

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/38

**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
Shannon L.K. Miyazaki	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 \$12,888.67 on account of unpaid wages and interest owed to Rebecca Cowan (“Ms. Cowan”) and Shannon Miyazaki (“Ms. Miyazaki”). I shall refer to Ms. Cowan and Ms. Miyazaki jointly 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 three separate \$500 monetary penalties against GPLC (see section 98 of the *Act*) thus bringing the total amount of the Corporate Determination to \$14,388.67.
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 \$1,500 in monetary penalties levied against Mr. Pyper under subsection 98(2) of the *Act*. The total amount of the Section 96 Determination is \$14,438.71. 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. This appeal is identical to the appeal filed by Mr. Pyper in EST File No. 2015A/37 relating to a determination issued against Mr. Pyper regarding unpaid wages owed to three other employees (these claims were also the subject of a prior corporate determination issued against GPLC). Indeed, the same Appeal Form and attached memorandum of argument was filed with respect to both appeals. Accordingly, since the issues before me are identical in both appeals, these reasons for decision should be read in conjunction with my reasons issued in the other appeal file (see *Pyper*, BC EST # D062/15).

6. 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. The delegate’s legal and factual findings set out in the Corporate Determination are not reviewable in this appeal (see *Steinemann*, BC EST # D180/96 and *Neudorf*, BC EST # D076/07).
7. I am adjudicating this appeal based on the parties’ written submissions and I have submissions from Mr. Pyper, the delegate and one of the two complainants, Ms. Miyazaki. Ms. Cowan did not file 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

8. 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 complainants assisted Mr. Pyper in his law practice.
9. On June 30, 2014, Ms. Cowan filed an unpaid wage complaint. She asserted that she had been employed as a “legal assistant” with the “Pyper Law Group” and was owed approximately \$4,500 in unpaid wages. On June 16, 2014, Ms. Miyazaki filed an unpaid wage complaint also naming the “Pyper Law Group” as her employer. Ms. Miyazaki claimed approximately \$14,500 in unpaid wages for her work as a “legal assistant”. 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.
10. 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*.
11. The delegate investigated these two complaints, as well as three others filed by former GPLC employees, and on December 9, 2014, issued two separate corporate determinations against GPLC.
12. During the course of the investigation, Mr. Pyper’s position was that each complainant was an “independent contractor” rather than an employee. Mr. Pyper also claimed that the LSBC “indirectly” terminated their employment and “took over his practice”. The LSBC rescinded Mr. Pyper’s suspension on September 10, 2014, thereby allowing Mr. Pyper to return to the practice of law.
13. The delegate determined that both complainants were employees of GPLC and, having determined their status, then calculated each complainant’s unpaid wage claim. The delegate appended a separate “Wage Calculation Summary” for each complainant to the Corporate Determination. The delegate calculated Ms. Cowan’s unpaid wage entitlement at \$4,546.36 including regular wages, statutory holiday pay, compensation

for length of service, vacation pay and section 88 interest. Ms. Miyazaki's claim totalled \$8,330.09 including regular wages, vacation pay, statutory holiday pay, compensation for length of service 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.

14. On January 26, 2015, the delegate issued the Section 96 Determination along with her accompanying reasons. As noted above, the amount of the unpaid wages awarded to each complainant is identical to the amount 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.
15. 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 three \$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

16. 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 at 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*].
17. 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

18. I will separately address Mr. Pyper's reasons for appeal and shall first deal with the alleged “errors of law” made by the delegate.

### *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*, this issue, as well as each complainant's unpaid wage entitlement, have been finally determined by way of the Corporate Determination. These matters 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 since 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, either complainant.
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.
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, the LSBC’s position is that 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 three 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. For example, at page 2 of her 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 three 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 three 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 three monetary penalties in question.
28. I now turn to the alleged “natural justice” breaches on the part of the delegate.

### *Alleged Breaches of Natural Justice*

29. 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 common law principle known as *audi alteram partem* ("hear the other side"). 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 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 \$14,438.71 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**