

An appeal

- by -

Clayton Pereversoff
(“Pereversoff”)

- 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.: 2010A/110

DATE OF DECISION: September 24, 2010

DECISION

SUBMISSIONS

Clayton Pereversoff	on his own behalf
James Ripley	on his own behalf
Amanda Clark Welder	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal by Clayton Pereversoff (“Mr. Pereversoff”) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a determination of the Director of Employment Standards (the “Director”) issued June 16, 2010 (the “Determination”).
2. Mr. Pereversoff filed a complaint alleging that James Ripley carrying on business as Turtle Tanks (“Mr. Ripley” or “Turtle Tanks”), a manufacturer and installer of septic tanks, owed him regular wages and reimbursement for costs of doing business.
3. The Director’s delegate held an oral hearing into Mr. Pereversoff’s complaint on January 13, 2010, and March 3, 2010. Mr. Pereversoff and Mr. Ripley appeared on their own behalves and called four and two witnesses respectively.
4. The Delegate, in the reasons for the Determination, concluded that Mr. Pereversoff was not an employee of Turtle Tanks but self-employed as the “degree of control and direction [over Mr. Pereversoff] was not typical of an employment relationship”. The Delegate additionally held that Mr. Pereversoff was “engaged [by Turtle Tanks] to complete specific work and the work performed was not integral to the business and not work normally performed by an employee”. The Delegate also noted that Mr. Pereversoff “made a substantial investment by purchasing and assuming the costs of the inventory of supplies and materials” which was not typical of an employment relationship. As a result, the Delegate dismissed Mr. Pereversoff’s complaint stating that the *Act* did not apply to his complaint and there was thus no need for her to make any findings of credibility pertaining to his “records of hours and expenses”.
5. Mr. Pereversoff appealed the Determination contending that the Delegate erred in law in finding that he was self-employed and not an employee of Turtle Tanks and that the Delegate failed to observe the principles of natural justice in making the Determination.
6. Mr. Pereversoff is seeking the Tribunal to vary the Determination and, based on his written submissions, it appears he is seeking this Tribunal to give him a rehearing of his complaint and vary the finding of the Delegate that he was self-employed and make an alternate finding that he was an employee of Turtle Tanks.
7. Pursuant to Section 36 of the *Administrative Tribunals Act* (the “*ATA*”), which is incorporated in the *Act* (S.103) and Rule 17 of the Tribunal’s *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.

ISSUES

8. Did the delegate err in law in finding that Mr. Pereversoff was self-employed and not an employee of Turtle Tanks?
9. Did the delegate fail to observe the principles of natural justice?

FACTS AND REASONS IN THE DETERMINATION

10. I have read the materials in the record presented by the Director in this appeal as well as the Reasons for the Determination very carefully. Based on the nature of the appeal which I will describe more specifically under the heading Analysis, I do not find it necessary to reiterate all the evidence of the parties and the findings and conclusions of fact of the Delegate although I will attempt to briefly identify the nature of the complaint, the parties' positions and the conclusions reached by the Delegate.
11. As indicated earlier, Mr. Ripley carries on business as Turtle Tanks. This business involves manufacturing and installing septic tanks. In British Columbia, Mr. Ripley has two locations of Turtle Tanks in Kelowna, one at Lethead Road and another at Clement Avenue. Mr. Pereversoff, who responded to an ad posted at his college for a position to perform soil analysis for Turtle Tanks, met with Mr. Ripley and subsequently entered into an agreement with Mr. Ripley to perform work for him. The scope of work Mr. Ripley engaged him to perform was broader than that advertised in the ad for the soil analysis position. More specifically, the work included, in addition to soil analysis, fabricating equipment used for the purpose of manufacturing septic tanks. Mr. Pereversoff worked at both locations of Turtle Tanks in Kelowna in and during the period April 3, 2009, to August 2009.
12. While Mr. Pereversoff's complaint was that Mr. Ripley or Turtle Tanks failed to pay him wages, provide him termination notice and reimburse him for costs of doing business, the penultimate issue at the hearing of the complaint was whether Mr. Pereversoff was an employee of Turtle Tanks or not.
13. At the hearing of the complaint, both parties presented evidence on the penultimate issue. Mr. Pereversoff argued that he was an employee of Turtle Tanks and Mr. Ripley argued that Mr. Pereversoff was an independent contractor. Both parties, in addition to providing oral and documentary evidence themselves, had witnesses who provided evidence. Both parties had the opportunity to cross-examine the other's witnesses.
14. The Delegate, in concluding that Mr. Pereversoff was self-employed and the *Act* did not apply to him, reviewed the evidence of both parties and applied the statutory definitions of "employee" and "employer" as well as the common law tests for determining whether an employer/employee relationship or an independent contractor relationship existed between the parties. With respect to the common law tests for determining employer-employee relationship, I note that the Delegate, in the Reasons for the Determination, specifically under descriptive headings including "Intention of the Parties", "Control and Direction", "Specific Result vs. an Ongoing Relationship", "Degree of Integration", "Financial Investment/Ownership of Tools and Chance of Profit and Risk of Loss", describes evidence she relied upon in arriving at the conclusion that Mr. Pereversoff was self-employed and not an employee of Turtle Tanks. While I do not find it necessary to reiterate the Delegate's application of the legal tests to the evidence of the parties in its entirety here, I think a brief review of the analysis in the Reasons of the Determination is in order here.
15. I note with respect to the matter of the intention of the parties in entering into an agreement, the Delegate found Mr. Pereversoff's evidence on this subject inconsistent and preferred the evidence of Mr. Ripley. The Delegate observed that Mr. Pereversoff entered into a written contract that specifically articulated that he was an

independent contractor and he acknowledged and understood the fundamental differences between an employment and a contractual relationship. Further, noted the Delegate, Mr. Pereversoff's actions, including his submission of his first invoice to Mr. Ripley wherein he claimed overtime and then amended the same invoice after discussion with Mr. Ripley, was demonstrative of his understanding that he was in a contractual relationship. He also chose not to submit his invoice for June until midway through August, which the Delegate concluded was inconsistent with someone who believed himself to be an employee. While the Delegate noted that Mr. Ripley and Mr. Pereversoff might have agreed to a contractual relationship, this did not prevent her from finding Mr. Pereversoff was an employee as this was but only one factor for her to weigh in evaluating the substantive nature of the parties' relationship.

16. With respect to the factors of control and direction exercised by Mr. Ripley over Mr. Pereversoff, the Delegate noted that there was a dispute between the parties with respect to this point. The Delegate preferred the evidence of Mr. Ripley to Mr. Pereversoff's on this point due to inconsistencies she identified in Mr. Pereversoff's testimony. She noted specifically that she could not reconcile Mr. Pereversoff's claim that Mr. Ripley was present to watch him work and aware of the time he put in at work with his testimony that he regularly worked alone in the evening and throughout the night. The Delegate also noted that Mr. Pereversoff did not challenge the evidence of Mr. Ripley's or the latter's witnesses that Mr. Ripley was infrequently at the Clement Avenue site of Turtle Tanks where Mr. Pereversoff worked from June onwards. In the Delegate's view, Mr. Ripley provided a believable and plausible explanation for not overseeing or supervising Mr. Pereversoff's activities stating that he was engaged with other aspects of his business ventures and believed Mr. Pereversoff to be self-employed with a fixed budget to build two pieces of equipment for Turtle Tanks, which did not require his direction or control. The Delegate also noted that Mr. Pereversoff's claim that he received daily task lists from Mr. Ripley was suspect because Mr. Ripley was seldom on site. For the same reason she also found improbable Mr. Pereversoff's explanation that he returned the daily task lists to Mr. Ripley and that is why he could not produce them at the hearing. The Delegate also noted that she was not convinced with Mr. Pereversoff's claim that during the months of April and May he was under the supervision and direction of Mr. Ripley because at the Hearing Mr. Pereversoff acknowledged that he worked for another company, G.M.T., exclusively during May 4 to 14, 2009, and his journal and/or day-timer also showed that he worked for the same company between April 30, 2009, and May 22, 2009, inclusive. The Delegate therefore concluded, on the totality of the evidence, that she was not persuaded that Mr. Ripley exercised a sufficient degree of control and direction over Mr. Pereversoff characteristic of an employment relationship.
17. The Delegate also concluded on the evidence adduced by the parties that Mr. Pereversoff, on the whole, was tasked with accomplishing specific projects and set his own schedule for that purpose as he had autonomy to decide what days he worked, including the times of the day he worked and for how long. From June onward, the Delegate noted that Mr. Pereversoff also determined what work he would do each day and he alone decided what methods he would use to complete the projects he was tasked with. He also worked for others during this period on his own accord.
18. The Delegate also considered the evidence of the parties in the context of the "specific results test". She examined specifically whether the agreement between Mr. Ripley and Mr. Pereversoff was for work to be performed by the latter for the former leading to a specific result or simply performance of general efforts on Mr. Ripley's behalf. She also examined whether Mr. Pereversoff was required to perform the work personally or had the ability to engage another person and determine how the project would be completed. While the Delegate observed that the contract between the parties was not particularly helpful in determining if the relationship between the parties was to attain a specific result, the Delegate concluded that the evidence on the whole was persuasive that the majority of the work Mr. Pereversoff performed was related to building the first concrete mixer for Turtle Tanks although some time was spent by the latter performing other unrelated tasks related to fabricating. However, from June onwards, the Delegate notes Mr. Pereversoff was engaged to complete specific

work, namely, to build for Turtle Tanks two specific pieces of equipment (i.e. a second concrete mixer and a Styrofoam processor) but not provide any general services. The Delegate notes that Mr. Pereversoff's evidence is also in accord with this assessment. The Delegate further notes that the two pieces of equipment Mr. Pereversoff was tasked to build had a timeline of two months as Mr. Ripley had requested Mr. Perveresoff to provide his up-to-date bill approximately two months after he starting working on the said projects. The Delegate viewed this evidence as supporting the conclusion that Mr. Pereversoff was an independent contractor who was required to bill at the end of the project.

19. As to whether Mr. Pereversoff could hire others to help out with the project, Mr. Ripley testified that he could and Mr. Pereversoff said he could not. However, the Delegate noted that neither party led any evidence on any specific discussion on the point and the Delegate chose not to make any findings on this point.
20. With respect to the matter of the degree of integration of the work Mr. Pereversoff was performing with the operation of Turtle Tanks business, the Delegate noted that Turtle Tanks was in the business of manufacturing, selling and installing septic tanks and Mr. Pereversoff was engaged to build a concrete mixer and Styrofoam processor for Turtle Tanks, which was not directly related to the business of Turtle Tanks. While the Delegate conceded that the machines in question could ultimately be used in production by Turtle Tanks, they were not essential to the business of Turtle Tanks as the latter did and continues to build tanks using concrete supplied by an independent source.
21. The Delegate also considered and applied, in this case, the definition of "employee" in the *Act* which contemplates a person who an employer allows to perform work normally performed by an employee. The Delegate observed that in the case of Mr. Pereversoff's relationship with Turtle Tanks, Mr. Pereversoff was not engaged to do work that one would generally expect an employee in a manufacturing business to perform. The Delegate also observed that Mr. Pereversoff's efforts, with minor exceptions, were unrelated to the main business of Turtle Tanks, namely, the production, sales, or installation of septic tanks. According to the Delegate, the fabrication of the equipment used in the production process for septic tanks which Mr. Pereversoff was engaged to do did not constitute work that could be properly characterized as work normally performed by an employee of Turtle Tank. In the circumstances, the Delegate concluded that the degree of integration of the work that Mr. Pereversoff performed was rather minimal.
22. With respect to the elements of "financial investment/ownership of tools and chance of profit or risk of loss" in the common law tests, the Delegate observed some competing evidence in favor of both employee-employer and independent contractor relationships. She noted in her Reasons that in favor of an employment relationship included evidence that there was a specific budget established for each piece of equipment with no chance for Mr. Pereversoff to profit and the evidence that Mr. Ripley supplied Mr. Pereversoff with fabrication equipment. However, weighing against that the Delegate noted the evidence that between June and mid August 2009, Mr. Pereversoff purchased over \$8,000 in materials, supplies, and tools at his own expense without authorization or consultation with Mr. Ripley. While the parties agreed that Turtle Tanks would pay for the cost of materials for the production of the equipment, the Delegate noted that Mr. Pereversoff controlled the costs of the materials, decided what to purchase and use in the fabrication of the equipment, where to purchase it from and use his own funds to make the purchase. Also important in the observations of the Delegate is the evidence of the parties that after a dispute arose between the parties in September 2009, Mr. Pereversoff returned some of the items he had purchased valued at over \$2,500, over one quarter the cost of the goods purchased. The Delegate relied upon this evidence as a whole to conclude that Mr. Pereversoff, notwithstanding the agreement of the parties to reimburse him for the cost of materials actually used in the fabrication of the equipment, did make a financial investment as he assumed the cost of inventory and had exposure to risk of loss as he made purchases which were not used in the fabrication process. According to the Delegate the conduct of Mr. Pereversoff in making purchases of inventory in the manner he did with no supervision or control over him and with the use of his own

funds and the subsequent return of the materials not used for a refund was more typical of an independent contractor relationship than an employment relationship.

SUBMISSIONS OF MR. PEREVERSOFF

23. Mr. Pereversoff's initial submissions accompanying the Appeal Form are a page-and-a-half in length and very telling in terms of the nature of his appeal. I have decided to set out those submissions verbatim below:

Clayton Pereversoff's Response to the Determination

Anything highlighted in yellow on the determination is incorrect (wrong) regardless if Jim has implied the ideas or where they have come from.

The Determination – Errors

1. Employed welders make \$35-50 per hour. That is normal and a realistic figure. Welders who are contractors make from \$50-150 per hour with full equipment. I was making \$25/hour which is a very low wage for that type of work.
2. Untrue.
3. I had given notice to Jim often (every second day) when I was asking for payment of the previous months time. Jim was in debt to me for more than \$3000 for the last 3 months that I worked for him. The amount he owed me only got bigger.
4. The Styrofoam processor functioned well and was very safe to use compared to the previous model (please see pictures of the previous model. Accessible from Jim).
5. Building a concrete septic tank requires a minimum of 2 people but normally requires 3 people.
6. Mr. Journey stated that Jim had minimal tools to do anything with.
7. Mr. Edgerton used the Styrofoam processor with me and commented that it works well.
8. In the initial contract it states that this is not permitted.
9. I worked for Turtle Tanks on evenings and weekends, whenever Jim called me and told me to come in.
10. In the beginning I did submit my time slips on 2 week intervals, when Jim requested them. (This is an informal process due to the small company).
11. Jim told me when to work with Mr. Jones, he told me on what days and what I will be doing. I have never talked to Ray Jones regarding working separate from Turtle Tanks. Jim is the only person to have made any agreements for Clayton to work with Ray.
12. The dollar amounts were complete but the rest of the reports were incomplete. (Inventory of receipts and organizations still needed to be complete).
13. I did show my journal to Todd Sloan at the first meeting in August.
14. Not true. I did submit my timecards on every job I have ever had, and I have never been a contractor.
15. I told Jim before I went that I was taking some time off. He didn't care and told me that it didn't matter because he would be in Newfoundland.
16. Jim was on site often, Jim and I built 16 tanks together (just the 2 of us).
17. Due to Amanda Clarke Welder's feelings about me, she discredited my testimony. I think this is due to my presence on the telephone while everyone else was from Kelowna and was present in person.

18. Most of the work was directly related to Turtle Tanks.
19. Since the majority of the work I did was not strictly building this machinery but doing numerous other tasks for Turtle Tanks; I would say this statement is untrue.
20. Jim told me where to buy items and what to use for construction. Jim also supplied all the tools for the fabrication work.
21. I returned items that were to be used for construction but not used yet. (other items were returned aswell [sic] like nozzles and hoses that were used for building septic tanks)
22. I was not engaged to complete specific work. I worked on and for Turtle Tanks in a general manner. I did a vast variety of work, most of which was directly and integral to the company functioning.

Due to these misconceptions I believe the case was biased against me. I would like the Tribunal to take another look at this and ask questions when needed. After talking with Imre I would consider him to be one of my witnesses rather than Jim's. We had a long talk about Jim's ventures and we have had a lots [sic] of the same problems arise.

I would like the Tribunal to relook at this case and see that I worked for Jim, and he decided that he wouldn't pay me. Not only for wages but for supplies that he agrees he still owes me for. I feel this is in your jurisdiction and you should be able to reform the determination. From my perspective I see the determination stating that Jim does in fact owe me money, but they are too busy to deal with it. After looking at the decision date and the date of the email I sent the Labour board, I would have to assume they ran out of time. Please resolve this case.

Sincerely

Clayton Pereversoff

24. I also note that Mr. Perversoff has submitted a Final Reply to the submissions of the Delegate below which I have carefully reviewed and are similar in nature to his initial submissions above and I do not find it necessary to outline them here but I do reference the relevant portions under the heading Analysis below particularly in context of the natural justice ground of appeal of Mr. Pereversoff.

SUBMISSIONS OF MR. RIPLEY

25. Mr. Ripley's submissions are very brief. He, understandably, supports the decision of the Director and contends that the Determination is "professional and fair" and there is no merit in the appeal submissions of Mr. Pereversoff.

SUBMISSIONS OF THE DIRECTOR

26. The Director submits that in the 22 enumerated points identified as errors committed by the Delegate in the submissions of Mr. Pereversoff, the first 13 points relate to the evidence the parties submitted and the balance relate to findings of facts made by the Delegate. The Director submits that with respect to the former, Mr. Pereversoff does not argue or demonstrate that the evidence he now challenges was not presented at the hearing of his complaint. The Director further submits that Mr. Pereversoff was afforded the opportunity to refute or rebut the evidence he now challenges. According to the Director, Mr. Pereversoff is effectively re-arguing his case on appeal and, in the process, attempting to introduce additional evidence in response to the testimony of Mr. Ripley and his witnesses and this is not permissible on an appeal of a determination.
27. With respect to the second set of errors identified as numbers 14 through 22 in Mr. Pereversoff's submissions, the Director states that Mr. Pereversoff is disagreeing with findings of facts made by the Delegate and fails to

demonstrate that these findings constitute an error of law as defined by the *British Columbia Court of Appeal in Gemex Developments Corp. v. British Columbia (Assessor of Area #12 - Coquitlam)*, [1998] B.C.J. No. 2275 (B.C.C.A.).

28. The Director further submits that the findings of facts made in the Determination are based on the evidence presented by the parties and Mr. Pereversoff has failed to demonstrate that any findings he disagrees with were made without evidence or could be considered facts which could not reasonably be entertained in light of the evidence.
29. The Director further submits that Mr. Pereversoff's allegation in point 17 of his appeal submissions, namely, that he was discredited by the Delegate as a result of his participation by telephone conference is without merit as the Delegate assessed the credibility of the evidence by applying the relevant principles and providing an explanation to support the findings of fact made.
30. With respect to the natural justice ground of appeal of Mr. Pereversoff, the Director notes that Mr. Pereversoff has failed to show that he was denied the opportunity to know the case against him or reply.
31. With respect to Mr. Pereversoff's allegation of bias on the part of the Delegate, the Delegate notes that the onus is on Mr. Pereversoff to demonstrate such but he has failed to present any evidence that the Delegate was biased. According to the Director, the allegation of bias is based on Mr. Pereversoff's dissatisfaction with the outcome of his case.
32. In conclusion, the Director submits that Mr. Pereversoff's appeal should be dismissed because he is simply disagreeing with the outcome of the Determination and the findings made by the Delegate without presenting any basis to establish error of law or breach of natural justice on the part of the Director in making the Determination.

ANALYSIS

33. Section 112 of the *Act* delineates only three grounds upon which an individual may appeal a determination. It provides:
112. (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
- (a) the Director erred in law;
 - (b) the Director failed to observe the principles of natural justice in making the determination;
 - (c) evidence has become available that was not available at the time the determination was being made.

34. In the case at hand, as previously indicated, Mr. Pereversoff has appealed on the basis of the "error of law" and "natural justice" grounds of appeal. I propose to address each ground of appeal under the descriptive subheadings below.

(I) Error of Law

35. The often-quoted decision of the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 - Coquitlam)*, *supra*, describes the following elements as constituting an error of law:
- (1) A misinterpretation or misapplication of a section of the *Act*;

- (2) A misapplication of an applicable principle of general law;
- (3) Acting without any evidence;
- (4) Acting on a view of the facts which could not reasonably be entertained; and
- (5) Exercising discretion in a fashion that is wrong in principle.

36. In *Britco Structures Ltd.*, [2003] B.C.E.S.T.D. No. 260 (QL), the Tribunal stated that the definition of error of law expounded by the Court of Appeal in *Gemex, supra*, should not be applied so broadly as to include errors which are not in fact errors of law, such as errors of fact alone, or errors of mixed law and fact which do not contain extricable errors of law. The Tribunal in *Britco* also added that unless there is an allegation that the Delegate erred in interpreting the law or in determining what legal principles are applicable, there cannot be an allegation that the Delegate erred by applying the incorrect legal test to the facts.
37. I also note that the Tribunal has indicated, time and time again, that it does not have jurisdiction over questions of fact (see *Re Pro-Serv Investigations Ltd.*, [2005] B.C.E.S.T.D. No. 59 (QL); *Re Kovisto (c.o.b. Finn Custom Luminum)*, [2005] B.C.E.S.T.D. No. 6 (QL)), unless of course the matter involves errors on findings of fact which may amount to an error of law. The Tribunal in *Re Funk*, [2004] B.C.E.S.T.D. No. 195 (QL), expounded on the latter point stating that the appellant would have to show that the fact finder made a “palpable and over-riding error” or that the finding of fact was “clearly wrong” to establish error of law.
38. In this case I note that the Delegate, in many instances, was confronted with questions of credibility when the parties had differing evidence on matters pertinent to the penultimate issue of the status of Mr. Pereversoff and where such occurred the Delegate preferred the evidence of Mr. Ripley or Turtle Tanks. In my view, a delegate presiding over a hearing is far better positioned to deal with questions of credibility than the Tribunal on an appeal. The Tribunal is generally reluctant to substitute the delegate’s findings of facts even if it is inclined to reach a different conclusion on the evidence. In this case, while I find that I may have been inclined to reach different conclusions of fact on certain matters in my analysis of the evidence presented by the parties, that is not a relevant consideration or a basis for me to vary or reverse the Delegate’s conclusions of fact. Having said this, on the relevant or applicable tests for finding an error of law delineated in *Gemex, supra*, or in the Tribunal’s decisions in *Re Britco, supra*, or *Re Funk, supra*, I can say with significant confidence that I am not persuaded that the Delegate made a palpable or overriding error or reached a clearly wrong conclusion of fact or acted without any evidence or on a view of evidence that could not reasonably be entertained. To the contrary, I find that the Delegate’s findings of fact, particularly as they relate to the Determination of Mr. Pereversoff’s relationship with Mr. Ripley or Turtle Tanks, to be based on a view of evidence that could reasonably be entertained.
39. In the circumstances, I find that Mr. Pereversoff has failed to discharge the burden on him to establish that the Delegate erred in law in making the Determination and I dismiss this ground of appeal.

(II) Natural Justice

40. Mr. Pereversoff has also advanced the natural justice ground of appeal. The principles of natural justice are essentially procedural rights that ensure that all parties are provided an opportunity to learn the case against them, afforded the opportunity to present their case and challenge the case of the opposing party, and the right to be heard by an independent decision-maker.
41. In reviewing the submissions of Mr. Pereversoff, I find specifically that the submissions relating to the natural justice ground of appeal include the following:

- (a) In paragraph 17 of the initial written submission of Mr. Perversoff enclosed with his Appeal Form Mr. Pereversoff states “(d)ue to the [Delegate’s] feelings about me, she discredited my testimony, I think this is due to my presence on the telephone while everyone else was from Kelowna and was present in person”.
- (b) In the second to last paragraph in the initial written submission of Mr. Pereversoff, referring to the previous 22 enumerated paragraphs wherein he is disputing the evidence presented at the hearing and challenging the Delegate’s conclusions of facts, states “(d)ue to these misconceptions I believe the case was biased against me”.
- (c) In the Final Reply of Mr. Pereversoff, he explains that his allegation of bias against the Delegate is due to the Delegate finding his and his witnesses’ testimony “not credible”.
- (d) In the Final Reply of Mr. Pereversoff, he states, during the hearing of his complaint, he was “not allowed to object to inaccurate testimony given from the opposition till [sic] after they finished telling their story”.

42. As concerns Mr. Pereversoff’s allegations of bias against the Delegate, I note that this is a very serious allegation as it challenges or impugns the integrity of the Delegate and it should not be made lightly unless there is sufficient evidence to support the allegation. Having reviewed the entirety of his submissions, I find Mr. Pereversoff’s allegation of bias to be speculative and without any real basis. There is nothing in the Reasons for the Determination, submissions of Mr. Pereversoff, or the appeal record that raises any doubts about the impartiality of the Delegate in her decision-making in this case. Simply because the Delegate preferred Mr. Ripley’s or Turtle Tanks’ evidence compelling and more believable where there was a dispute in the evidence between the parties does not constitute a breach of the principles of natural justice.

43. As for the allegation that the Delegate did not allow him to interject and object to “inaccurate testimony” of the witnesses of Turtle Tanks until after “they finished telling their story”, I find nothing wrong in the conduct of the Delegate in this regard at the hearing. It is within the powers of the Delegate to control the process at the hearing of the complaint. Frankly, I would think that the Delegate’s decision here to allow a party to adduce evidence in chief at the hearing without interference from the opposing party who disputes the evidence as inaccurate is not only preferable as it allows for the orderly conduct of the hearing but also serves the objectives of natural justice. Mr. Pereversoff certainly had the opportunity to cross examine or challenge the evidence of the witnesses on behalf of Turtle Tanks and point out any “inaccurate testimony” once the witnesses of Turtle Tanks were finished giving their evidence. I find no case for breach of natural justice in this regard or in any other regard has been established by Mr. Pereversoff and therefore dismiss the natural justice ground of appeal as well.

44. As a final note, I find based on the errors Mr. Pereversoff has enumerated in the 22 paragraphs in his appeal submissions as well as his Final Reply submissions that he largely disputes the Delegate’s conclusions of fact and intends to re-argue the matters that were before the Delegate during the hearing of his complaint. This is clearly inappropriate and impermissible on appeal of a determination and contrary to the stated objective of the *Act* in Section 2(d), namely, to provide fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. In the result, I dismiss the appeal of Mr. Pereversoff.

ORDER

45. I order, pursuant to Section 115 of the *Act*, that the Determination, dated June 16, 2010, be confirmed.

Shafik Bhalloo
Member
Employment Standards Tribunal