IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF a decision of the Labour Standards Board of the Northwest Territories dated March 10th, 1995

BETWEEN:

WILLIAM J. STELMASCHUK

Appellant

- and -

SHARON DEAN & MIKE COLBURNE

Respondents

REASONS FOR JUDGMENT

This is an appeal of a decision of the Labour Standards Board. The respondents did not appear on this hearing although served with notice. Counsel for the Labour Standards Board filed written argument and was invited to make submissions on the premise that this appeal may touch on a jurisdictional issue. The scope of the Board's involvement on any appeal was reviewed by me in Baffin Plumbing & Heating Ltd. v. Northwest Territories (Labour Standards Board), [1993] N.W.T.R. 301, and counsel were cognizant of the issues discussed in that case.

Facts:

2 The appellant is a director of a company known as W. J. Stelmaschuk & Associates Ltd. (the "company"). It is conceded that the appellant is the operating mind of the company.

3 In April of 1988, the Labour Standards Officer issued a certificate setting forth wages owing by the company to the two respondents. The company appealed to the Labour Standards Board. The Board, in a written decision dated March 10, 1989, confirmed the certificate. This decision was not appealed further. The company did not pay the wages.

4 In October of 1994, the Labour Standards Officer issued a certificate against the appellant, as a director of the company, for the amount of unpaid wages owing by the company. The appellant appealed to the Board. It became apparent that the appellant wanted to place before the Board further argument as to the company's liability to the respondents. The issue turns on whether the respondents carried out managerial functions or were truly employees. The Board then allowed the appellant to make submissions on the preliminary question of whether he could open up the 1989 Board decision for further argument.

5 On March 10, 1995, the Board issued a written decision. In it, the Board rejected the appellant's request to argue the merits of the company's liability to the respondents. It is from this decision that the appellant appeals to this court.

Legislation:

6 The *Labour Standards Act*, R.S.N.W.T. 1988, c.L-1, (the "Act"), sets out a comprehensive scheme of employment standards and a self-contained method of enforcement. It is an alternative to whatever civil remedies a person may enjoy.

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Appellant

- and -

SHARON DEAN & MIKE COLBURNE

Respondents

Appeal from a decision of the Labour Standards Board. Appeal dismissed.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J. Z. VERTES

Heard at Yellowknife, Northwest Territories
on July 13, 1995

Reasons filed: July 24, 1995

Counsel for the Appellant: Noel Sinclair

No one appearing for the Respondents

Counsel for the Labour Standards Board: Cayley J. Thomas

The provisions of the Act relevant to this appeal are:

53. (1) Where the Labour Standards Officer

(a) receives information that indicates that an employer has failed to pay to an employee all wages earned, and

(b) is satisfied that the employee is not proceeding with any other action for the recovery of the unpaid wages,

the Labour Standards Officer may, at any time,

(c) make a certificate in which shall be set out the wages owing, and

(d) send a copy of the certificate to the employer 30 days after the date of the mailing of the certificate within which to present evidence and make representation.

(2) The Board, after the investigation that it considers adequate, including the holding of hearings that it considers advisable, and consideration of representation, if any, from the persons concerned, may

(a) confirm the wages owing as set out in the certificate; or

(b) cancel the certificate and

(i) make another certificate, in which shall be set out the wages owing,
or

(ii) take no further action.

(3) The Board may, at any time, cause the certificate confirmed or made under subsection (2) to be filed with the Clerk of the Supreme Court and upon that the certificate shall be enforceable as a judgment or order of the Supreme Court in favour of the Board for the recovery of a debt in the amount of wages owing as set out in the certificate.

(4) An appeal lies to a judge of the Supreme Court from the Board on any point of law raised before the Board under this section and the appeal must be lodged within 30 days after the date of the decision appealed from.

(5) The decision of a judge of the Supreme Court on appeal is final.

- and -

61. Where a corporation commits an offence under sections 50 to 65, every officer or agent of the corporation who knowingly directed, authorized, assented to, acquiesced or participated in the commission of the offence is, whether or not the corporation is prosecuted for the offence, a party to and guilty of the offence.

62. Every officer of a corporation is liable for the unpaid wages of the employees of the corporation, but not exceeding the equivalent of two months wages for each employee who has not been paid, and the provisions of the Act respecting the recovery of wages apply, with the necessary changes and so far as they are applicable, to the recovery of such wages from a director and other officer of a corporation that does not pay its employee's wages.

