Employment Standards TRIBUNAL

An appeal

- by -

Love Again Network Inc. carrying on business as eloveagain.com
("LAN")

- 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: David B. Stevenson

FILE No.: 2012A/73

DATE OF DECISION: October 5, 2012

DECISION

SUBMISSIONS

Eric Bernal and Neil Hain	on behalf of Love Again Network Inc. carrying on business as eloveagain.com
Terri A. Goss	on her own behalf

OVERVIEW

1. This decision addresses an appeal filed under Section 112 of the *Employment Standards Act* (the *"Act"*) by Love Again Network Inc. carrying on business as eloveagain.com ("LAN") of a Determination issued by a delegate of the Director of Employment Standards (the "Director") on June 5, 2012.

2. The Determination found that LAN had contravened Part 3, section 18 and Part 7, section 58 of the *Act* in respect of the employment of Terri A. Goss ("Ms. Goss") by failing to pay Ms. Goss wages and annual vacation pay and ordered LAN to pay Ms. Goss an amount of $3,301.15, an amount which also included interest under section 88 of the *Act*.

3. The Director also imposed administrative penalties on LAN under Section 29(1) of the *Employment Standards Regulation* (the *"Regulation"*) in the amount of $1,000.00.

4. The total amount of the Determination is $4,301.15

5. LAN has filed this appeal, saying the Director erred in law and/or failed to observe principles of natural justice in making the Determination by finding the complaint filed by Ms. Goss was delivered to the Employment Standards Branch within the statutory time period for filing a complaint set out in section 74(3) of the *Act* and, in the alternative, in finding that Ms. Goss was an employee of LAN under the *Act*.

6. LAN has filed two statutory declarations in support of their appeal grounds and arguments. I shall address those statutory declarations later in this decision.

7. LAN seeks to have the Determination cancelled.

8. The Tribunal has discretion to choose the type of hearing for deciding an appeal. Appeals to the Tribunal are not *de novo* hearings and the statutory grounds of appeal are narrow in scope. The Tribunal is not required to hold an oral appeal hearing and may choose to hold any combination of oral, electronic or written submission hearing: see section 103 of the *Act* and section 36 of the *Administrative Tribunals Act*. The Tribunal finds the matters raised in this appeal can be decided from the written submissions and the material on the section 112(5) "Record", together with the submissions of the parties and any additional evidence allowed by the Tribunal to be added to the "Record".

ISSUE

9. The issues in this appeal are whether LAN has shown the Director erred in law and/or failed to observe principles of natural justice in finding Ms. Goss had filed her complaint within the statutory time period and/or finding that Ms. Goss was an employee under the *Act*.

THE FACTS

10. LAN owns a website that provides on-line support for people transitioning through a divorce. On that site, they provide advertising to health, legal and business professionals. Ms. Goss was engaged by LAN to sell advertising space on that site.

11. By way of background, in the reasons for the Determination, the Director sets out what is described in the Determination as a reproduction of the on-line advertisement to which Ms. Goss responded and which led to her contracting with LAN to become a "Consultant". I note that LAN says the advertisement set out is not the one to which Ms. Goss responded, but is actually an advertisement for a "Sales Manager" posted after Ms. Goss ceased to have any relationship with LAN. A review of the Record indicates LAN is correct in its position; the actual on-line advertisement was presented to the Director as exhibit 2 in the complaint hearing. I shall address the effect of this error later in this decision.

12. On January 19, 2010, LAN and Ms. Goss signed an agreement that set out the terms of the engagement. The agreement was drawn up by Neil Hain ("Mr. Hain"), one of the principals of LAN and a practicing lawyer. The main objectives of the agreement were twofold: first, to set out the terms of the engagement, including the work requirements of the position; and second, to establish Ms. Goss status as an independent contractor.

13. The engagement commenced January 26, 2010.

14. The Director found Ms. Goss terminated the arrangement on June 10, 2010. This finding was based on the absence of any evidence indicating either Ms. Goss or LAN terminated the relationship before that date and on evidence provided to the Director, including a May 31, 2010, email between Ms. Goss and Mr. Hain that gave no suggestion Ms. Goss was terminating her relationship with LAN, and more compelling, indicated she intended to continue to perform her duties under the arrangement in the following week, a June 7, 2010, email, also between Ms. Goss and Mr. Hain, and a telephone conversation on June 10, 2010 followed by Ms. Goss' removal from LAN's "Highrise" software program that was intended for use by LAN's sales representatives.

15. Ms. Goss filed a complaint with the Employment Standards Branch on December 6, 2010 claiming wages for April and May 2010.

16. The Director conducted a complaint hearing on February 24, 2012.

17. In response to the complaint, LAN contended Ms. Goss was not an employee. The Director found Ms. Goss was an employee for the purposes of the *Act*. The Director's finding was based on the definitions of "employee" and "employer" found in the *Act* and applied against evidence provided to the Director during the complaint hearing, including terms of the agreement, which the Director found demonstrated a significant level of direction and control over Ms. Goss in the work she performed and how she performed it. The Director found Ms. Goss was not operating her own business, was performing duties solely related to LAN's business, was assigned a territory by LAN and instructed what he duties were within that territory. The Director found the sales of advertising was integral to LAN's business.

ARGUMENT

18. LAN argues the Director erred in law and failed to observe principles of natural justice in finding Ms. Goss was an employee.

19. LAN submits the alleged errors of law and failure to observe principles of natural justice arise in several ways.

20. First, from the Director relying on information that was not in evidence and ignoring evidence that supported the conclusion Ms. Goss was an independent contractor, not an employee. One of the pieces of evidence falling within this part of the appeal was the on-line advertisement for a "Sales Manager" reproduced in the background information in the Determination. LAN says the reference to this job posting, on page R8 of the Determination, was an error, as that on-line advertisement was not in evidence.

21. Second, from the Director's finding that the sale of advertisements are a matter that was "integral" to the business of LAN, contending such a finding could not be made as there was no evidence about LAN'S business model or sources of revenue.

22. Third, from the Director applying the wrong legal test for determining employment in the particular workplace environment involved in this case. In particular, LAN says the Director failed to give sufficient weight to the intention of the parties expressed in several areas of the agreement not to create an employment relationship. LAN argues the reasons given by the Director disproportionately rely on some evidence while ignoring other, contradicting, evidence. In the context of this argument, LAN relies heavily on the assertions made in the statutory declarations of Mr. Hain and Eric Bernal ("Mr. Bernal") that have been submitted with the appeal.

23. Fourth, from the Director reaching a conclusion on the timeliness of the complaint that was not rationally supported by the evidence. LAN says the Director ought to have found, even if Ms. Goss was an employee (which is denied), that her employment terminated on May 30, 2010.

24. The Director has filed no response to the appeal.

25. Ms. Goss has filed a response that has focussed on aspects of the statutory declarations filed by Mr. Hain and Mr. Bernal, clarifying some of the statements made in them and denying others. Understandably, Ms. Goss says no errors were made by the Director.

ANALYSIS

26. The grounds of appeal are statutorily limited to those found in Subsection 112(1) of the *Act*, which says:

> *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 made.*

27. A review of decisions of the Tribunal reveals certain principles applicable to appeals have consistently been applied. The following principles bear on the analysis and result of this appeal.

28. An appeal is not simply another opportunity to argue the merits of a claim to another decision maker. An appeal is an error correction process, with the burden in an appeal being on the appellant to persuade the Tribunal there is an error in the Determination under one of the statutory grounds.

29. The *Act* does not provide for an appeal based on errors of fact and the Tribunal has no authority to consider appeals based on alleged errors in findings of fact unless such findings raise an error of law: see *Britco Structures Ltd.*, BC EST # D260/03. The Tribunal noted in the *Britco Structures Ltd.* case that the test for establishing an error of law on this basis is stringent, requiring the appellant to show that the findings of fact are perverse and inexplicable, in the sense that they are made without any evidence, that they are inconsistent with and contradictory to the evidence or they are without any rational foundation. The Tribunal has adopted the following definition of "error of law" set out 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.):

> 1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment 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. adopting a method of assessment which is wrong in principle.

30. A party alleging a denial of natural justice must provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST # D043/99.

31. As a general proposition, a failure by the Director to consider relevant evidence is a breach of natural justice and an error in law which can result in a setting aside of the Determination: see *D. Kendall & Son Contracting Ltd.*, BC EST # D107/09.

32. Subsection 112(1) (c) of the *Act* provides that a person may appeal a Determination on the ground that evidence has become available that was not available at the time the Determination was being made. The Tribunal is given discretion to accept or refuse new or additional evidence. Although this ground of appeal is not specifically relied on by LAN, the statutory declarations contain new evidence and it is appropriate to consider the principles that bear on whether or not this evidence is accepted in this appeal. The Tribunal has taken a relatively strict approach to the exercise of this discretion and tests the proposed evidence against several considerations, including whether such evidence was reasonably available and could have been provided during the complaint process, whether the evidence is relevant to a material issue arising from the complaint, whether it is credible, in the sense that it be reasonably capable of belief, and whether it is probative, in the sense of being capable of resulting in a different conclusion than what is found in the Determination: see *Davies and others (Merilus Technologies Inc.)*, BC EST # D171/03. New or additional evidence which does not satisfy any of these conditions will rarely be accepted. It should be noted that the conditions set out in the *Davies* decision are conjunctive and the party requesting the Tribunal to admit new evidence must satisfy all of them before the Tribunal will admit the new evidence.

33. The Tribunal has adopted a position that relaxes the approach taken to evidence adduced for the first time on appeal distinguishing those circumstances where the evidence is adduced for the purpose of having the truth of the evidence accepted "on the merits" from circumstance where the new evidence is adduced to show jurisdictional error. The rationale for this approach is that barring the latter type of evidence would be inconsistent with the purpose of the *Act* to provide fair and efficient procedures for dispute resolution: section 2(d) of the *Act*. In *J.C. Creations Ltd. o/a Heavenly Bodies Sport*, BC EST # RD317/03, the Tribunal, at page 15, elaborated on the distinction in the following excerpt:

> This distinction, which reinforces the fairness requirement in the *Act*, is consistent with elementary administrative law principles. Even on judicial review, courts allow "new evidence" to be tendered to

show jurisdictional error such as a breach of procedural fairness: *Evans Forest Products Ltd. v. British Columbia (Chief Forester)*, [1995] B.C.J. No. 729 (S.C.). Brown and Evans, in *Judicial Review of Administrative Action in Canada* (2003) at pp. 6-56, 57, accurately summarize the law as follows:

> …any evidence that relates to an excess of jurisdiction is admissible, as is evidence in support of the allegation that there was "no evidence" in support of a material finding of fact made by an administrative tribunal, evidence establishing an insufficient basis for the administrative action taken, or evidence of a breach of a duty of fairness… .

Breaches of procedural fairness are often not apparent on the record. Courts have long recognized that the traditionally restrictive "fresh evidence" principles cannot apply to evidence adduced to demonstrate a breach of procedural fairness. Justice and necessity require that evidence concerning such alleged breaches can be received so that procedural fairness allegations can be meaningfully raised and addressed. That is, of course, even more true where, as in this case, the Tribunal does not have the Delegate's record of what transpired during the hearing.

34. In that context, I shall address the admissibility of the statutory declarations submitted with the appeal.

35. The statutory declaration of Mr. Bernal, looked at in its entirety, is a combination of new evidence going to the merits – evidence relating to the relationship of advertising to the overall revenue stream of LAN – and his recollection of evidence he provided at the complaint hearing and which goes to that part of the appeal alleging the Director relied on information not in evidence and ignored evidence in making critical findings. The statutory declaration of Mr Hain is similarly disposed but with greater emphasis on his recollection of evidence provided at the complaint hearing by Ms. Goss, in cross-examination, and by him, in direct evidence, that were allegedly ignored by the Director.

36. I also note that Ms. Goss disagrees with and disputes some of the statements found in the statutory declarations.

37. Applying the above principles, I will accept those parts of the statutory declarations that speak to "no evidence" or procedural fairness, including those parts of the statutory declaration that go to the contention the Director ignored relevant evidence or made findings of fact "not rationally supported by the evidence". I will not allow or consider those parts of the statutory declarations that speak "to the merits" of the Determination.

