An Application for Reconsideration

- by -

Carestation Health Centres (Seymour) Ltd., Avicenna Group Holdings (Chilliwack) Ltd., and Oxbridge Ventures, Inc.
(the "Associated Entities")

- 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: Robert E. Groves

FILE No.: 2010A/98

DATE OF DECISION: September 29, 2010

DECISION

SUBMISSIONS

Karim Rajani	on behalf of Carestation Health Centres (Seymour) Ltd., Avicenna Group Holdings (Chilliwack) Ltd., and Oxbridge Ventures, Inc.
Valli Tremblay	on her own behalf
Anne Kelley	on her own behalf
Christine Ho	on her own behalf
Charmaine de Lima Vianna	on her own behalf
Lynnette Sewak	on her own behalf
Shahab A. Rizvi	on his own behalf
Mary Walsh	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an application for reconsideration brought by Carestation Health Centres (Seymour) Ltd. ("Carestation Seymour"), Avicenna Group Holdings (Chilliwack) Ltd. ("Avicenna"), and Oxbridge Ventures Inc. ("Oxbridge") (collectively, the "Associated Entities"), pursuant to section 116 of the *Employment Standards Act* (the "*Act*").

2. The Associated Entities seek a reconsideration of a decision of a Member of the Tribunal dated June 22, 2010, under BC EST # D063/10 (the "Original Decision").

3. The matter came before the Member by way of an appeal filed on behalf of the Associated Entities pursuant to section 112 of the *Act* in which they challenged a determination of a delegate (the "Delegate") of the Director of Employment Standards (the "Director") dated February 25, 2010 (the "Determination"). The Determination followed an investigation which arose after some forty-seven former employees of Carestation Health Centres Ltd. ("Carestation Health") filed complaints alleging that Carestation Health had contravened the *Act* when it failed to pay them wages.

4. The Delegate concluded that Carestation Health owed wages and interest to the complainants totalling $327,691.01. She ordered Carestation Health to pay the complainants this sum. She also imposed $6,500.00 in administrative penalties on Carestation Health pursuant to section 29 of the *Employment Standards Regulation*.

5. The Delegate also determined that the Associated Entities should be treated as a single employer with Carestation Health under section 95 of the *Act*. The effect of this was to render the Associated Entities jointly and separately liable with Carestation Health to pay the sums found to be owed in the Determination.

6. Pursuant to section 36 of the *Administrative Tribunals Act*, which is incorporated into these proceedings by section 103 of the *Act*, and Rule 26 of the Tribunal's *Rules of Practice and Procedure*, the Tribunal may hold any combination of written, electronic and oral hearings on applications for reconsideration. No party has requested an oral

hearing regarding this application. The Director, the Associated Entities, and some of the complainants have filed written submissions. The Tribunal has concluded that this application shall be decided having regard to the written materials received, without an oral hearing.

FACTS

7. Carestation Health, through its principal, Karim Rajani ("Rajani"), operated a number of medical clinics at which the complainants were employed. Carestation Health contracted the management services of Rajani with the physicians practising at the clinics. In 2009, Carestation Health ceased to operate the clinics, or to provide the services of Rajani, and the contractual arrangements with the physicians ended.

8. Commencing in June 2009, Carestation Health failed to pay regular wages to a number of its employees, including the complainants. However, the complainants continued to report for work, as they were advised by Carestation Health that it was still managing the clinics and that it was attempting to arrange re-financing, which would enable it to become current with the payment of wages.

9. The Delegate decided that the complainants' employment was deemed to have been terminated under section 66 of the *Act* on various dates determined having regard to the following criteria:

- where a complainant ceased to do work for Carestation Health due to chronic non-payment of wages, the date on which the work ceased;
- where a clinic closed, the date of closure;
- in the case of one clinic, July 15, 2009, which was the date the Delegate identified on which Rajani ceased to exercise management control over the operations conducted there; and
- in the case of the other clinics, September 18, 2009, which was the date Rajani ceased to exercise management control over the operations conducted at those locations.

10. Many of the complainants continued to work at the various clinic locations as these events unfolded. Some received payment for that work from the physicians practising there. The Delegate decided that the amounts paid were temporary loans.

