

Employer No: ER133-714

Head Office No: H Office: Richmond
Employer: ATOMIC CARTOONS INC.
Operating Name:
Mailing Address: 2ND FLOOR 112 6TH AVE W
VANCOUVER, BC Canada
V5Y 1K6
Phone: (604) 734-2866
Fax: (604) 734-2869
Cell:
Email: info@atomiccartoons.com

Received Date	Asgn No	Asgn Officer Type	Stat	Closed Date	Resl Typ
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*** CLOSED ASSIGNMENT EMPLOYEES ONLY ***

2013/02/16	s.22	AU Nguyen, Mica	CLSD	2013/08/27	58
2005/06/23	s.22	CO Martel, Chantal	CLSD	2005/08/23	01

DATA INFORMATION SHEET (DIS) PAGE 1 – POST November 30, 2002

**Note: Data person – please initial after any entries

(Updated May 2006)

COMPLAINTS

EMPLOYER'S LEGAL NAME: <u>Atomic Cartoons Inc.</u>			
CARRYING ON BUSINESS AS:			
ER#: <u>133-714</u>	EE#:	ASGN. #: <u>s.22</u>	TYPE OF BUSINESS:
UPDATE ER INFO <input type="checkbox"/>	UPDATE EE INFO <input type="checkbox"/>	REOPEN FILE <input type="checkbox"/>	
ADD/CHANGE ADDRESS/PHONE:		<u>PLS. add new email address.</u> <u>rsimmons@atomiccartoons.com</u>	

COMPLAINT(S) ASSIGNMENT STATUS

ASSESSMENT	<input type="checkbox"/>	DELEGATE #	DATE ASSIGNED
EDUCATION	<input type="checkbox"/>	DELEGATE #	DATE ASSIGNED
INVESTIGATION	<input type="checkbox"/>	DELEGATE #	DATE ASSIGNED
MEDIATION	<input type="checkbox"/>	DELEGATE #	DATE ASSIGNED
MEDIATION DATE			DATE MEDIATION HELD
AJUDICATION <input type="checkbox"/>		DELEGATE #	DATE ASSIGNED
ADJUDICATION DATE			DATE ADJUDICATION HELD
COLLECTIONS <input type="checkbox"/>		DELEGATE #	DATE ASSIGNED
CLOSURE INFORMATION			
CODE <u>01</u>	DELEGATE# <u>195</u>	WAGE AMOUNT <u>s.22</u>	THRU TRUST <input type="checkbox"/> OR Voluntary Payment <input type="checkbox"/>
	PAYMENT DATE <u>s.22</u>		DATE CLOSED <u>s.22</u>

ALLEGATIONS Information Captured at or after Education Stage

<input type="checkbox"/> WAGE (Regular Wages)	<input type="checkbox"/> OVT (Overtime Wages)	<input checked="" type="checkbox"/> VAC (Vacation Pay)
<input type="checkbox"/> STAT (Statutory Holiday Pay)	<input type="checkbox"/> GLOS (Termination Pay)	<input type="checkbox"/> DDUC (Unauthorized Deduction)
<input type="checkbox"/> LEAV (Part 6 – Leaves)	<input type="checkbox"/> NSF	<input type="checkbox"/> OTHER
		<input type="checkbox"/> SEC 8 (Misrepresenting Job)

SETTLEMENT AGREEMENT INFORMATION

FULL <input type="checkbox"/> OR PARTIAL <input type="checkbox"/>	DATE OF AGREEMENT	AMOUNT: \$
Payment Schedule (SCHD) <input type="checkbox"/>	Last payment due date	
CLOSURE SA <input type="checkbox"/>	Doc #	Paid <input type="checkbox"/>

DETERMINATION UPDATE / CLOSURE STATUS

Doc Type: CFUL <input type="checkbox"/> DFUL <input type="checkbox"/>	Doc #:	DATE C/J RELEASED:
Appeal <input type="checkbox"/>	Appeal Date	Oral Hearing Date
	Cancelled	
Paid <input type="checkbox"/>	Varied <input type="checkbox"/>	Settled <input type="checkbox"/>
	Discontinued <input type="checkbox"/>	NAST <input type="checkbox"/>
	PREL <input type="checkbox"/>	NFAR <input type="checkbox"/>
PENALTY(S) Paid <input type="checkbox"/>	List CA Code(s)	Cancelled <input type="checkbox"/>
	List CA Code(s)	NAST <input type="checkbox"/>
		PREL <input type="checkbox"/>

NAST = No Assets; NFAR = No Further Action (use with closure code 41); PREL = Paid on related DOC
More Next Page



For OFFICE AND COURT USE ONLY

OFFICE	A.M.
FILE DATE	
FILE NO.	133-714
ASSIGNED TO	s.22
DATE	
FILED BY	M.V.

Office Copy

Date of complaint submission:
February 16, 2013

Confirmation # 020477N/A

I have used the Employment Standards self-help kit and the problem has not been resolved.

Employer Information

Name of Employer:
Atomic Cartoons Inc

Mailing Address of employer:
2nd floor, 112 west 6th ave

City/town, Province, Country:
Vancouver, BC, Canada

Postal Code:
V5Y 1K6

Telephone Number:
604-734-2866

Fax Number:

Type of business:
Television/ animation

Email Address:
info@atomiccartoons.com

Name of supervisor:
Rob Simmons

Name and home phone number of owner:
()

Address of place where you worked if different from above

Street Address:

City/town, Province, Country:

Postal Code:

Is your employer bankrupt or in receivership?
No

Employers' bank:

Employers bank branch:

Is your employer still in business?
Yes

When did your employer go out of business?

Information About You

Your Last Name:
N/A

Your first or given name:
N/A

Middle
Initial(s):

SIN:

Mailing (street) Address:
N/A

City/town, Province, Country:
s.22

Postal Code:

Your home phone number:
s.22

Message Number:

Fax Number:

Date of Birth:

Email Address:

Are you in BC under a foreign worker program?
s.22

Are you covered by a collective agreement (union contract):
s.22

Union's Name:

Union Rep's Name:	Union Rep's Phone Number:
-------------------	---------------------------

Your work history with this employer			
Your job title: n/a	Date you started work for this employer: s.22	Last day you worked for this employer: s.22	
Your rate of pay:	Employment status:		
How often are you paid? Every two weeks			
Are your hours of work regular? s.22	Hours worked per day: s.22	Number of days worked per week:	Total Hours per week:
Do you have a record of the hours worked for this employer: s.22			

Work history continued. What do you believe you are owed?			
	From date	To date	Estimated amounts
<input type="checkbox"/> Regular wages			\$0
<input type="checkbox"/> Overtime			\$0
<input type="checkbox"/> Annual vacation pay			\$0
<input type="checkbox"/> Statutory holiday pay			\$0
<input type="checkbox"/> Deductions from wage	Specify:		\$0
<input type="checkbox"/> NSF Cheques			\$0
<input type="checkbox"/> Pregnancy/Parental or other leave			\$0
<input type="checkbox"/> Compensation for length of service (termination pay)			\$0
<input type="checkbox"/> Other	Specify:		\$0
Estimated Total you are owed:			\$0

Details of your complaint
<p>Employees do not receive the 4% vacation pay. It is written within the contracts that "the employee agrees to accept as compensation for all the services to be rendered hereunder a hourly salary inclusive of vacation pay calculated at 4% of the salary and payable not in advance every two weeks on the Friday following the end of each two week period." No one get's 4% vacation pay added to their weekly salary nor do we get paid time off. Is this legal? There are many employees under the same contract that do not want to come forward as they want to continue working for the company and are afraid to confront the owners.</p>

- Cannot process. Cannot conf. re. re phone number provided
 to ers phone number.



Office Copy

Date of complaint submission:
 February 16, 2013

Confirmation # 020477N/A.

I have used the Employment Standards self-help kit and the problem has not been resolved.

Employer Information		
Name of Employer: Atomic Cartoons Inc		
Mailing Address of employer: 2nd floor, 112 west 6th ave	City/town, Province, Country: Vancouver, BC, Canada	Postal Code: V5Y 1K6
Telephone Number: 604-734-2866	Fax Number:	Type of business: Television/ animation
Email Address: info@atomiccartoons.com		
Name of supervisor: Rob Simmons	Name and home phone number of owner: 0	
Address of place where you worked if different from above		
Street Address:	City/town, Province, Country:	Postal Code:
Is your employer bankrupt or in receivership? No		
Employers' bank:	Employers bank branch:	
Is your employer still in business? Yes	When did your employer go out of business?	

Information About You			
Your Last Name: N/A	Your first or given name: N/A	Middle Initial(s):	SIN:
Mailing (street) Address: N/A	City/town, Province, Country: s.22	Postal Code:	
Your home phone number: s.22	Message Number:	Fax Number:	
Date of Birth:	Email Address:		
Are you in BC under a foreign worker program? s.22			
Are you covered by a collective agreement (union contract): s.22			
Union's Name:			

Received Time Feb. 20, 2013 8:22AM No. 4486.

Nguyen, Mica LBR:EX

From: Nguyen, Mica LBR:EX
Sent: Tuesday, August 20, 2013 3:44 PM
To: 'Kacey A. Krenn'
Subject: employment standard branch: Atomic Cartoon

Hi Kasey

Can you forward me the wage statement indicating the s.22 1 for s.22
apologize for forgetting to request it during our previous conversation.
Thanks

has been paid. I

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esb/

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Page 007

Withheld pursuant to/removed as

s.22

Nguyen, Mica LBR:EX

From: Nguyen, Mica LBR:EX
Sent: Thursday, July 25, 2013 2:19 PM
To: 'Kacey A. Krenn'
Subject: RE: employment standards branch: Atomic Cartoon Inc. Prelim Findings [HARRIS-CO.FID204084]

Yes that is correct.

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
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From: Kacey A. Krenn [<mailto:KKrenn@harrisco.com>]
Sent: Thursday, July 25, 2013 1:21 PM
To: Nguyen, Mica LBR:EX
Subject: RE: employment standards branch: Atomic Cartoon Inc. Prelim Findings [HARRIS-CO.FID204084]

Hi Mica,

Further to our discussion earlier today, I'm just confirming that due to accepting the voluntary compliance option, we will not be required to provide a submission by August 6th, as requested in your letter. Please confirm that this assumption is correct.

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com



Harris & Company ^{LLP}
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com

Workpl. Law

RE: HARRIS-CO.FID204084

From: Nguyen, Mica LBR:EX [mailto:Mica.Nguyen@gov.bc.ca]
Sent: Wednesday, July 24, 2013 4:18 PM
To: Kacey A. Krenn
Subject: RE: employment standards branch: Atomic Cartoon Inc. Prelim Findings [HARRIS-CO.FID204084]

Ok the morning sounds good. I will be available after 9:30 a.m. to speak. Give me a call then.
Thanks.

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esb/

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From: Kacey A. Krenn [mailto:KKrenn@harrisco.com]
Sent: Wednesday, July 24, 2013 4:11 PM
To: Nguyen, Mica LBR:EX
Subject: RE: employment standards branch: Atomic Cartoon Inc. Prelim Findings [HARRIS-CO.FID204084]

Hi Mica,

I am available tomorrow morning, or else Friday after 2pm.

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com



Harris & Company ^{LLP}
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633

F/ 604 684 6632
harrisco.com

Workplace Law

From: Nguyen, Mica LBR:EX [<mailto:Mica.Nguyen@gov.bc.ca>]
Sent: Wednesday, July 24, 2013 4:08 PM
To: Kacey A. Krenn
Subject: RE: employment standards branch: Atomic Cartoon Inc. Prelim Findings [HARRIS-CO.FID204084]

Hi Kacey,
I am available tomorrow or the next day to speak. What is a better day for you?

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacobs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esb/

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From: Kacey A. Krenn [<mailto:KKrenn@harrisco.com>]
Sent: Monday, July 22, 2013 4:54 PM
To: Nguyen, Mica LBR:EX
Subject: RE: employment standards branch: Atomic Cartoon Inc. Prelim Findings [HARRIS-CO.FID204084]

Hi Mica,

Thank you for the letter, I confirm receipt and will review with my client.

Further to my voice message to you on July 11th, can you please let me know when you are available to discuss the "voluntary compliance" option?

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com



Harris & Company ^{LLP}
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com

Workplace Law

~~CONFIDENTIAL~~

From: Nguyen, Mica LBR:EX [<mailto:Mica.Nguyen@gov.bc.ca>]
Sent: Monday, July 22, 2013 4:49 PM
To: Kacey A. Krenn
Subject: employment standards branch: Atomic Cartoon Inc. Prelim Findings
Importance: High

Hi Kacey Krenn,
Above is the preliminary findings. Please confirm you have received it.
Regards,

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
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Nguyen, Mica LBR:EX

From: Rob Simmons [rsimmons@atomiccartoons.com]
Sent: Thursday, May 9, 2013 1:58 PM
To: Nguyen, Mica LBR:EX
Subject: Re: employment standards branch

Hello Mica

Thank you. I will have a look at the relevant material you have cited while we concurrently prepare the information that you request.

Regards

Rob

Rob Simmons
VP Finance & Business Affairs
Atomic Cartoons Inc
604.734.2866 x225
Twitter: @atomiccartoons

On 2013-05-09, at 1:04 PM, Nguyen, Mica LBR:EX wrote:

Hi Rob,

If you look at section 58. (2) it set out that how vacation pay is to be paid.

Further, our position has been confirmed on many cases during appeal. Here are some important case law.

Kirkham Silviculture Ltd., B.C.E.S.T. Decision No. D260/97; Golden Sikh Cultural Society, B.C.E.S.T. Decision No. D357/98 and Atlas Travel Service Ltd. v. B.C. (Director of Employment Standards) (1994), 99 B.C.L.R. (2d) 37 (B.C.S.C.).

You can find these decision at the BC Employment Standards Tribunal website.

<http://www.bcest.bc.ca/decisions/welcome.htm>

Thanks

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836

Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esb/

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From: Rob Simmons [<mailto:rsimmons@atomiccartoons.com>]
Sent: Wednesday, May 8, 2013 4:58 PM
To: Nguyen, Mica LBR:EX
Subject: Re: employment standards branch
Importance: High

Hi Mica

Thanks again for this; in your letter, you say that "the Act does not allow the inclusion of vacation pay as part of an hourly wage, salary wage, or unit wage scheme.". However, I am unable to find reference to that restriction in either the legislation resources valuable nor in the Policy Interpretation resources available on the Ministry website (specifically <http://www.labour.gov.bc.ca/esb/igm/esa-part-7/igm-esa-s-58.htm#2>). I will proceed with completing the information request as you have asked, but concurrently could you reference the legislation or Policy Interpretation that references an employer being prevented from having a wage that is inclusive of vacation pay, please?

Many thanks.

Rob

Rob Simmons
VP Finance & Business Affairs
Atomic Cartoons Inc
604.734.2866 x225
Twitter: @atomiccartoons

On 2013-05-08, at 4:13 PM, Nguyen, Mica LBR:EX wrote:

Hi Rob,

I have sent the notices via registered mail to Atomic Cartoons. Thought I would also send you a copy via email.
Thanks

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca

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<20130508160759.pdf>

Nguyen, Mica LBR:EX

From: Nguyen, Mica LBR:EX
Sent: Thursday, May 9, 2013 1:05 PM
To: 'Rob Simmons'
Subject: RE: employment standards branch

Hi Rob,

If you look at section 58. (2) it set out that how vacation pay is to be paid.

Further, our position has been confirmed on many cases during appeal. Here are some important case law.

Kirkham Silviculture Ltd., B.C.E.S.T. Decision No. D260/97; Golden Sikh Cultural Society, B.C.E.S.T. Decision No. D357/98 and Atlas Travel Service Ltd. v. B.C. (Director of Employment Standards) (1994), 99 B.C.L.R. (2d) 37 (B.C.S.C.).

You can find these decision at the BC Employment Standards Tribunal website.

<http://www.bcest.bc.ca/decisions/welcome.htm>

Thanks

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esh/

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From: Rob Simmons [<mailto:rsimmons@atomiccartoons.com>]
Sent: Wednesday, May 8, 2013 4:58 PM
To: Nguyen, Mica LBR:EX
Subject: Re: employment standards branch
Importance: High

Hi Mica

Thanks again for this; in your letter, you say that "the Act does not allow the inclusion of vacation pay as part of an hourly wage, salary wage, or unit wage scheme." However, I am unable to find reference to that restriction in either the legislation resources valuable nor in the Policy Interpretation resources available on the Ministry website (specifically <http://www.labour.gov.bc.ca/esb/igm/esa-part-7/igm-esa-s-58.htm#2>). I will proceed with completing the information request as you have asked, but concurrently could you reference the legislation or Policy Interpretation that references an employer being prevented from having a wage that is inclusive of vacation pay, please?

Many thanks.

Rob

Rob Simmons
VP Finance & Business Affairs
Atomic Cartoons Inc
604.734.2866 x225
Twitter: @atomiccartoons

On 2013-05-08, at 4:13 PM, Nguyen, Mica LBR:EX wrote:

Hi Rob,

I have sent the notices via registered mail to Atomic Cartoons. Thought I would also send you a copy via email.
Thanks

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
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<20130508160759.pdf>

Nguyen, Mica LBR:EX

From: Rob Simmons [rsimmons@atomiccartoons.com]
Sent: Wednesday, May 8, 2013 4:43 PM
To: Nguyen, Mica LBR:EX
Subject: Re: employment standards branch

Importance: High

Hello Mica,

Many thanks for this, I do appreciate it as I am interested in resolving this fairly quickly.

Regards

Rob

Rob Simmons
VP Finance & Business Affairs
Atomic Cartoons Inc
604.734.2866 x225
Twitter: @atomiccartoons

On 2013-05-08, at 4:13 PM, Nguyen, Mica LBR:EX wrote:

Hi Rob,

I have sent the notices via registered mail to Atomic Cartoons. Thought I would also send you a copy via email.
Thanks

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
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Suite 250 - 4600 Jacombs Rd.
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July 22, 2013

ER #133-714
Email

Atomic Cartoon Inc.
c/o Kacey Krenn, Harris&Company LLP
14th Floor, 550 Burrard Street
Vancouver, BC V6C 2B5

Dear Ms. Krenn on behalf of Atomic Cartoons Inc.:

**Re: Employment Standards Complaint filed against Atomic Cartoon Inc.
Preliminary Findings**

On February 16, 2013, the Employment Standards Branch ("Branch") received an anonymous complainant filed against Atomic Cartoon Inc. ("Atomic" or the "Employer") alleging Atomic pays its Employees a wage scheme inclusive of vacation pay. As such Atomic has failed to follow the vacation pay entitlement pursuant to Section 58 of the *Employment Standards Act* ("Act").

The following are my preliminary findings.

Atomic's Submissions:

- Atomic is an animation studio which is in the practice of hiring most Employees on temporary or fixed contract.
- All temporary or fixed contract Employees do not work for more than an 11 week period.
- All temporary or fixed contract Employees are provided with a weekly wage rate inclusive of vacation pay at a rate of 4% of the salary. The vacation pay is paid on each scheduled pay day. The terms are indicated on the employment agreement.
- All fixed contract Employees are provided with an employment agreement to review and sign before the commencement of their employment. Atomic submits a sample employment agreement.

- Given the short term nature of each Employee's term of employment none of the Employees in question would be entitled to the 6% vacation pursuant to Section 58 (1) (b).
- Atomic admits the wage statements did not expressly set out the amount of vacation pay paid on each pay period. However, since notification of the complaint, Atomic has changed its practices and vacation pay is expressly set out in its wage statements. Atomic submits a sample of a wage statement issued prior to the pay period ending on May 17, 2013, where vacation pay is not expressly set out and a sample of a wage statement issued for the pay period ending May 17, 2013, where vacation pay is expressly set out.
- Additional documents submitted by Atomic are as follows:
 - list of gross wages for short term Employees
 - list of all short term Employees and their contact details
 - T4 Statement of Remuneration Paid for short term Employees for 2012 and 2013 years
- Atomic argues it has not contravened Section 58 of the Act for the following reasons:
 - It is acceptable under the Act for an employee and an employer to agree that vacation pay will be paid on each pay day. In this regard, Atomic relies on *Sunner*, B.C.E.S.T. Decision No. D569/01.
 - Atomic and each short term Employee agreed in writing that 4% vacation pay would be included in the overall wage rate, and paid on each paycheque. This is not contrary to the Act. In this regard, Atomic relies on *National Signcorp Investment Ltd.*, B.C.E.S.T. #D163/98.
 - Atomic states failing to expressly set out the amount of vacation pay from the regular wage the wage statements, is simply an administrative error and the Employees were in fact paid the required amount of vacation pay on each pay period and therefore no additional vacation pay is owed. In this regard, Atomic relies on *Alkon Trading Ltd. (c.o.b. Kitchen Plus)*, B.C. E.S.T. #RD105/02.

The Law:

Section 58 of the Act states as follows:

58. (1) An employer must pay an employee the following amount of vacation pay:

(a) after 5 calendar days of employment, at least 4% of the employee's total wages during the year of employment entitling the employee to the

vacation pay;

(b) after 5 consecutive years of employment, at least 6% of the employee's total wages during the year of employment entitling the employee to the vacation pay.

(2) Vacation pay must be paid to an employee

(a) at least 7 days before the beginning of the employee's annual vacation,
or

(b) on the employee's scheduled paydays, if

(i) agreed in writing by the employer and the employee, or

(ii) provided by the collective agreement.

(3) Any vacation pay an employee is entitled to when the employment terminates must be paid to the employee at the time set by section 18 for paying wages.

Section 27 (1) of the Act states as follows:

27 (1) On every payday, an employer must give each employee a written wage statement for the pay period stating all of the following:

(a) the employer's name and address;

(b) the hours worked by the employee;

(c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;

(d) the employee's overtime wage rate;

(e) the hours worked by the employee at the overtime wage rate;

(f) any money, allowance or other payment the employee is entitled to;

(g) the amount of each deduction from the employee's wages and the purpose of each deduction;

(h) if the employee is paid other than by the hour or by salary, how the wages were calculated for the work the employee is paid for;

(i) the employee's gross and net wages;

(j) how much money the employee has taken from the employee's time bank and how much remains.

