



An appeal

- by -

The Cambie Malone's Corporation
(“Malone’s”)

- 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: Carol L. Roberts

FILE No.: 2016A/117

DATE OF DECISION: October 26, 2016

DECISION

SUBMISSIONS

Gabriel Ducharme

counsel for The Cambie Malone's Corporation

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (“the *Act*”), The Cambie Malone's Corporation (“Malone's”) has filed an appeal of a Determination issued by a delegate (the “delegate”) of the Director of Employment Standards (“the Director”) on July 15, 2016. In that Determination, the Director found that Malone's had contravened sections 40, 46 and 58 of the *Act* in failing to pay Jennifer Calagos also known as Jennifer Castillo (“Castillo”), overtime wages, vacation pay and statutory holiday pay. The Director ordered Malone's to pay \$23,154.42 in wages and interest. The Director also imposed four \$500 administrative penalties for the contraventions, for a total amount owing of \$25,154.42.
2. Malone's appeals the Determination contending that the delegate erred in law and failed to observe the principles of natural justice in making the Determination.
3. Malone's sought an oral hearing of this appeal. The Tribunal's *Rules of Practice and Procedure*, as well as Section 36 of the *Administrative Tribunals Act*, which is incorporated into the *Act* (s. 103), provides that the Tribunal may hold any combination of written, electronic, and oral hearings. (see also *D. Hall & Associates v. Director of Employment Standards et al.* 2001 BCSC 575). I have decided that this appeal can be adjudicated on Malone's written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made and the Reasons for the Determination. If I am satisfied that the appeal, or part of it, has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, Ms. Castillo and the delegate may be invited to file further submissions. If the appeal is not meritorious, or if I decline to extend the time for filing an appeal, it will be dismissed.
4. For the reasons that follow, I have decided that the appeal has no presumptive merit and it does not serve the object and purposes of the *Act* to require the other parties to respond to the appeal.

FACTS AND ARGUMENT

5. The facts relevant to the appeal are as follows.
6. Malone's is a British Columbia corporation that operates several businesses including a restaurant/bar and grill. Sam Yehia is its sole director and officer. Mr. Yehia hired Ms. Castillo to care for his elderly mother (“Mrs. Yehia”) in her home at a rate of \$2,100 (gross) per month. Ms. Castillo's wages were paid through Malone's employee payroll department. Ms. Castillo was paid \$2,100 (gross) per month.
7. Ms. Castillo cared for Mrs. Yehia from September 30, 2013, until she resigned on December 5, 2014. On January 5, 2016, Ms. Castillo filed a complaint alleging that Malone's contravened the *Act* by failing to pay her regular and overtime wages and statutory holiday pay.
8. The delegate held a hearing into the complaint on August 20 and September 24, 2015. Mr. Yehia, Cindy Ko and Maricel Labrado represented Malone's, and Paul Patrick appeared with Ms. Castillo.

9. At issue before the delegate was who Ms. Castillo's employer was, whether Ms. Castillo was excluded from all or part of the provisions of the *Act*, and whether Ms. Castillo was owed wages.
10. Ms. Castillo was hired through ACE Personnel Domestic Services ("ACE"). Although there was a dispute as to whether or not the parties entered into a written agreement, the parties agree that there was at least a verbal agreement that Ms. Castillo was employed to care for Mrs. Yehia.
11. Mr. Yehia's evidence was that during his interview with Ms. Castillo, he informed her that her sole responsibility was to care for his mother. This responsibility included looking after all aspects of her health, including giving medications, arranging doctor's appointments and co-ordinating with another caregiver who was hired as the relief worker. Ms. Castillo was informed that she would be the lead caregiver. Mr. Yehia told Ms. Castillo that she would also be responsible for some light housework such as vacuuming, dusting and laundry as well as meal preparation.
12. Mr. Yehia informed Ms. Castillo that her hours of work would be from 2:30 p.m. Monday to 10:00 a.m. Friday. Ms. Castillo stayed overnight at Mrs. Yehia's house on Monday, Tuesday, Wednesday and Thursday nights and returned to her own residence on Friday. While at work, Ms. Castillo was on duty between 8:00 a.m. and 10:00 p.m. depending on Mrs. Yehia's sleeping schedule. If Mrs. Yehia woke during the night, Ms. Castillo was to inform Mr. Yehia and they would discuss her hours.
13. Mr. Yehia did not provide a written employment agreement to Ms. Castillo or any document setting out the duties required of her. The only instructions he provided her were to look after the health and well-being of his mother. Mr. Yehia denied informing Ms. Castillo that she was to perform housekeeping tasks apart from "tidying up", which he contended included cleaning the floor and bathroom.
14. Prior to employing Ms. Castillo, Mrs. Yehia had a part-time housekeeper, and it was Mr. Yehia's belief that the housekeeper continued to come in to do the housekeeping after Ms. Castillo started caring for Mrs. Yehia. He was unaware when the housekeeper stopped working for his mother.
15. Mr. Yehia testified that Ms. Castillo soon became part of the family and said that she may have taken on household tasks on her own initiative but denied that he instructed her to do them. Although Ms. Castillo spent the nights at the family home because his mother could not be left alone at night, he denied that Ms. Castillo was on duty during that period and structured her compensation to reflect the fact that she would not be required to work past 10:00 p.m.
16. Mr. Yehia testified that, had Ms. Castillo raised concerns about her duties or hours of work, he would have made alternate arrangements.
17. Shortly after Ms. Castillo began work, the parties discovered there was a misunderstanding about her wages. When Ms. Castillo understood her wages were \$2,100 gross rather than net, she became discontented and ultimately quit.
18. Ms. Castillo did not perform any work for Malone's. Mr. Yehia said that he paid Ms. Castillo's wages through Malone's account because he was advised that statutory deductions had to be made and it was easier to pay her through Malone's payroll system. He informed Ms. Castillo that she could access her paystubs on-line and directed her to Malone's accounting department for payroll inquiries. Mr. Yehia said that he had nothing to do with payroll other than to provide the accounting department with "raw data."

19. Mr. Yehia argued that as Ms. Castillo was hired as a caregiver to care for his mother in her residence, she met the definition of “sitter” in the *Employment Standards Regulation* (“*Regulation*”) and was excluded from the protections of the *Act*. He acknowledged, however, that Ms. Castillo did not meet the criteria of other care-giving positions under the *Act*. Mr. Yehia referred to Tribunal decisions in *J. Raechel Dolji*, *Mike Renaud* and *Tammy Wood*, in which the complainants were found not to be sitters. Mr. Yehia argued that these decisions did not apply to Ms. Castillo’s situation because the tasks Ms. Castillo was asked to perform were different from the tasks performed by the complainants in those cases.
20. The delegate heard the evidence of Maricel Labrado, who was hired as the secondary caregiver for Mrs. Yehia. Ms. Labrado testified that although Mrs. Yehia was initially able to perform some cleaning tasks, she was eventually unable to do any at all and Ms. Castillo did most of the cleaning. Ms. Labrado assisted Ms. Castillo with some of the cleaning, which included cleaning the carpets, washing windows, sanitizing the bathroom floors, answering the telephone and taking care of visitors, including serving them snacks.
21. Ms. Labrado also testified that Mrs. Yehia often got up during the middle of the night to use the toilet, which she could not do without assistance.
22. Ms. Castillo testified that, at the beginning of September 2013, she was contacted by a placement specialist at ACE and advised that a prospective client would contact her regarding a caregiving job that included housekeeping, cooking, handling medications and taking the client to medical appointments. The duties and rate of pay of \$2,100 net per month were consistent with placement services advertised through ACE and their wage guidelines.
23. Ms. Castillo was interviewed by Mr. Yehia in mid-September. During the interview, he informed her that her duties included housekeeping and asked her to rate herself on her housekeeping and cooking abilities. After the interview, she met Mr. Yehia at his office to discuss the terms of her employment. She informed him that she wanted \$2,100 net plus medical. She signed an employment agreement as well as a tax form but did not request or receive copies of those documents.
24. Ms. Castillo said that ACE does not work on a verbal agreement basis. It was her understanding that ACE sent Mr. Yehia a copy of the employment agreement, and although both she and ACE requested Mr. Yehia to provide her with a copy of the signed agreement, he refused to do so. ACE provided Ms. Castillo with an unsigned copy of the agreement on June 3, 2015, and told her that it had been sent to Mr. Yehia in September 2013. Ms. Castillo relied on the unsigned copy as evidence of the agreement she would be paid \$2,100 net per month.
25. Ms. Castillo took her instructions from Mr. Yehia. From the beginning of her employment, she was told to do the house cleaning and cooking, which she estimated she spent five to eight hours per week performing, in addition to her other duties. She said that the cleaning included vacuuming, washing floors and cleaning the fridge, cupboards and windows. She said Mrs. Yehia was physically incapable of performing any meaningful cleaning tasks.
26. Ms. Castillo began maintaining a log of her daily duties in October 2015, primarily to communicate her daily activities to Ms. Labrado and provided the delegate with a photo of her entries. The activities included tasks such as vacuuming, dusting, washing floors and doing laundry. Ms. Castillo said that the list did not include all the tasks she performed. Mrs. Yehia did not have another housekeeper the entire time she was employed, and Ms. Castillo said that Mr. Yehia saw that the house was always clean.

27. Ms. Castillo described her typical work week for the delegate, which included preparing and serving Mrs. Yehia meals, cleaning the apartment and doing any necessary laundry. After dinner, she cleaned up and sat with Mrs. Yehia. At bedtime, she assisted Mrs. Yehia with her personal care and ensured she was safely in bed. She said that Mrs. Yehia often attempted to get out of bed herself and called for her assistance. As a result, Ms. Castillo often slept in the living room, rather than a second bedroom that had been provided for her, so she could hear Mrs. Yehia during the night.
28. Although a health care worker told Mr. Yehia that Ms. Castillo should be given a break twice a day, nothing came of that suggestion and Ms. Castillo did not take breaks. A social worker also suggested to Mr. Yehia that he obtain a monitor, although nothing came of that suggestion either.
29. Several times per week, Ms. Castillo took Mrs. Yehia for a walk, to doctors' appointments, shopping or various outings. Ms. Castillo was responsible for petty cash and ensured there was sufficient money for groceries and took care of the garbage, recycling and mail.
30. If Mrs. Yehia had visitors, Ms. Castillo served snacks and beverages. In addition to preparing meals for Mrs. Yehia, Ms. Castillo served meals for any other family members who visited. Mr. Yehia's brother visited his mother at least twice a week.
31. Ms. Castillo recorded her hours of work on Malone's employee sign-in sheet. The sheet reflected the hours Mr. Yehia told her to work, not the actual hours she did work. Mr. Yehia collected the sheet from Mrs. Yehia's residence and took them to his office where they were paid by direct deposit into Ms. Castillo's bank account.
32. In November 2014, Ms. Castillo worked Ms. Labrado's hours as well as her own when Ms. Labrado took time off. When she only received her regular rate of pay, she requested her pay statements from Mr. Yehia. Ms. Castillo denied that Mr. Yehia told her she could access the statements on-line, and after several requests, he eventually provided her with some statements that she did not understand. Ms. Castillo discovered that she was being paid \$2,100 per month gross, with no allowance for overtime.
33. Ms. Castillo said that she worked 91.5 hours per week, reflecting the fact that she was required to be at Mrs. Yehia's residence 24 hours per day without breaks. When Mrs. Yehia was in the residence, Ms. Castillo was "on call" as Mrs. Yehia could not be left alone.
34. Ms. Castillo was not paid any statutory holiday pay for her work on four statutory holidays and received vacation pay on only two cheques.
35. Ms. Castillo asserted that she was a caregiver and housekeeper rather than a sitter, and thus an employee under the *Act*.

Findings

36. The delegate found that Malone's was directly or indirectly responsible for Ms. Castillo's employment given that Ms. Castillo's hours were recorded on Malone's employee timesheets and her wages were paid through Malone's payroll department. The delegate also noted that, when seeking an adjournment of the original hearing date, Mr. Yehia stated that he was the sole officer and director of his company and thus, the only individual capable of representing the company in legal matters.

