

Citation: Lorne Nystrom and Nihar Pandey (Re)
2024 BCEST 19

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Lorne Nystrom

and by

Nihar Pandey

- of Determinations issued by -

The Director of Employment Standards

PANEL: Kenneth Wm. Thornicroft

FILE NOS.: 2023/139, 2023/140, 2023/141, and
2023/143

DATE OF DECISION: February 27, 2024

DECISION

SUBMISSIONS

Lorne Nystrom	on his own behalf
Nihar Pandey	on his own behalf

INTRODUCTION

1. I have before me four appeals of four separate, but closely related, determinations, each of which was issued against a director of Medipure Pharmaceuticals Inc. (“Medipure”). Two of the determinations were issued against Lorne Nystrom (“Mr. Nystrom”) and two were issued against Nihar Pandey (“Mr. Pandey”), by Kuo-Hao (George) Lee, a delegate of the Director of Employment Standards (“delegate”). The determinations were issued pursuant to section 96(1) of the *Employment Standards Act* (“ESA”) which 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.”
2. The four determinations, all issued on July 31, 2023, concern unpaid wages earned by two former Medipure employees. The delegate also issued separate “Reasons for the Determination” concurrently with each of the four determinations now under appeal.
3. In these appeals, each appellant relies on all three available statutory grounds: i) the delegate erred in law, ii) the delegate failed to observe the principles of natural justice in making the determination, and iii) new evidence has become available since the determination was issued (see sections 112(1)(a), (b), and (c) of the *ESA*).
4. In my view, none of these appeals has any reasonable prospect of succeeding and, that being the case, all four are dismissed pursuant to section 114(1)(f) of the *ESA*. My reasons for reaching that conclusion now follow.

THE DETERMINATIONS

5. The determinations were issued pursuant to section 96(1) of the *ESA* against the two appellants with respect to unpaid wages owed to two former Medipure employees, namely, Mr. Rakshit (a.k.a. “Rax”) Kodekalra (“Mr. Kodekalra”) and Ms. Annie Tam (“Ms. Tam”). Mr. Kodekalra was Medipure’s “Chief Technology Officer” and Ms. Tam was employed by Medipure as a research scientist. Medipure entered into bankruptcy on February 2, 2023. Medipure’s bankruptcy was preceded by proceedings under the federal *Companies’ Creditors Arrangement Act* (the first order issued in these proceedings was on August 19, 2022). These latter proceedings were a continuation of earlier *Bankruptcy and Insolvency Act* proceedings filed on May 11, 2022. In light of Medipure’s insolvency, no determinations were ever issued against that corporation.

6. On May 4, 2023, the delegate informed Mr. Pandey and Mr. Nystrom, by way of a letter sent by registered mail, about of their potential liability under section 96(1) of the *ESA*, and that an investigation into the unpaid wage claims of Mr. Kodekalra and Ms. Tam was being conducted. Ultimately, the delegate determined that Mr. Kodekalra was owed \$45,865.38 on account of unpaid wages (regular wages and concomitant vacation pay), and a further \$2,450.60 on account of section 88 interest, for a total of \$48,315.98. The delegate determined that Ms. Tam was owed \$11,251.87 on account of unpaid wages (regular wages and concomitant vacation pay), and a further \$601.19 for section 88 interest, thus bringing the total amount payable to \$11,853.06. The delegate issued separate determinations against both Mr. Pandey and Mr. Nystrom in relation to these total latter amounts owed to Mr. Kodekalra and Ms. Tam. I should note that the two separate calculations of the amounts of the unpaid wage awards are not in dispute.

7. The particulars of each determination are as follows.

EST File Nos. 2023/139 (Nystrom/Kodekalra Determination) and 2023/140 (Pandey/Kodekalra Determination)

8. Mr. Kodekalra filed his unpaid wage complaint on August 31, 2022.

9. During the course of the delegate's investigation, the delegate contacted both Mr. Pandey and Mr. Nystrom, as well as various other individuals. Following that investigation, the delegate determined (and this matter was not in dispute during the delegate's investigation) that Mr. Nystrom was a Medipure director as and from February 20, 2014, and that Mr. Pandey was a Medipure director as and from April 1, 2022. These findings were based on BC Corporate Registry records, as well as on information supplied by Mr. Pandey.

