

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* S.B.C. 1995, C. 38

- by -

Patricia Duncan  
("Duncan")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**DATE OF DECISION:** May 13, 1996

**FILE NO:** 96/220

**DECISION**

**OVERVIEW**

This is an appeal by Patricia Duncan (“Duncan”) pursuant to Section 112 of the Employment Standards Act (the “*Act*”) against Determination No. CDET 001499 issued by the Director of Employment Standards (the “Director”) on March 7, 1996. Duncan’s appeal concerns the Director’s refusal to investigate her complaint as it was filed out of time.

**FACTS**

Duncan filed a complaint with the Employment Standards Branch (the “Branch”) against the Vancouver School Board (the “VSB”) which was received on January 18, 1996. The complaint letter was dated January 16, 1996. In a follow-up letter to the Branch dated January 24, 1996, Duncan alleged she was wrongfully dismissed by the VSB in 1987. In her appeal to the Tribunal, Duncan states her end date with the VSB was July 1987.

The Director refused to investigate Duncan’s complaint on the basis that it was not made within the time limits stipulated in Section 74 of the *Act* and, subsequently, Determination No. CDET 001499 was issued.

**ISSUE TO BE DECIDED**

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

**ARGUMENTS**

The Director contends that pursuant to the *Act*, Duncan’s complaint is out of time. The last day on which a complaint could have been delivered to an office of the Branch by Campbell was in January 1988. This complaint was not delivered to an office of the Branch until January 18, 1996.

Duncan, on the other hand, wants her complaint against the VSB investigated regardless of the fact that several years has lapsed since she ceased working for this employer.

## ANALYSIS

Section 74 of the *Act* states:

### *Complaint 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.***

Section 76 of the *Act* 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.*

Duncan's last date of employment was in July 1987. Duncan's complaint letter was dated January 16, 1996 and received by the Branch on January 18, 1996. Clearly, her complaint was made outside the six month time limit which is stipulated in the *Act*.

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. Section 72(2) (a) of the *Act* allows the Director to refuse to investigate a complaint which is not made with the time limits set out in Section 74 of the *Act*.

For the above reasons, I conclude that the Director was correct in determining that Duncan'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 the *Act*, I order that Determination No. CDET 001499 be confirmed

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**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**

**NE:sr**