

# An appeal

- by -

Consolidated Silver Tusk Mines Ltd.

- 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:** Ib S. Petersen

**FILE No.:** 2001/546

**DATE OF DECISION:** September 12, 2001



# **DECISION**

## **SUBMISSIONS:**

Mr. William Van der Merwe on behalf of himself

Mr. Eric Dhali on behalf of the Director

### FACTS AND ANALYSIS

This is an appeal by Van der Merwe pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards (the "Director") issued on July 6, 2001 against the Consolidated Silver Tusk Mines Ltd., the Employer. The Determination concluded that the Employer had failed to pay wages and vacation pay to Ms. Elizabeth Hamilton. The amount awarded was \$32,828.84. The Determination ordered William Van der Merwe, and not the Employer, to pay the amount.

Not surprisingly, Van der Merwe takes issue with the delegate's conclusions. The Delegate appears to have concluded that Hamilton was employed by the Employer. The Employer apparently failed to participate in the investigation and the Delegate issued his Determination. Van der Merwe says he is not the employer. There is nothing in the Determination to support that he is. While the Determination is based on the premise that Consolidated is the Employer, the order to pay was made against Van der Merwe. There is no basis for that order. In the result, the Determination is fundamentally flawed and must be set aside.

### ORDER

Pursuant to Section 115 of the Act, I order that Determination in this matter, dated July 6, 2001 be cancelled and set aside.

Ib S. Petersen Adjudicator Employment Standards Tribunal