10. Mr. Nystrom and Mr. Pandey both accepted the unpaid wage calculations prepared by Medipure's court appointed Monitor, and these figures formed the basis for the determinations issued against them in relation to Mr. Kodekalra's unpaid wage claim (in the total amount of \$48,315.98 including section 88 interest). Mr. Kodekalra's unpaid wages were earned during the period from July 9 to September 9, 2022, the latter date being his last day of employment.

11. The delegate, in his reasons accompanying both determinations, noted that in light of Medipure's assignment into bankruptcy, no determination was ever issued against it, and in consequence, no monetary penalties (see section 98) were levied against Medipure. The delegate also observed that even if penalties had been levied against Medipure, he would not have issued any penalties against either Mr. Nystrom or Mr. Pandey, since there was no evidence that either individual authorized, permitted or acquiesced in any *ESA* contraventions by Medipure (see section 98(2) of the *ESA*).

12. For ease of reference, I shall refer to the determinations issued against Mr. Nystrom and Mr. Pandey in relation to Mr. Kodekalra's unpaid wages as the "Kodekalra Determinations."

EST File Nos. 2023/141 (Pandey/Tam Determination) and 2023/143 (Nystrom/Tam Determination)

13. Ms. Tam was employed with Medipure as a research scientist. Her unpaid wage claim spanned the period from July 9 to September 9, 2022. Medipure terminated her employment on September 9, 2022. Mr.

Pandey and Mr. Nystrom both accepted the court-appointed Monitor's calculations regarding Ms. Tam's unpaid wage claim and, that being the case, separate determinations were issued against each of them in the amount of \$11,853.06, including section 88 interest.

14. For ease of reference, I shall refer to the determinations issued against Mr. Nystrom and Mr. Pandey in relation to Ms. Tam's unpaid wages as the "Tam Determinations."

REASONS FOR APPEAL – THE KODEKALRA DETERMINATIONS

15. Mr. Nystrom and Mr. Pandey attached an essentially identical memorandum, dated September 5, 2023, to their respective Appeal Forms, in which they set out their reasons for appeal. These reasons include the following assertions, which could be characterized as alleged errors of law on the part of the delegate:

- Mr. Kodekalra was at all material times a Medipure officer and, flowing from that fact, Mr. Nystrom and Mr. Pandey appear to be arguing (although this is not entirely clear) that given his status as a Medipure officer, the delegate erred in issuing a section 96(1) determination awarding him unpaid wages.
- "In addition, a Director/Officer is not personally liable under Section 96: Corporate officer's liability for unpaid wages (96 (2) a, b, and c under section 63, if company was under receivership. Medipure (the company) was under receivership/insolvency at the time it occurred. These facts are completely ignored by the [Employment Standards] Branch while determining." *[sic]*
- "The company was fully controlled by the BC Supreme court's appointed Monitor (Deloitte) and their Chief Restructuring Officer for all decisions at the said time. Therefore, I should not be liable for the penalty, where a penalty has been imposed, on the grounds that I did not authorize, permit, or acquiesce in the company's contravention."
- "Nihar [Pandey], on behalf of directors/officers did provide the argument that Medipure was under control of BC supreme court appointed Monitor and CRO at this time...All the employees' termination was determined and served by the Monitor/CRO there was no directors/officers say on this; and all the financial decision were taken by the Monitor not by the Directors/Officers of Medipure." *[sic]*
- "...there were 4 directors and 2 officers (including [Mr. Kodekalra]) of Medipure and the directors/officers were not running the company, but the court appointed Monitor and CRO. This determination is set on 3 directors only."

16. In a written submission filed with the Tribunal filed on January 25, 2024, Mr. Nystrom made the following assertion, which could also be characterized as "new evidence" or, perhaps, as an alleged error of law:

An important point not mentioned is I "resigned" from the Board of Medipure on or about August 10th of 2022. I am sorry to not mention this before as my memory was faulty but during the Christmas break I was searching through some old emails and found the August 10th one which can be confirmed by the BC Securities Commission.

17. During the course of the delegate's investigation, Mr. Pandey, with Mr. Nystrom's consent, presented evidence and argument on behalf of both of them. As part of this joint appeal submission, filed on

September 7, 2023, Mr. Nystrom and Mr. Pandey submitted what they characterized as “new documents as evidence,” including:

- a record filed with the British Columbia Securities Commission, dated May 31, 2021, in which Mr. Kodekalra is identified as a Medipure officer (“Chief Technology Officer”);
- a management information circular dated May 13, 2021, listing Mr. Kodekalra’s (and five other individuals’) total compensation for 2018, 2019, and 2020, and describing him as an “executive officer”;
- Mr. Kodekalra’s employment agreement with Medipure, dated October 9, 2019;
- documents showing that Mr. Kodekalra was granted shares in Medipure (which put his shareholding interest at 1.4% of the issued shares as of May 26, 2022); and
- an affidavit filed in the B.C. Supreme Court Medipure insolvency proceedings on October 4, 2022, sworn by Craig Anderson which, in part, refers to Mr. Kodekalra’s employment prospects with a separate firm.

18. In later submissions filed with the Tribunal on September 20, 2023, Mr. Nystrom and Mr. Pandey filed various documents that were filed in, and otherwise relate to, Medipure’s insolvency proceedings in the B.C. Supreme Court. I presume these documents have been submitted as “new evidence” under section 112(1)(c) of the *ESA*.

19. The “natural justice” arguments raised by Mr. Nystrom and Mr. Pandey concern what they say are “Investigation Concerns.” First, they question why Mr. Kodekalra’s status as a Medipure officer was not investigated, and given that he was an officer of Medipure, whether he should have been awarded “lost wedges” (*sic*, wages?) by way of the two section 96 determinations. Second, they question why “no communication and/or investigation was made by ES branch to another Officer [name omitted], other Director [name omitted], court appointed Monitor [name omitted] and Chief Restructuring Officer [name omitted].” [*sic*] Third, they say that they should not be held liable under section 96(1) of the *ESA* because “as previously mentioned, we the ex-directors and ex-officers of the company did everything possible to work in companies’ best interest selflessly, but the situation went beyond our control [and we] personally lost my employment, wages, vacations, severance, unpaid expense, legal fee etc.” [*sic*]

FINDINGS AND ANALYSIS – THE KODEKALRA DETERMINATIONS

20. As previously noted, Mr. Nystrom and Mr. Pandey rely on all three statutory grounds. I will address their evidence and argument in turn, commencing with their “new evidence.”

New Evidence

21. New evidence may be received in an appeal in accordance with the strict test for admissibility set out in *Davies et al.*, BC EST # D171/03. Most fundamentally, and as is clear from the wording of section 112(1)(c) itself, the evidence must not have been *available* when the determination was being made. Several of the documents submitted are, in fact, included in the section 112(5) record, and thus were obviously before the delegate when the determinations were being made. These latter documents include Mr. Kodekalra’s employment contract, and several documents that were filed in Medipure’s insolvency proceedings.

22. With respect to the other documents submitted on appeal, first, they all predate the issuance of the determinations, and thus could have been provided to the delegate during the course of his investigation; second, and more fundamentally, none of these documents is relevant to the legal issues that arise in an appeal of a section 96 determination. The principal issues that arise in an appeal of a section 96(1) determination concern, first, whether the individual was a director or officer when the unpaid wage claim in question crystallized; second, whether the “2 months’ unpaid wages” liability ceiling has been correctly calculated; and third, whether any of the section 96(2) or (2.1) defences apply.
23. While I am prepared to accept, for the purposes of this appeal, that Mr. Kodekalra may have been a Medipure “officer,” as defined in section 96(4) of the *ESA*, he was, nonetheless also an “employee” entitled to pursue a claim for unpaid wages under the *ESA*. Mr. Kodekalra’s status is not relevant when considering whether the section 96(1) determinations issued against Mr. Nystrom and Mr. Pandey should be varied or cancelled. I address this particular issue further, below, under the “errors of law” subheading.

