



An appeal

- by -

More Marine Ltd. (“More”),  
More Management Ltd. (“More Management”)  
and Morecorp Holdings Ltd. (“Morecorp”)

- 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

**TRIBUNAL MEMBER:** Shafik Bhalloo

**FILE No:** 2008A/62

**DATE OF DECISION:** August 15, 2008

## DECISION

### OVERVIEW

1. This is an appeal by More Marine Ltd. (“More Marine”), More Management Ltd. (“More Management”), and Morecorp Holdings Ltd. (“Morecorp”) (collectively referred to as the “More Group”) under Section 112 of the *Employment Standards Act* (the “Act”) against a Determination of the Director of Employment Standards (the “Director”) issued May 7, 2008.
2. The Determination pertains to two employees and the Director has issued two separate Reasons for the Determination, one for each of the employees. The More Group has appealed the Determination in respect of each employee separately. I propose to deal with the appeals in separate decisions. This decision will relate to the appeal of the More Group in respect of the Determination pertaining to its former employee, Rodney Worth (“Worth”). The Determination found that More Group contravened Sections 42 and 58 of the *Act* for failing to pay Worth wages from time banked and annual vacation pay respectively within six days of the termination of his employment and ordered the More Group to pay Worth \$13,278.99, an amount which included wages and accrued interest pursuant to Section 88 of the *Act*.
3. The Determination also imposed on the More Group two administrative penalties, each in the amount of \$500, for the contraventions relating to Worth.
4. The total amount of the Determination, inclusive of the administrative penalties, is \$14,278.99.
5. The More Group appeals the Determination on all three grounds available under Section 112(1) of the *Act*, namely, the Director erred in law and 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.
6. The More Group has requested the Tribunal to change or vary the Determination.
7. The More Group has requested an oral hearing of the Appeal stating, “the process would best be served by a hearing in which we would present evidence including at least one witness”. However, the More Group does not explain how the “process would be best served by an [oral] hearing” nor what witness it wishes to call”. Section 36 of the *Administrative Tribunal’s Act* and Rule 16 of the Tribunal’s Rules of Practice and Procedure provide that the Tribunal may hold any combination of written, electronic and oral hearings. In my opinion, the More Group has not made a compelling argument for an oral hearing and in my view this Appeal can be adjudicated on the written submissions of the parties without resort to an oral hearing. Accordingly, I have decided that the Appeal shall be dealt with on the basis of the Section 112 (5) “record”, the submissions of the parties, and the reasons for the Determination.
8. Finally, the More Group has requested a suspension of the Determination pending the Appeal and advised the Tribunal that it is willing to put the amounts ordered in the Determination in the trust account of its legal counsel without any further explanation or justification for the request. The Director opposes the suspension request.
9. Section 113 of the *Act* provides:

**113(1)** A person who appeals a determination may request the Tribunal to suspend the effect of the determination.

(2) The tribunal may suspend the determination for the period and subject to the conditions it thinks appropriate, but only if the person who requests the suspension deposits with the director either

(a) the total amount, if any, required to be paid under the determination or,

(b) a smaller amount that the tribunal considers adequate in the circumstances of the appeal.

10. As indicated by the Tribunal in *Tricom Services Inc.* BC EST #D420/97 and *TNL Paving Ltd.* BC EST #D397/99, the Tribunal will not suspend the effect of a Determination in circumstances where the grounds of appeal are frivolous or have no apparent merit; however it may suspend where the appeal may have some merit. In this case, I am of the view that the appeal has merit in so far as More Marine and More Management are concerned, although the effect of my decision herein renders moot the issue of suspension of the Determination relating to these two companies. However, as concerns Morecorp, I am not persuaded that the appeal has merit and therefore I deny the application to suspend the Determination relating to Morecorp.

## ISSUES

11. The issues in this appeal can be described as follows:
1. Did the Director err in law in proceeding with Worth's complaint when More Marine had filed a Notice of Intention to Make a Proposal ("NOI") under the *Bankruptcy and Insolvency Act* ("BIA")?
12. If the answer to the first question is in the affirmative then I need not proceed with the balance of the issues, as that would be determinative of the Appeal. If, however, the answer to the first question is in the negative then the balance of the issues include the following:
2. Did the Director err in law in finding that More Marine, More Management and Morecorp are "associated corporations" within the meaning of Section 95 of the *Act* and thus jointly and severally liable for payment of the amounts stated in the Determination?
  3. Did the Director fail to observe the principal of natural justice in making the Determination?
  4. Is there new and relevant evidence that was not available at the time the Determination was being made that would have led the Delegate to a different conclusion on the material issues?

## FACTS

13. More Marine operated a tugboat and shipping business and employed Worth as a truck driver from October 2, 2006 to April 15, 2007 at a rate of \$21.51 per hour. Worth quit his employment on April 15,

2007 and subsequently, on May 1, 2007, filed a complaint under Section 74 of the *Act* (the “Complaint”) alleging that More Marine contravened the *Act* by failing to pay him annual vacation pay and wages from a time bank.

14. The Delegate investigated the Complaint and during his investigation considered the question of whether More Marine, More Management and Morecorp were associated corporations and therefore one employer within the meaning of Section 95 of the *Act*.
15. In the Section 112(5) “record”, there is a copy of a letter dated April 20, 2007 from the Trustee indicating that the Trustee consents to act as a Trustee under the Proposal to be filed by More Marine. This letter is stamped “received” on May 1, 2007 by the Ministry of Labour’s office in Terrace where Worth filed his Complaint. The Section 112(5) “record” also contains a Notice of Meeting of the Creditors (the “Notice of Meeting”) in the matter of the Proposal of More Marine and attached to it is a trustee’s report on the proposal made by More Marine under the *BIA* (the “Trustee’s Report”). The Notice of Meeting is stamped received by the Ministry of Labour on October 15, 2007 and therefore the attached Trustee’s Report was in the possession of the Delegate during the investigation of the Complaint and well in advance of the issuance of the Determination.
16. The Trustee’s Report records that on April 20, 2007 More Marine and More Management had each filed a NOI under the *BIA*. The Trustee’s report also indicates that on October 2, 2007 More Marine had filed a proposal to its creditors while the proposal of More Management had been approved by a majority of the creditors with proven claims and by the Court on August 15, 2007. The Delegate also acknowledges these facts in the Determination.
17. In the Determination the Delegate notes that while he was aware during the investigation and before making the Determination that a stay of proceeding under the *BIA* was in place with respect to both More Marine and More Management, the main purposes why he proceeded with the Complaint and issued the Determination was to establish both the quantum of wages owing to Worth and determine whether the insolvent companies, More Marine and More Management, and the solvent company, Morecorp, were associated employers under the *Act*.
18. In the section 112(5) record, there is a record of correspondence between the Director and the More Group or its counsel. I wish to refer to the pertinent correspondences starting with the Delegate’s two letters dated May 25, 2007 to Kerry Morris (“Morris”) and to his wife, Jerri Jane Morris (“Jerri”), seeking information on the precise relationship between More Marine and More Management as well as More Marine and Morecorp for the purpose of determining whether or not these three entities were associated employers within the meaning of Section 95 of the *Act*.
19. In response to the Delegate’s letters of May 25, 2007, counsel for the More Group, in his letter of June 18, 2007, advises the Delegate that More Marine had prepared a cheque for Worth in the total amount of wages owed to him but as a result of the NOI of More Marine, the Trustee advised More Marine that it could only pay Worth up to \$2,000.00 in accordance with the *BIA*, otherwise More Marine would be committing a preference under the *BIA*. Counsel also advises the Delegate that More Management has also filed a NOI and that the *BIA* has imposed a stay of proceedings against all creditors and potential creditors of More Management. With respect to Morecorp, counsel advises the Delegate “it is not and has never been active in business” and “has no involvement at all with the business of [More Marine]”.

