

An appeal

- by -

Jonathan Nick Peters (aka Jon Peters), Shane Murphy and Baron Menzel  
operating as IBV, Internet Business Ventures, Internet Bingo Ventures Ltd.,  
Internet Bingo Ventures Inc., IBV Bingo Network and  
International Learning Systems Ltd.

(“Peters”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

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

**TRIBUNAL MEMBER:** Kenneth Wm. Thornicroft

**FILE No.:** 2005A/197

**DATE OF DECISION:** February 2, 2006

## DECISION

### SUBMISSIONS

Graham R. MacLennan	Legal Counsel for Jonathan Nick Peters
Angel Akachuk	on her own behalf
Debbi Nelson	on her own behalf
Tara Parisier	on her own behalf
Teri Somerville	on her own behalf
Sheila Louise Wright	on her own behalf
Jim Ross	for the Director of Employment Standards

### INTRODUCTION

1. This is an appeal filed by Jonathan Nick Peters (“Peters”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). The appeal concerns a Determination (and accompanying “Reasons for the Determination”—the “delegate’s Reasons”) both issued on July 29th, 2005 following an investigation conducted by a delegate of the Director of Employment Standards (the “delegate”).
2. By way of the Determination, Peters—along with Shane Murphy (“Murphy”) and Baron Menzel (“Menzel”)—were held jointly and severally liable for \$13,456.32 in unpaid wages and section 88 interest and a further \$3,000 in administrative penalties (see section 98 of the *Act*). I should note that neither Murphy nor Menzel is an appellant in the present proceedings and I am not aware if either has separately appealed the Determination.
3. These reasons for decision do *not* address the merits of the appeal. Rather, there is a question about the timeliness of the appeal [see section 112(3) of the *Act*] and, accordingly, that matter must first be adjudicated. I am addressing the application to extend the appeal period based solely on the parties’ written submissions. However, prior to addressing the timeliness of the appeal, I shall briefly outline the background facts.

### BACKGROUND FACTS

4. The delegate’s Reasons address unpaid wage complaints filed by five individuals (the “complainants”). The delegate determined that the complainants were formerly employed by a B.C. company known as International Business Ventures, Canada Inc. and that a “partnership” comprising Peters, Murphy and Menzel was a “successor” employer (see section 97 of the *Act*). The delegate then concluded that the partners were liable to pay unpaid wages to each of the complainants—as noted above, the unpaid wage claims total \$13,456.32 including interest. The delegate also levied six separate \$500 administrative penalties based on the partners’ contraventions of sections 17, 18, 21, 40, 45 and 63 of the *Act*.

5. On November 10th, 2005 Mr. Peters, through his legal counsel, appealed the Determination to the Tribunal on the ground that the delegate erred in law [section 112(1)(a)]; more particularly, Mr. Peters' counsel asserts: "The employer was not a partnership of Jonathan Nick Peters, Shane Murphy and Baron Menzel as found on issue 1 in the determination."

### **TIMELINESS OF THE APPEAL**

6. An appeal of a determination must be filed, in writing, with the Tribunal within "30 days after the date of service of the determination, if the person was served by registered mail" [see section 112(3)(a) of the *Act*]. However, if the appeal is not filed within this latter statutory time limit, the Tribunal may extend the appeal period pursuant to section 109(1)(b) of the *Act*.
7. As noted above, the Determination and the attached "Reasons for the Determination" were both issued on July 29th, 2005. The Determination and Reasons were forwarded by registered mail to Mr. Peters at three separate addresses (all in Vancouver). It would appear that two of the addresses are residential addresses; the third address is "c/o Canada Reconnect" which is, I understand, the business address of a firm that lists Mr. Peters as its president and secretary.
8. The Determination contains a Notice, at the bottom of page 3, relating to appeals and this Notice states that the appeal deadline was 4:30 P.M. on September 6th, 2005. I presume that this deadline was calculated taking into account the "deemed service" provision contained in section 122(2) of the *Act*. Accordingly, the actual appeal period may have been prior to September 6th, 2005 depending on when the registered envelope containing the Determination and Reasons was actually received by Mr. Peters. Mr. Peters' Appeal Form is dated and was filed with the Tribunal on November 10th, 2005—approximately two months after the deadline set out in the Determination expired.
9. Section 7 of the Appeal Form addresses late appeals. Counsel for Mr. Peters provided the following explanation for the late appeal: "While the determination was received at the office of Canada Reconnect located at 800-885 Dunsmuir Street, Vancouver, BC, it was not received at the personal address of Mr. Peters and therefore did not come to his attention until now".
10. On December 7th, 2005, the Tribunal's Vice-Chair wrote to the parties and indicated that since the appeal was, on its face, filed after the expiration of the statutory appeal period, the Tribunal wished the parties to file written submissions regarding whether the appeal period should be extended. In her December 7th letter, the Vice-Chair also summarized the various factors [derived from the Tribunal's section 109(1)(b) jurisprudence] the Tribunal considers when ruling on an application to extend the appeal period. The parties were given until January 3rd, 2006 to file their initial submissions regarding the "timeliness of the appeal" issue and until January 19th, 2006 to file any reply submissions.
11. I now have before the following submissions (and supporting documents):
  - Counsel for Mr. Peters dated December 5th, 9th, 16th and 19th, 2005 and January 20th, 2006;
  - Mr. Jim Ross (for the Director) dated December 12th and 23rd, 2005;
  - Angel Akachuk (a complainant) dated December 15th, 2005;
  - Debbi Nelson (a complainant) dated December 22nd, 2005.