Alleged Natural Justice Breaches

24. In their appeal submissions, Mr. Nystrom and Mr. Pandey raise three separate matters that could be characterized as falling within the ambit of the “natural justice” ground of appeal (see section 112(1)(b) of the *ESA*). The first concerns whether the delegate should have investigated whether Mr. Kodekalra was a Medipure “officer.” As noted above, while I am prepared to accept for purposes of this appeal that Mr. Kodekalra was a Medipure “officer,” that question is not relevant to these two appeals concerning Mr. Kodekalra’s unpaid wage award.
25. Second, and in a similar vein, whether the delegate conducted an investigation regarding the possible section 96(1) liability of another Medipure officer, another director, the court appointed Monitor, or the Chief Restructuring Officer, is not relevant to the legal issues that arise in these two appeals of section 96(1) determinations issued against Mr. Nystrom and Mr. Pandey. Further, and with respect to the court appointed Monitor and Chief Restructuring Officer, B.C. Supreme Court Justice Walker’s November 1, 2022 order (contained in the section 112(5) record) includes the following direction, at para. 13:

The Monitor and the CRO, and their respective employees and representatives shall not be deemed directors of the Petitioners de facto or otherwise, and shall incur no liability as a result of acting in accordance with this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct.

This provision is a complete answer to the appellants’ assertion that the delegate should have issued section 96(1) determinations against the Monitor and the Chief Restructuring Officer.

26. Third, even if I accept Mr. Nystrom’s and Mr. Pandey’s assertions that they “did everything possible to work in [the] companies’ best interest selflessly,” and personally suffered monetary losses as a result of Medipure’s insolvency, those facts do not constitute a defence to a section 96(1) determination. The available statutory defences are exhaustively set out in section 96(2) of the *ESA*, and none applies here (see below).

Alleged Errors of Law

27. Mr. Nystrom and Mr. Pandey maintain that they should not be liable for any penalties levied under section 98(2) of the *ESA* because neither of them authorized, permitted, or acquiesced in any *ESA* contravention by Medipure. This ground of appeal is entirely without merit for the simple reason that no penalties were assessed against Mr. Nystrom or Mr. Pandey under section 98(2).
28. Mr. Nystrom and Mr. Pandey rely on the defences set out in sections 96(2)(a), (b) and (c) of the *ESA*. None of those defences is available here. The section 96(2)(a) defence is inapplicable because Mr. Kodekalra's unpaid wage award does not include any section 63 or section 64 compensation – the award consists entirely of regular wages, concomitant vacation pay, and section 88 interest. The section 96(2)(b) defence is no longer contained in the *ESA*, having been repealed in 2019. This provision formerly provided a defence where the corporation was “subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act.” Finally, the section 96(2)(c) defence is not available here. Mr. Kodekalra's award consists entirely of regular wages, concomitant vacation pay, and interest – the vacation pay component did not, in the language of section 96(2)(c), become payable *after* either Mr. Nystrom or Mr. Pandey ceased to be Medipure directors. Indeed, both Mr. Nystrom and Mr. Pandey were Medipure directors when Mr. Kodekalra's vacation pay became payable.
29. With respect to this latter factual matter, Mr. Nystrom now maintains that he resigned his directorship on or about August 10, 2022. I do not accept this assertion for the following reasons. First, his assertion is entirely inconsistent with B.C. Corporate Registry records which show that Mr. Nystrom was a Medipure director as of September 20, 2022 (Mr. Kodekalra's wages were earned and became payable during the period from July 9 to September 9, 2022). Second, the delegate wrote to Mr. Nystrom on May 4, 2023, advising him of his potential liability under section 96(1) as a Medipure director with respect to unpaid wage claims filed by four former Medipure employees, including Mr. Kodekalra and Ms. Tam. In his May 4th letter, the delegate specifically asked Mr. Nystrom to respond to these claims, and Mr. Pandey later did so on his behalf. At no time during the delegate's investigation did Mr. Nystrom, or Mr. Pandey on his behalf, ever contest his status as a Medipure director as of the date when the employees' unpaid wage claims crystallized. Third, Mr. Pandey's submission to the delegate, expressly adopted by Mr. Nystrom (see section 112(5) record, page 313), specifically identified Mr. Nystrom as a Medipure director as of May 17, 2023 (I should also add that in his written submission, dated September 5, 2023, and filed in the Tam Determination appeals, Mr. Nystrom identified himself as one of four Medipure directors). Fourth, I find it highly improbable, given the saliency of his status as a Medipure director insofar as his personal liability was concerned, that Mr. Nystrom would have somehow “forgotten” that he resigned his directorship in August 2022. Fifth, Mr. Nystrom has not provided *any* corroborating documentary evidence regarding his resignation (for example, a copy of the actual resignation or a confirmatory reply from someone acting on behalf of Medipure). Sixth, upon receipt of Mr. Nystrom's January 25, 2024, email to the Tribunal in which he claimed to have resigned his directorship “on or about August 10, 2022,” the Tribunal's Registry Administrator sent him an email on January 29, 2024, advising as follows:

If you are requesting that the Tribunal consider the fact of your resignation in support of your appeals, you must provide the Tribunal with copies of the relevant resignation documents **by no later than 4:00 p.m. on February 5, 2024.** [boldface in original document]

Please note, once this deadline has passed, the Tribunal will proceed with considering your appeals based on the documents submitted to date.

Despite this specific request, Mr. Nystrom never provided the requisite corroborating documentation by the deadline. Indeed, so far as I can determine, he simply ignored the Tribunal's January 29, 2024, request to provide the relevant confirmatory documentation by the February 5, 2024, deadline. Finally, to the extent that Mr. Nystrom's assertion regarding this "resignation" could be characterized as "new evidence," it is inadmissible under section 112(1), and thus, is not properly before me. This assertion should have been submitted to the delegate during his investigation so that it could have been properly investigated.

30. Mr. Nystrom and Mr. Pandey appear to be arguing that the delegate erred in law in issuing a section 96(1) determination against them in relation to Mr. Kodekalra's unpaid wages because the latter was also a Medipure officer. While I have accepted, for the purposes of this appeal, that Mr. Kodekalra may have been a Medipure officer (and, in that capacity, he was also an "employee" of Medipure), that fact is not a bar to a section 96(1) determination being issued in his favour: see *Annable*, BC EST # D342/98, application for reconsideration dismissed: *Director of Employment Standards*, BC EST # D559/98; *Austin*, BC EST # D345/98, application for reconsideration dismissed: *Director of Employment Standards*, BC EST # D560/98; *Card*, BC EST # D123/99, application for reconsideration dismissed: *Victoria Street Community Association*, BC EST # D361/99; *542617 B.C. Ltd.*, BC EST # D339/01; *Woo*, BC EST # D158/04; and *Kootenay Network Systems Inc.*, BC EST # D083/05. On the evidence before me, Mr. Kodekalra could not be reasonably characterized as a "controlling mind" of Medipure (see *Austin, supra*) – he only held 1.4% of the corporation's issued shares – and neither Mr. Pandey nor Mr. Nystrom assert that he could be so characterized.
31. Mr. Nystrom and Mr. Pandey question why the delegate never issued section 96(1) determinations against certain other directors or officers. I should note that essentially identical section 96(1) determinations were issued against a third Medipure director, now deceased, in favour of both Mr. Kodekalra and Ms. Tam. Although both determinations were appealed to the Tribunal, the executor for this deceased director's estate did not pursue the appeals, and the Tribunal has now closed these two appeal files.
32. Insofar as any section 96(1) determinations that might have been issued against other individuals is concerned, it should be noted that section 96 is one of several enforcement tools available to the Director of Employment Standards that may be used to recover employees' unpaid wages (all set out in Part 11 of the *ESA*). These enforcement tools may be utilized at the behest of the Director of Employment Standards. Although the Tribunal is empowered to hear appeals regarding whether a particular section 96(1) determination should be varied or cancelled, the Tribunal has no independent statutory authority to, in effect, order the Director of Employment Standards to undertake specific enforcement actions such as the issuance of a section 96(1) determination against specific individuals. The central thrust of Mr. Nystrom's and Mr. Pandey's argument on this score is perhaps analogous to a claim for a prerogative writ in the form of *mandamus*. In this case, they seemingly seek an order directing a public official, namely, the Director of Employment Standards, to fulfill a particular statutory duty, namely, to issue section 96(1) determinations against particular individuals. If such an order is even legally capable of being issued, that order would have to be issued by the B.C. Supreme Court. The Tribunal, as a purely statutory body with no inherent jurisdiction, has no such power.
33. Finally, Mr. Nystrom and Mr. Pandey argue that following Medipure's formal entry into insolvency proceedings, they had no effective say over decisions made, and actions taken, by the court appointed Monitor and/or the Chief Restructuring Officer. They assert that "the employees' termination was

