

Appeals

- by -

VIP Auto Rescue Inc. (“VIP”)

- and by –

Reginald S. Pal also known as Reggie Pal, a Director or Officer of VIP Auto
Rescue Inc. (“Pal”)

- of Determinations 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

TRIBUNAL MEMBER: Shafik Bhalloo

FILE Nos.: 2000A/113, 2007A/114

DATE OF DECISION: November 27, 2007

DECISION

OVERVIEW

This is an appeal by VIP Auto Rescue Inc. (“VIP”), an auto towing business, and its Director, Mr. Reginald S. Pal (“Pal”), pursuant to Section 112 of the Employment Standards Act (the “Act”), against the Determinations of the Director of Employment Standards (the “Director”) issued on January 18, 2007 (the “Corporate Determination”) and January 24, 2007 (the “Personal Determination”) respectively.

The Respondent Ryan T. McCaffery (“McCaffery”), formerly a tow truck driver for VIP, filed a complaint pursuant to Section 74 of the Act alleging that VIP contravened the Act by failing to pay him wages (the “Complaint”).

The Director’s delegate (the “Delegate”) investigated the Complaint and after concluding on the threshold question that McCaffery was an employee of VIP and not an independent contractor, found VIP to have contravened Sections 18, 58 and 21 of the Act by failing to pay McCaffery wages and annual vacation pay and requiring him to pay certain business costs of VIP.

The Delegate awarded McCaffery a total of \$1,794.08 for the said contraventions of the Act inclusive of interest pursuant Section 88 of the Act. The Delegate also ordered three administrative penalties of \$500 each against VIP for contraventions of Section 18 and 21 of the Act and Section 46 of the Regulation. The latter administrative penalty was for VIP’s failure to produce any documents after the Delegate had issued VIP the Demand for Records. The total of the amount awarded against VIP in the Corporate Determination is \$3,294.08.

As VIP failed to pay the amounts ordered in the Corporate Determination and ceased operating or is insolvent, the Director, concurrently with the Corporate Determination, issued the Personal Determination against Pal pursuant to Section 96 and 98 of the Act as Pal, according to the Director, was a director and officer of VIP at the time the wages owed to McCaffery were earned or should have been paid and he authorized, permitted or acquiesced in the contraventions of the Act. Accordingly, the Director, in the Personal Determination, held Pal liable to pay up to two months’ unpaid wages for McCaffery and the administrative penalties associated with the contraventions of the Act.

VIP and Pal are appealing both Determinations on all three grounds available in Section 112 of the Act, namely:

1. The Director of Employment Standards erred in law in making the Determinations;
2. The Director of Employment Standards failed to observe the principles of natural justice in making the Determinations; and
3. Evidence has become available that was not available at the time the Determinations were being made.

While the expiry date for VIP to file its appeal was February 26, 2007 for the Corporate Determination and March 5, 2007 for the Personal Determination, VIP's appeals were stamped received by the Tribunal almost seven months later on September 25, 2007 (although Pal who executed and filed VIP's Appeal form has dated it September 7, 2007).

As VIP and Pal have filed their Appeals after the expiry of the Appeal periods in Section 112 of the Act, there is a preliminary issue that needs to be dealt with in both Appeals, namely, whether the Tribunal should exercise its discretion under Section 109(1)(b) of the Act to extend the time for VIP's and Pal's Appeals. Neither VIP nor Pal has requested an oral hearing of their appeal and the Tribunal is of the view that an oral hearing is not necessary in order to adjudicate the preliminary issue of whether or not to allow VIP and Pal an extension of time to file their appeals. Therefore, the Tribunal will determine the preliminary issue based on the parties' written submissions, the Determinations and the Section 112(5) "Record".

ISSUES

Should VIP and Pal receive an extension of time for requesting the Appeals even though the Appeal periods have expired?

If the answer to first question is in the affirmative, then have VIP and Pal satisfied their respective burdens to show that:

- i. the Delegate erred in law in making the Determinations;
- ii. the Delegate failed to observe the principles of natural justice in making the Determinations; and
- iii. new and relevant evidence has become available that was not available at the time the Determinations were made that would lead the Delegate to a different conclusion on a material issue.