In response to counsel's June 18<sup>th</sup> letter, the Delegate in his letter of June 25, 2007, advises counsel that he discovered Morecorp was listed as a secured creditor for the amount of \$1.0 million on the Claim's Register in relation to the Proposal for More Marine and asks counsel for an explanation.

20. Counsel for the More Group, in response to the Delegate's June 25, 2007 letter, advises in his letter of June 26, 2007 that:

Morecorp Holdings Ltd. is the shareholder of More Marine Ltd. and it advanced monies to More Marine in order to help More Marine pay its indebtedness. It took the precaution of obtaining security for the advances. In essence, Morecorp Holdings Ltd. made More Marine Ltd. a shareholder's loan.

21. The Delegate, in his reply correspondence of same date to counsel, provides his preliminary conclusion that Morecorp is an associated employer of More Marine and explains:

The test for whether corporations, firms, syndicates or associations should be considered associated employers is whether they are carrying on a business, trade or undertaking under common control or direction. Morecorp contributes to the transportation services provided by More Marine as the vehicle through which the ownership of More Marine and Morecorp channel financing for the operations of More Marine. Kerry Andrew Morris is the controlling mind of both companies, is the sole officer and director of More Marine, and is the sole director of Morecorp and, with his spouse Jerri-Jane More, one of two officers of Morecorp. The two companies have the same registered and records offices. It would appear, based on the evidence available at this time, that there is sufficient basis of finding that Morecorp should be treated as an associated employer pursuant to Section 95 of the *Act*.

22. The Delegate also invites counsel to make further submissions if counsel is at odds with the Delegate's conclusion that Morecorp is an associated employer. While counsel did not follow up or respond to the Delegate's invitation with any further submissions on the said issue, counsel sent the Delegate a letter dated June 28, 2007 with respect to More Marine's position regarding Worth's claims. In particular, counsel states in the correspondence:

Mr. Worth was as well going to be paid what he was owed prior to you contacting the Trustee. However, since that time Mr. Worth has fallen under police investigation for doing \$30,000.00 worth of damage to More Marine's equipment. Apparently, not content with enlisting your support, Mr. Worth decided to inflict personal revenge on More Marine by draining important fluids from equipment leading to extensive damage. Mr. Worth confirmed this in a conversation with Mr. More of More Marine Ltd. recently.

23. The Delegate, in response to counsel's letter of June 28, 2007, points out that More Marine does not dispute Worth's claim except on the basis of the unproven allegation of vandalism on the part of Worth which, the Delegate opines, does not automatically forfeit Worth's entitlement to outstanding wages. The Delegate further opines in the letter that the matter of the alleged vandalism can be dealt with through a separate process.

24. With respect to the Delegate's conclusion that More Marine, More Management and Morecorp are associated employers under Section 95 of the *Act*, it should be noted that the Director relies on the following additional materials contained in the Section 112(5) "record":

- i. The BC On-line Company search for Morecorp Holdings Ltd. on May 1, 2007 showing Morris as the sole director of Morecorp and also its President and his wife, Jerri, as the as the Secretary;
- ii. The BC On-line search for More Management conducted on May 1, 2007 showing Morris as the sole director and officer of More Management;
- iii. The BC On-line search conducted on February 13, 2006 showing Morris as the sole director and officer of More Marine;
- iv. The Trustee's Report relating to More Marine wherein the Trustee describes the operations of More Marine as follows:

The Company was incorporated on October 1, 1999. With equipment leased from More Management Ltd., the Company provided services such as bulk freight transportation, ro/ro barging and log barging and towing along the West Coast of British Columbia.

- v. The Trustee's Report on the Proposal for More Management wherein the Trustee describes the operations of More management as follows:

The Company was incorporated on July 8th, 1977 and started operations in the beginning of 1998. With two tugboats and barges, the Company provided services such as: bulk freight transportation, ro/ro barging and log barging and towing along the West Coast of British Columbia.

On October 1, 1999, More Marine ("Marine") was incorporated. Although the Company's business operations were transferred over to Marine, the Company retained ownership of the equipment and leased it to Marine. At this point, purchasing of equipment to lease to Marine became the Company's sole purpose. As a result, Marine and the Company are inextricably linked.

- vi. The Statements of Affairs provided with respect to the insolvency of More Marine listing Morecorp as a secured creditor of More Marine in the amount of \$2.0 million and as an unsecured creditor of the same in the amount of \$2,403,248.94;
- vii. The Statements of Affairs provided with respect to the insolvency of More Management listing Morecorp as a secured creditor of More Management in the amount of \$2.0 million and as an unsecured creditor of the same in the amount of \$848,484.00;
- viii. The correspondence of the More Group's counsel referenced earlier wherein counsel for the More Group states that Morecorp is not and has never been in active business or had any involvement in the business of More Marine followed with a subsequent letter wherein counsel notes that Morecorp is the shareholder of More Marine and has advanced monies to More Marine in order to assist the latter in paying its indebtedness.

25. After considering all of the evidence of the relationship between More Marine, More Management and Morecorp, the Delegate concludes in the Determination that each of the three companies is under the

control and direction of Morris. The Delegate further observes that the evidence of the Trustee establishes that the sole reason for the business of More Management was to purchase equipment to lease to More Marine while Morecorp's association or relationship is as a shareholder of More Marine and provider of secured and unsecured financing totalling in excess of \$7.25 million to both More Marine and More Management. Therefore, the Delegate concludes, that More Marine, More Management and Morecorp are associated employers within the meaning of Section 95 of the *Act*.

26. After making the Section 95 determination, the Delegate goes on to conclude in the Determination that since More Marine did not dispute or challenge the total amount of the annual vacation pay and wages owed to Worth from the time banked except on the basis of the unproven allegations of vandalism on the part of Worth, the Marine Group owes Worth the full amount of his claim totalling \$12,482.42 plus an additional \$796.57 in interest pursuant to Section 88 of the *Act*. The Delegate also levies two penalties of \$500 each under the *Regulations* against the More Group for contraventions of Sections 42 and 58 of the *Act* and orders More Marine, More Management and Morecorp to pay the full amount of the award by way of "a certified cheque or money order made out to the Director of Employment Standards".

### **SUBMISSIONS OF THE MORE GROUP**

27. I have carefully reviewed the More Group's extensive Appeal submissions submitted by Morris. While I do not intend to reiterate all of the submission here, I will refer to the gist of those submissions under the relevant subheadings below corresponding to the More Group's appeal grounds.

#### ***(i) Error of Law***

28. With respect to the More Group's error of law ground of appeal, there are several arguments that the More Group is advancing. First, the More Group submits that as a result of More Marine's filing of the NOI with the Office of the Superintendent of Bankruptcy under the *BIA*, there is a stay of proceedings against More Marine. More Group also continues its submissions related to this argument in its submissions under the natural justice ground of appeal where it indicates that the Director by failing to recognize the effect of the NOI and the stay of proceedings "has sought to provide" Worth a fraudulent preference.
29. A second argument of the More Group under the error of law ground of appeal challenges the Director's conclusion that More Marine, More Management and Morecorp are associated employers under the meaning of Section 95 of the *Act* on the basis that the Delegate did not identify or take into consideration in making the Determination certain relevant facts including the share ownership of More Marine. In particular, the More Group states that the delegate failed to consider that More Marine was incorporated in October 1999, but only commenced its business in February 2000. Morecorp owns 50% of the shares of More Marine and the balance of the shares are owned by 599583 B.C. Ltd. The More Group then reviews the business history of More Marine and its dealings with its major customers and how the business relationship led More Marine's decision to become "a front-line supplier of freight services to the mid-coast" and proceed with the acquisition of and, in some cases, lease certain equipment from various parties including More Management. In particular, at one point, More Marine leased two barges from More Management and six highway trailers. However, More Group states that for more than two years, More Management has not leased any barges to Marine and sold off all its barges save only one, which it employs as a dock.

