

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Laine Cooper

- of a Determination issued by -

The Director of Employment Standards

PANEL: Carol L. Roberts

FILE NO.: 2023/027

DATE OF DECISION: June 13, 2023

DECISION

SUBMISSIONS

Laine Cooper

on her own behalf also known as Laine Marie Cooper, a
Director of 1229081 B.C. Ltd.

OVERVIEW

1. This is an appeal by Laine Cooper, also known as Laine Marie Cooper, a Director of 1229081 B.C. Ltd. of a decision of a delegate of the Director of Employment Standards (the “Director”) made March 7, 2023 (the “Personal Determination”).
2. On September 16, 2020, a former employee (the “Employee”) of 1229081 B.C. Ltd. carrying on business as Hidden Gem Lash and Brow Studio and/or Hidden Gem Medi Spa, formerly known as Laine Marie Cooper carrying on business as Hidden Gem Lash and Brow Studio and/or Hidden Gem Salon & Spa (the “Employer”) filed a complaint with the Director alleging that the Employer had contravened the *Employment Standards Act* (“*ESA*”) in making unauthorized deductions from her wages.
3. On March 7, 2023, the Director issued a determination (the “Corporate Determination”) determining that the Employer had contravened the *ESA* and finding that the Employer owed the Employee wages and interest in the total amount of \$5,628.41. The appeal period on the Corporate Determination expired March 31, 2023. As the Employer was no longer in business and the Director feared assets would disappear, the Director also issued the Personal Determination on the same date.
4. A corporate registry search conducted October 26, 2020, with a currency date of February 28, 2020, indicated that 1229081 B.C. Ltd. was incorporated on November 1, 2019. Ms. Cooper is the sole director. The registry search indicated that Hidden Gem Lash and Brow Studio is a sole proprietorship registered in British Columbia on November 25, 2016. Ms. Cooper is the sole proprietor. Hidden Gem Medi Spa is an unregistered proprietorship operated by Ms. Cooper, and Hidden Gem Salon & Spa is also an unregistered proprietorship formerly operated by Ms. Cooper. The Employer operated the business as a sole proprietorship until January 2020, after which it began operating the business as 1229081 B.C. Ltd. carrying on business as Hidden Gem Lash and Brow Studio and/or Hidden Gem Medi Spa.
5. The Director found that Ms. Cooper was the sole director of the Employer at the time the Employee’s wages were owed and should have been paid, and that Ms. Cooper was personally liable for up to two months’ unpaid wages for the Employee pursuant to section 96 of the *ESA*.
6. The Director calculated Ms. Cooper’s liability for the unpaid wages and interest to be \$1,937.07. The Director also found that Ms. Cooper was directly responsible for setting the terms of the Employee’s employment and paying her wages, that she was made aware of the complaint allegations and requirements of the *ESA* by the Employee during her employment, and that she failed to pay the wages earned and payable.

7. The Director also determined that Ms. Cooper authorized, permitted or acquiesced in the contravention and was therefore personally liable to pay the two administrative penalties pursuant to section 98(2) of the *ESA*. The Director noted that Ms. Cooper was informed of the Employer's obligations under the *ESA* with respect to unauthorized deductions from wages and not passing business expenses on to employees through various emails and letters sent by the Director. The Director further noted that Ms. Cooper did not respond to an Investigation Report or dispute the application of sections 96 and 98 of the *ESA* to her as a corporate officer. The total amount payable was \$2,937.07.
8. Ms. Cooper filed appeals of both the Corporate Determination and the Personal Determination at the same time, making the same arguments in both; that is, that the Director failed to observe the principles of justice in making the Determination and that evidence has become available that was not available at the time the Determination was being made.
9. Section 114 of the *ESA* provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria. After reviewing the appeal submissions, I found it unnecessary to seek submissions from the Director or the Employee.
10. This decision is based on the section 112(5) record that was before the delegate at the time the Determination was made, Ms. Cooper's submissions and the Reasons for the Determination.

ISSUE

11. Whether Ms. Cooper has established grounds for interfering with the Director's decision.

ARGUMENTS

12. Ms. Cooper's submissions relate entirely to the Corporate Determination, which she appealed at the same time as her appeal of the Personal Determination. She advanced the same grounds of appeal and same reasons for each of the appeals.
13. I have addressed the Employer's arguments in my decision to dismiss the appeal of the Corporate Determination (*1229081 B.C. Ltd.*, 2023 BCEST 39). There is nothing in Ms. Cooper's appeal submission of the Personal Determination that addresses either her position as director of the Employer, her personal liability for unpaid wages or her personal acquiescence in the contravention of the *ESA*.

ANALYSIS

14. Section 114 of the *ESA* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the 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.

15. Section 112(1) of the *ESA* provides that a person may appeal a determination on 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.

16. Ms. Cooper's submissions do not address any of the grounds of appeal. Rather, Ms. Cooper contends that the Corporate Determination was wrong. It is not open to Ms. Cooper to challenge the merits of a Corporate determination through the appeal of a Personal Determination. (see *Kerry Steinemann, Director/Officer of Pacific Western Vinyl Window & Doors Ltd.*, BC EST #D180/96). As the "Notice to Directors/Officers" attached to the Personal Determination informed Ms. Cooper:

You may not argue the merits of the Corporate Determination by appealing this Determination.

There are only three grounds on which you may appeal this Determination:

- 1) That you were not a director/officer of the company at the time wages were earned or should have been paid;
- 2) That the calculation of your director/officer's personal liability is incorrect; and/or,
- 3) That you should not be liable for the penalty, where a penalty has been assessed, on the grounds that you did not authorize, permit or acquiesce in the company's contravention.

17. Nevertheless, as this process is designed for the participation of parties who are not legally represented, the Tribunal takes a large and liberal interpretation of the grounds of appeal. (see, for example, *Triple S Transmission*, (BC EST #D141/03)). I have, therefore, considered Ms. Cooper's submissions under each ground of appeal.

18. I am not persuaded that Ms. Cooper has demonstrated any basis to interfere with the Personal Determination.

Error of Law

19. Section 96 of the *ESA* provides as follows:

- (1) 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.

- (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, or
 - (ii) is subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act,

...

20. There is nothing in the appeal submission that addresses Ms. Cooper's status as a director of the Corporate Employer. I find no error in the Director's conclusion that she was a director of the Employer at the time the Employee's wages were earned and that she is personally liable for two months of the Employee's unpaid wages. I am also satisfied, based on my decision in the Corporate Determination appeal, that the Director's calculation of the unauthorized deductions was not in error.
21. I also find no error in the Director's finding that Ms. Cooper was personally responsible for the two administrative penalties. There was ample evidence to support the conclusion that Ms. Cooper authorized, permitted or acquiesced in the Employer's contravention of the *ESA*.

Failure to Comply with Principles of Natural Justice

22. Natural justice is a procedural right that includes the right to know the case being made, the right to respond and the right to be heard by an unbiased decision maker.
23. There is nothing in the appeal submission that establishes that the Director failed to inform Ms. Cooper of her obligations as a director of the Employer at any time during the investigation of the Employee's complaint or denied her an opportunity to respond.
24. I find no basis for this ground of appeal.

New Evidence

25. Ms. Cooper submitted, as new evidence, her calculations of the Employee's wages, essentially conceding that her methodology for doing so may have been in error. As noted in my decision in the Employer's appeal of the Corporate Determination, not only is the evidence not new, I am not persuaded that it would change the Director's calculation of the outstanding wages owed to the Employee or Ms. Cooper's personal liability for those wages.
26. I find, pursuant to section 114(1)(f) of the *ESA*, that there is no reasonable prospect the appeal will succeed.

ORDER

27. Pursuant to section 115 of the *ESA*, I confirm the Determination dated March 7, 2023 in the amount of \$2,937.07 together with whatever interest may have accrued since the date of issuance, pursuant to section 88 of the *ESA*.

Carol L. Roberts
Member
Employment Standards Tribunal