Employment Standards TRIBUNAL

An appeal

- by -

Goodwin Gibson, a Director or Officer of Vidwrx Inc.
("Mr. Gibson")

- of a Determination 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: David B. Stevenson

FILE No.: 2016A/107

DATE OF DECISION: January 18, 2017

DECISION

SUBMISSIONS

Roselle P. Wu	counsel for Goodwin Gibson, a Director or Officer of Vidwrx Inc.
J. Gareth Morley	counsel for the Attorney General of British Columbia

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the *"Act"*) Goodwin Gibson, a Director or Officer of Vidwrx Inc., ("Mr. Gibson") has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the "Director") on June 30, 2016.

2. The Determination found Mr. Gibson was a director of Vidwrx Inc. ("Vidwrx"), an employer found to have contravened provisions of the *Act*, at the time wages were earned or should have been paid to Kirk Hasley ("Mr. Hasley") and as such was personally liable under section 96 of the *Act* for wages in the amount of $30,988.39.

3. This appeal is grounded in an assertion that the Director erred in law in making the Determination. Mr. Gibson seeks to have the Determination cancelled.

4. In correspondence dated August 11, 2016, the Tribunal notified the parties, among other things, that no submissions were being sought from any other party pending a review of the appeal by the Tribunal and, following such review, all or part of the appeal might be dismissed.

5. The appeal, among other things, raises a constitutional question relating to the applicability of section 96 of the *Act vis.* Mr. Gibson. The Tribunal has jurisdiction to decide constitutional questions arising in proceedings under the *Act* other than those relating to the *Canadian Charter of Rights and Freedoms*; see section 45(1) of the *Administrative Tribunals Act*, RSBC 2004, ch. 45 (the *"ATA")* and section 110 of the *Act*.

6. On October 13, 2016, the Tribunal notified counsel for Mr. Gibson of the requirement to provide notice of constitutional question. On October 13, 2016, counsel for Mr. Gibson confirmed such notice had been delivered by Mr. Gibson to the Attorney Generals of Canada and British Columbia: see section 46 of the *ATA* and section 8 of the *Constitutional Question Act*, RSBC 1996, ch. 68. The Tribunal has invited submissions on the question from those parties. The Attorney General of Canada has opted not to intervene in the matter at this stage; the Attorney General of British Columbia has filed a submission on the constitutional question.

7. The section 112(5) record (the "record") has been provided to the Tribunal by the Director and a copy has been delivered to counsel for Mr. Gibson, who has been provided with the opportunity to object to its completeness. No objection to the completeness of the record has been received and, accordingly, the Tribunal accepts it as being a complete record of the material that was before the Director when the Determination was made. Mr. Gibson seeks in this appeal to add additional evidence to the record.

8. I have decided this appeal is appropriate for consideration under section 114 of the *Act*. At this stage, I am assessing the appeal based solely on the Determination, the reasons for Determination, the appeal, the written

submission filed with the appeal, the submission of the Attorney General for British Columbia on the constitutional question, the reply submission of counsel for Mr. Gibson on the constitutional question, my review of the material that was before the Director when the Determination was being made and any other material allowed by the Tribunal to be added to the record. Under section 114(1) of the *Act*, the Tribunal has discretion to dismiss all or part of an appeal, without a hearing, for any of the reasons listed in the subsection, which reads:

> *114 (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:*
>
> *(a) the appeal is not within the jurisdiction of the tribunal;*
>
> *(b) the appeal was not filed within the applicable time limit;*
>
> *(c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;*
>
> *(d) the appeal was made in bad faith or filed for an improper purpose or motive;*
>
> *(e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;*
>
> *(f) there is no reasonable prospect that the appeal will succeed;*
>
> *(g) the substance of the appeal has been appropriately dealt with in another proceeding;*
>
> *(h) one or more of the requirements of section 112(2) have not been met.*

9. If satisfied the appeal or a part of it should not be dismissed under section 114(1) of the *Act*, the Director and Mr. Hasley will be invited to file submissions. On the other hand, if it is found the appeal satisfies any of the criteria set out in section 114(1), it is liable to be dismissed. In this case, I am looking at whether there is any reasonable prospect the appeal can succeed.

ISSUE

10. The issue at this stage of the proceeding is whether the appeal should be dismissed under section 114 of the *Act*.

THE FACTS

11. The facts relating to this appeal are brief.

12. Vidwrx is a video production company with its headquarters in Vancouver, BC.

13. Mr. Hasley was employed by Vidwrx from July 27, 2015, to January 5, 2016, as Vice-President – Sales, when his employment was terminated. He filed a complaint alleging Vidwrx had contravened the *Act* by failing to pay him all wages owed. The Director investigated the complaint, conducted a complaint hearing and, on June 30, 2016, issued a Determination against Vidwrx (the "corporate determination") which found Vidwrx had contravened sections 18, 58 and 63 of the *Act* and was liable for wages to Mr. Hasley in the amount of $30,988.39. The Director also imposed administrative penalties on Vidwrx in the amount of $1,500.00.

14. The Determination was sent to Mr. Gibson by registered mail to the address recorded for him in the corporate records of Vidwrx. A copy was also sent to Vidwrx at their registered and records office.

15. A BC On-line: Registrar of Companies corporate search conducted by the Director on February 9, 2016, indicated Vidwrx was registered in British Columbia as an extra-provincial company on November 9, 2007,

and filed its last annual report on November 9, 2015. The corporate registry refers persons to the incorporating jurisdiction, in the case of Vidwrx, federal jurisdiction, for a list of directors. A search by the Director of Corporations Canada for Federal Corporation Information, which is date stamped February 29, 2016, lists Mr. Gibson as a director of Vidwrx.

16. The wages claimed by Mr. Hasley were earned or should have been paid in November and December 2015 and January 2016. The searches confirmed Mr. Gibson was listed as a director of Vidwrx during the period Mr. Hasley's wages were earned or should have been paid.

17. Based on the information acquired and the findings made, the Director concluded Mr. Gibson was liable under section 96 of the *Act* for the amount set out in the Determination. Mr. Gibson was not found liable for the administrative penalties imposed on Vidwrx in the corporate determination.

18. The corporate determination has not been appealed; the statutory time limit for filing an appeal of the corporate determination has long expired.

ARGUMENT

19. Counsel for Mr. Gibson contends the Director erred in law in finding Mr. Gibson liable under section 96 of the *Act*. She makes three arguments in support of this contention.

20. First, she submits Mr. Gibson was not a director of Vidwrx because he was never validly appointed as a director and the "functional" director test is not applicable to Mr. Gibson. This argument is grounded in provisions in Part X of the *Canada Business Corporations Act*, R.S. 1985, C-44 (the "*CBCA*") and on evidence submitted with the appeal.

21. Second, she submits section 96 of the *Act* is inoperative against directors of companies incorporated under the *CBCA*. On this argument, counsel for Mr. Gibson submits there is an operational conflict between section 96 of the *Act* and sections 119 and 123(4) of the *CBCA* that renders the provisions of section 96 inapplicable to a director of a company incorporated under the *CBCA* and, even if there is no operational conflict, the section 96 of the *Act* is inoperative against a director of a company incorporated under the *CBCA*, because the effect of section 96 "frustrates" the purpose of the *CBCA* which is expressed in section 4 of that legislation.

22. Third, and in the alternative, she submits the calculation of Mr. Gibson's personal liability is incorrect.

23. In its submission on the constitutional question, counsel for the Attorney General of British Columbia notes there is a high burden of proof on a person seeking to establish federal paramountcy which has not been met in this case. Counsel submits there is no operational conflict; the provisions of both statutes can operate within their respective spheres without conflict. He also submits the federal government cannot immunize directors of federally incorporated companies from liabilities arising under provincial employment standards legislation when such company operates as a provincial entity within the boundaries of a province, employing persons in an area of provincial jurisdiction. Adding to that premise, counsel submits section 123(4) of the *CBCA* cannot reasonably be interpreted to immunize directors of federally incorporated companies from liability under provincial employment law.

