

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act*

- by -

John C. Burnham  
(" Burnham ")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 96/174

**DATE OF DECISION:** April 2, 1996

## DECISION

### OVERVIEW

This is an appeal by Burnham pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against Determination No. CDET 001221 issued by the Director on February 15, 1996. In this appeal Burnham claims that the Director should not have refused to investigate his complaint.

I have completed my review of the written submissions made by Burnham and the information provided by the Director.

### FACTS

Burnham was employed by V.R. Auto Surgeons Ltd. (“V.R.”) as a Auto Body Technician and Painter from December 23, 1994 to July 25, 1995. Burnham filed a complaint with the Employment Standards Branch (“the Branch”) which was received on February 13, 1996 with the envelope indicating a postmark of February 12, 1996. The complaint form itself was dated Jan. 19, 1996 and alleged that regular wages, overtime wages, vacation pay, statutory holiday pay, compensation for length of service and illegal deductions from wages were owing by V.R.

The Director refused to investigate Burnham’s complaint on the basis that it was not made within the time limits stipulated in Section 74 of the *Act* and, subsequently, determination # CDET 001221 was issued.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the Director’s refusal to investigate Burnham’s complaint was correct.

### ARGUMENTS

Burnham contends that he was not aware that there was a time limit for the filing of a complaint against his former employer. Burnham further contends that his complaint was not even a month late and should be accepted by the Branch for investigation.

The Director contends that pursuant to the *Act*, the last day on which a complaint could have been delivered to an office of the Branch by Burnham was January 24, 1996. This complaint was not delivered to an office of the Branch until February 13, 1996.

**ANALYSIS**

Section 74 of the *Act* states:

***Complaints and time limit***

**74.** (1) *An employee, former employee or other person may complain to the director that a person has contravened*

(a) *a requirement of Parts 2 to 8 of this Act, or*

(b) *a requirement of the regulations specified under section*

*127 (2) (1).*

**(2) *A complaint must be in writing and must be delivered to an office of the Employment Standards Branch.***

**(3) *A complaint relating to an employee whose employment has terminated must be delivered under subsection (2) within 6 months after the last day of employment.***

**(4) *A complaint that a person has contravened a requirement of section 8, 10, or 11 must be delivered under subsection (2) within 6 months after the date of the contravention.***

Should a complaint not be delivered to an office of the Branch within the time limits set forth in section 74 (3) above, the Director is required to consider the provisions of section 76 of the *Act* which states:

***Investigation after or without a complaint***

**76.** (1) *Subject to subsection (2), the director must investigate a complaint made under section 74.*

**(2) *The director may refuse to investigate a complaint or may stop or postpone investigating a complaint if***

**(a) *the complaint is not made within the time limit in section 74 (3) or (4).***

**(b) *the Act does not apply to the complaint,***

**(c) *the complaint is frivolous, vexatious or trivial or is not made in good faith,***

**(d) *there is not enough evidence to prove the complaint,***

**(e) *a proceeding relating to the subject matter of the complaint has been commenced before a court, tribunal, arbitrator or***

*mediator,*

**(f) *a court, tribunal or arbitrator has made a decision or award relating to the subject matter of the complaint, or***

**(g) *the dispute that caused the complaint is resolved.***

*(3) Without receiving a complaint, the director may conduct an investigation to ensure compliance with this Act.*

While the complaint form was dated Jan. 19, 1996, Burnham has not offered any explanation of why it was not delivered to an office of the Branch on or before January 24, 1996.

The language of section 74 (2) and (3) of the *Act* is mandatory as it requires that a complaint **must** be delivered within 6 months after the last day of employment. There is no provision to permit the Director to investigate a complaint received after the time limit has expired.

For the above reasons, I conclude that the Director was correct in determining that Burnham's complaint was not delivered within the time limits as set forth in the *Act*, and therefore should not be investigated.

**ORDER**

Pursuant to Section 115 of *Act*, I order that Determination No. CDET 001221 be confirmed.

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**

\_\_\_\_\_  
April 2, 1996  
**Date**

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