Employment Standards TRIBUNAL

An appeal

- by -

Seann Parcker
("Parcker")

- 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

ADJUDICATOR: David B. Stevenson

FILE No.: 2003A/299

DATE OF DECISION: March 3, 2004

DECISION

SUBMISSIONS

Graeme Moore	on behalf of Seann Parcker
Gary Clarke	on behalf of Vancouver Career College Inc.
Diane Roberts	on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the *"Act"*) brought by Seann Parcker ("Parcker") of a Determination that was issued on October 28, 2003 by a delegate of the Director of Employment Standards (the "Director"). The Determination concluded the *Act* had not been contravened and, accordingly, Parcker was owed no wages by his former employer, Vancouver Career College Inc. ("the College").

Parcker contends the Director erred in law in reaching the conclusion that he was not entitled to be paid commission on tuition fees that were paid to the College after the termination of his employment and failed to observe principles of natural justice in making the Determination.

The Tribunal has decided an oral hearing is not necessary in order to decide this appeal.

ISSUE

The issues in this case are whether the Director erred in law in denying Parcker's claim for payment of commission on tuition fees paid after his termination and whether the Director failed to observe principles of natural justice in making the Determination.

THE FACTS

The facts of this case are not in dispute. Parcker was employed by the College as an Admissions Representative from December 18, 2000 to July 18, 2002, the latter date being the effective date of Parcker's voluntary resignation.

At all relevant times, Parker's employment was governed by a contract of employment which, among other things, set out provisions for remuneration:

> 2.0 REMUNERATION
>
> 2.1 In consideration of the Representative's undertaking and performance of the obligations contained in this Agreement, the College will pay the following:
>
> (a) Base Salary: The Representative will receive a draw against commissions in the amount of $3,750.00 per month (the "Monthly Draw"), payable in equal semi-monthly instalments.

(b) Commissions: The Representative will earn a monthly commission (the "Monthly Commission") equal to 7% of the total tuition fees (less any refunds, travel allowances, referral bonuses, discounts or scholarships) which are received by the College from students enrolled in the College by the Representative (the "Net Tuition Fees") minus the Monthly Draw, calculated as follows:

Net Tuition Fees	X	Applicable percentage (including vacation entitlement as required by the *Employment Standards Act)*	-	Monthly Draw	=	Monthly Commission

(c) For greater certainty, the Net Tuition Fees will not include any amounts received by the College from students as payment for books, materials or supplies.

(d) The Monthly Commission shall only be payable on tuition fees received prior to the termination of employment of the Representative or during the period of notice to which the Representative is entitled under the *Employment Standards Act*.

(e) The applicable percentage of total tuition fees to be paid as a Monthly Commission to the Representative will include payment of vacation entitlement pursuant to the *Employment Standards Act*.[1]

(f) Monthly Commissions referred to in Section 2.1(b) will be calculated and paid on a monthly basis.

(g) Upon termination of this Agreement, the College will pay the Representative all Monthly Commissions due to the Representative at that time. The Representative will no be entitled to any commissions in connection with tuition fees received after the date of termination of employment.

The Director interpreted the above provisions as requiring three conditions be met before a commission was payable to Parcker:

1. Parcker must enroll a student at the College;
2. The student must pay a tuition fee; and
3. Parcker must be employed by the College at the time the student's tuition payment is made.

The parties agreed that if outstanding commissions were owed to Parcker, that amount was $8,676.75 plus 4% annual vacation pay.

The Director considered the above provisions of the employment contract, the definition of wages in the *Act*, the Tribunal's decisions, *Shell Canada Products Limited*, BC EST #RD488/01 (Reconsideration of BC EST #D096/01) and *Kocis*, BC EST #D331/98 (Reconsideration of BC EST #D114/98) and the Director's policy on commission payments and found no contravention of the *Act* and no wages owing to Parcker.

The Determination also noted that the parties agreed that the provisions of the contract for payment of annual vacation pay contravened the *Act* and matters arising out of that issue were resolved during the complaint process.

[1] This provision was found to be in contravention of the *Act* and all matters relating to that contravention were resolved prior to the Determination.

ARGUMENTS

I shall address the arguments for each of the grounds of appeal sequentially.

Error of Law

The question raised by this ground of appeal is whether the Director erred in law in deciding the commissions on tuition fees sold by Parcker that were not received by the College until after the termination of his employment were not wages under the *Act*.

Parcker says the error of law arises from a failure on the part of the Director to consider or apply Sections 2 and 4 of the *Act*, a failure to give effect to the objectives and purposes of the *Act* as remedial legislation, a failure to consider the unequal bargaining position between Parcker and the College and the failure to consider and apply analogous Tribunal and Court decisions when considering the question.

Parcker argues the Director failed to give effect to the statutory purposes set out in paragraphs 2(a), (b) and (d). He says the effect of the Determination is to allow a contractual forfeiture of wages – a result prohibited by Section 4. He supports his argument by expressions from several Court and Tribunal decisions, including *Machtinger v. HOJ Industries Ltd.*, (1992) 91 D.L.R. (4th) 491 (S.C.C.), *Helping Hands v. Director of Employment Standards*, (1995) 131 D.L.R. (4th) 336 (B.C.C.A.) and *Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, that recognize the remedial nature of the *Act* and correspondingly endorse a large and liberal construction and application of its provisions. Parcker says the objectives of the *Act* are not met by a decision that results in an employee foregoing wages that have been earned but unpaid and, more specifically, Section 4 prohibits an agreement that attempts to accomplish that result.

Alternatively, Parcker argues the employment contract was unconscionable and should not be given effect. He says the employment contract includes all the elements of unconscionability: an inequality in bargaining arising out of the weaker party's ignorance, need or distress; the unconscionable use by the stronger party of its position of power over the weaker to achieve an advantage; and a resulting agreement that is substantially unfair to the weaker party. Parcker relies on the presumptive inequality between employers and employees in "bargaining" terms of employment, arguing that typically terms of employment are imposed and an employee never really has bargaining strength or a choice in what provisions will be included in the employment contract.

Finally, Parcker argues the Director ignored relevant decisions of the Tribunal, including *Halston Homes Limited*, BC EST #D527/00, *Annable*, BC EST #D342/98, *National Cheese Co.*, BC EST #D374/96 and *Fabrisol Holdings Ltd. operating as Ragfinder*, BC EST #D376/96, and of the Ontario Court of Appeal in *Greenberg v, Meffert et al*, (1985) 18 D.L.R. (4th) 548 and the New Brunswick Court of Appeal in *Hawkins v. Mack Maritime Distributors Ltd.*, (1970) 2 N.B.R. (2d) 427 which, cumulatively, recognize that a commission is earned when the work required to earn it is substantially done, that a commission is payable when it is earned and entitlement, once established, cannot be lost.

In reply, the College argues that this issue was correctly decided by the Director on a fair and proper reading of the employment contract considered in the context of relevant Tribunal jurisprudence, including *Shell Canada Products Limited*, *supra*, *Kocis*, *supra* and *McKay*, BC EST #D518/01, and the Director's policy as expressed in the Director's Interpretation Guideline Manual.

The College says that no question under Section 4 of the *Act* arises because the commissions claimed by Parcker were not earned and refers to following excerpt from *Shell Canada Products Limited, supra*:

> We also agree with the Director that the real issue in this case is whether the Results Pay was earned and, if it was not earned, that no issue arises about whether there was a contravention of the prohibition found in Section 4 of the *Act* against "contracting out" of the minimum statutory requirements.

The College says the Tribunal and Court decisions relied on by Parcker are distinguishable on their facts from this case.

The College objects to Parcker raising, for the first time, the argument that the contract of employment is unconscionable and should be set aside. The College says an appeal under Section 112 of the *Act* is not a re-examination of the complaint, but an appeal of the Determination to decide its correctness in the context of the facts and the statutory requirements and this new argument may not be raised at this time.

In any event, the College argues that the contract of employment does not meet the test for unconscionability, noting the absence of any evidence which would support a conclusion the employment contract was unconscionable.

The Director has also filed a submission on the appeal. Essentially, it mirrors the reply filed by the College: that the Determination was correct and properly grounded in the provisions of the *Act*. The Director argues that Parcker has incorrectly asserted the commissions he claims are owed to him were earned and, based on that error, mischaracterizes the effect of applying the relevant provisions of his employment contract as a "forfeiture" of wages.

In response to the matter of unconscionability, the Director submits the interpretation of an employment contract is a matter of law and she has no authority to impose, or interfere with, provisions in an employment contract that exceed the minimum requirements of the *Act*. Specifically, and in the context of this case, the Director says that apart from the authority to require compliance with the statutory minimums, she has no authority to impose on the employment contract conditions under which commissions are earned and payable.

In his response to the submissions made by the College and the Director, Parcker says the Director has exceeded her role on appeal and her reply submission should be set aside. Much of the response reiterates the arguments made in the appeal submission. Some of the response, however, introduces additional arguments that properly should have been included in the initial appeal submission and go beyond what is the proper scope for a reply. Had I considered any of the arguments significantly altered an analysis of this issue, I would have allowed, and considered, further submissions from the College and the Director.

Natural Justice

Parcker argues the complaint resolution system used by the Director in making the Determination fails to comply with principles of natural justice. This ground of appeal is predominantly an indictment of the "self help" procedure imposed by the Director on potential complainants. For reasons which do not need to be set out or analyzed in this decision, Parcker says the "self help" procedure is contrary to administrative fairness, to the *Act* and to its purposes and objectives.

In the above context, Parcker makes two more specific arguments. First, that the Director breached her statutory mandate in failing to inform Parcker that he had an entitlement to statutory holiday pay. Second, that the "adjudication" of his complaint failed to comply with principles of natural justice.

In respect of the first argument, Parcker says the Director is statutorily mandated to ensure employees receive all of the entitlements required by the *Act* and to advise persons of those entitlements, the Director failed to do this and, as a result, left Parcker unaware that the College had failed to comply with minimum requirements on statutory holiday pay.

In respect of the second argument, Parcker says he was "ambushed" at the "adjudication" hearing. He had no prior information or knowledge of the case the College might present. He say he was not aware until he appeared for the hearing that a lawyer was representing the College and had prepared a brief for the Director. Parcker was given approximately 15 minutes to read the brief and formulate a response to it. He was left "on his own" by the Director, and the adjudicating delegate, unable to match the expertise of the lawyer for the College on the legal issues or tap the expertise of the Director on elements of the *Act*.

Parcker also raises a concern that because of the practice of requiring adjudicating delegates to submit the Determination to another delegate for review before it may be issued to the parties, there is a legitimate concern that the Determination will be made or influenced by a delegate who did not hear the complaint. Finally, Parcker says allegations of actual, or a reasonable apprehension of, bias might be made because the delegate who mediates a complaint and the delegate who adjudicates a complaint may share information relating to the complaint or the parties. There is, however, no such allegation being made in this appeal.

The College objects to the part of the appeal based on natural justice grounds, arguing this part of the appeal was not filed within the period allowed for filing an appeal in Section 112(3) of the *Act*. The College also argues that new issues are being raised in this part of the appeal and should be rejected on that basis.

In reply to the substantive aspects of this ground of appeal, the College disagrees the "self help" procedure does not comply with principles of natural justice. The College says there is nothing in the purposes of the *Act* that suggest the Director must canvas all complaints to determine if the complainant has included all potential entitlements; that the efforts made by the Director, through the issuance of fact sheets, telephone assistance and on-line resources, satisfy any requirement the Director may have to advise employees of their rights under the *Act*. The College says to impose a broader obligation would be inconsistent with the purpose of the *Act* identified in Section 2(d), that complaint resolution procedures be fair and efficient. In any event, the College says any claim for statutory holiday pay is out of time.

As well, the College says there was no unfairness to Parcker in the "adjudication". Parcker himself set the parameters of the case that had to be decided in his complaint and was aware of the College's position through submissions that were made and through the mediation. The brief about which Parcker now complains consisted of submissions of law and was provided as a matter of courtesy and convenience. Parcker did not object to its introduction at the "adjudication".

The College says there is no evidence the Determination was influenced or made by a delegate who was not the adjudicating delegate nor is there an evidence of bias or a reasonable apprehension of bias.

The Director says the facts do not support Parcker's argument that the Director failed to comply with principles of natural justice in making the Determination. The Director says the facts show Parcker made proper use of the "self help" procedure and there is no evidence the "self help" procedure was so onerous as to effectively deny Parcker access to the complaint process or that he lacked the requisite skills to comprehend and utilize that procedure.

The Director says the facts also show Parcker was not "ambushed"; he knew the position being taken by the College in response to his wage claim and that the College's case rested on the terms of the employment contract. Lastly, the Director says the fact the College was represented by a lawyer is not a denial of natural justice.

In response, Parcker says the preliminary objections by the College should be dismissed. The Tribunal did not reject the submission on the natural justice ground of appeal and neither the College nor the Director have shown they were inconvenienced by his filing the submissions on the natural justice ground four days after the expiry of the appeal period. In response to the substantive aspects of this ground of appeal, Parcker reiterates, and in some respects expands upon, the arguments made in the initial appeal submissions. Additionally, Parcker says the provision in the employment contract requiring an employee to reimburse the College for the cost of business cards if the employee does not pass the probationary period contravenes the *Act*.

ANALYSIS

Error of Law

At the outset I note there is no dispute that Parcker was paid at least the minimum wage for all hours worked in each pay period. I also note this is not a case that can be characterized as the College making a thinly disguised attempt to frustrate Parcker's right to receive commissions. Nor is this a case where the employer has unlawfully terminated the Parcker in order to avoid paying a financial incentive that it would otherwise be contractually bound to pay. As indicated in *Shell Canada Products Limited*, *supra*:

> It is probable that in such circumstances, the Tribunal would be less inclined to give effect to the contractual relationship. In this case, however, Verticchio voluntarily resigned with actual, or at least, constructive knowledge that by doing so he would lose his entitlement to Results Pay for the current year.

As in the *Shell Canada Products Limited* case, Parcker voluntarily resigned his employment with the College. I agree with the Director that wrong information received from the Employment Standards Branch, while unfortunate, has no bearing upon his entitlement under either the employment contract or the *Act*.

Parcker's complaint to the Director was based on an assertion that he was not paid all commissions owed. Commissions are included in the definition wages in Section 1 of the *Act*, the applicable part of which reads:

> *"**wages**" includes*
>
> *(a) salaries, commissions or money, paid or payable by an employer to an employee for work, . . .*

Parcker argues there is nothing explicit in the employment contract about when commissions are earned. He correctly points out that wages are payable when they are earned and, in the context of commission salespersons, are presumptively earned when the work required to earn the commission is substantially completed. He refers to comments made by the Tribunal in *Fabrisol Holdings Ltd. operating as Ragfinder*, BC EST #D376/96, which in the context of commissioned sales persons stated the relationship between what is earned and what is payable in the following way:

> As a matter of law, the *Act* identifies wages in the context of work performed by an employee. Simply put, wages are earned when work is performed. The Act, with minor exceptions, requires wages to be paid relative to the time they are earned. Section 17 requires an employer to pay its employees at least semi monthly and within 8 days of the end of a pay period all wages earned by the employee in the pay period. The only exceptions to this requirement are banked overtime wages, banked statutory holiday pay and vacation pay. Commissions are not an exception to this statutory requirement. As a matter of law, this requirement would compel an employer to pay all commissions earned by employees in the pay period in which they are earned. . . .
>
> Also, Section 18 requires all wages owing to an employee to be paid within 48 hours if the employment is terminated by the employer, or within 6 days, if it is terminated by the employee. In this context, it is the practice of the Director to require all commissions to be paid if they have been earned, without regard to when they might otherwise be paid had the employment not been terminated. There is no exception to this practice.

While all of the above may be quite correct, it is not directly responsive to the Determination. There was no issue in the *Fabrisol* decision that the commissions were earned by the employee and met the definition of "wages" in the *Act*. In cases which have considered that issue in the context of commission salespersons, the Tribunal has recognized the presumptive relationship of work and earnings can be affected by the facts and the terms of the employment contract. In *Re Kocis*, the Tribunal stated:

> The Act does not define when a commission is earned. The relationship between employee and employer is one of contract, and the effect of the Act is to prescribe minimum conditions for contracts of employment. The interpretation of an employment contract is a question of law. The entitlement of an employee to a commission depends on the facts and the interpretation of the employment contract.

Director's interpretation of the employment contract was that commissions on tuition fees received after Parcker's termination were not payable. Effectively, that conclusion allows a finding that commissions on tuition fees received after Parcker's termination were not "wages" under the *Act*. I am not convinced the Director's interpretation of the employment contract was wrong. Nor am I convinced that the *Act* dictates a different conclusion. In *Wen-Di Interiors Ltd. and Wen-Di Interiors (B.C.) Ltd.*, BC EST #D481/99, the Tribunal stated:

> Under the *Act*, employers and employees are free to agree on *any* commission structure they choose so long as, in its operation, *the employee is paid at least the minimum wage for all hours worked in each pay period.* As previously observed, the *Act* permits employers to establish commission-based compensation systems. On the other hand, a commission-based system cannot be used as an instrument to pay employees less than the minimum wage for each hour worked in a given pay period. Neither section 16 nor 17 is contravened so long as employees are paid, for each pay period, not less than the minimum wage for each hour worked during the pay period. (*emphasis* included)

To reiterate, there is no question here that under the employment contract Parcker received at least minimum wage for each hour worked. The minimum requirements of the *Act* were satisfied in that respect. In *Shell Canada Products Limited, supra*, a reconsideration panel of the Tribunal said:

> The legislature has not seen fit to grant the Director a roving mandate to regulate private employment contracts that in all respects satisfy the minimum statutory requirements of the *Act*. The authority of the Director is limited to enforcing such agreements. The Tribunal has also accepted that parties are free to arrange their relationship as they choose provided the terms of a private employment contract do not contravene the requirements of the *Act* and are otherwise consistent with the objectives and purposes of the legislation,. We can find no prohibition in the *Act* against employers and employees agreeing, *simpliciter*, to conditions for the payment of incentive based remuneration. In fact, as the Director has noted, on one level such agreements are entirely consistent with the stated purposes of the *Act*, found in Section 2, to encourage open communication between employers and employees and to encourage continued employment.

Parcker argues, in the alternative, the Tribunal should conclude the employment contract is unconscionable and must be set aside. Even if I accepted it was appropriate to allow this argument to be raised as a matter of first instance, and assuming the Tribunal, or the Director, has jurisdiction to set aside employment contracts which do not offend the prohibition in Section 4, the success of such an argument would require evidence which is not present in this case. In the absence of such evidence, the test for unconscionability is not met and this argument must be dismissed.

Parcker says the Director ignored relevant and compelling Court and Tribunal decisions. With respect, I find none of the decisions referred to by Parcker to be inconsistent with the result in this case or compel any different result. *Greenberg* and *Hawkins* turned on the Courts' interpretation of the respective employment contracts, as did the Tribunal's decision *Halston Homes Limited* and *Annable*. The Tribunal's decision *National Cheese Company* addressed an issue under Section 21 of the *Act*. The comments from that case which are referred to by Parcker are unrelated to any issue arising in this appeal. Similarly, and as indicated above, the question being considered in *Fabrisol Holdings Ltd. operating as Ragfinder* was not the same as that raised in this case.

In sum, no error of law in the Determination has been shown and this ground of appeal is dismissed.

Natural Justice

The College has raised a preliminary objection to this ground of appeal, arguing it is out of time and should be summarily dismissed. Section 112(2) of the *Act* sets out the statutory requirements for appealing a Determination to the Tribunal:

> *112 (2) a person who wishes to appeal a determination to the tribunal under subsection (1) must, with the appeal period established under subsection (3)*
>
> *(a) deliver to the office of the tribunal*
>
> *(i) a written request specifying the grounds upon which the appeal is based under subsection (1), and*
>
> *(ii) payment of the appeal fee, if any, prescribed by regulation, and*
>
> *(b) deliver a copy of the request under paragraph (a)(i) to the director.*

The appeal request was delivered to the office of the Tribunal on November 14, 2003, well within the appeal period. The appeal indicated that a copy of the appeal request was being delivered to the Director. The Director has not indicated this was not done. The appeal request specified the grounds upon which the appeal was being sought. The statutory requirements for filing an appeal were met. The appeal request also indicated that submissions on the specified grounds of appeal would be delivered to the Tribunal by December 5, 2003, the final day of the appeal period. The submission on this ground of appeal was delivered to the Tribunal on December 9, 2003.

I fail to see the basis for the preliminary objection. It appears to be based on a perception that the requirement to specify the grounds upon which the appeal is based includes a requirement to file full submissions on the appeal. That perception is incorrect. While it might be argued that Parcker failed to comply with the Tribunal's Rules prescribing specific requirements for the content of appeals, such an argument raises different considerations which are not raised in this preliminary objection (see *D. Hall & Associates Ltd.*, BC EST #D354/99).

The preliminary objection fails.

The College also says Parcker should not be allowed to raise new issues and arguments for the first time on appeal. While that argument is valid when the issues and argument raised go to the "merits" of the appeal, such an argument has little weight or relevance when the "new" issues and arguments relate to a jurisdictional error by the Director when making the Determination. Raising an issue for the first time on appeal relating to an excess of jurisdiction is a very different matter from raising new issues and arguments "on the merits" for the first time on appeal. Such a distinction, which reinforces the fairness requirement in the *Act*, is consistent with basic administrative law principles. Procedural unfairness has described as a species of jurisdictional legal error: *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561; *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643.

Having concluded Parcker may raise and argue the natural justice issue, I nonetheless agree with the point made in the Director's response that a claim of denial of natural justice must be supported by the facts in each case.

I do not accept the "self help" procedure, *per se*, fails to comply with principles of natural justice. I do agree there are several aspects of the "self help" procedure that have the potential to offend principles of natural justice, but they are not shown to exist in this case. There is no evidence that the "self help" procedure was incomprehensible to Parcker or, from his perspective, was so onerous as to frustrate the purposes of the *Act*. On the face of the material on record, there is no suggestion that the Director had any concerns with the complaint or the steps taken by Parcker prior to filing the complaint.

Nor do the facts suggest there was any unfairness to Parcker arising from the Director's decision to mediate, and subsequently, adjudicate the complaint. There is no evidence that Parcker did not understand the nature and the basis of his claim for unpaid commissions or did not know the College's response to his claim. There is no denial of natural justice because one party to a complaint chooses to be represented during the complaint process by legal counsel while the other party does not.

Parcker says the Director erred in failing to advise him of his entitlement to statutory holiday pay. He says the Director is statutorily required to ensure employees receive the basic standards of compensation. I disagree that the *Act* places such a broadly stated statutory obligation on the Director. While one of purposes found in Section 2 of the *Act* is to ensure employees receive at least basic standards of

compensation and terms of employment, it is well established that such statements of legislative purpose neither create rights nor impose obligations. Part 10 of the *Act* contains the substantive provisions governing, among other things, the filing and investigation of complaints and the issuance of Determinations. Some of those provisions impose specific obligations on the Director, but none impose obligations on the Director such as those stated by Parcker.

As noted above, the response of the College is that this argument is an attempt by Parcker to raise a new issue on appeal and, in any event, the limitation period for claiming entitlement to statutory holiday pay has expired. The Director has filed no response to this argument.

I agree with the College that the question of statutory holiday pay entitlement is identified for the first time on appeal, but unlike other aspects of Parcker's appeal, the facts do not show the same concerns and considerations as those which affected the Tribunal's decisions in *Tri-West Tractors Ltd.*, BC EST #D268/96, *Kaiser Stables Ltd.*, BC EST #DO58/97 or *Syncon Investments Ltd. (operating George and Dragon Pub Style Restaurant)*, BC EST #D094/97. This is a case where both Parcker and the Director appear to have been legitimately unaware of a potential claim by Parcker for statutory holiday pay.

The College argues that a claim for statutory holiday pay is time barred. That argument has merit only if it can be concluded the statutory holiday issue was not included in the complaint filed by Parcker on December 31, 2002. There is no issue that complaint was filed within the period allowed by the *Act*. Section 74(1) of the *Act* states:

> *74 (1) An employee, former employee or other person may complain to the director that a person has contravened*
>
> *(a) a requirement of Parts 2 to 8 of this Act; or*
>
> *(b) a requirement of the regulations specified under section 127 (2) (1).*

In Section C of the complaint form, which asks a complainant to indicate what they believe is owed, Parcker identified only "other – commissions owed". Even though the complaint form was, on its face, limited to a claim for what was alleged to be unpaid commissions, the Determination indicates that an issue relating to annual vacation pay was also identified and resolved during the complaint process. Presumably, in addressing that matter the Director did not feel constrained by what Parcker had put on the complaint form and took a liberal view of the scope of the complaint. Such an approach would, of course, be consistent with the statutory purpose of ensuring employees receive at least basic standards of compensation and conditions of employment and with the principles expressed in *Helping Hands v. Director of Employment Standards*, (1995) 131 D.L.R. (4th) 336 (B.C.C.A.), *Machtinger v. HOJ Industries Ltd.*, (1992) 91 D.L.R. (4th) 491 (S.C.C.) and *Health Labour Relations Association of B.C. v. Prins*, (1982) 40 B.C.L.R. 313, 82 C.L.L.C. 14,215, 140 D.L.R. (3rd) 744.

The matter of statutory holiday pay entitlement should not be lost because of an innocent oversight by the parties involved. It is a basic entitlement under the *Act*. This will be referred back to the Director.

ORDER

Pursuant to Section 115 of the *Act*, I order the matter of Parcker's entitlement to statutory holiday pay be referred back to the Director.

David B. Stevenson
Adjudicator
Employment Standards Tribunal