

An appeal

- by -

0776596 B.C. Ltd. carrying on business as Beef's Bar & Grill  
(the "Employer")

- 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.:** 2009A/102

**DATE OF DECISION:** October 15, 2009

## DECISION

### SUBMISSIONS

Steven Brennen	on behalf of 0776596 B.C. Ltd.
Candace Hopkins	on her own behalf
Alan Phillips	on behalf of the Director of Employment Standards

### INTRODUCTION

1. Pursuant to section 112(1) of the *Employment Standards Act* (the “*Act*”) Steven Brennen has filed an appeal, in his own name, regarding a Determination that was issued by a delegate of the Director of Employment Standards (the “Delegate”) against 0776596 B.C. Ltd., carrying on business as “Beef’s Bar & Grill” (the “Employer”), on June 24, 2009 (the “Determination”). By way of the Determination, the Employer was ordered to pay its former employee, Candace Hopkins (“Hopkins”), the sum of \$2,465.56 on account of unpaid regular wages (\$1,000), vacation pay (\$546.74), one week’s wages as section 63 compensation for length of service (\$875) and section 88 interest (\$43.82). In addition, and also by way of the Determination, the Delegate levied two separate \$500 monetary penalties (see section 98) against the employer for having contravened section 18 of the *Act* (failure to pay wages) and section 46 of the *Employment Standards Regulation* (failure to produce employment records). Thus, the total amount payable under the Determination is \$3,465.56.
2. As noted above, this appeal was filed in the name of Steven Brennen even though he is not personally liable under the Determination. In due course, if the Determination is not satisfied, the Director of Employment Standards might issue a section 96 determination against Mr. Brennen personally, however, so far as I know, no such determination has yet been issued; certainly, there is no section determination 96 before me. It seems clear that Mr. Brennen intended to appeal the Determination issued against the Employer (I understand that Mr. Brennen is a director and officer of the Employer) and, accordingly, I consider the appeal form to be technically irregular (see section 123) and I will treat this appeal as having been filed by Mr. Brennen on behalf of the Employer.
3. I am adjudicating this appeal based solely on the parties’ written submissions. I have before me a 1-page handwritten note appended to the Employer’s appeal form and a further 1-paragraph e-mail communication to the Tribunal sent by Mr. Brennen on September 28, 2009. I have considered Ms. Hopkins’ submissions filed on August 18 and September 30, 2009, and the Delegate’s submission dated September 4, 2009. I have also reviewed the section 112(5) “record” that was produced by the Delegate.
4. Notwithstanding my view that this appeal is properly before me, it nonetheless constitutes, in my judgment, an entirely frivolous and vexatious appeal as well as an abuse of process. Accordingly, I intend to summarily dismiss it under section 114(1)(c) of the *Act*. My reasons for so doing follow.

### FINDINGS AND ANALYSIS

5. The Employer, in its appeal form, says that the Determination should be cancelled because the Delegate failed to observe the principles of natural justice in making the Determination (section 112(1)(b)) and because it has new evidence that was not available when the Determination was being made (section 112(1)(c)).

Neither ground is adequately particularized and, on the face of things, each strikes me as being frivolous and vexatious.

6. As is detailed in the Delegate's "Reasons for the Determination" appended to the Determination (particularly at page R-3), the delegate made several efforts to involve the Employer in the investigate process but was rebuffed. The Employer refused to provide relevant payroll information pursuant to a valid demand and also provided misleading information – claiming that the Employer was bankrupt when in fact no such bankruptcy filing had occurred.
7. The Employer's allegations are also inconsistent on their face. In the 1-page note appended to the appeal form, Mr. Brennan states: Ms. Hopkins "went on strike" and "was terminated 3 months before I was forced to close the establishment due to financial issues". Ms. Hopkins could not have gone on strike since the workplace was not apparently unionized and, even if it were, managers such as Ms. Hopkins have no strike rights under B.C. labour legislation. Further, in the 1-paragraph e-mail sent September 28, 2009, Mr. Brennen says: "why should I have to pay [section 63 compensation for length of service] if she quit". In that same e-mail, Mr. Brennen contests Ms. Hopkins' right to statutory holiday pay, however, the Delegate refused to make such an award since, due to her manager status, she was not entitled to statutory holiday pay (see Delegate's Reasons, page R4). I might add that Mr. Brennen has also advanced several unsupported (and likely defamatory) comments about Ms. Hopkins (allegations to which Ms. Hopkins takes strong exception). As noted above, since these allegations are wholly unsupported, I do not intend to consider them further.
8. There is absolutely nothing in the material before me that raises a credible case that there was a denial of natural justice in this case. The Employer was given a full and fair opportunity to present its case and, for the most part, simply refused to make any substantively meaningful submission to the delegate (recall that the Employer refused to provide, despite a valid demand, any employment records relating to Ms. Hopkins' employment). There is no "new evidence" to be presented on appeal. Even if I were to consider the Employer's wholly unsupported (and internally inconsistent) allegations to constitute "evidence", these allegations could have been provided to the Delegate during the investigative process – there is simply nothing "new" about them.
9. While it seems evident that the Employer does not like the outcome reflected in the Determination, mere dissatisfaction with an adjudicated result falls well short of establishing even a *prima facie* case in an appeal to the Tribunal.

## **ORDER**

10. Pursuant to section 114(1)(c) of the *Act*, this appeal is dismissed. It follows that the Determination is confirmed as issued in the amount of \$3,465.56 together with whatever additional section 88 interest that may have accrued since the date of issuance.

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