11. The Delegate delivered Demands for Employer Records to Carestation Health. The records Carestation Health provided in response were, at best, incomplete. In particular, the Delegate noted that Carestation Health produced no records concerning:

- the complainants' daily hours of work;
- the complainants' allegations that Carestation Health had made deductions from their wages but had not properly remitted those sums to the complainants' insurance carrier;
- the wages that had been paid to the complainants; and
- the overtime and vacation pay claims of the complainants.

12. Carestation Health made a voluntary assignment into bankruptcy on January 22, 2010.

13. The Delegate noted that on January 8, 2010 she communicated via registered mail to Carestation Health, the Associated Entities, and their directors, advising that she intended to consider whether these corporate bodies

were associated for the purposes of section 95. The Delegate outlined the criteria for determining whether these entities should be treated as one employer for the purposes of the *Act*. She set out the evidence she had accumulated supporting a conclusion that the Associated Entities should be treated as a single employer, and invited them to respond by January 22, 2010.

14. The Delegate received no reply to this communication, notwithstanding that the records of Canada Post revealed to the Delegate that this correspondence was properly delivered to the intended recipients. The Delegate then issued the Determination, which included a finding that the Associated Entities were to be treated as a single employer pursuant to section 95, essentially on the basis set out in the Delegate's letter stating her preliminary conclusions dated January 8, 2010, but with some further particulars noted.

15. The Associated Entities filed an appeal of the Determination under section 112 of the *Act*. The specific issues identified for discussion on the appeal are in substance the same as those that are argued before me now. The Member decided in the Original Decision that the Determination should in all aspects be confirmed.

ISSUE

16. There are two issues which arise on an application for reconsideration of a decision of the Tribunal:

1. Does the request meet the threshold established by the Tribunal for reconsidering a decision?
2. If so, should the decision be cancelled or varied or sent back to the original panel, or another panel of the Tribunal?

ANALYSIS

17. The power of the Tribunal to reconsider one of its decisions arises pursuant to section 116, the relevant portion of which reads as follows:

> 116 (1) On application under subsection (2) or on its own motion, the tribunal may
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> (a) reconsider any order or decision of the tribunal, and
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> (b) confirm, cancel or vary the order or decision or refer the matter back to the original panel or another panel.

18. The reconsideration power is discretionary, and must be exercised with restraint. The attitude of the Tribunal towards applications under section 116 is derived in part from section 2 of the *Act*, which identifies as purposes of the legislation the promotion of fair treatment of employees and employers, and the provision of fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. It is also derived from a legitimate desire to preserve the integrity of the appeal process described in section 112 of the *Act*. A party should not easily have available to it an avenue for avoiding the consequences of a Tribunal decision with which it is unhappy. Nor should it be entitled to an opportunity to re-argue a case that failed to persuade the Tribunal at first instance. Having regard to these principles the Tribunal has repeatedly asserted that an application for reconsideration will be unsuccessful absent exceptional circumstances, the existence of which must be clearly established by the party seeking to have the Tribunal's original decision overturned.

19. The Tribunal has adopted a two-stage analysis when considering applications for reconsideration. In the first stage, the Tribunal asks whether the matters raised in the application warrant a reconsideration of the Tribunal's original decision at all. In order for the answer to be "yes" the applicant must raise questions of fact, law, principle or procedure flowing from the original decision which are so important that they demand intervention.

If the applicant satisfies this requirement the Tribunal will go on to the second stage of the inquiry, which focuses on the merits of the original decision. When considering the original decision at this second stage, the standard applied is one of correctness: *Zone Construction Inc.*, BC EST # RD053/06.

20. I have concluded that the application of the Associated Entities does not raise issues which warrant a reconsideration of the Original Decision, and so the application fails at stage one of the analysis.

21. The Associated Entities have delivered a number of submissions on this application for reconsideration that mirror arguments presented by them in the appeal, and rejected in the Original Decision. I will deal with them in order.

No Injury/Limited Injury

22. The Associated Entities claim that both the Delegate and the Member acknowledged that a number of the complainants received payments from the physicians in the clinics. The Delegate found that these payments were loans. The Member declined to interfere with this finding of fact.

23. The Associated Entities argue that there is nothing in the record to support a finding that the payments made were loans. If no loans were made, I believe the Associated Entities seek to argue that the complainants received remuneration for their work at the clinics during a period for which the Delegate determined the complainants were owed wages by Carestation Health. If so, I infer that the Associated Entities wish me to conclude that the complainants have successfully mitigated their damages.

