

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Raymond Wood  
("Mr. Wood")

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** David B. Stevenson

**FILE No.:** 2023/130

**DATE OF DECISION:** December 20, 2023

## DECISION

### SUBMISSIONS

Daniel Sorensen

counsel for Raymond Wood

### OVERVIEW

1. Raymond Wood (“Mr. Wood”) has filed an appeal under section 112 of the *Employment Standards Act* (“ESA”) of a determination issued by Carrie Manarin, a delegate (“deciding Delegate”) of the Director of Employment Standards (“Director”) on July 24, 2023 (“Determination”).
2. The Determination found Mr. Wood was a director and officer of QMI Manufacturing Inc. (“QMI Manufacturing”), Avcom Systems Inc. (“Avcom”), and Geo Alert Incorporated (“Geo Alert”) (collectively, “QMI”), employers found to have contravened provisions of the *ESA* at the time wages were earned or should have been paid to Michael Hanrahan (“Mr. Hanrahan”), and as such was personally liable under section 96 of the *ESA* for wages in the amount of \$12,696.56. Mr. Wood was also found liable under section 98 of the *ESA* for administrative penalties in the amount of \$2,500.00. The total amount of the Determination is \$15,196.56.
3. This appeal is grounded in assertions that the deciding Delegate erred in law and failed to observe principles of natural justice in making the Determination.
4. In correspondence dated September 27, 2023, the Tribunal, among other things, acknowledged having received the appeal, requested the section 112(5) record (“record”) from the Director, invited the parties to file any submissions on personal information or circumstances disclosure, and notified the other parties that submissions on the merits of the appeal were not being sought at that time.
5. The record has been provided to the Tribunal by the Director and a copy has been delivered to the parties, who have been provided with the opportunity to object to its completeness. No objection to the completeness of the record has been received and, for the purposes of this appeal, the Tribunal accepts it as being complete.
6. I have decided this appeal is appropriate for consideration under section 114 of the *ESA*. At this stage, I am assessing the appeal based solely on the Determination, the reasons for the Determination, the appeal, the written submission filed with the appeal, and my review of the material that was before the Director when the Determination was being made. Under section 114(1), the Tribunal has discretion to dismiss all or part of an appeal, without a hearing, for any of the reasons listed in the subsection, which reads:
  - 114 (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of any appeal if the tribunal determines that any of the following apply:
    - (a) the appeal is not within the jurisdiction of the tribunal;
    - (b) the appeal was not filed within the applicable time limit;

- (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
- (d) the appeal was made in bad faith or filed for an improper purpose or motive;
- (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
- (f) there is no reasonable prospect that the appeal will succeed;
- (g) the substance of the appeal has been appropriately dealt with in another proceeding;
- (h) one or more of the requirements of section 112 (2) have not been met.

7. If satisfied the appeal or a part of it has some presumptive merit and should not be dismissed under section 114(1), the Director and Mr. Hanrahan will be invited to file submissions. On the other hand, if it is found the appeal satisfies any of the criteria set out in section 114(1), it is liable to be dismissed. In this case, I am looking at whether there is any reasonable prospect the appeal can succeed.

### ISSUE

8. The issue in this appeal is whether it should be allowed to proceed or be dismissed under section 114(1) of the *ESA*.

### THE DETERMINATION

9. The facts relating to this appeal, as set out in the Determination, are relatively brief.

10. Mr. Hanrahan filed a complaint alleging QMI Manufacturing and Avcom had contravened the *ESA* by failing to pay him all wages owed under the *ESA*. A delegate of the Director (“investigating Delegate”) investigated the complaint and, on September 7, 2022, issued an Investigation Report. On February 24, 2023, the deciding Delegate issued a determination (“corporate determination”), finding QMI Manufacturing, Avcom, and Geo Alert were one employer for the purposes of the *ESA* and were collectively liable to Mr. Hanrahan for wages, including interest, in the amount of \$44,132.81. The deciding Delegate also imposed administrative penalties on QMI in the amount of \$2,500.00.

11. The corporate determination, which included a notice to directors and officers explaining their personal liability under the *ESA*, was delivered to the address for QMI, with a copy to Mr. Wood.

12. An appeal of the corporate determination was filed and has been dismissed: see *QMI Manufacturing Inc. et al.*, 2023 BCEST 55. An application for reconsideration has been made from that decision.

13. The record contains searches that were conducted of the BC Online Registrar of Companies on March 19, 2019, December 23, 2022, April 25, 2022, and July 28, 2022, which showed:

- QMI Manufacturing was incorporated on September 2, 2005.
- The company went through some name changes, becoming QMI Manufacturing as of March 23, 2010.

- Mr. Wood was listed as the sole director and officer and continued to be listed as such in the period between August 31, 2019, and August 31, 2020, when Mr. Hanrahan’s wages were earned or should have been paid.
- Avcom was incorporated on September 2, 2015.
- Mr. Wood was listed as the sole director and officer and continued to be listed as such in the period between August 31, 2019, and August 31, 2020, when Mr. Hanrahan’s wages were earned or should have been paid.
- Geo Alert was incorporated on March 3, 2020.
- Mr. Wood was listed as the sole director and officer and continued to be listed as such in the period between the date of incorporation and August 31, 2020, during which Mr. Hanrahan’s wages were earned or should have been paid.

14. Based on the information acquired during the investigation and the findings made in both the corporate determination and in the Determination under appeal here, the deciding Delegate concluded Mr. Wood was liable under section 96 of the *ESA* for the amount set out in the Determination and was liable under section 98 of the *ESA* for the administrative penalties imposed on QMI.

## ARGUMENTS

15. Mr. Wood has raised two grounds of appeal: error of law and failure to observe the principles of natural justice in making the Determination.

### Error of Law

16. Under this ground of appeal, counsel for Mr. Wood asserts the deciding Delegate failed to “adequately or at all establish or explain how Mr. Wood acquiesced, authorized, or permitted” QMI’s alleged contravention of the *ESA*.

### Natural Justice

17. Under this ground of appeal, counsel argues the decision of the deciding Delegate to issue the Determination against Mr. Wood under sections 96 and 98 of the *ESA* when a reconsideration application of the corporate determination has been made, and is pending, is a breach of natural justice.

## ANALYSIS

18. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *ESA*, which says:

- 112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
- (a) the director erred in law;
  - (b) the director failed to observe the principles of natural justice in making the determination;

- (c) evidence has become available that was not available at the time the determination was being made.

19. I shall address each of the two grounds of appeal raised by Mr. Wood.

### **Error of Law**

20. The Determination makes findings on two distinct issues relating to Mr. Wood's potential personal liability.

21. The first is whether Mr. Wood can be held personally liable under section 96 for wages which were earned by Mr. Hanrahan or should have been paid to him. It is well-established that a person challenging a determination issued under section 96 is limited to arguing those issues which arise under that provision: whether the person was a director or officer when the wages were earned or should have been paid; whether the amount of the liability imposed is within the limits for which a director or officer may be found personally liable; and, whether circumstances exist that would relieve the director or officer from personal liability under section 96(2) of the *ESA*, which reads:

- 96 (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
    - i. is in receivership, ...
  - (c) vacation pay that becomes payable after the director or officer of the corporation ceases to hold office, or
  - (d) money that remains in an employee's time bank after the director or officer of the corporation ceases to hold office.

22. The deciding Delegate found Mr. Wood was a director and officer of QMI during the relevant period. That finding is not in dispute. The deciding Delegate has calculated the amount of the liability arising under section 96. That finding is also not in dispute. Mr. Wood does not argue there are circumstances that would relieve him of personal liability.

23. That part of the appeal by Mr. Wood which raises error of law does not argue any of the issues under section 96, as outlined above. I find there is no basis arising from that ground of appeal for disturbing the deciding Delegate's conclusion in the Determination relating to the application of section 96 to Mr. Wood.

24. It is unnecessary to address this aspect of the appeal in any further detail.

25. The second issue addressed by the deciding Delegate is whether Mr. Wood is personally liable under section 98, more specifically section 98(2), of the *ESA*. The deciding Delegate found he was.

26. The appeal argues the deciding Delegate made this finding without adequately establishing or explaining it.

27. I disagree.
28. It is not correct to say the deciding Delegate did not provide reasons for her finding. The Determination, in the last paragraph on page R3 and the first paragraph on page R4, refers to evidence provided during the investigation. Some of that evidence is specifically identified as follows: Mr. Wood was directly responsible for setting the terms of Mr. Hanrahan’s employment and for paying his wages; Mr. Wood was made aware of the claim of non-payment of wages and of the requirements of the *ESA* by Mr. Hanrahan while he was employed, but beyond acknowledging and agreeing Mr. Hanrahan was owed wages, no concrete steps were ever taken to pay the outstanding wages; and Mr. Wood was educated on his responsibilities under the *ESA*, without effect, during the investigation. Even within the appeal submission, it is, at least indirectly, conceded that Mr. Wood was aware Mr. Hanrahan was not being paid wages. He attempts to deflect that concession by saying he was “working on a solution to have [Mr.] Hanrahan’s wages paid at the time the complaint was made.”
29. While the reasons provided by the deciding Delegate are not fully detailed, it is trite to say that not every finding and conclusion needs to be explained and there is no need to expound on each piece of evidence or controverted fact. In assessing the basis for and the adequacy of the reasons of the deciding Delegate, they should be read as a whole, in the context of all the evidence. The reasons expressed in the Determination under appeal here should be considered along with the findings made in the corporate determination and the facts set out in the Investigation Report, because collectively they constitute the basis for the reasons for the deciding Delegate’s findings on Mr. Wood’s personal liability.
30. In that sense, the corporate determination describes a false scenario advanced and relied on by QMI of Mr. Hanrahan agreeing to work as an ‘independent contractor’ and the creation of false payroll documents and the alteration of other records –which were delivered by QMI to the investigating Delegate in response to a Demand for Employer Records made under section 28 of the *ESA* and which, I note, were not accepted as accurately reflecting Mr. Hanrahan’s status as an employee of QMI. The corporate determination also notes that the “temporary compensation agreement,” which implicated Mr. Wood in the false scenario and was not reflected in any of the records provided by QMI during the investigation, was not disputed.
31. The corporate determination also described the circumstances, in which Mr. Wood was directly involved, that led the deciding Delegate to find there had been a substantial alteration to Mr. Hanrahan’s conditions of employment and, applying section 66 of the *ESA*, to determine his employment had been terminated.
32. The findings in the corporate determination, which are incorporated in the reasons expressed in the Determination under appeal here, are more than sufficient to allow for a finding that Mr. Wood “authorized, permitted, or acquiesced” in the contraventions of the *ESA* for which he was made liable under section 98.
33. I am not persuaded that the finding by the deciding Delegate that Mr. Wood was personally liable under section 98 was inadequately supported, or not supported at all, on the evidence.
34. It follows from this analysis that, viewed in their full context, the finding of the deciding Delegate was fully supported on the evidence. Based on all the evidence, I find it was reasonable for the deciding Delegate to have concluded that Mr. Wood did not pay Mr. Hanrahan wages he acknowledged were owed to him,

that he was aware he was not maintaining the employee records required by the ESA, and that he clearly intended to alter Mr. Hanrahan's terms of employment that led to his employment being terminated.

35. There is no merit to this ground of appeal, no reasonable likelihood it will succeed and is, accordingly, dismissed.

### **Natural Justice**

36. Mr. Wood submits it is a breach of principles of natural justice for the deciding Delegate to have issued the Determination against him while the appeal and reconsideration process is being pursued by QMI. There is nothing in the appeal submission that supports this assertion.

37. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision maker.

38. The Tribunal has confirmed on many occasions that the content and scope of procedural fairness is highly contextual. The Tribunal has briefly summarized the natural justice principles that typically operate in the complaint process, including this matter, in *Imperial Limousine Service Ltd.*, BC EST # D014/05:

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the Act, and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party. (see *BWI Business World Incorporated*, BC EST # D050/96).

39. The above statement succinctly incorporates and expresses both the common law duty of fairness and the statutory duty of fairness that operate in the context of the natural justice ground of appeal in this case.

40. Provided the process exhibits the elements of the above statement, it is unlikely a failure to observe principles of natural justice in making the Determination will be found. On the face of the material in the record and in the information submitted to the Tribunal in this appeal, Mr. Wood was provided with the opportunity required by principles of natural justice. I am satisfied Mr. Wood was accorded the procedural rights required under the *ESA*. He participated fully in the complaint process leading to the corporate determination; a copy of the corporate determination was delivered to him; and he filed an appeal and, later, a reconsideration application. The Investigation Report and the corporate determination included notice that directors and officers of the employer might be personally liable for wages and administrative penalties. He has provided no objectively acceptable evidence showing otherwise.

41. I do not accept the basic premise of the argument made by Mr. Wood on this aspect of his appeal: that an appeal, or reconsideration application, under the *ESA*, as a matter of natural justice, acts as a stay of a determination made by the Director or a decision made by the Tribunal.

42. There are sound reasons for not accepting that proposition, grounded in the purposes of the legislation – providing speedy and efficient resolution of what are basic and fundamental employment protections – and in its character as remedial legislation, which should be given such fair, large, and liberal construction as best suits its objectives. The general purpose of the legislation is to afford protection to, and provide processes for, the payment of an employee's wages which may not be available to the employee at common law. The suggestion that the processes to recover unpaid wages should be halted while disputes over determinations and decisions requiring the payment of wages plays out runs against that general purpose and is not accepted.
43. It may be the Tribunal, upon application, can order a stay, but such a step would be a matter of discretion for the Tribunal and would not likely be considered except in very limited circumstances. In any event, Mr. Wood has made no request to the Tribunal for a stay of the effect of the corporate determination on his personal liability.
44. The *ESA* allows for a suspending of the effect of a determination through an application under section 113 of the *ESA*. No such application has been made.
45. No natural justice issue has been established and, it logically follows, no breach of principles of natural justice shown. This ground has no reasonable prospect of succeeding and it too is dismissed.
46. There is nothing in the appeal that shows the deciding Delegate made an error in the Determination. The material in the record confirms Mr. Wood was a director of QMI during the time wages were earned or should have been paid to Mr. Hanrahan, that the liability imposed on him is within the limits for which a director may be found personally liable under section 96 and there are no circumstances that would relieve Mr. Wood personal liability under section of the *ESA*. The evidence in the record also supports the finding that Mr. Wood should be held personally responsible for the administrative penalties imposed in this case.
47. Based on all of the above, I find the purposes and objects of the *ESA* are not served by requiring the other parties to respond to it. The appeal is dismissed under section 114(1)(f) of the *ESA*.

## **ORDER**

48. Pursuant to section 115(1) of the *ESA*, I order the Determination dated July 24, 2023, be confirmed in the amount of \$15,196.56, together with any interest that has accrued under section 88 of the *ESA*.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**