38. In making this decision, I also accept and adopt the remarks of the Tribunal in *Jane Welch operating as Windy Willows Farm*, BC EST # D161/05, that described the limitations of intervening in a Determination on the basis the Director "failed to consider relevant evidence". Those limitations are reflected in the following excerpt from the analysis of the *Jane Welch* decision at paras. 40-43:

> . . . there are good reasons for the Tribunal to exercise caution in intervening with a decision of the Director on the basis that a delegate failed to consider relevant evidence. First, as pointed out by D. J. M. Brown and J. M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at paragraph 12:3700,
>
> > . . . any attempt to determine whether an administrative decision-maker has considered "all of the evidence" as a matter of procedural fairness, can come very close to the reassessment of the actual findings of fact, which would be inconsistent with the usual deferential approach to review of findings of fact.
>
> Second, the Tribunal should not lightly find that a delegate has failed to consider relevant evidence. Although the Director and his delegates have a duty, both under the *Act* and at common law, to provide reasons for their determinations, "[i]t is trite law that an administrative tribunal does not have to recite all of the evidence before it in its reasons for decision": *International Longshore & Warehouse Union (Marine*

> *Section), Local 400 v. Oster*, [2002] 212 F.T.R. 111, 2001 FCT 1115, at para. 46; see also *Manuel D. Gutierrez*, BC EST #D108/05, at para. 56. Thus, that a delegate does not mention particular relevant evidence in his or her reasons does not, in and of itself, demonstrate a failure to consider that evidence in making the determination. That said, the more relevant and probative the evidence is, the greater the expectation that this evidence will be considered expressly in the delegate's reasons.
>
> Third, even if an appellant establishes that a delegate failed to consider relevant evidence, it does not automatically follow that the delegate failed to observe the principles of natural justice in making the determination. In *Université du Québec à Trois-Rivières v. Larocque*, [1993] 1 S.C.R. 471 at 491-92, Lamer C.J. held that the rejection of relevant evidence is not automatically a breach of natural justice; rather, whether it constitutes a breach of natural justice depends on the impact of the rejection of the evidence on the fairness of the proceeding:
>
> > For my part, I am not prepared to say that the rejection of relevant evidence is automatically a breach of natural justice. A grievance arbitrator is in a privileged position to assess the relevance of evidence presented to him and I do not think it is desirable for the courts, in the guise of protecting the right of parties to be heard, to substitute their own assessment of the evidence for that of the grievance arbitrator. It may happen, however, that the rejection of relevant evidence has such an impact on the fairness of the proceeding, leading unavoidably to the conclusion that there has been a breach of natural justice.
>
> Relevant factors include the importance to the case of the issue upon which the evidence was sought to be introduced, and the other evidence that was available on that issue. Although *Université du Québec à Trois-Rivières* involved a refusal to permit a party to adduce relevant evidence, this reasoning applies with equal force to the question of whether a failure to consider relevant evidence denied a party a fair hearing. Thus, whether a failure to consider relevant evidence amounts to a breach of the principles of natural justice will depend on the particular circumstances of each case.

39. Applying the above cautions, I dismiss the arguments that the Director ignored relevant evidence or made findings that were not supported by the evidence in finding Ms. Goss was an employee under the *Act*.

40. The first, and central, element of these arguments is the alleged failure of the Director to give effect to the intention of the parties, expressed in several areas of the evidence, that Ms. Goss was an independent contractor, not an employee. While there is no doubt the Director did not accept the expressed intention of the parties as determining Ms. Goss' status under the *Act*, there is no basis for saying the evidence about that expressed intention was ignored. The Determination refers in several places to the stated intention of the parties and includes the following, at page R7:

> It is not the terms of the contract, or for that matter the intention of the parties, that determines the nature of the relationship for the purposes of the Act. Rather, it is the above definitions [of employee and employer] in Act [sic].

41. That statement is a completely correct summary of the law of the *Act* dealing with the effect of the stated intention of the parties on an individual's status as an employee. As the Tribunal noted in *Knight Piesold Ltd.*, BC EST # D093/99, at page 5:

> I accept that the intent of the parties was that Johnson was an independent contractor. As well, I accept that the relationship was established in good faith. The Employer relies on a decision of the Supreme Court of British Columbia, *Straume v. Point Grey Holdings Ltd.*, (1990) B.C.J. No. 365, for the proposition that weight should be given to the parties' intentions. In that case the court found that a farm manager was an independent contractor (contract for service) and not an employee (contract of service). The decision, which arose out of a claim for wrongful dismissal, *i.e.*, an action in common law, appears to be based to a large extent on the degree of control exercised by the alleged employee: he had great flexibility in his hours of work, when he took vacations, and he successfully resisted control over reporting weekly

> hours. In my view he decision does not reflect the law applicable to this case. If I am wrong in that respect, I find that the facts of that case can nevertheless be distinguished from those in the case at hand. Moreover, this case concerns employee status under the *Act*. In *Straume* the court noted, at page 3, that "the declared intention and classification of the contract parties may not bind statutory or third parties not party to the contract as against its true nature". As noted in *Christie et al.*, *above*, at page 2.1-2.2 with respect to the common law tests of "employee" status:
>
> > "In each of these contexts the purpose of characterizing a relationship as employment is quite different from the purpose of the characterization in the action for wrongful dismissal, the traditional common law action in which the two-party relationship that is the subject of this service is elaborated, to say nothing of the purpose of particular statutes in which the term may appear. ... It follows that precedents arising under common law or under a particular statute can be legitimately rejected or modified when the question of "employee" status is asked for a different purpose."
>
> While the parties intent is relevant in an action for wrongful dismissal, *i.e.*, an action founded in contract, and may be a relevant factor before the Tribunal, I do not agree, in view of the remedial nature of the statute, that much weight should be placed on this factor. It is well established that the basic purpose of the *Act* is the protection of employees through minimum standards of employment and that an interpretation which extends that protection is to be preferred over one which does not (see, for example, *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986). As well, Section 4 of the *Act* specifically provides that an agreement to waive any of the requirements is of no effect.

42. A reasonable conclusion based on a fair reading of the Determination is that the Director was made well aware of the areas of the arrangement expressing an intention for Ms. Goss to be an independent contractor but, based on evidence demonstrating the relationship fell within the *Act*, would not allow that stated intention to be used to avoid the requirements of the *Act*: see section 4. This is not a case where the evidence of intention was not mentioned or considered; rather it is a case where such stated intention was not found to be effective.

43. In respect of the assertion that the Director gave cursory consideration to and/or ignored to evidence that was inconsistent with a finding of control and direction, I do not find that has been shown. The Determination clearly reflects an analysis of the relationship as set out in written agreement and makes the finding that:

> "Overall, the contract goes to considerable lengths to deny the existence of an employment relationship while also solidifying Loveagain's authority to direct Ms. Goss in the work relationship. While there is evidence of control and direction throughout the contract it is particularly evident in clause 3.1 of the contract: . . ."

44. As stated in the *Jane Welch* decision, the Director does not have to recite all of the evidence before him in the reasons for the Determination. The specific elements of the evidence which LAN alleges were "ignored", even without considering the disagreement registered by Ms. Goss about some of the assertions made in the statutory declarations, are not in my view particularly relevant to the basis for the finding by the Director of direction and control to require specific mention.

45. It is appropriate at this point to address the argument that the Director erred in law in finding Ms. Goss was an employee. As the Tribunal has said on many occasions, while the common law tests remain useful in focusing attention on relevant factors, they are subservient to the definitions found in the *Act* and must be applied bearing in mind the broad statutory definitions, which must in turn be interpreted in light of the policy objectives of the *Act* that endorses "an interpretation of the *Act* which encourages employers to

comply with the minimum requirements of the Act, and so extends its protection to as many employees as possible, is favoured over one that does not": see *Machtinger v. HOJ Industries Ltd.*, *supra.*

46. The Director found "significant direction and control" by LAN over Ms. Goss' work activities. The evidence cited in the Determination justifies that finding. The analysis and decision of whether a person is an employee under the *Act* or an independent contractor is typically very fact-specific and, in the absence of a demonstrated error of law in findings of fact on which such decision is based, is not subject to review by the Tribunal. The Director considered the intention of the parties and whether Ms. Goss was in business on her own account or whether she had been engaged to perform services for LAN, finding these matters supported finding an employment relationship. There is no basis for suggesting the Director ignored the fact that under the agreement business costs, such as office expenses, had been transferred to Ms. Goss. There is no evidence that Ms. Goss had a chance to profit from anything other than supplying her own labour at the rates and on the conditions set by LAN.

