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 -

Penticton & District Daycare Society
("Penticton Daycare Society")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Cindy J. Lombard
FILE NO.:	1999/503
DATE OF HEARING:	October 15, 1999
DATE OF DECISION:	November 03, 1999

DECISION

APPEARANCES

Charlene Ames ("Ames"), current manager of the Penticton & District Daycare Society, appeared on behalf of the employer.

Tina Olexa ("Olexa") appeared on her own behalf.

The following Exhibits were submitted by the Penticton & District Daycare Society:

Exhibit 1	Letter from Moore dated October 13, 1999 (Re: office clerk)
Exhibit 2	Letter from Moore dated October 13, 1999 (Re: board member)
Exhibit 3	Letter Donesley dated October 14, 1999

OVERVIEW

This is an appeal by the Penticton & District Daycare Society ("Penticton Daycare Society") pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") of a Determination of the Director of Employment Standards (the "Director") issued on July 26, 1999. In that Determination the Director determined that Olexa was entitled to 4 hours minimum daily pay pursuant to Section 34 of the *Employment Standards Act* and compensation pay in lieu of notice pursuant to Section 63 of the *Act* in the total amount of $1,243.37.

ISSUE TO BE DECIDED

1.   Whether Olexa was entitled to a minimum 4 hours of pay during the term of her employment extending from November 15, 1997, to March 1, 1999.

FACTS AND ANALYSIS

During the time that Olexa was employed by the Penticton Daycare Society there was no written contract, however, she was hired for a minimum 8 hour flexible week and in the beginning with extra hours given.

Olexa did in fact work variable hours, however, it is agreed by the employer society that she was not paid a minimum of 4 hours per day as required by Section 34 of the *Act* apparently because the board of directors was not aware of the rule.

Section 34 of the *Act* provides as follows:

34.   (2)   An employee is entitled to be paid for a minimum of

> (a)   4 hours at the regular wage, if the employee starts work unless the work is suspended for a reason completely beyond the employer's control, including unsuitable weather conditions,

The employer does not disagree with the fact that Olexa did not receive the minimum 4 hours per day pay and that she is entitled to two weeks compensation in lieu of notice rather, the Penticton Daycare Society responds as follows:

1. If Olexa was aware of the rule, she should have been working the minimum 4 hours per day. Olexa gave evidence that she worked whenever asked by the office manager of Penticton Daycare Society to work and did so in respect of all aspects of the Penticton Daycare Society. The fact remains that the employer admits that Olexa did not receive the minimum 4 hours per day in contravention of the *Act*.

2. There was a conflict of interest between the Board of Directors and the Penticton Daycare Society because Olexa's mother-in-law at the time of Olexa's employment was the President of the Board of Directors.

3. The Board of Directors is liable to the Penticton Daycare Society for any monies owing because it failed to ensure that the Society was run in its best interests and in particular in a legal manner such that it met with the requirements of the *Act*.

The issues of the duties and liability of the Board of Directors to the Penticton Daycare Society i.e. 2 and 3 are outside the parameters of the Act, and therefore this is not the proper forum to address these issues.

SUMMARY

In consideration of all these circumstances, the evidence does not support a finding that the Director erred in his Determination and therefore the Appeal must be dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter dated July 26, 1999, be confirmed.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal