

September 23, 1999

**Tribunal File Numbers: 1999/286
1998/738**

TO INTERESTED PARTIES

**Re: Employment Standards Act
Determination issued on November 3, 1998
Victoria Street Community Association -and- Wanda Card
Decision Number: D413/99**

This letter sets out the Tribunal's decision regarding what wages are owed by the Victoria Street Community Association ("VSCA") to Wanda Card ("Card").

The Director of Employment Standards (the "Director") issued a Determination on November 3, 1998 which found Card was a director of VSCA and as such could not claim against it for wages. Card appealed the Determination to the Tribunal.

On March 23, 1999, the Tribunal issued Decision BC EST #D123/99 (the "original decision") in connection with the above-noted appeal. The Tribunal found that Card, despite being a director, was entitled to make a claim for wages. Accordingly, the Tribunal ordered that the Determination be referred back to the Director to determine the amount of wages owing by VSCA to Card including compensation for length of service, overtime, and holiday pay.

VSCA sought a reconsideration of the original decision. Legal counsel represented VSCA during the reconsideration process. On August 26, 1999 a three person panel of the Tribunal issued Decision BC EST #D361/99 which upheld the original decision.

Subsequently, in a letter dated August 31, 1999, the Tribunal forwarded two submissions (dated April 23, 1999 and April 26, 1999) regarding *quantum* from Gerry Omstead, a delegate of the Director, to the parties. The parties were advised that if they were unable to voluntarily resolve the matter with the Director's delegate and if they disagreed with the calculations made by the Director's delegate then they could provide submissions respecting *quantum* to the Tribunal no later than 4:00 p.m. September 14, 1999.

The parties were also advised that the issue of *quantum* may be decided based solely on written submissions and that an oral hearing may not necessarily be held.

The Tribunal received a submission from VSCA dated September 14, 1999. The submission does not address the issue of *quantum*. Rather, VSCA focuses on reasons why it is not liable to pay wages to Card.

On September 16, 1999, the Tribunal received a fax from the Director's delegate advising that there was no voluntary resolution of the matter and that he had not received any notification that his calculations were incorrect.

I have considered the submissions made by the Director's delegate regarding *quantum*. The Director's delegate found that Card was owed \$7,906.48 (including interest). He based his calculations on records provided by Card. He stated that he requested records from VSCA but they did not provide any records. As noted above, VSCA has made no reply to the submissions of the Director's delegate on the issue of *quantum*. Rather, it focuses on reasons why it is not liable for the wages. The Tribunal, however, has already finally decided that issue. VSCA's application for reconsideration of the Tribunal's original decision that Card was entitled to make a claim for wages including holiday pay, compensation for length of service and overtime was rejected by the Tribunal. The only issue before the Tribunal at this point is how much is owed by VSCA to Card. In that regard, I have reviewed the calculations made by the Director's delegate and I find no basis to alter his conclusions on *quantum*. Accordingly, the following Order is made:

ORDER

Pursuant to Section 115 of the Employment Standards Act and further to Tribunal Decisions BC EST #D123/99 and BC EST #D361/99, I order that the Determination dated November 3, 1998 be varied to show that Wanda Card is owed \$7, 906.48 by the Victoria Street Community Association plus any other interest accumulated pursuant to Section 88 of the Employment Standards Act.

Norma Edelman
Acting Chair
Employment Standards Tribunal

Interested Parties:

Victoria Street Community Association
Wanda Card
Peter Weinrich
Director of Employment Standards (Officer: Gerry Omstead)