

An appeal

- by -

Patrick Helme, A Director or Officer of Wowtown.com, (Nevada) Inc.  
("Helme")

- 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:** David B. Stevenson

**FILE No.:** 2001/515

**DATE OF DECISION:** November 2, 2001

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Patrick Helme (“Helme”) of a Determination that was issued on June 20, 2001 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Helme was a Director or Officer of Wowtown.com (Nevada) Inc. and was liable had under Section 96 of the *Act* for an amount of \$11,211.01 in respect of the employment of Daniel McKenna (“McKenna”). An earlier Determination (the “corporate Determination”) concluded Wowtown.com (Nevada) Inc. had contravened Sections 18(1), 58 and 63 of the *Act* in respect of the employment of McKenna and ordered Wowtown.com (Nevada) Inc. to cease contravening and to comply with the *Act* and to pay an amount of \$11,211.01.

Helme says the Determination is wrong because he has never been a director or Officer of Wowtown.com (Nevada) Inc. and the corporate records relied on by the Director to reach that conclusion were incorrect.

### ISSUE

The issue is whether Helme has demonstrated an error in the Determination sufficient to justify the Tribunal exercising its authority under Section 115 of the *Act* to cancel it.

### FACTS

The following findings of fact are set out in the Determination:

Based on the evidence available from yourself and the complainant, you were a Director or Officer of this company at the time these wages were earned or should have been paid. The evidence confirmed that you participated in the activities of the company during the time wages were earned.

The BC Online Registrar of Companies Corporate Search, indicates as at February 5, 2000 Wowtown.com (Nevada) Inc. was incorporated on June 9, 1999 and assumed its current name on March 17, 2000. Patrick Helme was listed as a Director/Officer. Daniel McKenna’s unpaid wages were earned between March 18 and December 15, 2000. Patrick Helme was a Director/Officer of Wowtown.com (Nevada) Inc. and was so appointed at the time wages were earned and became payable.

Wowtown.com (Nevada) Inc. was extra-provincially registered on February 29, 2000. It appears that the name of this company prior to the change was Wow town.com, Inc.

In his appeal, Helme asserts the following:

1. I have never been a director or Officer of the company [Wowtown.com (Nevada) Inc].
2. That company's lawyer erred when submitting the information for the Extra Provincial registration and shows me as an Officer. The records should have matched the Actual Records for the Company. They did not. I have been waiting for the Company's lawyer to provide a letter to me and the Victoria Registrar that explains the error and to correct the records.
3. I was unaware that my name was included in the filing as an extra provincial company until the Determination was issued against me.
4. I have never agreed to be a Director or Officer of the company.
5. The company records in Nevada have not at any time shown that I was a director or Officer.
6. I did not have access to the company bank account nor the ability to write cheques for payroll, or otherwise. (I cannot get the banking details from the bank as I am not authorized - I would have enclosed them as well).

Helme submitted a letter from the lawyers for Wowtown.com (Nevada) Inc. It is addressed to the attention of Stephen Jackson and the body of that letter states:

Further to our telephone conversation of today's date, we confirm that we have reviewed the minute book for the Company as well as facsimiles of the Annual List of Officers, Directors and Agents of the Company dated June 22, 1999 and May 29, 2000 which we understand were filed by Nevada Agency and Trust Company with the Secretary of State for Nevada. None of the foregoing documents show any record of Patrick Helme being appointed as a director or officer of the Company. Documents filed in connection with the extra-provincial registration of the Company in British Columbia indicate that Mr. Helme was a vice-president of the Company. We confirm your instructions that this was an error and we will prepare the documentation necessary to correct this for filing with the Registrar of Companies for British Columbia.

Documents filed in the appeal from the State of Nevada corporate registry confirm that Helme was not a Director or Officer of Wowtown.com (Nevada) Inc. (or the previous company, Wowtown.com, Inc.) in that state.

In the reply submission from McKenna, he says that Helme was a Director and Officer of wowtown.com, Inc. and has included several pieces of information, including a Prospectus filed with the Securities and Exchange Commission in Washington, D.C. announcing a public offering

of shares in wowtown.com, Inc., to establish that assertion. The Prospectus discusses the sale of a subsidiary of wowtown.com, Inc., providing the following history:

The Company was incorporated on December 18, 1997. Prior to February 7, 2000, the Company was inactive.

On February 7, 2000, the Company acquired all of the issued and outstanding shares of Wowtown.com, Inc., a Nevada corporation (Wowtown/Nevada) . . . . Following the acquisition of Wowtown/Nevada, the Company's shareholders approved a resolution to change the name of the Company to wowtown.com, Inc.

The Prospectus identifies Wowtown/Nevada as a subsidiary of wowtown.com, Inc. and notes that following the acquisition, Helme was appointed as Vice-President and a Director of wowtown.com, Inc. The Prospectus also announced a special meeting of shareholders of wowtown.com, Inc. to take place on March 9, 2001 in Vancouver, B.C. for the purpose, *inter alia* of approving the sale of the Company's subsidiary, Wowtown (Nevada) Incorporated.

There is no dispute from Helme that he was a Director and Officer of wowtown.com, Inc.

## ARGUMENT AND ANALYSIS

The burden of establishing an error in the Determination is on Helme. The nature of that burden was described by the tribunal in *Director of Employment Standards (Re Michalkovic)*, BC EST #RD047/01 (Reconsideration of BC EST #D056/00):

. . . the case law reviewed here and in *Wilinofsky* stands for the following propositions:

1. The corporate records, primarily those available through the Registrar of Companies or available at the corporation's registered and records office, raise a rebuttable presumption that a person is a director or officer. In other words, the Director may presumptively rely on those corporate records to establish director or officer status.
2. It is then open to the person, who, according to the corporate records, is a director or officer, to prove on a balance of probabilities that the company records are *inaccurate*, for example because the person resigned and the documents were not properly processed, a person is not properly appointed, etc. . . .

In *Re Wilinofsky*, BC EST #D106/99, the Tribunal stated:

. . . where an individual is recorded as an officer or director of a company in the records maintained by the Registrar, a rebuttable presumption arises that the

individual is actually a director or officer . . . of the company. . . . *This presumption, however, can be rebutted by credible and cogent evidence that the Registrar's records are inaccurate* - the burden of proving that one is not a corporate director or officer rests with the individual who denies such status.  
(emphasis added)

I am satisfied that Helme has met the burden placed on him in this appeal. In his submission, McKenna submits that Helme, as a Director and Officer of a publicly traded corporation, is responsible for the indebtedness of the wholly owner subsidiary, Wowtown.com (Nevada) Inc. That is probably correct, but is not the issue in this case. The issue is whether Helme has shown the Determination was wrong in its conclusion that he was a Director or Officer of Wowtown.com (Nevada) Inc. and he has done that.

The Determination, as it is written, must be cancelled.

#### **ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated June 20, 2001 be cancelled.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**