24. Counsel for Mr. Gibson has provided a reply to the submissions of the Attorney General of British Columbia.

ANALYSIS

25. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *Act*, which says:

> *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;*
>
> *(c) evidence has become available that was not available at the time the determination was being made.*

26. I find this appeal must be dismissed.

27. I am not persuaded the Director erred in law in finding Mr. Gibson was a director of Vidwrx and liable under section 96 of the *Act* for the wages owed to Mr. Hasley.

28. A person challenging a determination issued under section 96 of the *Act* is limited to arguing those issues which arise under that provision: whether the person was a director or officer when the wages were earned or should have been paid, whether the amount of the liability imposed is within the limits for which a director or officer may be found personally liable; and whether circumstances exist that would relieve the director or officer from personal liability under section 96(2) of the *Act*. The director/officer is precluded from raising and arguing the corporate liability: see *Kerry Steineman, Director/Officer of Pacific Western Vinyl Windows & Doors Ltd.*, BC EST # D180/96.

29. Consistent with the above framework, Mr. Gibson submits he was not a director of Vidwrx at the time Mr. Hasley's wages were earned or ought to have been paid – if indeed he was ever a director of Vidwrx. In support of this submission, he has attached documents to the appeal. The appeal is not grounded on evidence becoming available that was not available when the Determination was being made, but I have no difficulty in exercising my discretion to accept these documents in this appeal. There is nothing in the material relating to this matter that indicates Mr. Gibson was ever provided the opportunity to state his position on the correctness of his being considered a director for the purposes of section 96. It would simply be unfair to foreclose him from that opportunity in this appeal.

30. Having said that, my decision to consider this material should not be interpreted as meaning I find these materials to be complete, particularly compelling or to have the effect argued in the appeal. The evidence comprises an unsworn statement by Mr. Gibson, a copy of a federal corporate search of the company, a copy of the articles of incorporation of the company, a copy of a Certificate of Amendment, dated November 21, 2013, increasing the number of directors from a maximum of three to a maximum of ten, and a copy of By-Law No. 1 of the Corporation.

31. Mr. Gibson is listed as a director in the corporate records of Vidwrx. Mr. Gibson does not dispute the corporate records list him as a director but says they are wrong because he was not validly appointed. The law under the *Act* allows the Director to rely on the corporate records in deciding Mr. Gibson was a director of Vidwrx at the relevant time and allows Mr. Gibson the opportunity to show those records are inaccurate.

32. In *Director of Employment Standards (Re Michalkovic)*, BC EST # RD047/01, the Tribunal summarized the case law under the *Act* for deciding whether a person may be found to be a director or officer and personally liable under section 96:

> In our view, in summary, the case law reviewed here and in *Wilinofsky* stands for the following propositions:
>
> 1. The corporate records, primarily those available through the Registrar of Companies or available at a corporation's registered and records office, raise a rebuttable presumption that a person is a director or officer. In other words, the Director of Employment Standards may presumptively rely on those corporate records to establish director or officer status.
> 2. It is then open to the person, who, according to the corporate records, is a director or officer, to prove on the balance of probabilities that the company records are inaccurate, for example, because the person resigned and the documents were not properly processed, a person is not properly appointed etc.
> 3. There may well be circumstances where it would be inappropriate to find that a person is a director or officer despite being recorded as such. However, it will be the rare and exceptional case to be decided on all the circumstances of the particular case and not simply by showing that he or she did not actually perform the functions, duties or tasks or a director or officer.
> 4. The determination of director-officer status should be narrowly construed, at least with respect to Section 96.

33. Mr. Gibson acknowledges in the appeal submission that he signed a consent to act as a director on or about October 5, 2015. He says that, "to the best of [his] knowledge" he was never elected to become a director by the shareholders, but was "purportedly" appointed as a director of Vidwrx by way of a director's consent resolution in or around late October 2015. He says "the best of [his] knowledge" he did not fill any vacancy on the board of directors. Based on this narrative, he submits the existing directors were without authority to appoint him as a director.

34. All of the assertions made by Mr. Gibson are, from an evidentiary perspective, supposition. The material is inexplicably scant. As a director of Vidwrx on the record, Mr. Gibson would have access to much more complete picture of the circumstances of his becoming appointed as a director. Among other things, a copy of his consent is not included; there are no minutes of the director's meeting in October 2015; no copy of the resolution; and no copy of the Personal Information Form submitted to the TSX Venture Exchange, which is referred to in Mr. Gibson's unsworn statement, or the correspondence relating to it.

35. In *Wilinofsky*, BC EST # D106/99, the Tribunal commented on the burden imposed on an individual recorded in the corporate records as a director or officer of a company to show the corporate information is wrong:

> "... where an individual is recorded as an officer or director of a company in the records maintained by the Registrar, a rebuttable presumption arises that the individual actually is a director or officer ... of the company .... *This presumption, however, may be rebutted by credible and cogent evidence that the Registrar's records are inaccurate*—the burden of proving that one is not a corporate director or officer rests with the individual who denies such status." [emphasis added]

36. I am not persuaded Mr. Goodwin has met the burden imposed on him on this issue. The "evidence" he has provided relating to the validity is based on belief and an incomplete knowledge of the circumstances of his appointment; the supporting documentary material is selective and incomplete.

37. Overall, the statements he has made concerning this aspect of his appeal are not sufficiently cogent to overcome the presumption arising from his inclusion in the corporate records as a director. The objective factual and legal basis for his contention is absent. It is troubling that documents which might have provided a more complete and objective assessment of the validity of his argument are absent. There are other aspects

of his position that are not adequately explained; for example, was he not required to affirm in the Personal Information Form that he was a director of Vidwrx? False statements in that form are offences under securities legislation and the Criminal Code. I do not presume that Mr. Gibson committed a crime when he affirmed he was a director of Vidwrx. The deficiencies and concerns are neither addressed nor overcome in the assertions he has made and the material provided.

38. On the basis of the foregoing I need not consider the "functional" director test arguments. An application of that test was not the basis upon which the Director found Mr. Gibson to be liable under section 96 and, if it were necessary, it is the Director who should decide if there is any basis for concluding Mr. Gibson could be found to be a director on that test. Such an assessment is factually driven and there are no facts in the record going to that question.

39. In sum, however, I do not accept the argument that Mr. Gibson was not a director of Vidwrx for the purposes of section 96 of the *Act*.

40. Nor do I accept the alternative argument: that section 96 does not apply to a director of a federal corporation.

41. The key facts are that Mr. Hasley is a provincial employee whose terms and conditions of employment are governed by the provisions of the *Act* and Vidwrx is a provincial employer. There is no federally regulated employment involved in this case; federal jurisdiction over Mr. Hasley's employment is not argued, nor does it exist. Mr. Gibson is a director of a provincial employer which has contravened the *Act*.

42. During the appeal process, the Court of Appeal issued its decision in an appeal of a refusal to allow judicial review of a decision of the Tribunal, *Tatiana Gorenshtein and another v. Employment Standards Tribunal and others*, 2016 BCCA 457 (*"Gorenshtein"*). Counsel were alerted to this decision, provided a copy of it and allowed to address its relevance to this appeal.

43. While I appreciate there are differences between the circumstances of *Gorenshtein* and this case, the decision is relevant in respect of its discussion of the principles of federal paramountcy, at paras 89 – 92, which reinforces an approach to cases where federal paramountcy is invoked that confirms principles and tests expressed in those paragraphs.

44. The decision summarized the considerations made by the Courts in such cases from the majority decision of the Supreme Court of Canada in *Canadian Western Bank v. Alberta*, 2007 SCC 22:

- paramountcy must be narrowly construed and harmonious interpretations of the competing legislation should be favoured over ones creating incompatibility;
- courts should avoid an expansive interpretation of federal legislation that will cause conflict with provincial legislation;
- where it is possible to comply with both legislative schemes, such as with permissive federal legislation and restrictive provincial legislation, operational conflict generally is not established;
- to establish frustration of the federal scheme by the provincial legislation, the proponent must establish the purpose of the federal legislation and prove the provincial legislation is incompatible with the purpose; and
- courts should not presume Parliament intended to occupy the field and render inoperative provincial legislation in relation to the subject.

45. Applying the above, I find Mr. Gibson has not met the burden of showing the legislative provisions relating to director liability in the *CBCA* conflicts with and renders inoperative the provisions of section 96 of the *Act*.