- Tara Parisier (a complainant) dated December 15th, 2005;
- Teri Somerville (a complainant) dated December 28th, 2005 and January 21st, 2006; and
- Sheila Louise Wright (a complainant) dated December 9th, 2005.

12. Although two reply submissions were filed after the deadline for delivery of reply submissions, I have decided to accept them given that each was only a day or so late and no party, in my view, would be prejudiced by my consideration of these late reply submissions.

## **THE PARTIES' SUBMISSIONS**

### ***Counsel for Mr. Peters***

13. The *only* reference to, or explanation for, the untimely appeal is contained in counsel's December 19th submission (the other submissions simply request further time to prepare a submission or otherwise explain why an extension is required) where it is simply asserted that Mr. Peters "has appealed promptly and has provided evidence which establishes that his appeal is very strong and likely to succeed". An affidavit sworn by Mr. Peters on December 19th, 2005 is attached to the December 19th letter; however, this affidavit speaks to the merits of the appeal and does not, *in any fashion*, address the timeliness issue.
14. Thus, the only explanation regarding the late appeal is that contained in the Appeal Form (see above).

### ***The Director's Delegate***

15. In his December 12th submission the delegate provided particulars regarding the original delivery (and non-delivery) of the Determination and Reasons to Mr. Peters. The envelope delivered to one residential address was returned on August 5th, 2005 with the notation "Moved Out"; the delegate says that the envelope delivered to the "Canada Reconnect" office was mailed on July 29th, 2005 and was thus deemed to be delivered as of August 8th, 2005. The envelope to the second residential address "was signed for by the concierge and receipt returned to the Employment Standards Branch", however, I have not been provided with any further particulars.

### ***The Complainants***

16. The complainants all oppose the application to extend the appeal period.

## **FINDINGS AND ANALYSIS**

17. Mr. Peters concedes that the Determination and Reasons were delivered to the "Canada Reconnect" office. The evidence before me is that Mr. Peters is both the president and secretary of this latter firm. The envelope was received at the company's office within a few days after July 29th, 2005. Further, an envelope containing the Determination and Reasons were also delivered to a current residential address and one must presume that in the ordinary course of events the concierge would have passed on the envelope to Mr. Peters. There is nothing in the material—neither an affidavit from the concierge nor from Mr. Peters—to suggest otherwise.

18. Further, I note that during the delegate's investigation, Mr. Peters did not provide any information of substance other than to simply deny that he was the complainants' employer. Much of the evidence Mr. Peters now wishes to place before the Tribunal is probably inadmissible since it could have been provided to the delegate during the course of his investigation [see section 112(1)(c)]. Further, and despite counsel's assertions to the contrary, I consider the arguments advanced by Mr. Peters regarding the merits of the appeal to fall well short of being "very strong and likely to succeed".
19. The record before me indicates that Mr. Peters has been, throughout these proceedings, unwilling or unable to meaningfully respond in a timely fashion. In my view, Mr. Peters has not advanced a reasonable explanation for his late appeal and I do not consider this to be a case where the merits are so compelling that justice demands the appeal period be extended.

### **ORDER**

20. The application to extend the appeal period is **refused**.
21. Pursuant to section 114(1) of the *Act*, I order that the appeal be dismissed. It follows that the Determination is confirmed as issued in the amount of **\$16,456.32** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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