



An appeal

- by -

Paul Bourassa also known as Paul A. (Alexander) Bourassa, a Director and Officer  
of 0862284 B.C. Ltd.

(“Bourassa”)

- 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:** David B. Stevenson

**FILE No.:** 2013A/57

**DATE OF DECISION:** April 8, 2014

## DECISION

### SUBMISSIONS

Paul A. Bourassa on his own behalf as a Director and Officer of 0862284 B.C. Ltd.

### OVERVIEW

1. Paul A. (Alexander) Bourassa (“Bourassa”) has filed an appeal under section 112 of the *Employment Standards Act* (the “*Act*”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on July 31, 2013.
2. The Determination concluded that Bourassa was a director and officer of 0862284 B.C. Ltd. (“0862284”), an employer found to have contravened provisions of the *Act*, at the time wages owed were earned or should have been paid to forty-two employees, and as such, was personally liable under section 96 of the *Act* for an amount of \$50,466.16.
3. In this appeal, Bourassa contends the Director erred in law and failed to observe principles of natural justice in making the Determination and asks the Tribunal to cancel it. The appeal is an exact copy of the appeal filed on the corporate determination. Bourassa seeks to have the Determination cancelled.
4. The Tribunal has discretion to choose the type of hearing for deciding an appeal. Appeals are not *de novo* hearings and the statutory grounds of appeal are narrow in scope. The Tribunal is not required to hold an oral appeal hearing and may choose to hold any combination of oral, electronic or written submission hearing: see section 103 of the *Act* and section 36 of the *Administrative Tribunals Act*. The Tribunal finds the matters raised in this appeal can be decided from the material in the file, which consists of the section 112(5) “record” and with the submissions of Bourassa.
5. For reasons which will be explained later in this decision, I do not find it necessary to seek submissions from the other parties.

### ISSUE

6. The issue in this appeal is whether there is any legal basis to cancel the Determination.

### THE FACTS

7. The relevant facts related to this appeal are brief.
8. On June 28, 2013, the Director issued a Determination (the “corporate determination”) against 0862284 B.C. Ltd., 0862284 B.C. Ltd. carrying on business as Fun City Sightseeing, and Fun City Sightseeing Inc. (collectively, “Fun City”) on behalf of forty-two former employees of Fun City, many of whom had complained to the Director that they had not received all wages owing from their employment with Fun City.
9. The Director determined that Fun City should be associated as one employer under section 95 of the *Act*, found Fun City had contravened the *Act* by failing to pay wages, annual vacation pay and statutory holiday pay and that the former employees were owed wages and interest in the amount of \$50,466.16.

10. The Director imposed administrative penalties on Fun City in the amount of \$4,000.00.
11. 0862284 appealed the corporate determination. That appeal was allowed in part. The corporate determination was referred back to the Director to re-calculate the total wages owing as a result of the inclusion in the Determination of former employees of Fun City who had not filed a complaint with the Director claiming unpaid wages. The allegations and arguments of error of law and breach of natural justice by the Director which were raised by 0862284 in the appeal submission were considered and dismissed.
12. This Determination states that a BC On-line: Registrar of Companies search conducted by the Director on November 5, 2012, showed 0862284 was incorporated on September 27, 2009, and listed Bourassa as the sole director and officer of the company. A further search conducted April 10, 2013, showed Bourassa was still listed as the sole director and officer.
13. Based on that information, the Director found Bourassa was a director and officer of 0862284, a company associated under section 95 as an employer for the purposes of the *Act*, during the time wages were earned or should have been paid to the former employees and issued a Determination against him under section 96 of the *Act*. No administrative penalties were imposed on Bourassa personally.

## ANALYSIS

14. As a result of amendments to the *Act* which came into effect on November 29, 2002, the grounds of appeal are statutorily limited to those found in subsection 112(1) of the *Act*, 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.*
15. It is unnecessary to review the arguments made in this appeal. That review was conducted in the decision on the appeal of the corporate determination. There are two aspects to this appeal that compel its dismissal. The first relates to the effect of the decision on the appeal of the corporate determination. The second relates to the allowable scope of an appeal of a section 96 Determination. The two are related.
16. On the first matter, I have already noted this appeal is a mirror of the appeal by 0862284 of the corporate determination. All of the issues raised in this appeal were decided in *0862284 B.C. Ltd.*, BC EST # D022/14.
17. It is well established that a person challenging a director/officer Determination is limited to arguing those issues which arise under section 96: whether the person was a director/officer when the wages were earned or should have been paid; whether the amount of the liability imposed is within the limit for which a director/officer may be found personally liable; and whether circumstances exist that would relieve the director/officer from personal liability under subsection 96(2). The director/officer is precluded from arguing the corporate liability: see *Kerry Steineman, Director/Officer of Pacific Western Vinyl Windows & Doors Ltd.*, BC EST #180/96. Accordingly, the arguments that question the correctness of the corporate determination may not be raised in this appeal.
18. Specifically, Bourassa may not question the validity of the Director finding 0862284 should be associated under section 95 of the *Act*.

19. Bourassa does not argue the correctness of the Director's conclusion about his status as a director and officer of 0862284.
20. While Bourassa has not specifically raised an issue concerning the amount of his personal liability in this appeal, the corporate determination reached a final decision on the inclusion by the Director in the Determination of persons who had not delivered a complaint to the Branch. Specifically, in the appeal of the corporate determination, it was decided the Director had been over-inclusive in extending the wage awards in the corporate determination to persons who had not delivered a complaint to the Branch. That decision has the potential to directly impact his personal liability under section 96. This appeal must give effect to that decision, as to do otherwise would be unfair and open the door to all those concerns the doctrine of issue estoppel operates to prevent. Also, this result is so obvious that to require further expenditure of resources to hear other parties on it would be inefficient and impose a delay not justified by the circumstances.
21. In sum, this Determination must be varied for the same reasons and on the same terms as the corporate determination.

### **ORDER**

22. Pursuant to section 115 of the *Act*, I order the Determination dated July 31, 2013, be varied in accordance with this decision. The matter is still before the Director and the personal liability of Bourassa under section 96 of the *Act* needs to be recalculated.

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