



## Determination

Sent by Registered Mail

ER # 174-524

May 7, 2014

The Chilliwack and District Agricultural Society  
7590 Lickman Rd  
Chilliwack, BC V2R 4A7

**Director of Employment Standards – and – The Chilliwack and District  
Agricultural Society**

With respect to the complaint filed by Nancy M. Spratt, dated December 4, 2012, I have determined that the dispute that caused the complaint was resolved.

Accordingly, no further action will be taken.

Katherine Wulf  
Delegate of the Director  
of Employment Standards

Written decision attached

cc: Nancy M. Spratt

**Appeal Information**

Should you wish to appeal this Determination, your appeal must be delivered to the **Employment Standards Tribunal** by 4:30 pm on June 16, 2014.

The Employment Standards Tribunal is separate and independent from the Employment Standards Branch. Information on how to appeal a Determination can be found on the Tribunal's website at [www.bcest.bc.ca](http://www.bcest.bc.ca) or by phone at (604) 775-3512.

**Director of Employment Standards**

**Reasons for the Determination**

ER #174-524

**The Chilliwack and District Agricultural Society**

**– and –**

**Nancy M. Spratt**

**Delegate:** Katherine Wulf  
Delegate of the Director of Employment Standards

**Date of Decision:** May 7, 2014

## **I. INTRODUCTION**

Nancy M. Spratt ("Ms. Spratt") filed a complaint under section 74 of the *Employment Standards Act* (the "Act"). Ms. Spratt alleges that The Chilliwack and District Agricultural Society (the "Society") contravened the Act by failing to pay overtime wages and annual vacation pay.

I have completed my investigation into the Ms. Spratt's allegations. I am providing these reasons to set out the basis for my decision pursuant to section 81 of the Act.

## **II. BACKGROUND**

The BC Registry Services summary provided information that The Chilliwack and District Agricultural Society was duly incorporated as a society on August 20, 1914. The society promotes agriculture and education and its main function is to put on the Chilliwack Fair each year. Employment in that function falls within the jurisdiction of the Act. The parties operated on the basis that Ms. Spratt was an independent contractor and not an employee. The parties entered into two separate Event Coordinator Services Agreements (the "Agreements") whereby Ms. Spratt would oversee the organizing of the Chilliwack Fall Fair. The preamble to the Agreements contained the statement:

"A: The CAS [The Chilliwack and District Agricultural Society] wishes to retain the services of the Contractor to provide event coordination services for the Chilliwack Exhibition and fair, the details of which are set out in Schedule "A" to this Agreement"

The term of the first contract commenced February 7, 2011 to September 15, 2012 and the second contract commenced on September 16, 2011 with an end date of September 15, 2012.

Ms. Spratt was paid \$18.00 per hour. The Agreements set out the number of hours that Ms. Spratt was allowed to work and bill the Society. The first agreement stated that she could work 16 hours per week for the months of February and March, 24 hours a week for May and June and 40 hours per week for July and August. The second agreement provided that Ms. Spratt could work 24 hours for June and September and 40 hours for July and August. Both agreements contained statements there was a possibility Ms. Spratt could work longer days during the week of the fair and that additional hours must be approved by the executive directors.

The Agreement provided that Ms. Spratt would be paid a ten percent commission if there was cash sponsorship exceeding fifty thousand dollars. This target was never achieved during Ms. Spratt's tenure.

Also, the Agreement provided that "Ten percent of the total hourly portion of the contract will be paid to the contractor on September 30, 2012 in the form of a project completion

bonus if all contract obligations are met till September 15<sup>th</sup>, 2012. Maximum bonus \$2500." (as written)

The Agreement contained the following clause:

" the CAS may terminate this agreement:

- (a) Immediately and without further notice if the Contractor is in default of any term or condition of this agreement and has failed to correct the default of the CAS's satisfaction with 5 days of receiving written notification of that default from the CAS;
- (b) In any other case, by providing 14 days notice in writing to the Contractor.

A Schedule "A" was attached to the Agreement which set out the following:

### **Schedule "A"**

#### **Event Coordinator**

- Work under the direction of the CAS Executive, and in consultation with committee chairs to coordinate every aspect of the event and present the best possible event for the enjoyment of the community
- Actively seek and secure new sponsorship, while maintaining and advancing relationships with existing sponsors to expand our sponsorship program. This is a key component of the position, as it is hoped the position will eventually become self sustaining as a result. Serve as an ambassador for the Chilliwack & District Agricultural Society to raise the profile of the society at local events such as the Plowing Match, Canada Day Celebrations, Chamber of Commerce events, etc. Prepare suitable displays, brochures, and take away information to be used as necessary at such events** (bolding and underlining as written)
- Provide clear and concise information to the webmaster on a weekly basis in the correct format.
- Create a degree of continuity/consistency between all printed material and information
- Liase with our existing Partners in the Community to strengthen relationships and foster new partnerships
- Work with the Board to create a budget and prudently manage resources. Track expenses and provide information to the Treasurer
- Attend monthly board and executive meetings and give reports invoices must include record keeping to provide detailed billing (as written)
- Administer day to day operations of the office, including phone messages, mail and email
- Provide information for website updates and update our information on other websites (city, Tourism, etc), ensuring information provided on all sites is current and complete
- Work from and continue to update the Event Coordinator's manual

- Supervise office staff during the summer months
- Book vendors, displays and entertainment other than Community Stage entertainment, as directed by the Executive
- Coordinate plans with West Coast Amusements regarding setup and location
- Look to the future and develop new ideas for improvement of the event on both a short term and longer term basis

On August 24, 2012, the Society terminated Ms. Spratt's services and both parties signed the Release that was presented to Ms. Spratt.

Ms. Spratt subsequently contacted the Society and requested that the Society pay her wages for overtime hours. The Society refused and responded that Ms. Spratt was not entitled to overtime wages and that all wage claims were previously settled based on the Release signed by Ms. Spratt.

Ms. Spratt filed her complaint with the Employment Standards Branch (the "Branch") on December 4, 2012, within the time period allowed under the Act.

### **III. ISSUES IN DISPUTE**

1. Was Ms. Spratt an employee or an independent contractor?
2. Should the Release be set aside?
3. If Ms. Spratt was an employee, what if any, wages are owed under the Act?

### **IV. ARGUMENT AND EVIDENCE OF THE COMPLAINANT**

Ms. Spratt argued that she was not an independent contractor. She stated that there were several reasons that would indicate that she was an employee. These are summarized below:

- The rate of pay was determined by the Society (\$18.00 per hour);
- The Agreement set out that Ms. Spratt would work a specific number of hours;
- She was not in business for herself as a provider of event coordination;
- She was under the direction and control of the Society's Board of Directors and Executive;
- She worked out of the Society's office and used their computers, office equipment and office supplies;
- The Society provided Ms. Spratt with business cards identifying her as the Coordinator of the Chilliwack Fair.

In her submission to the Branch dated August 14, 2013, Ms. Spratt stated that she was responsible for selecting, interviewing and hiring the Fair's two summer assistants and they worked under her direction as the Coordinator.

The Fall Fair occurred on August 11, 2012. In her correspondence to the Branch, Ms. Spratt stated that on August 11, 2012, some office staff were given the night off. She

stated that it was a member of the board who authorized this. Regarding this event, Ms Spratt stated the following:

“... I would not have offered them the night off – managers of special events don’t send staff home on the busiest night of the event.”

Ms. Spratt had authority over other staff who worked for the Society and that she considered herself a manager. As a manager she would not be in business for herself.

### The Release

Ms. Spratt attached a letter to her complaint outlining the basis of her complaint. In the letter she stated that while she was still working for the Society, the Executive Directors refused to pay her for 54 hours of overtime when she submitted an invoice for payment. The Society disputed the hours and subsequently her services were terminated. She stated that two members of the Board presented her with a document to sign (the Release). Ms. Spratt stated she signed the document which she called a waiver because “I was concerned about leaving the office and my employment with no pay at all.”

