



An appeal

- by -

Leslie Johnson

- 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:** Sheldon Seigel

**FILE No.:** 2008A/27

**DATE OF DECISION:** May 28, 2008

## DECISION

### SUBMISSIONS

Leslie Johnson	on his own behalf
Joe Le Blanc	on behalf of the Director

### OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act (Act)* brought by Mr. Johnson, of a Determination that was issued on February 1, 2008 by a delegate of the Director of Employment Standards (Director). The Determination found that Mr. Johnson was an independent contractor, not an employee, and the Employment Standards Act did not apply.
2. Mr. Johnson submits that the Director erred in law and/or failed to observe the principles of natural justice in making the Determination.
3. An oral hearing was not requested. This appeal was determined based on the written submissions received from the parties.
4. Mr. Johnson completed the standard form of appeal and annexed two typed pages of explanation of his position.
5. Mr. Johnson made additional submissions by facsimile to the Tribunal which were received on May 13, 2008. These documents include a two page letter authored by Mr. Johnson and photocopies of a business license, an addressed envelope, and what appears to be a flyer advertising massage services.

### ISSUES

6. The issues in this appeal are:
  1. Did the Director err in law?
  2. Did the Director or fail to observe the principles of natural justice in making the Determination?

### ANALYSIS

7. The appeal discloses no specific arguments that address error of law or issues of natural justice with respect to the Determination.
8. In its best interpretation, Mr. Johnson's appeal is simply a re-arguing of the central issue of the Determination; whether or not Mr. Johnson was an employee or an independent contractor.

9. A careful review of the Determination indicates that the Director conducted an investigation and an oral hearing. Mr Johnson appeared at the hearing, provided testimony and witnesses, and cross examined the witnesses of the other party.
10. An appeal under this section of the Act is not a *trial de novo* and a party is not entitled to a re-hearing of the evidence simply because he was unsuccessful in the first instance.
11. There is no evidence of procedural or substantive error on the face of the Determination, and Mr. Johnson has not provided any argument that was ostensibly unavailable at the initial hearing.
12. The delegate of the Director had the opportunity to hear witnesses and arguments in person, and was able to utilize that opportunity to make findings based on the best evidence available. It would be inappropriate in this circumstance to disturb his findings.
13. Finally, I reviewed the late submissions sent by Mr. Johnson including the photocopied documents and the two page letter dated “May 2008” and find that they provide no relevant new information, and no impact on the Determination.
14. I find no evidence that the delegate of the Director erred in law or failed to observe the principles of natural justice in making the Determination.
15. The Appeal fails on all grounds.

## **ORDER**

16. Pursuant to section 115 of the Act, I confirm the Determination.

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**Sheldon Seigel**  
**Member**  
**Employment Standards Tribunal**