

An appeal

- by -

Target Programs Ltd.
(“Target”)

- 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: Shafik Bhalloo

FILE No.: 2012A/86

DATE OF DECISION: October 12, 2012

DECISION

SUBMISSIONS

Christopher Nam	counsel for Target Programs Ltd.
Blythe Katindoy	on her own behalf
Stan Yoshida	on his own behalf
Jeremy Butler	on his own behalf
Lynn Ranger	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) brought by Target Programs Ltd. (“Target”) of a Determination that was issued on November 16, 2011, by a delegate of the Director of Employment Standards (the “Director”).
2. Deborah Angrave, Jeremy Butler, William Fredericks, Harland Giesbrecht, Cody Guha, Alan (A.J.) Junop, Blythe Katindoy, Gordon Peters, Peter Schaad, David Smith, Kyhan Smith, Matthew Stovold, Paul Sundher, Mark Tuit, Ronald Weaver, and Stan Yoshida (collectively, the “Complainants”) were employed in various capacities for different periods by Target which operated a radio, television and recording arts school, and carried on business as Columbia Academy of Radio, Television & Recording Arts. The Complainants filed their complaints against Target between February 11 and March 22, 2011, alleging that Target contravened the *Act* by failing to pay them regular wages, vacation pay, business expenses (in one (1) case), and compensation for length of service (the “Complaints”).
3. Following an investigation into the Complaints, the delegate determined that Target had contravened sections 17, 18, 58 and 63 of the *Act* in failing to pay the Complainants wages, vacation pay and compensation for length of service. The delegate also found that, in the case of one (1) of the Complainants, Target contravened section 21 of the *Act* by requiring him to cover some business expenses of Target. The delegate concluded that the Complainants were entitled to wages and interest in a total amount of \$169,839.42. The delegate also imposed three (3) administrative penalties of \$500.00 each, for a total of \$1,500.00, for contraventions of sections 17, 18 and 21 of the *Act*, pursuant to section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”).
4. Accompanying the Determination against Target was a Notice to Directors and Officers (the “Notice”) setting out their personal liability for unpaid wages under section 96 of the *Act*. The Notice also provided the following instructions to a director or officer of the company:

If a director/officer of the company which is the subject of the attached Determination disputes any of the findings contained in the Determination, he or she should ensure that the company files an appeal within the appeal period noted in the Determination.

If the Determination against the company is not appealed, or is appealed and confirmed by the Employment Standards Tribunal, the Employment Standards Branch will commence collection proceedings if voluntary payment is not made. The Employment Standards Branch may also proceed

against the directors/officers of the company for the amount of their personal liability as set out in the Act.

5. On the page preceding the Notice in the Determination, Target's appeal expiry date is expressly set out as 4:30 p.m. on December 26, 2011. However, Target did not file its appeal until August 10, 2012, over seven (7) months after the expiry of the appeal period.
6. Target's appeal invokes two (2) grounds, namely, the error of law and the natural justice grounds of appeal under subsections 112(1)(a) and (b) of the *Act*.
7. By way of remedy, Target is seeking the Tribunal to change or vary the Determination or to outright cancel the Determination.
8. As indicated, Target's appeal is filed after the expiry of the appeal period and, therefore, Target is seeking an extension of time in which to file its appeal. The Director opposes Target's application for an extension of time to appeal and so do three (3) of the Complainants who have filed responses to the appeal.
9. This decision will only address the issue of the timeliness of Target's appeal and whether the Tribunal should exercise its discretion under section 109(1)(b) and extend the statutory time limit for Target to appeal. If my decision is in the affirmative, then only will the parties be invited to make full submissions on the substantive issues raised in the appeal.
10. Pursuant to section 36 of the *Administrative Tribunals Act*, which is incorporated in the *Act* (s. 103), and Rule 8 of the Tribunal's *Rules of Practice and Procedure*, the Tribunal may hold any combination of written, electronic and oral hearings. In my view, the preliminary issue of the timeliness of Target's appeal may be adjudicated on the basis of the section 112(5) "record", the Reasons for the Determination (the "Reasons") and the written submissions of the parties.

ISSUE

11. Should the Tribunal exercise its discretion under section 109(1)(b) of the *Act* and allow the appeal even though the time period for seeking an appeal has expired?

