

An appeal

- by -

Michael Brett Director/Officer of Child Link Services Inc.  
(“Brett”)

- 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

**TRIBUNAL MEMBER:** Kenneth Wm. Thornicroft

**FILE No.:** 2005A/23

**DATE OF DECISION:** April 4, 2005

## DECISION

### SUBMISSIONS

Michael Brett	on his own behalf
Desiree Jones	on her own behalf
Rod Bianchini	for the Director of Employment Standards

### INTRODUCTION AND SUMMARY OF PREVIOUS PROCEEDINGS

This is an appeal filed by Michael Brett (“Brett”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) and the matter comes back before me as a result of a “referral back” order I issued pursuant to section 115(1)(b) of the *Act* on January 4th, 2005 (see *Brett*, B.C.E.S.T. Decision No. D001/05).

Mr. Brett originally appealed a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on September 5th, 2003 pursuant to which he was ordered to pay the sum of \$14,919.24 on account of unpaid wages and interest owed to eight former employees of a firm known as Child Link Services Inc. (the “Determination”). The eight former employees’ wages were earned during the period February 12th to July 12th, 2002.

The Determination was issued against Mr. Brett pursuant to section 96(1) of the *Act* on the basis that he was “personally liable for up to 2 months’ unpaid wages for each employee” of Child Link Services Inc. (“Child Link”), a firm of which he was, so said the Director, a director and officer when the employees’ wages claims crystallized.

I held, at page 5 of my Reasons for Decision, that Mr. Brett was not a corporate *director* of Child Link:

Mr. Brett concedes that he was a director of Child Link at one time but that he resigned his directorship as of April 24th, 2000. This latter assertion is consistent with the only corporate search record that is in evidence before me. I also have before me a “Form 8/9” indicating that Mr. Brett has ceased to be a director of Child Link; this form was filed with the Registrar of Companies on May 16th, 2000.

Accordingly, since the Determination was apparently issued against Mr. Brett solely because a Registrar of Companies’ search record allegedly indicated Mr. Brett was a Child Link “director”, the Determination is, on its face, clearly incorrect and must be varied (at least to that extent).

I note that there is nothing in the Determination indicating that the Director’s delegate proceeded against Mr. Brett on the basis that he carried out the “functions” of a corporate director during the relevant time period (see *Penner and Hauff*, B.C.E.S.T. Decision No. D371/96). In finding Mr. Brett personally liable for the employees’ unpaid wages, the Director’s delegate relied exclusively on the corporate search record.

I then concluded, also at page 5 of my Reasons, that Mr. Brett was a Child Link *officer*:

...I am not satisfied that Mr. Brett’s status as an officer ended prior to May 23rd, 2002. Although Mr. Brett’s legal counsel states, in her November 29th, 2004 Reply Submission (para. 9), that “Mr. Brett was fired/quit in or about February 2002 after a confrontation over not being paid”, Mr.

Brett's May 23rd, 2002 resignation letter states that he was "unable to *continue working*"--an assertion that clearly suggests Mr. Brett considered himself to be an employee immediately prior to submitting his resignation.

The Registrar of Companies' official records raise a rebuttable presumption that Mr. Brett was a corporate officer as of February 27th, 2003 [see *Director of Employment Standards (Michalkovic)*, B.C.E.S.T. Decision No. RD047/01]. This latter presumption has been partially rebutted by Mr. Brett. I am satisfied that he ceased to be a corporate officer of Child Link Services Inc. as of May 23rd, 2002.

Accordingly, I held (at page 6 of my Reasons) that Mr. Brett was liable for any unpaid wages that were earned or should have been paid during the period from February 24th to May 23rd, 2002:

Mr. Brett and the Director's delegate both agree that the eight employees' unpaid wage claims crystallized during the period February 24th to July 12th, 2002. Mr. Brett is not, therefore, liable for any unpaid wages that were earned after May 23rd, 2002, however, he is liable for all wages that were earned or payable during the period from February 24th to May 23rd, 2002 subject to the statutory 2-month liability ceiling and any other section 96(2) defence that may be applicable.