Preliminary Findings:

A sample of the relevant section in Atomic's employment agreement reads as follows:

3. Remuneration

- 3.1 The Employer shall pay and the Employee agrees to accept as Compensation for all the services to be rendered hereunder a weekly salary of \$900.00 (the "Salary"), inclusive of vacation pay calculated at (4%) of the Salary and payable not in advance every two weeks on the Friday following the end of each two week period. The Employer shall withhold from the Salary and remit on behalf of the Employee such amounts as may be required by law from time to time.

I preliminarily find it is contrary to the Act for an Employer to pay a wage scheme inclusive of vacation pay. This principle has been adopted in a long line of cases which have confirmed that all inclusive wage schemes are contrary to the Act. As such, it has been established vacation pay cannot be included in a commission structure, a daily rate structure, a piece rate structure, a monthly rate structure, an hourly rate structure, or an hourly rate combined with a bonus commission structure (see: *Atlas Travel Service Ltd. v. British Columbia (Director of Employment Standards)* (1994), 99 B.C.L.R. (2d) 37 (S.C.)); *Foresil Enterprises Ltd.* B.C.E.S.T. #D201/96; *W.M. Schultz Trucking Ltd.* B.C.E.S.T. #D127/97; *Monday Publications Ltd.*, B.C.E.S.T. #D296/98, Reconsideration of #D059/97; *Phiroze Irani aka Phil Irani operating as Amy's Loonie Toonie Town* B.C.E.S.T. #D413/01; *Sunner* B.C.E.S.T. #D569/01; *Selder Bay Contracting Ltd.* B.C. E.S.T. #D327/01; *Label Express* B.C.E.S.T. #D239/03; *Martin Hudelist and Christoph Lotter* B.C.E.S.T. #D124/02; and *Yellow Cabs (Kamloops) Ltd.* B.C.E.S.T. #D366/01.

Relying on *National Signcorp Investments* and *Sunner*, Atomic argues since its Employees agreed in writing at the onset of the employment relationship that vacation pay would be inclusive in the overall weekly wage rate and that the vacation pay would be paid on each payday it has not contravened the Act.

The Tribunal in *National Signcorp Investments* found the following:

- the system in place was completely transparent;
- it was agreed to in writing by the employer and employee at the onset of the employment relationship; and

- it separately identified the “regular” commission earning and the vacation pay on each wage statement.

The Tribunal in *Sunner* found the following:

- if there is an agreement between the parties that vacation pay be paid on each scheduled payday, then it is the Employer’s responsibility to document the same; and
- the employee’s wage statement should clearly and separately set out both the hourly rate and the additional vacation pay being paid for the current pay period.

I preliminarily find Atomic is distinguishable from *National Signcorp Investments and Sunner* since Atomic failed to separately identify an Employee’s “regular” wage from the corresponding vacation pay on each wage statement and as such failed to be completely transparent. Although the Act does allow for an Employer and an Employee to agree in writing that vacation pay can be included on the scheduled payday pursuant to Section 58 (2) (b) of the Act, Section 27 (1) (f) of the Act clearly mandates that any monies paid on account of vacation pay be separately itemized on the employee’s wage statement. This minimum requirement is set out in the Act so that an employee clearly understands what he is earning as a regular rate of pay, the corresponding vacation pay, and whether the Employer is actually meeting the terms of the agreements to pay him his vacation pay on each scheduled payday. As such, I find to comply with the Act, Atomic needed to be completely transparent by not only having their Employees agree in writing at the onset of the employment relationship to be paid vacation pay on each payday but it also needed to clearly delineate an Employee’s regular pay from the corresponding vacation pay as was the case in *National Signcorp Investments*.

Atomic argues failing to separately allocate a regular weekly wage from the corresponding vacation pay was simply an administrative error on behalf of the Employer and it has already paid the required amounts of vacation pay. Atomic relies on *Alkon Trading* for this reasoning and argues because vacation pay was not expressly set out on each wage statement it does not mean vacation pay was not paid. Further, Atomic adds it has amended its practices since being notified of the anonymous complainant.

The Tribunal in *Alkon Trading* found the following:

Where the employer maintains that it has paid vacation pay but is unable to document such payment, one must carefully scrutinize the evidence

the burden properly falls on an employer to show that it has met its statutory obligation with respect to the payment of vacation pay.

I preliminarily find Atomic is distinguishable from *Alkon Trading*. The Tribunal in *Alkon Trading* found the Employee's paycheques indicated that her pay included vacation pay; sometime in 2000, the Employer changed this practice and separately recorded vacation pay on the Employee's wage statements. The Employer changed its method of paying vacation pay before the complaint had been filed.

In Atomic's case, there appears to be no evidence Atomic indicated on its Employees' paycheques that the amount included vacation pay. Atomic admits it failed to record vacation pay on its Employees' wage statements and only amended its practices after being notified of the Branch's investigation. Further, the only evidence from Atomic regarding the payment of vacation pay is a statement contained in its employment contract which I have previously noted above that an agreement alone to pay vacation pay on each scheduled payday does not suffice to show that Atomic has indeed paid vacation pay. As such, it appears Atomic has failed to show based on a balance of probabilities that it has met its statutory obligations in respect to vacation pay.

I preliminarily find the above noted cases which Atomic has relied on are readily distinguishable from Atomic on the facts and that the reasoning set out in *Atlas Travel Service* remains applicable to the case at hand. Reviewing Atomic's employment contract, I preliminarily find Atomic paid its Employees a wage scheme inclusive of vacation pay and as such appears to be in contravention of Section 58 (1) of the Act.

If you disagree with the above findings please **provide written reasons and supportive evidence, if any, for your decision by August 6, 2013**. All responses are to be sent to my office at the address indicated on the footer of this letter. Please address the item to my attention.

If your written reasons and supportive evidence do not support a substantive change to the above findings, the Branch will issue a determination ordering Atomic to cease contravening the Act. Interest on the wages found to be owed and administrative penalties will also accompany the issuance of a determination.

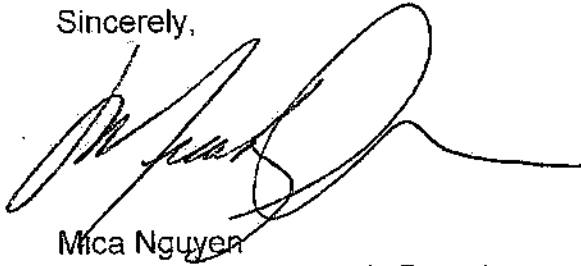
Please note the amount of vacation pay that can be claimed under the Act is determined by the employee's anniversary date, the dates vacations were taken and the date of termination. Section 80 of the Act limits recovery of wages to those wages which become payable within 6 months of the date of the complaint or terminated. As such, if a determination is issued, I will award the maximum vacation pay entitlement (up to 30 months less a day) for all short term Employees whose vacation pay was earned or became payable from August 17, 2012 to February 16, 2013 (date Branch received complaint).

Finally, I would like to also bring to your attention that I see other potential issues with the wage statements. At this time, I see no indication of hours worked on the wage

statements which appears to be a contravention of Section 27 (1) (b) of the Act. Further, reviewing the employment agreement under "Remuneration", it states that the weekly salary is for "all services to be rendered". Given this statement and the failure to indicate the total hours worked on the wage statements, if a determination is issued, I would potentially have to determine whether Atomic has properly complied with the overtime and statutory holiday pay requirements and issue a Demand for Records regarding the daily hours worked for all short term Employees. The onus is on Atomic to substantiate its Employee's are excluded from the overtime and statutory holiday provisions under the Act.

If Atomic wishes to voluntarily comply regarding the issue of vacation pay, a determination will not be issued and I will not investigate regarding overtime wages or statutory holiday pay. Please contact me directly to discuss voluntary compliance options.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mica Nguyen', with a long horizontal flourish extending to the right.

Mica Nguyen
Employment Standards Branch
604-664-7836
Mica.Nguyen@gov.bc.ca

Nguyen, Mica LBR:EX

From: Nguyen, Mica LBR:EX
Sent: Monday, July 22, 2013 4:49 PM
To: 'kkrenn@harrisco.com'
Subject: employment standards branch: Atomic Cartoon Inc. Prelim Findings
Attachments: 20130722164510.pdf

Importance: High

Hi Kacey Krenn,
Above is the preliminary findings. Please confirm you have received it.
Regards,

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esb/

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Nguyen, Mica LBR:EX

From: Mail Delivery Subsystem [postmaster@gems9.gov.bc.ca]
To: kkrenn@harrisco.com
Sent: Monday, July 22, 2013 4:49 PM
Subject: Relayed: employment standards branch: Atomic Cartoon Inc. Prelim Findings

Delivery to these recipients or distribution lists is complete, but delivery notification was not sent by the destination:

kkrenn@harrisco.com

Subject: employment standards branch: Atomic Cartoon Inc. Prelim Findings

Nguyen, Mica LBR:EX

From: Kacey A. Krenn [KKrenn@harrisco.com]
Sent: Monday, July 22, 2013 4:54 PM
To: Nguyen, Mica LBR:EX
Subject: RE: employment standards branch: Atomic Cartoon Inc. Prelim Findings [HARRIS-CO.FID204084]

Hi Mica,

Thank you for the letter, I confirm receipt and will review with my client.

Further to my voice message to you on July 11th, can you please let me know when you are available to discuss the "voluntary compliance" option?

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com



Harris & Company ^{LLP}
14th Floor, 560 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com

Workplace Law

From: Nguyen, Mica LBR:EX [<mailto:Mica.Nguyen@gov.bc.ca>]
Sent: Monday, July 22, 2013 4:49 PM
To: Kacey A. Krenn
Subject: employment standards branch: Atomic Cartoon Inc. Prelim Findings
Importance: High

Hi Kacey Krenn,
Above is the preliminary findings. Please confirm you have received it.
Regards,

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836

Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esb/

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Nguyen, Mica LBR:EX

From: Kacey A. Krenn [KKrenn@harrisco.com]
To: Nguyen, Mica LBR:EX
Sent: Monday, July 22, 2013 4:50 PM
Subject: Read: employment standards branch: Atomic Cartoon Inc. Prelim Findings

Your message was read on Monday, July 22, 2013 4:49:59 PM (GMT-08:00) Pacific Time (US & Canada).



August 27, 2013

ER #133-714
Email

Atomic Cartoon
c/o Kasey Krenn, Harris & Company LLP
14th Floor, 550 Burrard Street
Vancouver, BC V6C 2B5

Dear Ms. Krenn on behalf of Atomic Cartoons Inc.:

Re: Anonymous Employment Standards Complaint: Audit

Please be advised the anonymous complaint against Atomic Cartoons Inc. received by the employment standards branch on February 16, 2013 has been voluntarily resolved. As such, the file has now been closed.

Thank you for your assistance regarding this matter.

Sincerely,

Mica Nguyen
Delegate of the Director of Employment Standards

Nguyen, Mica LBR:EX

From: Nguyen, Mica LBR:EX
Sent: Tuesday, August 27, 2013 12:49 PM
To: 'Kacey A. Krenn'
Subject: RE: employment standard branch: Atomic Cartoon [HARRIS-CO.FID204084]
Attachments: 20130827124526.pdf

Hi Kasey,

I just got the front to officially close the file today. I have attached a letter for your records.

Thank you for your help regarding this matter.

Regards

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3R1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esb/

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From: Kacey A. Krenn [<mailto:KKrenn@harrisco.com>]
Sent: Monday, August 26, 2013 9:06 AM
To: Nguyen, Mica LBR:EX
Subject: RE: employment standard branch: Atomic Cartoon [HARRIS-CO.FID204084]

Hi Mica,

Can you please advise when we can expect notice from you that the Complaint file has been closed? My client is hoping this will be soon, s.21

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com

Harris & Company LLP
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com

From: Nguyen, Mica LBR:EX [mailto:Mica.Nguyen@gov.bc.ca]
Sent: Wednesday, August 21, 2013 9:05 AM
To: Kacey A. Krenn
Subject: RE: employment standard branch: Atomic Cartoon [HARRIS-CO.FID204084]

Hi Kasey,
Makes total sense. Can you have the company forward me all the wage statement to reflect this amount.
Thanks

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
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From: Kacey A. Krenn [mailto:KKrenn@harrisco.com]
Sent: Tuesday, August 20, 2013 3:48 PM
To: Nguyen, Mica LBR:EX
Subject: RE: employment standard branch: Atomic Cartoon [HARRIS-CO.FID204084]

Hi Mica,

It was not paid on one wage statement. That amount represents the total vacation pay that was paid to s.2 in each pay period from s.22

I hope this makes sense.

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com

Harris & Company LLP
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com

From: Nguyen, Mica LBR:EX [mailto:Mica.Nguyen@gov.bc.ca]
Sent: Tuesday, August 20, 2013 3:44 PM
To: Kacey A. Krenn
Subject: employment standard branch: Atomic Cartoon

Hi Kasey

Can you forward me the wage statement indicating the s.22 for s.22 : vacation pay has been paid. I apologize for forgetting to request it during our previous conversation.
Thanks

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esb/

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Nguyen, Mica LBR:EX

From: Mail Delivery Subsystem [postmaster@gemis9.gov.bc.ca]
To: KKrenn@harrisco.com
Sent: Tuesday, August 27, 2013 12:50 PM
Subject: Relayed: employment standard branch: Atomic Cartoon [HARRIS-CO.FID204084]

Delivery to these recipients or distribution lists is complete, but delivery notification was not sent by the destination:

KKrenn@harrisco.com

Subject: RE: employment standard branch: Atomic Cartoon [HARRIS-CO.FID204084]

Page 035 to/à Page 036

Withheld pursuant to/removed as

s.3

Nguyen, Mica LBR:EX

From: Kacey A. Krenn [KKrenn@harrisco.com]
Sent: Monday, August 19, 2013 9:21 AM
To: Nguyen, Mica LBR:EX
Subject: Atomic Cartoons Inc. [HARRIS-CO.FID204084]
Attachments: LT ESB.PDF; 130816093912_0001 (1).pdf; 130814153926_0001.pdf

Hello Mica,

Please find attached our letter of today's date, with enclosures.

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com



Harris & Company ^{LLP}
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com

Worl... (1)

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14th Floor, 550 Burrard Street
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Canada V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com
info@harrisco.com

August 19, 2013

Kacey A. Krenn
D/ 604 691 2241

By Email

kkrenn@harrisco.com
Our file 006778.001

Workplace Law

Employment Standards Branch
250 - 4600 Jacombs Road
Richmond, BC
V6V 3B1

Attention: Mica Nguyen, Delegate of the Director of Employment Standards

Dear Sirs and Mesdames:

Re: Anonymous Complaint filed under the *Employment Standards Act* (the "Act")
(Atomic Cartoons Inc.)

We are writing further to our telephone discussion on July 25, 2013, with respect to the voluntary compliance option that has been agreed to by the Employer, Atomic Cartoons Inc. in relation to the above-noted complaint under the Act.

Please now find enclosed the list of employees to whom vacation pay was paid (those employees who worked more than 5 days from s.22). Also enclosed are copies of the cheques for vacation pay provided to those employees, dated s.22.

Please note that there is s.2 employee on the original list of employees who was not paid vacation pay (s.22), as it was determined that s.2 had not in fact worked more than 5 calendar days in the relevant time period, and therefore was not eligible for vacation pay.

Further, due to a shortcoming in the Employer's accounting software, the vacation pay shows up in the current period as partially allocated to salary and partially allocated to vacation pay. The YTD calculations are correct, however, with respect to the amount that is salary and the amount that is vacation pay for each employee.

We trust you will find the foregoing to be satisfactory.

Please contact the writer if you have any questions. Kindly confirm as soon as possible that this file has been closed.

Yours very truly,
Harris & Company LLP

Per:



Kacey A. Krenn

KAK/ab

Enclosures

cc Client

GENERAL/006778.001/1215380.1

Page 040 to/à Page 058

Withheld pursuant to/removed as

s.22

Officer notes on Voluntary Compliance.

- after receiving prelin findings Ek Choose to voluntarily comply and pay all employee vacation pay who worked there as of 2013. Since it was an animation studio people were hired for short periods. I decided to capture the voluntary compliance period from Jan 1, 2013 to present date.

Checked the cheques and everything looks good.

Nguyen, Mica LBR:EX

From: Nguyen, Mica LBR:EX
Sent: Wednesday, August 21, 2013 9:05 AM
To: 'Kacey A. Krenn'
Subject: RE: employment standard branch: Atomic Cartoon [HARRIS-CO.FID204084]

Hi Kasey,
Makes total sense. Can you have the company forward me all the wage statement to reflect this amount.
Thanks

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esb/

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From: Kacey A. Krenn [<mailto:KKrenn@harrisco.com>]
Sent: Tuesday, August 20, 2013 3:48 PM
To: Nguyen, Mica LBR:EX
Subject: RE: employment standard branch: Atomic Cartoon [HARRIS-CO.FID204084]

Hi Mica,

It was not paid on one wage statement. That amount represents the total vacation pay that was paid to s.2 in each pay period from s.22

I hope this makes sense.

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com

Harris & Company ^{LLP}
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com

From: Nguyen, Mica LBR:EX [mailto:Mica.Nguyen@gov.bc.ca]
Sent: Tuesday, August 20, 2013 3:44 PM
To: Kacey A. Krenn
Subject: employment standard branch: Atomic Cartoon

Hi Kasey

Can you forward me the wage statement indicating the ^{s.22} l for s.22
apologize for forgetting to request it during our previous conversation.
Thanks

s vacation pay has been paid. I

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
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Nguyen, Mica LBR:EX

From: Kacey A. Krenn [KKrenn@harrisco.com]
Sent: Wednesday, August 21, 2013 1:32 PM
To: Nguyen, Mica LBR:EX
Subject: RE: employment standard branch: Atomic Cartoon [HARRIS-CO.FID204084]
Attachments: Employee Chart.pdf; Payroll Documents.pdf

Hi Mica,

Attached is a summary, as well as copies of the cheques to s.22

The first two cheques (A – s.22) were when the vacation pay was not properly recorded.

The next one on the summary list (B – s.22) was the “transaction” created to “force” the accounting software to allocate vacation pay so the YTD totals would be correct. This is the one cent payment we discussed yesterday.

The payments from s.22 (C) are those where the vacation pay was properly allocated following the switch.

The last one, s.22 (D), is the additional, “retroactive” vacation pay payment of s.22

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com

Harris & Company LLP
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com

From: Nguyen, Mica LBR:EX [<mailto:Mica.Nguyen@gov.bc.ca>]
Sent: Wednesday, August 21, 2013 9:05 AM
To: Kacey A. Krenn
Subject: RE: employment standard branch: Atomic Cartoon [HARRIS-CO.FID204084]

Hi Kasey,

Makes total sense. Can you have the company forward me all the wage statement to reflect this amount.
Thanks

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
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I hope this makes sense.

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com

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14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com

From: Nguyen, Mica LBR:EX [<mailto:Mica.Nguyen@gov.bc.ca>]
Sent: Tuesday, August 20, 2013 3:44 PM
To: Kacey A. Krenn
Subject: employment standard branch: Atomic Cartoon

Hi Kasey

Can you forward me the wage statement indicating the s.22 for s.22
apologize for forgetting to request it during our previous conversation.
Thanks

vacation pay has been paid. I

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1

Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esb/

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Page 065 to/à Page 069

Withheld pursuant to/removed as

s.22

In the Matter of a Complaint pursuant to the
Employment Standards Act, R.S.B.C. 1996, c. 113

BETWEEN:

Anonymous Complainant

COMPLAINANT

AND:

Atomic Cartoons Inc.

EMPLOYER

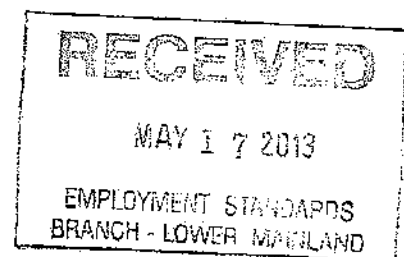
Employer's Book of Documents



14th floor, 550 Burrard Street
Vancouver BC V6C 2B5
Tel 604 684 6633

Kacey A. Krenn, Counsel

May 2013



In the Matter of a Complaint pursuant to the
Employment Standards Act, R.S.B.C. 1996, c. 113

BETWEEN:

Anonymous Complainant

COMPLAINANT

AND:

Atomic Cartoons Inc.

EMPLOYER

Employer's Book of Documents



14th floor, 550 Burrard Street
Vancouver BC V6C 2B5
Tel 604 684 6633

Kacey A. Krenn, Counsel

May 2013

Employer's Book of Documents Table of Contents

Tab

1.	June 19, 2012	Sample Employment Agreement
2.	2012 - 2013	Employee Lists showing short-term employees with contact information
3.	2012	T4 Statements of Remuneration Paid for short-term employees
4.	2012 - 2013	List of gross wages for short-term employees
5.	June 29, 2012	Sample wage statement for short-term employee
6.	May 24, 2013	Sample wage statement for short-term employee

Page 073 to/à Page 101

Withheld pursuant to/removed as

s.22



Harris & Company LLP
14th Floor, 650 Burrard Street
Vancouver, BC
Canada V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
harrisco.com
info@harrisco.com

May 17, 2013

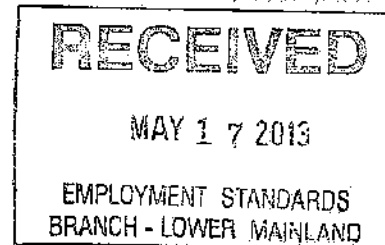
Kacey A. Krenn
D/ 604 891 2241

kkrenn@harrisco.com
Our file 006778.001

By Courier

Workplace Law

Employment Standards Branch
250 - 4600 Jacombs Road
Richmond, BC
V6V 3B1



Attention: Mica Nguyen, Delegate of the Director of Employment Standards

Dear Sirs and Mesdames:

Re: Anonymous Complaint filed under the *Employment Standards Act* (Atomic Cartoons Inc.)

We are counsel for Atomic Cartoons Inc. ("Atomic" or the "Employer") and are writing further to your letter dated May 9, 2013 to Atomic with respect to the above-noted Anonymous Complaint.

The Complaint alleges that Atomic has failed to pay vacation pay in accordance with Section 58 of the *Employment Standards Act* (the "Act"). It is our position that Atomic has not violated the Act in relation to the payment of vacation, and we provide details of that position below. In addition, we are enclosing a Book of Documents, as requested from Atomic in the Demand for Employer Records attached to your May 9th letter.

Facts

Atomic is an animation studio in Vancouver that frequently engages employees on temporary, fixed term contracts to perform services associated with a particular production or project. This is a common practice in the industry. None of the short-term employees currently employed by Atomic have been employed for longer than 11 weeks. In addition, there are ^{s,2} employees on the employee list in 2012, and ^{s,} employees to date in 2013, that worked for 5 days or less (Book of Documents, Tab 2).

A sample Employment Agreement, representing the same agreement signed by Atomic's short-term employees in 2012 and 2013 to date, is enclosed in the Book of Documents at Tab 1. The relevant portion of the agreement is section 3, which reads in part:

The Employer shall pay and the Employee agrees to accept as compensation for all of the services to be rendered hereunder a weekly salary of \$1000 (the "Salary"), inclusive of vacation pay calculated at four percent (4%) of the Salary and payable not in advance every two weeks on the Friday following the end of each two week period. The Employer shall withhold from the Salary and remit on behalf of the Employee such amounts as may be required by law from time to time.

[emphasis added]

These employment agreements were reviewed and signed by each short-term employee prior to commencing employment with Atomic. Each short-term employee agreed to the terms contained in the employment agreement, including the inclusion of 4% vacation pay in their weekly compensation.

Given the short-term nature of each employee's term of employment, none of the employees in question would be entitled to vacation pay of 6%, pursuant to section 58(1)(b).

The wage statements for Atomic's short-term employees set out their regular pay, as well as the deductions for EI and CPP. The wage statements prior to the current pay period, which ends May 17, 2013, including the samples enclosed with this letter at Tab 5, do not expressly set out the amount of vacation pay paid in each pay period. Atomic has now changed this practice, however, and is now expressly setting out the amount of vacation pay paid in each pay period on the employee's wage statements, as evidenced by the copy of the cheque that will be issued to employee^{s.22} on May 24, 2013, for the pay period ending May 17, 2013 (Tab 6).

Law: Application of the Act

Section 58 of the Act provides for the payment of vacation pay. Specifically, section 58(2) states as follows:

58.(2) Vacation pay must be paid to an employee

- (a) at least 7 days before the beginning of the employee's annual vacation, or
- (b) on the employee's scheduled paydays, if
 - (i) agreed in writing by the employer and the employee, or
 - (ii) provided by the collective agreement.

[emphasis added]

We have reviewed the decisions that you cited in your email to Rob Simmons of Atomic, dated May 9, 2013, along with several other decisions that address the issue of the payment of vacation

pay. In our respectful opinion, the cases cited by the Officer can all be distinguished from the Complaint on the basis of fact.

It is our view that Atomic has not contravened Section 58 of the Act for the following reasons:

- a. Atomic and each employee agreed in writing that 4% vacation pay would be included in the overall wage rate, and paid on each paycheque. This is not contrary to the Act;
- b. While Atomic acknowledges that there was an administrative error in terms of failing to expressly set out the amount of vacation pay paid on each wage statement, the employees were all in fact paid the required amount of vacation pay in each pay period, as required by the Act (see Tab 4); and
- c. There is therefore no monetary compensation owed to any of Atomic's short-term employees with respect to unpaid vacation pay.

The Employer's position is supported by the Employment Standards Tribunal's decision in *National Signcorp Investments Ltd.*, [1998] B.C.E.S.T.D. No. 200, in which the employer argued that a prior determination that awarded vacation pay was in error, because the employees had already been paid vacation pay. In that case, the employees signed an employment agreement at the time of hire that provided for a compensation package. A term of the agreement provided as follows:

Commission/draw, commission/salary and straight commission earnings are 100th/104th of the amount paid. Four (4) 104ths are considered to be vacation pay which will be paid at each pay period.

The Tribunal set aside the order for vacation pay, and stated as follows at paragraphs 12 to 14:

12 It is to be noted that 58(2)(b) specifically provides that an employer and an employee may agree that vacation pay will be paid at each pay period. Further, section 27(1)(f) of the Act mandates that any monies paid on account of vacation pay be separately itemized on the employee's payday wage statement.

13 In my view, the system that the employer has put in place with respect to the payment of vacation pay is in full compliance with the Act. This system is completely transparent; it was agreed (in writing) between the employer and employee at the outset of the employment relationship; and it separately identifies "regular" commission earnings and vacation pay on each payday wage statement. The Director's delegate concedes that if an employer had, from the outset, simply reduced the global commission rate by an amount equivalent to vacation pay and then added that latter amount to each employee's pay on each payday, the requirements of the Act would have been satisfied. For my part, I cannot fathom why the same result cannot be lawfully accomplished by simply paying a global commission rate and then allocating a portion of that commission to vacation pay so long as that system is clearly explained to the employee at the outset of the employment relationship and the vacation pay portion is clearly identified and accounted for on the employee's wage statement.

14 While the employer's approach to the payment of vacation would not have passed muster under the former Employment Standards Act, S.B.C. 1980 c. 10 inasmuch as section 37 of that Act did not contain the equivalent of section 58(2)(b) of the current Act, the employer's approach is, in my opinion, lawful under the current Act. For this reason, I cannot accede to the Director's submission that the employer's argument must fail by reason of the B.C. Supreme Court's decision in *Atlas Travel Service Ltd. v. B.C. (Director of Employment Standards)* (1994), 99 B.C.L.R. (2d) 37. In *Atlas Travel*, the employees signed an agreement that simply provided "Payment for vacation, which is included in your commission earnings, is prescribed by the Employment Standards Act of British Columbia"; the amount payable as vacation pay (and also statutory holiday pay that was similarly "rolled" into the commission rate) was never separately identified on the employees' payday wage statements and, clearly, the employer's approach violated section 37 of the former Act.

[emphasis added]

In *Re Sunner*, [2001] B.C.E.S.T.D. No. 571, the Tribunal confirmed that it is acceptable under the Act for an employer and employee to agree that vacation pay will be paid on each payday, and that a wage rate includes vacation pay. It is clear that an employer is not entitled to unilaterally allocate a portion of an employee's hourly wage to vacation pay. However, in that case, there was no evidence of any agreement to pay vacation pay in that manner, and there was no evidence of regularly issued wage statements. The Tribunal stated as follows at paragraph 15:

15 It may well be that the Employer's intent was that Sunner's hourly rate included vacation pay, however, I am not satisfied, on the balance of probabilities, that a formal agreement in this latter regard was reached between Sunner and Gill. Under the Act, an employer and an employee can agree upon a certain hourly rate (so long as it meets or exceeds the minimum wage) and, in addition, that the employee will be paid both the hourly rate and their accrued vacation pay on each scheduled pay day. However, an employer cannot unilaterally allocate, say 4% , of the employee's earned hourly wages to vacation pay and, in that fashion, satisfy its statutory obligation under section 58 of the Act.

[emphasis added]

In another Tribunal decision, *Alkon Trading Ltd. (c.o.b. Kitchen Plus)*, [2002] B.C.E.S.T.D. No. 105, the employer applied for reconsideration of a Tribunal order with respect to vacation pay and compensation for length of service, asserting that there was an agreement between the parties that the employee would be paid vacation pay in each pay period. It had been found that the employer and the employee did agree to receive vacation pay on each scheduled pay day. The Tribunal noted that the employer may have contravened section 27 of the Act by not always itemizing separately vacation pay on the wage statements. The Director had made this finding, but expressly refused to issue a \$500 penalty pursuant to section 98 of the Act because the employer had changed its method of paying vacation pay. The Tribunal confirmed that where the employee had in fact been paid vacation pay, the fact that it was not properly documented was a separate issue, and it would not be a fair result for the employee to be paid vacation pay twice over due to

the employer's poor administrative practice (para. 18). The Tribunal therefore set aside the order for vacation pay, on the basis that the parties had agreed that it would be paid in each pay period and there was no misrepresentation about the wage rate, which included vacation pay, and that vacation pay had in fact been paid.

It is our position that Atomic's practice of offering employees a weekly wage rate that was expressly inclusive of 4% vacation pay payable in each pay period, and obtaining the employee's express written agreement to this manner of compensation, is not contrary to section 58 of the Act, on the basis of the reasoning in *National Signcorp Investments* and *Re Sunner, supra*. Where Atomic may have fallen short, although this has now been rectified, was in not expressly setting out on each employee's wage statements the amount of vacation pay that was being paid on each pay cheque. On this basis, it must be determined that no vacation pay is owing to the employees of Atomic.

Further, it is submitted that the fact that Atomic has immediately amended its payroll practices by expressly setting out the amount of vacation pay paid on each wage statement demonstrates its desire to ensure compliance with the Act and treat every employee fairly and appropriately. In the circumstances, based on the reasoning in *Alkon Trading, supra*, it is submitted that it would not be appropriate to make an order for a penalty against Atomic.

Conclusion

Based on all of the foregoing, it is our view that the anonymous Complaint against Atomic with respect to section 58 of the Act should be dismissed, on the basis that Atomic has not acted contrary to the Act.

We trust you will find the foregoing to be satisfactory. Please contact the writer should you require any additional information or wish to discuss this matter in more detail. We note that, as discussed between yourself and Mr. Simmons previously, our client would appreciate this matter being dealt with in an expeditious manner, due to other commercial considerations.

Yours very truly,
Harris & Company LLP

Per:



Kacey A. Krenn

KAK/ab

Enclosures

cc Client

GENERAL/006778.001/1148854.1

FILE COPY



May 9, 2013

ER #133-714

Atomic Cartoons Inc.
c/o Robert Simmons
2nd Floor 112 6th Ave West
Vancouver, BC V5Y 1K6

Dear Mr. Simmons on behalf of Atomic Cartoons Inc.:

Re: Anonymous Complaint filed under the Employment Standards Act

Please be advised that this office of the Employment Standards Branch has received an anonymous complaint under the *Employment Standards Act* ("Act"), alleging Atomic Cartoons Inc. ("Atomic Cartoons") pays their employees an hourly or monthly wage inclusive of vacation pay. As such, Atomic Cartoons has failed to follow the vacation pay entitlement pursuant to Section 58 of the Act.

My role as a delegate of the Director of Employment Standards is to interpret, apply and enforce the Act. I am not the complainant's advocate. Accordingly, I wish to hear your response to these allegations.

On May 8, 2013, we spoke via telephone. At this time, I informed you of the anonymous complainant and of my investigation into the matter. You confirmed Atomic Cartoons does pay its short term employees an hourly or monthly wage inclusive of vacation pay.

Please be advised an Employer must pay vacation pay according to Section 58 of the Act. As such, the Act does not allow the inclusion of vacation pay as part of an hourly wage, salary wage, or unit wage scheme.

Section 58 states as follows:

58. (1) An employer must pay an employee the following amount of vacation pay:

(a) after 5 calendar days of employment, at least 4% of the employee's total wages during the year of employment entitling the employee to the vacation pay;

(b) after 5 consecutive years of employment, at least 6% of the employee's total wages during the year of employment entitling the employee to the vacation pay.

Ministry of Jobs, Tourism and
Skills Training and Minister
Responsible for Labour

Employment Standards
Branch

Mailing Address:

250 - 4600 Jacombs Road
Richmond, B.C. V6V 3B1

Telephone: (604) 660-4946
Facsimile: (604) 713-0450

(2) Vacation pay must be paid to an employee

(a) at least 7 days before the beginning of the employee's annual vacation, or

(b) on the employee's scheduled paydays, if

(i) agreed in writing by the employer and the employee, or

(ii) provided by the collective agreement.

(3) Any vacation pay an employee is entitled to when the employment terminates must be paid to the employee at the time set by section 18 for paying wages.

At this time, I am requesting additional information and records from Atomic Cartoons. Attached with this notice is a Demand for Employer Records. Please review the notice carefully to ensure all records are submitted by the deadline.

As part of the disclosure process, I have also enclosed a copy of the anonymous complaint form.

I appreciate your attention regarding this matter.

Sincerely,

Mica Nguyen
Delegate of the Director of Employment Standards
604-664-7836

Enc.



Demand for Employer Records

FILE COPY

May 9, 2013

File: 133-714
Registered Mail

To: Atomic Cartoons Inc.
c/o Robert Simmons
2nd Floor 112 6th Ave West
Vancouver, BC V5Y 1K6

Pursuant to section 85 of the Employment Standards Act (the "Act"), Atomic Cartoons Inc. is required to disclose, produce and deliver all employment records for:

Name:

- All short term employees employed in 2012 and 2013

The payroll records required are:

1. Provide a copy of a sample offer of employment/contract of employment provided to short term employees
2. Provide the full names and full contact details of all short term employees who were employed in 2012 and 2013. Contact details will include the employee's mailing address, telephone number and email address.
3. Please indicate whether any short term employees identified as being employed in 2012 and 2013 was employed for 5 or less calendar days.
4. Provide a copy of the 2012 T4 Statement of Remuneration Paid for each short term employee listed as employed in 2012.
5. Provide a record of the gross wages earned for each short term employee listed as working in 2013.
6. Provide a copy of a short term employee's wage statement. Please provide one month's sample (2 wage statements in total).

You are required to disclose, produce and deliver the records specified in this Demand on or before:

May 22, 2013 by 4:30 PM

to the Employment Standards Branch. The records may be delivered in person or by mail to ste.250-4600 Jacombs Road, Richmond, BC V6V 3B1.

Ministry of Jobs, Tourism
and Skills Training and
Minister Responsible for
Labour

Employment Standards
Branch

Mailing Address:

250 - 4600 Jacombs Road
Richmond, B.C. V6V 3B1

Telephone: (604) 660-4946
Facsimile: (604) 713-0450

Failure to produce these records as required will result in a Determination being issued. Where a contravention is found in a Determination an escalating administrative penalty will be imposed under Section 29 and 46 of the Employment Standards Regulation (minimum \$500.00).

Mica Nguyen
Delegate of the Director of Employment Standards
604-664-7836

EMPLOYMENT STANDARDS ACT

(excerpts)

Entry and inspection powers

- 85** (1) For the purposes of ensuring compliance with this Act and the regulations, the director may do one or more of the following:
- (a) enter during regular working hours any place, including any means of conveyance or transport, where
 - (i) work is or has been done or started by employees,
 - (ii) an employer carries on business or stores assets relating to that business,
 - (iii) a record required for the purposes of this Act is kept, or
 - (iv) anything to which this Act applies is taking place or has taken place;
 - (b) inspect, and question a person about, any work, material, appliance, machinery, equipment or other thing in the place;
 - (c) inspect any records that may be relevant to an investigation under this Part;
 - (d) on giving a receipt for a record examined under paragraph (c), remove the record to make copies or extracts;
 - (e) require a person to disclose, either orally or in writing, a matter required under this Act and require that the disclosure be under oath or affirmation;
 - (f) require a person to produce, or to deliver to a place specified by the director, any records for inspection under paragraph (c).
- (2) Despite subsection (1), the director may enter a place occupied as a private residence only with the consent of the occupant or under the authority of a warrant issued under section 120.

Payroll records

- 28** (1) For each employee, an employer must keep records of the following information:
- (a) the employee's name, date of birth, occupation, telephone number and residential address;
 - (b) the date employment began;
 - (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;
 - (d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;
 - (e) the benefits paid to the employee by the employer;
 - (f) the employee's gross and net wages for each pay period;
 - (g) each deduction made from the employee's wages and the reason for it;
 - (h) the dates of the statutory holidays taken by the employee and the amounts paid by the employer;
 - (i) the dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing;

- (j) how much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken.
- (2) Payroll records must
 - (a) be in English,
 - (b) be kept at the employer's principal place of business in British Columbia, and
 - (c) be retained by the employer for 2 years after the employment terminates.

EMPLOYMENT STANDARDS REGULATIONS

(excerpts)

Production of records

- 46(1)** A person who is required under section 85 (1) (f) of the Act to produce or deliver records to the director must produce or deliver the records as and when required.

Administrative penalties

- 29** (1) Subject to section 81 of the Act and any right of appeal under Part 13 of the Act, the following monetary penalties are prescribed for the purposes of section 98(1) of the Act:

- (a) a fine of \$500 if the director determines that a person has contravened a requirement under the Act, unless paragraph (b) or (c) applies;
- (b) a fine of \$2 500 if
 - (i) after the date of a determination under paragraph (a), the director determines that the person contravened the requirement referred to in that paragraph subsequent to the determination under paragraph (a), and
 - (ii) that subsequent contravention occurs within 3 years after the date of the most recent contravention of the same requirement in relation to which there has been a determination under paragraph (a),unless paragraph (c) applies;
- (c) a fine of \$10 000 if
 - (i) after the date of a determination under paragraph (b), the director determines that the person contravened the requirement referred to in that paragraph subsequent to the determination under paragraph (b), and

- (ii) that subsequent contravention occurs within 3 years after the date of the most recent contravention of the same requirement in relation to which there has been a determination under paragraph (b).
- (1.1) For the purposes of subsection (1), an act or omission of an employer constituting a contravention of a requirement under the Act is deemed to be a single contravention regardless of the number of employees affected by the contravention.

**FAILURE TO COMPLY WITH THIS DEMAND WILL RESULT IN A PENALTY
AGAINST YOU WITHOUT FURTHER NOTICE.**

For office use only:

OFFICE	B.M.
ESI DATE	
ER No.	133-714
ASSIGN NO.	s.22
EE No.	
DATE ASSIGNED	
OTHER	M.V.

Office Copy

Date of complaint submission:
February 16, 2013

Confirmation # 020477N/A

I have used the Employment Standards self-help kit and the problem has not been resolved.

Employer Information

Name of Employer:

Atomic Cartoons Inc

Mailing Address of employer:
2nd floor, 112 west 6th ave

City/town, Province, Country:
Vancouver, BC, Canada

Postal Code:
V5Y 1K6

Telephone Number:
604-734-2866

Fax Number:

Type of business:
Television/ animation

Email Address:

info@atomiccartoons.com

Name of supervisor:
Rob Simmons

Name and home phone number of owner:
()

Address of place where you worked if different from above

Street Address:

City/town, Province, Country:

Postal Code:

Is your employer bankrupt or in receivership?
No

Employers' bank:

Employers bank branch:

Is your employer still in business?
Yes

When did your employer go out of business?

Information About You

Your Last Name:
N/A

Your first or given name:
N/A

Middle Initial(s):

SIN:

Mailing (street) Address:
N/A

City/town, Province, Country:
s.22

Postal Code:

Your home phone number:
s.22

Message Number:

Fax Number:

Date of Birth:

Email Address:

Are you in BC under a foreign worker program?
s.22

Are you covered by a collective agreement (union contract):
s.22

Union's Name:

Union Rep's Name:	Union Rep's Phone Number:
-------------------	---------------------------

Your work history with this employer			
Your job title: n/a		Date you started work for this employer: s.22	Last day you worked for this employer: s.22
Your rate of pay:		Employment status:	
How often are you paid? s.22			
Are your hours of work regular? s.22	Hours worked per day:	Number of days worked per week:	Total Hours per week:
Do you have a record of the hours worked for this employer? s.22			

Work history continued. What do you believe you are owed?			
	From date	To date	Estimated amounts
<input type="checkbox"/> Regular wages			\$0
<input type="checkbox"/> Overtime			\$0
<input type="checkbox"/> Annual vacation pay			\$0
<input type="checkbox"/> Statutory holiday pay			\$0
<input type="checkbox"/> Deductions from wage	Specify:		\$0
<input type="checkbox"/> NSF Cheques			\$0
<input type="checkbox"/> Pregnancy/Parental or other leave			\$0
<input type="checkbox"/> Compensation for length of service (termination pay)			\$0
<input type="checkbox"/> Other	Specify:		\$0
Estimated Total you are owed:			\$0

Details of your complaint
<p>Employees do not receive the 4% vacation pay. It is written within the contracts that "the employee agrees to accept as compensation for all the services to be rendered hereunder a hourly salary inclusive of vacation pay calculated at 4% of the salary and payable not in advance every two weeks on the Friday following the end of each two week period." No one get's 4% vacation pay added to their weekly salary nor do we get paid time off. Is this legal? There are many employees under the same contract that do not want to come forward as they want to continue working for the company and are afraid to confront the owners.</p>

REGISTERED MAIL TRACE SHEET

MINISTRY OF JOBS, TOURISM AND SKILLS TRAINING
AND MINISTER RESPONSIBLE FOR LABOUR

BRANCH: Employment Standards Branch
Lower Mainland Region


ADDRESS: #250 -- 4600 Jacombs Road
Richmond, BC V6V 3B1

TELEPHONE: (604) 660-4946
FAX: (604) 713-0450

Name of officer: Mica Nguyen

Date: May 9, 2013

Atomic Cartoons Inc.
ATT: Robert Simmons
2nd Floor 112 6th Ave West
Vancouver, BC V5K 1K6

 RW 770 776 055 CA

ER 133-714
Correspondence
Demand for records

- Demand for Records
- Investigation Notice

RECEIVED

MAY 08 2013

EMPLOYMENT STANDARDS
BRANCH - LOWER MAINLAND

REGISTERED MAIL TRACE SHEET

MINISTRY OF JOBS, TOURISM AND SKILLS TRAINING AND MINISTER RESPONSIBLE FOR LABOUR

BRANCH: Employment Standards Branch
Lower Mainland Region

ADDRESS: #250 - 4600 Jacombs Road
Richmond, BC V6V 3B1

TELEPHONE: (604) 660-4946
FAX: (604) 713-0450

Name of officer: Hica Nguyen

Date: May 9, 2013

Atomic Cartoons Inc.
ATT: Robert Simmons
2nd Floor 112 6th Ave West
Vancouver, BC V5K 1K6

ER 133-714
Correspondence
Demand for records

RW 770 776 055 CA

BC MAIL PLUS
COQUITLAM, B.C.
MAY 10 2013
MINISTRY OF LABOUR
AND CITIZEN SERVICES

RECEIVED

MAY 13 2013

EMPLOYMENT STANDARDS
BRANCH - LOWER MAINLAND

Nguyen, Mica LBR:EX

From: Nguyen, Mica LBR:EX
Sent: Wednesday, May 8, 2013 4:13 PM
To: 'rsimmons@atomiccartoons.com'
Subject: employment standards branch
Attachments: 20130508160759.pdf

Importance: High

Hi Rob,

I have sent the notices via registered mail to Atomic Cartoons. Thought I would also send you a copy via email.
Thanks

Mica Nguyen
Employment Standards Officer
BC Employment Standards Branch
Ministry of Jobs, Tourism, and Skills Training
and Minister Responsible for Labour
Suite 250 - 4600 Jacombs Rd.
Richmond, BC V6V 3B1
Direct: (604) 664-7836
Fax: (604) 713-0450
Email: Mica.Nguyen@gov.bc.ca
www.labour.gov.bc.ca/esb/

DISCLAIMER: This email is confidential and intended only for the use of the individual or entity named above and may contain privileged information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this email is strictly prohibited. Please notify me immediately if you are not the intended recipient by return email or telephone and destroy the original message and any copies.

Nguyen, Mica LBR:EX

From: Mail Delivery Subsystem [postmaster@gems9.gov.bc.ca]
To: rsimmons@atomiccartoons.com
Sent: Wednesday, May 8, 2013 4:13 PM
Subject: Relayed: employment standards branch

Delivery to these recipients or distribution lists is complete, but delivery notification was not sent by the destination:

rsimmons@atomiccartoons.com

Subject: employment standards branch

Nguyen, Mica LBR:EX

From: LBR ESB Domestic Registry LBR:EX
Sent: Thursday, May 2, 2013 12:17 PM
To: 'Juliet.Smith@fmc-law.com'
Cc: Nguyen, Mica LBR:EX
Subject: Due Diligence OPEN Assignment ER133-714 Atomic Cartoons Inc.
Attachments: Due Diligence OPEN Assignment Found.pdf

Importance: High



May 2, 2013

File: 72200-04/133-714

Via Facsimile/Email: juliet.smith@dentons.com

Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver BC V6C 3R8

Attention: Juliet Smith

RE: Atomic Cartoons Inc.

Thank you for your request dated April 29, 2013. This is to advise that a system search has been completed and, at this time there is an active claim under the Employment Standards Act against the above company.

For further information regarding the active claim, please contact Mica Nguyen at our Richmond Office at (604)664-7836.

Thank you for your inquiry.

Leslie Scott
Search and Registry Clerk

cc: Mica Nguyen

Ministry of Jobs, Tourism and
Skills Training and Minister
Responsible for Labour

Employment Standards
Branch

ESB Address:
102 - 1577 7th Avenue
Prince George BC
V2L 3P5
Telephone: (250) 565-4121
Facsimile: (250) 565-4169/Toll Free: 1-866-861-8700

Date: 2014/Jun/17

COVER SHEET EMPLOYER INFORMATION

Page: 1

Employer No: ER178-565

Head Office No: H109816 Office: Kelowna
Employer: ATOMIC CARTOONS (ROCKET MONKEYS 2) INC.
Operating Name:
Mailing Address: 2ND FLR 112 WEST 6TH AVE
VANCOUVER, BC Canada
V1Y 2E2
Phone: (604) 734-2866
Fax:
Cell:
Email: j.turner@atomiccartoons.com

Received Date	Asgn No	Asgn Officer Type	Stat	Closed Date	Resl Typ
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*** CLOSED ASSIGNMENT EMPLOYEES ONLY ***

2014/03/16	s.22	CO Campbell, Linda	CLSD	2014/06/17	01
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110-563
ER
EE s.22
Assign s.22

Office Copy

Date of complaint submission:
March 16, 2014

Confirmation # 1068410KAT

I am within one month of the six-month time limit for filing an employment standards complaint. If I do not contact the Employment Standards Branch within 30 days to confirm I have used the self-help kit, the Director of Employment Standards will consider my complaint withdrawn. I am aware that my complaint will not be reviewed during this time.

Employer Information		
Name of Employer: Atomic Cartoons (Rocket Monkeys 2) Inc		
Mailing Address of employer: 2nd Floor - 112 West 6th Avenue	City/town, Province, Country: Vancouver, BC, Canada	Postal Code: V1Y 2E2
Telephone Number: 604-734-2866	Fax Number:	Type of business: Animation Studio
Email Address: j.turner@atomiccartoons.com		
Name of supervisor: s.22	Name and home phone number of owner: ()	
Address of place where you worked if different from above		
Street Address: YetiFarm, Suite 303, 1441 Ellis Street	City/town, Province, Country: Kelowna, BC, Canada	Postal Code: V1Y 2A3
Is your employer bankrupt or in receivership? No		
Employers' bank:	Employers bank branch:	
Is your employer still in business? Yes	When did your employer go out of business?	

Information About You			
Your Last Name: s.22	Your first or given name: s.22	Middle Initial(s):	SIN: s.22
Mailing (street) Address: s.22	City/town, Province, Country:		Postal Code:
Your home phone number: s.22	Message Number:	Fax Number:	
Date of Birth: s.22	Email Address:		

Are you in BC under a foreign worker program?

s.22

Are you covered by a collective agreement (union contract):

s.22

Union's Name:

Union Rep's Name:

Union Rep's Phone Number:

Your work history with this employer

Your job title:

s.22

Date you started work for this employer:

s.22

Last day you worked for this employer:

s.22

Your rate of pay:

s.22

Employment status:

s.22

How often are you paid?

s.22

Are your hours of work regular?

s.22

Hours worked per day:

Number of days worked per week:

Total Hours per week:

Do you have a record of the hours worked for this employer:

Work history continued. What do you believe you are owed?

	From date	To date	Estimated amounts
<input type="checkbox"/> Regular wages	s.22		
<input type="checkbox"/> Overtime			\$0
<input type="checkbox"/> Annual vacation pay			\$0
<input type="checkbox"/> Statutory holiday pay			\$0
<input type="checkbox"/> Deductions from wage	Specify:		\$0
<input type="checkbox"/> NSF Cheques			\$0
<input type="checkbox"/> Pregnancy/Parental or other leave			\$0
<input type="checkbox"/> Compensation for length of service (termination pay)			\$0
<input type="checkbox"/> Other	Specify: undue expenses		s.22
Estimated Total you are owed:			

Details of your complaint

s.22

Page 125 to/à Page 126

Withheld pursuant to/removed as

s.3

Apr. 15 - TT EE

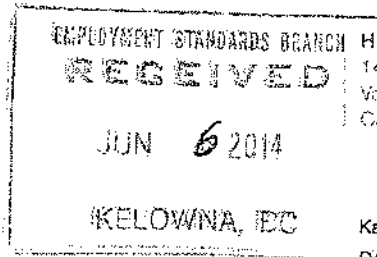
- has a lawyer suing them & HR complaint,
are negotiating. Will have lawyer
call me.

DATE	EE/ER/C	TIME start/end	NOTES
May 14	TI	ee	- wants to talk to Lawyer first, will C/B
May 28	TI	er	- Andrea Rempel - HR person they said they would pay for training but ^{s.22} would have to sign a release and ^{s.22} wouldn't agree to that. - The release was so that no further action would be taken, however ^{s.22} is initiating a human rights complaint but would not give me any more information than that. Rasey Krenn - Council - 604-891-2241 KKrenn@harrisco.com - agreed to pay for training
May 30			Emailed ^{s.22} as ^{s.22} phone doesn't seem to be working
June 3	TI	ee	- had left email, no response, tried to call but can't leave msg because it is not set up to take messages. Emailed again

Page 129 to/à Page 131

Withheld pursuant to/removed as

s.22



Harris & Company LLP
14th Floor, 550 Burrard Street
Vancouver, BC
Canada V6C 2B5

T/ 604 684 6638
F/ 604 684 6632
harrisco.com
info@harrisco.com

June 4, 2014

Kacey A. Krenn
D/ 604 891 2241

By Courier

kkrenn@harrisco.com
Our file 008778.002

Workplace Law

Employment Standards Branch
102 – 1690 Powick Road
Kelowna, BC V1X 7G5

Attention: Linda Campbell

Dear Sirs and Mesdames:

Re: Atomic Cartoons Inc. –and: ^{s.22}

We are writing further to our previous correspondence and discussions relating to the above-noted Complaint, filed March 16, 2014 (the "Complaint"). Please find enclosed a cheque to ^{s.22} in the amount of ^{s.22}, less deductions, in full and final settlement of the Complaint. We are providing this cheque to you on the understanding that you will provide the cheque to ^{s.22} and then forward to us the signed Release of Payment and Termination of Complaint form.

Yours very truly,
Harris & Company LLP

Per:

Kacey A. Krenn

KAK/sem

Enclosure

cc Boughton Law Corporation, Attn: Elizabeth Reid (by email)
Client

GENERAL/006778.002/1425949 1



Receipt of Payment and Termination of Complaint

File #178565
Assignment: s.22
Officer 249

With respect to my complaint filed with the Employment Standards Branch on March 16, 2014, against Atomic Cartoons(Rocket Monkeys 2) Inc.,

I, (COMPLAINANT'S NAME) s.22 _____

hereby acknowledge receipt of:

☐ CASH ☒ CHEQUE ☐ MONEY ORDER ☐ OTHER (specify) _____

in the amount of: s.22

in settlement of my complaint. I understand that the investigation into my complaint is complete and that no further action will be taken on my behalf under the British Columbia Employment Standards Act.

COMPLAINANT: s.22

Signature: _____

Date: June 6, 2014

WITNESS: Linda Campbell

Signature: 

Address: 102-1690 Powick Rd.

Kelowna, B.C. V1X 7G5

Ministry of Jobs, Tourism
and Skills Training and
Minister Responsible for
Labour

Employment Standards
Branch

Mailing Address:
102-1690 Powick Rd
Kelowna, B.C. V1X 7G5

Telephone: (250) 861-7303
Facsimile: (250) 861-7428

Campbell, Linda LBR:EX

From: s.22
Sent: Friday, June 6, 2014 6:28 AM
To: Campbell, Linda LBR:EX
Subject: RE: Employment Standards
Attachments: 20140604121753 (signed).pdf

Hi Linda,

please find attached my signed receipt.

Have a nice day!

s.22

From: Campbell, Linda LBR:EX [<mailto:Linda.Campbell@gov.bc.ca>]
Sent: June 04, 2014 18:54
To: 's.22
Subject: FW: Employment Standards

Hello s.22 just to let you know the cheque has already been issued. So as soon as I can get the signed copy back, I can forward the cheque to Victoria for processing.

From: Campbell, Linda LBR:EX
Sent: Wednesday, June 4, 2014 12:21 PM
To: s.22
Subject: Employment Standards

Dear s.22

Please sign and return to me as soon as possible. If you can scan and email or fax at 250-861-7428. Thank you.

Sincerely,

Linda Campbell
250-861-7303

Campbell, Linda LBR:EX

From: Campbell, Linda LBR:EX
Sent: Friday, June 6, 2014 10:05 AM
To: 'Kacey A. Krenn'
Subject: Employment Standards
Attachments: 20140604121753 (signed).pdf

Dear Kacey,

For your records. Please send cheque to 102-1690 Powick Rd., Kelowna V1X 7G5. Thank you for your assistance in this matter.

Sincerely,

Linda Campbell
Employment Standards Branch
250-861-7303

Campbell, Linda LBR:EX

From: Kacey A. Krenn [KKrenn@harrisco.com]
Sent: Wednesday, June 4, 2014 3:40 PM
To: Campbell, Linda LBR:EX
Cc: Andrea Rempel
Subject: RE: Employment Standards [HARRIS-CO.FID228770]

Thank you Linda. I have now received the cheque, and it will be sent to you today.

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com



Harris & Company ^{LLP}
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
www.harrisllp.com

From: Campbell, Linda LBR:EX [<mailto:Linda.Campbell@gov.bc.ca>]
Sent: Wednesday, June 04, 2014 12:25 PM
To: Kacey A. Krenn
Subject: Employment Standards

Dear Kacey,

Once I receive a signed copy, I will forward to you. In order to speed things along, please send cheque to our office at 102-1690 Powick Rd., Kelowna, B.C., V1X 7G5. I will not release cheque until I get the termination letter signed. Thank you.

Sincerely,

Linda Campbell

Campbell, Linda LBR:EX

From: Campbell, Linda LBR:EX
Sent: Wednesday, June 4, 2014 12:25 PM
To: 'Kacey A. Krenn'
Subject: Employment Standards
Attachments: 20140604121753.pdf

Dear Kacey,

Once I receive a signed copy, I will forward to you. In order to speed things along, please send cheque to our office at 102-1690 Powick Rd., Kelowna, B.C., V1X 7G5. I will not release cheque until I get the termination letter signed. Thank you.

Sincerely,

Linda Campbell

Campbell, Linda LBR:EX

From: Campbell, Linda LBR:EX
Sent: Wednesday, June 4, 2014 12:21 PM
To: s.22
Subject: Employment Standards
Attachments: 20140604121753.pdf

Dear s.22

Please sign and return to me as soon as possible. If you can scan and email or fax at 250-861-7428. Thank you.

Sincerely,

Linda Campbell
250-861-7303

Campbell, Linda LBR:EX

From: Mail Delivery Subsystem [postmaster@gems9.gov.bc.ca]
To: s.22
Sent: Wednesday, June 4, 2014 12:21 PM
Subject: Relayed: Employment Standards

Delivery to these recipients or distribution lists is complete, but delivery notification was not sent by the destination:

s.22

Subject: Employment Standards

Campbell, Linda LBR:EX

From: Campbell, Linda LBR:EX
Sent: Tuesday, June 3, 2014 4:09 PM
To: 'Kacey A. Krenn'
Subject: RE: Employment Standards [HARRIS-CO.FID228770]

Yes, as soon as I can get the employee's signature, but I will need to know the amount of the cheque after deductions please.

From: Kacey A. Krenn [<mailto:KKrenn@harrisco.com>]
Sent: Tuesday, June 3, 2014 3:50 PM
To: Campbell, Linda LBR:EX
Cc: Andrea Rempel
Subject: RE: Employment Standards [HARRIS-CO.FID228770]

Thank you Linda. Could you please forward me a copy of the termination and release form that you are referencing? Much appreciated.

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com

HARRIS

Harris & Company ^{LLP}
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
<http://www.harrisandcompany.com>

www.harrisandcompany.com

From: Campbell, Linda LBR:EX [<mailto:Linda.Campbell@gov.bc.ca>]
Sent: Tuesday, June 03, 2014 3:22 PM
To: Kacey A. Krenn
Subject: Employment Standards

In the matter of s.22 s.2 has accepted the s.22 less deductions. I will have s.2 sign a termination a release form once you advise me what the amount less deductions is equal to. I will forward it to s.22 for signature and send to you for your records. If you could mail the cheque to 102-1690 Powick Rd., Kelowna, B.C., V1X 7G5, we will make sure that it gets to s.22 Thank you for your attention in the matter.

Sincerely,

Campbell, Linda LBR:EX

From: Campbell, Linda LBR:EX
Sent: Tuesday, June 3, 2014 3:22 PM
To: 'kkrenn@harrisco.com'
Subject: Employment Standards

In the matter of s.22 , s.2 has accepted the s.22 less deductions. I will have s.2 sign a termination a release form once you advise me what the amount less deductions is equal to. I will forward it to s.2 for signature and send to you for your records. If you could mail the cheque to 102-1690 Powick Rd., Kelowna, B.C., V1X 7G5, we will make sure that it gets to s.22 Thank you for your attention in the matter.

Sincerely,

Linda Campbell
Employment Standards Branch
250-861-7303

Campbell, Linda LBR:EX

From: Mail Delivery Subsystem [postmaster@gems9.gov.bc.ca]
To: kkrenn@harrisco.com
Sent: Tuesday, June 3, 2014 3:22 PM
Subject: Relayed: Employment Standards

Delivery to these recipients or distribution lists is complete, but delivery notification was not sent by the destination:

kkrenn@harrisco.com

Subject: Employment Standards

Campbell, Linda LBR:EX

From: Campbell, Linda LBR:EX
Sent: Tuesday, June 3, 2014 3:27 PM
To: s.22
Subject: RE: Employment Standards

I will draw up the termination and release form for you to sign. Once it is signed then I will forward a copy to the employer so that they can make a cheque out and send to our office in Kelowna. I will have to send it to our trust department in Victoria and once it clears the bank the government will issue you a cheque. In this way, you do not have to worry about any bounced cheques. I hope you are able to print off the form and sign it and you can either email it back to me or fax it to me at 250-861-7428. Thank you Lisa.

From: s.22
Sent: Tuesday, June 3, 2014 3:11 PM
To: Campbell, Linda LBR:EX
Subject: RE: Employment Standards

Hi Linda,

Thank you for the information. Even though I do not agree with Atomic's judgment about the other expenses (they asked me to arrive in Kelowna as early as September to start training) I will accept their regular wages of \$22 (less deductions) s.22. I would appreciate if the check was mailed to my temporary address at s.22.
s.22
1. Can you also mail the release form for me to sign to the same address.

Thank you kindly,
s.22

From: Campbell, Linda LBR:EX [<mailto:Linda.Campbell@gov.bc.ca>]
Sent: May 30, 2014 14:45
To: s.22
Subject: Employment Standards

Dear s.22

I spoke with counsel for Atomic Cartoons and they have agreed to pay for your regular wages of \$22 (less deductions) but will not pay for the other expenses as they said you choice to come to Kelowna when you did. If you are willing to accept this amount please let me know. Do you want them to send the cheque to our Kelowna office so that you can pick it up? You would also have to sign a termination and release form with the Branch, which is just for the wages, meaning you can't try to collect that money from small claims etc. Thank you.

Sincerely,

Linda Campbell
Employment Standards Branch
250-861-7303

Campbell, Linda LBR:EX

From: Kacey A. Krenn [KKrenn@harrisco.com]
Sent: Tuesday, June 3, 2014 4:47 PM
To: Campbell, Linda LBR:EX
Subject: RE: Employment Standards [HARRIS-CO.FID228770]

Hi Linda,

The total, after deductions, is \$^{s.22} . I was hoping you could send me the blank termination and release, as I'm curious about the terms.

Regards,
Kacey

From: Campbell, Linda LBR:EX [mailto:Linda.Campbell@gov.bc.ca]
Sent: Tuesday, June 03, 2014 4:09 PM
To: Kacey A. Krenn
Subject: RE: Employment Standards [HARRIS-CO.FID228770]

Yes, as soon as I can get the employee's signature, but I will need to know the amount of the cheque after deductions please.

From: Kacey A. Krenn [mailto:KKrenn@harrisco.com]
Sent: Tuesday, June 3, 2014 3:50 PM
To: Campbell, Linda LBR:EX
Cc: Andrea Rempel
Subject: RE: Employment Standards [HARRIS-CO.FID228770]

Thank you Linda. Could you please forward me a copy of the termination and release form that you are referencing? Much appreciated.

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com



Harris & Company ^{LLP}
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
info@harrisco.com

A HARRIS & COMPANY LLP

From: Campbell, Linda LBR:EX [<mailto:Linda.Campbell@gov.bc.ca>]

Sent: Tuesday, June 03, 2014 3:22 PM

To: Kacey A. Krenn

Subject: Employment Standards

In the matter of s.22, s.2 has accepted the s.22 less deductions. I will have s.2 sign a termination a release form once you advise me what the amount less deductions is equal to. I will forward it to s.2 for signature and send to you for your records. If you could mail the cheque to 102-1690 Powick Rd., Kelowna, B.C., V1X 7G5, we will make sure that it gets to s.22. Thank you for your attention in the matter.

Sincerely,

Linda Campbell
Employment Standards Branch
250-861-7303

Campbell, Linda LBR:EX

From: Campbell, Linda LBR:EX
Sent: Tuesday, June 3, 2014 11:23 AM
To: s.22
Subject: Employment Standards

Dear s.22

I emailed you last Friday May 30, but have not heard back from you as yet. I have tried to call you but your telephone will not accept messages because you have not initiated that service. Can you please respond by June 17, 2014. Failure to do so will result in your file being closed and no further action will be taken by the Branch. Thank you.

Sincerely,

Linda Campbell
Employment Standards Branch
250-861-7303

Campbell, Linda LBR:EX

From: Mail Delivery Subsystem [postmaster@gems9.gov.bc.ca]
To: s.22
Sent: Tuesday, June 3, 2014 11:23 AM
Subject: Relayed: Employment Standards

Delivery to these recipients or distribution lists is complete, but delivery notification was not sent by the destination:

s.22

Subject: Employment Standards

Campbell, Linda LBR:EX

From: Campbell, Linda LBR:EX
Sent: Friday, May 30, 2014 11:45 AM
To: s.22
Subject: Employment Standards

Dear s.22

I spoke with counsel for Atomic Cartoons and they have agreed to pay for your regular wages of s.22 (less deductions) but will not pay for the other expenses as they said you choice to come to Kelowna when you did. If you are willing to accept this amount please let me know. Do you want them to send the cheque to our Kelowna office so that you can pick it up? You would also have to sign a termination and release form with the Branch, which is just for the wages, meaning you can't try to collect that money from small claims etc. Thank you.

Sincerely,

Linda Campbell
Employment Standards Branch
250-861-7303

Campbell, Linda LBR:EX

From: Kacey A. Krenn [KKrenn@harrisco.com]
Sent: Thursday, May 29, 2014 9:36 AM
To: Campbell, Linda LBR:EX
Subject: RE: Employment Standards [HARRIS-CO.FID204084]

Thank you Linda.

Regards,

Kacey A. Krenn
D/ 604 891 2241
KKrenn@harrisco.com

HARRIS

Harris & Company LLP
14th Floor, 550 Burrard St.
Vancouver, BC V6C 2B5

T/ 604 684 6633
F/ 604 684 6632
www.harrisandcompany.com

From: Campbell, Linda LBR:EX [<mailto:Linda.Campbell@gov.bc.ca>]
Sent: Thursday, May 29, 2014 9:26 AM
To: Kacey A. Krenn
Subject: Employment Standards

Please find attached complaint from^{s.22} . Thank you.

Sincerely,

Linda Campbell
Employment Standards
102-1690 Powick Rd., Kelowna
250-861-7303

Campbell, Linda LBR:EX

From: Campbell, Linda LBR:EX
Sent: Thursday, May 29, 2014 9:26 AM
To: 'kkrenn@harrisco.com'
Subject: Employment Standards
Attachments: 20140529092201.pdf

Please find attached complaint from s.22 Thank you.

Sincerely,

Linda Campbell
Employment Standards
102-1690 Powick Rd., Kelowna
250-861-7303

Campbell, Linda LBR:EX

From: Mail Delivery Subsystem [postmaster@gems9.gov.bc.ca]
To: kkrenn@harrisco.com
Sent: Thursday, May 29, 2014 9:35 AM
Subject: Relayed: Employment Standards

Delivery to these recipients or distribution lists is complete, but delivery notification was not sent by the destination:

kkrenn@harrisco.com

Subject: Employment Standards