

An appeal

- by -

Gerhard Pyper a Director of Gerhard Pyper Law Corporation  
carrying on business as Pyper Law Group Barristers & Solicitors  
("Mr. Pyper")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2015A/37

**DATE OF DECISION:** June 26, 2015

## DECISION

### SUBMISSIONS

Gerhard Pyper	on his own behalf as a Director of Gerhard Pyper Law Corporation carrying on business as Pyper Law Group Barristers & Solicitors
Barbara Chase	on her own behalf
Elaine Ullrich	on behalf of the Director of Employment Standards

### OVERVIEW

1. On December 9, 2014, a delegate of the Director of Employment Standards issued a determination against Gerhard Pyper Law Corporation carrying on business as Pyper Law Group Barristers & Solicitors (“GPLC”) under section 79 of the *Employment Standards Act* (the “*Act*”). Pursuant to this determination, GPLC was ordered to pay \$10,638.74 on account of unpaid wages and interest owed to Michael Carter (“Mr. Carter”), Barbara Chase (“Ms. Chase”) and Lisa Ogg (“Ms. Ogg”); I shall refer to Mr. Carter, Ms. Chase and Ms. Ogg, collectively, as the “complainants”. I shall refer to this determination as the “Corporate Determination”. Further, and also by way of the Corporate Determination, the delegate levied six separate \$500 monetary penalties against GPLC (see section 98 of the *Act*) thus bringing the total amount of the Corporate Determination to \$13,638.74.
2. It is my understanding that the Corporate Determination was never appealed (the appeal period expired January 5, 2015) and thus it now stands as a final order.
3. On January 26, 2015, the delegate issued the determination now under appeal – I shall refer to this determination as the “Section 96 Determination” since it was issued against Gerhard Pyper in his personal capacity under subsection 96(1) of the *Act*. The Section 96 Determination reflects the same unpaid wage liability as set out in the Corporate Determination, save for a minor interest adjustment, and also includes \$3,000 in monetary penalties levied against Mr. Pyper under subsection 98(2) of the *Act*. The total amount of the Section 96 Determination is \$13,680.04. The delegate issued “Reasons for the Determination” concurrently with the Section 96 Determination (the “delegate’s reasons”).
4. On March 2, 2015, Mr. Pyper appealed the Section 96 Determination on the grounds that the delegate erred in law and failed to observe the principles of natural justice in making the determination (see subsections 112(1)(a) and (b) of the *Act*). Mr. Pyper says that the Section 96 Determination should be cancelled principally because he “was not a director or officer of [GPLC] at the material time when all the employees were rendered unemployed”.
5. As noted above, the Corporate Determination was issued on December 9, 2014, and was never appealed. The appeal period – calculated in accordance with subsections 112(3) and 122(1) and (2) of the *Act* – expired on January 5, 2015. The Appeal Form filed with the Tribunal on March 2, 2015, identifies both Mr. Pyper and GPLC as the appellants. However, only the Section 96 Determination was appended to the form (along with the delegate’s reasons for the Section 96 Determination). Appellants must append a copy of the determination being appealed, and the accompanying reasons, to the Appeal Form (see Part No. 7). Part No. 6 of the Appeal Form addresses late appeals and Mr. Pyper did not check off this box nor did he provide any

reasons for filing a late appeal of the Corporate Determination. Accordingly, even if Mr. Pyper intended to appeal *both* the Section 96 Determination and the Corporate Determination, he did not formally do so and has not provided any reasons justifying an extension of the appeal period relating to the Corporate Determination. Accordingly, the only appeal properly before me is one relating to the Section 96 Determination.

6. I am adjudicating this appeal based on the parties' written submissions and I have submissions from Mr. Pyper, the delegate and one of the three respondent employees, Ms. Chase. Neither of the other two respondent employees filed a submission and, although invited to do so, Mr. Pyper did not file a reply submission. I have also reviewed the record that was before the delegate when she issued the Section 96 Determination.

