

An appeal

- by -

Centre Dining (1976) Ltd.
("Centre Dining")

- 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.: 2014A/103

DATE OF DECISION: November 27, 2014

DECISION

SUBMISSIONS

Sonny Murray

on behalf of Centre Dining (1976) Ltd.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Centre Dining (1976) Ltd. (“Centre Dining”) has filed an appeal of a determination issued by a delegate of the Director of Employment Standards (the “Director”) on July 9, 2014 (the “Determination”).
2. The Determination concluded that Centre Dining contravened Part 4, section 40 (overtime) and Part 5, sections 45 and 46 (statutory holiday pay) of the *Act* in respect to the employment of Juancho Sinlao (“Mr. Sinlao”), and ordered Centre Dining to pay Mr. Sinlao wages and interest in the amount of \$7,553.28, inclusive of accrued interest under section 88 of the *Act*.
3. The Determination also levied three (3) administrative penalties of \$500.00 each against Centre Dining for contravention of sections 40, 45 and 46 of the *Act*.
4. The total amount of the Determination is \$9,053.28.
5. Centre Dining has appealed the Determination on the grounds that the Director erred in law and failed to observe the principles of natural justice in making the Determination.
6. By way of remedy, Centre Dining is seeking the Employment Standards Tribunal (the “Tribunal”) to cancel the Determination.
7. Pursuant to section 114 of the *Act*, the Tribunal has discretionary power to dismiss all or part of an appeal without seeking submissions from the parties. At this stage of the proceeding, I will assess the appeal based solely on a review of the Reasons for the Determination (the “Reasons”); the written submissions of Mr. Murray, a representative of Centre Dining; and the “Record” that was before the delegate when the Determination was being made. If I am satisfied the appeal, or part of it, has some presumptive merit and should not be dismissed under section 114 of the *Act*, Mr. Sinlao and the Director may be invited to file further submissions. Alternatively, if I find the appeal is not meritorious, it will be dismissed under section 114(1) of the *Act*.

ISSUE

8. Is there a basis on which the Determination should be cancelled?

THE FACTS

9. Centre Dining is a company incorporated under the laws of British Columbia and operates a restaurant business.
10. Nancy Wong (“Ms. Wong”) is the sole director and officer of Centre Dining.

11. Centre Dining employed Mr. Sinlao as a cook from June 18, 2012, to October 7, 2013, at the rate of pay of \$14.00 per hour. Mr. Sinlao, after resigning from his employment, filed a complaint under section 74 of the *Act* against Centre Dining alleging that the latter contravened the *Act* by failing to pay him overtime and statutory holiday pay (the “Complaint”).
12. A delegate of the Director conducted a hearing into the Complaint on March 27, 2014 (the “Hearing”).
13. Mr. Sinlao appeared on his own behalf at the Hearing. Centre Dining was represented by Mr. Murray and called a witness, Kathleen Sampson (“Ms. Sampson”), a Philippine contract worker, employed as a cook with Centre Dining.
14. In the Reasons, the delegate sets out five (5) issues he considered and heard the parties’ evidence on at the Hearing, namely:
 1. What were Mr. Sinlao’s hours of work?
 2. How much was Mr. Sinlao paid by Centre Dining during his last six (6) months of employment?
 3. Does Centre Dining owe Mr. Sinlao for overtime wages?
 4. Does Centre Dining owe Mr. Sinlao for statutory holiday pay?
 5. Does Centre Dining owe Mr. Sinlao for deductions made for room and board?
15. With respect to the question of Mr. Sinlao’s hours of work, the delegate notes in the Reasons that both parties submitted their records of Mr. Sinlao’s hours of work. In the case of Centre Dining, its records consisted of a series of spreadsheets which Centre Dining claimed were weekly schedules of hours worked by Mr. Sinlao. Mr. Sinlao, on the other hand, submitted his calendars, on which he claims he handwrote his start and finish times on each work day contemporaneously with the work he performed at Centre Dining. He also provided a spreadsheet on which he delineated the total hours he worked each day.
16. According to the delegate neither party’s records were definitive nor accurate records of hours worked by Mr. Sinlao. With respect to Centre Dining’s schedules, the delegate notes that these records showed the hours Mr. Sinlao was scheduled to work from April through October, 2013; however, a review of the payroll records of Centre Dining showed that the hours Mr. Sinlao was paid in a pay period did not match the hours recorded on the schedule in nine (9) of the thirteen (13) pay periods examined. The delegate notes that while Centre Dining acknowledges this difference in its payment records and schedule of Mr. Sinlao’s hours of work, it argues that this is evidence that Mr. Sinlao was overpaid.
17. However, the delegate concludes that the schedules submitted by Centre Dining appear to have been created specifically by the latter to respond to the Complaint since they included a notation on the last page stating that the business hours of the restaurant are 11:00 a.m. to 9:00 p.m. on weekdays and 3:45 p.m. to 8:45 p.m. on weekends and holidays in contrast to the Employment Contract between Centre Dining and Mr. Sinlao, which stated that the business hours were “6:30 a.m. to 11:30 p.m.”. The delegate also notes that while Centre Dining presented Ms. Sampson’s evidence with respect to Mr. Sinlao’s hours of work, she was only able to state that Mr. Sinlao had his own schedule, and that she was certain that he had worked from 2:00 p.m. to 8:30 p.m. on Mondays. Given that Mr. Sinlao and Ms. Sampson shared the same accommodation and worked alongside each other at Centre Dining, the delegate found that it was odd that the only day for which Ms. Sampson could specify Mr. Sinlao’s hours of work was Monday, and not any other day.
18. The delegate also notes that with respect to Mr. Sinlao’s records, there was a similar issue in that the hours written on the calendars by Mr. Sinlao are consistently greater than the total hours worked which Mr. Sinlao

includes in his spreadsheet calculation. Since Mr. Sinlao indicated that he entered his hours on the calendar just prior to starting and then just after finishing his work shifts, the delegate deduced that this may account for some of the variance between the two (2) records. The delegate also notes that the calendar records of Mr. Sinlao go all the way back to Mr. Sinlao's first day of employment, in June 2012, which is outside of the timeframe covered in the Complaint. He further notes that Mr. Sinlao, at the Hearing, stated that his regularly scheduled hours of work consisted of ten (10) per day on weekdays and eight (8) per day on weekends, with one (1) day off per week. This was reflected in the hours Mr. Sinlao recorded on his spreadsheet calculation.

19. Upon considering both Centre Dining's and Mr. Sinlao's records, the delegate notes that the questions and concerns with respect to Centre Dining's records of hours worked by Mr. Sinlao are sufficiently serious that he could not rely on the accuracy of these records with any confidence. The delegate felt that it was more likely than not that Mr. Sinlao completed his calendar records contemporaneously with the work being performed, and that these records are more likely to present an accurate record of his hours worked. The delegate further noted that Mr. Sinlao also submitted a spreadsheet summary of hours worked on each day from April through October, 2013, which records set out hours worked to the half hour, while Mr. Sinlao's calendar sheets show time "in" and "out" to the minute, which the delegate concluded supported Mr. Sinlao's description of filling out the calendar just before, and just after, working his shifts at Centre Dining. In the result, the delegate found the spreadsheet records submitted by Mr. Sinlao more likely represented the actual time spent by Mr. Sinlao working in the kitchen of Centre Dining's restaurant and, therefore, the best evidence of Mr. Sinlao's hours of work with Centre Dining.
20. With respect to the question of how much Mr. Sinlao was paid by Centre Dining during his last six (6) months of employment, the delegate notes that Centre Dining's payroll records indicate that Mr. Sinlao was paid a total of \$15,165.68. He further notes that Mr. Sinlao claimed that, in addition to the said amount, he was also paid \$63.00 in cash by Centre Dining each week up until September 20, 2013, to partially compensate him for overtime worked. The delegate concludes that it is unlikely that Mr. Sinlao would claim to have received additional wages in cash if this had not occurred, and, therefore, concludes that Mr. Sinlao was indeed paid a further \$63.00 per week for 24 weeks, for a total of \$1,512.00 on account of overtime wages. This amount, added to his other wages for the last six (6) months of his employment, total \$16,677.68.
21. With respect to the question of whether Centre Dining owed Mr. Sinlao for overtime wages, the delegate notes that, based on Mr. Sinlao's records, he worked a significant amount of overtime hours, but Centre Dining's payroll records do not indicate that any wages were paid to him at an overtime rate of pay. The delegate also notes that Mr. Sinlao was paid for more hours than recorded in his records in some pay periods and received an additional amount of \$1,512.00 on account of overtime wages, but Centre Dining still owed him \$6,061.34 in overtime wages, plus \$242.45 in vacation pay on this amount. In the result, the delegate found Centre Dining to have contravened section 40 of the *Act* for failing to pay Mr. Sinlao overtime wages, and ordered Centre Dining to pay Mr. Sinlao the amounts owing and, relatedly, levied an administrative penalty against Centre Dining in relation to this contravention.
22. With respect to the question of whether Centre Dining owed Mr. Sinlao for statutory holiday pay, the delegate notes, based on the schedules of hours Mr. Sinlao worked, that he was entitled to statutory holiday pay for each of Victoria Day, Canada Day, BC Day and Labour Day in 2013. He further notes that the records show Mr. Sinlao worked on each of these holidays and, therefore, was entitled to be paid at time and one-half, pursuant to section 46 of the *Act*. As Centre Dining did not show that Mr. Sinlao was paid any wages on account of statutory holiday pay, the delegate determined that Centre Dining owed Mr. Sinlao \$452.80 for statutory holiday pay, pursuant to section 45 of the *Act*, and a further \$588.00, pursuant to section

46 of the *Act*, plus \$41.64 in vacation pay on the said amounts. Relatedly, the delegate levied two (2) administrative penalties of \$500.00 each against Centre Dining for contravening sections 45 and 46 of the *Act*.

23. With respect to Mr. Sinlao's claim that Centre Dining made unauthorized deductions from his wages for rent and food, the delegate noted that Mr. Sinlao failed to provide any evidence to support this claim. Moreover, the examination of Centre Dining's payroll records did not disclose any evidence of unauthorized deductions. Therefore, the delegate rejected this claim of Mr. Sinlao.

SUBMISSIONS OF CENTRE DINING

24. As indicated previously, Centre Dining appeals the Determination on the basis that the Director erred in law and failed to observe the principles of natural justice in making the Determination. Mr. Murray makes written submissions on behalf of Centre Dining on both these grounds.
25. I also note Mr. Murray has made written submissions objecting to the completeness of the Director's Record.
26. I have carefully read both submissions and while I do not find it necessary to reiterate them verbatim here, I will summarize the gist of those submissions under separate sub-headings below.

(a) Completeness of the Record

27. On August 20, 2014, the Tribunal requested the Director to provide a complete copy of the Record. The Director complied with the request by providing the Record on September 4, 2014. The Record included all of the documents adduced by both parties that were "cross-disclosed" to the parties prior to the Hearing. In the follow-up submissions of the Director, the latter points out that the Record included a document entitled "Safety Orientation Manual" as part of the employee's submissions, but this was included in error because the template the Director used to submit the Record was not cleared of all the entries of a previous file. Otherwise, the Record is complete, according to the Director.
28. On the part of Centre Dining, Mr. Murray argues that the Record is incorrect and "should be corrected", and then goes on to attach numerous documents already disclosed in the Director's Record and presents his narrative on each with a view to disputing the delegate's interpretation of these documents and relatedly the delegate's findings of fact in the Determination.
29. Mr. Murray also submits that the narrative he is providing in context of the challenge to the completeness of the Director's Record was previously provided to the delegate at the Hearing, but is missing in the Record. He contends it must form part of the Record if the Tribunal is to have a complete Record.
30. He also notes that "there is a disagreement as to the weight given to different pieces of evidence", and he asserts that his, or Centre Dining's, interpretation of the evidence is the correct interpretation.
31. In my view, the objections of Mr. Murray to the completeness of the Director's Record are nothing more than a disagreement with the delegate's findings of fact and weight placed by the delegate on various pieces of documentary evidence, and I find those objections inappropriate and irrelevant in context of his objection to the completeness of the Director's Record. Therefore, I dismiss those objections.

(b) Error of Law

32. Under the error of law ground of appeal, Mr. Murray submits that the delegate was provided with all employer records and explanations relating to these records, but the delegate “seriously misinterpreted the payroll records, ... pay periods, hours and wages earned”. He contends that “all vacation, holiday pay etc., were remitted as required to Mr. Sinlao” but Centre Dining’s “payroll program did not accommodate separate categories for statutory holidays” and this led the delegate to misinterpret the payroll records and commit an error of law.
33. With respect to overtime pay, Mr. Murray submits that, at the Hearing, it was explained to the delegate that there was no overtime earned or recorded by Centre Dining for Mr. Sinlao during the period in question. He again states that the “Delegate misinterpreted the payroll records and chose to disregard all evidence presented”. He also submits that the delegate, in preferring the evidence of Mr. Sinlao, “relied on a fictitious presentation by the employee, of erroneous evidence to extort, (‘error of fact’), and concluded that overtime pay was due”. [sic].

(c) Breach of Natural Justice

34. With respect to the natural justice ground of appeal, Mr. Murray submits:
- The evidence provided by the Delegate is fundamentally weak, inadequate and cannot be corroborated. There is error of fact in much of the evidence and the reluctance of the Delegate to acknowledge or uncover these errors lead to a biased and prejudicial determination by the Delegate.
35. Mr. Murray also asserts that the delegate failed in his duty to act fairly and his decision is “based on speculation and suspicion” and lacks “adequate reasoning and justification”. He reiterates his earlier submission in context of the error of law ground of appeal and argues that the delegate’s analysis and interpretation of Centre Dining’s documents is fraught with errors and, thus, a breach of natural justice.
36. Mr. Murray also submits that Centre Dining has the “responsibility and obligation to record employee hours” and has done so for the past 38 years and maintained proper accounting and payroll records to the satisfaction of the Canada Revenue Agency (“CRA”). The implication being that Centre Dining’s records cannot be wrong and have been misinterpreted by the delegate.
37. Mr. Murray goes on to discuss at some length the evidence previously presented by Centre Dining at the Hearing, disputing the delegate’s finding of fact that nine (9) of the thirteen (13) pay periods in Centre Dining’s hours recorded do not match the hours paid. Mr. Murray contends that there was no significant variance in hours recorded and hours paid, except that the hours paid included lunch and coffee breaks, and did not show “pay deductions for these breaks”. In the circumstances he states that Mr. Sinlao was overpaid.
38. Mr. Murray also goes on to dispute Mr. Sinlao’s evidence at the Hearing regarding cash payments for overtime worked and his hours worked as recorded in his calendar, including as “fabricated” evidence. He submits that the delegate’s decision to accept Mr. Sinlao’s evidence shows an “apparent bias” on the part of the delegate in his decision making. He also submits that the September 2013 schedule of hours worked, supplied by Mr. Sinlao, relates to another employee and not Mr. Sinlao.
39. Mr. Murray concludes his submissions by reiterating his dispute with the delegate’s findings of fact throughout the Determination and criticizes the delegate’s “investigative techniques to arrive at the underlying true facts” and ability to make “a fair and objective review decision”. He concludes by stating that:

The error of facts are based on: wrongful interpretation of the employer payroll records; witness cross examination; and employee evidence. The employer payroll records were misread by the Delegate and wrong assumptions were made about the employee evidence and witness cross examination.

...

The Delegate appears to have utilized speculation and suspicion, derived from erroneous evidence to formulate his concluding arguments regarding the determination. Further we believe that the Delegate has biased himself in the presentation of the evidence and breached the natural justice that is the right of the employer.

ANALYSIS

40. Section 112(1) of the *Act*, delineates the grounds upon which an appeal may be made to the Tribunal from a determination by the Director. This section reads as follows:

Appeal of director's determination

- 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.

41. As previously indicated, Centre Dining alleges that the Director erred in law and failed to observe the principles of natural justice in making the Determination. I will deal with each ground of appeal under a separate sub-heading below.

(a) Did the Director's delegate err in law in making the Determination?

42. In *Britco Structures Ltd.* (BC EST #D260/03), the Tribunal 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)*, [1988] B.C.J. No. 2275 (BCCA):

1. a misinterpretation or misapplication of a section of the *Act*; [in *Gemex* the legislation was the *Assessment Act*]
2. a miscalculation of an applicable principle of general law;
3. acting without any evidence;
4. acting on a view of facts which could not reasonably be entertained; and
5. adopting a method of assessment which is wrong in principle.

43. Having carefully reviewed Mr. Murray's submissions under this ground of appeal, I find that the submissions do not reveal or suggest any error of law by the delegate. There is no misinterpretation or misapplication of law made out by Mr. Murray. I also do not find that the delegate acted without any evidence or acted on a view of facts which could not reasonably be entertained, or adopted a method of assessment which was wrong in principle when assessing the evidence of the parties and concluding as he did with respect to each of the six (6) questions he considered at the Hearing and set out in the Reasons.

44. I find the substance of Mr. Murray's submissions under the error of law ground contain arguments regarding why the findings, or conclusions, of fact made by the delegate relating to Centre Dining's records and evidence relating to the hours worked by Mr. Sinlao, including holiday pay and overtime pay, are incorrect, and how the evidence should have been weighed differently by the delegate.
45. It should be noted that the weight of evidence is a matter to be decided by the delegate and is a question of fact, not law (see *Beamriders Sound & Video*, BC EST # D028/06). The Tribunal is without jurisdiction to hear appeals based on questions of fact alone. However, where there is an allegation that the delegate acted without evidence or acted on a view of facts which could not reasonably be entertained, an error of law may be found under the test in *Britco Structures Ltd.*, *supra*. It should also be noted that the Tribunal, in *Britco*, quoting from the decision of the British Columbia Supreme Court in *Delsom Estate Ltd. v. Assessor of Area 11 – Richmond/Delta*, [2000] B.C.J. No. 331, noted that error of law, in these circumstances, is only found where it is shown:

... that there is no evidence before the Board which supports the finding made, in the sense that it is inconsistent with and contradictory to the evidence. In other words, the evidence does not provide any rational basis for the finding. It is perverse or inexplicable. Put still another way, in terms analogous to jury trials, the Appellant will succeed only if it establishes that no reasonable person, acting judicially and properly instructed as to the relevant law, could have come to the determination, the emphasis being on the word 'could'...

46. In this case, the delegate considered the evidence of both parties, neither of which was definitive, but his task was to reach a fair and reasonable conclusion based on the best evidence available, which he found to be that of Mr. Sinlao. I do not find that the delegate acted without any evidence, nor did he act on a view of facts that could not reasonably be entertained with respect to any of the questions he considered, including those raised by Mr. Murray in Centre Dining's appeal relating to the weight the delegate placed on Mr. Sinlao's records relative to Centre Dining's records, and the conclusions of fact the delegate reached in respect of the questions of holiday pay and overtime wages owed by Centre Dining to Mr. Sinlao. Mr. Murray's submissions do not persuade me that a reasonable person, acting judicially and properly instructed as to the relevant law, could not have come to the same determination as that made by this delegate. I find also that, in this case, the delegate delineated the evidence that supported his findings of fact in a reasonably clear manner, and the Reasons suggest that the delegate did give consideration to all relevant evidence. I do not find the delegate erred in any respect in the Determination, and dismiss Centre Dining's error of law ground of appeal.

(b) Did the Director's delegate breach the principles of natural justice in making the Determination?

47. Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. The principles of natural justice have been observed if the party is provided with information on the hearing process, has had a fair hearing, and has had full opportunity to present his or her case (see *Re: 607730 B.C. Ltd. (operating as English Inn and Resort)*, BC EST # D055/05).
48. In this appeal, I do not find that there is any allegation that Centre Dining did not have an opportunity to know the case against it or was denied a full and fair opportunity to present its evidence. There is, however, a suggestion in Mr. Murray's submissions that the delegate acted with "apparent bias". However, on a closer examination of Mr. Murray's submissions it appears the bias allegation is based on Mr. Murray's contention that the delegate committed an "error of fact in much of the evidence" and his decisions in the Determination were "based on speculation and suspicion" and, furthermore, he "failed to provide adequate

reasoning and justification”. Mr. Murray then goes on to, again, set out those conclusions and findings of fact of the delegate he disagrees with and disputes the weight the delegate attached to the evidence, particularly in preferring the evidence of Mr. Sinlao over Centre Dining’s. He also contends that the delegate failed to consider all the relevant evidence because he decided to prefer the evidence of Mr. Sinlao over Centre Dining’s.

49. Having said this, with respect to the allegation of bias made by Mr. Murray against the delegate, the Tribunal has previously noted that such allegation against a decision maker is serious and should not be made speculatively. It ought not to be made unless supported by sufficient evidence to demonstrate that, to a reasonable person, there is a sound basis for apprehending that the person against whom it is made did not bring an impartial mind to bear upon the case. Mere suspicions or impressions are not enough (see *Re: Khabazian-Isfabani*, BC EST # D105/06). In this case, I do not find Mr. Murray’s submissions persuade me that there is any factual basis to support his allegation of bias against the delegate. I find his assertion to be nothing more than a bare assertion on Mr. Murray’s part, and I dismiss it.
50. With respect to Mr. Murray’s dispute, under the natural justice ground of appeal, with the delegate’s conclusions or findings of fact and weight attached to the evidence of the parties, the decision of the Tribunal, in *Dongoh Educational Company Ltd.* (BC EST # D049/09), is instructive. In *Dongoh*, the Tribunal aptly stated:

Natural justice does not require the decision maker to accept everything each party says – that would be absurd and make the process unworkable – nor does it prohibit the decision maker from accepting the position of one party and rejecting the position of the other so long as reasons are provided for the choice made and those reasons are based on relevant considerations.... In deciding the merits of the complaint, the Director had to make some choices between the competing positions of the parties. The reasons for those choices are explained in the Determination. [The appellant] may not like the choices made, but they were provided with an opportunity to present their position in evidence and argument and, in these circumstances, I am unable to accept that there was any failure by the Director to observe principles of natural justice in making the choices and the resulting Determination.

51. The delegate, in this case, was obliged to, and did, consider, evaluate and weigh the evidence and arguments of both parties. He heard testimony from the parties and their witnesses, and assessed the credibility of the evidence of both parties. The delegate was required to make choices in respect of the competing positions of the parties, and he chose to prefer the evidence of Mr. Sinlao and delineated the reasons for his choice, which reasons, in my view, are persuasive. I do not find that the delegate, in preferring Mr. Sinlao’s evidence over that of Centre Dining, committed a breach of natural justice.
52. Having said this, I also note that Mr. Murray is alleging that the delegate failed to consider relevant evidence, that being the evidence of Centre Dining. A failure to consider relevant evidence may constitute a breach of the principles of natural justice (see *Jane Welch operating as Windy Willows Farm*, BC EST # D161/05). The determination as to whether a breach has occurred depends on an analysis of the particular circumstances of each case. In this case, I find that the delegate expressly referred to the evidence of both parties and, as indicated, preferred the evidence of Mr. Sinlao on the questions in dispute. The main thrust of Mr. Murray’s argument pertains to the weight the delegate placed on the evidence of Centre Dining, and Mr. Murray’s submissions simply expand upon the reasons why he believes the delegate should have given more weight to the evidence of Centre Dining on all of the issues, including the payroll records of Centre Dining, hours of operation, payment of overtime and statutory holiday pay. It is amply clear that Centre Dining and Mr. Murray disagree with the findings of fact made by the delegate and seek to have the Tribunal cancel the Determination. An appeal is not a second opportunity for a dissatisfied party to take a “second kick at the can” as it were and re-argue its position because it is dissatisfied with the results. In my view, Centre Dining

has therefore not demonstrated that the delegate failed to observe the principles of natural justice in making the Determination.

53. I also do not find any merit in Murray's contention that because Centre Dining has allegedly maintained proper employee records to the satisfaction of CRA that Centre Dining's records and interpretation of records should have been preferred over Mr. Sinlao's by the delegate. Assuming the CRA has actually looked at the employee payroll records of Centre Dining and found those records satisfactory, CRA's opinion under its governing statutes - federal *Income Tax Act*, the *Employment Insurance Act* or the *Canada Pension Plan Act* - is not determinative in context of employment standards purposes. The purposes of the federal enactments CRA is governed by are not the same as those of the *Act* (see section 2 of the *Act*). For instance, one of the purposes of the *Act*, set out in section 2(a) is to ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment. This is not the purpose of the federal acts administered by CRA.
54. In my view, therefore, this appeal has no prospect of succeeding and, accordingly, must be dismissed.

ORDER

55. Pursuant to subsection 114(1)(f) of the *Act*, this appeal is dismissed. Pursuant to subsection 115(1)(a) of the *Act*, the Determination is confirmed as issued in the amount of \$9,053.28, together with whatever further interest has accrued under section 88 of the *Act* since the date of issuance.

Shafik Bhalloo
Member
Employment Standards Tribunal