Employment Standards TRIBUNAL

An appeal

- by -

Dollenkamp's Bakery Ltd.

- 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: Robert Groves

FILE No.: 2007A/142

DATE OF DECISION: February 18, 2008

DECISION

OVERVIEW

1. This is an appeal brought on behalf of Dollenkamp's Bakery Ltd. (the "Employer") against a determination (the "Determination") issued by a delegate of the Director of Employment Standards (the "Delegate") dated July 11, 2007. The Determination resulted from a complaint brought by one Sarah Pearson.

2. The Delegate decided that the Employer had contravened sections 58 and 63 of the *Employment Standards Act* (the "*Act*") and section 46(1) of the *Employment Standards Regulation* (the "*Regulation*"). The Employer was ordered to pay $364.76 by way of compensation for length of service, vacation pay, and accumulated interest, and two administrative penalties of $500.00 each, for a total of $1,364.76

3. The Appeal Form which commenced the appeal proceedings names Joe Tang as the person who is making the appeal. No corporate search material has been delivered to the Tribunal which might shed light on Mr. Tang's connection to the Employer. However, the Delegate's Reasons for Determination identify Mr. Tang as the person who appeared on behalf of the Employer at the hearing the Delegate conducted prior to issuing the Determination, and state that he testified he was one of the Employer's directors. I am prepared to infer from those Reasons, and the material filed in support of the appeal, that Mr. Tang is an authorized representative of the Employer, and that it is the Employer, and not Mr. Tang personally, who has brought the appeal.

4. The Employer's appeal was delivered to the Tribunal three days after the appeal period had expired. In a decision dated November 12, 2007 (the "Original Decision") the Tribunal ordered that the time within which the Employer might file its appeal should be extended pursuant to section 109(1)(b) of the *Act*.

5. The appeal has now been referred to me for a decision on the merits. I have before me the Employer's Appeal Form and attached submission, the Determination and Reasons for the Determination, a submission from Ms. Pearson dated September 19, 2007, a submission delivered by the Delegate dated September 6, 2007 together with the record I infer the Director has supplied in accord with section 112(5) of the *Act*, a submission from Mr. Tang dated October 8, 2007, the Original Decision, a further submission from the Delegate dated December 5, 2007, and a final submission from Mr. Tang dated January 3, 2008.

6. The Tribunal has determined that I will decide this aspect of the appeal on the basis of the written materials submitted by the parties, pursuant to section 36 of the *Administrative Tribunals Act*, which is incorporated into these proceedings by section 103 of the *Act* and Rule 16 of the Tribunal's Rules of Practice and Procedure.

FACTS

7. The Employer operated a bakery. Ms. Pearson was employed there as a cashier from September 9, 2006 until January 1, 2007, at which time the Employer notified her that her employment was terminated due to a "shortage of work". Despite this communication, the Employer took the position before the Delegate that the real reason for Ms. Pearson's dismissal was the Employer's belief that she had committed theft.

8. The Delegate conducted a hearing of the complaint on May 30, 2007. Mr. Tang attended before the Delegate and gave sworn evidence. Ms. Pearson did not attend. In her submission dated September 19, 2007 Ms. Pearson said she could not attend at the hearing as she was "working under contract" at the time. She further stated that when she read the Determination she was both "angered and hurt" to find that Mr. Tang had accused her of theft, a charge that she denied.

9. When Ms. Pearson failed to attend at the hearing, the Delegate made attempts to contact her, without success. After a short delay, the Delegate decided to proceed with the hearing. The Delegate's reasons for doing so are contained in the Reasons for the Determination, which say this:

> I informed the employer the hearing would proceed in spite of the complainant's absence. In part, this is because Section 63 of the Act places the onus on an employer to show why compensation for length of service is not owed under the Act. The non-attendance of a party (in this case, the complainant) does not change the onus of proof, which on this issue, and specifically on the undisputed evidence that the complainant did not quit, remains with the employer. As an evidentiary matter, a non-attending party bears the risk that the attending party may submit sufficient and weighty evidence to meet its burden. A party who fails to attend also takes a risk that information or evidence helpful to the decision-maker may not be available as a result of the party's non-attendance. However, these considerations do not alter the statutory allocation of proof, which in this case rests with the employer.

10. Mr. Tang then gave evidence. Among other things, he said the following:

- On December 21, 2006, a day Ms. Pearson was working as cashier, the cash receipts for the bakery dropped to about $300.00 ($386.00 according to the Employer's documentary evidence). A normal day's receipts totalled $500.00 to $700.00.

- When confronted with the low sales for December 21, Ms. Pearson said that sales had been slow, and that this could happen, even around Christmas.

- Ms. Pearson was not the only person with access to the cash register, and her cash float, on December 21, 2006. Other employees with access likely included a baker, Mr. Tang's wife, and a part-time cashier.

- Mr. Tang stated that the baker and the part-time cashier would not have committed the theft because they were honest people. He acknowledged, however, that the part-time cashier would have worked unsupervised for at least part of the day on December 21, 2006.

- Ms. Pearson's cash balanced at the end of her shift on December 21, 2006.

- There were no cameras in the bakery.

- At the time of the alleged theft, there was no inventory control system in operation at the bakery.

11. Mr. Tang's allegation of theft was based on the single incident involving lower than usual cash receipts for December 21, 2006. Essentially, Mr. Tang argued that Ms. Pearson pocketed the cash received for a few hundred dollars worth of baked goods on that day, instead of ringing the sales through the cash register. However, as it was difficult to find a replacement for Ms. Pearson during the Christmas season, Mr. Tang did not terminate her until he had found someone to take her place at the end of December.

12. After weighing the evidence presented, the Delegate decided that it was insufficient to support a conclusion, on a balance of probabilities, either that there had been a theft, or if there had been a theft, that it had been committed by Ms. Pearson.

ISSUE

13. Is there a basis for my deciding that the Determination must be varied or cancelled, or that the matter must be referred back to the Director for consideration afresh?

ANALYSIS

14. The jurisdiction of the Tribunal to hear an appeal of a determination is contained in section 112(1) of the *Act*, which reads:

> 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.

15. Section 115(1) of the *Act* should also be noted. It says this:

> 115(1) After considering whether the grounds for appeal have been met, the tribunal may, by order,
>
> (a) confirm, vary or cancel the determination under appeal, or
>
> (b) refer the matter back to the director.

16. While the Employer has ticked boxes on the Appeal Form in respect of the grounds set out in sections 112(1)(a) and (b), it is apparent from a review of the submissions it has delivered that it also wishes to raise an issue under section 112(1)(c). I propose to deal with the various grounds of appeal in order.

Section 112(1)(a) – The Director erred in law

17. I perceive four discrete bases on which the Employer asserts that the Director erred in law.

18. First, the Employer says that the Delegate committed an error when she relied only on the evidence of daily sales in concluding there was insufficient evidence to support a finding of theft. If I read the Employer's submission correctly, it says that the Delegate should instead have taken into account not only the sales data, but also the amount of leftover product, and then compared it to the "actual baked number" for the day in question. The Employer's submission states that when "we looked at the sales and leftover, there was a big discrepancy. This discrepancy means theft happened."

19. Essentially, the Employer is saying that the Delegate ignored important evidence, and so committed an error of law. I must say that I have considerable difficulty with this submission. While the Reasons for the Determination state that Mr. Tang "checked the inventory" when the sales data came in so low on December 21, 2006, the evidence he tendered at the hearing was restricted to the sales data for the period in question. No evidence of inventory comparisons was presented. This is not surprising, as he acknowledged that on December 21, 2006 there was no system in place to keep track of how much product was made, and how much remained at the close of business each day.

20. I conclude, therefore, that either there was, as Mr. Tang said at the hearing, no system for tracking inventory at the relevant time, or there was such a system, and Mr. Tang had tracked inventory and concluded from the exercise that a theft had occurred, but he neglected to present evidence of it at the hearing before the Delegate. Neither scenario grounds an argument that the Delegate erred in law. Instead, it appears that the Employer's submission is an attempt to bolster a case that failed to persuade at first instance. That is not the purpose of an appeal under section 112 (see *MSI Delivery Services Ltd.* BC EST #D051/06)

21. Second, the Employer asserts that since Ms. Pearson noted on her Complaint and Information Form submitted "to government" that she had been "fired", she had "accepted this fact", and it was therefore inappropriate for the Delegate to consider whether she was entitled to compensation for length of service. Such an assertion misapprehends entirely the substance of Ms. Pearson's complaint, and the purpose of the Delegate's investigation. It is clear that Ms. Pearson believed the Employer had acted improperly. If Ms. Pearson had felt otherwise, she would not have filed a complaint.

22. Third, the Employer takes issue with the administrative penalty imposed as a result of its failure to respond to the Delegate's Demand for Employer Records. Its submission asserts that it "forgot" to respond in time, but it did produce the records at the hearing. The Reasons for the Determination state that Mr. Tang testified he received the Demand, but did not read it, which accounted for the Employer's failure to comply.

23. The record reveals that the Demand was issued on March 30, 2007, with a return date of April 27, 2007. It required the Employer to produce, *inter alia*:

> 1. Any and all payroll records relating to wages paid, the daily hours of work records, and any and all documents pertaining to the conditions and terms of employment.
>
> 2. Any and all documents relating to the termination of the above named employee including any and all documents that the employer relies on to establish just cause to terminate the employee, as applicable, as well as a copy of the Record of Employment form.

24. Section 85(1)(c) and (f) of the *Act* say this:

> 85(1) For the purposes of ensuring compliance with this Act and the regulations, the director may do one or more of the following:
>
> (c) inspect any records that may be relevant to an investigation under this Part;
>
> (f) require a person to produce, or to deliver to a place specified by the director, any records for inspection under paragraph (c).

25. Section 46(1) of the *Regulation* also informs the discussion concerning an employer's obligation to produce records. It says this:

> 46(1) A person who is required under section 85(1)(f) of the Act to produce or deliver records to the director must produce or deliver the records as and when required.

26. In the circumstances presented here, I cannot conclude that the imposition of the administrative penalty was unlawful. It is clear that the Employer received the Demand, and due to its own neglect it failed to respond within time. That failure to comply with its statutory obligation continued until the date of the hearing on May 30, 2007. Even then, the Employer did not comply in full, notwithstanding its plea that it did so. True, the Employer did produce the sales data, which may be said to have been documents of the sort referred to in item 2 of the Demand. However, as the Delegate noted in her Reasons for the Determination, the Employer also failed to produce the payroll records sought in item 1 of the Demand, which meant that the Delegate had to calculate the compensation for length of service owed to Ms. Pearson on the basis of Mr. Tang's evidence as to her rate of pay and hours of work given at the hearing.

27. Section 46 of the *Regulation* requires that the records sought in a Demand be produced or delivered *as and when required*. In the circumstances, this did not occur. The burden of that failure lies entirely on the shoulders of the Employer. The production of an employer's records is often of critical importance in the timely resolution of complaints filed pursuant to the *Act*. One of the stated purposes of the legislative scheme, which appears in section 2(d), is that it "provide fair and efficient procedures for resolving disputes over the application and interpretation of this *Act*". To the extent that the Employer in this case neglected, and ultimately declined, to respond either in a timely way, or at all, to the Delegate's Demand for Employer Records, that legislative purpose was subverted.

28. Fourth, the Employer argues that the failure of Ms. Pearson to attend at the hearing conducted by the Delegate means that her complaint should have been dismissed. The Employer offers no argument of substance in support of this assertion. In the Original Decision, however, the Tribunal member offered the following as a basis for extending the Employer's time to appeal the Determination:

> The delegate in this case gave a lengthy and detailed set of reasons for finding that Dollenkamp had not met the onus of proving that there was just cause for dismissing the employee. While the delegate is correct in placing the onus on the employer, it appears to me that there is at least a *prima facie* case that (the) delegate placed too much emphasis on the possibilities of other explanations for the missing money and did not properly accept the only sworn evidence before her. The onus in a case such as this is the balance of probabilities and the appellant has a reasonable argument that the delegate relied on the mere possibility of other explanations for the missing money in rejecting the sworn evidence of the employer especially in the absence of any sworn explanation from the employee.
>
> Of course, this is a preliminary assessment of these issues and this assessment does not decide the substance of the appeal herein but it appears to me that the appellant has raised an important issue that needs to be heard and an injustice could arise if an extension of time were not granted.

29. I agree with the tenor of these comments, at least in the context in which they were made, that is, the Tribunal's considering whether the time within which the Employer might appeal should be extended. Upon a review of the materials before me on this appeal, however, I am not persuaded that the Delegate erred in law in the approach she took to the determination of Ms. Pearson's complaint on its merits.