THE FACTS

12. The facts material to the issue of timeliness of Target's appeal are as follows:
 1. On November 16, 2011, the Director issued a Determination against Target which included a Notice that should Target wish to appeal the Determination, such appeal was required to be delivered to the Tribunal no later than 4:30 p.m. on December 26, 2011.
 2. The Determination was sent by registered mail to the business address of Target; the registered and records office of Target at the law firm of Pushor Mitchell LLP; as well as to the home address of Mr. Morash (provided in the corporate search of Target).
 3. There is evidence in the section 112(5) "record" of the Director showing Canada Post's confirmation that the Determination was successfully delivered to the registered and records office of Target, as well to the address listed for Mr. Morash in the corporate search of Target.
 4. Target does not dispute receipt of the Determination in a timely fashion.

5. The Director of Target, Mr. Morash, intermittently participated in the investigation of the Complaints and the delegate in the Reasons sets out an extensive record of communications and attempts she made to communicate with Mr. Morash to obtain information from him.
6. There is evidence in the record and in the Reasons that most of the communication between Mr. Morash and the delegate occurred during the period March 4, 2011, through to June 12, 2011. Thereafter, on June 27, 2011, the delegate received Mr. Moorish's email reply indicating that he was out of the office on business at his Vancouver office and then off on holidays until July 4, 2011.
7. Subsequently, on July 19, 2011, the delegate sent Mr. Morash a preliminary findings letter, together with an updated calculation spreadsheet, via registered mail to the address at which she had previously communicated with Mr. Morash, and requested information from the latter and also informed him of his liability for unpaid wages as a director of the company. She did not receive a response.
8. On September 26, 2011, the delegate sent a further preliminary findings letter via email and registered mail to Mr. Morash and included in that correspondence a reminder to him of the claims against Target and updated the excel spreadsheets showing a recalculation of wages owing to the Complainants. She also included in that correspondence a submission of one of the respondents and identified a deadline by which she wanted Mr. Morash to respond.
9. Mr. Morash did not respond to either of the inquiries of the delegate inquiries of July 19, 2011, and September 26, 2011. Notwithstanding, the delegate attempted to contact Mr. Morash two (2) more times via email and telephone messages, which were left with Mr. Morash's administrative assistant at his accounting firm in Kelowna, but Mr. Morash again did not respond or return the delegate's calls.
10. Target's appeal, as previously indicated, was filed on August 10, 2012, in excess of seven (7) months after the expiry of the appeal period.
11. Target's appeal invokes two grounds of appeal, namely, the Director erred in law and failure to observe the principles of natural justice in making the Determination.

SUBMISSIONS OF TARGET

13. Target's appeal submissions are made by counsel who indicates in his submissions that he is counsel for Mr. Morash, who is the sole director and officer of P253 Enterprises Ltd. ("P253"), which purchased all of the issued and outstanding shares of Target on or about September 15, 2010.
14. While I have reviewed and considered all of counsel's lengthy submissions in this matter, I will very briefly highlight them here. The submissions may be divided between those that pertain to the merits of the appeal and those that relate to Target's application for an extension of time to file its late appeal. With respect to the former, counsel advances the following three (3) arguments:
 - (i) Pursuant to section 96(2)(b) of the Act, Mr. Morash is not personally liable for wages payable under section 96(1) because Target was subject to a proceeding under an insolvency Act;
 - (ii) In the alternative, it would be inequitable and unjust for Mr. Morash to be personally liable for the wages that accrued during the tenure of the previous owner of Target; and
 - (iii) In the further alternative, pursuant to section 65(1)(d) of the Act, liability resulting from length of service should not be payable by Mr. Morash because of an 'unforeseeable event or circumstance' which rendered performance of employee contracts impossible.

15. With respect to the first argument relating to the merits, wherein counsel argues that Mr. Morash should not be saddled with liability under section 96 of the *Act*, I note that the Determination under appeal is a corporate determination against Target and not an s.96 or a director's determination.
16. Counsel also highlights and relies upon subsection 96(2) of the *Act* in his submissions to persuade this Tribunal that Mr. Morash should not be personally liable for wages of employees awarded in made in the Determination. Section 96(2) exempts a director or officer from personal liability for wages where a corporation is subject "to a proceeding under an insolvency Act". Counsel, in arguing that subsection 96(2) of the *Act* applies in the case of Mr. Morash, relies on the Notice of Intention to Enforce a Security pursuant to paragraph 69(2)(c) and subsection 244(1) of the *Bankruptcy and Insolvency Act* issued to P253 on March 31, 2011, by the latter's secured creditor. P253 is the entity or the parent company that owns shares of Target.
17. With respect to the second argument, counsel argues that the previous owners and, more particularly, Sidney George McNeill ("Mr. McNeill") was the operating mind of Target for thirty (30) years prior to Mr. Morash taking over. While Mr. Morash was an accountant for Mr. McNeill and Target, Mr. Morash "was effectively a director for only four months" and he was provided inaccurate and missing financial information about Target and its employment wage obligations. Counsel describes how Mr. McNeill misrepresented to Mr. Morash the operations and financial condition and historical performance of Target. Counsel contends that in the circumstances holding Mr. Morash liable for unpaid wages "would lead to a patently unjust outcome which is contrary to the spirit and intent of the Act".
18. Counsel also appears to argue that there was a breach of principles of natural justice on the part of the delegate because she failed to consider the factors related to the alleged deception of Mr. Morash by the vendor and the latter's misrepresentations to Mr. Morash which induced him into a deal to purchase shares of Target (using P253) that he would otherwise not have engaged in.
19. Counsel also submits that Mr. McNeill, through his separate company, entered into a service agreement to provide consulting service to Target but breached that agreement and the delegate failed to consider that evidence also in making the Determination.
20. With respect to the third and final argument, counsel relies on section 65 of the *Act* which sets out a variety of exceptional circumstances under which liability resulting from length of service in section 63 (as well as section 64 for group termination) does not apply. In particular, he is relying upon section 65(1)(d) of the *Act* which provides:

Exceptions

65 (1) Sections 63 and 64 do not apply to an employee

....

(d) employed under an employment contract that is impossible to perform due to an unforeseeable event or circumstance other than receivership, action under section 427 of the *Bank Act* (Canada) or a proceeding under an insolvency Act,

21. It is counsel's contention that the alleged misrepresentations by Mr. McNeill in context of the share purchase of Target, together with Mr. McNeill's alleged breach of the share purchase agreement and his further breach of the consulting agreement, jointly constituted "an unforeseeable event or circumstance which made honouring the employment contracts of Target employees impossible to perform". In the circumstances, counsel argues that liability resulting from length of service pursuant to section 63 of the *Act* should not attach to Mr. Morash.

22. With respect to evidence in support of Target's application for extension of the appeal period, counsel submits that "the true consequences of the sale and purchase of Target from McNeill to P253 only developed within two months of the date of this Appeal letter". Mr. Morash was only in the position "to realize the full extent of Target's financial difficulties ... after the Determination was made".
23. He further argues that "[a]t all material times, Mr. Morash was suffering severe emotional distress and strain as a consequence of his marital difficulties and the resulting financial hardships associated with his divorce". As a result, counsel states that Mr. Morash was unable to seek counsel "within the short statutory time limits for appeal". Mr. Morash only retained counsel after he was able to get "through this tough period in his life", argues counsel. Further, only after retaining counsel, has Mr. Morash been able to "articulate his position and understand his rights and obligations", states counsel.
24. Counsel also states that Mr. Morash is of the view that the Determination was made "unjustly and incorrectly" and he "has always intended to appeal the Determination because of the severe prejudice to him and harsh financial consequences of the Determination will have on his life". [sic]
25. Counsel argues that the Complainants will not be unduly prejudiced if an extension to appeal is granted to Target as they will have "an opportunity to make their case" and will be in "no worse of".
26. Counsel also argues that there is a "very strong *prima facie* case in favour of Mr. Morash" on the basis of the three (3) arguments on the merit he has presented. Counsel encloses the affidavit of Mr. Morash, which contains information, which is substantially, if not wholly, incorporated in counsel's written submissions.

SUBMISSIONS OF COMPLAINANTS

27. Those Complainants who filed a reply all oppose granting Target an extension of time to appeal. I do not find it necessary to reiterate their submissions here.

SUBMISSIONS OF THE DIRECTOR

28. The Director opposes Target's application for an extension of time for filing an appeal. I have reviewed the Director's submissions carefully and, while I do not see the need to repeat those submissions verbatim here, I would like to point out three (3) noteworthy items from those submissions. First, the Director notes that Mr. Morash did not provide information regarding the relationship between P253 and Target in the investigation of the Complaints, nor did Mr. Morash argue at any time that P253 owned Target. The Director notes that all payroll records, documentation and correspondence she received during the investigation of the Complaints are in the name of Target, and no argument has been made that the style of cause in the Determination or the proceeding is incorrect.
29. With respect to the natural justice ground of appeal, the Director sets out in great detail in her submissions, as well as in the Reasons at pages R4 and R5, the attempts she made to contact Mr. Morash and when she was successful and when she was not. I note those attempts are significant in number, and the Director points out that Mr. Morash did not respond to her final requests for a response that included her preliminary findings letters which she sent to Mr. Morash in July and later in September and her subsequent calls to him at his accounting office in Kelowna.
30. Lastly, the Director notes that upon the expiry of the appeal period, after the matter was transferred to the Employment Standards Branch (the "Branch") for collections because Target failed to pay monies ordered under the Determination, the Determination was then filed in the Supreme Court of British Columbia on

April 24, 2012. Thereafter, the Branch commenced collections efforts by engaging a bailiff. It is these efforts of the Branch that have prompted Target to now appeal and ask for an extension of time to appeal, argues the Director. Otherwise, argues the Director, there is not a reasonable or credible explanation for Target's failure to appeal the Determination within the statutory time limit.

ANALYSIS

31. Section 112 of the *Act* serves as the code for any party wishing to appeal the Director's Determination. It also sets out the appeal period or time limit for filing an appeal. Subsections 112(3)(a) and (b) of the *Act* provide:

- 112 (3) The appeal period referred to in subsection (2) is
- (a) 30 days after the date of service of the determination, if the person was served by registered mail, and
 - (b) 21 days after the date of service of the determination, if the person was personally served or served under section 122(3).

32. Section 122 of the *Act* provides:

- 122 (1) A determination or demand or a notice under section 30.1(2) that is required to be served on a person under this Act is deemed to have been served if
- (a) served on the person, or
 - (b) sent by registered mail to the person's last known address.
- (2) If service is by registered mail, the determination or demand or the notice under section 30.1(2) is deemed to be served 8 days after the determination or demand or notice under section 30.1(2) is deposited in a Canada Post Office.

33. As indicated previously, the Determination was issued on November 16, 2011, and sent on that very date by registered mail to Target's business address, as well as to its registered and records office, which is the address of the law firm Pushor Mitchell LLP in Kelowna, British Columbia. The Determination was also sent to Target's Director, Jim Richard Morash ("Mr. Morash") at his residential address.

34. Neither Target nor Mr. Morash dispute receiving the Determination in a timely fashion, nor do either of them dispute the deadline for Target to appeal the Determination, namely December 26, 2011. Instead, Target, through its counsel, is seeking an extension of time to file its appeal in excess of seven (7) months after the appeal period expired.

35. As indicated previously, section 109(1)(b) of the *Act* sets out the Tribunal's authority to extend the time period for requesting an appeal under section 112. It states:

- 109 (1) In addition to its powers under section 108 and Part 13, the tribunal may do one or more of the following:
- ...
 - (b) extend the time period for requesting an appeal even though the period has expired.

36. The Tribunal has discretion to exercise its statutory authority to extend the time for filing an appeal where there are compelling reasons, and the burden, on the balance of probabilities, is on the appellant to show that such reasons exist. In *Re: Tang* (BC EST # D211/96), the Tribunal stated:

Section 109(1)(b) of the Act provides the Tribunal with the discretion to extend the time limits for an appeal. In my view, such extensions should not be granted as a matter of course. Extensions should be granted only where there are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.

37. In *Re: Niemisto* (BC EST # D099/96), the Tribunal delineated the following criteria which the appellant should satisfy in seeking an extension of time to file an appeal:

- (i) There is a reasonable and credible explanation for the failure to request an appeal within the statutory time limits;
- (ii) There has been a genuine and on-going *bona fide* intention to appeal the Determination;
- (iii) The respondent party (i.e. the employer or employee), as well the Director, must have been made aware of this intention;
- (iv) The respondent party will not be unduly prejudiced by the granting of an extension; and
- (v) There is a strong *prima facie* case in favour of the appellant.

38. The criteria in *Re: Niemisto, supra*, are not intended to constitute an exhaustive list, nor are they conjunctive in nature (see *Re: Patara Holdings c.o.b. Best Western Canadian Lodge*, BC EST # D010/08, reconsideration dismissed BC EST # RD053/08). The Tribunal will consider and weigh those and any other factors it considers relevant and make its decision to, or not to, exercise its discretion to extend the time for filing the appeal based on the totality of all factors it considers.

39. In this case, having reviewed the facts in the case, including the parties' submissions, in context of the criteria in *Re: Niemisto, supra*, I find that Target, for the reasons delineated below, has failed on the balance to satisfy the criteria for granting an extension of time to file an appeal.

40. With respect to the first criterion, I am not persuaded that there is a reasonable and credible explanation for Target's failure to request an appeal within the statutory time limits. Mr. Morash was aware and knew of the Complaints during the investigation stage. He chose at some point later in the investigation, before the Determination was made, not to participate in the investigation. He failed to respond to the delegate's correspondence in July and September when she was attempting to seek a response from him after sending him two (2) preliminary findings letters. He also failed to return her subsequent telephone calls.

41. I also note that there is no dispute that Mr. Morash did not receive the Determination in a timely fashion. There is, however, a bare assertion by counsel that Mr. Morash "at all material times ... was suffering severe emotional distress and strain as a consequence of his marital difficulties and the resulting financial hardships associated with his divorce". There is no evidence beyond the bare assertion that Mr. Morash was under any disability that prevented him from responding to the Determination against Target or filing an appeal on behalf of Target or retaining a counsel for such purpose.

42. The matter of his alleged marital difficulties and resulting financial hardships appear to have existed as early as in 2009 before he purchased the shares of Target through his company, P253. Counsel, in his own submissions, at paragraph 4, notes that in the fall of 2009, Mr. Morash was talking to Mr. McNeill about the breakdown of his marital relationship and the resulting financial challenges. Despite this, he was able to

soldier on and negotiate an agreement to purchase the shares of Target. I also do not find it credible that Mr. Morash only retained counsel “after getting through this tough period in his life” when he expressly represented to the delegate, during the investigation of the Complaints, in his email to the delegate dated April 14, 2011, that he was receiving “extensive legal counsel over the last few months” in context of whether or not to retain a trustee and begin insolvency proceedings with respect to Target.

43. In the circumstances, I am convinced that Target is motivated to now appeal the Determination and ask for an extension of time to file its late appeal because of the collections proceedings underway. I do not believe there is any credible evidence that Mr. Morash was legitimately disabled from filing an appeal on behalf of Target during the appeal period.
44. With respect to the second criterion, I note that other than counsel’s bare assertion that Mr. Morash always intended to appeal the Determination, there is no evidence whatsoever of a genuine and ongoing *bona fide* intention to appeal the Determination.
45. With respect to the third criterion, there is also no evidence adduced by counsel to show that Target made the Director or any of the Complainants aware of its intention to appeal.
46. With respect to the fourth criterion, I find that more than seven and one-half months’ delay to file an appeal is a long delay, and I find that there would be prejudice to the Complainants if an extension were granted. They are owed wages dating back to January 1, 2011.
47. Finally, with respect to the last criterion, namely whether there is a strong *prima facie* case in favour of the appellant, it is important to note that except to the extent necessary to determine if there is a “strong *prima facie* case that might succeed”, the Tribunal does not consider the merits of the appeal when deciding whether to extend the appeal period (see *Re: Owolabi c.o.b. Just Beauty*, BC EST # RD193/04; *Re: BNN Enterprises Ltd.*, BC EST # D165/04). In this case, I find that there is absolutely no evidence adduced by Target or its counsel showing that there has been a breach of natural justice on the part of the delegate. In particular, the delegate made numerous concerted efforts to contact Mr. Morash and did contact Mr. Morash on several occasions, but lost contact with Mr. Morash when the latter decided not to respond at some point later in the investigation when Mr. Morash failed to respond to the delegate’s preliminary findings letter of July 19, 2011, and a revised preliminary findings letter of September 26, 2011.
48. If counsel’s natural justice ground of appeal is based on his allegation that the delegate did not consider the circumstances surrounding the sale of Target’s shares to P253 and the alleged misrepresentations or failure to disclose certain financial and other information relating to Target’s business by Mr. McNeill, I am not persuaded of the relevance of such information (even if such information were disclosed to the delegate in the investigation of which I am doubtful because I do not see it in the section 112(5) “record”). If there were indeed misrepresentations made by the vendor of Target’s shares to Mr. Morash or P253, P253 or Mr. Morash may have a cause of action against the vendor seek their remedies against the vendor. I do not see “being duped” by the vendor (if that is the case here) mitigates the liability of Target for unpaid wages to its employees. As an aside, I find it rather curious that Mr. Morash served as an accountant to the vendor, and one would think that he would be better positioned than almost anyone in terms of insight into the financial affairs of the vendor or alternatively have the means to discover the financial affairs of the vendor or walk away from the transaction if he is unable to obtain transparency in the disclosure by the vendor. However, this is not a consideration I make in my decision but simply an observation.
49. I also note that counsel, in his submissions, is referring to section 96(1) of the *Act* which deals with a director’s or officer’s personal liability for up to two (2) months’ unpaid wages for each employee and the

circumstances, under section 96(2)(b), where that liability is exempted or extinguished. I reiterate that the Determination is not against Mr. Morash at this stage. Instead, the Determination is a corporate determination against Target. Notwithstanding, I note that the exemption for director's liability under the circumstances set out in section 96(2)(b), arises where there is a proceeding under an insolvency Act against the corporation. While I am not intending to pre-empt counsel's argument at a later stage should there be a determination under section 96 against Mr. Morash, the Complainants' employer in this case is Target and not P253. However, it is the latter, P253, who is subject to a proceeding under an insolvency Act as the Notice of Intention to Enforce a Security under the *Bankruptcy and Insolvency Act* was issued to P253 by the latter's secured creditor. P253, as indicated earlier, is the parent company or shareholder of Target and that distinction appears to be lost on counsel.

50. With respect to the second argument of counsel, namely, that it would inequitable and unjust for Mr. Morash to be personally liable for the wages that accrued during the tenure of the previous owner of Target, again, I note that the Determination is against Target at this stage and not Mr. Morash at its director. I also note that the wages ordered in the Determination cover the pay period from January 1 to 15 and January 16 to January 31, 2011 respectively, periods when Mr. Morash was a director, having purchased the shares of Target on October 7, 2010.
51. With respect to the final argument, counsel relies upon section 65(1)(d) of the *Act* which provides as follows:

Exceptions

65 (1) Sections 63 and 64 do not apply to an employee

....

(d) employed under an employment contract that is impossible to perform due to an unforeseeable event or circumstance other than receivership, action under section 427 of the *Bank Act* (Canada) or a proceeding under an insolvency Act,

52. Counsel argues that under this subsection, the misrepresentations made by Mr. McNeill, the alleged breach of the share purchase agreement by Mr. McNeill and his wife, and the breach of the consulting agreement, all combined to create "an unforeseeable event or circumstance which made honouring the employment contracts of Target employees impossible to perform". I do not find this argument meritorious or convincing. The circumstances counsel alleges do not excuse an employer from its obligations under the *Act*. The "unforeseeable event" exception, in my view, was not intended to apply to a situation where there have been misrepresentations between vendor and purchaser of a business or a breach of some other agreement, such as a consulting agreement, by a third party with the purchaser/employer.
53. In summary, on the totality of the evidence and submissions of counsel on behalf of Target, I am not persuaded that Target has shown a strong *prima facie* case in its favour.
54. In the circumstances, I refuse to exercise my discretion to grant an extension of time to Target to appeal the Determination.

ORDER

55. I find that Target has not met its burden of showing that the time limit for appealing the Determination, dated November 16, 2011, should be extended in this case and, therefore, I decline to exercise my discretion to extend the time to appeal. Accordingly, pursuant to section 114(1)(b) of the *Act*, this appeal is dismissed.

Shafik Bhalloo
Member
Employment Standards Tribunal