### FACTUAL BACKGROUND

7. GPLC is a "law corporation" as defined in section 1 of the *Legal Profession Act* and its principal and sole director is the current appellant, Mr. Pyper, a lawyer. GPLC was incorporated on May 12, 2010, and the three complainants assisted Mr. Pyper in his law practice.
8. On June 27, 2014, Mr. Carter filed an unpaid wage complaint. He asserted that he had been employed as a paralegal with the "Pyper Law Group" and was owed \$5,250 in unpaid wages. On June 20, 2014, Ms. Chase filed an unpaid wage complaint also naming the "Pyper Law Group" as her employer. Ms. Chase claimed approximately \$2,600 in unpaid wages for her work as a "legal assistant". Ms. Ogg, a "receptionist" with the "Pyper Law Group", filed her complaint on June 26, 2014, and she claimed \$3,160 in unpaid wages. It would appear that the precipitating event to these complaints was Mr. Pyper's suspension by the Law Society of British Columbia ("LSBC") and the concurrent suspension of GPLC's permit authorizing it to practice law in British Columbia.
9. On May 27, 2014, Justice Bruce of the British Columbia Supreme Court issued an order appointing the LSBC as "custodian of the law practice of [Mr. Pyper and GPLC]". This order was made under section 50 of the *Legal Professions Act*.
10. The delegate investigated the three complaints and on December 9, 2014, issued the Corporate Determination (along with accompanying reasons). These latter reasons note that on May 25, 2014 (a Sunday), Mr. Pyper sent a text message to another law practice employee in which he indicated that he had been suspended and that she should not report for work the following day. This text also directed this employee to contact Mr. Carter and Ms. Chase to advise them of the situation but suggested that Ms. Ogg "should report to work and cover reception". Ms. Ogg reported for work and worked until about Noon when Mr. Pyper terminated her employment and paid her in cash for the hours she had worked that day.
11. During the course of the investigation, Mr. Pyper's position was that each of the complainants was an "independent contractor" rather than an employee. Mr. Pyper also claimed that the LSBC "indirectly" terminated their employment and "took over his practice" (Corporate Determination reasons, page R5). With respect to the LSBC's involvement in this matter, the delegate noted the following (at page R6):

On several occasions I spoke with the designated custodian, Manika Rajan, staff lawyer for LSBC and she explained she was in contact with Mr. Pyper approximately every other day and has encouraged him to respond to the Branch regarding the Employment Standards claims. As custodian, Ms. Rajan indicated that the LSBC does not represent Mr. Pyper. She confirmed they seized all files relating to Pyper's business but that Mr. Pyper had access to his information upon request. Ms. Rajan also confirmed that all correspondence and employment matters are directed to Mr. Pyper for his review and action. She

reiterated that LSBC does not encumber Mr. Pyper's ability to respond to any Employment Standards requests. Mr. Pyper had requested documentation on one occasion, and she confirmed he was provided with that documentation within a couple of days of his request. On September 10, 2014 Mr. Pyper was granted the ability to return to practice and the suspension was lifted.

12. The delegate ultimately determined that the complainants were employees of GPLC (see her reasons at pages R6 – R8) and, having determined their status, then turned her mind to their various unpaid wage claims. The delegate appended a separate “Wage Calculation Summary” for each complainant to the Corporate Determination. The delegate calculated Mr. Carter's unpaid wage entitlement based on his agreed \$35 per hour wage rate. His claim, including regular wages, statutory holiday pay, overtime pay, compensation for length of service, vacation pay and reimbursement for an \$80 court filing fee he had paid (see subsection 21(2)), together with section 88 interest, totalled \$4,255.87. Ms. Chase's claim, also calculated based on a \$35 per hour wage rate, totalled \$3,123.97 including regular wages, overtime pay, compensation for length of service, vacation pay and section 88 interest. Ms. Ogg's unpaid wage claim, based on her \$20 per hour wage rate, totalled \$3,258.90 including regular wages, statutory holiday pay, overtime pay, compensation for length of service, vacation pay and section 88 interest. As previously noted, GPLC never appealed the Corporate Determination and the time for so doing expired on January 5, 2015, and thus it now stands as a final order.
13. On January 26, 2015, the delegate issued the Section 96 Determination along with her accompanying reasons. As noted above, the unpaid wage amounts awarded to each of the three complainants is identical to the amounts awarded to each of them under the Corporate Determination save for some additional section 88 interest amounts. The delegate, in finding Mr. Pyper personally liable under subsection 96(1), noted that he was recorded in the BC Corporate Registry as GPLC's sole director when the complainants' unpaid wage claims crystallized.
14. Subsection 98(2) of the *Act* provides as follows: “If a corporation contravenes a requirement of this Act or the regulations, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the contravention is also liable to the penalty.” The delegate held Mr. Pyper liable for each of the six \$500 monetary penalties levied against GPLC because “Mr. Pyper oversaw the general operations of the business and was responsible for paying wages to employees” and “was aware that the wages had not been paid and failed to pay them as required” (delegate's reasons, page R3).

## REASONS FOR APPEAL

15. Mr. Pyper's Appeal Form indicates that he is appealing the Section 96 Determination on the grounds that the delegate erred in law and failed to observe the principles of natural justice in making the determination (subsections 112(1)(a) and (b) of the *Act*). In a 1 ½-page memorandum appended to his Appeal Form, Mr. Pyper further explicated his reasons for appeal and the alleged “errors of law” may be summarized as follows:
  - “Gerhard Pyper was not a director or officer of Pyper Law Group [GPLC] at the material time when all the employees were rendered unemployed” and he “denies that he was a *de facto* director of [GPLC] at the material times that triggered a claim by the complainants”. He says that the LSBC “failed to file a change of directors/officers for [GPLC] with the Corporate Registry”;
  - “The Director of Employment Standards failed to pursue the Law Society who was in *de facto* control of [GPLC] and the employees at all material times”;

- “Gerhard Pyper an no time [*sic*] permit, authorized or acquiesced to [GPLC] alleged contravention of the Employment Standards Act [*sic*].”
  - The complainants were not “full-time” employees and they were working under verbal contracts whereby “they were only entitled for remuneration on an hourly basis when called upon for work”; and
  - “It is respectfully submitted that the decision not based on legal principles” [*sic*].
16. The alleged “natural justice” breaches are described as follows:
- “It is respectfully submitted that the decision of the Director is unjust, biased, unequitable [*sic*] and violates the principles of natural justice. The delegate...displayed an overly hostile attitude towards Gerhard Pyper during a meeting to discuss the complainants’ claims. [The delegate] refused to accept the fact that Gerhard Pyper could not provide documents in support of [GPLC’s] defense. All documents which included the server (computer) were at all material times under the care and control of the Law Society”;
  - “[The delegate] had disposed of the matter before hearing [GPLC’s] argument or defense. [The delegate] treated Mr. Pyper with contempt and total disrespect [and]...the conduct of [the delegate] renders the determination void”.

## FINDINGS AND ANALYSIS

17. At the outset of my findings and analysis, I think it important to reiterate that the appeal before me concerns the *Section 96 Determination* not the *Corporate Determination*. The Corporate Determination was issued on December 9, 2014, and the time for appealing it expired on January 5, 2015. GPLC could have, but for whatever reason chose not to, appealed the Determination to the Tribunal but, having failed to do so, the findings set out in it with respect the complainants’ unpaid wage claims are now a matter of *res judicata*.
18. An appeal of a determination issued under subsection 96(1) is limited, in most cases, to issues that relate to the correctness of the determination insofar as the individual’s liability under subsection 96(1) is concerned such as whether the individual was a director or officer when the complainant’s wage claim crystallized, whether the 2-month wage liability ceiling was correctly calculated and, in an appropriate case, whether one or more of the subsection 96(2) defences applies. If the determination also includes amounts reflecting monetary penalties, as is the case here, the director/officer can also argue whether he or she authorized, permitted or acquiesced in the contravention that gave rise to the penalty. However, issues that have already been determined by way of an underlying corporate determination are not to be re-litigated in an appeal of a determination issued under subsection 96(1) – see, for example, *Steinemann*, BC EST # D180/96 and *Neudorf*, BC EST # D076/07. Tribunal Member Stevenson noted in *Neudorf, supra* (at pages 2 – 3):

...in the absence of fraud, collusion, or decisive fresh evidence not previously available, the doctrine of *res judicata*, or issue estoppel, precludes individuals like Neudorf from arguing whether the Company was properly found liable in the corporate Determination.

A director/officer of an employer company appealing a Determination of personal liability under Section 96 of the *Act* is limited to arguing issues of whether he or she was a director/officer at the time the wages were earned and should have been paid and whether the amount of the Determination falls within the 2 month ceiling on such personal liability. Where personal liability is imposed under Section 98(2), a director/officer is limited to arguing the issue of whether he or she authorized, permitted or acquiesced in the contraventions of the *Act* resulting in the imposition of administrative penalties against the company. The policy reason underlying this approach is that the enforcement mechanisms of the *Act* are meant to

operate quickly and inexpensively, and permitting corporate directors to re-litigate a finding of corporate liability would undermine the fulfillment of that goal.

### *Alleged Errors of Law*

19. Although Mr. Pyper says that the delegate erred in law in finding that the complainants were “employees” as defined in section 1 of the *Act*, and thus were not entitled to statutory entitlements such as overtime pay, vacation pay, statutory holiday pay and compensation for length of service, these matters have been finally determined by way of the Corporate Determination and cannot be revisited in this appeal of the Section 96 Determination. Further, even if these issues were properly before me, I should note that Mr. Pyper’s bald assertions that the complainants were not employees cannot be given any credence in light of the careful analysis of this issue contained in the delegate’s reasons issued concurrently with the Corporate Determination (see, especially, pages R6 – R8). There is nothing in Mr. Pyper’s submission that calls into question the correctness of the delegate’s findings with respect to the status of, or the amounts owing to, any of the complainants.
20. Mr. Pyper says that he was not an actual or “*de facto*” director when the complainants’ wage claims crystallized. However, this wholly uncorroborated assertion (for example, Mr. Pyper has not submitted a copy of his formal resignation as a director) stands in marked contrast to the record before me that indicates Mr. Pyper was GPLC’s sole director at all material times. Mr. Pyper advances the curious submission that it was somehow incumbent on the LSBC to file a notice of change of directors with the BC Corporate Registry. However, Mr. Pyper has not provided any further elucidation as to why the LSBC was obliged to proceed in that manner or what legal authority the LSBC would have had to undertake such an action (obviously, the LSBC was not a shareholder of GPLC). I am unable to find any provision in the *Legal Profession Act* that enables the LSBC to unilaterally file such a “change of directors” notice. I consider Mr. Pyper’s assertion on this score to be wholly misconceived.
21. Mr. Pyper appears to be suggesting – although he has not referred to the specific statutory provision – that somehow the LSBC was an “associated employer” under section 95 of the *Act*. In my view, it is only through the application of this provision that the LSBC could be characterized as an employer and thus also liable for the complainants’ unpaid wages. In my view, this ground of appeal is entirely without merit. There is nothing in the material before me that even remotely suggests that GPLC and the LSBC were jointly operating his law practice – the LSBC’s role in Mr. Pyper’s practice was as a regulator of the legal profession generally (a profession including Mr. Pyper) but not as a *co-employer* of those who worked with Mr. Pyper in his professional law practice. If Mr. Pyper truly believes that the LSBC improperly exercised its statutory authority to suspend him from practice and to appoint an interim custodian, he can pursue whatever claim he believes he might have in the civil courts – however, this is not a matter over which the Employment Standards Tribunal has any jurisdiction.
22. Mr. Pyper says that he was unable to properly address the complainants’ complaints because the LSBC “seized the total operation” of his law practice and “seized the bank accounts”. I am somewhat puzzled as to how this assertion relates to the complainants’ unpaid wage claims. If the complainants are owed wages under the *Act* (and it has now been finally determined that they were) and if Mr. Pyper was the sole director of the corporate entity that employed them (and he was), whether or not his bank accounts were “frozen” or “seized” by the LSBC is completely irrelevant. Further, and with respect to the matter of his access to the law practice’s payroll and other documents, the record before me includes a letter dated August 20, 2014, from the LSBC custodian to the delegate in which the custodian advises the delegate that, first, that there were “minimal general funds” in the general account of the practice (suggesting that the custodian had no funds available to pay the complainants the unpaid wages to which they were entitled) and, second, that “I am not

representing Mr. Pyper with respect to this employment matter and all correspondence received from you will be forwarded to Mr. Pyper for his review and action” (suggesting that Mr. Pyper was apprised about any communications between the delegate and the LSBC). Further, and contrary to Mr. Pyper’s assertions about not having access to records, as the delegate noted in her reasons issued concurrently with the Corporate Determination (quoted in part, above), Mr. Pyper did have access to all practice records – all he had to do was ask (something he apparently only did on one occasion before his suspension was lifted on September 10, 2014).

23. With respect to the six monetary penalties, Mr. Pyper’s position is nothing more than a bald denial: “Gerhard Pyper an no time [*sic*] permit, authorized or acquiesced to [GPLC] alleged contravention of the Employment Standards Act [*sic*]”. However, this assertion stands in marked contrast to certain findings of fact contained in the delegate’s reasons issued concurrently with both the Corporate Determination and the Section 96 Determination. For example, at page 2 of the latter reasons, the delegate notes that “Mr. Pyper does not dispute that wages are owed to the Complainants but that Pyper’s accounts were frozen by the [LSBC] and that is why he was unable to pay their outstanding wage” and that “he agreed the Complainants were not paid their final pay and are owed for the hours they worked in their final pay period” (page R2).
24. It is important to note that Mr. Pyper was, at all material times, the sole director of GPLC and that this was the legal entity through which he operated his law practice. At all material times, he directed and controlled the business affairs of GPLC in accordance with the provisions of Part 9 of the *Legal Profession Act*, and even though the LSBC suspended his right to practice law and GPLC’s permit issued under section 82 of the *Legal Profession Act*, those actions did not affect his status as GPLC’s sole director.
25. A number of separate defences to a director’s subsection 96(1) personal liability for unpaid wages are set out in subsection 96(2). Mr. Pyper has not raised any of these defences and, simply for sake of completeness, I should note that, based on my review of the entire documentary record, none could apply in this instance.
26. Insofar as Mr. Pyper’s liability for the six monetary penalties levied against GPLC under subsection 98(1) of the *Act* is concerned, it must be remembered that voting shareholders in law corporations must be either practising lawyers or authorized law corporations (section 82, *Legal Profession Act*). Mr. Pyper was the only practising lawyer employed by GPLC and clearly was its sole “controlling force”. It follows that he either knew, or should have known, that his employees were not being paid their wages as required by the *Act*. The delegate held, at page R3 of her reasons:

I have found the Complainants were not paid all wages as owed. Mr. Pyper oversaw the general operations of the business and was responsible for paying wages to employees. Furthermore, the Complainants made numerous attempts to collect their unpaid wages from Mr. Pyper but he did not pay them. The August 14, 2014 preliminary findings letter clearly sets out the corporate officer liability for administrative penalties. Accordingly, I find Mr. Pyper was responsible for the payment of wages, was aware that the wages had not been paid and failed to pay them as required.
27. Given the total absence of any serious challenge to the delegate’s findings of fact, and coupled with the fundamental elements of the law corporation vehicle that Mr. Pyper utilized to operate his law practice (see Part 6, *Legal Profession Act*), I am satisfied that the delegate did not err in finding that Mr. Pyper was also liable under subsection 98(2) of the *Act* for the six monetary penalties originally levied against GPLC. In my view, it is abundantly apparent that Mr. Pyper “authorized, permitted or acquiesced” in the contraventions of the *Act* that triggered the six monetary penalties in question.
28. I have one further observation regarding Mr. Pyper’s personal liability in this matter. The delegate initially issued a determination against GPLC, and subsequently issued a determination against Mr. Pyper in his

personal capacity based on his status as GPLC's sole director. However, the record before me suggests that the delegate might have equally proceeded against *both* GPLC and Mr. Pyper as "co-employers" of the complainants. Alternatively, the delegate might well have determined that GPLC and Mr. Pyper were "associated employers" under section 95 of the *Act*.

### ***Alleged Breaches of Natural Justice***

29. I now turn to the "natural justice" grounds of appeal. As I read Mr. Pyper's memorandum appended to his Appeal Form, there are two essential allegations advanced under this ground of appeal. First, Mr. Pyper says that the delegate was "biased" against him – and he infers this bias, in large measure, from her "hostile", "disrespectful" and "contemptuous" demeanour towards him. Second, he appears to be suggesting that the delegate made a decision without first giving him an opportunity to present his evidence and argument: "[The delegate] had disposed of the matter before hearing [GPLC's] argument or defense".
30. The "bias" allegation against the delegate is not supported by any evidence. I am troubled that the appellant, a lawyer, would launch an *ad hominem* attack against the delegate without providing at least some evidence to support the aspersions he has cast her way. Mr. Pyper says the delegate was "overly hostile", "disrespectful" and that she treated him "with contempt" but has not provided *any* particulars that one might examine to determine if these allegations have any ring of truth. Given the fact that the "bias" allegation amounts to nothing more than a wholly unsubstantiated personal attack on the delegate's character and integrity, I consider this ground of appeal to be wholly without merit.
31. Mr. Pyper's second "natural justice" allegation is as follows: "[The delegate] had disposed of the matter before hearing [GPLC's] argument or defense". In essence, Mr. Pyper is relying on the principle known as *audi alteram partem* which states that a person is entitled to know the case against them and to be afforded an opportunity to respond to that case by providing their own evidence and argument prior to any decision being rendered. To a significant degree, this principle is codified in section 77 of the *Act*: "If an investigation is conducted, the director must make reasonable efforts to give a person under investigation an opportunity to respond."
32. The record before me indicates that Mr. Pyper was given an opportunity to respond to the case against him and, as such, his allegation that he was not given such an opportunity is entirely baseless. On July 4, 2014, the delegate wrote to GPLC (and to Mr. Pyper's attention) advising about several unpaid wage complaints (including those filed by all three of the present complainants) and seeking a reply. Mr. Pyper responded to the delegate by letter dated July 21, 2014. The record before me also includes e-mail correspondence from the delegate to Mr. Pyper dated July 4, 2014, and August 14, 2014, and correspondence from Mr. Pyper to the delegate dated October 29, 2014. The delegate also copied all of her correspondence to the LSBC to Mr. Pyper including a letter dated August 14, 2014 (and Mr. Pyper responded to the delegate regarding this letter on September 15, 2014). It also appears that Mr. Pyper met with the delegate at some point (see para. 11 of Mr. Pyper's memorandum appended to his Appeal Form) although the particulars relating to this meeting are not contained in the record before me. In light of this documentary record, it seems clear that Mr. Pyper was afforded a reasonable opportunity to respond and to fully participate in the delegate's investigation.



**ORDER**

33. Pursuant to subsection 115(1)(a) of the *Act*, the Section 96 Determination is confirmed as issued in the amount of \$13,680.04 together with whatever further interest that has accrued, under section 88 of the *Act*, since the date of issuance.

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