

An appeal

- by -

Peter Tuan Luong  
("Mr. Luong")

- 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)

**PANEL:** Kenneth Wm. Thornicroft

**FILE NO.:** 2018A/102

**DATE OF DECISION:** April 17, 2019

## DECISION

### SUBMISSIONS

Maxwell J. Brunette

counsel for Peter Tuan Luong

Chantal Webb

delegate of the Director of Employment Standards

### INTRODUCTION AND BACKGROUND FACTS

1. On June 19, 2018, Chantal Webb, a delegate (the “delegate”) of the Director of Employment Standards, issued a determination pursuant to section 79 of the *Employment Standards Act* (the “*ESA*”) against Fusionpipe Software Solutions Inc. (“Fusionpipe”). I shall refer to this determination as the “Corporate Determination”.
2. By way of the Corporate Determination, Fusionpipe was ordered to pay the total sum of \$29,355.52 on account of unpaid wages (vacation pay) and section 88 interest due to five former employees (the “Complainants”). In addition, and also by way of the Corporate Determination, the delegate levied two separate \$500 monetary penalties against Fusionpipe (see section 98 of the *ESA*). Thus, the total amount payable under the Corporate Determination is \$30,355.52. Fusionpipe did not appeal the Corporate Determination (the appeal period expired on July 27, 2018) and it now stands as a final order.
3. On September 10, 2018, and in accordance with subsection 96(1) of the *ESA*, the delegate issued a separate determination against the present appellant, Peter Tuan Luong (“Mr. Luong”), given that Mr. Luong was identified in the B.C. Corporate Registry as being a Fusionpipe director. I shall refer to the determination issued against Mr. Luong on September 10, 2018 as the “Section 96 Determination” and it is this determination that is before me on this appeal.
4. By way of the Section 96 Determination, Mr. Luong was ordered to pay the total sum of \$29,588.56 on account of unpaid wages and section 88 interest. This liability is in relation to the unpaid wages owed by Fusionpipe to the Complainants. The delegate held that Mr. Luong “was a director between August 28, 2017 and February 27, 2018, when the Complainants’ wages were earned or should have been paid”, and since the Complainants’ individual unpaid claims all fell below the 2-month threshold set out in subsection 96(1) of the *ESA*, Mr. Luong was personally liable for the full amount of each Complainant’s unpaid wage claim.
5. Mr. Luong appealed the Section 96 Determination on all three available statutory grounds, namely, that the delegate erred in law, failed to observe the principles of natural justice, and on the ground that he had evidence that was not available at the time the Section 96 Determination was issued (see subsections 112(1)(a), (b), and (c) of the *ESA*). Fundamentally, however, Mr. Luong’s position was quite straight forward – he maintained that he was not a Fusionpipe director when the bulk of the Complainants’ unpaid wage claims crystallized.
6. Mr. Luong conceded that he was a Fusionpipe director from May 21, 2010, until December 3, 2015 (when he resigned). Mr. Luong subsequently consented to serve as a Fusionpipe director on January 16, 2018,

but says that he did not formally assume a directorship until January 31, 2018, when he was so appointed by a Board of Director's resolution. The Complainants' unpaid wage claims span the period from August 28, 2017, to February 27, 2018, and that being the case, Mr. Luong maintained that he "should not be personally liable for wages which were earned or should have been paid prior to January 31, 2018". Mr. Luong provided several documents that appeared to corroborate his position regarding his status as a Fusionpipe director and officer since May 21, 2010. Presumably, these documents constituted the "new evidence" submitted under subsection 112(1)(c) of the *ESA* although, obviously, all of this evidence was "available" when the Section 96 Determination was issued on September 10, 2018.

7. In an interim decision issued on December 24, 2018 (2018 BCEST 112), I found that there was at least some presumptive merit to Mr. Luong's position and that being the case, coupled with some concerns I had regarding the scope of the delegate's original investigation (see 2018 BCEST 112 at paras. 9 – 15), I issued the following order:

Pursuant to subsection 114(2)(a) of the *ESA*, I am referring the matter of Mr. Luong's personal liability under subsection 96(1) back to the Director for further investigation. The Director shall afford Mr. Luong a reasonable opportunity to participate in the Director's further investigation. The Director shall have 90 days from the date of this decision to file a report with the Tribunal. The Tribunal, after hearing from the parties, will then issue a final order in this appeal.

### **SUBSEQUENT PROCEEDINGS**

8. On March 11, 2019, the delegate filed a report with the Tribunal in which she stated: "Wages found to be owing to five former employees have been paid by the corporate directors. Accordingly, no further action is required regarding Mr. Luong's personal liability because the former employees have been paid."
9. On March 11, 2019, the Tribunal's Registrar sent the delegate's report to Mr. Luong's legal counsel with a request, directed to both Mr. Luong and the delegate, for a written response by no later than March 25, 2019:

Given that there no longer appears to be a live dispute between the Director of Employment Standards and Mr. Luong, the Panel assigned to the above-noted appeal is requesting a submission from the Appellant and the Director of Employment Standards on whether they object to the Tribunal preparing a consent order regarding the cancellation of the Determination.

10. By letter dated March 14, 2019, the delegate advised the Tribunal that the Director of Employment Standards did not object to the proposed cancellation of the Section 96 Determination by way of a consent order. Similarly, by letter dated March 20, 2019, Mr. Luong's legal counsel advised that he had no objection to the issuance of a cancellation order.

### **FINDINGS**

11. In light of the fact that both the delegate and Mr. Luong's counsel have consented to a proposed cancellation order, I believe that such an order is appropriate at this juncture.

12. I wish to stress, however, that in issuing a cancellation order, I am not making any factual and/or legal findings with respect to Mr. Luong's grounds of appeal, his status as corporate director, or with respect to his personal liability under the Section 96 Determination.

**ORDER**

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

---

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