determined and served by the Monitor/CRO [and] there was no directors/officers say on this.” Even if that statement is factually accurate, in my view, that has no bearing on Mr. Nystrom’s and Mr. Pandey’s personal liability under section 96(1). Employees of a corporation can be, and frequently are, terminated from their employment without any direct (or even indirect) involvement of the corporate employer’s directors. It is not a defence to a section 96(1) determination for a corporate director to say that they were not involved in the decision to terminate the employee(s) in question. Where a dismissed employee is not paid all of the wages to which they are entitled under the *ESA*, the key question that arises under section 96(1), when determining if a corporate director is personally liable for those unpaid wages, is whether the director *was* a corporate director when those wages “were earned or should have been paid.” In this case, the record clearly shows that both Mr. Nystrom and Mr. Pandey were Medipure directors when Mr. Kodekalra’s unpaid wages were earned and should have been paid.

34. Further, as previously discussed, none of the available section 96(2) defences applies, and the delegate’s calculations regarding Mr. Kodekalra’s “2-months’ wages” entitlement have not been challenged. Indeed, Mr. Pandey, for himself, and also on behalf of Mr. Nystrom, accepted the accuracy of the Monitor’s calculations regarding the amount of wages due to Mr. Kodekalra. The delegate adopted these calculations in issuing the two section 96(1) determinations.

35. In sum, the delegate did not err in law in issuing section 96(1) determinations against either Mr. Nystrom or Mr. Pandey. Accordingly, each of the section 96(1) determinations issued against Mr. Nystrom and Mr. Pandey in favour of Mr. Kodekalra will be confirmed.

36. I now turn to the section 96(1) determinations issued against Mr. Nystrom and Mr. Pandey in favour of Ms. Tam.

REASONS FOR APPEAL – THE TAM DETERMINATIONS

37. Mr. Nystrom and Mr. Pandey filed identical submissions in support of their separate appeals of the two Tam Determinations. Their reasons for appeal closely track the reasons advanced in their appeals of the Kodekalra Determinations. In particular, they maintain that:

- the delegate should have issued additional section 96(1) determinations against two officers and one other director;
- they should not be liable for any monetary penalties under section 98 of the *ESA* – it should be noted, however, as was the case with the Kodekalra Determinations, no monetary penalties were levied against Mr. Nystrom or Mr. Pandey in the Tam Determinations;
- they “were volunteers and have lost their investments” and never “earned a single dime out of this unfortunate insolvency and bankruptcy”; and
- “Based on the abovementioned facts about Directors and Officer, and Section 96 (2) a, b, and c under section 63 that company was under receivership/insolvency, and there were other officers and directors during the time this occurred, and situations we all faced, I hereby request and appeal to the respected tribunal to not make me personally liable to pay the determined liabilities and penalties by dismissing this determination.” [sic]

