

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C. 113*

- by -

Canadian Habitat International Inc.  
("CHI")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** David Stevenson

**FILE NO.:** 98/198

**DATE OF DECISION:** May 13, 1998

**DECISION**

**OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Canadian Habitat International Inc (“CHII”) of a Determination of a delegate of the Director of Employment Standards (the “Director”) dated March 9, 1998. In that Determination, the Director concluded CHII had contravened Section 46 of the *Employment Standards Regulations* (the “Regulations”) and, pursuant to Section 28 of the *Regulations*, ordered CHI to pay a fine of \$500.00 in respect of the contravention.

**ISSUE TO BE DECIDED**

The issue is whether the Director was justified in imposing a \$500.00 penalty on CHII.

**FACTS**

On February 19, 1998, a Demand for Employer Records was issued by the Director, delivered to John Zedi, a director and officer of CHII, by facsimile on the same day and served on the registered and records office of CHII on February 23, 1998. CHII failed to respond to the Demand and the Determination under appeal was issued.

The demand related to a complaint filed by Norman Asseltine. CHII challenged the merits of the complaint. The main objection taken by CHII to it was that Mr. Asseltine was not an employee of CHII, but was an independent contractor working for another company. There is some issue about what records were available, but no dispute that there were some records in the possession of CHII that may have assisted the Director in assessing the validity, or otherwise, of the complaint and the objection.

After the penalty Determination was issued, Mr. Asseltine asked to “cancel” his complaint. The only document on file showing this request is dated April 17, 1998.

The only ground of appeal raised by CHII is that Mr. Asseltine was working on a contract basis for another company and not for CHII. The position of the Director is that CHII is named as the employer in the complaint and for the purpose of ascertaining the merits of that assertion, particularly in light of the denial by CHII, it sought to have all records in the possession of CHII produced for examination.

**ANALYSIS**

Section 46 of the *Regulations* reads:

46. *A person who is required under section 85(1)(f) of the Act to produce or deliver records to the director must produce and deliver the records as and when required.*

Subsection 85(1)(c) and (f), both of which are relevant to this appeal, read:

85. (1) *For the purpose of ensuring compliance with this Act and the regulations, the director may do one or more of the following:*

...

(c) *inspect any records that may be relevant to an investigation under this Part;*

...

(f) *require a person to produce, or to deliver to a place specified by the director, any records for inspection under paragraph (c).*

The Tribunal has noted that Section 85 of the *Act* gives the Director broad powers of entry and inspection. The Director must have reasonable grounds for exercising those powers and when exercised, must act within established procedures. Provided the Director meets those criteria, the Tribunal has not considered it appropriate to interfere with the decision of the Director to impose a penalty.

CHII acknowledged the existence of some records. The issue it had with the Director was a fundamental one relating to the complaint: whether the complainant was an employee of CHII. The power given to the Director in Section 85 allows demand for production and delivery and inspection of “*any records that may be relevant*”. That provision exists to avoid the very issue created by CHII in this case. A person’s disagreement with the substance of a complaint does not relieve it from the obligation to produce records when the demand is made. Provided there is sufficient material to demonstrate the potential relevance of the documents sought by the Director, the party upon whom the demand is made must produce them and, if they fail to do so, may be penalized for that failure.

There is simply no argument in this case that the records of CHII the Director asked to be produced had potential relevance to the investigation the Director was statutorily obligated to undertake upon receipt of the complaint from Mr. Asseltine. The appeal is dismissed.

It makes no difference to this decision that Mr Asseltine has asked the Director to “cancel” his complaint. First, that request did not come until after the Determination had been made. Second, it would be inconsistent with the purpose of Section 85 and of the *Act* to allow persons to attempt to frustrate and delay the statutory process in the hope the

complainant may abandon the complaint. Third, the Director does not need a complaint in order to conduct an investigation to ensure compliance with the *Act* (see Section 76(3) of the *Act*). The investigation initiated by the complaint of Mr. Asseltine may be continued by the Director on her own authority (see also *CDI Enterprises Ltd.*, BC EST #D358/97).

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated March 9, 1998 be confirmed.

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**David Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**