

Citation: Verna Alison Callihoo and Brian Harold Sanders (Re)  
2020 BCEST 113

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Verna Alison Callihoo  
("Callihoo")

- and by -

Brian Harold Sanders  
("Brian Sanders")

- 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 NOS.:** 2020/032 & 2020/034

**DATE OF DECISION:** September 16, 2020

## DECISION

### SUBMISSIONS

Shannon Corregan

delegate of the Director of Employment Standards

### INTRODUCTION

1. These two appeals concern separate, but essentially identical, determinations issued under section 96 of the *Employment Standards Act* (the “ESA”) against Verna Alison Callihoo (Tribunal File Number 2020/032; “Ms. Callihoo”) and Brian Harold Sanders (Tribunal File Number 2020/034; “Mr. Brian Sanders”). Section 96(1) provides as follows: “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.” In this case, the corporate employer was Sandman Enterprises Ltd. (“Sandman”).
2. On October 24, 2019, Shannon Corregan, a delegate of the Director of Employment Standards (the “delegate”), issued a determination (the “Corporate Determination”) against Sandman pursuant to section 79 of the ESA ordering Sandman to pay \$4,249.88 on account of unpaid wages and interest owed to a former employee (the “complainant”). Further, and also by way of the Corporate Determination, Sandman was ordered to pay an additional \$3,000 on account of six separate \$500 monetary penalties (see section 98 of the ESA). Accordingly, the total amount payable under the Corporate Determination was \$7,249.88.
3. The two section 96 determinations issued against the present appellants on February 14, 2020, are virtually identical, as are the delegate’s accompanying “Reasons for the Determination” (the “delegate’s reasons”) appended to each determination. Both appellants were ordered to pay \$2,358.95 on account of unpaid wages and section 88 interest owed to the complainant. In issuing the section 96 determinations, the delegate relied on B.C. Registry Services records that showed both appellants to be Sandman officers as of October 24, 2018. The complainant’s wages were earned during the period from early April to late July 2018.
4. In each appeal, the appellant maintained that they were neither a director nor an officer of Sandman when the complainant’s unpaid wage-claim crystallized.
5. On June 18, 2020, I issued a “referral back” order pursuant to section 114(2)(a) of the ESA (see 2020 BCEST 72; the “referral back decision”). As I noted in the referral back decision, there was nothing in the section 112(5) record demonstrating that the delegate had any communication whatsoever with either appellant prior to issuing the two section 96 determinations. In light of that circumstance, I was not satisfied that the delegate had complied 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, I issued the following interim orders:

## INTERIM ORDERS

Pursuant to subsection 114(2)(a) of the *ESA*, these two matters are referred back to the Director for further investigation. The Director shall afford Ms. Callihoo and Mr. Brian Sanders a reasonable opportunity to participate in the Director's further investigation.

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, the Tribunal will issue final reasons for decision, and final orders, with respect to these two appeals.

## THE REFERRAL BACK REPORT AND ANALYSIS

6. On August 10, 2020, the delegate filed a report with the Tribunal. In her report, the delegate referred to the various registry searches she conducted. These searches showed that both appellants ceased to be Sandman directors, but not officers, as of January 13, 2017. However, both appellants continued to be listed in the B.C. Corporate Registry as Sandman officers as of October 24, 2018. The delegate conducted a further B.C. Corporate Registry search on June 23, 2020, which showed that both appellants had ceased to be Sandman officers as of February 28, 2020. As noted above, the complainant was employed by Sandman from April 6 to July 25, 2018.
7. I made the following observations in the referral back decision (at para. 5):

The evidence before the Tribunal regarding the appellants' status is largely, if not exclusively, hearsay evidence. BC Registry Services records indicate that both appellants resigned as Sandman *directors* as of January 13, 2017, but continued on as *officers* at least until October 24, 2018. Neither appellant has filed any further evidence – such as a sworn declaration or even a simple written statement – indicating that they actually resigned their separate *offices* as of January 13, 2017.
8. On June 30, 2020, the delegate wrote to the appellants seeking their response to her preliminary findings that each was a corporate officer. The letter to Mr. Brian Sanders was successfully delivered. The letter to Ms. Callihoo, delivered to her c/o Sandman's corporate records office, was returned with a notation indicating that she had moved. Both letters were sent by registered mail. During the delegate's original investigation, certain evidence was submitted by a third party – Darryl Scott Sanders (who also represented Sandman, himself, and the present appellants in their respective original appeals). The delegate expressed some concerns about the veracity of this evidence (her concerns are detailed in her August 10th report).
9. As part of the referral back process, the delegate contacted Darryl Scott Sanders (Sandman's principal director and officer) by electronic mail, asking him to make himself available for an interview, and that he supply complete copies of certain corporate records. Darryl Scott Sanders never responded to the delegate's request for an interview, and he never supplied the requisite corporate records.
10. Mr. Darryl Scott Sanders, despite the delegate's specific request, never provided a current address for Ms. Callihoo and never provided any new evidence regarding the status of the present appellants. Mr. Brian Sanders did not respond to the delegate's June 30, 2020 request for information. After reviewing the

material that Darryl Scott Sanders submitted on February 19, 2020, the delegate concluded that there was no credible evidence to show that the B.C. Corporate Registry records were inaccurate. I entirely agree with the delegate's analysis of the evidence submitted in February 2020 by Darryl Scott Sanders. This latter evidence is highly problematic in terms of demonstrating that either appellant had ceased to be a Sandman officer when the complainant's wages were earned or should have been paid.

11. B.C. Registry Services' documents only establish a rebuttable presumption regarding an individual's status (see *Director of Employment Standards – and – Michalkovic*, BC EST # RD047/01). However, in this case, I am not satisfied that the appellants have rebutted the presumption, flowing from the B.C. Registry's records, that they were Sandman officers when the complainant's unpaid wage claim crystallized.

## **ORDER**

12. Pursuant to section 115(1)(a) of the *ESA*, the determinations issued against the appellants under section 96(1) of the *ESA* are confirmed as issued, each in the amount of \$2,358.95, together with whatever further interest that has accrued under section 88 of the *ESA* since the date of issuance.

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