FACTS AND ARGUMENT

The facts relevant to this Appeal are as follows:

1. On or about May 23, 2006, McCaffrey, using the Employment Standards Self-Help Kit, requests payment of wages and vacation pay from his employer, VIP, but that request is denied or rejected in a letter of same date from Pal to McCaffrey wherein the latter admits to McCaffrey that while McCaffrey is owed \$689.81 in wages and not vacation pay, McCaffrey owes VIP in excess of \$10,492.37 for damages to the property of VIP by McCaffrey and Pal proposes to offset the amount he thinks is owed to McCaffrey against the amount he claims McCaffrey owes to VIP on account of damages.
2. On or about June 6, 2006, McCaffrey filed a complaint pursuant to Section 74 of the Act, alleging that VIP contravened the Act by failing to pay him wages for the period April 1 to April 15, 2006 and annual vacation for the period October 15 to April 15, 2006.

3. On July 18, 2006, the Delegate sent a letter (the “First Letter”) by facsimile (with original by regular mail) to the attention of Pal at VIP’s office address at 3891 #3 Road, Richmond, British Columbia V6X 2B8 (“VIP’s Office Address”), advising Pal and VIP that she is conducting an investigation into the Complaint and requests Pal to respond with any and all information he considers relevant.
4. The Delegate also confirms in the First Letter the telephone conversation she had with Pal on July 18, 2006 wherein Pal advised her that in two days’ time he would be leaving the country for a year and he would “investigate (VIP’s) representation (by) independent legal counsel” while he was out of the country.
5. The Delegate also summarizes the Complaint in the First Letter including the wages McCaffrey claimed he was owed by VIP and instructs Pal and VIP that if VIP is disputing some or all aspects of the Complaint, then Pal should send her a written response to the Complaint including all records and timesheets or other documents which support VIP’s position no later than August 9, 2006.
6. Pal does not deny receiving the First Letter and indeed relies upon the First Letter in his submissions.
7. On August 11, 2006, the Employment Standards Branch (the “Branch”) received an undated letter to the attention of the Delegate on the letterhead of VIP showing VIP’s Office Address and signed by Pal (“VIP’s First Response”). Pal, in the First Response, disputes McCaffrey’s status as an employee of VIP and asserts that McCaffrey was an employee of Payless Auto Towing Ltd. (“Payless”) and subcontracted to VIP. Pal encloses copies of some pay stubs and paycheques provided by VIP to McCaffrey and a single page document showing a statement purportedly from Payless with VIP’s name and a notation of an amount of gross income but no explanation of these documents or what they represented.
8. On August 18, 2006, the Delegate sent, via certified mail, another letter to the attention of Pal at VIP’s Office Address (the “Second Letter”). In the Second Letter, the Delegate advises Pal, *inter alia*, that McCaffrey was an employee of VIP and references Pal’s letter dated May 23, 2006 to McCaffrey where in Pal admits a total of \$689.81 was owed to McCaffrey. The Delegate, however, notes that VIP has not paid any monies to McCaffrey and instructs VIP to forward a certified cheque or money order to the Delegate’s attention at the Branch, payable to McCaffrey, and further instructs VIP that if VIP is disputing any aspect of the Complaint then it should send the Delegate a written response plus all records. The Delegate also encloses a Demand for Records with the Second Letter.
9. On August 20, 2006, the Branch received a confirmation receipt of Canada Post indicating that the Second Letter and the Demand for Records was successfully delivered on August 21, 2006 to VIP.
10. On September 7, 2006, the Branch received an undated letter of Pal (“VIP’s Second Response”) in response to the Second Letter from the Delegate. In VIP’s Second Response, Pal continues protesting McCaffrey’s status as an employee of VIP and contends that another Payless is McCaffrey’s employer.

