

An Application for Reconsideration

- by -

Lori Stromquist  
("Stromquist")

- of a Decision issued by -

The Employment Standards Tribunal  
(the "Tribunal")

pursuant to Section 116 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**TRIBUNAL MEMBER:** Kenneth Wm. Thornicroft

**FILE No.:** 2011A/56

**DATE OF DECISION:** July 5, 2011

## DECISION

### SUBMISSIONS

Lori Stromquist	on her own behalf
Rory K. McDonald	legal counsel for Sisto's Neighbourhood Pub Ltd.
Kristine Booth	on behalf of the Director of Employment Standards

### INTRODUCTION

1. This is an application filed by Lori Stromquist ("Stromquist") pursuant to section 116 of the *Employment Standards Act* (the "*Act*") for reconsideration of a Tribunal decision issued by Member Sheldon Seigel on April 7th, 2011 (B.C.E.S.T. Decision No. D036/11). By way of this latter decision, Member Seigel dismissed Ms. Stromquist's appeal and confirmed a Determination issued by a delegate of the Director of Employment Standards (the "delegate") on December 15th, 2010 (the "Determination"). The delegate dismissed Ms. Stromquist's claim for compensation for length of service payable under section 63 of the *Act* holding that, firstly, she voluntarily resigned her position (section 63(3)(c)) and, secondly, that this resignation was not triggered by the employer's substantial alteration of her terms and conditions of employment (see section 66) – see delegate's "Reasons for the Determination" appended to the Determination (the "delegate's reasons").
2. I am adjudicating this application based on the parties' written submissions. I have reviewed the submissions filed by Ms. Stromquist, by legal counsel for her former employer, Sisto's Neighbourhood Pub Ltd. (the "Employer"), and by the delegate. In addition, I have reviewed all of the documents that were before Member Seigel when he was considering Ms. Stromquist's original appeal.

### BACKGROUND FACTS AND PRIOR PROCEEDINGS

3. Ms. Stromquist was employed as a bartender and server at the Employer's pub from January 2005 until March 30th, 2008. Ms. Stromquist alleged that sometime in either 2006 or 2007 a bar patron, only identified in the material as "Rod", asked her out on a date but she refused. Ms. Stromquist alleges that Rod would not take "no" for an answer and waited for her in the parking lot at the end of her shift and then followed her in his own vehicle, at one point "trying to run her off the road" and, at a later point, blocking her from crossing a bridge but he then sped away (delegate's reasons, page 5). Ms. Stromquist never reported this apparently criminal behaviour to the police until a year or more later but no charges were ever filed.
4. Ms. Stromquist says that Rod apologized and agreed to stop coming into the pub but several months later started to regularly frequent the pub. There were no other incidents – there is no evidence in the record that Ms. Stromquist ever asked her Employer to have Rod banned from the pub.
5. In March 2008 the Employer interviewed several applicants, including Rod, for a bartender position; Ms. Stromquist's supervisor – who apparently was aware of Ms. Stromquist's enmity toward Rod – consulted with Ms. Stromquist about Rod's possible hiring and Ms. Stromquist indicated that she would "try" to work with him. The record indicates that there were no incidents of any misconduct by Rod toward Ms. Stromquist (or anyone else, for that matter). However, on or about March 29th, 2008 Ms. Stromquist had a wholly unreasonable reaction to an entirely innocent workplace incident and quit her job. She was subsequently diagnosed by a psychologist who provided a report as part of her Workers' Compensation claim

as suffering from “Posttraumatic Stress Disorder with delayed onset”. I note that in this report, dated July 7th, 2008, the psychologist recorded Ms. Stromquist as indicating she “decided that she could no longer work in this environment [at the pub] and quit her job”; he also reported her saying “she experienced significant fear and stress, resulting in her decision to quit her job out of fear for her safety”. In the April 22nd, 2010 Workers’ Compensation Appeal Tribunal (“WCAT”) decision allowing her appeal regarding a “compensable mental stress claim”, the incident triggering her resignation was characterized as an incident “that most persons would view...as a harmless action” (page 21).

6. Ms. Stromquist left a note for her supervisor at the end of her shift on the evening of March 29th, 2008 that read, in part: “My Monday shift is covered. I won’t be back nothing can change my mind the damage is done. Sorry please don’t make changes to the recent hire it will make it worse for me and you cause you’ll be down two bartenders. I can’t stay or come back right now.” The next day she sent many text messages to her supervisor but never attempted to rescind her decision to quit. The Employer later prepared her Record of Employment and provided a cheque for accrued wages; Ms. Stromquist did not attempt to rescind her quit at this time.
7. On April 10th, 2008 Ms. Stromquist filed a claim for compensation with the Workers’ Compensation Board and on September 11th, 2008 she filed a complaint under the *Act* seeking compensation for length of service under section 63 of the *Act*.
8. The claim for WCB benefits was, as noted above, ultimately successful. In the WCAT decision, the adjudicator noted that Ms. Stromquist’s Employer did not change her working conditions, discipline her or terminate her employment (page 23). Rather, Ms. Stromquist quit her employment not because the Employer took action directly against her, or aimed at her employment, but because she experienced “an unusual and emotionally shocking workplace event that caused her quickly to emotionally break down and to suffer a mental stress injury” (page 23).
9. In the materials filed in support of her *Employment Standards Act* complaint she noted: “[The Employer] believe[s] I quit. I believe I was bullied and harassed and forced to terminate my position”. The delegate dismissed Ms. Stromquist’s complaint and the Tribunal dismissed her appeal of that decision (this decision is the subject of the present application).

## **THE APPLICATION FOR RECONSIDERATION**

10. Ms. Stromquist’s section 116 application is supported by a 1-page note appended to her reconsideration form. She also attached a copy of the psychologist’s report that formed the basis of her ultimately successful WCB claim (this report was already included in the section 112(5) record before the delegate). Ms. Stromquist’s application is based solely on the assertion that her decision to quit should not have foreclosed her claim for section 63 compensation since her decision to quit “was a heat of the moment, impulsive reaction which the psychologist confirmed was a normal symptom to PSDT delayed onset”.
11. The Employer says that the reconsideration application should be summarily dismissed since she is simply re-arguing whether she voluntarily quit her job without providing any new evidence or arguments that have not already been advanced and fully addressed. The delegate says that the application should be summarily dismissed for essentially the same reason.

## FINDINGS AND ANALYSIS

12. Ms. Stromquist quit her job on March 29th, 2008. Her resignation note was clear and unambiguous. She did not attempt to rescind the quit the next day. She did not attempt to rescind her decision to quit when, several days later, she received her final paycheque and a Record of Employment. Every decision-maker who has reviewed this matter has concluded that the Employer did not say or do anything – other than hiring Rod – that might have precipitated her resignation. There is no evidence that Rod did anything untoward during his period of overlapping employment with Ms. Stromquist. Indeed, Ms. Stromquist was consulted about working with Rod prior to his being hired and she did not ask the Employer not to hire Rod – she indicated her (perhaps begrudging) acceptance of him being hired.
13. The Employer was not privy to any diagnosis about any sort of mental illness or trauma that Ms. Stromquist might have been suffering at the time she submitted her resignation. Indeed, the psychologist's report was not even prepared until July 7th, 2008, over 3 months after her resignation. Ms. Stromquist did not file her *Employment Standards Act* complaint – at which point the Employer was put on notice that Ms. Stromquist was purporting to rescind her quit – until September 11th, 2008, over 5 months after she submitted her resignation.
14. The *Act* does not contain any provision enabling employees to take unpaid “mental stress” or other forms of medical leave (thereby preserving their employment) other than maternity leave. The introduction of new leave provisions is a matter for the Legislature to address, not this Tribunal. Thus, at the time Ms. Stromquist submitted her resignation, and for several months thereafter, the only thing that the Employer knew was that Ms. Stromquist no longer wanted to work at the pub, and that it had done nothing to precipitate her decision other than hiring Rod, and in this respect the Employer was acting entirely lawfully and with Ms. Stromquist's concurrence.
15. Applications for reconsideration must be summarily dismissed where, as here, the application simply constitutes an undisguised attempt to reargue matters that have already been fully addressed (see *Director of Employment Standards and Milan Holdings Inc.*, BC EST # D313/98). In my view, there is nothing in the material before me that raises even a *prima facie* case that the Determination was incorrectly decided on the “quit” issue.

## ORDER

16. Pursuant to section 116(1)(b) of the *Act*, this application to reconsider BC EST # D036/11 issued on April 7th, 2011 is refused.

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**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**