30. In *Britco Structures Ltd.* BC EST #D260/03 the Tribunal cited *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)* [1998] BCJ No.2275 as an authority in which our Court of Appeal defined "error of law" to include, *inter alia*, the following:

- a misapplication of an applicable principle of general law
- acting on a view of the facts which could not reasonably be entertained, and
- adopting a method of assessment which is wrong in principle

31. As I understand the issue in the case before me, the question is whether the Delegate erred in failing to accept the inference the Employer wished her to draw after listening to the sworn evidence of Mr. Tang to the effect that Ms. Pearson had committed theft, in circumstances where no evidence in rebuttal was tendered by Ms. Pearson because she did not attend at the hearing. Framed in this way, the issue does, in my opinion, raise an issue of law, insofar as it engages principles of the general law relating to the legal and evidential burdens of proof applicable in the circumstances.

32. In *The Law of Evidence in Canada*, Butterworths 1992, the learned authors say this at pages 56-57:

> The term evidential burden means that a party has the responsibility to insure that there is sufficient evidence of the existence or non-existence of a fact or of an issue on the record to pass the threshold test for that particular fact or issue...
>
> In contrast, the term legal burden of proof means that a party has an obligation to prove or disprove a fact or issue to the...civil standard. The failure to convince the trier of fact to the appropriate standard means that party will lose on that issue...
>
> A party who bears the evidential burden is subject to an adverse ruling for failing to meet the threshold test for that particular evidential burden. In a jury trial, the trial judge has the authority to decide that issue without leaving it for the jury's consideration. However, where a party satisfies an evidential burden, the trial judge must leave that issue for the jury's determination...

33. Later, at page 60, the authors say this:

> The incidence of an evidential burden means that a party has the obligation to adduce evidence or to ensure that there is sufficient evidence of a fact in the record to raise an issue...

34. In the case before me, the Delegate decided that the onus rested on the Employer to establish, on a balance of probabilities, that it had just cause to dismiss Ms. Pearson, and so it was not obligated to pay compensation for length of service under the *Act*. In reaching this conclusion as to the legal burden of proof, the Delegate was clearly correct. The obligation to pay compensation for length of service is an obligation that section 63 of the *Act* imposes on an employer. The employer may discharge that liability if he can prove, *inter alia*, just cause for the dismissal. It follows that the legal burden for proving that the conduct of Ms. Pearson justified dismissal must rest with the Employer (see *Director of Employment Standards and Ellison* BC EST #RD122/03).

35. The corollary to the existence of a legal burden of proof resting with the Employer is that there was no burden, evidential, legal, or otherwise, resting with Ms. Pearson on the issue of just cause, at least in the circumstances of this case. All she needed to show was that she was employed for the period required to create an obligation on the part of the Employer to pay compensation for length of service, and that she

had been dismissed. The Employer conceded this. It follows that Ms. Pearson's absenting herself from the hearing was not conclusive of the determination of the question whether the Employer had just cause to dismiss her. It was risky for Ms. Pearson to absent herself, because the nature of the evidence tendered by the Employer in favour of a finding of just cause at the hearing might have created circumstances leading the Delegate to conclude that the Employer had succeeded in meeting the legal burden or proof for just cause. In the event, however, Ms. Pearson was fortunate that it did not.

36. In my view, the Employer can be said to have met the evidential burden resting on it to present evidence sufficient to raise an issue that Ms. Pearson had committed theft, and therefore had given just cause for dismissal without payment of compensation for length of service. That is the sense in which I read the comments in the Original Decision to the effect that the Employer had "raised an important issue that needs to be heard". However, the fact that the Employer may have met the evidential burden does not mean that it succeeded in establishing the higher, legal burden of proof to the satisfaction of the Delegate.

37. It is trite to say that the weight to be given to particular evidence rests with the trier of fact (see *Housen v. Nikolaisen* [2002] 2 SCR 235 at paragraph 72). Moreover, it is not open to the Tribunal to interfere with a delegate's findings of fact, absent a finding of palpable and overriding error, by which is meant circumstances in which the factual conclusions of a delegate, or the inferences drawn from those factual conclusions, are inadequately supported, or are wholly unsupported, by the evidentiary record, with the result that there is no rational basis for the finding, and so it is perverse or inexplicable. Put another way, an appellant will succeed only if he establishes that no reasonable person, acting judicially and properly instructed as to the relevant law, could have come to the determination (see *Gemex*, *supra*; *Delsom Estates Ltd. v. British Columbia (Assessor of Area 11 – Richmond/Delta)* [2000] BCJ No.331).

