

An appeal

- by -

Sans-Souci Management Society of Victoria

- 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

**ADJUDICATOR:** John M. Orr

**FILE No.:** 2002/399

**DATE OF DECISION:** October 17, 2002

## DECISION

### OVERVIEW

This is an appeal by the Sans-Souci Management Society of Victoria (“the Society”) pursuant to Section 112 of the Employment Standards Act (the “Act”) from a Determination dated July 05, 2002 by the Director of Employment Standards (the “Director”).

In the exercise of its authority under section 107 of the Act the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

The Society is a non-profit organisation that employs home care providers to one disabled person. In January 2002 the Society interviewed Micheline Cote (“Cote”) as a prospective employee. Cote attended the home of the disabled person on eight separate days, two of which were over-nights. The Society only paid Cote for three of the eight days. Cote sought payment for the other five days and the Director determined that she was being trained during those five days and is entitled to wages.

The Society claimed that Cote was a volunteer during the first five days and was therefore not entitled to payment of wages. The Director rejected this argument and the Society has appealed to this Tribunal.

### ISSUES

The issue raised in this case is whether Cote was a volunteer or an employee in training.

### FACTS AND ANALYSIS

If wages are found to be owing the amount of wages has not been disputed.

The Society asserts that: “before the intensive training process begins, we ask applicants to show their serious intent by attending a few volunteer sessions”. The Society claims that these sessions are entirely voluntary and according to the Director’s policy volunteers for a non-profit organisation’s are not normally regarded as employees.

The legislation does not clearly address the issue of volunteers and I do not intend to address that issue directly in this decision because I have concluded that Cote was not a volunteer but was an employee in training during the five days for which she was not paid.

The onus on an appeal to the Tribunal is on the appellant to satisfy the Tribunal that the Determination was wrong. Despite the somewhat forceful arguments presented by the Society I am satisfied that there is ample evidence to support the findings made by the Director. There is little evidence to support the allegations that Cote chose to volunteer her time for the first five days of her involvement with the Society.

The advertisement for the position noted that: “Experience in this field is not essential, since (volunteer) training will be provided.” It is implicit in this advertisement that the Society expected the time to be

used for "training" - although it is also evident that the Society expected the prospective employee to accept the training on a volunteer basis. This expectation runs contrary to the legislation. The definition of "employee" in the *Act* is as follows:

*"employee" includes*

(c) *a person being trained by an employer for the employer's business*

The Society also provided Cote with a document entitled "Observation/Training/Orientation - New Staff". While the document requires new "recruits" to spend time with the disabled person as a "volunteer" it is also clear that the purpose of this time is "to learn the skills needed to work with him without creating harm or undue stress". The recruit is expected to "try out various routines under supervision". The recruit is also expected to read the Policies and Procedure's Manual carefully and become familiar with the client's routines and activities and his specialised equipment. These expectations are very clearly training activities.

A further document was produced which is entitled "Training Schedule". In this document the first five days are included as part of the training schedule and a record is kept of the activities observed or tried by the recruit. The Director concluded that Cote was learning the various practices and procedures involved with the job during the five days in dispute and that she was clearly involved in on the job orientation and training. In my opinion this is a reasonable conclusion.

The Society submits that there is a distinction between the volunteer phase and employment. I am not satisfied on the submissions before me that such a distinction can be made in this case. On the evidence and submissions provided to me I am satisfied that Cote was required to be engaged in the scheduled activities over those five days as part of the process of becoming employed with the Society. In my opinion being "trained" includes orientation, familiarisation and observation. It includes reading policy manuals and becoming familiar with any specialised equipment or activities. These are all the kind of activities engaged in by Cote during the five days in dispute. I can find no substantial basis to distinguish between any of the activities.

In conclusion, I am not satisfied that the appellant has met the burden of persuading me that the Determination was in error and therefore it will be confirmed.

## **ORDER**

I order, under section 115 of the *Act*, that the Determination dated July 05, 2002 is confirmed.

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**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**