

An appeal

- by -

Josiah Crowell, a Director of J. Crowell Investments Inc.  
(“Mr. Crowell”)

- 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:** Carol L. Roberts

**FILE No.:** 2016A/43

**DATE OF DECISION:** June 24, 2016

## DECISION

### SUBMISSIONS

Josiah Crowell on his own behalf, as a Director of J. Crowell Investments Inc.

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Josiah Crowell (“Mr. Crowell”), a Director of J. Crowell Investments Inc. (“JCI”), has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on January 25, 2016. In that Determination, the Director found that Mr. Crowell was a director of JCI at the time wages owing to Pardeep Parmar, Satar Geeta Parmar, Rayan Rameez and Atif Khan were earned or should have been paid. The Director ordered Mr. Crowell to pay the amount of \$9,415.29, representing not more than two months’ outstanding wages per employee, including accrued interest in the amount of \$197.12.
2. Mr. Crowell appeals the Determination on the grounds that evidence has become available that was not available at the time the Determination was being made. Mr. Crowell also seeks an extension of time in which to appeal the Determination.
3. Upon receiving the section 112(5) record submitted by the Director, Mr. Crowell contended that the record was incomplete. He argued that the record did not disclose a payment made to one of the employees. The delegate said that all information before her at the time she issued her Determination was part of the record and that there was nothing further to add. Mr. Crowell did not respond further.
4. I find no basis to conclude that the record is incomplete. Mr. Crowell’s argument that the record fails to reflect a payment to an employee will be addressed in my reasons, below.
5. This decision is based on Mr. Crowell’s written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made and the Reasons for the Determination.

### FACTS AND ARGUMENT

6. Pardeep Parmar, Satar Geeta Parmar, Rayan Rameez and Atif Khan (the “Employees”) filed complaints alleging that JCI had contravened the *Act* in failing to pay them regular and overtime wages, statutory holiday pay, commissions and vacation pay.
7. Following an investigation, a delegate of the Director issued a Determination on November 17, 2015, against JCI finding that the Employees were entitled to wages and interest in the amount of \$9,368.24 (the “Corporate Determination”). The Director also imposed five administrative penalties on JCI in the total amount of \$2,500 for contraventions of the *Act*.
8. The Corporate Determination, which included a notice to directors and officers regarding their personal liability for wages under the *Act*, was sent by registered mail to JCI’s registered and records office as well as to its director. A copy of the Determination was also sent to the office of JCI’s British Columbia’s corporate solicitor. Canada Post records confirm that although the Determination which was sent to Mr. Crowell personally was unclaimed, it was successfully delivered to JCI’s head office as well as JCI’s lawyer.

9. The appeal period for the Corporate Determination expired December 28, 2015. The Determination was not appealed and JCI did not pay the amount in that Determination.
10. A September 2, 2015, Corporate Search indicated that JCI was incorporated on January 5, 2015, that Mr. Crowell was listed as a director, and that Mr. Crowell was a director between March 23, 2015, and April 21, 2015, when the Employees' wages were earned or should have been paid.
11. The delegate determined that as a director of JCI, Mr. Crowell was liable for the Employees' unpaid wages, which were for less than a two month period. The delegate was unable to conclude that Mr. Crowell authorized, permitted or acquiesced in the contraventions and found that he was not personally liable for the administrative penalties.
12. Mr. Crowell contends that he was unaware of the Determination until the bailiff served him with a copy. He says that during the period when the wages were to be paid, his office was in the process of engaging new bookkeepers and payroll services. He submits that his new bookkeeper had to correct a number of errors made by the previous bookkeeper, causing him additional problems. He also contends that, during this period, he did not have access to some timekeeping software. In his appeal, Mr. Crowell says that he understands the employees are "in fact owed something" but that he requires additional time to determine what these amounts should be.
13. Mr. Crowell says that the addresses "listed on the documents" (by which I infer are the addresses noted in the Determination as JCI's Edmonton Registered and Records office and JCI's B.C. lawyer) are out of date so he was not notified about, and did not respond to, the complaints.
14. Mr. Crowell contended that some of the Employees' wages were paid. Attached to the appeal was a copy of an interac transfer to one of the employees.

## ANALYSIS

15. Section 114 of the *Act* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:
  - (a) the appeal is not within the jurisdiction of the tribunal;
  - (b) the appeal was not filed within the applicable time limit;
  - (c) the appeal is frivolous, vexatious, trivial or gives rise to an abuse of process;
  - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
  - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
  - (f) there is no reasonable prospect that the appeal will succeed;
  - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
  - (h) one or more of the requirements of section 112(2) have not been met.
16. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
  - (a) the director erred in law;
  - (b) the director failed to observe the principles of natural justice in making the determination;

- (c) evidence has become available that was not available at the time the determination was being made.

17. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with the decision. I conclude that Mr. Crowell has not met that burden and dismiss the appeal.

*Failure to observe the principles of natural justice*

18. Although Mr. Crowell contends that the Director failed to observe the principles of natural justice, there is nothing in the appeal documentation that refers to this ground of appeal. There is nothing in the appeal submission supporting this ground of appeal. The record confirms that the Director sent the Notice of Hearing regarding the complaints as well as the Notice to Directors regarding their personal liability for unpaid wages to JCI and to JCI's registered office.

19. The corporate search, which was conducted September 2, 2015, contained a Registered and Records address in Edmonton as well as a Langley, B.C. Attorney Information. While it may be that the Corporate Registry address for Mr. Crowell is "out of date" and Mr. Crowell did not receive the information that does not amount to a denial of natural justice. It is JCI's responsibility to ensure that the corporate registry information is current. Furthermore, Mr. Crowell does not say, and there is no evidence, that the address for the British Columbia lawyer and JCI's head office, are incorrect. Both the Notice of the Fact Finding meeting as well as the Corporate Determination were properly served.

20. I also note that the delegate sent Mr. Crowell a copy of the complaints as well as notice of the hearing into those complaints by way of e-mail at the address used by Mr. Crowell in filing his appeal. The e-mail indicates that a delegate had a conversation with Mr. Crowell about those complaints on August 17, 2015. Therefore, I find that Mr. Crowell was aware of the allegations, as well as his liability for the wages owed to the Employees and had every opportunity to respond.

21. The Tribunal recognizes that parties without legal training often do not appreciate what natural justice means. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker. Natural justice does not mean that the delegate accepts one party's notion of "fairness".

22. Mr. Crowell's appeal is, in essence, a contention that the Determination is wrong, although he concedes that the Employees are owed wages.

23. The Corporate registry demonstrates that Mr. Crowell was, in fact, listed as a corporate director during the time the Employees' wages were earned and should have been paid.

24. Section 96 of the *Act* provides as follows:

- (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.
- (2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for
  - (a) any liability to an employee under Section 63, termination pay or money payable in respect of an individual or group terminations, if the corporation is in receivership,

(b) any liability to an employee for wages, if the corporation is subject to an action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act...

25. There is no evidence, and Mr. Crowell does not contend, that he was not a director when the wages were earned or that JCI was in bankruptcy or receivership. I find no error in the delegate's conclusions.

26. The appeal is dismissed.

### **ORDER**

27. Pursuant to section 115 of the *Act*, I deny the appeal. I order that the Determination, dated January 25, 2016, be confirmed in the amount of \$9,415.29 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**