

An appeal

- by -

Jak Redenbach  
(the "Appellant")

- 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

**ADJUDICATOR:** Ib S. Petersen

**FILE No.:** 2002/472

**DATE OF HEARING:** November 26 and December 6, 2002

**DATE OF DECISION:** January 15, 2003

## DECISION

### APPEARANCES:

Mr. Jack Redenbach	on behalf of himself
Ms. G. Allison	counsel, on behalf of the Architectural Institute of British Columbia (“AIBC” or the “Employer”)
Ms. Carla Brown-John	

### OVERVIEW

This is an appeal by Mr. Redenbach, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination of the Director issued on August 16, 2002. The Determination concluded that Mr. Redenbach was not owed money by his Employer.

Mr. Redenbach had brought a complaint against his former Employer, AIBC, alleging that he was owed additional wages for extra duties performed outside his job as deputy registrar. He also alleged that he was owed wages for hours worked in excess of a “standard” 35 hour work week. Finally, Mr. Redenbach complained that the Employer misrepresented the terms and conditions of employment in contravention of Section 8 of the *Act*.

The Delegate’s conclusions may briefly be summarized as follows. Mr. Redenbach was a manager under the Act and not entitled to overtime wages. This is not in dispute. However, the Delegate, based on Mr. Redenbach’s written employment contract, concluded that there was no 35 hour work week applicable to him and that his \$70,000 annual salary “encompassed all hours of work.” Mr. Redenbach contended that he was entitled to additional salary for, what in his view, essentially amounted to a “second job.” The Delegate rejected his claim that he was entitled to “...additional wages for duties not found in [his] job description...” (attached to the written agreement). In the Delegate’s view, the Employer’s restructuring of the deputy registrar’s duties did not, in the circumstances, contravene the *Act*. The Delegate also rejected his claim that the Employer misrepresented his employment contrary to Section 8 and, in any event, that the complaint was filed outside the six month time limit provided in Section 74(4).

### PARTIES’ POSITIONS

In a nutshell, Mr. Redenbach argues that the Delegate erred in misinterpreting his employment contract and that he is entitled to be paid an “equivalent” rate for the “second job.” He also says that the onus should not be on him to record the hours of work. He maintains that AIBC misrepresented the terms and conditions of employment, including those pertaining to termination of employment. He disagrees with the conclusion that he was time-barred. In his view, the misrepresentation was ongoing until early April 2001.

The Employer’s position, obviously, is that the Determination should stand. AIBC says that Mr. Redenbach’s employment is governed, as the Delegate concluded, by his employment contract. Among others, the Employer says that he was paid a substantial annual salary for all hours worked and that the job description includes an obligation to perform “other duties as required.” The employer denies misrepresenting terms and conditions of employment.

## FACTS AND ANALYSIS

Mr. Redenbach, as mentioned, appeals the determination. As the Appellant, he has the burden to persuade me that the Determination is wrong. In the circumstances, I am not persuaded that he has met the burden. For the reasons that follow the appeal is dismissed.

A hearing was convened at the Tribunal's offices on November 26 and December 6, 2002. There were only two witnesses called to testify, Mr. Redenbach, for himself, and Mr. Mackey, a former registrar (among other things), for the Employer.

Mr. Redenbach had worked for some years--from October 1995 to February 28, 1999--as AIBC's registrar on a "contract" basis. He was, as such, quite familiar with the Employer's organization and personnel. I would find it quite incredible that he would not be thoroughly acquainted with "problems," political and otherwise, present at AIBC, including the termination of the previous executive director's employment in January 1999. AIBC's council decided to fill the registrar's position with a council member and hire a full-time deputy registrar to assist that person. The Employer posted the position of deputy registrar. Mr. Redenbach applied for and was offered the position.

On February 25, 1999, Mr. Neilson, AIBC's acting executive director, wrote to him setting out the proposed terms and condition of employment for a term of three years from March 1, 1999. The proposed annual salary was \$70,000 with an "annual performance appraisal and compensation review in January or February of each year of the term of your employment." The proposal included a termination provision, after a probationary period, in accordance with provincial employment standards legislation. Of particular relevance to the issues at hand, the proposal included the following:

"The AIBC Policy and Procedures manual, as amended from time to time, is part of your employment contract, except to the extent that its provisions have been modified by this letter or the attached schedule. If a provision of the Manual is inconsistent with or contradictory to a term of this letter or the attached schedule, the term of this letter or the attached schedule applies.

