



An appeal

- by -

Corinex Communications Corp.
("Corinex")

- 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.: 2009A/25

DATE OF DECISION: May 8, 2009

DECISION

SUBMISSIONS

Peter Sobotka	on behalf of Corinex Communications Corp.
Steven Chen	on his own behalf
Andres Barker	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), brought by Mr. Peter Sobotka (“Sobotka”), a Director and CEO of Corinex Communication Corp. (“Corinex”) of a Determination that was issued against Corinex on January 26, 2009 by a delegate of the Director of Employment Standards (the “Director”). The Determination found that Corinex contravened Section 17 of the *Act* in respect of the employment of Mr. Steven Chen (“Chen”) and ordered Corinex to pay Chen \$9,000.00 for unpaid wages, \$360.00 in vacation pay (S. 58) and \$383.94 in accrued interest on the said amounts pursuant to Section 88 of the *Act*.
2. The Director also imposed an administrative penalty of \$500.00 on Corinex under Section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”) for contravention of Section 17 of the *Act*.
3. The total amount of the Determination is \$10,243.94.
4. I note that Sobotka files the appeal of the Determination as paragraph 1 of the Appeal form shows Sobotka, and not Corinex, as the “person making the appeal”. I simply point this out because the Determination is not against Sobotka; it is against Corinex. Having said this, I note that Section 112 of the *Act* provides:

“... a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds”
5. The Section 112(5) “record” contains correspondence showing that the Director served the Determination on Sobotka, a Director of Corinex, at the registered and records office address of Corinex at 601 –905 West Pender Avenue, Vancouver. In my view, since the Director recognized Sobotka as a director of Corinex and there is no issue taken by the Director or Chen with Sobotka’s status as a Director of Corinex at the time of the Appeal of the Determination, Sobotka has standing under Section 112 “as a person served with a determination” to appeal it.
6. The sole ground of appeal delineated in the Appeal form is that the Director erred in law in making the Determination.
7. Sobotka is seeking the Tribunal to change or vary the Determination against Corinex “so that there is no payment from Corinex Communications Corp. to Steven Chen”.
8. Pursuant to Section 36 of the *Administrative Tribunals Act* (the “*ATA*”), which is incorporated into the *Act* (s. 103), and Rule 17 of the *Tribunals Rules of Practice and Procedure*, the Tribunal may hold any combination of written, electronic and oral hearings. In my view, this appeal can be adjudicated on the basis of the Section 112(5) “record”, the written submissions of the parties and the Reasons for the Determination.

ISSUE

9. Did the Director err in law in making the Determination by virtue of misinterpreting the employment agreement between Chen and Corinex and failing to consider the evidence of Corinex?

FACTS

10. Corinex operates a connectivity solutions company and employed Chen as Senior Design Developer from July 4, 2006 to March 20, 2008 at the rate of pay of \$3,500.00 per month.
11. On or about July 30, 2008, Chen filed a complaint under Section 74 of the *Act* against Corinex alleging that the latter contravened the *Act* by failing to pay him regular wages in the form of commissions or bonuses in the amount of \$24,500.00 and wages resulting from salary increases in the amount of \$20,000 for a total of \$44,500.00 (the “Complaint”).
12. The delegate of the Director conducted a hearing of the Complaint on December 18, 2008 (the “Hearing”). Both Chen, on his own behalf, and Sobotka, on behalf of Corinex, attended the Hearing.
13. At the Hearing, Chen put into evidence the employment agreement between himself and Corinex dated June 19, 2006 (the “Agreement”).
14. The relevant parts of the Agreement are contained in paragraphs 1 to 3 inclusive of the Agreement and I propose to set them out verbatim below:
 1. Terms and conditions of your employment engagement are as follows:
 - You will be working in a position of hardware developer.
 2. Scope of Work
 - Design products based on AnyWire technology (HPNA, UPA, HomePlug, Panasonic and Texas Instruments).
 - Coordinate development and manufacturing between European team and factories in China,
 - Focus on cost of reduction and cost optimized products
 - Introduce new innovative ideas regarding new products and improved feature of old products.
 - Support test of technologies developed by Corinex with customers in the field, provide trouble shooting – report requested enhancements and design troubleshooting.
 - Communicate with third parties Corinex manufacturing and R&D needs
 - Cooperate with other design engineers in Corinex R&D projects
 - Travel in the case that product is introduced for manufacturing in China factory
 - Travel if it is needed to obtain satisfactory designs and products

3. Financial Compensation

Corinex Communication Corp. will pay to you monthly salary 3500 CAD per month until bellow [sic] mentioned milestones will be reached.

