

An appeal

- by -

Lisa Reid  
("Reid")

- of a Determination issued by -

The Director of Employment Standards

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

**TRIBUNAL MEMBER:** Kenneth Wm. Thornicroft

**FILE NO.:** 2017A/130

**DATE OF DECISION:** March 19, 2018

## DECISION

### SUBMISSIONS

Chantal Webb

on behalf of the Director of Employment Standards

### INTRODUCTION AND BACKGROUND FACTS

1. This is an appeal filed by Lisa Reid (“Reid”) under subsection 112(1) of the *Employment Standards Act* (the “*ESA*”). On January 23, 2018, I issued an interim decision in this matter (see *Reid*, 2018 BCEST 8). By way of that interim order, I referred certain matters back to the Director for further investigation. That investigation has now been completed, a report has been prepared and it has been provided to the parties for their response. I am now issuing my final reasons and order.
2. On September 27, 2017, Chantal Webb, a delegate of the Director of Employment Standards (the “delegate”), issued two separate determinations under section 79 of the *ESA* regarding the unpaid wage claims of Hayan Seo and Lindsay R. Caird (the “complainants”), former employees of Elane’s Little Stars Childcare Association (“Little Stars”). The delegate determined that the complainants were jointly owed \$8,303.41 on account of unpaid wages and section 88 interest. This latter amount was reflected in a determination issued against Little Stars together with a further \$2,000 in administrative penalties (see section 98 of the *ESA*). I shall refer to this determination, in the total amount of \$10,303.41, as the “Corporate Determination”.
3. The complainants’ wages were earned and/or should have been paid during the period from February 16 to May 8, 2017. The delegate, noting BC Corporate Registry records indicated that Ms. Reid was a director of Little Stars when the complainants’ wages were earned or should have been paid, and further noting that Little Stars “is out of business”, issued a second determination, also on September 27, 2017, against Ms. Reid under subsection 96(1) of the *ESA*: “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”.
4. This latter determination, which I shall identify as the “Section 96 Determination”, is the subject of the present appeal. The Section 96 Determination is in the total amount of \$8,303.41 and does not include any administrative penalties as the delegate found insufficient evidence that Ms. Reid “authorized, permitted or acquiesced in the contravention(s) of [Little Stars]” (Reasons for the Section 96 Determination, page R3).
5. Ms. Reid appealed the Section 96 Determination on the basis that she was not a director of Little Stars when the complainants’ unpaid wages were earned or became payable. In my interim decision, I rejected that assertion as lacking any legal or factual merit.
6. Ms. Reid also advanced an alternative ground of appeal, namely, that the delegate failed to observe the principles of natural justice (see subsection 112(1)(b) of the *ESA*). The Section 96 Determination was not issued following a complaint hearing but, rather, issued concurrently with the Corporate Determination, presumably following a section 76 investigation into the two complaints. Ms. Reid’s counsel says that

Ms. Reid “was not provided with the opportunity to adduce evidence during the course of the Investigation, or the opportunity to dispute her status as a former director of [Little Stars]”.

7. In my interim decision, I found that there was some presumptive merit to Ms. Reid’s “natural justice” ground of appeal and, in particular, that there has been a failure to comply with section 77 of the *ESA*: “If an investigation is conducted, the director must make reasonable efforts to give a person under investigation an opportunity to respond”. Accordingly, and pursuant to subsection 114(2(a) of the *ESA*, I issued the following order:

Pursuant to subsection 114(2) of the *ESA*, this matter is referred back to the Director for further investigation in accordance with these reasons.

The Director shall complete this further investigation and report, in writing, to the Tribunal by no later than 90 days from the date of these reasons.

Upon receipt of the Director’s report, and after hearing from the parties, I will issue my final reasons for decision, and a final order, with respect to this appeal.

## **THE REFERRAL BACK REPORT & THE PARTIES’ REPLIES**

8. The delegate filed her report with the Tribunal on February 19, 2018, and by letter dated February 20, 2018, the Tribunal provided a copy of the report to, and sought submissions from, Ms. Reid and the complainants. However, none of the parties filed a submission in response to the delegate’s report.
9. The delegate’s position, as set out in her report, is that the Section 96 Determination should be cancelled but not on the basis of any natural justice failing. Indeed, the delegate noted in her report that, given her conclusion regarding Ms. Reid’s section 96 liability, it was not necessary to address the natural justice concerns I identified in my interim decision.
10. The delegate noted that the evidence showed that Ms. Reid did not receive any remuneration for serving as a director of Little Stars and, further, that the latter firm is a non-profit charitable society. In section 1 of the *Employment Standards Regulation* (the “*ESR*”), “charity” is defined as follows:

“**charity**” means

- (a) a charity as defined in the *Income Tax Act* (Canada), or
- (b) a society as defined in the *Societies Act*;

Section 45 of the *ESR* states:

Section 96 of the Act does not apply to a director or officer of a charity who receives reasonable out-of-pocket expenses but no other remuneration for services performed for the charity.

11. The delegate, in her report, made the following submission: “...by operation of s. 45 of the Regulation, Ms. Reid is not liable as director and the decision should be cancelled...The authority to cancel the determination now rests with the Tribunal, and I request that the Member exercise his authority to cancel the determination.”

12. As noted above, although all parties were provided with a copy of the delegate's report and were invited to file a written response, none did so. Thus, no party has provided any reason why the Section 96 Determination should not be cancelled and, in my view, it would be appropriate to issue a cancellation order.

**ORDER**

13. Pursuant to subsection 115(1)(a) of the *ESA*, the Section 96 Determination is cancelled.

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**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**