In her submission dated October 17, 2013, Ms. Spratt stated that Ed Hinkley and Cathie Oss (on behalf of the Society) came to the office on August 24, 2012. They told Ms. Spratt that they were terminating the service agreement and presented her with a document “waiving my rights to overtime pay” and told her if she did not sign the Release, she would not receive other monies, including the completion bonus and final paycheque.

The submission contained information that she was told that if she didn’t like it to “take it to Labour Relations”. She further stated:

“it was perfectly clear that if I left that day without complying I would have great difficulty in obtaining any of the monies owed to me.”

In the submission, Ms. Spratt stated that she signed the Release and noted “under duress” next to her signature. Mr. Hinkley and Ms. Oss would not accept that and in the end “for the reason outlined above, I signed the document”

Ms. Spratt stated the Release should be set aside because of “economic duress.” Ms. Spratt does not deny that she understood the terms of the Release. She knew that by signing the Release she would forfeit her right to claim further money from the Society. She has maintained that she had to “sign her rights away.”

At the time the Society presented the Release, it was explained to Ms. Spratt that the Society did not believe she was entitled to either a bonus or any overtime wages. Ms. Spratt reported that the Society told her that if she did not agree, she could take the matter up with “Labour Relations.”

In her final submission to the Branch, Ms. Spratt stated that she was not presented with a cheque in the sum of \$1,404.00 or any other cheque. She reported that Mr. Hinkley and Ms. Oss made it clear to her that no money would be provided unless she signed the Release.

In a recent telephone conversation with Ms. Spratt regarding her claim for overtime wages, she stated that the Board had previously told her during the term of the second contract not to work overtime hours, however she stated that it was "completely impractical" and if she wasn't there to perform the work who would do it? She made a decision and worked extra hours. She had been paid for extra hours the previous year and expected that she would again.

With regards to the two cheques that she received on her last day of work, she stated that she didn't know that the Board had two cheques. She said that she saw they had a cheque book. She further stated that there was no issue about receiving her final wages and it was the "Completion Bonus" that they were withholding. She stated that she wanted the bonus and believed that she was entitled to it.

## **V. ARGUMENT AND EVIDENCE OF THE EMPLOYER**

The Society stated that Ms. Spratt was an independent contractor and provided the following reasons:

- The parties' intention was that Ms. Spratt would be a contractor, not an employee and they entered into two separate contracts to provide for that intention;
- Ms. Spratt retained total control over the fall fair, i.e. contracts, quotes, purchases etc.;
- The job was for a definite period of time;
- Ms. Spratt could sub-contract her work;
- There was a chance for profit i.e. she could hire others to perform work at a lesser rate of pay;
- The Society never told Ms. Spratt what time she had to report for work;
- Ms. Spratt could choose to work from home or the Society's office;
- Ms. Spratt hired and supervised summer staff;
- The Society requested that Ms. Spratt supervise office staff.

The Society, through their legal counsel Stephanie Gorner, asserted that the Society did not owe Ms. Spratt overtime wages because they had explicitly stated that overtime hours had to be approved by the executive directors. This restriction was contained in the Agreement. Further, on August 2, 2012 Ms. Spratt had requested that she be paid for 11 overtime hours worked. The Society paid those hours and then explicitly stated that in future she must request approval to work any hours over and above those set out in the Agreement. On August 16, 2012, Ms. Spratt submitted an invoice including 54 extra hours. The invoice did not include any details of what hours she worked or what tasks she performed.

In addition, the Society refused to pay vacation pay. The Society relied on the Agreement that set out Ms. Spratt was to be paid a "flat fee" of \$18.00 per hour and that the fee was inclusive of any entitlement to vacation pay.

### The Release

The Society was given the opportunity to respond to Ms. Spratt's allegation that she would not have received any pay, including her final wages if she did not sign the Release.

