

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 -

Yvette S. Kohnke
(" Kohnke ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No: 1999/729

DATE OF DECISION: January 24, 2000

DECISION

OVERVIEW

This is an appeal brought by Yvette S. Kohnke (“Kohnke”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on November 8th, 1999 under file number ER 032915 (the “Determination”).

Kohnke filed a “Complaint and Information Form” with the Employment Standards Branch on April 8th, 1999; the Complaint is dated April 5th, 1999. In her Complaint, Kohnke alleged that she had been employed as an “accountant/bookkeeper” with a firm described as “Aztec Canada Management Ltd. formerly Aztec Canada Manufacturing Ltd. a.k.a. Chantel Gardens” from August 1989 until November 1991. Kohnke claimed some \$68,000 in unpaid wages.

By way of the Determination, the Director’s delegate dismissed the complaint on the basis that it was filed well beyond (by about 7 years) the 6-month limitation period set out in section 74(3) of the *Act*.

ISSUES TO BE DECIDED

Kohnke says that the delegate erred in dismissing her complaint because, *inter alia*, a “statute of limitations does not apply until the party knows the true nature of the matter”.

FACTS AND ANALYSIS

Section 74(3) of the *Act* states that “a complaint relating to an employee whose employment has terminated must be delivered [in writing to an Employment Standards Branch office] within 6 months after the last day of employment”. Further, section 76(2)(a) of the *Act* gives the Director the authority to refuse to investigate a complaint, or stop investigating a complaint if “the complaint is not made within the time limit in section 74(3)”.

In this particular instance, the delegate simply exercised her statutory authority as she was directed to do by the Legislature. It should be noted that the delay in this case was very substantial. As I understand the appellant’s position, she now says that she delayed filing a complaint because, for period of time, she was of the view that, as a spouse of a shareholder of the employer, she was not an “employee” and therefore could not file a complaint under the *Act*.

I should add that Kohnke did take some action relating to her employment, albeit in the Small Claims Court. I should also add that Kohnke’s present assertion that she did not realize that she was an “employee” until April 1999 is entirely inconsistent with her 1991 income tax return in which she reported \$6,000 in *employment* income. In her own documents submitted to the Tribunal, Kohnke states that “I was persuaded in August 1989 to give up my employment with Tonto Mining & Engineering and to transfer my secretarial and accounting/bookkeeping skills to

employment with Aztec Canada Management Ltd.” (*italics added*). The documents before me show that the appellant was married to a principal in a family business (namely, the “Aztec” company now continued as Chantel Gardens Ltd.) and that the appellant and her husband endured a protracted matrimonial dispute which addressed, among other things, the appellant’s rights and entitlements vis-à-vis the family business. It would appear that the appellant filed the within Complaint in an effort to continue, in some fashion, the matrimonial dispute (and, in particular, her claim to family assets).

In light of all the history of this dispute and the very substantial delay in filing a complaint I can scarcely criticize the delegate for not continuing with her investigation of Kohnke’s unpaid wage complaint; indeed, it was the right and proper disposition of this matter--see *Campbell*, BC EST Decision No. 061/96; *Dhaliwal*, BC EST Decision No. 062/96; *Duncan*, BC EST. Decision No. 084/96; *Keu*, BC EST. Decision No. 257/96; *Williamson*, BC EST. Decision No. 282/96; *Chea*, B.C.E.S.T. Decision No. 114/97; *Harris*, BC EST Decision No. 124/97; and *Reddy*, BC EST Decision No. 163/97. Quite apart from section 76(2)(a), the delegate, it appears to me, might also have equally refused to investigate the appellant’s Complaint in accordance with the provisions of subsections 76(2)(c), (f) and (g) of the *Act*.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal