

**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-

Aries Property Maintenance (Canada) Company Ltd.  
("Aires" or "Employer")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	Kenneth Wm. Thornicroft
<b>FILE No.:</b>	97/124
<b>DATE OF HEARING:</b>	June 23rd, 1997
<b>DATE OF DECISION:</b>	July 4th, 1997

**DECISION**

**APPEARANCES**

Julio Rubido for Aries Property Maintenance (Canada) Company Ltd.

Wioletta Michalski on her own behalf

**OVERVIEW**

This is an appeal brought by Aries Property Maintenance (Canada) Company Ltd. (“Aries” or the “Employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on February 3rd, 1997 under file number 31027 (the “Determination”). The Director determined that Aries owed two former employees, Wioletta Michalski (“Michalski”) and Gabriel Jaruchik, the total sum of \$3,056.16. The present appeal is limited to the Employer’s liability to Ms. Michalski under the Determination.

The Director found that Aries employed Michalski and was therefore liable for unpaid wages (including statutory holiday and vacation pay) in the amount of \$2,011.27 inclusive of accrued interest. The employer’s appeal is based on the assertion that Michalski was not an employee, but rather an independent contractor and, as such, was not entitled to file a claim under the *Act*.

The appeal was heard at the Tribunal’s offices in Vancouver, B.C. on June 23rd, 1997, at which time I heard testimony from Mr. Julio Rubido, the president/secretary and sole director of Aries and from Ms. Michalski (her testimony was given through a certified polish interpreter, Ms. Malgorzata Jaszczewska). The Director was not represented at the appeal hearing.

**ISSUE TO BE DECIDED**

Was Michalski an employee or an independent contractor ?

**FACTS AND ANALYSIS**

Aries is a small firm that provides janitorial services, as a contractor, to various clients, particularly in the North Vancouver area. Mr. Rubido, during the course of his testimony, emphasized that Michalski was paid, as a sub-contractor, on the basis of invoices that were submitted by her under the firm name “Alternative Cleaning”. “Alternative Cleaning” is not a

registered corporation, although it may be a name that was registered by Michalski as a sole proprietorship--the evidence before me is unclear regarding this latter point.

Rubido's evidence is that Michalski was retained to service five or six Aries clients in North Vancouver. Aries paid Michalski, as per Michalski's "Alternative Cleaning" invoices, a gross sum, without the usual deductions for income tax etc. Michalski invoiced Aries once each month.

Although the relationship between Aries and Michalski was structured to make it appear that Michalski was an independent contractor, I am of the view that the real relationship between the parties was that of employer and employee. In my opinion, Michalski was an Aries employee under either the common law "four-factor" or "integration" tests and also under the definition of "employee" contained within the *Act*. In coming to this conclusion I am particularly influenced by the following factors:

- Michalski was retained to service existing Aries clients who were, in turn, invoiced directly by Aries.
- All client service agreements were negotiated directly between the client and Aries;
- Aries' customers prepared monthly "reports" regarding the quality of the work done; these reports were sent directly to Aries, not to Michalski.
- Aries provided Michalski with the necessary building pass keys.
- From time to time, Rubido attended at the client sites to inspect Michalski's work.
- If a customer had a problem that customer would contact Aries, not Michalski.
- Aries owned and provided the necessary cleaning materials, at its own cost, to Michalski as well as providing the necessary equipment such as a vacuum, dusters, cloths ringer/mop etc.
- Rubido estimated that it would take approximately 50 to 65 hours each week for Michalski to meet her performance obligations; thus, her time was fully occupied servicing Aries clients and, consequently, she was in a position of economic dependence on Aries.

I am fully satisfied, on the Employer's own evidence, that Michalski was retained as an "employee" to perform "work" for "wages" on behalf of Aries, her "Employer" (see Section 1 of the *Act* for definitions of these various terms).

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated February 3rd, 1997 and filed under number 31027, be confirmed with respect to Wioletta Michalski in the amount of \$2,011.27 together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**