47. While LAN has argued the Director applied the wrong test, there is no indication of what the test should be, other than one which gives effect to the intention of the parties. LAN relies on some comments found in the Tribunal decision *Kelsy Trigg*, BC EST # D040/03 (incorrectly referred to in the appeal as the *Payspaces* decision), as supporting the proposition that the intention of the parties expressed in a written agreement is instructive, but has apparently failed to appreciate the effect of the following comment from that decision, found at page 6:

> . . . the written agreement will only be given weight provided that it properly reflects the relationship between the parties.

48. I also note the following comment from that case,

> In determining the nature of a relationship, courts, and this Tribunal, have typically assessed the nature of the relationship, looking beyond the language used by the parties. While there is no magic test, the total relationship of the contracting parties must be examined, with a view to determining "whose business is it?"

49. There can be no dispute that the business belonged to LAN.

50. In sum, I find the Director made no error of law in the interpretation of the *Act* or in the test applied to the facts.

51. LAN challenges the finding by the Director that the work being done by Ms. Goss was "integral" to LAN's business, submitting there was no evidence about LAN's business model or sources of revenue. I cannot accept this aspect of the appeal. First, there was ample evidence that advertising revenue was a source of income for LAN. Second, there was evidence that advertising sales was an integral part of LAN's business. In context, the term "integral" relates to a consideration of the "integration test" which assesses the level of integration between the service provided by the putative employee and the nature of the putative employer's business. Under a contract of service, a person is employed as part of the business and his or her work is done as an integrated part of that business. Conversely, a contract for services or work, although done for the business, is not integral to the business but only an accessory to the business. On the evidence, Ms. Goss was not performing the service on her own account, but as part of LAN's business and as such it was correctly characterized as "integral" to that business. This argument has no merit and is dismissed.

52. In respect of the argument by LAN that the Director erred by referring to an on-line advertisement for a "Sales Manager" that was not in evidence at the complaint hearing and was created after Ms. Goss left LAN, I am not persuaded that matter should affect the result of the Determination.

53. LAN says the on-line advertisement relating to the job Ms. Goss took was the only such document in evidence. A copy of that document is in the "Record" and is also attached to Mr. Hain's statutory declaration. I have accepted the particular document referred to by the Director in the Determination was not placed in evidence. What I do not accept, and is not explained in the appeal, is how reference to that document rather than the one specifically applying to the job Ms. Goss applied for should have any effect on the Determination. No reason has been expressed by LAN and none is apparent. The two advertisements are virtually identical in content. It is a logical inference that whatever the Director said about one would also apply to the other and that the view of the Director of the job description in one would be the same in the other. It would make no sense, considering the stated purpose found in section 2(d), to cancel a Determination on an error that is more technical than substantive, which has not been shown to have any effect on the result in the Determination and which, on any reasoned view of the evidence, would not alter or change any part of the penultimate finding made in Determination.

54. Finally, LAN argues the Director erred in "ignoring evidence" or making critical findings of fact not supported by the evidence on the matter of the timeliness of the complaint.

55. I am not persuaded there was any error made by the Director on the timeliness of the complaint. This argument simply takes issue with the finding of fact made by the Director that Ms. Goss employment did not terminate before June 10, 2010. There was evidence from which the Director could reasonably make that finding; it is set out and analyzed in the Determination.

56. For the above reasons, the appeal is dismissed.

ORDER

57. Pursuant to Section 115 of the *Act*, I order the Determination dated June 5, 2012, be confirmed in the amount of $4,301.15, together with any interest that has accrued under Section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal