

An appeal

- by -

Sidney Chan a Director or Officer of ALR Technologies Inc.

- 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:** Sheldon Seigel

**FILE No.:** 2006A/142

**DATE OF DECISION:** February 20, 2007

## DECISION

### SUBMISSIONS

Sidney Chan	a director or officer of ALR Technologies Inc. ("Corporation")
Edgar Luk	employee respondent
K.J. MacLean	on behalf of the Director

### OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act (Act)* brought by a director or officer of the employer of a Determination that was issued on November 14, 2006 by a delegate of the Director of Employment Standards (the "Director"). The Determination found that Mr. Chan owed the employee regular wages, unauthorized deductions, annual vacation pay and accrued interest totaling \$4,493.90. The Determination found that an employer/employee relationship existed between the employee and the Corporation and that Mr. Chan was personally liable to pay the aforementioned amount, which is not more than two months' unpaid wages per employee. The Determination found that the employer had contravened the *Act*.
2. Mr. Chan appealed, and submitted that the Director failed to observe principles of natural justice in making the determination.
3. Mr. Chan submitted that the Director failed to take into account the value of a laptop computer that the Corporation provided to the employee. He indicated that the employee has had use of the computer for two years and did not return the computer even after his employment was terminated.
4. An oral hearing was not requested. Mr. Chan, the employee and the Director provided written submissions.

### ISSUE

5. Did the Director fail to observe the principles of natural justice in making the Determination?

### ARGUMENT

6. Mr. Chan submitted the following:
  - During Mr. Luk's employment, Mr. Chan purchased a new computer for the employee's exclusive use.
  - The employee used the computer in his home.
  - The employee did not return the computer after his employment ended.

- The computer is still in the employee's possession.
- The employee knows where Mr. Chan's office is in Vancouver and could have returned the computer at any time.
- He paid \$944.56 for the computer, which cost was reimbursed by the Corporation.
- The computer currently has no residual value.
- The original cost of the computer should be deducted from the amount of the award for wages owed to the employee.

7. The employee submitted the following:

- He does still have the computer.
- He contacted Mr. Chan by email several times after his employment was terminated, to return the computer, but Mr. Chan “never showed up to get it back.” He attached two email messages dated July 11, 2005 and August 2, 2005 to support this claim.
- He is prepared to return the computer as soon as possible to the Tribunal or other agent so that it can be passed back to Mr. Chan.

8. The Director submitted the following:

- The appeal does not relate to Mr. Chan's capacity as a director/officer of the Corporation or the calculation of wages found owing. Accordingly, the appeal does not relate to the subject matter of the Determination or the Tribunal's confirmation of the Corporate Determination.
- The Director of Employment Standards does not have jurisdiction to deduct the cost of the computer from the amount owing for wages. Mr. Chan has the right to pursue this claim through the courts.

## **THE FACTS AND ANALYSIS**

9. The evidence suggests that Mr. Chan purchased a computer so that the employee could provide the services that he was employed to provide for the Corporation. It appears that the parties were content with the employee taking the computer home. There is no evidence that the employee having the computer at home was an issue before the termination of the employment relationship.
10. The purchase price of the computer (\$944.56) is uncontested, as is the fact that it is in the possession of the employee, and that it belongs to Mr. Chan or the Corporation.
11. The employee has offered to return it to Mr. Chan.
12. There is no evidence regarding the employee's terms of use relating to the computer, or whether it was to be returned following the termination of employment. There is no evidence as to the value of the use (if any) of the computer that the employee enjoyed after the termination of employment.

13. I have been presented with no authority that would allow a set-off of money's owed by the employee against a Determination of regular wages, unauthorized deductions, annual vacation pay and accrued interest owing.
14. Further, I have been presented with no evidence to indicate that there is an amount owing as a result of the employee's retention of the computer.
15. Finally, I note that the Corporate Determination makes reference to the computer, and accordingly Mr. Chan was aware of his issue at the time of the investigation. I do not know whether he presented it to the Director or, chose not to do so.
16. I find that there is no evidence that the Director failed to observe the principles of natural justice in the making of the Determination.

### **ORDER**

17. Pursuant to section 115 of the *Act*, I confirm the Determination.

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**Sheldon Seigel**  
**Member**  
**Employment Standards Tribunal**