

**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 -

Joan Muller  
("Muller")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	Richard S. Longpre
<b>FILE NO.:</b>	97/117
<b>DATE OF HEARING:</b>	May 12, 1997
<b>DATE OF DECISION:</b>	May 27, 1997



Mrs. Fisher was assisted by Para-Med Health Services twice daily from 8:00 a.m. to 10:00 a.m. and from 2:00 p.m. to 4:00 p.m. Reynolds would start her care of Mrs. Fisher at 10:00 a.m. and would take a two hour break in the afternoon. Reynolds was on call for Mrs. Fisher throughout the evening and night of each working day.

As can be seen, Reynolds' schedule as a "sitter" gave her time to do housekeeping work. Muller and Reynolds also had an arrangement where Muller would prepare the family meal. Reynolds could do the house cleaning during this period. The Determination found that the house cleaning duties were to clean the main level of the house once a week, which took approximately four hours and to clean the kitchen once a week which took approximately five hours. The Determination concluded that Reynolds worked nine hours a week outside her employment as a sitter.

## ANALYSIS

Muller argued that Reynolds was not asked to give up her free time. She argued that Reynolds performed some of the house cleaning work in exchange for Muller doing all of the cooking and meal preparation work. Dinner meals were eaten with Mrs. Fisher and Reynolds in Mrs. Fisher's down stair suite. Muller also argued that it could not possibly have taken Reynolds nine hours a week to do the house cleaning work. Reynolds would decide when she would do the cleaning work. No one else lived in the Mullers' home. The living room on the main floor was rarely used. It would not take four hours a week to clean the main floor. The kitchen would not have taken 5 hours a week to clean.

Reynolds pointed out that cleaning involved more than basic housework in the kitchen and the home. She referred to several other duties including caring for the family pet, watering plants, cleaning the Muller's hot tub and doing general laundry. The house cleaning expected of her was not mentioned in her employment interview. She never exchanged time away from her duties as a sitter of Mrs. Fisher to do house cleaning work.

Muller responded by noting that the cat was fed once a day. Reynolds cleaned the hot tub perhaps a few times. Watering plants took only a few minutes.

I start by noting that Muller had the onus to establish an error in the Determination. If established, Reynolds had the opportunity to explain the Determination's conclusion. The Director was not represented at the hearing.

The definition of "employee" in the *Act* includes house cleaning work Muller directly or indirectly allowed Reynolds to perform. Muller had the responsibility to supervise how much time Reynolds spent performing the work of an employee. If Reynolds took longer than Muller thought reasonable, Muller should have discussed that with her. Muller believed that she could have Reynolds perform house cleaning work in exchange for Muller doing the cooking of the dinners. Both the housework and the preparing of meals for the entire family were the work of an employee; both assisted the Muller family and not

just Mrs. Fisher. In any event, the *Act* did not permit Muller and Reynolds to make an agreement that excluded the application of the *Act* to certain circumstances. The *Act* applied to all time that Reynolds worked as a housekeeper

The Determination was based on estimates given by Reynolds of work she performed. At the hearing, I heard evidence from both parties on the time Reynolds spent as a housekeeper. It was an informal working relationship and Muller did not keep records of Reynolds' time worked. Reynolds records were very general. Muller did not direct Reynolds as to when she should perform her housework duties. Her arguments were based on the time she believed Reynolds took to do the work. This was not sufficient to prove that the Determination was incorrect regarding the four hours of housework a week.

Initially, Reynolds' claim of five hours of work each week in the kitchen did not seem reasonable. Muller acknowledged, however, that Reynolds did the family's dishes each evening. While that may not have taken more than a half hour, it was time spent each day as a housekeeper. This time must be added to time spent cleaning the kitchen area each week. I can not say that a total of five hours spent over the week was an unreasonable conclusion by the Delegate. It was a determination that Muller was unable to refute.

Understandably, Muller did not keep accurate work records. She did not supervise Reynolds' work schedule outside her job as a sitter. Muller thought that Reynolds' employment brought Reynolds into their family. That was probably so. The complaint to Employment Standards has no doubt strained their friendship. However, Reynolds had rights under the *Act* which she properly exercised. No doubt Muller has a better understanding of these rights if sitters are hired in the future. I hope the parties can put this dispute behind them.

## **ORDER**

Pursuant to section 115 of the *Employment Standards Act* the Determination dated February 4, 1997 is confirmed.

**Richard S. Longpre**  
**Adjudicator**  
**Employment Standards Tribunal**