

An appeal

- by -

APNA Media Group Inc.  
("APNA")

- 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:** Shafik Bhalloo

**FILE No.:** 2007A/150

**DATE OF DECISION:** February 11, 2008

## DECISION

### OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by APNA Media Group Inc. (“APNA”) of a Determination that was issued on October 26, 2007 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that APNA had contravened Sections 40 (overtime), 45 (statutory holiday pay), 58 (annual vacation pay), and 63 (compensation to a length of service) of the Act and ordered APNA to pay Ms. Gurpreet Kaur (“Kaur”) an amount of \$6,179.48 which amount included accrued interest under Section 88 of the Act.
2. The Director also imposed seven administrative penalties upon APNA under Section 29(1) of the *Employment Standards Regulation* (the “Regulations”) in respect of APNA’s breaches of Sections 17, 27, 28, 40, 45, 58 and 63 of the Act. Each administrative penalty was in the amount of \$500.00 for a total of \$3,500.00.
3. APNA appeals the Determination on the ground that the Director failed to observe the principles of natural justice in making the Determination.
4. APNA has requested, as a remedy in its appeal, a cancellation of the Determination. APNA has also requested an oral hearing of the appeal, but has not provided an explanation of why an oral hearing is necessary. Section 36 of the *Administrative Tribunal Act* and Rule 16 of the Tribunal Rules of Practice and Procedure provide that the Tribunal may hold any combination of written, electronic and oral hearings. In my opinion, APNA’s appeal can be properly adjudicated on the written submissions of the parties without resort to an oral hearing. Therefore, this appeal will be decided based on the written submissions of the parties, Section 112(5) “Record” and the Reasons for the Determination.

### ISSUE

5. The issue to be determined in this appeal is whether the Director of Employment Standards failed to observe the principles of natural justice in making the Determination.

### FACTS

6. APNA operates a telephone publishing directory business and employed Kaur as an administrative assistant from March 30, 2005 to January 27, 2006.
7. Kaur filed a complaint under Section 74 of the Act (the “Complaint”) alleging that APNA contravened the Act by failing to pay her overtime, statutory holiday pay, vacation pay and compensation for length of service.
8. The Complaint was originally investigated by a delegate of the Director (the “Initial Delegate”) who made a finding regarding credibility against Kaur and dismissed Kaur’s complaint in the determination he issued on November 9, 2006 (the “Initial Determination”).

9. Kaur subsequently appealed the Initial Determination to the Employment Standards Tribunal. The Tribunal, pursuant to Section 116 of the Act, set aside the Initial Determination and referred the Complaint back to the Director for reconsideration on the basis that the delegate in the Initial Determination committed an error of law because he failed to consider or properly appreciate relevant evidence.
10. Subsequently, the Employment Standards Branch (“Branch”) scheduled an adjudication hearing of the Complaint for 9:00 am on July 5, 2007, and gave notice of the hearing to both parties well in advance.
11. On July 5, 2007, at approximately 9:15 am, the new delegate (the “Delegate”) commenced the hearing with only Kaur present. As a result, the Delegate adjourned the hearing briefly and attempted, through an industrial relations officer, to contact APNA and to find out whether APNA would be attending at the hearing. The industrial relations officer was successful in contacting APNA’s representative, Mr. Sukhjinder Sihota (“Sihota”), who advised that he was on his way to the hearing.
12. Once APNA’s representative, Sihota, arrived, the hearing was reconvened and the Delegate explained the process to the parties at which time Sihota indicated that APNA’s case was the same as the first time when the Initial Delegate was involved. The Delegate further explained to Sihota that all of the documents from the earlier investigation by the Initial Delegate were sealed and not seen by him, and that this was a new hearing and he would have to re-present his evidence. Sihota indicated that he did not have his documents with him and would need an adjournment to obtain them. Kaur opposed any adjournment and was prepared to proceed with the hearing. The Delegate, as a result, took a recess to review the file and consider APNA’s adjournment request. After reconvening the hearing, the Delegate explained to APNA’s representative Sihota that the evidence he was going to present at the hearing was his own and had been presented during the initial investigation and it was also the same evidence that was presented at the appeal of the Initial Determination. The Delegate also indicated to Sihota that the entire file had been photocopied and sent to him prior to the hearing and therefore he should be familiar with his own evidence. However, the Delegate afforded Sihota a short period of time to refresh his memory and adjourned the hearing to 1:00 pm on the same day and advised Sihota that the hearing would commence promptly at 1:00 pm even if he were late.
13. Sihota, in his response to the Delegate, indicated that he did not particularly appreciate the manner in which the adjudicator was speaking to him and that he would not be returning to the hearing and that he would take the matter to court at which point the adjudicator adjourned the hearing until 1:00 pm.
14. At 1:00 pm on July 5, 2007, both Sihota, on behalf of APNA, and Kaur, on her own behalf, were in attendance and the Delegate asked both if they wanted to discuss the matter with a mediator. Both parties agreed and met with a mediator but were unsuccessful in reaching a settlement. When the parties reconvened before the Delegate on the same day, it was too late to commence the hearing. As a result, the Delegate rescheduled the hearing to September 6, 2007, and both parties were given notice of the same.
15. On September 6, 2007, the hearing commenced at 9:00 am with only Kaur in attendance. Again, the Delegate adjourned the hearing briefly and arranged for an industrial relations officer to telephone APNA to find out if APNA would attend. The industrial relations officer managed to contact Sihota and the latter advised that he was caught up in traffic but on his way to the hearing. Sihota arrived at the hearing at 9:15 am and the hearing reconvened then.
16. At the hearing, the Delegate explained the hearing process to both parties and the hearing proceeded.

17. Both Sihota and another employee of APNA, a Mr. Ranjit Dhillon (“Dhillon”), testified at the hearing on behalf of APNA and both were cross-examined by Kaur.
18. Kaur testified on her own behalf and produced a former employee of APNA, a Mr. Samir Ghandi (“Ghandi”) as her witness. APNA did not cross-examine Kaur but cross-examined Ghandi.
19. At the hearing, APNA, through Sihota, alleged just cause for Kaur’s dismissal. In particular, APNA alleged that Kaur committed fraud, was dishonest, breached her duty of fidelity, breached company rules, undermined the corporate culture and stole company property and gave it to APNA’s competitor.
20. In support of the allegations of cause, APNA relied on an email that Sihota alleged Kaur sent to “Samir” which contained confidential information of APNA. However, the Delegate rejected the email as supporting cause for Kaur’s dismissal for the following reasons: (i) there was no header on the e-mail indicating the recipient or to whom it was conclusively sent; (ii) there was no evidence to support a finding that the information contained in the e-mail was of a confidential nature; and (iii) there was no conclusive evidence to support a finding that the e-mail was sent by Kaur as it was sent from a site which could be accessed by the public.
21. In further support of APNA’s allegation of cause for terminating Kaur, APNA alleged that Kaur took the employment contracts of APNA’s former employees including herself and either gave them to APNA’s competitors or destroyed them. APNA relied on the evidence of its employee Dhillon in this regard who stated that that Kaur told him she took the documents in question. However, when Dhillon was questioned at the hearing, he could not recall when Kaur told him she took the documents. Dhillon also admitted that he did not see Kaur take the documents. Furthermore, the conversation with Dhillon in which Kaur allegedly informed him that she took the documents in question, was to have taken place at the residence of Ghandi while Kaur, Ghandi and Dhillon were having coffee. However, Ghandi denied having had coffee at any time with Kaur and Dhillon at the same time, and further denied that he ever heard Kaur tell Dhillon or anyone else that she took the employment contracts belonging to APNA. Ghandi also testified that there were no written employment contracts between APNA and its employees in his discussions with two other employees of APNA he was informed that APNA only had verbal agreements with employees.
22. Kaur also refuted APNA’s allegation that she took contracts of APNA’s employees including hers and queried why she would destroy a document that would support her case by showing hours she was required to work and the rate of pay she was to be paid.
23. The Delegate, in the Determination, concluded that the evidence of Kaur was supported by Ghandi’s on the matter of the employment contracts and that he preferred the evidence of Kaur and her witness, Ghandi, over that of APNA and its witness, Dhillon.
24. The Delegate further noted that the evidence of both Kaur and Ghandi had “the ring of truth and logic to it” and both witnesses were “clear and concise in their evidence and on balance their positions (made) the most sense”. Conversely, the Delegate noted that APNA relied on the hearsay evidence of Dhillon and further noted that a conversation between Kaur and Ghandi did not establish, on a balance of probabilities, that the actions attributed to Kaur actually occurred. On the basis of all of the aforesaid considerations, the Delegate concluded that APNA had failed to establish that Kaur took any documents belonging to APNA. The Delegate also added that he did not believe that the documents in questions

existed in the first place. Accordingly, the Delegate concluded that APNA failed to prove just cause to terminate Kaur's employment and that Kaur was entitled to compensation for length of service.

25. With respect to Kaur's claim for overtime pay, the Director found neither Kaur's evidence nor APNA's evidence reliable. APNA's records indicated that Kaur had worked 220 hours of overtime from March 30, 2005 to December 14, 2005. Kaur's records, on the other hand, indicated that she worked 422.5 hours of overtime from August 1, 2005 to December 15, 2005. The adjudicator, applying the "best evidence" rule, considered and accepted the evidence of Kaur's witness, Ghandi, who testified at the hearing that Kaur, including other employees of APNA, started working overtime approximately one to two months before APNA's directory was published and while he does not recall the exact time that the directory was sent to the printer, he believed that it was in late July 2005. Further, Ghandi's evidence was that Kaur worked overtime after the directory was printed as well and that Kaur worked "way more overtime" than he did. Ghandi also admitted that he only worked 237 hours of overtime. The adjudicator, based on the evidence of the parties and Ghandi, concluded that for the period March 30, 2005 to July 27, 2005, Kaur worked 102 hours of overtime as per APNA's own records adduced at the hearing and that she had been paid for these hours. The Delegate further indicated that if Kaur had not been paid for the said period, then she would be foreclosed from advancing her claim for the said period as it fell outside the six-month limit for which she is entitled to claim wages. With respect to the period July 28 to December 15, 2005, the Delegate concluded that it was reasonable that Kaur worked overtime on 107 days which was a compromise number between Kaur's 108 days and APNA's 106 days based on the parties' respective records. The Delegate further reasoned that as Kaur worked more overtime than Ghandi (the latter having testified that he worked 237 hours of overtime) it was reasonable to assume that she worked 2.5 hours of overtime on each of the 107 days for a total of 267.5 hours of overtime (about 30 hours more than Ghandi). The Delegate accordingly found APNA to have contravened section 40 of the Act by failing to pay Kaur Overtime.
26. APNA adduced a photocopy of a cheque #0515 dated October 20, 2005 in the amount of \$400 that APNA's related company, APNA Business Directory Inc., allegedly paid to Kaur for some overtime work she performed for APNA but Kaur disputed the admissibility of the cheque and demanded that APNA produce the original version as it would allow her to see the back side of the cheque which would show whether it was indeed deposited in her account. APNA informed the Delegate that it could provide the original of the cheque and the Delegate provided APNA an opportunity to produce it by the close of business on the next day. However, the Delegate noted that APNA failed to produce the cheque on the next day or at all and he based his calculations of overtime pay or wages owed to Kaur without regard to the said cheque.
27. The Delegate also found sufficient documentary evidence to show that Kaur was not paid semi-monthly as required by Section 17 of the Act, and issued a penalty to APNA for contravention of Section 17 of Act.
28. With respect to outstanding wages, particularly for the month of November 2005, the Delegate noted that, according to APNA's records, a cheque #1612 dated November 30, 2005 for \$2,000 was issued to Kaur in payment of her wages for the month of November 2005. Kaur indicates that this cheque was issued to her by APNA for repayment of a loan she made to APNA on September 21, 2005. The Delegate meticulously reviewed the evidence of both parties on this subject and particularly noted APNA's failure to deny the loan in question. While the Delegate, in the end, preferred the evidence of Kaur on this matter, he noted that APNA did issue another cheque (#1612) dated December 1, 2005 to Kaur, in the

amount of \$1,621.07, which according to the Delegate was a payment to Kaur for her November 2005 wages.

29. With respect to statutory holiday pay, the adjudicator found, on the basis of the records adduced at the hearing, that Kaur was not paid properly for Victoria Day – May 23, 2005, Canada Day – July 1, 2005 and BC Day – August 1, 2005. However, as all three holidays fell outside the six-month time limit for wage claims the Delegate was allowed to consider, the Delegate did not award Kaur any wages for the said holidays. The Delegate, however, awarded Kaur regular days' pay for Christmas Day, December 25, 2005, and New Year's Day, January 1, 2006, as Kaur worked or earned wages on 15 of the 30 calendar days prior to both these holidays but did not work on either of these days.
30. With respect to vacation pay, Kaur alleged that she had not been paid vacation pay during her employment with APNA and explained that cheque #1625 in the amount of \$692.76 was to top up her salary for January 2006, as she normally received \$1,621.07 in net pay but APNA had only paid her \$1,012.37 for January 2006. APNA, on the other hand, claimed that the cheque was for vacation pay because the top of the cheque had "vacation pay" written on it. However, Kaur disputed that those words were not recorded on the original cheque. The Delegate reviewed the copy of the original cheque and found the words "vacation pay" were written in pen on the photocopy. Accordingly, the Delegate made a finding of fact that the original cheque did not have the words "vacation pay" written on it and therefore the cheque was not in respect of vacation pay. Accordingly, the Delegate found that APNA contravened Section 58 of the Act by failing to pay Kaur all vacation pay owing upon termination but since Kaur did not work the entire month of January 2006, the Delegate made adjustments accordingly to the vacation pay Kaur was entitled to.
31. The Delegate also found, on the basis of the documentary evidence adduced at the hearing, that APNA contravened Section 27 by failing to give Kaur a wage statement when her rate of pay changed and by failing to show her rate of pay.
32. The Delegate also found that APNA had contravened Section 28 of the Act by failing to keep a record of the hours Kaur worked each day.

## **ARGUMENT**

### ***Submissions of APNA***

33. APNA, through its representative, Sihota, submitted an 11-page written submission in support of its appeal and a further 3-page Final Reply. I have carefully reviewed all of the submissions, and with two exceptions, I do not find it necessary to reiterate the submissions here except to categorize them generally as falling in the following categories:
1. Submissions wherein Sihota shares his view and belief of the ulterior motives of Kaur in pursuing her Complaint;
  2. Submissions challenging the credibility of Kaur and her witness Ghandi;

3. Submissions under the heading “Background” giving the background and history of APNA and its former employees including Kaur and allegations of certain tortious activities on the part of Kaur and these other employees;
4. Submissions challenging the findings of facts made by the Director in the Determination;
5. Submissions pertaining to cheque #0515 in the amount of \$400 that APNA’s related company, APNA Business Directory Inc. (“APNA Directory”), allegedly paid to Kaur for overtime work she performed for APNA; and
6. Submissions alleging bias against the delegate in making the Determination.

34. With respect to the last category of submissions, Sihota, in APNA’s written submissions, states:

It is my belief that Mr. White was unable to grasp the background as to the matter of Kaur’s employment, her work history, and her dishonest nature. I believe that this is strictly due to my being late for the hearing. My sincerest apologies were given to Mr. White as it is not my intention to display careless disregard for the Tribunal, but that simply running a media company single-handedly rendered me with no time to spend on a case that I felt was a waste of everyone’s time. I believe that Mr. White made a biased judgment based on this disagreement and did not fully consider all of the evidences as some are missing from the Determination altogether. I kindly ask the Panel to review all evidences before granting judgment (*sic*).

35. Sihota also adds:

“...there was a conflict of views between myself and Mr. White. I felt as if he had already determined to make judgment against me without fully considering the evidences on hand. I did not agree with his attitude towards me since the beginning of the hearing only because I was late and felt that he should be the unbiased. I felt that he allowed Kaur to speak freely, but guided me when it was my turn to ask questions or answer them. I take my business very seriously and became heated when she outright lied (*sic*).”

36. With respect to the fifth category of submissions, Sihota, in APNA’s Final Reply submissions, states that an employee of APNA delivered the original of cheque #0515 to the Delegate’s attention at the Employment Standards Branch in Surrey. Sihota does not indicate when the cheque was delivered or the name of the employee who delivered it or any supporting evidence of the alleged employee. However, Sihota provides a copy of the front of cheque #0515 and a copy of the backside of a cheque, which he claims is the backside of cheque #0515. Sihota also submits that if necessary, a copy of the cheque can be requested from TD Canada Trust, which presumably is the bank of APNA Directory.

### ***Submissions of the Director***

37. The Director submits that APNA has failed to provide evidence to support the basis of its appeal, namely, that the Director failed to observe the principles of natural justice in making the Determination. In support of that submission, the Director states that: (i) APNA participated fully at the adjudication hearing and had an opportunity to question Kaur; and (ii) he explained on more than one occasions to both APNA and Kaur that the material presented to the Initial Delegate leading to the Initial Determination (which the Tribunal, on Kaur’s appeal, set aside) was not before the Delegate and would not be considered unless

resubmitted or re-presented to him at the hearing. Essentially both parties were advised by the Delegate that the parties had to make their cases afresh and adduce all evidence they wanted to rely upon.

38. The Director also submits that APNA's appeal is a challenge on the findings of fact made by the Delegate and represents an attempt to re-argue the case on its merits and therefore not a proper basis for an appeal of the Determination. The Delegate also submits that APNA's submissions contained in paragraphs 1 to 10 in the appeal, under the heading "Background", contain information that was not presented at the hearing of the Complaint and presumably should not be accepted.
39. Finally, the Director also submits that APNA did not deliver the original of cheque #0515 requested at the hearing at any time.

### ***Kaur's submissions***

40. Kaur did not file any submissions with the Tribunal.

### **ANALYSIS**

41. APNA's appeal is grounded in Section 112(1)(b) of the Act that provides that a person may appeal a Determination on the ground that the Director failed to observe the principles of natural justice in making the determination. Principles of natural justice, very briefly, are procedural rights that are intended to afford parties, in legal or administrative proceedings, an opportunity to know the case against them, the right to meet or respond to the case against them, and the right to an impartial and unbiased decision maker. In this case, based on my review of the Section 112(5) "Record", the submissions of the parties, the Determination and the Initial Determination, APNA not only had sufficient notice of the Complaint but ample opportunity to respond to the Complaint and present its case. More specifically, APNA was first notified of the Complaint when the Initial Delegate conducted an investigation of the Complaint. APNA subsequently participated as a respondent in the appeal of the Initial Determination before the Tribunal and thereafter in the hearing of the Complaint before the Delegate, after the Tribunal set aside the Initial Determination and referred the Complaint back to the Director for reconsideration.
42. It is also noteworthy that APNA was afforded accommodations on two separate occasions in the hearing before the Delegate. First, when APNA failed to attend at the initially appointed time and date for the hearing, at 9:00 am on July 5, 2007, the Delegate briefly adjourned the hearing and arranged for an industrial relations officer to contact APNA and only reconvened the hearing after APNA's representative, Sihota, arrived. Subsequently, the Delegate adjourned the hearing to afford the parties an opportunity to mediate and when the mediation failed, the Delegate rescheduled the hearing about two months in the future, on September 6, 2007 at 9:00 a.m. which inarguably afforded both parties ample opportunity to prepare for the hearing. Both parties also knew what was expected of them at the hearing as the Delegate advised both at the originally scheduled date for the hearing on July 5, 2007 that all of the documents from the initial investigation of the Complaint were sealed and had not been seen by him and that the hearing before him would be a new hearing and the parties would be required to re-present their evidence. However, on September 6, 2007, at the appointed time of 9:00 am for the hearing, APNA again was not in attendance and the Delegate again arranged for another industrial relations officer to contact APNA's representative who arrived 15 minutes after the scheduled time for the commencement of the hearing. The adjudicator reconvened the hearing after the arrival of APNA's representative, Sihota. Further, at the hearing, APNA responded to the allegations in the Complaint through its witnesses, Sihota



and Dhillon, and was afforded the opportunity to cross-examine both Kaur as well as her witness, Ghandi, and opted to cross-examine the latter but not Kaur. In the circumstances, I find no basis for APNA to argue that the Director breached the principles of natural justice in making the Determination to the extent that APNA was afforded the opportunity to know the case against it and to fully met or respond to the same.

43. Having said that, APNA, through Sihota, argues that the Delegate was biased and did not fully consider all of the evidence presented at the hearing in making the Determination because APNA was late in attendance at the hearing. Bias on the part of the Delegate, if established, can found an appeal based on breach of the principles of natural justice as those principles incorporate the right to an impartial and unbiased decision-maker.

44. To properly assess APNA's allegation of bias on the part of the Delegate, it is helpful to review the law governing bias. The Supreme Court of Canada in *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259 described bias in the following terms at paragraph 58:

[A] leaning, inclination, bent or predisposition to one side or another or a particular result. In its application to legal proceedings, it represents a predisposition to decide an issue or cause in a certain way, which does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind, which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case.

45. In *United Food and Commercial Workers Union, Local 1518 v. British Columbia (Labour Relations Board)* [2007] B.C.J. No. 1353, the Supreme Court of British Columbia quoted the passage in *Wewaykum, supra*, with approval and went on to state at paragraph 103:

There is ample authority for the proposition that the rules of natural justice and the duty of fairness require that the adjudicator both be and appear to be unbiased. There is also ample authority for the proposition that the matter is to be viewed from the perspective of a reasonable and informed person, viewing the matter realistically and practically. The preliminary remarks in the *Wewaykum* decision with respect to the applicable standard are worthy of note. The Court comments, *inter alia*, that an allegation of an apprehension of bias must overcome a strong presumption of judicial impartiality. Further, any inquiry with respect to the issue will be highly fact specific and will be one in which context and the particular circumstances of the case are of utmost significance. In the decision of *R. v. R.D.S.*, 1977 CamLII 324 (S.C.C.), [1977] 3 S.C.R. 484, Cory J. at [paragraph] 113 noted that an allegation of bias must be based upon convincing, cogent evidence.

46. In the case at hand, I have carefully reviewed the Determination and the submissions of APNA and find that APNA's allegation of bias on the part of the Delegate is based on Sihota's feeling or hunch that the Delegate had either predetermined the case because Sihota was late on both occasions when the hearing was scheduled and because the Delegate issued Sihota a warning when rescheduling the hearing that the hearing would continue as scheduled even if APNA was late. I find that Sihota's feeling or hunch of bias is baseless and certainly unsupported by "convincing" or "cogent evidence" and therefore reject APNA's allegation of bias on the part of the Delegate.

47. Having said this, I would like to address the balance of the categories of submissions of APNA referred to above starting with the first and second categories, namely, submissions wherein Sihota shares his view and belief of the ulterior motives of Kaur in pursuing her Complaint and submissions challenging the credibility of Kaur and her witness Ghandi. In my view, APNA's submissions in these categories do not

support any of the permissible grounds of appeal in section 112 of the Act including the natural justice ground of appeal that APNA has expressly relied upon in its appeal. Moreover, it is not for this Tribunal to second-guess the Delegates finding of credibility of Kaur and her witness Ghandi particularly where the Delegate had the benefit of viewing these witnesses and considering their testimonies under oath in a *viva voce* hearing.

48. With respect to APNA's submissions in the third category-submissions under the heading "Background" giving the background and history of APNA and its former employees including Kaur and allegations of certain tortious activities on the part of Kaur and these other employees of APNA-there is nothing in those submissions relevant to or supportive of APNA's stated ground of appeal, namely, the breach of natural justice principles on the part of the Director in making the Determination. In addition, nothing in this category of submissions, even if relevant or supportive of APNA's appeal, would be admissible as "new evidence" on appeal as there is nothing in these submissions that was unavailable at the time of the hearing or before the Determination was made.
49. With respect to the fourth category of APNA's submissions-challenges to the findings of facts made by the Director in the Determination- it should be noted that the Tribunal has no jurisdiction over questions of fact. However, the Tribunal in re: *Funk*, [2004] B.C.E.S.T.D. No. 195 (QL) has indicated that a finding of fact may be characterized as an error of law but only if the fact finder made a "palpable and overriding error" or the finding of fact is "clearly wrong". In this case, a significant part of the appeal of APNA including its written submissions is devoted to challenging the Director's findings of fact. While I have not found it necessary to delineate those submissions here, I have very carefully reviewed them and found nothing in the submissions that could be remotely characterized as a "palpable and overriding error" on the part of the Delegate or the Director. The conclusions the Delegate made in the Determination, in my view, are both fair and reasonably supported by the evidence adduced by the parties at the hearing.
50. Finally, with respect to the fifth category of APNA's submissions-submissions pertaining to cheque #0515 in the amount of \$400 that APNA's related company, APNA Directory allegedly paid to Kaur for overtime work she performed for APNA-I am not convinced that APNA produced the original of the cheque to the Delegate the day after the hearing as required by the Director or at any time. While APNA submits that the cheque was sent to the attention of the Director with one of APNA's employees, APNA does not indicate when the cheque was sent nor provide the name of the employee who allegedly delivered the cheque or any supporting evidence from that employee. Further, while APNA has submitted with its appeal submissions a copy of the backside of a cheque, which APNA claims is the backside of cheque #0515, I am not, on the balance of probabilities, convinced that the document in question is indeed the backside of cheque #0515 and not some other cheque. While APNA states that if necessary, a copy of the cheque (I presume the back side of it) can be requested from TD Canada Trust, the onus is on APNA to submit all the evidence that it relies upon in its appeal and APNA has failed to do this in relation to cheque #0515.
51. On the basis of my analysis above, I find that APNA's appeal is without any merit and I agree with the Director that APNA's is simply trying to re-argue its case, in the hope of finding a more sympathetic ear and outcome.

**ORDER**

52. I order, pursuant to Section 115 of the Act, the Determination dated October 26, 2007 is confirmed together with any further interest that has accrued under Section 88 of the Act.

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**Shafik Bhalloo**  
**Member**  
**Employment Standards Tribunal**