The Society stated that allegation is incorrect. They stated they told Ms. Spratt that she was not eligible for the bonus, however, they were prepared to pay that amount in the interest of settling all outstanding issues. They stated that Ms. Spratt would have received her final wages and payment in lieu of notice without signing the Release. As evidence they provided copies of two separate entry statements from a cheque book and copies of two cancelled cheques that were cashed by Ms. Spratt. The Society stated they were going to give Ms. Spratt the first cheque for final wages and payment in lieu whether she signed the Release or not. They stated there would be no other reason for them to have written two separate cheques. They would not have withheld her final pay.

The Society and Ms. Spratt entered into a settlement agreement (the "Release") that provided the Society would pay Ms. Spratt \$972.00 in lieu of notice to terminate and \$2,341.80 completion bonus in exchange that Ms. Spratt released the Society from "any and all claims arising from Ms. Spratt's contractual relationship and the termination of that relationship."

Ms. Spratt received two cheques from the Society. One cheque was in the sum of \$1,404.00 comprising of \$432.00 final wages and \$972.00 as payment in lieu of notice, the other cheque in the sum of \$2,341.80.

The Society stated the Release functions as a full defence to the complaint. The Release contained the following:

" WHEREAS, in exchange for the reduced contractual requirements set forth herein, and the additional covenants and conditions set forth below, Ms. Spratt agrees to release the Society from any claims arising from or related to the relationship;

" WHEREAS, Ms. Spratt has no disputes, claims, grievances, charges, actions, petitions and demands against the Society, including but not limited to, any and all claims arising or in any way related to Ms. Spratt's contract with, or separation from, the Society..."



## **VI. FINDINGS AND ANALYSIS**

### **Employee or Independent Contractor?**

The Act applies to those persons who are employees and does not apply to independent contractors because that person is considered to be self-employed. Just because someone is called an independent contractor does not mean that he or she is one. Section 1 of the Act defines "employee" and "employer" as follows:

**"employee"** includes:

- (a) a person, including a deceased person, receiving or entitled to wages for work performed by another,
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,
- (c) a person being trained by an employer for the employer's business,
- (d) a person on leave from an employer, and
- (e) a person who has the right of recall;

**"employer"** includes a person

- (a) who has or had control or direction of an employee, or
- (b) who is or was responsible, directly or indirectly, for the employment of an employee;

Determining who is an employee within the meaning of the Act is based on a variety of factors including the definition of an employee in section 1 of the Act (see above) and various tests that have been developed by the courts, the Employment Standards Branch and the Employment Standards Tribunal.

These tests include: The four Fold Test which includes the Control test; Ownership of tools and Equipment test, Risk of Profit/Chance of Loss and the Integration test. In addition the courts have applied the Permanency test.

#### **Control Test**

The method of pay can be an indicator of whether a person is an employee or independent contractor. Payment for work by the hour, week, or month as opposed to a lump sum may be considered strong evidence of an employment relationship. In this case, the Society determined that Ms. Spratt would be paid \$18.00 per hour.

Specified hours of work are a strong indication that the worker is an employee. The Society set the number of hours that Ms. Spratt could work in any given week. Although, it appears from the evidence that Ms. Spratt was not closely supervised, she was required to report for a certain number of hours. The Agreement set out:

"The Contractor is to provide 24 hours service per week for the months September June and 40 hours per week for July and August with the possibility of longer days during the week of the fair. Additional hours must be approved by the executive directors."

### Chance of Profit and Risk of Loss

The central question in this test is whether a person has a chance of making a profit or does she/he have a risk of losing money if the cost of doing a job is more than the price charged for it. Ms. Spratt did not bid on the services that she would perform; she was paid an hourly rate for her work.

The Society argued that Ms. Spratt could have hired others to perform the work at a lesser rate and she could have profited in that manner. However, I note that in Schedule "A" the Society requested that Ms. Spratt "Administer day to day operations at the office, including phone messages, mail and email." She was also to supervise office staff during the summer months.

I find it difficult to comprehend how the Society could request that Ms. Spratt provide the required services by sub-contracting the work out. I note that she had much freedom and autonomy; however, I find that there was no chance of profit or risk of loss apparent in this case.

### Ownership of Tools

The Society stated that Ms. Spratt could work from home or their office and would therefore be using her own computer and office equipment. The Society did not provide any evidence that Ms. Spratt worked from her home. Ms. Spratt argued that the nature of her duties required her to be in the office and in fact she worked from the Society's office.

I prefer Ms. Spratt's evidence on this matter. As previously noted, the Society stated in Schedule "A" that Ms. Spratt was to "Administer day to day operations of the office, including phone messages, mail and email." Also, the Schedule "A" provided that Ms. Spratt "Supervise office staff during the summer months."

Based on these factors, I find that Ms. Spratt was required to work out of the Society's office and used their equipment and office supplies.

### Integration Test

This test determines if the work a person performs is integral to, or contributes to, the operation of the business. The more integrated the work is with the company's business the more likely that the person is an employee.

The Society provided the tools and equipment, namely the Society's office, phone, staff and computers. Ms. Spratt's duties included she could make independent decisions regarding budgets and staff.

The Society reported that their main function was to put on the Chilliwack Fair each year. In this case Ms. Spratt worked as an Event Coordinator, which was completely concerned with the Society's business.

In *Re Kelsey Trigg*, BC EST #D040/03 the Tribunal stated:

The fourfold test and the other traditional common law tests are becoming less helpful in determining the role of master and servant in modern workplaces. Courts and the Tribunal have typically assessed the nature of the relationship, looking beyond the language used by the parties. While there is no magic test, the total relationship of the parties must be examined, with a view of determining "whose business is it?" Thus, the overriding test is whether the complainant "performed work for another". The definition of "employee" is to be broadly interpreted and the common law tests of employment are subordinate to the statutory definition.

In *671122 Ontario Ltd. v. Sagaz Industrial Canada Inc.*, [2001] 2 S.C.R. 983, the Supreme Court of Canada stated that the central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account.

I find that putting on the Chilliwack Fall fair was not Ms. Spratt's business, nor was she in business for herself. Further I find that based on the fourfold test Ms. Spratt would be found to be an employee. The Society had control of the work performed by Ms. Spratt and Schedule "A" set out in detail the tasks that Ms. Spratt was expected to complete.

I find that based on my review of the relationship between Ms. Spratt and the Society, the relationship in law was that of an employer and employee as set out in section 1 of the Act.

Pursuant to section 4 of the Act, any agreement to waive any of the minimum requirements of the Act has no effect. Therefore, I would find that Ms. Spratt would be considered an employee and as such the written agreement would fall short of the minimum requirements, specifically the non payment of annual vacation pay.

Ms. Spratt requested that the Event Coordinator Agreement be set aside and that the Employment Standards Act be substituted. Under the Act, Ms. Spratt performed duties which would likely be defined in the Act as those of a manager. She supervised and directed both human and other resources.

## **The Release**

As I have determined that Ms. Spratt was an employee and that the Employment Standards Act would apply, I will address the issue of the Release. Specifically, whether the existence of a signed Release indicates the matter has been resolved and precludes any entitlements under the Act.

The Act has provided that settlements are a means to resolve disputes and that they are designed to provide a final resolution of all matters under the Act. Section 78(3) of the Act modifies the common law principle that one must sue to enforce a settlement agreement that has not been fulfilled.

“(3) A person who is a party to a settlement agreement under subsection (1) (a) must comply with the terms of the settlement agreement.”

Ms. Spratt stated the Release should be set aside because of “economic duress.” Black’s Law dictionary defines duress as:

“Duress consists in any illegal imprisonment, or legal imprisonment used for an illegal purpose, or threats of bodily or other harm, or other means amounting to or tending to coerce the will of another and actually inducing him to do an act contrary to his free will.”

There is no indication that the Society used any nefarious methods in the signing of the Release. Further, there is no evidence that Ms. Spratt was incapable of independent decision making.

In order to substantiate an argument of economic duress it must be shown that there was no reasonable alternative but to accept the other party's terms. If there is an available legal remedy, there is no duress.

Ms. Spratt was aware that there were other avenues available to resolve the disagreement with the Society. In fact, the Society stated that if Ms. Spratt did not agree with signing the Release and receive the subsequent payment, she could take the matter up with “Labour Relations” (Employment Standards Branch).

In her letters and submissions, Ms. Spratt had stated that she believed she would not have received any wages from the Society unless she signed the Release. However, in my telephone conversation with Ms. Spratt, she conceded that she did accept two cheques. She stated that she wanted the bonus and believed that she was entitled to it.

Based on the evidence provided by the Society and Ms. Spratt’s admission, she would have received her final wages and the two weeks in lieu of notice even if she had not signed the Release. The Society believed that she was not entitled to a bonus and only paid her that sum of money in exchange for the Release.

The Society maintained that the Release should not be set aside because the Release was intended to be a final resolution of Ms. Spratt's claims. They also state that the Release does not offend the Act as Ms. Spratt received more than basic entitlements pursuant to the amount that was paid pursuant to the Release. I agree with the Society. The Society paid Ms. Spratt two weeks in lieu of written notice. They stated they would have made this payment without the Release. Ms. Spratt was employed for a specified term, the last Agreement set out that the term was from September 16, 2011 to September 15, 2012.

Section 63 of the Act provides that after three consecutive months of employment, an employer becomes liable to pay an employee an amount equal to one week's wages as compensation for length of service and the amount increases to two week's wages after 12 consecutive months of employment.

As Ms. Spratt's last day of employment was August 24, 2012, Ms. Spratt received above the minimum requirements under the Act as she was entitled to one week's wages for compensation for length of service.

Lastly, the Society contested that they owed Ms. Spratt any bonus. They asserted that there were other issues besides Ms. Spratt's claim for overtime wages, and as previously stated in their view overtime was not owed as they had specifically told her that any overtime hours had to be approved. Ms. Spratt's services were terminated on August 24, 2012. The Agreement set out that Ms. Spratt would receive ten percent of her total hourly service portion in the form of a completion bonus if all contract obligations were met by September 15, 2011. The Society stated this was not met.

Fostering an environment in which disputes can be resolved finally by the parties is an objective for the Director as the administrator of the Act. The settlement of a dispute between an employer and an employee is one of the purposes of the Act as set out in Section 2 which states:

- 2) The purposes of this Act are as follows:*  
*(a) to provide fair and efficient procedures for resolving disputes over the application and interpretations of this Act; .*

I find support for this view in the Employment Standards Tribunal reconsideration decision RD003/04 where the panel of adjudicators stated:

"While there is a public policy interest in the enforcement of minimum employment standards, there is an equally compelling public interest in the enforcement of bona fide settlement agreements, even where the terms of that settlement may be something less than a party alleges they are entitled to under the Act. In our view, such settlements do not offend the Act. As the Tribunal stated in *Alnor Services Ltd.* (BC EST #D199/99):

The settlement of unpaid wage claims is an integral aspect of the Act...In my view, the entire scheme of the Act is undermined if bona fide settlements can be overridden simply because one party - with the benefit of hindsight - subsequently concludes that they made a bad (or at least not an optimal) bargain."

Ms. Spratt has asked that the Release be set aside. However, I see no duress and the minimum entitlements have been met; i.e. the amount paid exceeded an amount that was claimed for vacation pay and overtime.

At the time the Release was presented to Ms. Spratt, both parties understood the issues under dispute. It follows that they also understood the terms of what was being settled at the time of signing the agreement.

Ms. Spratt's evidence showed that she understood the terms of the Release. She knew that by signing the Release she would forfeit her right to take further legal action against the Society. She maintained that she had to "sign her rights away."

Ms. Spratt was aware that there were other avenues available to resolve the disagreement with the Society. Ms. Spratt could have refused to sign the Release and sought other options. She demonstrated that she had the ability to do so. She filed a complaint with the Branch and sought legal advice when her requests for further wages were not met.

Ms. Spratt had the option to either accept the terms of the settlement of the issues or reject it and proceed with litigation, or whatever other course of action she chose. She chose to accept settlement.

Therefore, I find the Release is valid. Accordingly, the matter has been resolved and the complaint is dismissed.



Katherine Wulf  
Delegate of the Director  
of Employment Standards