

An Application for Reconsideration

- by -

Xiang Ma, a Director of C1Stop Canada Inc.
("Ms. Ma")

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

pursuant to section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

PANEL: David B. Stevenson

FILE No.: 2019/166

DATE OF DECISION: November 20, 2019

DECISION

SUBMISSIONS

Xiang Ma on her own behalf

OVERVIEW

1. Xiang Ma (“Ms. Ma”), seeks reconsideration of decision of the Tribunal, 2019 BCEST 83 (the “original decision”), dated August 19, 2019.
2. The original decision considered an appeal of a determination (the “Determination”) issued by May Lee, a delegate of the Director of Employment Standards (the “Director”), on April 16, 2019, which found Ms. Ma was a director of C1Stop Canada Inc. (“C1Stop”) at the time wages of an employee of C1Stop were earned or should have been paid and under section 96 of the *ESA* was personally liable to the employee for wages in the amount of \$3,741.18.
3. The appeal was filed by Ms. Ma on the ground that new evidence had become available that was not available when the Determination was being made.
4. The Tribunal Member making the original decision dismissed the appeal under section 114 of the *Employment Standards Act* (the “*ESA*”), finding the new evidence advanced did not meet the conditions for accepting and considering it, that it could not, in any event, affect the finding in the Determination that Ms. Ma was a director of C1Stop and was liable for wages under section 96 of the *ESA*, and that in all other respects the Director made no reviewable error in making that finding.
5. A Reconsideration Application Form was delivered to the Tribunal on September 16, 2019. It contained a request for an extension of the statutory time period to October 18, 2019.
6. On October 17, 2019, the Tribunal received a submission from Ms. Ma explaining the reasons for seeking reconsideration.

ISSUE

7. There are two issues being addressed in this decision: first, whether the Tribunal should extend the time period for filing the application for reconsideration; and second, if the first request is granted, whether reconsideration is warranted. The two issues are related in the sense that the absence of a case that warrants reconsideration will operate against an extension of the time period.
8. In respect of the second issue, the Tribunal has discretionary authority to allow an application for reconsideration and in doing so may, as suggested above, assess the merits of the application before imposing the time and expense of responding on the other parties.

ARGUMENT

9. The submission on the application is not so much an argument relating to the correctness of the original decision as it is a request to be relieved of the liability imposed upon her in the Determination.
10. In respect of the request by Ms. Ma to extend the time period for filing for reconsideration, she asks for an extension because she was busy with work and looking for legal advice.
11. In respect of the substantive basis for the reconsideration request, Ms. Ma does not add anything to the points she made to the Director and to the Tribunal in her appeal: that she was naïve and misled by Harry Piao, who was the owner and sole director of C1Stop when she became associated with it; that she is a single mother struggling to get by, who also lost wages when C1Stop ceased operating; and she doesn't believe it is the intention of the *ESA* to punish people like her.

ANALYSIS

12. I commence my analysis of this application with a review of the statutory provisions and policy considerations that attend an application for reconsideration generally. As a result of amendments to the *ESA* made in the *Administrative Tribunals Statutes Amendment Act, 2015*, parts of which came into effect on May 14, 2015, section 116 reads:

- 116** (1) *On an application under subsection (2) or on its own motion, the tribunal may*
- (a) *reconsider any order or decision of the tribunal, or*
 - (b) *confirm, vary or cancel the order or decision or refer the matter back to the original panel or another panel.*
- (2) *The director or a person served with an order or a decision of the tribunal may make an application under this section.*
- (2.1) *The application may not be made more than 30 days after the date of the order or decision.*
 - (2.2) *The tribunal may not reconsider an order or decision on the tribunal's own motion more than 30 days after the date of the decision or order.*
- (3) *An application may be made only once with respect to the same order or decision.*
- (4) *The director and a person served with an order or a decision of the tribunal are parties to a reconsideration of the order or decision.*

13. Except for the inclusion of statutory time limits for filing an application for reconsideration and for the Tribunal reconsidering its own orders and decisions, the amendments have not altered the Tribunal's approach to reconsiderations.
14. In respect of the now-imposed statutory time limits for reconsideration applications, the Tribunal has decided the approach to extensions of the reconsideration time period will be consistent with the approach taken to extensions of time in appeals. In *Serendipity Winery Ltd.*, BC EST # RD108/15, the Tribunal stated:

I see no reason to deviate from the criteria listed above [in *Re Niemisto*, BC EST # D099/96] when considering requests for an extension of the time period for filing reconsideration applications. However, the question of whether there is a strong *prima facie* case must take into account that the Tribunal's discretionary authority to reconsider under section 116 of the *Act* is exercised with restraint – see *The Director of Employment Standards (Re Giovanni (John) and Carmen Valoroso)*, BC EST # RD046/01 – and must remain consistent with the approach taken by the Tribunal in deciding whether reconsideration is warranted. (at para. 21)

15. In respect to deciding whether reconsideration is warranted, the Tribunal has developed and applied a principled approach to the exercise of its discretion. The rationale for this approach is grounded in the language and purposes of the *ESA*. One of the purposes of the *ESA*, found in section 2(d), is “to provide fair and efficient procedures for resolving disputes over the application and interpretation” of its provisions. Another stated purpose, found in section 2(b), is to “promote the fair treatment of employees and employers”. The approach is fully described in *Milan Holdings Inc.*, BC EST # D313/98 (Reconsideration of BC EST # D559/97). In *The Director of Employment Standards (Re Giovanni (John) and Carmen Valoroso)*, *supra*, the Tribunal explained the reasons for its restrained approach:

. . . the *Act* creates a legislative expectation that, in general, one Tribunal hearing will finally and conclusively resolve an employment standards dispute.

There are compelling reasons to exercise the reconsideration power with restraint. One is to preserve the integrity of the process at first instance. Another is to ensure that, in an adjudicative process subject to a strong privative clause and a presumption of regularity, the “winner” not be deprived of the benefit of an adjudicator’s decision without good reason. A third is to avoid the spectre of a Tribunal process skewed in favour of persons with greater resources, who are best able to fund litigation, and whose applications will necessarily create further delay in the final resolution of a dispute.

16. In deciding whether to reconsider, the Tribunal considers such factors as timeliness, the nature of the issue and its importance both to the parties, and the system generally. Undue delay in filing for reconsideration will mitigate against, and likely lead to a denial of, an application. An assessment is also made of the merits of the original decision. The focus of a reconsideration application is, generally, the correctness of the original decision.
17. Applying the above considerations, I am not persuaded there should be an extension of the reconsideration time period in this case. I find the reasons for seeking the extension of time do not satisfy the criteria identified in *Re Niemisto*, *supra*.
18. Even if were to grant an extension of the reconsideration appeal period, I would still reach the conclusion this application does not warrant reconsideration. I am completely satisfied, based on the material before the Tribunal Member in the appeal that there was no error made in the original decision such as to warrant its reconsideration.
19. I find the Determination and the original decision are correct. I make this finding for the same reasons provided by the Director in the Determination and the Tribunal Member in the original decision.
20. There is nothing in this application that calls into question the correctness of either the Determination or the original decision. Both are entirely in accord with the provisions of the *ESA* relating to the personal

liability of persons who are recorded as directors of corporations found liable to employees for wages under the *ESA* and are consistent with how those provisions have been interpreted and applied in cases such as this.

21. On a personal note, I certainly sympathize with the circumstances in which Ms. Ma finds herself, but my obligation here is to apply the provisions of the *ESA*. I am certain I speak for all the persons involved with the file when I say there is no intention to punish Ms. Ma, but simply to do what is required of them by the *ESA*.
22. In sum, the reconsideration is out of time and is denied for that reason. In any event, it has no merit. Applying principles for extending the reconsideration time period found in the *ESA* and consistent with the Tribunal's approach to applications for reconsideration, the request is denied and the application dismissed.

ORDER

23. Pursuant to section 116 of the *ESA*, the original decision, 2019 BCEST 83, is confirmed.

David B. Stevenson
Member
Employment Standards Tribunal