In the month following month when *cumulative revenue of Corinex Communications Corp.* reached 0,8 [sic] mil USD your salary will be 4000 CAD per month. [Emphasis added]

In the month following month when *cumulative revenue of Corinex Communications* reached 1 mil USD your salary will be 4500 CAD per month. [Emphasis added]

In the month following month when *cumulative revenue of Corinex Communications* reached 1.2 mil USD your salary will be 5000 CAD per month. [Emphasis added]

Note: Revenue of Corinex Communications in 2005 was 4.8 mil USD and it grew 300% over year 2004.

Revenue for this contract *mean all payments for product actually received* by the company. [Emphasis added]

In addition to salary during the time when your salary will be lower than 4000 CAD you will be entitled to the following bonuses:

- For each *product of your own design* which we will manufacture you will get 20 cents a piece but not more than 150,000 USD bonus per product in total. [Emphasis added]

You will be entitled to following bonuses without salary limitation:

- For *each own successful design* manufactured in at least 100 units you will get 5000 CAD bonus. [Emphasis added]
- For shared design this reward will be splited [sic] among participants.

The decision about extent of your involvement in design of particular product is with company and you agree with it. [sic]

15. As Chen's claim for unpaid commissions was unsuccessful in the Determination and since this is only Corinex's appeal of the Determination against it pertaining to Chen's claim for wages resulting from salary increases, I will not make any reference to the evidence adduced at the Hearing pertaining to Chen's claim for commissions except to the extent that it is relevant to consider the issue on appeal, namely, the successful claim of Chen for wages resulting from salary increases.

16. With respect to his claim for salary increases, Chen submitted at the Hearing that based on the terms of the Agreement, he is owed additional salary from January to May 2007 based on Corinex's having attained the revenue milestones set out in paragraph 3 of the Agreement. In particular, Chen stated that he was owed \$20,000 in salary increases as follows:

17.

Period	Contract Amount	Amount Paid	Difference Monthly	Total
January 2007 to May 2007	4,500	3,500	1,000 per month	\$5,000

18.

Period	Contract Amount	Amount Paid	Difference Monthly	Total
June 2007 to March 2008	5,000	3,500	1,500 per month	\$15,000

19. In support of his claim, Chen adduced an article published by an accounting firm, Deloitte Touche, naming Corinex as one of the fastest growing technology companies in Canada. The article described Corinex as follows:

“Corinex Communications Corp. is ranked among the Deloitte Technology Fast 50, a ranking of the 50 fastest growing companies in Canada, based on the percentage of revenue growth over five years. Corinex’s increase in revenues of 3,595 percent from \$1.227 million to \$45.410 million from 2003 to 2007 resulted in a sixth ranking...

... Corinex’s CEO Peter Sobotka, credits the Corinex team and increased awareness of Powerline networking with the company’s 3,595 percent revenue growth. Sobotka said, “Corinex is proud to be recognized as one of the elite companies in the Deloitte Technology Fast 50 for Canada. This honor serves not only as recognition for the company and all employees worldwide, but also for the entire Powerline industry ...

... To qualify for the Deloitte Technology Fast 50 ranking, companies must have been in business for at least five years, have revenues of at least \$5 million, be headquartered in Canada, own proprietary technology, and conducted research and development activities in Canada ...”

20. According to Chen, based on a simple definition of revenue since the relevant milestones for salary increases in paragraph 3 of the Agreement were met by Corinex, he should have received increases to his \$3,500 per month salary of \$1,000 and \$1,500 for the periods January 2007 to May 2007, and June 2007 to March 2008, respectively.

21. Sobotka, on behalf of Corinex, testified that Chen was not owed any salary increases because Corinex did not have the required revenues to trigger the milestones for salary increases in the Agreement. More specifically, Sobotka argued that the revenue of Corinex is not as it appears because Corinex acquired Corinex Group s.a. (“Corinex Group”) in Slovakia and that transaction affected the reporting of revenues by Corinex. More specifically that transaction increased the consolidated revenues reported in the financial documents of Corinex.

22. Sobotka also argued that revenues for the purposes of the salary increase calculation in the Agreement meant revenues generated for the products that Chen designed and worked on; not any other products for which Corinex received payments.

23. The delegate of the Director, in finding in favour of Chen with respect to the latter's claim for salary increases, noted:

The employment contract states clearly that Mr. Chen would be paid \$3,500 per month until the revenue milestones are reached. There are no other requirements set out in the contract, only that once a certain revenue milestone is reached, Mr. Chen's compensation would increase.

...

Mr. Sobotka submitted spreadsheets of company revenues. The spreadsheets indicate that the total for 2007 was \$5,450,095 and \$10,288,352 for 2008. As such, the condition precedent for salary increases as set out in the employment contract was met. Therefore, I find that Mr. Chen is entitled to regular wages calculated as follows:

Salary paid = 3,500
Salary owing = 5,000

6 months x \$1,500 difference per month = \$9,000.00

24. Based on the above finding, the delegate concluded that Corinex did not comply with Section 17 of the *Act* for failure to pay Chen the salary increases earned by him at least semi-monthly and within eight days after the end of the pay period. The delegate, as a result, ordered Corinex to pay Chen \$9,000 in wages, \$360.00 in vacation pay and \$383.94 in accrued interest on both these amounts.

SUBMISSIONS OF CORINEX

25. Sobotka, in his written submissions on behalf of Corinex, argues that the Director failed to consider "other requirements for revenue count" when considering paragraph 3 of the Agreement which sets out the preconditions to Chen's salary increases. According to Sobotka, the reference to revenue milestones of Corinex in paragraph 3 refers to revenue realized by Corinex from "products designed and produced by the designer", namely, Chen, in accordance with his "scope of work" in the Agreement.
26. Sobotka further submits that the Agreement:
- ...uses the precise wording 'cumulative' to reflect the total of the mixture of products designed by the designer, not the 'consolidated' revenue of [Corinex]. The meaning of 'consolidated' is different from that of 'cumulative'. There is no wording in the [Agreement] using 'consolidated' to mean consolidation of a revenue of different businesses under the [Agreement].
27. Sobotka further submits that the reference in paragraph 3 of the Agreement to monthly revenue should not be mistaken for annual revenue as the annual revenue of Corinex in 2005, the year prior to Chen entering into the Agreement was at \$4.6 million and therefore in excess of all the limits in the milestones for salary increases set out in the Agreement.
28. Furthermore, Sobotka states that after the acquisition by Corinex of Corinex Group, Corinex's consolidated revenue increased significantly allowing Deloitte Touche to list it on its Technology Fast 50 rankings. According to Sobotka, since the consolidated revenue of Corinex is not related to the growth of Corinex from "revenue received from products developed by Steven Chen under his [Agreement] with Corinex ...", that revenue should not be considered to qualify Chen for salary increases under the Agreement. Sobotka also points out that Corinex Group was also not owned by Corinex at the time the Agreement was executed

or entered by Corinex and Chen and therefore the reference to revenue milestones in paragraph 3 of the Agreement can only be referring to product Chen was supposed to develop under the Agreement.

29. Sobotka attached to the appeal submissions the consolidated financial statements of Corinex for the years 2005 to 2007, inclusive as well as income statements and balance sheets of Corinex without consolidation of any revenue arising from Corinex Group for the period 2007 and 2008. Without consolidation of the revenue from Corinex Group, Corinex's revenue is shown as USD\$5.698 million for 2007 and USD\$8.254 million in 2008. Sobotka also provides documentation detailing monthly revenue of Corinex to support his assertion that revenue of Corinex did not exceed \$800,000 from products designed by Chen.

SUBMISSIONS OF CHEN

30. Chen submits that his claim for salary increases is correctly decided in the Determination and he accepts the Determination as a whole despite the adverse finding with respect to his claim for bonus or commission wages.
31. Chen goes on to challenge Sobotka's interpretation of the Agreement as concerns the preconditions to salary increases. While I have read and considered Chen's submissions in their entirety, I do not find it necessary or helpful to delineate all of them here except to state, in a general way, that he advocates a plain reading of the Agreement using the English dictionary to define those words in the Agreement that are in dispute between the parties. For example, he argues that a plain reading of the words "cumulative revenue" of Corinex includes all payments received by Corinex without exception.
32. I also do not propose to set out Chen's submissions on his failed claim for bonus or commission wages as he did not file his own appeal of that failed claim and furthermore, he has indicated that he is satisfied with the Determination despite that failed claim.