As an important member of AIBC's management team, you are expected to devote your full time to this position; however, we understand that you may wish to continue to perform limited architectural services during the term of this employment contract. This is acceptable so long as

(1) these architectural services do not interfere in any way with your ability to diligently fulfil your full-time responsibilities for the Institute,

.....

You will be expected from time to time to carry out your role and responsibilities outside AIBC's normal business hours and days. Your compensation, which is reviewed annually, takes into account these expectations. You understand and agree that you will not be paid any additional or overtime compensation or given time off in place of additional or overtime compensation.

The proposal attached a job description for the deputy registrar's position, setting out, in some detail, the duties associated with the position. It also stated that the deputy registrar

"A) Provides staff support to the Registrar with all the Registrar's statutory obligations, including:

- Maintaining the registers of the Institute respecting individuals, architectural firms and certificates of practice, and submitting these to Council for approval as required.

.....

G) Performs other duties as required.”

Mr. Redenbach’s duties, especially with respect to the so-called “registration board,” quickly became a bone of contention.

Mr. Redenbach did not find these terms acceptable. On March 1, 1999, the day he commenced his employment, he set out in writing, addressed to the acting executive director, certain proposals. In particular, he wanted certain changes to the employment contract, including:

- a salary of \$80,000;
- 3% annual increases;
- a one year transition period:  
“The renewal or non-renewal of this contract of employment is to be determined by negotiation to a conclusion at least 1 year prior to the end of the three year term.”
- elimination of the probation period;

In Mr. Redenbach’s mind he was asking for a three year contract. This was reasonable, in his view, as he was giving up (or limiting) his practice. Mr. Redenbach was aware of the uncertainties created by the termination of the previous executive director in late 1998. Mr. Redenbach’s proposal stated: “Accommodating the uncertainties of renewal and undetermined [sic.] Executive Director.” He finished the letter with a commitment to reaching an accommodation. In other words, the proposal from the Employer was not such--in his view--that it could not be used as a basis for further negotiation.

Mr. Redenbach started his employment as deputy registrar on March 1, 1999. On that day, Mr. Redenbach says he had a discussion with Mr. Mackey, AIBC’s registrar, based on his written March 1 proposal. He says that he reached an agreement with Mr. Mackey and, on that basis, commenced his employment. He said he agreed to the lower salary initially proposed by AIBC, but AIBC accommodated him with improved vacation, immediate RRSP contribution start date, no probation period and--importantly, in his view--a three year contract with a one year transition back to practice. I am not persuaded that Mr. Mackey entered into an agreement as suggested by Mr. Redenbach.

On March 24, 1999, AIBC, under the signature of Mr. Neilson, the acting executive director, wrote to Mr. Redenbach setting out the terms and conditions. Mr. Mackey explained that this letter had come about as a result of the discussions with Mr. Redenbach on March 1. In many respects, the terms and conditions set out there are similar to those proposed February 25, 1999. Indeed, the letter starts out:

“This letter confirms the terms of your employment with the AIBC in the full-time position of Deputy Registrar effective March 1, 1999 for a term of three years. Your annual compensation will be \$70,000.”

If there was any doubt in Mr. Redenbach’s mind as to whether or not AIBC had agreed to his proposed terms on March 1, these doubts should reasonably have been eliminated with the March 24 letter. Mr. Redenbach explained that he “naively” signed the letter on the strength of Mr. Mackey’s representation, in effect, not to worry. I do not accept this evidence.

AIBC accepted certain changes requested by Mr. Redenbach. He did not get the salary he wanted. However, the March 24 letter included an annual cost of living allowance. As well, the termination provisions were improved, to three months' notice:

“Subject to AIBC’s right to terminate your employment contract without notice “for cause,” the AIBC may terminate your employment contract, by giving three months written notice to you or compensation instead of notice.

You may terminate your employment contract by giving three months written notice to the AIBC.

If the parties wish to renew this agreement it is to be determined by negotiation to a conclusion no later than one year prior to the end of the three year term.”

Thus AIBC agreed to adopt Mr. Redenbach’s proposal regarding the one year transition period, as he put it. AIBC also agreed to add liability insurance, increased vacation entitlement and improved RRSP contributions.

The letter requested that Mr. Redenbach indicate his agreement by signing and returning a copy of the letter. Mr. Redenbach signed this agreement. He also initialled the attached job description for the deputy registrar.

Mr. Redenbach now says that he told Mr. Mackey, on March 24, that he did not consider himself bound by the notice provisions. I do not accept that evidence. I prefer Mr. Mackey’s testimony denying that. Mr. Mackey explained that if Mr. Redenbach had told him that he did not agree to the terms proposed in AIBC’s letter, he would have had to go back to the interim management committee for approval. He also said he would have told him not to sign the letter. In my view, Mr. Mackey’s evidence rings true. In any event, Mr. Redenbach indicated his agreement by signing the agreement. This conclusion is also supported by one (of many) e-mails sent by Mr. Redenbach to AIBC during his employment. In one, dated October 30, 2000, to the executive director, he explained:

“When I accepted the employment agreement, Dave [Mackey] specifically asked me if I was OK with it....I unequivocally assured Dave [Mackey] that since I was accepting the agreement, I was accepting it as a free individual without qualification....”

In my view, Mr. Redenbach largely got the contract he wanted. He is, however, mistaken about those terms, in the sense that he may have read things into the agreement that it did not warrant. AIBC did give him a three year contract. In other words, the parties intended this to be a three year relationship. The value of that, of course, is limited by the three month notice provision expressly set out in the agreement, signed by Mr. Redenbach. The original February 25 proposal from AIBC proposed Employment Standards notice. I note that Mr. Redenbach’s counter-offer did not deal, expressly, at least, with notice, rather it focussed on the “renewal” of the agreement. AIBC agreed to include this in the agreement.

Regrettably, over time, the employment relationship deteriorated. By January 2001, Mr. Redenbach refused to perform the registration board duties. Rather than terminating his employment, the Employer sought to accommodate his work load. In April 2001, the Employer gave notice that it did intend to renew Mr. Redenbach’s contract with AIBC when it expired. The relationship deteriorated further and on May 22, 2001, the Employer terminated Mr. Redenbach. He was paid three months’ salary in lieu of notice, as required by the agreement between the parties.

I accept Mr. Mackey's evidence that the intent was to allow Mr. Redenbach's practice to "bubble along," i.e., to allow him to keep contacts etc. in the industry. Mr. Redenbach's contract with AIBC expressly speaks to full-time employment. I do not accept that Mr. Redenbach's ability to do that was seriously limited, other than what could reasonably be expected from holding a full-time position, especially in a situation where he would reasonably be expected, as part of the management team, to backfill the executive director's position which was not filled on a permanent and regular basis until September 1999. It is clear that there was some restructuring of Mr. Redenbach's position. The so-called registration board duties may have been part of the executive director's duties in the past. But it seems to me that the duties were contemplated by the job description provided by the Employer and agreed to by Mr. Redenbach.

I hasten to add that I do not doubt that Mr. Redenbach worked hard and diligently at his duties as AIBC's deputy registrar. There were, I am sure, many weeks where he did work in excess of 35 hours. It is clear on the evidence, however, that there were also weeks where he did not--and still got paid his salary. In the absence of ambiguity, the natural and literal meaning of the words used in the contract should be adopted (see, for example, *London Drugs Ltd. v. Truscen Realty Ltd.* (1988), 3 R.P.R. 60 (B.C.S.C.)). On my reading of the agreement between the parties, the parties did not reasonably contemplate that the 35 hour work week for "office staff" applied to a member of the management team (Policy and Procedure Manual). While I might have used different language to convey this, I think that the parties contemplated, as stated in the agreement, that the employment would be "full-time" and that Mr. Redenbach would work the hours required to fulfill the requirements of the position, which might be outside the general office hours of 8:30 a.m. to 5:00 p.m., and that he would not be paid "additional" or "overtime" compensation for those hours. I fail to see that the Delegate erred in her conclusion in that regard. In the result, I am not persuaded that Mr. Redenbach is owed additional wages.

I am also not persuaded that the Delegate erred with respect to Mr. Redenbach's numerous complaints about misrepresentation contrary to Section 8 of the *Act*. I agree with the Employer that there is little (or, in fact, no) evidence to support Mr. Redenbach's allegations in that regard. In my view, this is a dispute over the contractual terms. The Tribunal's jurisprudence had been that this provision applies to pre-hiring situations (see, for example, *Re Harris*, BCEST #D124/97). In any event, even if the Employer had contravened Section 8, the complaint was not filed within the six months required by Section 74.

The appeal is dismissed.

## ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated August 16, 2002, be confirmed.

---

**Ib S. Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**