46. I can find nothing in the *CBCA* which suggests the provisions relating to director liability in that legislation were intended to rule out provincial action on the personal liability of a director of a federally registered company for unpaid wages to employees whose employment is governed exclusively by the *Act*. While counsel for Mr. Gibson has directed me to the statement of the purposes of the *CBCA* contained in section 4, a reasonable interpretation of that provision does not satisfy the burden on Mr. Gibson to show parliament intended to render all provincial legislation that touched upon matters covered by the *CBCA* inoperative. More particularly, it does not speak to any intention to affect provincial employment standards legislation or immunize a director of a federal corporation from the provisions of provincial labour standards legislation. The more acceptable view, is that the intention of parliament is reflected in the clear effect of the language contained in that provision: to provide a template for the basic structure and standards for the direction and control of corporations with the objective of providing uniformity in the rules and mechanisms under which corporations operate throughout Canada. The statement of purposes does not suggest parliament intended to interfere or override the authority of the provinces to develop their own structures and standards for corporations operating within the boundaries of the province.

47. The Supreme Court of Canada has cautioned against an overly broad interpretation of federal legislation that will cause conflict with provincial legislation. The following comment is found at para. 91 of *Gorenshtein*:

> In *Alberta (Attorney General) v. Moloney*, 2015 SCC 51 at para. 27, Justice Gascon for the majority explained:
>
> > Be it under the first or the second branch, the burden of proof rests on the party alleging the conflict. Discharging that burden is not an easy task, and the standard is always high. In keeping with co-operative federalism, the doctrine of paramountcy is applied with restraint. It is presumed that Parliament intends its laws to co-exist with provincial laws. Absent a genuine inconsistency, courts will favour an interpretation of the federal legislation that allows the concurrent operation of both laws: *Western Bank*, at paras. 74-75, citing *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307 ("*Law Society of B.C.*"), at p. 356; see also *Rothmans*, at para. 21; *O'Grady v. Sparling*, [1960] S.C.R. 804, at pp. 811 and 820. Conflict must be defined narrowly, so that each level of government may act as freely as possible within its respective sphere of authority: *Husky Oil*, at para. 162, per Iacobucci J. (dissenting, but not on this particular point), referring to *Deloitte Haskins and Sells Ltd. v. Workers' Compensation Board*, [1985] 1 S.C.R. 785, at pp. 807-8, *per* Wilson J.

48. An interpretation of the *CBCA* that accepts some of its provisions were intended by parliament to trammel upon a matter that is constitutionally a matter of provincial jurisdiction would generate such conflict.

49. The Supreme Court also requires that Mr. Gibson demonstrate the scheme of the *CBCA* is frustrated by the allegedly offending provisions of the *Act*, establishing both the purpose of the *CBCA* and the incompatibility of the *Act* with those purposes. The standard for invalidating provincial legislation on the basis of frustration of federal purpose is high; permissive federal legislation, without more, will not establish that a federal purpose is frustrated when provincial legislation restricts the scope of the federal permission: see *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241. The Court also says I should not presume a frustration of federal purpose from a policy perspective. Mr. Gibson must establish the purpose of the federal legislation is incompatible with the operation of the provincial law, either from the express text of the legislation itself or from admissible evidence that this was parliament's intention.

50. As indicated above, I find the purpose of the *CBCA* is to establish a structure and standards for regulating the affairs of corporations incorporated under the *CBCA* and not for the purpose of regulating employment generated by those corporations within the boundaries of provinces.

51. The authority of the province to enact employment standards laws arises from its constitutional authority over property and civil rights in the province. Mr. Gibson has not pointed to the source of the constitutional power that would allow parliament to interfere with this authority and to immunize directors of companies incorporated federally from the consequences of being the director of an employer governed by provincial employment standards laws.

52. In any event, I agree with the submission of counsel for the Attorney General of British Columbia that regardless of whether parliament has the constitutional power to immunize directors of companies incorporated federally, it has not done so. Section 123(4) of the *CBCA* speaks to no liabilities other than those created by sections 118 and 119. More specifically, it speaks to no liability created by any other Canadian law.

53. The personal liability created in section 119(1) is conditional upon the occurrence of any of three events: the corporation of which the person is a director under the *CBCA* has been sued for the "debt" within a specified time-frame and execution has been returned unsatisfied in whole or in part; liquidation or dissolution proceedings are pending or completed; or the corporation has made an assignment or a bankruptcy order has been made against it. No personal liability under the *CBCA* arises unless the preconditions are satisfied and none of those preconditions refer to administrative proceedings before a provincial tribunal or orders issued by that tribunal.

54. When interpreting the provisions of the *Act* and *CBCA*, the Courts have endorsed an approach that will avoid absurd results: see *Timber's Disposal Ltd.*, BC EST # D173/04, at pages 3 – 4, citing *Canadian Pacific Ltd. v. Ontario* (1995), 99 C.C.C. (3d) 97, 125 D.L.R. (4th) 385, sub nom. *R. v. Canadian Pacific Ltd.* (S.C.C.). The consequence of the arguments made by Mr. Gibson is that employees working for a provincial employer which has been federally incorporated – and extra-provincially registered in the province – would be unable to access the scheme established under the *Act* for collecting unpaid wages if it was perceived that a director of that corporation might be personally liable for the wages. Such employee would be compelled to sue the corporation in a civil action brought under the *CBCA*. Such a result is unreasonable and inequitable; it defeats the purpose and objective of the *Act*, to apply wages protections to employees in the province.

55. In light of comments from *Re Rizzo and Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 47, recognizing minimum standards employment legislation as benefits conferring, enacted for the protection of employees, it is improbable that parliament intended that section 119 of the *CBCA* would require some employees of a provincial employer to forego the administrative remedies provided in the *Act* and bring a civil suit against the "corporation" under the *CBCA* for wages owed. Such a result would be absurd in light of the comprehensive legislated minimum standards scheme in this province – one substantially duplicated, I might add, in Part III of the *Canada Labour Code* – that seeks to provide an effective and efficient regime for resolving disputes relating to disputes arising under the *Act*.

56. Such result would also be inconsistent with the decision of the British Columbia Court of Appeal in *Macaraeg v. E Care Contact Centers Ltd.*, 295 D.L.R. (4th) 358, in which the Court refused to allow Ms. Macaraeg to bring a civil action against her employer to enforce the statutory rights conferred on her by the *Act*. In reaching this conclusion, the Court stated, at paras 102 and 103:

> [102] When a statute provides an adequate administrative scheme for conferring and enforcing rights, in the absence of providing for a right of enforcement through civil action expressly or as necessarily incidental to the legislation, there is a presumption that enforcement is through the statutory regime and no civil action is available.
>
> [103] In this case, the ***ESA*** provides a complete and effective administrative structure for granting and enforcing rights to employees. There is no intention that such rights could be enforced in a civil action.

57. To be clear, I do not suggest an employee within the province cannot seek to enforce the directors' liability provisions of the *CBCA*. Those provisions can be applied to wage claims for which the provisions of the *Act* are not engaged and which do not seek to enforce employment rights conferred by the *Act*. There is, however, no conflict between the *Act* and the *CBCA*; each can be read as applying to those situations identified by its legislative provisions.

58. In sum, the constitutional argument is dismissed.

59. Finally, Mr. Goodwin argues the Director erred by awarding Mr. Hasley compensation for length of service. The argument on this issue does not address whether the calculation of the personal liability, *ie.*, whether the amount for which Mr. Goodwin was found liable represents two months' unpaid wages, but argues he was not entitled to length of service compensation because he terminated his own employment. The finding on that point was part of the corporate determination.

60. As indicated above, Mr. Goodwin is precluded from raising and arguing the corporate liability. He is bound by the corporate determination and the failure to appeal any aspect of it.

61. In sum, I find no merit to the appeal and I find it has no reasonable prospect of succeeding. The appeal is dismissed under section 114 of the *Act*; the purposes and objects of the *Act* are not served by requiring the other parties to respond to it.

ORDER

62. Pursuant to section 115 of the *Act*, I order the Determination dated June 30, 2016, be confirmed in the amount of $30,988.39, together with any interest that has accrued under section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal