

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Harold Male Director/Officer of Collinridge Fine
Homes and Renovations Ltd.
("Male")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Alfred C. Kempf
FILE No.:	97/834
DATE OF DECISION:	January 28 1998

DECISION

APPEARANCES

The Appeal proceeded by way of written submissions.

OVERVIEW

While there have been three determinations issued with respect to Male and his company Collinridge Fine Homes and Renovations Ltd. (“Collinridge”), this Appeal relates only to the Director’s Determination dated October 24, 1997 relating to director liability on the part of Male. No appeals were filed in a timely fashion with respect to the Determinations dated April 24, 1997 (penalty determination for failure to produce records which will be referred to as the “Penalty Determination”) and May 29, 1997 (the original determination finding Collinridge liable for wages to Craig Senay (“Senay”) which will be referred to as the “Original Determination”). Since no application was filed to extend the time to appeal the Original and Penalty Determinations and since no reasons have been put forward to explain the reason for not appealing sooner this appeal will deal only with the October 24, 1997 Determination.

ISSUES TO BE DECIDED

Is Male liable for the sum set out in the Determination.

FACTS

The Director in the Determination indicates that Male was a Director or Officer of Collinridge at the time wages were earned by, or should have been paid to, Senay. Male does not deny this in his submissions.

ANALYSIS

Male has raised no error in the Determination. His submissions deal entirely with the Original and Penalty Determinations which I have no power to disturb.

I do point however that my review of those Determinations and Male’s submissions indicate that the primary issue is whether Senay is an employee or an independent contractor. According to Male: “Senay had no construction experience, no tools, no tool skills, was unable to read or interpret drawings and he had no knowledge of building codes. Senay was not qualified to be hired as a framer.”

It is clear he did not supervise people and did not bear any risk of loss or chance of profit. In the circumstances it is highly unlikely that this Tribunal would conclude that Senay was not an employee. Even if the parties considered him to be an independent contractor (which is not at all clear), the test that applies is whether in substance he was an independent contractor.

I can find no fault or error with regard to the determination under appeal.

ORDER

I order, under Section 115 of the Act that the Determination dated October 24, 1997 be confirmed.

Alfred C. Kempf
Adjudicator
Employment Standards Tribunal