I am unable to determine, given that there is no payroll information before me, the actual amount of Mr. Brett's personal liability to each of the eight individual employees. Accordingly, I am referring that latter matter back to the Director so that the employees' individual entitlements as against Mr. Brett may be calculated.

My formal Order is set out below:

Pursuant to section 115(1)(a) of the *Act*, I order that the Determination be varied by deleting any and all references to Mr. Michael Brett being liable for unpaid wages as a result of his alleged status as a *director* of Child Link Services Inc.

Further, the Determination is also varied to indicate that Mr. Brett is only liable, in his capacity as a *corporate officer*, for any unpaid wages that were earned by, or became payable to, any of the eight employees named in the Determination during the period from February 24th to May 23rd, 2002 inclusive.

Pursuant to section 115(1)(b) of the *Act*, I am referring the matter of the employees' unpaid wage entitlements as against Mr. Brett back to the Director so that the employees' individual entitlements may be calculated in accordance with the findings and directions set out in these reasons for decision.

## THE REFERRAL BACK REPORT

On February 14th, 2005, the Director's delegate submitted a report to the Tribunal. This report consists of a single cover page and attached calculation schedules setting out each individual employee's entitlement for the period in question and taking into account the 2-month liability ceiling set out in section 96(1) of the *Act*.

Mr. Brett's "liability exposure" period was fixed by the Determination as February 24th to July 12th, 2002. I reduced that period to February 24th to May 23rd, 2002. However, as matters turned out, all but two employees earned at least two full months' wages during this latter period and the net effect of my Order was to leave the total amount payable by Mr. Brett under section 96(1) wholly unchanged, namely, \$14,919.24.

## THE PARTIES' POSITIONS

The delegate's report was forwarded (by way of a letter from the Tribunal's Vice-Chair dated February 14th, 2005) to Mr. Brett, his legal counsel and to the eight employees for their reply. I have before me a response filed by Mr. Brett personally and a reply from one of the employees, Mr. Desiree Jones.

Mr. Brett's submission sets out his view of the rather unfortunate history of the corporate employer and his role in the matter but does not, in any fashion whatsoever, speak to the correctness of the delegate's calculations. This latter matter is the only issue that is properly before me at this point. Mr. Brett's personal liability as a corporate officer has already been determined and cannot be re-argued before me. If I have erred in finding him liable, his remedy lies in an application for reconsideration under section 116 of the *Act*.

Ms. Jones, for her part, simply confirms in her submission that the delegate correctly calculated her 5-week (her total tenure) unpaid wage claim in the amount of \$1,326.59 including section 88 interest. Ms. Jones says that this latter amount, if anything, is a conservative estimate of her total claim since she worked more than the 6 hours per day credited to her by the delegate. However, since Ms. Jones never appealed the Determination, I do not intend to adjust the amount that the delegate concluded she is owed.

None of the other employees filed any submission and, accordingly, I assume they are similarly satisfied with the delegate's calculations. Certainly, there is nothing before me that would cause me to question the delegate's calculations.

## ORDER

Pursuant to section 115(1)(a) of the *Act*, I hereby confirm my earlier order that the Determination be varied by deleting any and all references to Mr. Michael Brett being liable for unpaid wages as a result of his alleged status as a *director* of Child Link Services Inc.

I also confirm my earlier order varying the Determination to indicate that Mr. Brett is only liable, in his capacity as a *corporate officer*, for any unpaid wages that were earned by, or became payable to, any of the eight employees named in the Determination during the period from February 24th to May 23rd, 2002 inclusive.

Finally, I order that in all other respects, including the calculation of Mr. Brett's unpaid wage liability under section 96(1) of the *Act*, the Determination be confirmed in the amount of \$14,919.24 together with whatever further section 88 interest that may have accrued as and from the date the Determination was issued.

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