

An Interim Decision  
In Regard to the Appeal

- by -

514504 B.C. Ltd. operating as Sir 101 Hair Restoration  
(the "Employer")

- 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 Petersen

**FILE No.:** 2001/695

**DATE OF INTERIM DECISION:** December 18, 2001

## INTERIM DECISION

### SUBMISSIONS/APPEARANCES:

Mr. Kendall Beleshko   on behalf of the Employer

### OVERVIEW

This application arises out of an appeal by both the Employer and the Employee pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director issued on September 12, 2001. The Determination concluded that the Employee was owed \$1,691.55 by the Employer on account of compensation for length of service.

The Employee filed a complaint against the Employer, the operator of a hair restoration business, where he had been employed from August 5, 1999 to September 5, 2000, claiming for unpaid wages, unauthorized deductions, vacation pay and compensation for length of service. He had been employed as a hair restoration consultant on the basis of salary and commissions.

The Delegate concluded that the Employee was not owed any commissions and, as well, dismissed his claim for unauthorized deductions. He found in the Employee’s favour with respect to the claim for compensation for length of service. On October 5, 2001, the Employer has appealed that determination. About the same time, the Employee, on the other hand, took issue with and appealed the determinations against him. A claim for vacation pay was resolved.

In December 2000, the Employer obtained an injunction in the Supreme Court of British Columbia against the Employee and other defendants, including, it would appear, the Employee’s current employer and other former employees. Mr. Justice Taylor issued an “*interim, interlocutory and permanent* injunction,” dated December 19, 2000, which, *inter alia*, required the defendants, including the Employee, to deliver “proprietary information,” deliver records of such information and destroy such information stored by *January 5, 2001*. There was, as well, an order which may generally be described as prohibiting the Employee from contacting or soliciting the employer’s clients and others for a period of four months from *January 1, 2001*.

### ISSUE

The employer has made an application to protect and keep confidential certain information, the names of clients, that was inadvertently disclosed to Crozier in the course of this appeal.

## FACTS AND ANALYSIS

As mentioned both the Employer and the Employee appealed the Delegate's Determination. In accordance with the Tribunal's procedure, these are separate appeals. The Employer's appeal is on Tribunal file number 2001/695 the Employee's is on Tribunal file number 2001/696.

On October 31, 2001, the Delegate filed a response to the Employer's appeal. Attached to that submission was a spreadsheet, detailing names of the Employer's clients in 1999 and 2000 (the "Sir 101 List"). The date stamp indicated that the spreadsheet was received by the Delegate on February 5, 2001. The Delegate explained that he received it from the Employer. This submission was cross-disclosed to the other party, *i.e.*, to Crozier by letter dated November 14, 2001. The Employer had expressed concern with respect to the confidentiality of information provided to the Delegate.

In its response to the Employee's appeal, dated October 31, 2001, to the Tribunal, the Employer noted its concern with respect to information it considered confidential and covered by the order of Mr. Justice Taylor:

"It is of the utmost importance that the Employment Standards Tribunal respect and follow the court order from the British Columbia Supreme Court ... Mr. Crozier is no longer allowed to have in his possession or even allowed to view the names of clients and addresses of Sir 101 clients, including past present and future clients. This also includes any materials, documents, memos, etc. that are the property of Sir 101 Ltd. and 514504 B.C. Ltd."

Without necessarily agreeing with this characterization, it is fair to say that the Employer early on in these appeals—and, indeed, in its dealings with the Delegate—indicated concerns for the confidentiality of its business records. Immediately after filing its response to Crozier's appeal, the Employer contacted the Tribunal and, apparently, it was suggested that documentation could be provided with names and addresses "blacked out." The Employer supplied the documentation in this form on November 10, 2001. Neither the Delegate nor the Employee took issue with this. It, therefore, appears to me that the identity of the clients is not necessary to the issues before me (in the appeal on the merits of the appeals).

As mentioned earlier, by letter dated November 14, 2001, the Tribunal's staff inadvertently disclosed the Sir 101 List, attached to the Delegate's submission, to the Employee. When the Employer received a copy, it contacted the Tribunal to attempt to remedy the situation. On November 20, 2001, the Employer wrote to the Tribunal re-iterating its concern about the disclosure of the Sir 101 List. On November 22, the Tribunal wrote to the Employer, describing the contacts with the Employer:

"In closing I would like to say that the Tribunal is very conscious of its responsibility to respect the legitimate interests of all parties concerning the confidentiality of personal and proprietary information. Within the limits of fair

and equitable procedure the Tribunal tries to accommodate all such legitimate concerns, as we have done in respect to your submissions on Tribunal File Number 2001/696.”

This letter was copied to the other parties. Neither the Delegate nor the Employee took issue with this. From the file, it would appear that there was no response to this.

On December 17, 2001, the Employer filed a response to the Tribunal’s November 22, 2001, letter. In a lengthy submission, which I do not need to detail, the Employer expressed concern about the employee having the Sir 101 List and the potential impact on its business and requested that the Tribunal issue an order that:

1. the Employee return the Sir 101 List;
2. the Employee destroy all copies;
3. the Employee not make use of any of the information on the list;
4. the Employee “undertakes” that no other persons, including his current employer, make use of the information;
5. the Employee not pass on the information to anyone;
6. the Employee provide full disclosure of persons who have seen the list;
7. the employee search persons who may have had contact with the list;
8. the employee assure the Tribunal that persons who have seen the list have destroyed it; and
9. the Employee provide full disclosure of the Employer’s clients, past and present, that he or “his colleagues, friends, family, employers ... have contacted since October 2001.”

In the circumstances, I am not persuaded to issue the order sought. I am not convinced that I have the jurisdiction to issue what, in my view, amounts to broad based injunctory relief. There is, in any event, what appears a valid and subsisting “*interim, interlocutory and permanent*” injunction issued by the Supreme Court of British Columbia. The enforcement of that injunction is a matter for the Courts.

However, that is not the end of the matter. Under Section 107 of the *Act*, the Tribunal has the power to regulate its proceedings (see also Section 108). The Tribunal, as well, has the power under Section 109 to order production of documents. It is unfortunate that the Sir 101 List was disclosed with the client information. That cannot be un-done. There has been no suggestion from the Employee (or the Delegate) that the client information is necessary for the purposes of

prosecuting the appeal or responding to the Employer's appeal. In short, there appears to be no prejudice. It is not uncommon for the Tribunal to order that documents produced in the course of its proceedings be treated with confidentiality or that conditions are imposed respecting the use of such documents. In the circumstances, I am prepared to make the order set out below.

I emphasize that this order in no way reflects on the merits of the appeals by either party.

### **ORDER**

I order that:

1. The Sir 101 List be treated as confidential and used only and exclusively for the purposes of the proceedings before the Tribunal.
2. The names of clients on the Sir 101 List must be "blacked out."
3. Upon the conclusion of these proceedings, the Sir 101 List and all copies must be returned to the Employer.

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**Ib Skov Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**