

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 -

Jean Davenport, Director or Officer of
Xinex Networks Inc., in Receivership
("Davenport")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE No.: 1998/772

DATE OF DECISION: February 22, 1999

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Jean Davenport (“Davenport”), a Director or Officer of Xinex Networks Inc., in Receivership (“Xinex”) of a Determination which was issued on November 13, 1998 by a delegate of the Director of Employment Standards (the “Director”). In that Determination the Director found that Davenport was a director or officer of Xinex, ordered Davenport to comply with the requirements of the Act and, pursuant to Section 96 of the Act, ordered Davenport to pay \$319,819.93. This appeal is one of eight appeals filed by directors or officers of Xinex. All of the appeals are identical. The reasons applicable to this appeal are set out in *John Andrew, a Director or Officer of Xinex Networks Inc., in Receivership*, BC EST #D068/99.

Davenport says the Determination is wrong because the amount ordered to be paid includes calculations for interest, vacation pay, bonuses and other amounts which are not the responsibility of a director or officer under the Act and is excessive. Davenport seeks to have the amount reduced to “accurately reflect the amounts owed to former employees” of Xinex.

The Tribunal has decided that an oral hearing is not required.

ISSUE TO BE DECIDED

The issue raised by this appeal is whether Davenport has met the burden of persuading the Tribunal that the Determination ought to be varied or cancelled because the Director erred in fact or in law.

FACTS

Xinex was engaged in high tech research and development. Its office and principal place of business was in Delta, British Columbia. It was placed in receivership on June 5, 1998. On September 21, 1998, the Director issued a corporate Determination against Xinex in an amount of \$421, 817.10. The calculation of the amount owing was based on information provided to the Director by Andrew, who was the Controller and chief financial officer of Xinex. There was no appeal by Xinex of that Determination. Davenport was a director or officer of Xinex and held office until Xinex was placed in receivership.

A spreadsheet attached to the Determination listed 69 employees and provided some information relating to amounts owed to each employee. The spreadsheet identified, among other things:

- an amount equivalent to 2 months wages, which is the limit of a director or officer’s liability under subsection 96(1);
- an amount of vacation pay owing;
- an amount that included unpaid overtime, commissions and bonuses;
- an amount for interest; and
- an amount specifically identifying the “Director or Officer’s liability”, stated individually for each employee and as a total amount.

In all cases but one, the amount claimed as the director or officer’s liability for each employee was less than or equal to the amount identified as 2 months wages.

ANALYSIS

For the reasons set out in *John Andrew, a Director or Officer of Xinex Networks Inc., in Receivership*, BC EST #D068/99 this appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated November 13, 1998 be confirmed in the amount of \$319,819.93.

David Stevenson
Adjudicator
Employment Standards Tribunal