38. Mr. Nystrom and Mr. Pandey also submitted various documents, presumably as “new evidence” under section 112(1)(c) of the *ESA*. Almost all of these documents were submitted in support of their appeals of the Kodekalra Determinations, although it appears that a few of the documents were not submitted in support of those latter two appeals. All of these documents predate the issuance of the Tam Determinations. Finally, under the subheading “Investigation Concerns,” Mr. Nystrom and Mr. Pandey advance arguments that are essentially identical to those advanced under the same subheading in their written submissions filed in their appeals of the Kodekalra Determinations. In addition, as he did in his appeal of the Kodekalra Determination issued against him, Mr. Nystrom now says that he resigned his Medipure directorship “on or about August 10, 2022.”

FINDINGS AND ANALYSIS – THE TAM DETERMINATIONS

39. I have already addressed the substance of each of the above arguments in the context of the two appeals relating to the Kodekalra Determinations. For the reasons previously given, I find that none of these arguments is meritorious.
40. With respect to their position that they were merely “volunteers,” and did not earn any compensation from their service as Medipure directors, even if those assertions are accurate, there is nothing in section 96 that relieves a director from personal liability based on the fact that they did not receive any compensation for serving as a director (see *Hernandez*, BC EST # D150/02; *Jiang*, BC EST # D074/06; *Jia*, BC EST # D039/14; *Dancho*, BC EST # D063/14; *Pepper*, BC EST # D121/17; and *Wang*, 2019 BCEST 35). Section 45 of the *Employment Standards Regulation* does relieve section 96(1) liability for “volunteer” directors (provided they only receive reimbursement for reasonable expenses), but only if they are a director of a “charity” (defined in section 1(1) of the *Regulation*). Medipure, being a for-profit (at least that was the intention) business corporation, was not a “charity.”
41. As previously stated, I am not prepared to find, based on the evidentiary record before me, that Mr. Nystrom resigned his Medipure directorship in August 2022.
42. None of the documents filed in support of their appeals of the Tam Determinations are admissible under section 112(1)(c). With respect to the documents that were filed in the appeals of the Kodekalra Determinations, I find them to be inadmissible for the reasons previously given. In addition, all of these documents are irrelevant to the issues properly before me in these two appeals. Further, all of the documents were available when the Tam Determinations were being issued. There is no merit whatsoever to the “new evidence” ground of appeal.
43. As for the “Investigative Concerns” identified by Mr. Nystrom and Mr. Pandey in their written submissions, for the reasons previously given with respect to these same arguments that were advanced in the appeals of the Kodekalra Determinations, I find that there was no failure on the delegate’s part to observe the principles of natural justice in making the Tam Determinations.

SUMMARY

44. In my view, none of the four appeals before me has any reasonable prospect of succeeding. Accordingly, all four appeals will be dismissed, and the section 96 determinations under appeal will all be confirmed.

ORDERS

45. Pursuant to section 114(1)(f) of the *ESA*, the appeals filed by Mr. Nystrom and Mr. Pandey with respect to the Kodekalra Determinations and the Tam Determinations are dismissed.
46. Pursuant to section 115(1)(a) of the *ESA*, the following determinations are confirmed as issued:
- The Section 96(1) Determination issued against Mr. Lorne Nystrom on July 31, 2023, ordering him to pay Mr. Rakshit Kodekalra the total sum of \$48,315.98;
 - The Section 96(1) Determination issued against Mr. Nihar Pandey on July 31, 2023, ordering him to pay Mr. Rakshit Kodekalra the total sum of \$48,315.98;
 - The Section 96(1) Determination issued against Mr. Lorne Nystrom on July 31, 2023, ordering him to pay Ms. Annie Tam the total sum of \$11,853.06; and
 - The Section 96(1) Determination issued against Mr. Nihar Pandey on July 31, 2023, ordering him to pay Ms. Annie Tam the total sum of \$11,853.06.
47. In addition to the above amounts, Mr. Kodekalra and Ms. Tam are each entitled to recover whatever additional interest that has accrued under section 88 of the *ESA* as and from August 1, 2023, until the date of payment.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal