



An appeal

- by -

Fraser Valley Community College Inc.
(“FVCC”)

- 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.: 2015A/151

DATE OF DECISION: February 10, 2016

DECISION

SUBMISSIONS

Sunanda Kikla

on behalf of Fraser Valley Community College Inc.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Fraser Valley Community College Inc. (“FVCC”) has filed an appeal of a determination issued by a delegate of the Director of Employment Standards (the “Director”) on October 6, 2015 (the “Determination”).
2. The Determination found that FVCC contravened Part 3, section 18 (payment of wages when employment is terminated); Part 4, section 40 (overtime wages); Part 5, section 45 (statutory holiday pay); Part 7, section 58 (vacation pay); and Part 8, section 63 (liability resulting from length of service) of the *Act* in respect of the employment of Vandana Khetarpal (“Ms. Khetarpal”), and ordered FVCC to pay Ms. Khetarpal wages in the amount of \$3,953.10, including accrued interest pursuant to section 88 of the *Act*.
3. The Determination also ordered FVCC to pay administrative penalties under section 29 of the *Employment Standards Regulation* (the “*Regulation*”) in the amount of \$3,000.00 for contraventions of sections 17, 18, 40, 45 and 63 of the *Act*, as well as section 46 of the *Regulation*.
4. The total amount of the Determination is \$6,953.10.
5. FVCC has filed this appeal on all of the available grounds under section 112(1) of the *Act*; namely, that the Director erred in law; the Director failed to observe the principles of natural justice in making the Determination; and that evidence has become available that was not available when the Determination was being made.
6. FVCC seeks the Employment Standards Tribunal (the “Tribunal”) to change or vary the Determination or refer it back to the Director so that a “proper determination can be made with exchange of evidence and oral hearing”.
7. In addition to appealing the Determination, FVCC has applied under section 113 of the *Act* for a suspension of the Determination pending a final adjudication of this appeal. The suspension application is decided in a separate decision (see *Fraser Valley Community College Inc.*, BC EST # D026/16).
8. In correspondence, dated January 28, 2016, the Tribunal notified the parties, among other things, that no submissions were being sought from any other party pending review of the appeal by the Tribunal and that following such review all, or part, of the appeal might be dismissed.
9. The Director provided the Tribunal with the section 112(5) “record” (the “Record”), a copy was delivered to FVCC, and the latter was afforded an opportunity to object to its completeness and it did so object. FVCC’s submissions challenging the Record are dealt with separately under the heading “Submissions of FVCC” below.
10. Having reviewed the appeal materials, I have decided this appeal is an appropriate case for consideration under section 114 of the *Act*. Therefore, at this stage, I will assess the appeal based solely on the Reasons for

the Determination (the “Reasons”), the written submissions of FVCC and my review of the Record that was before the Director when the Determination was being made. If I am satisfied the appeal, or part of it, has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, Ms. Khetarpal will, and the Director may, be invited to file further submissions. On the other hand, if it is found the appeal satisfies any of the criteria set out in section 114(1) of the *Act*, it will be dismissed.

ISSUE

11. The issue in this appeal is whether there is any reasonable prospect that FVCC’s appeal will succeed.

THE FACTS

12. FVCC is a company incorporated under the laws of British Columbia and operates an international education program. A BC Online: Registrar of Companies – Corporation Search conducted on July 9, 2015, indicates that it was incorporated on November 19, 2009. Sunanda Dinesh Kikla (“Ms. Kikla”) is listed as the sole director of FVCC. Ms. Kikla is also one of five officers of FVCC.
13. Ms. Khetarpal was employed by FVCC as an instructor from April 25, 2014, to February 6, 2015, and as a full-time office administrator from September 17, 2014, to December 21, 2014.
14. The Reasons note that on December 21, 2014, Ms. Kikla advised Ms. Khetarpal that she was no longer needed in the office and that following the Christmas break, she would continue as an instructor only. Ms. Khetarpal’s last full day of office work was on December 22, 2014.
15. The Reason’s also note that Ms. Khetarpal submitted that in January 2015, she provided 18 hours of instruction for FVCC but was not paid for these hours. On February 11, 2015, she sent an email to Ms. Kikla indicating that because there were outstanding wages owed to her by FVCC for the period September 2014 to January 2015, she could not continue to work with FVCC.
16. Subsequently, on July 9, 2015, Ms. Khetarpal filed a complaint under section 74 of the *Act*, alleging that FVCC contravened the *Act* by failing to pay her regular wages, overtime wages, statutory holiday pay, compensation for length of service and vacation pay (the “Complaint”).
17. The Reasons note that the Director conducted a hearing on October 2, 2015 (the “Hearing”), but FVCC failed to attend.
18. The Reasons also delineate in some detail the following attempts and efforts the Director made to afford FVCC opportunities to participate or respond to the Complaint during the pre-Hearing stage and on the date of the Hearing and what, if any response, FVCC provided:
 - On August 10, 2015, the Director emailed FVCC a Notice of Mediation Session scheduled for Friday, August 14, 2015. On the same date, FVCC responded by email requesting that the mediation be adjourned to Friday, August 28, 2015.
 - On August 17, 2015, the Director emailed FVCC an Amended Notice of Mediation Session, setting the mediation for 1:30 p.m. on Friday, August 28, 2015. On August 28, 2015, at 10:34 a.m., FVCC emailed the mediator refusing to participate in the mediation, and expressed its desire for a hearing date to be set.

- On September 1, 2015, the Director sent FVCC and Ms. Kikla a Notice of Complaint Hearing and Demand for Employer Records (the “Demand”) by registered mail. The Director received a Canada Post Delivery Certificate indicating that an A. Kikla acknowledged receipt of the registered mail at 13:21 on September 4, 2015. Further, a Canada Post Delivery Certificate, obtained by the Director, indicated that a Shabha Lalotra acknowledged receipt of the registered mail sent to FVCC at 11:53 on September 3, 2015.
 - The Notice of Complaint Hearing notified FVCC that the Hearing would occur at 9:00 a.m. on Friday, October 2, 2015, at A207 – 20159 88th Avenue in Langley, British Columbia and further stated that the Branch Adjudicator may make a determination based on information before them, even if a party chooses not to participate at the Hearing. The Notice of Complaint Hearing also included instructions for FVCC to produce records it intended to rely on at the Hearing on or before September 16, 2015.
 - The Demand required FVCC to disclose, produce and deliver payroll records for Ms. Khetarpal for the period of April 25, 2014, to February 5, 2015, on or before September 16, 2015. When records were not forthcoming from FVCC, on September 24, 2015, at 8:45 a.m., a delegate of the Director emailed FVCC at fvcc.surrey@gmail.com to inquire if FVCC would be providing any records for the Hearing. The email also noted that the records requested had been due on September 16, 2015.
 - On September 24, 2015 at 9:11 a.m., Ms. Kikla responded by email to the delegate of the Director stating “[*The records*] will be sent by Monday. Thanks for your patience as we had to request some documents from archives which took time”. However, FVCC did not produce any evidence and did not supply the payroll records demanded in advance of the Hearing on October 2, 2015.
 - On the morning of October 2, 2015, the Director’s representative called FVCC to inquire as to its intention with respect to participating in the Hearing. The representative left three (3) voice messages at various FVCC phone numbers between 9:21 a.m. and 9:28 a.m. When no response was forthcoming from FVCC, the delegate, in the absence of FVCC, proceeded with the Hearing at 9:35 a.m. and concluded it on the same date.
19. As FVCC did not attend at the Hearing, nor provided any materials to the delegate before the Hearing, the delegate, based on the uncontested evidence of Ms. Khetarpal, concluded that FVCC owed Ms. Khetarpal wages as delineated in the Wage Calculation Summary attached to the Determination. The Determination also levied six (6) administrative penalties pursuant to section 29 of the *Regulation* referred to previously.

SUBMISSIONS OF FVCC

(a) Submissions Disputing the Completeness of the Record

20. By correspondence dated December 9, 2015, the Tribunal forwarded the Record received from the Director to FVCC and allowed the latter an opportunity to object to its completeness by 4:00 p.m. on December 23, 2015.
21. By way of an email dated December 23, 2015, Ms. Kikla responds stating, among other things, that “[m]any important documents that should have been included in the [R]ecord” are missing and some “were never provided to [FVCC]”. She asks the Tribunal “if FVCC should send...a list of documents which are missing” in the Record.

22. Subsequently, by letter dated December 24, 2015 (and received by the Tribunal on December 29, 2015), Ms. Kikla submits that the Complaint document appearing in the Record that FVCC received before the scheduled mediation date, consisted of two (2) pages and not three (3) pages. The missing part from the Complaint document was the part entitled “Details of Your Complaint”, commencing at the bottom of the second page and carrying on to the third page. She states that the delegate she was dealing with assured her that the Complaint document was “[p]roper and clearly this is not the case”.
23. Ms. Kikla also attaches to her submissions, Schedules A to M, which contain emails time stamped after the Director’s representative called FVCC several times on the morning of the Hearing and after the Hearing of October 2, 2015, commenced. The emails record exchanges between Ms. Kikla and a delegate of the Director. Ms. Kikla is requesting the Director to reschedule the Hearing date because FVCC missed the Hearing due to “unintentional oversight” as FVCC was dealing with “an extremely time sensitive Legal matter before BC Supreme Court”. Ms. Kikla also expresses her desire to make written submissions and provide supporting documents on behalf of FVCC. She also includes an email dated October 7, 2015, in which she attaches FVCC’s written submissions and supporting documents disputing the merits of the Complaint which I deal with separately below.
24. On January 19, 2016, Ms. Kikla makes further submissions. These submissions can be categorized under five (5) broad categories, namely:
- submissions reiterating earlier submissions about not receiving a complete copy of the Complaint because the Complaint was missing the portion entitled “Details of Your Complaint”;
 - submissions pertaining to exchanges between Ms. Kikla and a delegate of the Director after FVCC had missed the Hearing on October 2, 2015;
 - submissions questioning lack of production of any documents outlining “the notes made by [the adjudicator] in reaching her conclusions”;
 - allegations of bias and bad faith on the part of the adjudicator; and
 - submissions alleging that the Complaint is a result of a “conspiracy” between the defendants Ms. Kikla and FVCC are suing in the Supreme Court action.
25. While I have carefully reviewed Ms. Kikla’s submissions above, for the reasons I set out in the section entitled “Analysis” below, I do not find it necessary to particularize them here.

(b) Submissions Pertaining to the Merits of the Appeal

26. As previously indicated, FVCC appeals on all three (3) grounds of appeal available under section 112(1) of the *Act*; namely, the Director erred in law, the Director failed to observe the principles of natural justice in making the Determination and “new” evidence has become available that was not available at the time the Determination was being made. Attached to the Appeal Form of FVCC is a five (5) page written submission from Ms. Kikla and more than 400 pages of documents. I have reviewed all of the documents presented by FVCC in this appeal and do not find it necessary to set out the contents of each document for the reasons I provide in the “Analysis” section below.
27. As for the written submissions of Ms. Kikla, they set out the employment relationship between Ms. Khetarpal and FVCC, and largely dispute Ms. Khetarpal’s claims for regular wages, overtime, and statutory holiday pay,

compensation for length of service and vacation pay. Ms. Kikla claims that Ms. Khetarpal's claims are "false and without merit".

28. Ms. Kikla also states that the "Employment standards branch did not permit written submission" and "rendered a decision in [the] absence [of written submissions]". She wants the Tribunal to consider the "[e]vidence and submissions by FVCC" that she submitted in her email of October 7, 2015, after the Determination was made.
29. She goes on to explain that FVCC was absent at the Hearing "due to pressing hardships faced due to ongoing litigation with [Ms. Khetarpal]". She attaches a copy of a Notice of Civil Claim she and FVCC filed against Ms. Khetarpal and other parties on June 29, 2015, seeking various remedies for a variety of alleged torts committed by the defendants. She also attaches other pleading materials in the same legal action, and submits that it was "very challenging" for FVCC to attend at the Hearing because she, as FVCC's director, was in the Supreme Court on the same day "filing materials". She also states that she was as well scheduled to be in the Provincial Court on the same date as the Hearing. Therefore, she contends that a new hearing should be held to consider the evidence of FVCC.
30. Ms. Kikla also alleges, in passing, that the delegate was biased and "did not act as an independent adjudicator" in making the Determination, but is short, in these submissions, on providing any relevant details in support of this allegation.
31. With respect to the documents Ms. Kikla produces, other than the pleadings in the Court action referred to above, they include email correspondence between FVCC and Ms. Khetarpal and some of the documents that were previously requested by the delegate in the Demand.

RESPONSE OF THE DIRECTOR TO FVCC'S SUBMISSION DISPUTING THE COMPLETENESS OF THE RECORD

32. The Director submits that the Record is a complete collection of the documentary evidence that was before the adjudicator when the Determination was made on October, 6, 2015.
33. The Director also submits that the Tribunal should refuse to consider FVCC's submissions disputing the completeness of the Record because they were received on December 29, 2015, approximately five (5) days after the deadline for providing those submissions.
34. The Director further submits that the submissions of FVCC contain Schedules A through M which are emails dated after the completion of the Hearing on October 2, 2015, and the adjudicator was not in possession of these documents and did not consider them in arriving at the Determination and, therefore, they do not form part of the Record.
35. The Director contends that it has no obligation to disclose the complete Complaint Form when scheduling a mediation and/or a complaint hearing. Therefore, in this case, the Director contends it had no obligation to disclose to FVCC "the complainant's summary of her complaint found in the text box entitled '[D]etails of [Y]our [C]omplaint'". Notwithstanding the foregoing, the Director contends that the adjudicator did not rely on the Complaint Form in this case when making the Determination, and only relied on the oral testimony of Ms. Khetarpal at the Hearing and the documents she produced which were disclosed to FVCC in advance of the Hearing.

36. The Director further states that FVCC failed to attend at the Hearing and failed to comply with the Director's Demand. In these circumstances, the Director suggests that FVCC's objections to the completeness of the Record are groundless.

ANALYSIS

(a) *Completeness of the Record*

37. Section 112(5) of the *Act* provides:

- (5) On receiving a copy of the request under subsection (2)(b)... the director must provide the tribunal with the record that was before the director at the time the determination...was made, including any witness statement and document considered by the director.

38. In *Super Save Disposal Inc.* (BC EST # D100/04), the Tribunal explained that the contents of the record will vary depending on whether the complaint was the subject of an investigation or an oral complaint hearing. In the latter case, the Tribunal, in *Super Save*, at page 9, notes that:

...[T]he delegate does not conduct an independent factfinding investigation. Rather the delegate hears the parties (and any witnesses they might call), finds facts based on the evidence presented (which may involve resolving conflicts in the evidence), determines the governing legal principles and then issues a decision applying those principles to the relevant facts. In this latter procedure, the onus lies on the parties to gather evidence, prepare their positions and then present their case in a formal evidentiary hearing before a Director's delegate. Where there is an oral hearing, the delegate's role is limited to hearing the parties' evidence (in a manner that is consistent with the principles of natural justice) and then issuing a decision in accordance with the provisions of the *Act*.

...In my view, the contents of the 'record' will be affected by the nature of the adjudicative process that preceded the issuance of the determination. If the determination is issued after an oral hearing, the record might well be limited to the evidence presented by the parties at the oral hearing together with other relevant documents such as the original complaint. However, if the determination is issued after a delegate has conducted an independent factfinding investigation, there may be documents that neither party submitted to the Director's delegate but that nevertheless form part of the record since they were obtained by delegate [*sic*] during the investigation and considered prior to issuing the determination (for example, a third party witness statement).

39. The authority of *Super Save* was confirmed more than ten (10) years later in *The Director of Employment Standards* (BC EST # RD100/15), wherein the Tribunal addressed the matter of what constitutes the "record" in an appeal at paragraph 43 as follows:

Our findings may be summarized as follows:

- The delegate's disclosure obligations under section 77 and subsection 112(5) of the *Act* are separate and distinct obligations and different considerations apply in each case;
- The scope of the disclosure obligation under subsection 112(5) of the *Act* varies depending on whether the determination was issued following an oral complaint hearing or an investigation;
- Absent extraordinary circumstances, the delegate's notes taken during the course of an oral complaint hearing do not constitute a formal transcript of the hearing and are not required to be disclosed under subsection 112(5);

- Where a complainant's, or other witness's, evidence is submitted in the form of a written statement, that statement forms part of the subsection 112(5) record and, where evidence is taken from such individuals directly by the delegate during the course of an investigation, the delegate's notes setting out the individual's evidence form part of the record;
- *Super Save* is the governing Tribunal decision relating to the contents of the record.

40. In light of the considerations in *Super Save* and *The Director of Employment Standards* above, I am of the view that the notes taken by the adjudicator, or the delegate, during the course of the Hearing are not required to be disclosed under subsection 112(5) of the *Act*. Therefore the Record does not need to have contained the adjudicator's notes at the Hearing.
41. As for Ms. Kikla's argument that FVCC did not receive a complete Complaint as the delegate did not disclose that portion of the Complaint Form entitled "Details of Your Complaint" before the Hearing, I note, based on the Reasons, the delegate relied on the oral testimony of Ms. Khetarpal and the documents the latter relied upon at the Hearing when making the Determination. The documents Ms. Khetarpal relied upon at the Hearing were disclosed to FVCC well in advance of the Hearing and they are part of the Record disclosed by the Director in this appeal. While I do not agree with the Director's submission that the Director is not obliged to disclose the complete Complaint Form to the employer when scheduling a hearing in the matter, in this case, I do not find FVCC to have been prejudiced in any way by the delegate's non-disclosure of that portion of the Complaint entitled "Details of Your Complaint" to FVCC. I find, if anything, it was FVCC's failure to attend the Hearing (which I will discuss in more detail below), together with its lack of participation in the pre-Hearing stage, including failure to respond to the Demand, that potentially prejudiced FVCC in terms of the outcome in the Determination.
42. With respect to the documents Ms. Kikla attaches to FVCC's December 29, 2015, submissions, marked as Schedules A to M, I agree with the Director that these documents are not part of the Record, and cannot form part of the Record, as they were not before the adjudicator at the time the Determination was made. These documents were created after the Hearing was completed and after the Determination was made. The same is the case with the written submissions of Ms. Kikla and the documents she submitted after the Hearing and the Determination on October 7, 2015, at 3:34 a.m., via email.
43. In these circumstances, I find FVCC's objections to the completeness of the Record unpersuasive and lacking merit.

(b) Merits of the Appeal

44. An appeal is an error-correction process, with the burden in an appeal being on the appellant to persuade the Tribunal that there is an error in the Determination under one of the statutory grounds of appeal found in subsection 112(1) of the *Act*, which reads:

Appeal of director's determination

- 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.

45. In this case, while FVCC has framed its appeal on the error of law, failure by the Director to observe the principles of natural justice in making the Determination and “new evidence” grounds of appeal, the central question in the appeal is whether FVCC was afforded a reasonable opportunity to respond to the Complaint made by Ms. Khetarpal.
46. Having said this, in this case, after the completion of the Hearing, which FVCC failed to attend, Ms. Kikla contacted a delegate of the Director with a view to providing FVCC’s submissions and documents. When the delegate informed Ms. Kikla that the Hearing completed in the absence of FVCC and that a determination had been made with respect to the Complaint, Ms. Kikla insisted on presenting FVCC’s submissions to the adjudicator and did so, as indicated, on October 7, 2015 by way of an email to the delegate requesting him to forward same to the adjudicator. Since those submissions were not and could not have been considered by the adjudicator to reverse the Determination already made, FVCC appealed the Determination.
47. In her appeal submissions, as previously indicated, Ms. Kikla describes the employment relationship between Ms. Khetarpal and FVCC, and goes on to dispute Ms. Khetarpal’s claims for regular wages, overtime, statutory holiday pay, compensation for length of service and vacation pay. She submits that the Complaint contains claims that are “false and without merit”. She attaches in excess of 400 pages of documents, some of which contain other legal proceedings that FVCC was involved in against Ms. Khetarpal and others. Other documents she presents include documents that should have been produced in context of the Demand sent by the Director to FVCC and Ms. Kikla by registered mail on September 1, 2015.
48. I find that the fact pattern of this case has many similarities to, and falls under the precedent of *Re: Tri-West Tractor Ltd.* (BC EST # D268/96). In *Tri-West Tractor*, the delegate requested information from the employer to support its allegations against a former employee to justify her termination. The adjudicator found that the employer had produced no documented evidence to support its claim. The employer ignored verbal and written requests for information, and there was no evidence to validate its claim of cause for termination. In its appeal, the employer provided new information to support its termination. The adjudicator stated:
- This Tribunal will not allow appellants to ‘sit in the weeds’, failing or refusing to cooperate with the delegate in providing reasons for the termination of an employee and later filing appeals of the Determination when they disagree with it. An appeal under Section 112 of the *Act* is not a complete re-examination of the complaint. It is an appeal of a decision already made for the purpose of determining whether that decision was correct in the context of the facts and the statutory provisions and policies. The Tribunal will not necessarily foreclose any party to an appeal from bringing forward evidence in support of their case, but we will not allow the appeal procedure to be used to make the case that should have and could have been given to the delegate in the investigative process.
49. In this case, the delegate meticulously summarizes in the Reasons all communications and attempted communications with FVCC, including all opportunities FVCC was provided to respond to the Complaint, prior to the Hearing and at the Hearing, all of which are summarized in paragraph 18 of this decision. Not only did FVCC not respond to the Demand and not attend at a new mediation date which was scheduled to accommodate FVCC but it also failed to attend the Hearing and failed to ask for an adjournment of the Hearing. In the circumstances, I find the delegate afforded ample opportunity to FVCC to participate and present its evidence at all stages - the pre-Hearing and the Hearing. Therefore, it is not a breach of natural justice, for the delegate to have proceeded to determine the Complaint on the basis of the evidence tendered by Ms. Khetarpal only.
50. I also do not find there is any foundation in the submissions of Ms. Kikla for the error of law ground of appeal.

51. I also find that FVCC's challenge of the Determination on the basis of "new evidence" fails on the basis of *Tri-West Tractor Ltd.* It would be inconsistent with the stated purpose of the *Act* in section 2(d); namely, to provide fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*, to consider the evidence that FVCC now presents in the appeal. It is not only unfair, but it is inefficient for a party to fail to participate at the Hearing, including the pre-Hearing stages – mediation and production of employer records – and then seek to challenge the conclusions reached by making allegations of breach of natural justice, error of law and "new evidence". While the delegate may well have arrived at a different conclusion if all parties fully participated at the Hearing, that different conclusion does not demonstrate an error on the part of the delegate.
52. I also find it noteworthy that the delegate provided a written Notice of Complaint Hearing to FVCC which delineates expressly the consequences of failure to participate at the Hearing. The Notice of Complaint Hearing indicates the date, time and location of the Hearing, and goes on to state as follows:

The Branch Adjudicator may make a Determination based on information before them, **even if you choose not to participate at the hearing.**

...

1. Send the Branch **two hard copies or one electronic copy** of any documents you intend to rely on by Sept. 16, 2015 as per the following instructions:
 - a) List your documents using the attached *List of Documents* form. Include the title, a brief description and the total number of pages of each document.
- ...
2. Provide a list of people you intend to call as witnesses using the attached *List of Witnesses* form, with a brief summary of the relevant evidence those witnesses are expected to give.
3. Provide all documents required in the *Demand for Employer Records*, if one was issued to you.

It is your responsibility to ensure that any records or evidence you intend to rely on at the hearing are submitted to the Branch by Sept. 16, 2015 so the Branch has time to send them to the other party for their review prior to the hearing.

Adjournments

A request for an adjournment should normally be in writing, include reasons, and be delivered to the Branch at least seven days before the scheduled hearing date. However, a request for an adjournment may be made up to and including the date of the hearing and will be granted or refused on a case-by-case basis depending on the circumstances. The Adjudicator will make reasonable efforts to accommodate the parties.

53. If FVCC was unable to attend at the Hearing despite sufficient advance notice of it, the Notice of Complaint Hearing provided a mechanism for FVCC to apply for an adjournment of the Hearing. Ms. Kikla says that FVCC "missed" the Hearing "due to a genuine oversight as the director [Ms. Kikla] was in Supreme Court that day for filing materials" and that there was another conflicting court date in another court. If Ms. Kikla was double or triple booked for the date of the Hearing, she should have requested an adjournment on FVCC's behalf, but she did not do so, nor did she provide any of FVCC's materials in advance of the Hearing. I find FVCC's failure to ask for an adjournment is fatal to its appeal and particularly its allegation of a breach of natural justice. I also add that to accede to FVCC's request for a new hearing date in the circumstances would be inconsistent with section 2(d) of the *Act*.

54. Finally, I note that Ms. Kikla has made an allegation of bad faith and bias on the part of the adjudicator and other representatives of the Director who participated in the Complaint process at different stages; however, I do not find any or sufficient evidence in FVCC's submissions to support those allegations.
55. In the result, I am sufficiently satisfied that FVCC's appeal has no presumptive merit and has no prospect of succeeding. Therefore, I dismiss it.

ORDER

56. Pursuant to section 115 of the *Act*, I order the Determination, dated October 6, 2015, be confirmed in the amount of \$6,953.10, together whatever further interest has accrued under section 88 of the *Act* since the date of issuance.

Shafik Bhalloo
Member
Employment Standards Tribunal