

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act*

- by -

Arthur Y. Thornhill, Director / Officer  
Cheryl-Ann Schuetz, Director / Officer  
Deborah E. Lorenz, Director / Officer  
and  
Comprehensive Credit Systems (B.C.) Ltd.  
(" Comprehensive ")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 96/119

**DATE OF DECISION:** May 15, 1996

## DECISION

### OVERVIEW

This is an appeal by Comprehensive and the named directors / officers pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against Determinations No. DDET 000082, DDET 000084, DDET 000085 and CDET 000905 issued by the Director of Employment Standards (“Director”) on January 26, 1996. In this appeal Comprehensive claims that no compensation for length of service is owed to Wendy L. McColm (“McColm”).

Consideration of this appeal falls under the transitional provisions of the *Act*. Section 128 (3) of the *Act* states:

If, before the repeal of the former Act, no decision was made by the director, an authorized representative of the director or an officer on a complaint made under that Act, the complaint is to be treated for all purposes, including section 80 of this *Act*, as a complaint under this *Act*.

I have completed my review of the written submissions made by Comprehensive and the information provided by the Director.

### FACTS

Comprehensive states that McColm was employed as a receptionist from September 22, 1994 to March 31, 1995.

There is no dispute that Arthur Y. Thornhill (DDET 000082), Cheryl-Ann Schuetz (DDET 000084) and Deborah E. Lorenz (DDET 000085) were directors / officers of Comprehensive at all material times with respect to this matter.

There is no dispute that McColm was given verbal notice of her possible lay-off.

The Director investigated McColm’s complaint and, subsequently, issued determinations against Comprehensive and its 3 directors / officers.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the employer’s liability to pay compensation for length of service has been discharged under Section 63(3) of the *Act*. That is, has Comprehensive demonstrated, on the balance of probabilities, that McColm was given written notice of termination.

## ARGUMENTS

Comprehensive argues that:

- McColm was given verbal notice of her possible lay-off one month prior to her actual lay-off;
- McColm was given written notice of termination prior two weeks prior to her actual lay-off;
- At the time of the verbal and written notice to McColm, she had not completed 6 months of employment .

The Director contends that:

- the verbal notice given by Comprehensive was with respect to a “possible lay-off” and no verbal notice of a definite lay-off was given;
- Comprehensive did not provide any written notice of termination as required by the provisions of Section 63 of the *Act*;
- in the absence of written notice, McColm is entitled to 2 weeks notice or compensation for length of service, as she was terminated under the provisions of the former *Act*.

## ANALYSIS

Section 63 of the *Act* provides that an employer becomes liable to pay an employee compensation for length of service. The liability is deemed to be discharged if the employee is given written notice of termination equal to the number of weeks of compensation which would otherwise be owed.

With respect to Comprehensive’s argument that McColm had not achieved the 6 months threshold at the time that verbal notice was given, it must be understood that it is the length of service of the employee at the time of termination, not at the time the notice was provided that is the governing factor.

In any event, the *Act* requires that written notice be provided and the burden of proving that written notice of termination has been provided rests with Comprehensive. Comprehensive has not met that burden in that they have not submitted any documentary evidence to prove that written notice of termination was provided to McColm. In the absence of such proof, I must conclude that no written notice was provided to McColm.

For the above reasons, I conclude that the liability of Comprehensive pursuant to section 63 of the *Act* has not been discharged, therefore, McColm is owed 2 weeks compensation for length of service.

## ORDER

Pursuant to Section 115 of *Act*, I order that Determinations No. DDET 000082, DDET 000084, DDET 000085 and CDET 000905 be confirmed in the amount of \$530.77.

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**

May 15, 1996  
**Date**

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