



Employment  
Standards  
**TRIBUNAL**

Citation: Leeza Shekhter  
2025 BCEST 26

EMPLOYMENT STANDARDS TRIBUNAL

An appeal  
pursuant to section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C.113 (as amended)*

- by -

Leeza Shekhter carrying on business as Leeza Shekhter, Skating Coach also  
known as West Coast Skating School, WCSS, and West Coast Skaters

- of a Determination issued by -

The Director of Employment Standards

PANEL: John Chesko  
SUBMISSIONS: Leeza Shekhter, on her own behalf  
FILE NUMBER: 2024/134  
DATE OF DECISION: February 26, 2025

## DECISION

### INTRODUCTION

1. Leeza Shekhter carrying on business as Leeza Shekhter, Skating Coach also known as West Coast Skating School, WCSS, and West Coast Skaters operates a business related to figure-skating coaching in Burnaby, B.C. that falls within the jurisdiction of the *Employment Standards Act (ESA)*.
2. Angelique Bergheim worked as a skating coach with Ms. Shekhter from June 2021 to December 2022.
3. Ms. Bergheim filed a complaint under section 74 of the *ESA* on January 31, 2023, alleging Ms. Shekhter had contravened the *ESA* by failing to pay her for minimum daily hours, statutory holiday pay, compensation for length of service, and annual vacation pay.
4. I note Ms. Bergheim filed two complaints; one against Ms. Shekhter and the second against another alleged employer, Delta Skate Club. Ms. Shekhter held the role of 'Director of the Delta Skate Club' and represented both herself and the Delta Skate Club during the investigation at the Employment Standards Branch.
5. A delegate (“Investigator”) of the Director of Employment Standards (“**Director**”) was assigned to investigate the complaints. The Investigator contacted the parties and their representatives and received statements and evidence in response to the issues raised in the complaint.
6. The Investigator prepared a report for Ms. Shekhter and Ms. Bergheim dated April 4, 2024, summarizing the information provided and included a list of relevant records and documents (“**Investigation Report**”).
7. The Investigative Delegate set out the issues under consideration but did not make findings in the Investigation Report.
8. Ms. Shekhter and Ms. Bergheim were requested to review the Investigation Report carefully and provide further information and clarification.
9. Ms. Shekhter provided further information and contact information for supporting witnesses. The Investigator followed up on the information provided by Ms. Shekhter and it was cross-disclosed to both Ms. Shekhter and Ms. Bergheim. Further responses from Ms. Shekhter and Ms. Bergheim were again disclosed to the parties.
10. The Investigation Report and the subsequent evidence and responses were submitted to the delegate (“**Delegate**”) of the Director for a determination.
11. The Delegate issued the Determination dated September 20, 2024. (“**Determination**”)
12. The Determination finds Ms. Bergheim was in an employment relationship with Ms. Shekhter. Concerning the employment relationship, the Determination states:

Overall, the evidence is strongly supportive of an employment relationship. The evidence that supports [Ms. Bergheim] was in business for herself is not compelling. Thus, **I find that [Ms. Bergheim] was an employee of [Ms. Shekhter], carrying on business as WCSS, and [Ms. Bergheim] is entitled to the minimum standards for compensation under the [ESA].** [emphasis in original] (Determination, p R10)

13. The Determination finds that Ms. Bergheim is entitled to minimum daily hours, statutory holiday pay, annual vacation pay, and interest totaling \$2,155.19. Additionally, the Delegate levied administrative penalties of \$3,000.00, for a total amount payable of \$5,155.19.
14. I note the Determination dismissed part of the complaint, finding Ms. Bergheim was not entitled to compensation for length of service.
15. Ms. Shekhter appealed the Determination.
16. For the reasons set out below, I find the appeal has no reasonable prospect of success (section 114(1)(f) of the *ESA*). Ms. Shekhter has not shown the Director erred in law in assessing the evidence and applying the law. I therefore dismiss the appeal without seeking submissions from the other parties and I confirm the Determination.

## ISSUE

17. Has Ms. Shekhter shown a reasonable prospect of success in arguing the Director erred in law?

## ANALYSIS

18. These reasons are based on the written submissions of Ms. Shekhter, the Determination, and the Record.
19. On receiving Ms. Shekhter's appeal, the Director provided the section 112(5) record ("**Record**") to the Tribunal, Ms. Shekhter, and Ms. Bergheim for purposes of the appeal. The Tribunal then requested submissions on the completeness of the Record from the parties. As the Tribunal did not receive any objections to the completeness of the Record from the parties, the Tribunal accepts the Record as complete.
20. In her appeal, Ms. Shekhter submits the Director erred in law.
21. Ms. Shekhter submits 'the Director acted on a view of facts which could not reasonably be entertained.'
22. Ms. Shekhter says the Director improperly gave 'significant weight to an unsigned contract between the parties' which Ms. Shekhter submits does not reflect the 'actual agreement between the parties.' Ms. Shekhter submits the actual agreement between the parties supports Ms. Bergheim was an independent contractor and not an employee. Ms. Shekhter submits examples of alleged errors in the Determination about control over billing and compensation, control over the place of employment, oversight over hours and scheduling, and association of clients.

23. Ms. Shekhter submits ‘although there is not a single conclusive legal test to determine whether a worker is an employee or an independent contractor’ the factors looked at by the courts including control, equipment, helpers, financial risk, investment and management, opportunity for profit and performance of tasks support the conclusion that Ms. Bergheim was an independent contractor.
24. In conclusion, “[t]he Appellant respectfully submits that the Director applied improper weight to the unsigned contract and misapprehended the evidence demonstrating the actual agreement between the parties, which shows that [Ms. Bergheim] was at all times acting as an independent contractor.”

### **Error in Law**

25. To show an error of law, Ms. Shekhter has the burden to show a material legal error in the decision. Examples of errors of law may include the following: i) a misinterpretation of misapplication of a section of the *ESA*; ii) a misapplication of an applicable principle of general law; iii) acting without any evidence at all; iv) acting on a view of the facts which could not be reasonably entertained; and v) exercising discretion in a fashion inconsistent with established principle (see *Gemex Developments Corp. v. British Columbia (Assessor of Area #12)* 1998 CanLII 6466).
26. A disagreement with a finding of fact applied within the law does not amount to an error of law. In cases where there is some evidence, the Tribunal will generally not re-evaluate the evidence and substitute its own view of the same evidence - even if the Tribunal might have come to a different conclusion. The assessment and weighing of evidence is considered a question of fact properly within the purview of the Delegate.
27. I have considered Ms. Shekhter’s submission, reviewed the Determination and the evidence in the Record and do not find an error of law in the Determination. The finding that Ms. Bergheim was in an employment relationship and not an independent contractor was based on the applicable law and facts found by the Delegate (see *Beach Place Ventures and Black Top Cabs* 2019 BCEST 23, aff’d 2019 BCEST 61, aff’d 2021 BCSC 1463, aff’d 2022 BCCA 147, leave to SCC dismissed SCC 2023-02-09, 40239; *Zip Cartage*, BC EST # D109/14, aff’d BC EST # RD005/15; *United Specialty Products Ltd.*, BC EST # RD126/12).
28. While Ms. Shekhter submits arguments about the weight given to the evidence — and submits the findings could not be ‘reasonably entertained’ — I find the Delegate properly considered the submissions and evidence within the established law and came to a rational conclusion based on reasonable findings of fact that Ms. Bergheim performed work under the direction and control of Ms. Shekhter.
29. Concerning Ms. Shekhter’s submission that the Delegate gave improper weight to an unsigned employment contract, the Determination shows that the Delegate specifically considered the evidence and arguments concerning the contract and came to a reasoned decision — even noting Ms. Shekhter had relied on parts of the same contract. As stated in the Determination:

While the Contract provided by [Ms. Bergheim] is not signed by [Ms. Shekhter], [Ms. Shekhter] has not denied its authenticity and has relied upon it to support her position.

As such, I give significant weight to the Contract when considering the intention of the parties. (Determination, p R6)

30. I have also considered the calculation of the amount found owing to Ms. Bergheim for minimum daily hours, statutory holiday pay, annual vacation pay, and interest. I find there is no error of law in the calculation and confirm the amounts.
31. While Ms. Shekhter may not agree with the Determination, I find there was evidence the Delegate could rely on to make the findings and arrive at the conclusions in the Determination. It is clearly established in Tribunal decisions that this Tribunal will not re-hear the case, nor will it re-evaluate the evidence and substitute its own view of the same evidence.
32. Lastly, I have also considered the administrative penalties levied in the Determination. The law is clear the administrative penalties owed by Ms. Shekhter are mandatory in the circumstances (see *537370 B.C. Ltd.*, BC EST # D011/06).
33. In summary, I find Ms. Shekhter is, for the most part, rearguing her view of the same facts and law that have already been properly considered and decided in the Determination. Absent an error of law as required under section 112(1) of the *ESA*, this Tribunal cannot re-hear and re-weigh the evidence to ‘second-guess’ the Delegate.
34. I find there is no error of law and dismiss this ground of appeal.

## **CONCLUSION**

35. I find there is no reasonable prospect the appeal would succeed and dismiss the appeal: section 114(1)(f) of the *ESA*.

## **ORDER**

36. Pursuant to section 114(1)(f) of the *ESA*, the appeal is dismissed.
37. Pursuant to section 115(1) of the *ESA*, I confirm the Determination, together with any additional interest that has accrued pursuant to section 88 of the *ESA*.

*/S/ John Chesko*

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**John Chesko**  
**Member**  
**Employment Standards Tribunal**