

An appeal

- by -

Direct Current Gas Ltd. operating as DC Gas  
(“DC Gas”)

- 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.:** 2005A/194

**DATE OF DECISION:** January 17, 2006



7. Cary Lawrence Praetor is President/Secretary of DC Gas. Believing DC Gas was or was likely to become indebted to Mr. Praetor, the Director issued Demand Notices<sup>1</sup> under Section 89 of the *Act* on September 3, 2004 and sent those Demand Notices by registered mail to DC Gas. Acknowledgement of receipt of the Demand Notices was made by legal counsel for DC Gas in a letter to the Director dated September 20, 2004.
8. No money was paid to the Director under the Demand Notices nor did the Director receive any other response to the Demand Notices from DC Gas. The Demand Notices have not been cancelled by the Director.
9. On July 29, 2005, a Demand for Records was issued by the Director to DC Gas. The Demand required DC Gas to “disclose, produce and deliver all records for any business with or employment of Cary Praetor or Cary Praetor operating as C.I.P. International for the period September 3, 2004 to July 31, 2005. This Demand was delivered to DC Gas by registered mail and required DC Gas to comply with the Demand on or before August 9, 2005. The Determination indicates that receipt of the Demand was acknowledged by legal counsel for DC Gas on August 3, 2005.
10. In a letter dated August 11, 2005, DC Gas, through an unidentified individual, provided the following response to the Demand:
  - This letter is in response to your letter of demand dated July 29, 2005.
  1. CIP International does not exist.
  2. There are no business records or any other records on business.
  3. Direct Current Gas Ltd [sic] has no affiliation with CIP International and is a separate identity. No findings were made or decisions against DC Gas Ltd [sic] and as such no records will be made available.
  4. With regards to the Randells, an action has been initiated against them in Supreme Court - should you not wish to set aside this matter, the lawyers will go to court and get this set aside. Please see pleadings.
  5. Any further information is to be sent to Colin Campbell And [sic] Associates.
11. Consistent with the position stated in point 3 (above) of the August 11 letter, DC Gas did not provide any records to the Director.

## **ARGUMENT AND ANALYSIS**

12. The appeal substantially echoes the August 11 letter. DC Gas has submitted the following points:
  - C.I.P International was struck from the registry more than six years ago;
  - C.I.P. International is indebted to Mr. Praetor for thousands of dollars. Mr. Praetor has private tax rebates from the government that proves this.

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<sup>1</sup> The Record indicates there were two Demand Notices issued by the Director, one referring to indebtedness to Cary Lawrence Praetor and the other referring to indebtedness to Cary Lawrence Praetor operating as C.I.P. International.

- DC Gas, while “at this stage” is indebted to Mr. Praetor, does not afford Mr. Praetor the luxury of a wage, and has private balance sheets to prove this;
  - DC Gas did not withhold information from the Director, but only stated the obvious;
  - DC Gas is a limited company and a completely separate entity with no association to C.I.P. International and, as such has no obligation to pay any debt for that, or any other, company. The Director has not proved DC Gas is indebted to Mr. Praetor;
  - C.I.P. International was an incorporated company and its correct name was C.I.P. International Inc.;
  - The original Determinations do not state anything on DC Gas;
  - A number of settlement offers were made and refused without prejudice. Accordingly, no interest should be owed. The Director has shown a bias against “me”<sup>2</sup>; and
  - The amount submitted in the Determination is incorrect.
13. DC Gas says there is no proof whatsoever of any indebtedness to Mr. Praetor.
14. In reply, the Director says most of the assertions made in the appeal are incorrect or irrelevant. The Director however does note, in point 3 above, that DC Gas has acknowledged some indebtedness to Mr. Praetor. Possibly in response to that part of the Director’s reply submission, DC Gas submitted a letter from their accounting firm, dated November 29, 2005, which states, in part, “. . . as of November 29, 2005, the company [DC Gas] owes no money to Mr. Praetor.”
15. That letter, as the Director’s submission on that letter states, misses the point entirely. The Demand Notices were issued September 3, 2004 and, applying subsection 89(5), operated continuously from date of service or indebtedness until it was either satisfied or cancelled by the Director.
16. The statutory framework within which this appeal arises include Sections 89 and 90 of the *Act*, which state:
- 89 (1)** *If the director has reason to believe that a person is or is likely to become indebted to another who is required to pay money under a determination, a settlement agreement or an order of the tribunal, the director may demand in writing that the person pay to the director, on account of the other’s liability under the determination, settlement agreement or order of the tribunal, all or part of the money otherwise payable by the other person.*
- (2) *A person on whom a demand is made under this section must, if indebted to the other person, pay to the director or to someone specified by the director the amount demanded, within 15 days after the later of*
- (a) the date the demand is served, and*
- (b) the date the person named in the demand becomes indebted to the other person.*
- (3) *The director’s receipt for money paid by a person in response to a demand is proof that the person’s liability to the person required to pay under the determination or settlement*

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<sup>2</sup> This reference “me” appears to be to Mr. Praetor, personally, and I have addressed it as such.

*agreement or under the order of the tribunal is discharged to the extent of the amount stated in the receipt.*

(4) *For the purposes of this section, a savings institution is indebted to a person required to pay under a determination or settlement agreement or under an order of the tribunal for money or a beneficial interest in money in the savings institution*

*(a) on deposit to the credit of that person when a demand is served,*

*(b) held in trust by a depositor for that person when a demand is served, or*

*(c) deposited to the credit of that person after a demand is served.*

(5) *A demand made under this section continues in effect until it is satisfied or until it is cancelled by the director.*

**90 (1)** *If a person on whom a demand is made under section 89 does not comply with the demand,*

*(a) the director may enforce recovery of the amount stated in the demand as if it were unpaid wages, and*

*(b) this Act applies to the recovery of that amount.*

(2) *If a person on whom a demand is made under section 89 denies indebtedness to anyone required to pay person required to pay under a determination, a settlement agreement or an order of the tribunal, the director may require that person to produce information the director considers necessary to establish there is no indebtedness.*

17. The above provisions exist to assist the Director in meeting the statutory purposes found in Section 2, which include ensuring employees receive at least basic employment standards and providing fair and efficient procedures for resolving disputes. Sections 89 and 90 are found in Part 11 of the *Act*, which deals with the enforcement of Determinations, settlements and Tribunal orders. It bears repeating that the *Act* is remedial legislation and should be given such large and liberal interpretation as will best ensure the attainment of its purposes and objects, see *Machtinger v. HOJ Industries Ltd.* (1992) 91 D.L.R. (4th) 491 (S.C.C.) and *Helping Hands v. Director of Employment Standards* (1995) 131 D.L.R. (4th) 336 (B.C.C.A.). I agree with the following comment from *Machtinger v. HOJ Industries Ltd.*, supra, that:

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

18. The opening words of subsection 89(1) of *Act* require the Director to have reason to believe a third party is likely to be or become indebted to a person required to pay money under a Determination. In this case, the Director's belief was based on the knowledge that Mr. Praetor, who is indisputably a person required to pay money under two Determinations issued by the Director in 1999, is the President/Secretary of DC Gas and is actively involved in its business,. While the reasonableness of the Director's decision to issue the Demand Notice to DC Gas is not challenged directly in this appeal, I nevertheless confirm that the circumstances justified the Director's belief that DC Gas was, or was likely to become, indebted to Mr. Praetor. Indeed, DC Gas has confirmed in this appeal the legitimacy of the Director's belief.

19. It is clear that DC Gas did not comply with the Demand Notices made by the Director under Section 89 of the *Act* made. Nor, in response to the Demand Notices, did DC Gas deny an indebtedness to Mr. Praetor. The reasons given by DC Gas for the obvious failure to comply are irrelevant. Most relate to a mistaken perception that C.I.P. International, and not Mr. Praetor, is responsible to pay the amounts found owing in the Determinations issued by the Director in 1999. The remainder of the reasons supporting this appeal

are unrelated to the nature of the obligation imposed on DC Gas under Section 89 of the *Act* once the Demand Notice was properly served.

20. Subsection 90(1) expressly allows the Director to enforce recovery of the amount stated in a demand made under Section 89 *as if it were unpaid wages* where the person on whom the demand is made fails to comply with the demand. The amount of the Demand Notice was \$16,044.98. The *Act* applies to the recovery of that amount. The Director had the statutory authority to issue a Determination for the amount stated in the Demand Notice.
21. The Director did not, however, have authority to include interest on that amount under Section 88 of the *Act* for two reasons: first, subsection 90(1) specifically limits recovery to the amount stated in the demand; second, subsection 88(1) limits the obligation to pay interest on unpaid wages to the “employer” (at least until wages are collected and deposited in a savings institution by the Director - subsection 88(5)). The Determination will be varied to remove any interest calculated on the amount stated in the demand.
22. The imposition of an administrative penalty for the failure by DC Gas to comply with the Demand Notice was required under Section 29 of the *Regulation*, which provides mandatory penalties where a contravention is found by the Director in a Determination issued under the *Act*. As I have indicated above, a failure by DC Gas to comply with the Demand Notice has been shown.
23. I do not reach the same conclusion about the administrative penalty imposed for contravening Section 46 of the *Regulation*. That provision says, in part, that a “*person who is required under section 85(1)(f) to produce or deliver records to the Director must produce or deliver those records as and when required.*” There is no doubt that DC Gas was asked to produce records and refused to do so. However, the demand made on DC Gas to produce records was governed by the provisions of subsection 90(2) of the *Act*, which on its face confines the authority of the Director to require production of information to cases where the third party has “*denied indebtedness to anyone required to pay under a determination*”. Section 85, which is a more general authority to demand records, is found in Part 10 of the *Act* which contains provisions governing complaints, investigations and Determinations. More particularly paragraph 85(1)(c), which is referenced in paragraph 85(1)(f), refers to “*records that may be relevant to an investigation under this Part*” (emphasis added). A requirement to produce information issued under subsection 90(2) is found in Part 11 of the *Act*, which, as I have noted earlier, contains provisions relating to the enforcement of Determinations, settlement agreements and Tribunal orders. Because there was no denial of indebtedness by DC Gas in response to the Demand Notice, the pre-condition for the authority of the Director to require DC Gas to produce information was absent when the requirement to produce was imposed. I would add that the pre-condition has now been met by the denial of DC Gas in this process of any indebtedness to Mr. Praetor.
24. The consequence of the above analysis is that the administrative penalty based on a presumed contravention of Section 46 of the *Regulation* must be set aside and the Determination varied by deducting the amount of that penalty.

**ORDER**

25. Pursuant to Section 115 of the *Act*, I order the Determination be varied by deleting reference to accrued interest and a contravention of Section 46 of the *Regulation* and by varying the total amount payable to \$16,544.98.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**