

Rioux, Luke MUNI:EX

From: Sylvia Brow <SBrow@bcfed.ca>
Sent: February 25, 2021 4:26 PM
To: Smith, Krystal LBR:EX; Moraes, Josh LBR:EX; Hold - 211216 - Scott, Samantha CITZ:EX
Cc: Chuka Ejeckam; Denise Moffatt
Subject: Precarious Work Resources

[EXTERNAL] This email came from an external source. Only open attachments or links that you are expecting from a known sender.

Hello Krystal, Josh, and Sam,

Thank you for your time this afternoon. I've attached a document with links to research conducted on precarious work in Ontario, as well as additional research on issues related to precarious work emerging in the UK, the US, Japan, and Australia. I've also attached our recent paper on the potential impact of automation on labour in BC, and a recent Employment Standards decision regarding high technology workers. I've also included an Employment Standards Coalition report released a few years ago.

As well, here is a link to the recent federal labour code changes, for ease of access;

<https://www.canada.ca/en/employment-social-development/programs/laws-regulations/labour/current-future-legislative.html>

A recent UK Supreme Court ruling classifies all gig workers as employees. Notably, this decision draws upon labour principles enshrined in EU legislation; <https://www.aljazeera.com/opinions/2021/2/25/the-uk-supreme-courts-uber-decision-is-a-victory-for-all-workers>

Platform-based precarious work has also enabled hyper-bifurcated labour arrangements that pay far below minimum wage; <https://www.theatlantic.com/business/archive/2018/01/amazon-mechanical-turk/551192/>

As well, the latest developments in California; <https://www.theguardian.com/us-news/2021/feb/18/uber-lyft-doordash-prop-22-drivers-california>

Finally, I've also attached the reverse onus legislation from Ontario. Here is the specific language;

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Thank you, and be well,

CHUKA EJECKAM

Director, Research & Policy

Sent by:



Determination

Sent by Registered Mail

ER # 426308

December 6, 2018

Cinesite Vancouver Inc.,
formerly known as Nitrogen Studios Canada Inc.
708 Powell St.
Vancouver, BC V6A 1H6

**Director of Employment Standards – and – Cinesite Vancouver Inc., formerly
known as Nitrogen Studios Canada Inc.**

I have determined that Cinesite Vancouver Inc., formerly known as Nitrogen Studios Canada Inc. (the "Employer") contravened section 40 of the *Employment Standards Act* (the "Act") by failing to pay its employees overtime. Pursuant to section 79 of the Act, I require the Employer to:

1. Within 30 days of the date of this determination, at its expense, employ a payroll service approved of by the Director to calculate all wages, in accordance with the Act, payable to its employees, and
2. Within 60 days of the date of this determination, pay its employees all wages that the payroll service determines are payable to them and provide proof of payment of wages, including copies of wage statements that comply with section 27 of the Act, to the Director.

Section 98(1) of the Act requires that the Director impose a mandatory administrative penalty on the Employer if the Director imposes a requirement under section 79 of the Act. Section 29(1) of the Regulation sets out the penalty amounts.

Contravention	Work Location	Date of Contravention	Occurrence (within 3 years)	Amount
Section 40 of the Act	708 Powell St. Vancouver BC	April 1, 2016	First	\$ 500.00

B. Total Administrative Penalty

\$500.00

I order the Employer to cease contravening the section of the Act determined to have

Ministry of Labour

Employment Standards
Branch

Mailing Address:

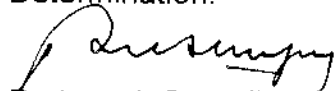
PO Box 9571 Stn Prov Govt.
Suite 200 - 880 Douglas St.
Victoria, B.C. V8W 9K1

Telephone: (250) 952-0399
Facsimile: (250) 952-0476

been contravened and to comply with all of the requirements of the Act and Regulation. I order Cinesite Vancouver Inc., formerly known as Nitrogen Studios Canada Inc. to pay **\$500.00**. Please send a certified cheque or money order payable to the Director of Employment Standards, P.O. Box 9570, Stn Prov Govt, Victoria, B.C., V8W 9K1, within five working days. The administrative penalty is not subject to statutory deductions.

Under the Act, directors and officers who authorize, permit, or acquiesce in the Employer's contravention of the Act are also liable for the total administrative penalty amount.

In accordance with section 101 of the Act, the Director may publish information relating to contraventions of the Act or Regulation including the identity of persons named in a Determination.