38. In my opinion, it was open to the Delegate to decide, on the evidence before her, that the Employer had not satisfied the legal burden of proof that a theft had occurred, and even if it had, that Ms. Pearson was the person responsible. This is so notwithstanding the fact that the only sworn evidence made available to the Delegate was the evidence of Mr. Tang on behalf of the Employer. The Delegate conducted a thorough review of the available evidence in her Reasons for the Determination. In the end, that evidence revealed that no one had actually seen Ms. Pearson give baked goods away and pocket the cash received in return. There was no evidence of substance presented which showed that inventory was missing for which no payment had been deposited in the cash register. The evidence also suggested that there were other persons working on site to whom an opportunity had been made available to commit a theft. The Employer conducted no investigation of substance at the time the alleged theft is said to have occurred. Ms. Pearson was permitted to continue to work for a time thereafter, with minimal supervision. When the Employer discharged Ms. Pearson the reason given was "shortage of work". The allegation of theft only appears to have been raised when Mr. Tang referred to it for the first time at the hearing conducted by the Delegate. All of this led the Delegate to conclude that the Employer's allegation of theft was based on suspicion at best. I do not discern that the Delegate ignored relevant evidence to the contrary. As the Employer's case for theft was entirely circumstantial, I am not persuaded that the Delegate acted unreasonably, in the sense that her decision was perverse or inexplicable. Mr. Tang's evidence was the only sworn evidence the Delegate considered, to be sure, but in the end it was insufficient to satisfy the Employer's legal burden of proof.

39. I am not persuaded that the Delegate erred in law.

Section 112(1)(b) – The Director failed to observe the principles of natural justice in making the Determination

40. A challenge to a determination on the grounds of a failure to observe the principles of natural justice raises a concern that the procedure followed by the Director and his delegates was unfair. The principles of natural justice mandate that a party must have an opportunity to know the case it is required to meet, and an opportunity to be heard in its own defence. The duty is imported into proceedings conducted at the behest of the Director under the *Act* by virtue of section 77, which states that if an investigation is conducted, the Director must make reasonable efforts to give a person under investigation an opportunity to respond. Another element of natural justice is that the determination that is made be made by an independent decision-maker, free from bias.

41. The Employer raises two issues under this heading.

42. First, the Employer says that it was denied natural justice because Ms. Pearson did not attend the hearing, and so the Employer was unable to cross examine her. The inference I discern the Employer wishes to establish is that if it had had an opportunity at the hearing to cross examine Ms. Pearson it would have adduced evidence out of her mouth which would have supported its assertion that she had committed a theft. The Employer therefore asserts that it was denied an opportunity to respond fully to the complaint, and so the process was conducted unfairly.

43. Accepting that the denial of an opportunity to lead the evidence of a key witness at a hearing raises a fairness concern, a review of the facts relating to the Employer's not having an opportunity to cross examine Ms. Pearson does not, in my opinion, lead to the conclusion that the Delegate failed to observe the principles of natural justice. The Employer's submissions on appeal say that Mr. Tang was "prepared to ask Sarah Pearson some critical questions face to face on the hearing day" but "she did not show up". I accept that that is so. However, there is nothing in the material before me which suggests that Mr. Tang's desire to lead Ms. Pearson's evidence was communicated to the Delegate at any time prior to the issuance of the Determination, or at all. Indeed, it appears that the Employer's wishing to cross examine Ms Pearson was made known for the first time in its submissions delivered in support of the appeal.

44. In one of her submissions the Delegate states that Mr. Tang did not object to the Delegate's proceeding with the hearing in Ms. Pearson's absence, and that he at no time requested an adjournment. In its final submission in reply, the Employer says this comment on the part of the Delegate is "not acceptable", but it does not say why.

45. In my view, the Delegate was not obliged to delay the hearing in these circumstances, or to intuit that the Employer wished to lead evidence through Ms. Pearson. It was up to the Employer to ensure that its case was presented properly to the Delegate. Conversely, it was no part of the Delegate's role to advise the Employer concerning the deficiencies in its presentation, or other avenues by means of which a case of theft might be made out. For the Delegate to have proceeded in such a manner would have jeopardized the perception of her impartiality (see *Re 492907 BC Ltd (cob Slumber Lodge Motel)* BC EST #D099/05). Having elected to proceed without the benefit of a cross examination of Ms. Pearson, the Employer must bear the consequences.

46. The second argument put forward by the Employer on natural justice grounds is that the "Employment Standards Office had been biased in handling this case". Nothing more of substance in support of this suggestion is offered.

47. Previous decisions of the Tribunal have adverted to the gravity of an allegation of bias against a decision-maker, and to the admonition that it should never be made absent very compelling evidence (see *Zadehmoghadami* BC EST #D171/05; *Dang* BC EST #D184/05). No such evidence has been presented in this case. There is no merit to this ground of appeal.

Section 112(1)(c) – Evidence has become available that was not available at the time the Determination was being made

48. As I have said earlier in these reasons, the appeal provisions in the *Act* are not intended to permit a party who is unhappy with the result in a determination to seek out new evidence to bolster a case that has failed to persuade at first instance. An appeal does not amount to a re-hearing, or a re-investigation of a complaint. It is an error correction process, with the burden of showing error on the appellant (see *MSI Delivery Services Ltd., supra*; *Re Bruce Davies et al.* BC EST #D171/03; *J.P. Metal Masters 2000 Inc.* BC EST #D057/05). If, therefore, it is clear that evidence should have been led at the time of the initial hearing, it will not normally be admitted on appeal under section 112(1)(c) (see *D.J.M. Holdings Ltd.* BC EST #D461/97).

49. Having said that, the Tribunal retains a discretion to allow an appeal based on fresh evidence, but it must be exercised with caution. One of the criteria that the Tribunal will apply in determining whether an appeal should be allowed on this basis is to ask itself whether the evidence could not, with the exercise of due diligence, have been discovered and presented to the delegate during the investigation or adjudication of the complaint and prior to the determination being made. In other words, was the evidence really unavailable to the party seeking to tender it? At the same time, even if the evidence was not unavailable in this sense, the Tribunal may nevertheless consider it if the appellant can demonstrate that the evidence is important, there is good reason why the evidence was not presented at first instance, and no serious prejudice will be visited upon the respondent if it is admitted (see *Re Specialty Motor Cars* BC EST #D570/98).

50. In one of its submissions on the appeal the Employer says this:

> The determination was based only on the analysis of sales data for a period of days. But the fact is the sold items plus the leftover were less than the actual baked items. The sales data shows only the sold number, no actual baked number and leftover. When we looked at the sales and leftover, there was big discrepancy. This discrepancy means theft happened. We believe Sarah Pearson stole money based on this discrepancy, not the sales data among few days. On the other hand, she stole money from daily float too. We can have the previous baker to witness this.

51. Mr. Tang was the only person called to testify on behalf of the Employer at the hearing conducted by the Delegate. At no point prior to the identification of the "previous baker" in the Employer's submission on appeal was there a reference to such an individual by the Employer as someone from whom important evidence might be obtained. The description the Employer gives of the nature of the evidence it now wishes to lead is vague. It does not descend into particulars, the provision of which might have brought into focus why the evidence should be considered at this late juncture. Even assuming that the evidence could satisfy the test of probity, there are no facts disclosed in the Employer's submission suggesting that the evidence was unavailable at the time the Determination was being made, and if not, why not.

52. I am not persuaded that the Employer has demonstrated that evidence has become available that was not available at the time the Determination was being made.

53. This is sufficient to dispose of the appeal. One further matter requires comment, however. In the Employer's January 3, 2008 submission, Mr. Tang advised that the Employer's business was "closed" in October 2007, that its corporate existence had been "dissolved", and that it was a "dead legal entity". He also referred to the wording in section 87 of the British Columbia *Business Corporations Act* to the effect that shareholders in a company are not personally liable for the debts, obligations, defaults or acts of the company.

54. My jurisdiction under the *Act* emanates from the appeal of the Determination, which was issued on July 11, 2007. There is no evidence that the Employer had ceased to exist as a legal entity on that date. Whether the Determination can be enforced against the Employer hereafter I need not decide. I observe, however, that sections 96 and 98 of the *Act* make directors and officers of a corporation personally liable for wages and penalties, respectively, in certain defined situations, whether a determination may be enforced against a corporate entity or not.

ORDER

55. Pursuant to section 115(1)(a) of the *Act*, I order that the Determination dated July 11, 2007 be confirmed.

Robert Groves
Member
Employment Standards Tribunal