More Group then refers to the long-term contract that More Marine entered into with Alcan and the consequent litigation with Alcan.

30. More Group also submits that More Management holds no shares in More Marine and never has. Instead, More Management's shares are directly held by Morecorp Holdings and Morris is the sole director and officer of Morecorp while Morris' wife, Jerri, resigned from her position as a secretary of Morecorp on April 1, 2004.

31. More Group also points out that the Delegate failed to consider that on December 16, 2004, More Marine entered into a loan agreement (the "Loan Agreement") with North Point Mezzanine Limited Partnership ("North Point"). According to the More Group, the loan transaction required More Marine to execute a share transfer document, which More Group claims transferred "all legal control of [More] Marine to [North Point] in exchange for a loan". Therefore, the More Group argues that while Morris was the sole officer and director of More Marine, "effective control of the companies lay with North Point". In support of the said submission, More Group attaches four share pledge agreements, the first one, dated December 16, 2005, is between North Point, Morris and Morecorp whereunder Morris pledges his shares of Morecorp in favour of North Point as collateral security for the payment of a loan in the principal amount of \$1.35 million purportedly made by North Point to More Marine under the Loan Agreement. The second share pledge agreement is between North Point, Morecorp and More Marine whereunder Morecorp pledges its security interest in certain shares of More Marine to North Point as a continued collateral security for the payment of the \$1.35 million loan made by North Point to More Marine under the Loan Agreement. The third share pledge agreement is between North Point, Morecorp and More Management whereunder Morecorp pledges its security interest in certain shares of More Management in favour of North Point as collateral security for the payment of the \$1.35 Million loan made by North Point to More Marine under the Loan Agreement. Finally, the last share pledge agreement is between North Point, 599583 B.C. Ltd. ("599583") and More Marine, whereunder 599583 pledges its interest in certain shares of More Marine to North Point as collateral security for the payment of the \$1.35 million loan made by North Point to More Marine under the Loan Agreement.

32. The final submission of the More Group under the error of law ground of appeal is based on its clear misunderstanding that the Director, in the Determination, is pursuing the directors and/or officers of the More Group personally for the amount payable to Worth under the Determination. As the Determination did not involve a section 96 determination against the directors and officers of any of the companies concerned, I will not reiterate the More Group's submissions in this regard here as they are irrelevant in this appeal.

***(ii) Natural Justice***

33. With respect to the natural justice ground of appeal, the More Group's argument under this ground, in part, is an extension of its argument under the error of law ground of appeal that the process initiated by More Marine under the *BIA* should not be subverted by the Director and that the Director's Determination has the effect of providing a fraudulent preference to Worth.

34. Also under the natural justice ground of appeal, More Group argues that the Director failed to "accurately and honestly consider the vandalism of three More Marine highway tractors" on the part of Worth. The More Group then sets out its allegations relating to the purported vandalism in more detail. I have reviewed those allegations of vandalism and I do not purpose to set them out here for the reason I will discuss under the heading Analysis herein.



35. Finally, under the natural justice ground of appeal, the More Group makes an allegation of bias on the part of the Delegate stating that Delegate is “acquainted with” Worth and “thus less than impartial.”

**(iii) New Evidence**

36. With respect to the new evidence ground of appeal, More Group provides certain records and documents showing that Morris is the sole director of Morecorp and a declaration that his wife, Jerri, never acted in the capacity of a secretary of Morecorp. More Group also encloses documents indicating that the position of secretary of Morecorp was filled by Morris on April 1, 2004 and encloses relevant supporting documents for the current year.

**FURTHER APPEAL SUBMISSIONS OF THE MORE GROUP**

37. In addition to the submissions of the More Group with respect to the three identified grounds of appeal, More Group has presented another 2 ½ pages of submissions critiquing numerous findings of fact of the Delegate in the Determination ending with the bare assertion suggesting bias on the part of the Delegate in making the Determination. More Group alleges that the Determination is simply “an opinion or belief” held by the Delegate and “not necessarily one held by the Minister” and goes on to further state that “(t)his is particularly important because of information which we have received that suggests that [the Delegate] is acquainted with one or both of the claimants and is thus less than impartial in these proceedings”. While I will, under the heading Analysis, deal with the allegation of bias, I do not wish to reiterate the other submissions critiquing the findings of facts of the Delegate as these submissions, in my view, constitute re-argument and not a proper basis for an appeal. There is also nothing in those submissions that would constitute “new evidence” under the test delineated in *Re: Merilus Technologies Inc.*, [2003] B.C.E.S.T.D. No. 171(QL) since it is the type of evidence that could, with the exercise of due diligence, have been discovered and presented to the Director during the investigation or adjudication of the Complaint and at the least prior to the Determination being made.
38. Similarly, I find that the More Group’s reply submissions dated July 29, 2008 in response to the submissions of the Director delineated below, constitute re-argument and not a proper basis for appealing and therefore, I do not wish to reiterate them here.

**DIRECTOR’S SUBMISSIONS**

**(i) Error of Law**

39. In response to More Group’s submission that the Director, in making the Determination, is circumventing the process under the *BIA* which both More Marine and More Management are involved in, the Director submits that the Delegate has addressed in the Determination that there is a stay of proceedings in place with respect to both More Marine and More Management and that the “primary reason for the issuance of the Determination was to establish whether [More Marine] and [More Management] and Morecorp were associated employers within the meaning of Section 95 of the *Act*”. The Director further points out that this point is significant “in that Morecorp is not involved, as a debtor, in the *BIA* proceedings and is not covered by any stay of proceedings”. The Director further acknowledges that for Worth to collect any outstanding wages from More Marine, a proof of claim has to be filed with the Trustee and with respect to More Management, a proof of claim was indeed filed and the Trustee found the claim against More Management was a “post filing claim and, therefore, not effected by the *BIA* proceedings”.

40. With respect to the More Group's submissions relating to its concern that the directors and officers of the companies comprising the More Group are being pursued or held personally liable for outstanding wages referred to in the Determination, the Director points out that no determination has been issued against the directors or officers of any of the companies and should it become necessary to investigate this issue further, both Morris and his wife, Jerri, will "will be given a full opportunity to put forward evidence with respect to this issue".
41. With respect to More Group's argument that the Director erred in law in finding the three companies, More Marine, More Management, and Morecorp are associated employers, the Director notes that the Delegate sent correspondence to More Management and Morecorp on May 25, 2007 advising that the Delegate was investigating the issue of whether they were associated employers with More Marine and "request[ed] a detailed description of the relationship between the companies". The Director notes the exchange of correspondences between him and counsel up to and including June 29, 2007 and points out that counsel did not raise any argument "with the association of [More] Management, perhaps because it had sought protection from creditors, and provided only a short comment with respect to Morecorp". The Director indicates that the "evidence submitted [by counsel] was considered and addressed in the Determination".
42. With respect to the More Group's assertion that North Point was the controlling mind of More Marine or any of the companies comprising the More Group, the Director submits that North Point was "far from being the controlling mind of any of the companies" and was simply "the primary secured creditor whose attempt to collect on [the loan debt] led [More] Marine and [More] Management to seek the protection of BIA."
43. In response to the allegations of the More Group that the description of the businesses carried out by More Marine and More Management in the Determination are inaccurate, the Director asserts that that these descriptions were "derived from the reports of the Trustee on the Proposal and, in most instances, are direct quotes from those reports".

*(ii) Natural justice*

44. With respect to the natural justice ground of appeal of the More Group, the Director suggests that the More Group's argument that the Director failed to consider the alleged vandalism on the part of Worth under this ground of appeal should properly be dealt with under the error of law ground of appeal. The Director then proceeds to address the said allegation by reiterating the position of the Delegate on this issue in the Determination stating that the allegation of vandalism made by More Marine against Worth is "as yet unproven" and "it does not automatically follow that, if the allegations are proven, the result must be that Worth would forfeit wages that he had earned". The Director suggests that in such case More Marine has "other avenues to address this matter" suggesting civil proceedings.
45. The Director also addresses the allegation of bias against the Delegate made by the More Group stating that the More Group's allegation is "patently false and utterly without foundation" and no more than "a personal attack without a single scintilla of evidence to support it". The only contact of the Delegate with Worth, according to the Director, was when Worth was "across the counter at the Terrace field office of the Employment Standards Branch," otherwise the Delegate has had no other contact with Worth other than by telephone communication.

***(iii) New Evidence***

46. With respect to the documents produced by the More Group as “new evidence” which pertain to identification of Morris’ and his wife Jerri’s status vis-à-vis Morecorp, the Director notes that these documents were not submitted during the investigation of the Complaint and while there is no evidence suggesting that they were not available or would not have been available during the investigation, there is nothing in these documents that would have the effect of altering the findings in the Determination, according to the Director.
47. The Director concludes by asking the Tribunal to uphold the determination.

**SUBMISSIONS OF WORTH**

48. Worth was afforded notice of the appeal of the More Group and provided submissions of both the More Group and the Director but did not respond in this appeal.

**ANALYSIS**

49. I propose to deal with all three grounds of appeal of the More Group below, in the reverse order in which they have been presented in the Appeal.

***(i) New Evidence***

50. The More Group has presented corporate documents identifying the status of Morris as well as his wife, Jerri, vis-à-vis Morecorp and while I very much doubt that the documents presented by the More Group would qualify as “new evidence” under the test delineated in *Re: Merilus Technologies Inc.*, supra, [2003] B.C.E.S.T.D. No. 171(QL) since they constitute the type of evidence that, with the exercise of due diligence, could have been discovered and presented to the Director during the investigation or adjudication of the Complaint and prior to the Determination being made, I do not have to rule on this issue for the simple reason that it is not relevant in this appeal. To further explain, in my view, the More Group has adduced the “new evidence” in question, to counter its concern that the Determination somehow pursues personally the directors and officers of the companies and particularly Morris’ wife, Jerri. Since the Determination does not concern or deal with a determination under section 96 of the *Act* against any directors or officers of any of the companies concerned in this decision, the More Group’s submissions and evidence under the new evidence ground of appeal are irrelevant in this appeal.

***(ii) Natural Justice***

51. With respect to the More Group’s assertion under the natural justice ground of appeal that the Director in making the Determination has sought to provide a fraudulent preference to Worth, I propose to deal with this allegation under the More Group’s error of law ground of appeal below as it is an extension of its argument under the latter ground of appeal that as a result of More Marine’s filing of the NOI with the Office of the Superintendent of Bankruptcy under the *BIA*, there is a stay of proceedings against More Marine.
52. With respect to the More Group’s assertion that the Delegate is “acquainted with” Worth and “thus less than impartial,” I find this assertion is without any merit or foundation. There is absolutely no evidence of bias or impartiality on the part of the Delegate in this proceeding and I would like to admonish the

More Group and also make it clear to any others out there who intend to make such a frivolous allegation as the More Group has in this case that it is plain wrong to attempt to sully the reputation of an adjudicator without any real evidence of bias and this Tribunal will not tolerate such conduct on any party's part.

53. With respect to the More Group's argument that the Delegate's failure to consider the allegation of vandalism on the part of Worth in making the Determination, I point out that the More Group has indicated in its own submissions that the incident of vandalism is under police investigation. In my view, the Delegate is without jurisdiction to investigate the matter and furthermore, I agree with the Director that even if vandalism were proven on the part of Worth, this does not disentitle or foreclose him from otherwise claiming outstanding wages from his employer. The employer, in such case, may have recourse against Worth in civil courts.

***(iii) Error of Law***

54. With respect to the matter of the impact of the *BIA* on the Determination of the Director, I refer to Part III, Division I of the *BIA*, which allows an insolvent person to make a proposal to its creditors. The proposal, once accepted and approved, becomes a new "contract" as it were between the debtor and his or her creditors regarding repayment of the debtor's debts and allows the insolvent person to avoid a formal declaration of "bankruptcy".
55. Pursuant to Section 69 of the *BIA*, on the filing of a NOI under Section 50.4 by an insolvent person, there is a stay of proceedings against the insolvent person. In particular, Section 69 (1)(a) provides:

Stay of proceedings – notice of intention

69 (1) Subject to subsections (2) and (3) and sections 69.4 and 69.5, on the filing of a notice of intention under section 50.4 by an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy....

56. In the case at hand, Worth filed the Complaint on May 1, 2007, the same day that the Delegate's office received the letter of April 20, 2007 from the Trustee under the Proposal to be filed by More Marine. Subsequently, on October 15, 2007, while the investigation of the Complaint was underway and before the Determination was made, the Delegate's office received the Notice of Meeting of the Creditors in the matter of the Proposal of More Marine together with the Trustee's Report.
57. The Trustee's Report records that More Marine and More Management had each filed a NOI under the *BIA* on April 20, 2007 and that More Marine had filed a proposal to its creditors on October 2, 2007 and the proposal of More Management had been approved by a majority of the creditors with proven claims and by the Court on August 15, 2007. As indicated previously, the Delegate also acknowledges these facts in the Determination.
58. The Delegate, as previously indicated, also acknowledges in the Determination that he was aware during the investigation and before making the Determination that a stay of proceedings under the *BIA* was in place with respect to both More Marine and More Management but he was proceeding with the Complaint for the purposes of issuing a determination to establish both the quantum of wages owing to

Worth and whether the insolvent companies, More Marine and More Management, and the solvent company, Morecorp, were associated employers under the *Act*. After making the Section 95 determination and finding the three companies to be associated employers the Delegate states in the Determination “I order More Marine Ltd. and More Management Ltd. and Morecorp Holdings Ltd. to pay \$18,989.36” (an amount that included a determination relating to one other employee in addition to Worth) and requests all three companies to “send a certified cheque or money order made out to the Director of Employment Standards.”

59. If it were not for More Marine and More Management seeking the protection of the *BIA*, I would have no difficulty in affirming the Delegate’s decision in its entirety as I find the Director’s decision compelling and agree with his substantive analysis leading to the finding that More Marine, More Management and Morecorp are associated employers within the meaning of Section 95 of the *Act*. However, since More Marine and More Management both filed their NOIs under the *BIA* prior to the Determination while the investigation into the Complaint was underway, I find that Section 69(1) of the *BIA* is an obstacle for the Delegate as concerns any proceeding or order against More Marine and More Management. Section 69(1) is quite clear in providing that that none of the debtors’ creditors “has any remedy against the insolvent person or the insolvent person’s property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy”. In light of this provision, it is my view that the Delegate, in this case, was without jurisdiction to proceed with the Complaint and make a determination against More Marine and More Management. I find that the Delegate erred in law in ordering these companies, in the Determination, to pay the amounts found owing to Worth and the related administrative penalties. In my view, once both More Marine and More Management filed their NOIs under Section 50.4 of the *BIA* thereby triggering a stay of proceedings under Section 69(1) of the *BIA*, Worth’s claim against More Marine and More Management could only be addressed in accordance with the scheme of distribution provided in the *BIA*. Therefore the Determination against More Marine and More Management must fall.
60. Having said this, I find that the Delegate, notwithstanding the filing of the NOIs by More Marine and More Management, had the requisite jurisdiction to make the section 95 determination and I agree with that determination. Since Morecorp is an associated employer with More Marine and More Management and not in bankruptcy or under the protection of Section 69(1) of the *BIA*, the Determination as against Morecorp stands.

## **ORDER**

61. Pursuant to Section 115(1)(a) of the *Act*, I order that the Determination dated May 7, 2008 be cancelled as against More Marine Ltd. and More Management Ltd. and confirmed against Morecorp Holdings Ltd.

---

**Shafik Bhalloo**  
**Member**  
**Employment Standards Tribunal**