Rodney J. Strandberg
Delegate of the Director of
Employment Standards

cc: Antony Hunt, Rodger Director
708 Powell St.
Vancouver, BC V6A 1H6

Duncan Rodger, Director
708 Powell St.
Vancouver, BC V6A 1H6

c/o Registered and Records Office
20th Floor, 250 Howe St.
Vancouver, BC V6C 3R8

Nicole Stinn, CEO and President
708 Powell St.
Vancouver, BC V6A 1H6

Barry Dong, Counsel for the Employer

The Complainant

Appeal Information

Should you wish to appeal this Determination, your appeal must be delivered to the **Employment Standards Tribunal** by 4:30 pm on January 14, 2019.

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

NOTICE TO DIRECTORS / OFFICERS

If a director/officer of the company that is the subject of the attached Determination disputes any of the findings contained in the Determination, he or she should ensure that the company files an appeal within the appeal period noted in the Determination.

If the Determination against the company is not appealed, or is appealed and confirmed by the Employment Standards Tribunal, the Employment Standards Branch will commence collection proceedings if voluntary payment is not made. If the Employment Standards Branch has difficulty collecting against the company, proceedings will be commenced against the directors/officers of the company for the amount of their personal liability as set out in the Act. A director or officer may also be held liable for a penalty imposed on the company if he or she authorized, permitted, or acquiesced in the company's contravention.

If a Determination is issued against a director/officer of a company, the director/officer may not argue the merits of the Determination against the company by appealing the director/officer Determination.

There are only three grounds on which a Determination made against a director/officer may be appealed:

- 1) That the person appealing was not a director/officer of the company at the time wages were earned or should have been paid;
- 2) That the calculation of the director/officer's personal liability is incorrect; and/or,
- 3) That the director/officer should not be liable for the penalty, where a penalty has been imposed, on the grounds that he or she did not authorize, permit or acquiesce in the company's contravention.

The Employment Standards Branch obtains information about directors and officers from the Registrar of Companies through BC OnLine. If information regarding a director or officer's standing with a company is not current with the Registrar of Companies it is his or her responsibility to provide updated information to the Employment Standards Branch.

EMPLOYMENT STANDARDS ACT **(excerpts)**

Section 96: Corporate officer's liability for unpaid wages

- 96 (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.
- (2) Despite subsection (1), a person who was a director or an officer of a corporation is not personally liable for

- (a) any liability to an employee under section 63, termination pay or money payable in respect of individual or group terminations, if the corporation is in receivership,
 - (b) any liability to an employee for wages, if the corporation is subject to action under section 427 of the Bank Act (Canada) or to a proceeding under an insolvency Act,
 - (c) vacation pay that becomes payable after the director or officer ceases to hold office, or
 - (d) money that remains in an employee's time bank after the director or officer ceases to hold office.
- (2.1) If a corporation that is a talent agency has received wages from an employer on behalf of an employee and fails to pay those wages, less any fees allowed under the regulations, to the employee within the time required under the regulations,
- (a) a person who was a director or officer of the corporation at the time the wages were received is personally liable for the amount received by the corporation from the employer, less any fees allowed under the regulations, and
 - (b) that amount is considered for the purposes of subsection (3) to be unpaid wages.
- (3) This Act applies to the recovery of the unpaid wages from a person liable for them under subsection (1) or (2.1).

Section 98: Monetary penalties

- 98 (1) In accordance with the regulations, a person in respect of whom the director makes a determination and imposes a requirement under section 79 is subject to a monetary penalty prescribed by the regulations.
- (1.1) A penalty imposed under this section is in addition to and not instead of any requirement imposed under section 79.
- (1.2) A determination made by the director under section 79 must include a statement of the applicable penalty.
- (2) If a corporation contravenes a requirement of this Act or the regulations, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the contravention is also liable to the penalty.
- (3) A person on whom a penalty is imposed under this section must pay the penalty whether or not the person
- (a) has been convicted of an offence under this Act or the regulations, or
 - (b) is also liable to pay a fine for an offence under section 125.
- (4) A penalty imposed under this Part is a debt due to the government and may be collected by the director in the same manner as wages.

Director of Employment Standards

Reasons for the Determination

ER # 426308

Cinesite Vancouver Inc.,
formerly known as Nitrogen Studios Canada Inc.

- and -

Third Party Complainant

Delegate: Rodney J. Strandberg
Delegate of the Director
of Employment Standards

Date of Decision: December 6, 2018

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AUTOMATION AND LABOUR IN BRITISH COLUMBIA



FINAL REPORT
FEBRUARY 2020

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Workers' Stories of Exploitation & Abuse: Why BC Employment Standards Need to Change

SUMMARY REPORT

BC Employment Standards Coalition
May 2017

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