

An appeal

- by -

HOC Center for Progressive Medicine Victoria Inc.  
("HOC Victoria")

- 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.:** 2006A/3

**DATE OF DECISION:** March 2, 2006

## DECISION

### SUBMISSIONS

Humphrey Killam	on behalf of HOC Centre for Progressive Medicine Victoria Inc.
Joy Guilbault	on behalf of the Director

### OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by HOC Center for Progressive Medicine Victoria Inc. (“HOC Victoria”) of a Determination that was issued on November 25, 2005 by a delegate of the Director of Employment Standards (the “Director”).
2. The Determination found HOC Victoria to be an associated company under Section 95 of the *Act* with HOC Hyberbaric Care Centre Inc. and HOC Progressive Medical Products Inc. and found the associated companies to be collectively liable under the *Act* for wages owing to Jessica Moon (“Moon”) in the amount of \$2163.15 and for administrative penalties in the amount of \$1500.00.
3. HOC Victoria says the Director erred in associating that company with the other companies under Section 95 and finding them responsible for the wage claim made by Moon and the administrative penalties imposed.
4. HOC Victoria asks that the Determination be cancelled.
5. The Tribunal has reviewed the appeal and the materials submitted with it and has decided an oral hearing is not necessary in order to decide this appeal.

### ISSUE

6. The sole issue in this case is whether the Director erred in deciding to associate HOC Victoria with HOC Hyberbaric Care Centre Inc. and HOC Progressive Medical Products Inc. under Section 95 of the *Act*.

### THE FACTS

7. I will only refer to those facts that relate to the issue raised in this appeal.
8. HOC Hyberbaric Care Centre Inc. (“HOC Coquitlam”) operated a hyperbaric/naturopathic clinic in Coquitlam. Moon was employed at this clinic in the period covered by her claim. The corporate records acquired by the Director during the investigation show Zayd Ratansi and Roderick Patterson as directors/officers of this company and record that Humphrey Killam had ceased to be a director of this company as of August 23, 2003. The notice of a change of directors was filed on November 27, 2004.
9. HOC Progressive Medical Products Inc. (“HOC Medical”) sold nutritional supplements through HOC Coquitlam and HOC Victoria.

10. HOC Victoria operated a naturopathic clinic in Victoria. The corporate records in the file show Mr. Patterson and Mr. Killam as directors/officers of HOC Coquitlam and HOC Victoria.
11. The determination records the following additional facts on the Section 95 question:
- HOC Coquitlam and HOC Medical shared the same business address;
  - Mr. Patterson worked mainly out of HOC Coquitlam, but would help out at HOC Victoria if needed;
  - Mr. Killam would help out at HOC Coquitlam as needed;
  - Mr. Patterson issued cheques to the employees of HOC Coquitlam;
  - Moon went to Victoria for four days to help with the “Grand Opening” of HOC Victoria;
  - Moon would package and ship products from HOC Coquitlam (HOC Medical) to HOC Victoria;
  - Moon would make accommodation and other arrangements for patients of HOC Victoria who were coming to HOC Coquitlam for treatment, and vice-versa;
  - Moon would have contact with HOC Victoria as she would have to call Mr. Killam to clear customer accounts and to set up bookings for patients of HOC Coquitlam;
  - Payment for regular wages of employees of HOC Coquitlam was drawn on an account held by HOC Medical, but list the “1-888” HOC Victoria telephone number on the cheques - although they list a post office box in Abbotsford as the address;
  - Moon was directed to HOC Victoria by Dr. Ratansi to recoup payment on the NSF wage cheques that she had received; Dr. Ratansi told Moon he would contact Mr. Killam (HOC Victoria) on her behalf to have her wages covered;
12. There were questions of credibility on some of the conflicting assertions of facts about the interrelationship of the three companies which were resolved in favour of Moon.

## **ARGUMENT AND ANALYSIS**

13. The grounds upon which an appeal may be made are found in Subsection 112(1) of the *Act*, which says:

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 made.*

14. The burden of demonstrating an error in the Determination is on the appellant, in this case HOC Victoria. The *Act* does not provide for an appeal based on errors of fact and the Tribunal has no authority to consider appeals based on alleged errors in findings of fact unless such findings raise an error of law (see *Britco Structures Ltd.*, BC EST #D260/03).
15. HOC Victoria has grounded its appeal in the contention that evidence has come available that was not available at the time the Determination was made. The appeal, however, does not include any “new evidence”, but rather expresses disagreement with some of the findings and conclusions of fact made in the Determination and provides commentary on other aspects of the evidence referred to by the Director.
16. HOC Victoria says Moon was never employed by them and never worked at their facility.
17. The former assertion misses the effect of an associated company decision. Where the conditions for a decision under Section 95 of the *Act* are present, the result is to treat the associated entities as one person for the purposes of the *Act*, whether or not the claimant has actually been employed by all of the entities that are associated. As the Tribunal has pointed out in other decision on Section 95, that provision exists in the enforcement part of the *Act* and exists to give effect to the purposes set out in Section 2. In *Invicta Security Systems Corp.*, BC EST #349/96, the Tribunal said:

One of the purposes of the *Act* is to ensure employees in the province receive the basic standards of compensation and conditions of employment. The *Act* not only sets the basic standards of compensation and conditions of employment but also provides a comprehensive scheme for the enforcement of the *Act*, including some collection procedures such as claims of lien, court order enforcement and seizure of assets in appropriate circumstances. It is in the enforcement provisions of the *Act* where Section 95 has been placed. The statutory purpose requirement is met if the one employer determination is for the purpose of enforcing basic standards of compensation and conditions of employment.
18. To put it in other terms, the legislature has decided that for the purpose set out above, the Director should have the power to pierce the corporate veil. In the limited circumstances provided in Section 95, the legislature has deemed the interests protected by the *Act* should supersede the objectives served by allowing individuals to incorporate and operate companies as distinct and separate legal entities.
19. The assertion that Moon never worked at HOC Victoria runs directly contrary to a specific finding of fact made by the Director. There is no error of law in that finding of fact and, consequently, I have no authority to consider that argument in this appeal.
20. In sum, the appellant has failed to demonstrate there is any error in the decision of the Director to associate HOC Victoria with HOC Coquitlam and HOC Medical under Section 95 of the *Act*
21. The appeal is dismissed.

**ORDER**

22. Pursuant to Section 115 of the *Act*, I order the Determination dated November 25, 2005 confirmed in the amount of \$3663.15, together with any interest that has accrued under Section 88 of the *Act*.

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