8 It will be readily noticed that the opening of s.62 says only that every "officer" of a corporation is liable for unpaid wages while further on it says that the sections dealing with wage recovery apply to wage recovery from a "director and other officer". The omission of "director" from the opening words of s.62 is surely a legislative oversight. The *Companies Act*, R.S.N.W.T. 1988, c.C-12, does not even define the term "officer" and that term is only used in passing while "directors" are the ones clearly responsible for the management of companies. Counsel for the appellant approached this appeal on the basis that the term includes his client. All similar provisions wherein liability for unpaid wages is imposed, such as s.76 of the *Companies Act* and s.119 of the *Canada Business Corporations Act*, refer specifically and exclusively to "directors". Hence I conclude that s.62 applies to directors as well.

The Board Decision:

9 The Board gave considered reasons for rejecting the appellant's request to make submissions on the company's liability to the respondents. It examined the legislation and the policy reasons behind it. The concluding portions of the decision read:

> The company was given an opportunity to make submissions about the facts of the employees' complaints and work history and any other relevant matters at the time when the Board was considering that certificate. Once the Board has completed its investigation and made a decision to confirm the certificate, the corporation is liable for that debt unless the Supreme Court overturns the Board's decision.
>
> Certificates are issued against directors only as a way of collecting the unpaid wages owed by a corporation to its employees. Once the certificate issued against the company is confirmed by the Board and filed in the Supreme Court, a debt exists. The only matter that could change the recovery of those wages from that director is (a) the payment of the wages in full by the company or (b) the Board's finding that the person named in the director's certificate is not a director of that corporation. In legislating the Board's right to recover wages owed by a corporation from the directors of that corporation if the wages were not paid by the corporation, the Legislature intended to provide the Board with another method of collecting wages owed to employees by corporations, as confirmed by the

> Board under section 53, not to provide companies with an opportunity to appeal the Board's original decision as to the company's wage liability. Any such appeal should have been made as set out in sec. 53(4).
>
> The Board's decision is that it will not hear submissions from Mr. Stelmaschuk on the merits of the employees' complaint against the corporation as this matter has been heard and decided previously. The Board will accept submissions from Mr. Stelmaschuk on whether he is a director of W.J. Stelmaschuk and Associates Ltd., which owes wages to Mr. Colbourne and Ms. Dean, and on whether the wages set out in the certificate exceed the two months' limitation set out in the Act, if Mr. Stelmaschuk chooses to make such an argument.
>
> In the Board's view, as this is a decision on a point of law raised before the Board under section 53 of the Act, this decision is a matter that may be appealed to the Supreme Court of the NWT under section 53(4) within the next 30 days. If no appeal is made, the Board will proceed to deal with any submissions Mr. Stelmaschuk may wish to make on his status as a director.

10 In my opinion, two issues are raised on this appeal. The first one is procedural. Is this decision on a preliminary issue subject to the appeal right provided by s.53(4) of the Act? The second issue is the substantive one of the correctness of the decision itself. That raises the question of the applicability of the doctrine of issue estoppel.

Right of Appeal:

11 The Board characterized its decision as one addressing a "preliminary" issue. the appellant sought a ruling from the Board as to the scope of argument the Board was willing to entertain on his appeal of the certificate. The Board went on to decide that preliminary issue but that issue only. It made no decision on the merits of the appeal of the certificate issued against the appellant in his capacity as a director of the company.

12 The Act provides, in s.53(4), an appeal to this court on any point of law raised before the Board. I have previously held, in the above-noted Baffin Plumbing case, that

the scope of a s.53(4) appeal encompasses errors of law, jurisdictional error, and natural justice issues. The Board concluded its decision by saying that its decision was on a point of law and therefore may be appealed to this court. Whether it is or not is for this court to say, however, not for the Board.

13 The decision is clearly on a point of law. The appeal alleges an error of law on a substantive right: the extent of a director's right to challenge the company's liability when a certificate is issued pursuant to s.62 of the Act. Since there is a right of appeal on points of law, then the standard to be applied on this appeal is one of "correctness". Was the Board's decision the correct one? The court has a duty to correct errors of law.

14 In my opinion, however, this is not a jurisdictional issue. If the Board erred, then it is an error made in good faith in interpreting a provision of the statute. It is therefore an intrajurisdictional error of law. Accordingly the Board had no status to participate in the hearing before me. However, since there was some doubt on this point, and especially in view of the fact that the respondents have not appeared, I found it helpful to have the views of the Board's counsel.

15 The essential point about the question of appealability in this case is whether the appeal is premature. Section 53(2) empowers the Board to (a) confirm the certificate; or (b) cancel the certificate; or (c) make another certificate. In this case the Board has not yet decided what to do about the certificate. It only decided a preliminary issue. Therefore, can it be said that this issue should await the final determination by the Board as to the certificate? Is the appellant splitting his case?

16 The rule is that a court will only interfere with a preliminary ruling made by an administrative tribunal where the tribunal never had jurisdiction or has irretrievably lost it: Howe v. Institute of Chartered Accountants (1995), 27 Admin. L.R. (2d) 118 (Ont. C.A.), leave to appeal to S.C.C. refused (February 2, 1995). There is no lack or loss of jurisdiction in this case. Similarly, as a general rule in all civil litigation, splitting up the case by a mid-trial appeal is much to be avoided: Aylsworth v. Richardson (1987), 20 B.C.L.R. (2d) 43 (S.C.).

17 Appellant's counsel, however, advised that his client does not dispute the two issues left to be decided, i.e., whether the appellant is a director and whether the amount set out in the certificate as owing exceeds the equivalent of two months wages. If he cannot argue the merits of the company's liability then there is nothing to argue. There is then no point in going back before the Board.

18 It appears, therefore, that if this appeal fails it will dispose of all issues in this proceeding. In such case all further expense and inconvenience will be avoided. For that reason I am persuaded to allow the appeal to proceed. In Hockin v. Bank of British Columbia (1989), 35 C.P.C. (2d) 250 (B.C.C.A.), Wallace J. A. said (at page 254) in reference to a civil action:

> ...it is plainly in the interests of the more efficient management of justice that there should be split trials in appropriate cases, and that it may be desirable that the decision be appealed before incurring the unnecessary expense of the continuing trial.

19 I have therefore concluded that, not only is there a right of appeal, but the appeal, even though on a preliminary issue, should be heard.

Correctness of the Decision:

20 The substantive reason given by the Board for not hearing submissions on the merits of the employees' claims against the company, is that the "matter has been heard and decided previously". In lawyers' terms, it is *res judicata*.

21 There is no dispute that the company took advantage of the opportunity to argue the merits before the Board on the appeal of the original certificate issued in 1988. Counsel advised that the same issues would be argued again. It will be essentially a relitigation of the same issues. Counsel advised that there is some "new" evidence that may be relied on but he did not elaborate nor try to justify the appeal on the basis of fresh evidence only now available.

22 Appellant's counsel advanced a number of arguments as to why his client should be able to relitigate this issue.

23 First, he argued that the appellant, even though he is the operating mind of the company, stands now in his capacity as a director and therefore is a new party to the dispute. Since the company and the individual are distinct legal entities the original ruling can only bind the company and not him.

24 Second, he argued that the statute must be strictly interpreted. Since the legislation infringes on the appellant's economic interests to his detriment, it must define the extent of that infringement in clear and unambiguous terms. He relied on principles

of statutory construction, principally in the taxation field, to the effect that the statute must be construed beneficially in favour of the appellant.

25 Third, the appellant's counsel argued that since his client is susceptible to a conviction under s.61, as well as the liability under s.62, there is a clear threat to his liberty and security. From that potential threat arises the duty on the legislature to extend the principles of fundamental justice to the appellant. By that he presumably means that the right to attack the underlying ruling made in 1989 is, in these circumstances, a principle of fundamental justice.

26 Finally, he argued that the appellant is entitled under the statute to raise any point he wishes so long as it is relevant. He pointed to that portion of s.62 which makes those provisions of the Act dealing with wage recovery applicable to recovery from directors. Those provisions are found in subsections 53(1) and (2) which outline the procedure whereby the Labour Standards Officer issues a certificate and then an appeal may be taken to the Board. Since the Board is under a duty, as set out in subsection 53(2), to consider the "representation, if any, from the persons concerned", this means, according to counsel, that his client may put forth any and all representations disputing liability.

27 For the reasons that follow I reject these arguments.

28 The first rule of statutory interpretation is to determine the purpose of the legislation. As stated previously, the Act sets forth a comprehensive scheme for the regulation of employment standards. It is a statute implementing social policy. Its

provisions primarily protect employees and the Act was enacted for the benefit of employees. The purpose of the wage recovery provisions is to ensure that employees are paid all money due to them by their employers and the Act must be interpreted in light of that purpose. Numerous cases have said this: Kenney v. Browning-Ferris Industries Ltd. (1988), 63 Alta. L. R. (2d) 164 (Q.B.); Hine v. Susan Shoe Industries Ltd. (1989), 71 O.R. (2d) 438 (H.C.J.), affirmed (1994), 18 O.R. (3d) 255 (C.A.); Meyers v. Walter's Cycle Company et al (1990), 71 D.L.R. (4th) 190 (Sask. C.A.).

29 The Act also sets up a self-contained enforcement mechanism. The Labour Standards Officer issues a certificate in response to the mandate of the statute. The Board is established to act as an impartial body to review the decisions of the Officer. The British Columbia Court of Appeal, in Re Evans and Employment Standards Board (1983), 149 D.L.R. (3d) 1, reviewed similar legislation. Anderson J. A., on behalf of the court, said (at page 9):

> The adjudicative role played by the board is not for the purpose of settling private disputes but for the purpose of carrying into effect a broad social scheme. This scheme establishes minimum standards relating to wages, hours of work, overtime, annual vacation, termination of employment, maternity leave, employee protection, farm labour and employment agencies. The scheme protects employees against insolvent employers. Directors are made liable, subject to strict limits, for the payment of wages (s.19). Unpaid wages set out in a certificate constitute a lien or charge in favour of the director [of enforcement] and have priority over other debts owing by the employer (s. 15). It will be noted that such lien or charge is based on a certificate being issued by the director. A judgment granted by a court does not constitute such a lien or charge.

30 With this purpose in mind, the statute must be given a fair and liberal interpretation. It is consistent with the aims of the statute to not only impose liability on directors, within limits, but also to preclude the relitigation of the company's liability by

the directors. The enforcement mechanism is meant to be a summary procedure, quick, inexpensive, and accessible to employees. It would be counterproductive to those aims to have a constant relitigation of issues, especially when the company took the opportunity the first time around to contest the same issues.

31 In the case of Byrt v. Government of Saskatchewan, [1987] 2 W.W.R. 475 (Sask. Q.B.), Scheibel J. considered a constitutional challenge to that province's equivalent of s.62 of the Act. The challenge was based on the argument that the legislation imposing joint and several liability on a director for wages infringes on the director's right to "security of the person" as protected by s.7 of the Charter of Rights and Freedoms. In dismissing the challenge, Scheibel J. held that, while the legislation does pierce the corporate veil and imposes, to a limited extent, personal liability on a director, this affects only economic interests and therefore not related to the physical or personal integrity of the individual. There is a veritable host of legislation affecting one's economic freedom, many of them, like the Labour Standards Act, enacted for the protection of a category of individuals participating in the economic life of this country. No one is entitled to totally unrestrained economic freedom.

32 Appellant's counsel also argued, however, that s.61 exposes the appellant to sanctions such as a fine or possibly imprisonment. That section imposes liability on any "officer or agent of a corporation who knowingly directed, authorized, assented to, acquiesced or participated in the commission of an offence". The argument is that since there are potential quasi-criminal sanctions, s.62 of the statute must be interpreted so as

not to divest the director of the opportunity to argue the substantive issue of the company's liability.

33 In my opinion there is no connection between sections 61 and 62 in this situation. There is nothing in the Act that suggests to me that the mere non-payment of wages, whether confirmed by a certificate or not, is an "offence" under the Act. The enforcement mechanism for wage recovery is the registration of the certificate with the court and enforcing it as a judgment (see s.53(3) of the Act). Furthermore, the standard of proof on a quasi-criminal prosecution is different and, under s.61, the prosecution must prove that the officer or agent knowingly participated in the commission of the offence. This has no relationship to the economic vicarious liability imposed by s.62 of the Act.

34 Can the issue of the company's liability be opened up once again for argument? The company cannot do so. It did not appeal the Board's 1989 decision confirming the wages owing. That decision is final. So can the appellant do so in his role as a director?

35 The Board's counsel, in her written brief, submitted that the Board has no power to revisit its earlier decision since it is *functus officio*. The doctrine of *functus officio* states that an adjudicator, whether it be an arbitrator, an administrative tribunal, or a court, cannot go back and alter a decision once made: Chandler v. Alberta Association of Architects, [1989] 2 S.C.R. 848. In my opinion that doctrine is not the appropriate one to consider in this case; the appropriate doctrine to examine is that of issue estoppel.

36 All lawyers are familiar with the plea of *res judicata*, that is, the allegation that the legal rights and obligations flowing between the parties have been conclusively disposed of by an earlier judgment. The doctrine of *res judicata* reflects the fundamental premise that there must at some point be an end to litigation. The doctrine is treated as part of the law of estoppel and an estoppel can apply not just generally to a cause of action but also to a single issue.

37 In this case, the doctrine of issue estoppel arises to prevent relitigation of the issue of the company's liability to the respondents for unpaid wages. It does not determine completely the appellant's liability as a director because, as the Board noted, it is still open to the director to argue that he was not a director or the amount claimed exceeds two months' wages.

38 The requirements of issue estoppel were defined by Lord Guest in Carl Zeiss Stiftung v. Rayner & Keeler Ltd. (No.2), [1967] 1 A.C. 853 (H.L.), at page 935:

> ...(1) that the same question has been decided; (2) that the judicial decision which is said to create the estoppel was final; and, (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

These criteria have been accepted and followed in Canada: Angle v. Minister of National Revenue, [1975] 2 S.C.R. 248; Verlysdonk v. Premier Patrenas Construction Co. Ltd. (1987), 60 O.R. (2d) 65 (Div. Ct.).

39 The doctrine of issue estoppel applies to decisions of administrative tribunals as well as courts. In Rasanen v. Rosemount Instruments Ltd. (1994), 17 O.R. (3d) 267 (C.A.), Abella J. A. held that as long as the hearing process before the tribunal provides

the parties with an opportunity to know and meet the case against them, and so long as the decision is within the tribunal's jurisdiction, then there is no basis to exempt the issues adjudicated by the tribunal from the operation of the doctrine of issue estoppel in a subsequent proceeding. There is no question in this case that the company was given a full opportunity to present its case to the Board in the first proceedings and that the decision made by the Board in 1989 was within its jurisdiction to make.

40 The first criterion is that the same question must have been decided. The issue alleged to trigger the estoppel must have clearly confronted the tribunal in the previous proceeding and must have been determined with certainty. This criterion is satisfied here. In 1989 the Board confirmed that wages were owing by the company to the respondents. Argument was presented at that time that the respondents were not entitled to these wages, nor indeed to the benefits of the Act, because they were managers and not employees. The Board ruled against the company. The appellant now wants to argue the same issue once again before the Board.

41 The second criterion, that the decision was final, is also satisfied. The Board's decision of 1989 was never appealed or otherwise challenged.

42 The third criterion is the critical one. The parties to the original decision, or their privies, must be the same persons as the parties here, or their privies. The parties to the Board's 1989 decision were the company and the respondents. The respondents are the same but now the appellant is the individual director, not the company. As appellant's counsel points out, the company and the individual are distinct legal entities.

43 There are two ways of addressing this argument.

44 First, it may logically be concluded that the appellant, in his capacity as a director, is a "privy" to the company. Generally, privies include any person who participates or has an interest in some act. It is essential that he who is to be held estopped must have had some kind of interest in the previous litigation or its subject matter: Nesbitt Thomson Deacon Inc. v. Everett (1989), 60 D.L.R. (4th) 238 (B.C.C.A.).

45 The company is a privately-held one. It is conceded that the appellant is the company's operating mind. Therefore, it could be said that the company is the appellant's "alter ego". The appellant clearly had an interest in the outcome of the original proceedings before the Board. The director of any company acts as the trustee of the company's assets and agent in the transaction of the company's business.

46 Second, since the company had a full and fair opportunity procedurally, substantively and evidentially to contest its liability previously, there should be no relitigation of this decided issue in the absence of fraud or collusion in the original result. Canadian courts have applied the doctrine of issue estoppel even in the absence of strict mutuality of the parties on the basis that it would be an abuse of process to permit relitigation: Demeter v. British Pacific Life Insurance Co. (1984), 48 O.R. (2d) 266 (C.A.); Bjarnarson v. Manitoba (1987), 50 Man. R. (2d) 178 (C.A.).

47 In my opinion, it is wholly consistent with the purpose of the legislation, and the summary administrative enforcement scheme contained within it, to say that a director,

on whom liability is imposed because of s.62 of the Act, should not be able to relitigate the underlying liability of the company. To do so would lead to the possibility of conflicting decisions. It would also undermine the protection afforded by the Act to employees where the employer becomes insolvent. This is reinforced in the case, as here, of a privately-held company and a director who is its operating mind. It would be an abuse of the process of the Labour Standards Board to allow the issue to be relitigated. As stated in the decision of Lord Maugham L. C. in New Brunswick Ry. Co. v. British & French Trust Corp. Ltd., [1939] A.C. 1 (H.L.), at page 20:

> If an issue has been distinctly raised and decided in an action, in which both parties are represented, it is unjust and unreasonable to permit the same issue to be litigated afresh between the same parties or persons claiming under them. (emphasis added)

48 The only exception would be in the case of fraud or collusion being shown, or the tendering of fresh evidence which would be decisive and was not available previously through the exercise of reasonable dilegence. None of those factors are present here.

49 Counsel argued that, since s.62 makes the provisions of the Act dealing with wage recovery applicable to directors, then a director may make the same representations as the company would be able to before the Board. He based this on the obligation of the Board, in s.53(2), to consider the "representation, if any, from the persons concerned".

50 In my view this obligation of the Board does not assist the appellant. Issue estoppel is a common law doctrine emanating from the court's concern over excessive and never-ending litigation. The obligation on the Board to hear representations is a procedural obligation emanating from the principles of natural justice. The Board has to

hear the appellant but, as a matter of law, it does not have to hear the appellant on every issue. The appellant is not confronted with strict liability since, as the Board said, he can still argue his status and whether the amount comes within the limits set by s.62. He simply cannot revisit the issue that has already been argued and decided.

51 Finally, counsel referred me to the judgment of the Manitoba Court of Appeal in Derbach v. Shaw et al, [1933] 2 W.W.R. 605. In that case the plaintiff recovered judgment against a company for wages. He then sued the directors of the company under the *Manitoba Companies Act* provision that imposed joint and several liability on directors for unpaid wages. The section under consideration was similar to the wage liability provisions found today in s.76 of the Northwest Territories *Companies Act* and s.119 of the *Canada Business Corporations Act*. In Derbach the court held that, even though a judgment against the company was a condition precedent to commencing a suit against the directors, the new action was a claim on the original debt and not upon the judgment against the company. Therefore, the first judgment was not conclusive against the directors who may set up any defence that was available to the company. As the directors were not parties to the action against the company, it was necessary to prove the claim.

52 The Derbach decision does not discuss the question of issue estoppel. In any event, there are significant differences between an action on the statutory liability created by something like the *Companies Act* and the enforcement provisions of the *Labour Standards Act*.

53 As the judgments in the Evans, Hine, and Kenney cases (noted previously) point out, the wage recovery provisions of a self-contained statute such as the *Labour Standards Board* do not create a private cause of action. An employee cannot sue on the basis of those provisions. Only the enforcement provisions of the Act can be used. This is consistent with the social purpose behind the Act. Therefore there is nothing incongruous or unjust in limiting the defences available to a director in these summary proceedings when the company has had a full and fair opportunity to dispute the liability.

54 The provision imposing liability on directors in the *Companies Act*, however, does create a private cause of action. A judgment against the company is, as in Derbach, a condition precedent to such an action but not determinative. But the *Companies Act* does not provide a comprehensive scheme of enforcement nor is it enacted for the social purpose that employment standards legislation is enacted for, specifically, the protection of employees. Hence, there is no comparison.

55 Accordingly, for these reasons, I have concluded that the Board was correct in its decision dated March 10, 1995.

Conclusions:

56 The appeal is dismissed. Because the appeal raised an issue of the interpretation of the Act which will have significance beyond just this case, there will be no costs ordered against the appellant even though he was unsuccessful.

57 I have one final procedural comment. The appellant initiated this appeal by way of originating notice because there is no specific procedure set out in the Act for appeals to this court.

58 In the future, counsel should file a "Notice of Appeal" detailing the decision appealed from and the grounds in support of the appeal. After service of that document on the respondents and the Board, as a matter of course, and after the record has been agreed upon by the parties to the appeal, counsel should then obtain a special date from the clerk for the actual hearing of the appeal. By filing a "Notice of Appeal", it will be clear to all concerned that the proceeding is by way of the appeal provision as opposed to a judicial review seeking an extraordinary remedy.

59 I thank counsel for their submissions.

John Z. Vertes
J.S.C.

Dated this 24th day of July, 1995

Counsel for the Appellant: Noel Sinclair

No one appearing for the Respondents

Counsel for the Labour Standards Board: Cayley J. Thomas

CV 05713

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Reasons for Judgment of the Honourable Mr. Justice J. Z. Vertes