37. The delegate considered whether Ms. Castillo was a sitter, and therefore excluded from the *Act*, or a caregiver, entitled to all of the minimum standards. She noted the interpretive principle that exclusionary provisions must be narrowly interpreted and that the onus of proof that the *Act* did not apply rested with the party asserting the exclusion.
38. In assessing whether Ms. Castillo was a “sitter” as defined by the *Act*, the delegate considered whether Ms. Castillo was engaged *solely to provide the service of attending to* Mrs. Yehia.
39. The delegate noted that Mr. Yehia did not refute the accuracy of Ms. Castillo’s daily log and found that it represented a contemporaneous record of the tasks performed by Ms. Castillo. She also accepted Ms. Castillo’s evidence that the primary purpose of the log was to communicate the daily activities to Ms. Labrado and did not reflect the full extent of her daily chores.
40. The delegate found, based on the evidence of Ms. Castillo, Ms. Labrado and the daily logs, that Ms. Castillo regularly performed household duties including vacuuming, cleaning carpets, mopping floors, cleaning toilets, doing the laundry, cleaning windows and cupboards as well as grocery shopping. The delegate rejected Mr. Yehia’s assertion that Ms. Castillo’s cleaning duties were merely to “tidy up” and incidental to caring for Mrs. Yehia. She noted Mr. Yehia’s evidence that although the house was always clean, he gave little thought to who was cleaning the house. She concluded that Mr. Yehia did not take any steps to inquire into who was performing the cleaning or tell Ms. Castillo that the tasks were beyond the scope of her employment. She also rejected his suggestion that his mother’s former cleaner might be cleaning the house. The delegate noted that Mr. Yehia had taken over responsibility for the care of his mother, including the household expenses, and would have known if he was paying the housekeeper’s wages. The delegate also rejected Mr. Yehia’s evidence that he thought his mother was still cleaning her own house given his evidence about her deteriorating physical and mental condition.
41. The delegate concluded that Mr. Yehia knew, or ought to have known that Ms. Castillo was cleaning his mother’s home and that he directly or indirectly allowed her to continue to perform those duties.
42. The delegate determined that the housekeeping duties performed by Ms. Castillo
- were not incidental or ancillary to Ms. Yehia’s care. Rather they were performed by [Ms. Castillo] on a regular basis in the normal course of her work and are beyond the scope of duties reasonably and ordinarily associated with the meaning of sitter.
43. The delegate concluded that Ms. Castillo was not a sitter and that she did not fit within any of the other excluded categories contained in the *Regulation*. As a consequence, the delegate found Ms. Castillo was an employee as defined in section 1 of the *Act*.
44. The delegate considered the term “work” as defined in the *Act*, noting that employees were deemed to be at work while on call at a location designated by the employer.
45. The delegate also considered the *Act*’s requirement that employees must be paid at least minimum wage for all hours worked. Noting that Ms. Castillo was paid \$2,100 per month, even if it was Mr. Yehia’s intention that Ms. Castillo work 50 hours per week, the delegate determined that Ms. Castillo had not been paid minimum wage. The delegate concluded that it was therefore unnecessary for her to determine whether or not there was a written agreement between the parties that Ms. Castillo be paid a net salary of \$2,100 per month.

46. The delegate also accepted Ms. Castillo's evidence that she was provided with no relief from caring for Mrs. Yehia, who could not be left alone. The delegate concluded that Ms. Castillo worked 2:30 p.m. to 10 p.m. on Mondays, 8:30 a.m. to 10:00 p.m. Tuesdays to Thursdays and 8:30 a.m. to 10:00 a.m. on Fridays.
47. The delegate also concluded that Mr. Yehia did not dispute Ms. Castillo's evidence that her work included sleeping over at Mrs. Yehia's home. Although Mr. Yehia contended that Ms. Castillo's work ended at 10:00 p.m., he also did not dispute her evidence, corroborated by Ms. Labrado, that Mrs. Yehia required assistance at various times of the night. The delegate noted that Mr. Yehia ought to have foreseen that his mother would have required some assistance during the night given that his mother needed 24 hour care. The delegate determined that Ms. Castillo was on call at a location determined by the employer, and was consequently entitled to be paid for those hours.
48. The delegate determined that Ms. Castillo's work day consisted of five 24 hour periods beginning at midnight, or 9.5 hours of work on Monday, followed by three 24 hour shifts and a 10 hour shift on Friday.
49. Based on Ms. Castillo's time sheets and Malone's employee detail sheets, the delegate determined that, for the last six months of her employment, Ms. Castillo worked 91.5 hours per week consisting of 40 hours at a regular wage rate, 15.5 hour of overtime at a rate of time and a half and 36 hours of overtime calculated at double time with exceptions for days Ms. Castillo worked Ms. Labrado's hours, one day in June she did not work at all, and her regular two week vacation in July and September.

Argument

50. The basis for Malone's appeal is that the delegate erred in concluding that Ms. Castillo was not a sitter and in putting Malone's in a "reverse onus" position to argue that the *Act* should be "narrowed".
51. Malone's submits that Ms. Castillo was not given any additional tasks other than caring for Mrs. Yehia and the delegate failed to properly apply Tribunal decisions where complainants were not found to be sitters. Malone's says that that the delegate, by "failing to follow precedent from appeals, which were vertical to the hearing decision" (sic) erred in law.
52. Malone's also says that the delegate erred by presupposing that Malone's, rather than Mrs. Yehia, was the employer.
53. Malone's also contends that the delegate erred in presupposing there was an employer-employee agreement rather than an independent contractor relationship and in not evaluating whether or not Ms. Castillo was an independent contractor.
54. Malone's says that the delegate failed to comply with the principles of natural justice by "ignoring the principles enunciated by the Court of Appeal in *Johnson*" and failing to have Mrs. Yehia as a party to the proceedings.
55. Finally, Malone's says that the delegate erred in failing to discharge her duty to give reasons.

ANALYSIS

56. Section 114(1) of the *Act* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:
- (a) the appeal is not within the jurisdiction of the tribunal;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
 - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
 - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
 - (f) there is no reasonable prospect that the appeal will succeed;
 - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
 - (h) one or more of the requirements of section 112(2) have not been met.
57. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
- the director erred in law;
 - the director failed to observe the principles of natural justice in making the determination;
 - evidence has become available that was not available at the time the determination was being made.
58. The burden is on an appellant to demonstrate one of the statutory grounds of appeal. I conclude that Malone's has not met that burden.

Error of Law

59. The Tribunal as 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.

60. I will address each of Malone's arguments in turn.

Identification of the Employer

61. Counsel submits that Malone's was "merely covering Mrs. Yehia's obligations for convenience purposes due to her being the matriarch of the businesses." Although Malone's suggests there was a verbal contract between Mr. Yehia, as power of attorney for Mrs. Yehia, and Ms. Castillo for Ms. Castillo to be a sitter, there

is no documentary evidence to support this assertion. In the absence of any documentary evidence, the delegate made her findings based on the oral testimony of the parties and the available documentary evidence, which confirmed that Malone's issued Ms. Castillo's cheques and that Ms. Castillo recorded her time on Malone's time sheets. The delegate also noted that Mr. Yehia stated he was appearing as the director of Malone's and in fact did appear with a paralegal employed by Malone's. Furthermore, I note that the appeal submissions are made by Mr. Ducharme, Malone's in-house counsel, which support the delegate's conclusion on this point.

Independent contractor v Employee

62. Counsel argues that the delegate erred by "presupposing there was an employer-employee relationship." The suggestion that Ms. Castillo was an independent contractor was never raised by Mr. Yehia at the hearing. Furthermore, counsel's submissions on appeal concede that there was at least a "verbal contract" between two parties that Ms. Castillo was to be an employee. I find no merit to this argument.

Was Ms. Castillo a "Sitter"?

63. The *Act* imposes requirements on an employer with respect to a number of things, including payment of wages, hours of work and conditions of work. The *Act* exempts certain employees or classes of employees from these minimum standards. Section 32(1)(c) of the *Regulation* provide that a sitter is excluded from the hours of work and overtime provisions established in Part 4 of the *Act*.

64. At the hearing before the delegate, Mr. Yehia, who was assisted by Malone's paralegal, conceded that Ms. Castillo did not fall into any of the categories of employees who provide personal care services with the exception of a sitter. I find no error on the part of the delegate in assessing that the only possible category of exempted employees that Ms. Castillo could possibly fall into was that of a sitter.

65. Section 1 of the *Regulation* defines sitter as:

... a person employed in a private residence solely to provide the service of attending to a child, or to a disabled, infirm or other person, but does not include a nurse, domestic, therapist, live-in home support worker...

66. The Tribunal has consistently concluded that the *Act*, as benefits conferring legislation, must be construed in a broad, generous and purposive manner, with any doubt arising from statutory construction to be resolved in favour of claimants. In other words, any exemptions from minimum standards and overtime provisions will be interpreted in a way that extends protections to as many employees as possible. (*Machtinger v. HOJ Industries Ltd.* [1992] 1 S.C.R. 986, and *Re Rizzo & Rizzo Shoes* [1998] 1 S.C.R. 27). It was not an error on the part of the delegate to interpret this section in a large and liberal manner, contrary to Counsel's contention that the delegate placed Malone's in a "reverse onus" position.

67. On appeal, Malone's relies on a number of Tribunal decisions, including *Dolji*, BC EST # D524/97, *Renaud*, BC EST # D436/99, and *Wood*, BC EST # D176/00, all of which were considered by the delegate in her reasons. These cases were also considered by the Tribunal in *Kopchuk*, BC EST # D049/05 (Reconsideration denied BC EST # RD114/05), in analyzing whether the complainant was a sitter. The Tribunal in that case said as follows:

The Tribunal has considered the scope of the definition of "sitter", but there remains some uncertainty about the extent to which an employee can also perform household duties, without thereby ceasing to be a sitter. In cases involving caregivers for disabled adults, the Tribunal has held that the performance of

incidental tasks of caring for a dependent person, such as some cleaning and feeding, do not prevent that person from being a sitter, because they are included in “attending” to the dependent person: *Dolji*, BC EST #D524/97; *Renaud*, BC EST #D436/99 (Reconsideration denied, BC EST #D373/00); *Wood*, BC EST #D176/00.

However, if an employer requires the employee to perform other tasks of a housekeeping nature that are not directly linked to the care of a person, then the employee is not a sitter, and is protected by the *Act*: *Hampshire*, BC EST #D044/01; *McLellan*, BC EST #D438/98. Further, the Tribunal adopted a narrow interpretation of the definition in *Tikkanen*, BC EST #D433/02, on facts similar to those in this case, in that it involved the issues of whether a live-in caregiver for children was an employee or an independent contractor, and whether she performed sufficient other household tasks to take her out of the definition of sitter. The Tribunal held as follows:

...[T]he Tribunal is bound to interpret language excluding persons from the protections of the *Act* narrowly. In *Renaud*, the adjudicator was clearly uncomfortable with his decision to exclude a caregiver from the *Act*.

68. I find that the principles enunciated in *Kopchuk*, *supra*, rather than being “entirely irrelevant” as contended by counsel for Malone’s, were completely on point. On that basis, I am unable to conclude that the delegate erred in concluding that Ms. Castillo’s tasks involved more than solely caring for Mrs. Yehia and that Mr. Yehia was, or ought to have been aware that she was doing so. The delegate relied on evidence from Malone’s witness, which corroborated Ms. Castillo’s evidence, about the nature and extent of work performed. That evidence established that Ms. Castillo’s work included tasks of a housekeeping nature which were not merely incidental to Mrs. Yehia’s care, including cleaning, laundry, preparing meals and washing windows. The delegate correctly determined, in my view, that Ms. Castillo was an employee and not excluded from the protections of the *Act*.

Failing to give reasons

69. The Determination, including the Reasons for the Determination, is 24 pages long, with 7 of those pages dedicated to the analysis and reasons. There is no merit to this ground of appeal.

Failure to observe the Principles of Natural Justice

70. Malone’s contends that the delegate failed to observe the principles of natural justice by not including Mrs. Yehia as party to the proceedings. There is also no merit to this ground of appeal. There is nothing in the record that suggests that Mr. Yehia asked to have his mother identified as a party or called as a witness and was denied the opportunity to do so.

Failure to apply principles enunciated in *Johnson v. British Columbia Securities Commission* ([2002] BCCA 461)

71. The thrust of counsel’s argument appears to be that the delegate, in not following previous Tribunal decisions on the issue of whether or not Ms. Castillo was a sitter, treated Malone’s unfairly. In my view, the delegate applied the principles in the leading case of *Kopchuk*, *supra*, and Malone’s was treated fairly.

72. I conclude that Malone’s has not met the burden of establishing any of the statutory grounds of appeal.

73. I find that the appeal has no reasonable prospect of success. I also find that the object and purposes of the *Act* are not met by requiring the other parties to respond.

74. The appeal is dismissed.

ORDER

75. Pursuant to section 115 of the *Act*, I order that the Determination, dated July 15, 2016, be confirmed in the amount of \$25,154.42 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal