one as a basis of an abuse of process. This is not a reason to hold an oral hearing.

103. In the circumstances, I agree with the position taken by Delegate Welder.

104. A decision to conduct an oral hearing rather than an investigation in order to resolve a complaint is one of the matters of discretion resting within the purview of the Director under section 76(3) of the *Act*.
105. It is trite to say that the requirement to observe the principles of natural justice, or the procedural obligations of fairness embodied in section 77 of the *Act*, does not always mandate that the Director conduct an oral hearing in order to resolve a complaint. The statutory expectation, expressed in section 76(3), that some complaints may be resolved via investigation, and not adjudication, confirms the point.
106. There are, as well, several decisions of the Tribunal, and of courts, to the effect that there is no absolute right to an oral hearing in proceedings under the *Act* (see, for example, *D. Hall & Associates Ltd. v. British Columbia (Director of Employment Standards)* 2001 BCSC 575; *Re 0697655 BC Ltd. (cob the Rocking Horse Pub)* BC EST # D119/08, affirmed in BC EST # RD032/09; *Re 6307485 Canada Ltd. (cob McDonald's Restaurant)* BC EST # D121/09).
107. Proceedings under the *Act* are meant to be summary in form. The expectation is that the complaint process will be inexpensive and speedy. For these reasons, it can be said that the protections afforded by employment standards legislation are as much procedural as they are substantive (see *Yeomans v. Sobeys Stores Ltd.* [1989] SCJ No.13 at paragraph 66). It is at least arguable, therefore, that the insistence on an oral hearing, in the right circumstances, might act so as to undermine the stated purpose of the *Act* set out in section 2(d) that it is intended to provide fair and efficient procedures for resolving disputes over its application and interpretation.
108. More generally, the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817 has made it clear, at paragraph 33, that oral hearings are not always necessary to ensure a fair hearing, because “the flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways in different situations.”
109. For its part, the Tribunal has said that when it comes to a review, on natural justice grounds, of the Director’s decision to conduct an investigation of a complaint, rather than an oral hearing, the Tribunal should decline to interfere, absent exceptional circumstances. Put another way, the Tribunal should be respectful of the discretion of the Director as to how a complaint should be dealt with under the *Act* (see *Re Sarmiento*, BC EST # RD082/13; *Old Dutch Foods Ltd.*, BC EST # RD115/09).
110. What, then, are the circumstances in which the Tribunal will interfere with a Director’s decision to conduct an investigation, and not an oral hearing?
111. In *D. Hall & Associates, supra*, the court made it clear, at paragraph 26, that “an oral hearing complete with cross examination is not required to resolve every disputed issue of fact, or even every disputed question of fact which is important to the determination of the case.”
112. Regarding its own proceedings, the Tribunal has said, as far back as its decision in *Re Pacific Ice Co.*, BC EST # D174/96, that it will be inclined to hold an oral hearing where the case involves a *serious* question of credibility on one or more key issues, or an oral hearing is the only adequate way of ensuring that each party can state its case fairly. I emphasize *serious* in this reference, because the Tribunal has also stated that there is no automatic right to a hearing even where credibility appears to be in issue (see *Re Sarmiento, supra*).
113. The same approach is reflected in the following passage from Macaulay and Sprague, *Hearings Before Administrative Tribunals* (Toronto: Carswell, 1995) at page 12-173, referred to in *Great Canadian Bingo Corp.*, BC EST # D046/06, at paragraph 42, a decision relied upon by Delegate Welder in her Reasons:



At common law, there is no absolute obligation on agencies to allow cross examination of witnesses in oral hearings or to allow cross-examination on the materials submitted or interlocutories when the hearing is conducted in writing. The only right which the rules of procedural fairness guarantee to parties is the right to rebut opposing evidence and to correct or contradict prejudicial statements. If this can be achieved without recourse to cross-examination, then parties appearing before a tribunal are not entitled to it. The key is whether cross examination is the only effective method open to a party to answer the case made against it. As such, the availability of cross-examination as a matter of right, as with all other procedural requirements at common law, will largely depend upon the circumstances of the individual case and upon the nature of the particular tribunal involved.

114. Here, Gulf Coast has taken advantage of multiple opportunities over a period of years to argue, ably, that Helgesen's complaints were the product of a conspiracy and so they should have been dismissed as an abuse of process.
115. Gulf Coast provided to Delegate Welder the examples of inconsistent evidence and its suspicions regarding the *bona fides* of the "loan" payments to Helgesen to which I have referred.
116. It is clear that Delegate Welder weighed these submissions. Indeed, Delegate Welder accepted Gulf Coast's assertions regarding the "loan" payments and determined that the evidence relating to them was not "credible or consistent." In the result, Delegate Welder found that the "loan" payments were not loans at all, but rather the payment of "wages" for the purposes of the *Act*.
117. Regarding the existence of a conspiracy, I find it difficult to discern from the submissions of Gulf Coast what facts it might put to Helgesen, Mhinder Mayer, and Kelly Mayer in cross examination that it has not already laid for consideration before Delegate Welder. I cannot help but agree with her, then, that the purpose of a cross examination would be to elicit some hitherto unknown evidence, or admissions, which might support its conspiracy theory.
118. I agree further that such a hope for a beneficial result is insufficient to ground a finding that an oral hearing had to be conducted in this case in order to avoid a successful challenge on the grounds of fairness. If this were the test that must be applied to resolve the question whether an oral hearing should be held, it would likely mean that there would be few complaints dealt with by the Director that could be concluded without an oral hearing. In my opinion, such a result would undermine the purpose of the *Act* that appears in section 2(d) – to provide not only fair, but efficient procedures for resolving disputes concerning its application and interpretation.
119. In making this decision, I take comfort from the fact that the Review Decision also considered whether an oral hearing should have been held, and determined that, notwithstanding no such hearing took place, the previous proceedings should not be set aside on this ground. One of the reasons cited by the court, at paragraph 130, was that there was nothing on the face of the record to indicate that an oral hearing was the only way for Gulf Coast to state its case. Indeed, the court noted that counsel for Gulf Coast filed comprehensive materials which dealt with all the matters in issue. Those materials also included a submission that it was only through cross examination of Helgesen, Mhinder Mayer, and Kelly Mayer could the *bona fides* of Helgesen's complaints be tested.
120. I do not see that Gulf Coast has done any more than repeat the substance of its arguments in favour of an oral hearing that were rejected by the court, and then re-considered, and also rejected, by Delegate Welder.
121. For these reasons, I am not persuaded that Delegate Welder failed to observe the principles of natural justice when she declined to conduct an oral hearing before issuing the Determinations.

**6. *The Director failed to observe the principles of natural justice by failing to determine the complaints in a timely manner.***

122. In its February 12, 2014, submission, Gulf Coast says this regarding the issue of delay:

54. The Director failed to observe the principles of natural justice by failing to determine this case in a timely manner. Specifically, there was an unexplained 21-month delay from February 15, 2011 to November 14, 2012. The Director misapplied the legal test by failing to take into account relevant factors, including the total lack of explanation for the delay and the serious prejudice to the appellants through faded memories. The ability of the appellant to make full answer and defence has been compromised because an important part of its defence depends on the memories of Bhora Mayer, Mhinder Mayer, Dan Helgesen, and Kelly Mayer. This inordinate and unreasonable delay resulted in a loss of jurisdiction in the Director.

123. Gulf Coast also refers to the comments of the court in the Review Decision, at paragraphs 74 and 76, that the time occupied in dealing with the parties' dispute prior to the judicial review hearing was "inordinate" and "defies common sense."

124. Gulf Coast acknowledges, however, that the authorities contemplate that a delay must not only be inordinate, but it must also cause serious prejudice to a party before a determination may be made that there has been a failure to observe the principles of natural justice. I would also add a third requirement that is referred to in the authorities cited – that it is no longer possible to have a fair hearing (see *Stinchcombe v. Law Society of Alberta* 2002 ABCA 106, at paragraphs 41-43, citing *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307 at paragraph 102).

125. Assuming, but not deciding, that the Director took inordinate time to issue the Determinations after the Review Decision was rendered, I am not convinced that Gulf Coast has provided compelling grounds demonstrating that the period consumed by the investigation caused serious prejudice to the company, or resulted in a state of affairs where it was no longer possible to have a fair hearing of Helgesen's complaints.

126. Gulf Coast argues that it has suffered prejudice because its ability to effectively challenge the evidence of Helgesen, Mhinder Mayer, and Kelly Mayer, and in particular their credibility, has faded.

127. The difficulty I have with this submission is that Gulf Coast nowhere defines how, precisely, its ability to test the evidence of these persons has been compromised due to the passage of time. It appears to assume that the harm automatically flows from the fact that the investigations took years to complete.

128. The history of these proceedings convinces me that Gulf Coast's submission must be rejected. Gulf Coast has been apprised of the essentials of Helgesen's claims since he filed his first complaint. It has taken advantage of numerous opportunities to marshal its evidence, to state its case, and to refute the evidence tendered on behalf of Helgesen, Mhinder Mayer, and Kelly Mayer.

129. There is no evidence that Gulf Coast points to that it says the passage of time has prevented it from producing. There are no areas of dispute to which it refers where the evidence might have been more clearly presented had memories not faded, witnesses not died or disappeared, or documents not been lost.

130. That being so, I cannot conclude that it was impossible for Delegate Welder to conduct proceedings that provided a fair hearing for Gulf Coast, despite the lengthy period consumed by the Director's investigations.

**ORDER**

131. Pursuant to section 115 of the *Act*, I order that the matter of the determination of the amount of wages payable by Gulf Coast to Helgesen pursuant to section 80(1)(b) be referred back to the Director.
132. In all other respects, I order that the Determinations be confirmed.

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**Robert E. Groves**  
**Member**  
**Employment Standards Tribunal**