24. If loans were, in fact, made to the complainants by third parties, the Associated Entities submit that the complainants' claims are somehow subsumed within the applicable machinery for managing the bankruptcy of Carestation Health that is set out in the *Bankruptcy and Insolvency Act* (the "*BIA*").

25. The Member rejected these arguments, and I concur with his conclusions.

26. The Delegate's finding that the sums received by the complainants from third parties were temporary loans is a finding of fact. As noted by the Member, the Tribunal has a very limited jurisdiction to interfere with a Delegate's findings of fact, and it only arises when the error of fact amounts to an error of law. Errors of fact do not amount to errors of law except in rare circumstances where they reveal what the authorities refer to as palpable and overriding error. An example would be a situation where a finding of fact is irrational or inexplicable because it is based on no evidence at all. Absent palpable and overriding error, the Tribunal cannot disturb a delegate's findings of fact, even in circumstances where the evidence might have led the Tribunal to reach different factual conclusions than those appearing in a determination (see *Gemex Developments Corp. v. B.C. (Assessor)* (1998) 62 BCLR 3d 354; *Delsom Estates Ltd. v. British Columbia (Assessor of Area 11 – Richmond/Delta)* [2000] BCJ No.331).

27. Here, the Associated Entities argue, in substance, that the Delegate's conclusions were based on no evidence at all. They say that no legally sufficient evidence of loans was tendered, in the form of loan documentation, bank records and other material lending credence to the suggestion that obligations of this sort were incurred, and that they were, or will be, repaid. In my view, the perceived absence of this type of corroborative evidence does not inexorably lead to a conclusion that the Delegate acted on no evidence at all. The Delegate concluded that the payments were loans at least in part on the basis that the complainants told her that was what they were. Those statements constitute some evidence that the payments were loans. Whether the Delegate should have accepted that evidence raises issues of credibility, and the weight to be attributed to the statements made. Those were

issues for the Delegate to decide, and absent some extraordinary vitiating factor, the presence of which is not suggested here, the Tribunal must not interfere.

28. A more compelling rationale for the Delegate's conclusion that the payments were in the nature of loans, rather than remuneration for work, is discussed by the Member in the Original Decision. The Delegate found that the facts supported a conclusion that the complainants remained employees of Carestation Health, notwithstanding that Carestation Health fell behind in its payments of their wages. The complainants continued to report for work because Rajani assured them that re-financing was being sought to permit Carestation Health to meet its financial obligations. At no time did Carestation Health formally terminate the employment of any of the complainants, or suggest to them that their status as employees had ceased. At the same time, there was no evidence that the physicians, or anyone else for that matter, employed the complainants on terms that exempted Carestation Health from its obligations to pay wages pursuant to the *Act*.

29. Furthermore, I fail to see how a finding that the complainants may have received loans from third parties shields the Associated Entities from liability pursuant to section 95 due to the operation of the *BIA*. The argument of the Associated Entities on this point is muddled, and fails to make its point clear. The fact that the complainants may have a claim in bankruptcy against Carestation Health is of no moment. It is to the Associated Entities that the Determination was directed, not Carestation Health. There is no evidence that the Associated Entities have made assignments into bankruptcy.

Alternative Remedy

30. The Asssociated Entities submit that since the trustee in bankruptcy for Carestation Health has assets available to satisfy the wage claims of the complainants, at least in part, the complainants should be made to exhaust the remedies available to them under the *BIA* before they employ the machinery of the *Act* to seek redress.

31. Accepting for the purposes of discussion that the factual assumptions underlying this submission are true, I am aware of no authority which would compel the Director to defer to the bankruptcy proceedings in circumstances where the determination that is issued is not directed to the legal entity that has made an assignment under the *BIA*. As the Member said in the Original Decision, the Director has jurisdiction to make a section 95 decision and the *BIA* is no obstacle to his doing so where the entities found to be associated with the bankrupt are not themselves in bankruptcy.

32. The fact that the Associated Entities have re-submitted this argument on this application for reconsideration does not make the legal conclusion any different than the one reached by the Member in the Original Decision.

Constructive Dismissal and Mitigation

33. The Associated Entities argue strenuously that the Delegate, and the Member, erred in failing to apply common law authorities which they submit must lead to a conclusion that the complainants were constructively dismissed much earlier than the termination dates accepted in the Determination.

34. I do not quarrel with the legal analysis offered by the Associated Entities relating to the factors a court might consider in common law claims for wrongful dismissal. Having said this, it is important to note that while the Tribunal must pay heed, where appropriate, to the principles of the common law articulated by our courts, especially in cases involving employment relationships, it is the *Act* which establishes the analytical criteria which must be applied to the circumstances of complaints made pursuant to it.

35. Here, the question for the Delegate was whether the facts supported a conclusion that the complainants' employment had been terminated having regard to section 66 of the *Act*, which reads:

> 66 If a condition of employment is substantially altered, the director may determine that the employment of an employee has been terminated.

36. As the Member pointed out, a finding that an employee has been terminated pursuant to section 66 is not necessarily the same as a finding that the employee has been constructively dismissed at common law. On the interpretation of section 66, the Member took guidance from the Tribunal's decision in *Isle Three Holdings Ltd., carrying on business as Thrifty Foods*, BC EST # RD124/08, as do I. That decision re-affirmed that the *Act* is remedial legislation creating entitlements for employees that are separate and distinct from those they may wish to seek in proceedings at common law.

37. *Isle Three* also made it clear that the Director's power under section 66 is discretionary. A finding of substantial alteration of a condition of employment need not result automatically in a conclusion that there has been a termination of an employee's employment. Rather, the Director must be guided by the provisions of the *Act*, and the purposes underlying it, in the exercise of his discretion. This may, and sometimes does, result in a determination that does not mirror the result which would occur at common law. In particular, *Isle Three* and other Tribunal decisions like it have shown that common law principles like acquiescence and mitigation are of little, if any, assistance in determining whether a termination has occurred for the purposes of section 66, and if so, the statutory remedies that the *Act* provides in the circumstances.

38. Here, the Delegate found, and the Member agreed, that the circumstances supported a conclusion that Carestation Health continued to employ the complainants, and therefore no termination under section 66 had occurred, notwithstanding that it had failed to pay them their wages in a timely way. One of the reasons for this, no doubt, was that the Delegate had evidence before her to the effect that the complainants continued to report for work, at least in part because Rajani had assured them that Carestation Health was seeking re-financing so that its financial obligations could be met in a timely way. That evidence supported the Delegate's exercising the section 66 discretion so as to conclude that despite the fact the conditions of employment of the complainants may have been substantially altered because Carestation Health failed to pay them their wages, their positions of employment had not been terminated.

39. The Delegate also decided, and the Member affirmed, that a finding of continued employment was appropriate having regard to several of the policy objectives expressed in the *Act*. On the view of the facts offered by the Associated Entities, the complainants suffered numerous, successive terminations of their employment, followed by automatic re-hirings, as Carestation Health repeatedly failed in its obligation to pay them their wages, and they continued to report for work. Of this analysis, the Member said the following in the Original Decision:

> ...Such a result would be inconsistent with several of the stated purposes in Section 2 of the *Act*, including the purposes of ensuring employees in British Columbia receive at least basic standards of compensation and conditions of employment; promoting the fair treatment of employees and employers; encouraging open communication between employers and employees; providing fair and efficient procedures for resolving disputes over the application and interpretation of this *Act*; and contributing in assisting employees to meet work and family responsibilities.

40. I do not see that it was improper for the Delegate, or the Member, to have approached the question whether a section 66 termination had occurred at the time(s) specified by the Delegate in the Determination having regard to the purposes of the *Act* outlined in section 2. Nor can I conclude that the Associated Entities have offered anything in their submissions on this application for reconsideration that must lead me to decide that either the

Delegate or the Member is guilty of error in the manner in which these principles were applied to the circumstances of this case.

Section 95

41. The Associated Entities submit that the Member erred in confirming the Delegate's conclusion that they met the requirements of section 95, and should be viewed as a single employer along with Carestation Health. Section 95 says this:

> 95 If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,
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> (a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one employer for the purposes of this Act, and
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> (b) if so, they are jointly and separately liable for payment of the amount stated in a determination, a settlement agreement or an order of the tribunal, and this Act applies to that recovery of that amount from any or all of them.

42. Previous decisions of the Tribunal have identified four factors which must be considered before determining whether separate entities constitute a single employer for the purposes of section 95 (see, for example, *Re Invicta Security Systems Corp.*, BC EST # D349/96). Those factors are:

1. There must be more than one corporation, individual, firm, syndicate or association;
2. Each of these entities must be carrying on a business, trade, or undertaking;
3. There must be common control or direction; and
4. There must be some statutory purpose for treating the entities as one employer.

43. Here, the Associated Entities easily satisfy factors 1 and 2. Factor 4 is satisfied because it has been identified in cases like *Invicta Security Systems* that one of the purposes of the *Act* is to ensure that employees in British Columbia enjoy the basic standards of compensation and conditions of employment established in the legislation. One such standard is the timely payment of wages. If, in an appropriate case, section 95 is employed so as to deem separate entities a single employer for the purpose of collecting unpaid wages, a statutory purpose embedded in the *Act* will be vindicated.

44. The focus of the submission of the Associated Entities, however, engages factor 3. They say that there was no documentary evidence before the Delegate which supports a contention that Oxbridge exercised "financial control" or that Avicenna exercised "operational control" of Carestation Health. The Associated Entities do not appear to make a submission on the application of section 95 as regards Carestation Seymour.

45. The Associated Entities focus on the references to financial control and operational control in the Original Decision. I observe, however, that the Member properly interpreted the criteria that would inform a discussion of the applicability of section 95 when he referenced the language in *Invicta Security Systems* to the effect that factors like financial and operational control are not meant to be exhaustive. Rather, they are merely illustrative of the variety of circumstances which may lead to a conclusion that there is common control or direction. Regarding this point, the Tribunal in *Invicta Security Systems* also said this:

> Control or direction is not limited in its application to direct financial or corporate control. The totality of the business and the inter-relationships of the entities must be examined.

46. Here, the Delegate noted the following facts, *inter alia*, which, cumulatively, led her to conclude that the Associated Entities were captured within the ambit of section 95:

- Corporate searches for Carestation Health, Oxbridge, and Avicenna revealed the same registered and records offices address for each of them;
- Rajani was the sole director for Carestation Seymour, Oxbridge, and Avicenna. He and another were the sole directors of Carestation Health;
- The corporate head office for Carestation Health was the location of the medical clinic operated by Carestation Seymour;
- The website for Carestation Health provided, as contact, the email of Rajani at krajani@oxbridgeventures.com. The Delegate noted that throughout the investigation she dealt with Rajani at this email address, and that his office voicemail contained links to the services offered by Oxbridge;
- Some of the wage cheques issued to certain of the complainants came from Avicenna;
- Avicenna was found to be the owner of at least one property where a clinic operated by Carestation Health was located;
- A press release in 2008 noted that Oxbridge would be arranging $50 million in equity and debt capital for Carestation Health;
- The Oxbridge website described its work as arranging equity and debt investments in two sectors: health care and life sciences and real estate. It also listed its headquarters as the clinic operated by Carestation Seymour;
- A further 2008 press release stated that Oxbridge was announcing a letter of intent with Carestation Health to develop up to $1 billion in medically anchored real estate, with Carestation Health providing practice management services to physicians and lease facilities to Oxbridge.

47. In my view the Delegate was right to conclude, and the Member correct in confirming, that these facts were collectively capable of meeting the evidentiary burden resting on the Director to establish the sufficient level of connection or intermingling necessary to show common control or direction amongst the Associated Entities for the purposes of section 95.

48. A key factor in this analysis is that the Delegate wrote to the Associated Entities on January 8, 2010, setting out all but one of the particulars noted above, and her preliminary conclusion that section 95 was engaged. She specifically invited the Associated Entities to submit other evidence which might refute this conclusion. She set a date of January 22, 2010, for the receipt of any replies. No replies were received. Instead, on January 22, 2010, Carestation Health made a voluntary assignment into bankruptcy.

49. The Associated Entities appear to have repeated, for the purposes of their submissions on this application for reconsideration, the same arguments they made to the Member regarding section 95. The Member said this regarding the matter in the Original Decision:

> The Director found elements of common control of the enterprise in the financial control shown by Oxbridge and operational control by Avicenna, the *de facto* control in Mr. Rajani's control of the board of directors of all of the entities, in the interrelationship among the entities that allowed each to support the operations of the others in a unified whole. The Director found common direction in the apparent ability of Mr. Rajani to make significant decisions respecting how each aspect of the business would be run.
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> ...
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> Based on the applicable tests in section 95 and the facts found by the Director, I find no error of law in the decision of the Director to associate the entities under section 95...

50. I see nothing in the submissions of the Associated Entities on this application for reconsideration which must lead me to conclude that the Member erred in reaching this conclusion.

Rebuttal Evidence

51. On appeal, the Associated Entities sought to tender new evidence for the Member's consideration relating to the question whether they should be found to be a single employer with Carestation Health under section 95.

52. The Member's jurisdiction to consider new evidence in an appeal is grounded in section 112(1)(c) of the *Act*, which reads:

> 112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
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> ...
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> (c) evidence has become available that was not available at the time the determination was made.

53. The Member characterized the Tribunal's obligation when considering section 112(1)(c) matters in the following way. I agree with these comments:

> If a party attempts to introduce new evidence in an appeal, the Tribunal has discretion to allow such evidence, but has consistently taken a relatively strict approach to what will be accepted. The Tribunal considers whether the evidence which a party is seeking to introduce on appeal was reasonably available during the complaint process, whether such evidence is relevant to a material issue arising from the complaint, whether it is credible, in the sense that it is reasonably capable of belief, and whether it is probative, in the sense of being capable of resulting in a different conclusion than what is found in the Determination: see *Davies and others (Merilus Technologies Inc.),* BC EST # D171/03, and *Senor Rana's Cantina Ltd.*, BC EST # D017/05.

54. In dismissing the Associated Entities' appeal on this ground, the Member paid special attention to the fact that the evidence sought to be tendered was available to the Associated Entities during the course of the Delegate's investigation and at the time the Delegate raised the spectre of liability under section 95 on January 8, 2010, yet no attempt was made to apprise the Delegate of its existence prior to the issuance of the Determination on February 25, 2010. In doing so, the Member rejected the submission of the Associated Entities that the first effective legal notice they received of the Delegate's intention to consider section 95 was when the Determination was issued. Given that the Associated Entities did not dispute that they had received, in a timely way, the Delegate's January 8, 2010, correspondence that raised the issue, I cannot see how it can be said that the Member was incorrect.

55. On this application for reconsideration, the Associated Entities take a different tack. They say this:

> The associated companies have produced evidence to indicate that the companies should not be associated because they are under different control. The Delegate and Tribunal seek to exclude this evidence on the grounds that the evidence was submitted late. However, the evidence should be accepted as rebuttal evidence because the appellants assumed that the letter of January 8, 2010 inviting the associated companies to respond to the appeal was negated by the Carestation bankruptcy on or about January 22, 2010. Once the Carestation bankruptcy process was underway, the associated companies then had a reasonable expectation that the federal bankruptcy process would govern. Indeed, the very reason that the appellant companies did not respond to the letter of January 8, 2010 was the Carestation bankruptcy some three weeks later on January 22, 2010. At the very least, the Delegate should have advised the associated companies of her intention to continue her actions against them despite the Carestation bankruptcy. Given that the associated companies could reasonably rely on the Carestation bankruptcy filing as governing, the Tribunal should at the very least admit this evidence as rebuttal evidence.

56. I reject this submission. No authority has been cited, and I am aware of none, which suggests that it was incumbent on the Delegate to re-notify the Associated Entities of their potential exposure under section 95 after Carestation Health made its assignment into bankruptcy. Nor was the Delegate obliged to correct the misconception on the part of the Associated Entities that the bankruptcy proceedings involving Carestation Health would supercede the Delegate's investigation and her ability to fashion other remedies for the complainants pursuant to the relevant provisions of the *Act*, even if the Delegate had been aware of it. The Director does not provide legal advice to parties implicated in investigations.

57. In this case, the Associated Entities appear to have been mistaken as to the true legal effect of Carestation Health's assignment into bankruptcy. That is unfortunate for them, but it does not lead to a conclusion that the Delegate failed to provide a reasonable opportunity to respond to the preliminary conclusions she alluded to in her January 8, 2010, correspondence. The Associated Entities were fully aware of those conclusions, and failed to respond to them at their peril.

ORDER

58. Pursuant to section 116(1)(b) of the *Act*, I order that the Original Decision be confirmed.

Robert E. Groves
Member
Employment Standards Tribunal