REPLY SUBMISSIONS OF CORINEX ADDRESSING CHEN'S SUBMISSIONS

33. I have reviewed Corinex's reply submissions submitted by Sobotka on April 21, 2009, but do not propose to set them out here, as I do not find them particularly helpful or relevant in many instances. I note that much of Corinex's reply submissions is re-argument of submissions made earlier at the Hearing and in the earlier written submissions filed with its Appeal.

SUBMISSIONS OF THE DIRECTOR

34. As a preliminary matter, the Director submits that Corinex, through Sobotka, has submitted new evidence that would not qualify under the four-fold conditions set out in the Tribunal's decision in *Merilus Technologies Inc*, B.C. EST #D131/03. In particular, the Director notes that the new evidence is in the form of Corinex's consolidated financial statements for the years 2005 to 2007, inclusive, Corinex's income statements and balance sheets, and Corinex's detailed monthly revenue statements. With the exception of one – the 2007 consolidated financial statements dated February 4, 2009 – the rest of the documents appear to have existed during the adjudication process and Corinex has not explained why they were not presented to the delegate then.
35. However, with respect to Corinex's 2007 consolidated financial statement, the Director takes no position on its admissibility and notes that the said document shows Corinex's 2007 revenues for sale of goods in the amount of \$45,615,885.

36. With respect to the “error of law” ground of appeal of Corinex, the Director states that the penultimate issue in Corinex’s appeal is “whether the delegate engaged in a reasonable interpretation of the employment contract”.

37. According to the Director, Corinex is asking the Tribunal:

... to adopt a version of the contract which is not indicative of a clear reading and which seeks to disentitle Mr. Chen to wages found to be owing. If Corinex did intend for the contract to be interpreted in the manner they claim, the responsibility was on them to draft it in such a way that any party called upon to interpret the contract would be able to ascertain its clear meaning.

Corinex asserts in their submissions that the term products within Section 3 of the contract means products based on AnyWire technology, as discussed in Section 2 of the contract. However, Corinex also argues the word is specific to products developed by Mr. Chen. In other words, Mr. Chen had to develop products, and those products he developed had to reach sales revenues of at least \$800,000 within a month before an increase in salary would be realized.

The statement regarding bonuses following the sentence where revenue is defined is relevant to the analysis of the contract. In this section it is stated that during periods where Mr. Chen’s salary is lower than \$4,000 per month, Mr. Chen is entitled to bonuses for each product of his own design in the amount of twenty cents apiece up to \$150,000 USD per product. Following this clause it is stated that without limitation to his salary Mr. Chen will receive a \$5,000 bonus for each of his ‘own successful design’ manufactured in quantities of at least 100 units. In two separate areas within the ‘Financial Compensation’ portion of Mr. Chen’s contract Corinex made reference to bonuses for the sale of products specifically designed by Mr. Chen. However, when discussing how revenues were to be defined for the purposes of the contract Corinex chose to omit this reference. This would suggest the Delegate was not unreasonable in interpreting revenue to mean revenues from products in general as opposed to those products designed by Mr. Chen.

38. The Director further submits that it was not inappropriate for the delegate to adopt a plain reading of the contract and to reject Corinex’s argument that the definition of “product” meant only that which is designed by Chen. Further, the delegate goes on to state:

Corinex argues the products referred to in the contract were not sold by the acquired company [Corinex Group] and furthermore the acquired company [Corinex Group] exists in another jurisdiction. Corinex has produced spreadsheets demonstrating that their revenues in 2007 independent of the acquired company was \$5.698 million and in 2008 was \$8.254 million. However, they have also produced for this appeal their consolidated financial statements for the year 2007 which demonstrates their sales revenues from goods sold was \$45,615,885. If the word product is accepted in a normal sense as being any product sold by the company, it is reasonable that this would fall within the meaning of ‘goods’ within the financial statements. Even if the Delegate misinterpreted the contract by not assessing revenues on a monthly basis, it is not unreasonable that with revenues in excess of \$45.5 million, Corinex would have made the revenue milestones to trigger the salary increases on a monthly basis. It is also relevant that Corinex has not produced their full revenues for the months in 2008 that are applicable to Mr. Chen’s claim, and as such if ‘revenues from product’ is interpreted as being revenues from any products sold, Corinex has failed to demonstrate that there has been an error for any calculations relevant to 2008. One final point worth mentioning regarding the possible constructions of the contract is that the contract could also be interpreted as meaning that once the revenues for Corinex on the year reach \$800,000, Mr. Chen would be entitled to a salary of at least \$4,000 per month for the remainder of that year, after which it would revert back to \$3,500 per month until revenue milestones were once again reached. This point is only raised to assert that the contrary to Corinex’s assertions, the interpretation of the contract is not clear.

Also, following the statements expressing the raise in salary relevant to cumulative revenue, Corinex follows with a statement expressing that Corinex's revenue in 2005 was \$4.8 million. Corinex provided this statement of their revenue, and then followed it by stating that revenue for the contract means 'all payment for product.' Had Corinex meant all payments for products developed by Steven Chen, it stands in strange contrast to the immediately preceding sentence where revenue is defined in the most general of terms. If the contract was drafted without foresight to how future business activities would affect Mr. Chen's entitlement, this should not be laid at the feet of Mr. Chen.

39. The Director further submits that in light of Chen's position as Senior Design Developer with a salary of \$42,000 per year, there is nothing unrealistic about a contract that provides him an opportunity to earn up to \$60,000 more based on the productivity of the company. This point is made in support of the Director's assertion that the interpretation of the Agreement by the delegate does not result in an unrealistic or unreasonable result.
40. The Director concludes that the delegate's analysis and interpretation of the Agreement is not unreasonable and Corinex has not demonstrated an error in law in the Determination and therefore Corinex's appeal should be rejected.

ANALYSIS

41. As indicated earlier, Corinex's appeal is based on the "error of law" ground of appeal in Subsection 112(1)(a) of the *Act*. However, while Corinex has not raised the "new evidence" ground of appeal in Subsection 112(1)(c) of the *Act*, Sobotka, in his appeal submissions on behalf of Corinex, submitted evidence that was not before the delegate during the adjudication process. In particular, Sobotka submitted Corinex's consolidated financial statements for the years 2005 through 2007, income statements and balance sheets and detailed monthly revenue statements. With the exception of the 2007 consolidated financial statements of Corinex dated February 4, 2009, the remainder of the documents referred to appear to have existed during the adjudication process and prior to the Determination.
42. While the Director takes no position on the admissibility of the 2007 consolidated financial statements of Corinex and Chen has made no submissions on the matter, I am required to assess whether or not the consolidated financial statements of Corinex for the years 2005 to 2006 inclusive, income statements and balance sheets and detailed monthly revenue statements constituted "new evidence" within the meaning of Subsection 112(1)(c) of the *Act*.
43. In *Re: Merilus Technologies Inc., supra*, the Tribunal set out four conjunctive requirements that must be met before new evidence will be considered. The appellant must establish that:
- The evidence could not, with the exercise of due diligence, have been discovered and presented to the Director during the investigation or adjudication of the complaint and prior to the Determination being made;
 - The evidence must be relevant to a material issue arising from the complaint;
 - The evidence must be credible in the sense that it is reasonably capable of belief; and
 - The evidence must have high potential probative value in the sense that, if believed, it could on its own or when considered with other evidence, have led the Director to a different conclusion on the material issue.

44. It should be noted that the above-mentioned requirements for determining whether evidence qualifies as “new evidence” are conjunctive requirements and not alternative requirements.
45. In this case, Corinex has not provided any explanation why the consolidated financial statements for the years 2005 to 2006 inclusive, the income statements and balance sheets, and the detailed monthly revenue statements were not produced during the adjudication process. Therefore, in my view, Corinex fails with respect to the first of the conjunctive requirements in *Re: Merilus* and I am not required to consider the balance of the requirements delineated in that case. In my view, therefore, the consolidated financial statements for the years 2005 to 2006, the income statements and balance sheets and the detailed monthly revenue statements do not constitute new evidence and I need not consider them.
46. With respect to Corinex’s consolidated financial statement for 2007, since the Director is taking no position with respect to its admissibility and Chen has taken no position whatsoever on the matter, I will consider the document as it appears to have been created subsequent to the Determination and has some relevance to a material issue in this dispute.
47. With respect to the error of law ground of appeal, Corinex states that the delegate incorrectly interpreted the Agreement resulting in her award of salary increases to Chen. More specifically, Corinex argues that the revenue milestones contained in paragraph 3 of the Agreement do not refer to revenues realized from Corinex’s products in general but only to products designed by Chen within his “scope of work” described in section 2 of the Agreement. Corinex further contends that where the Agreement (in paragraph 3) refers to salary increases “in the following month when cumulative revenue of Corinex Communications reache[s]” a particular milestone, only those revenues realized from sales of products designed by Chen in a specific month should be considered and not the annual revenues as the delegate considered.
48. Corinex also alleges that the revenue milestones in paragraph 3 of the Agreement should not include revenues of Corinex by virtue of its acquisition of Corinex Group in 2006, as the Agreement does not call for consolidated revenues to be considered.
49. I have read the entire Agreement and particularly paragraph 3 of the Agreement which contains both the criteria for salary increases and salary bonuses or commissions. The actual wording in the Agreement for determination of salary increases is “cumulative revenue of Corinex” without any limitation. Further, in the same paragraph 3 of The Agreement, the word “revenue” is exclusively defined to “mean all payments for product actually received by the company”. The definition of revenue is not limited to only product specifically designed by Chen.
50. In contrast, in the same paragraph in the Agreement, paragraph 3, in the context of Chen’s entitlement to bonuses or commissions, the Agreement specifically makes reference to bonuses or commissions Chen will receive “for each product [of his] own design which [Corinex] will manufacture.” In my view, it therefore stands to reason that if Corinex intended to limit the salary increase milestones in paragraph 3 of the Agreement to revenues realized from product designed by Chen only, then it should have done so explicitly as it did in the case of the bonus or commission payments later in the same paragraph.
51. While I do not find any ambiguity in the language of the Agreement concerning Chen’s entitlement to salary increases, if I am wrong in this conclusion and the interpretation contended by Corinex is a further plausible second interpretation suggesting ambiguity in the Agreement then this would give rise to the *contra proferentem* principle. Since Corinex is the author of the Agreement, the *contra proferentem* rule applies in favour of Chen [*Rittel v. Imprimeries Quebecor Inc.* (1994), 94 B.C.L.R. (2d) 12 at 21 (B.C.C.A.), a decision of the British Columbia Court of Appeal, leave to appeal to the Supreme Court of Canada denied].

52. Therefore, I find that “cumulative revenue” of Corinex in paragraph 3 of the Agreement should include all revenues of Corinex however derived and without limitation.
53. With respect to Corinex’s contention that where the contract refers to salary increases following months where cumulative revenues reach the specified milestone amount, only those revenues made in a specific month should be considered and not the annual revenues (which is what the delegate did), I do not find that the delegate’s interpretation to be unreasonable, implausible or wrong. I think, at best, Corinex may be able to argue that there is ambiguity in the Agreement that is capable of two interpretations. In the latter case, as previously indicated, the agreement was drafted by Corinex and therefore the *contra proferentem* doctrine would apply and the interpretation least favourable to the drafter of the Agreement is to be applied. Therefore, I reject Corinex’s latter argument to vary or cancel the Determination.
54. I also note, notwithstanding the issue of the admissibility of the financial information produced for the first time by Corinex in this Appeal, Corinex’s spreadsheets indicate revenues in 2007 and 2008 (independent of the revenues of Corinex Group) of \$5.698 million dollars and \$8.254 million dollars respectively. In the case of the consolidated financial statement of Corinex for the year 2007, it shows Corinex’s revenues at \$45,615,885. It would appear from these revenues, whether or not they are consolidated and include the revenues from Corinex Group, Chen would qualify for the salary increases in paragraph 3 of the Agreement.
55. I also agree with the Director that even if the delegate misinterpreted the Agreement in assessing Corinex’s revenues on an annual as opposed to a monthly basis in calculating Chen’s salary increases, “it is not unreasonable that with revenues in excess of \$45.5 million, Corinex would have made the revenue milestones to trigger the salary increases on a monthly basis”.
56. Accordingly, I dismiss Corinex’s appeal of the Determination.

ORDER

The appeal is dismissed and the Determination dated January 26, 2009, is confirmed.

Shafik Bhalloo
Member
Employment Standards Tribunal