11. On September 28, 2006, the Delegate sent a further letter to the attention of Pal at VIP's Office Address (the "Third Letter") summarizing her preliminary findings and VIP's contraventions of the Act. In particular, the Delegate states that in her view McCaffrey was indeed an employee of VIP and VIP owed him a total sum of \$1,717.41 comprising of regular wages, vacation pay and an amount in respect of the business costs of VIP that McCaffrey paid. The Delegate then instructs VIP to send her the payment of the said sum by October 20, 2006, or alternatively provide a reply to her by the same date with any evidence or documentation disputing her findings with the following warning:

If you fail to send payment or reply to this letter by October 20, 2006, I will be forced to proceed based on the available information and legal action in the form of a Determination will be issued with accrued interest and the total administrative penalty amount.
12. As no response was forthcoming from Pal or VIP, on January 18, 2007, the Director issued a Determination against VIP based on her investigative findings delineated in the Third Letter and imposed three administrative penalties of \$500 each for VIP's contraventions of Sections 18 and 21 of the Act and Section 46 of the Regulation.
13. On January 18, 2006, the Director mailed the Corporate Determination to VIP at VIP's Office Address.
14. On January 22, 2007, the registered mail containing the Corporate Determination was returned to the Branch by Canada Post marked "Refused".
15. On January 24, 2007, the Corporate Determination was mailed to Pal at the same address at 3891 #3 Road, Richmond, British Columbia V6X 2B8 by registered mail.
16. On March 14, 2007, Canada Post returned the said registered mail to the Branch marked "Refused".
17. On January 24, 2007, the Director issued the Personal Determination against Pal holding him liable to pay the amounts awarded to McCaffrey in the Corporate Determination against VIP as well as the administrative penalties, because, according to the Director, Pal was a director or officer of VIP at the time the wages owed to McCaffrey were earned and authorized, permitted or acquiesced in VIP's contraventions of the Act and Regulations.
18. Subsequently, West Coast Court Bailiffs Inc. (the "Bailiffs") initiated collection efforts against VIP and Pal with respect to the Determinations.
19. On or before September 6, 2007, Pal contacted the Branch and requested copies of both Determinations.
20. The Delegate, in her letter of September 6, 2007 to Pal, responds to Pal's request for the Determinations and encloses copies of the same.
21. On September 25, 2007, the Tribunal received VIP's and Pal's appeals of the Determinations. While the Appeals are based on all three grounds of appeal under Section 112(1) of the Act,

neither VIP nor Pal make any written submissions in support of these grounds with the exception of a single comment with respect to the “new evidence” ground of appeal, namely, that VIP owes Revenue Canada taxes if McCaffrey is an employee and attaches a document from the Canada Revenue Agency website entitled “Payroll Deductions Online Calculator” showing certain calculations without any further explanation.

22. Furthermore, in the Appeal Form, Pal indicates that the appeals are not late, as he and VIP only received the Determinations by mail on September 6, 2007. In support of this submission, Pal attaches to the Appeal form the Delegate’s letter to him of September 6, 2007 enclosing the Determinations.
23. On September 26, 2007, the Tribunal sent a letter to McCaffrey and the Director and copied the letter to VIP advising that the Tribunal had received VIP’s and Pal’s late appeals of the Determinations together with reasons why the appeals were filed late and provides McCaffrey and the Director an opportunity to make submissions on the issue of the late appeals and the time extension to file the appeals by October 18, 2007.
24. On September 28, 2007, Pal, sent a letter to the Tribunal setting out VIP’s explanation of why VIP had not appealed within the timeline permitted for appealing. I have reproduced the contents of the letter verbatim below:

The reason why Vip Auto Rescue was not able to file an appeal by the deadline, as we were not aware of the decision of the Employment Standards Branch until the bailiff came to the shared office. He then spoke to me on the phone and said he was here to collect or seize things that belong to VIP AUTO RESCUE, I told him the company has no assets and that I had filed an appeal with the branch. The many conversations I had with the branch they were always aware of VIP filing an appeal or filing proceeding under the insolvency act, which is still possible. The bailiff has not dropped off any determination or court papers regarding this matter only his business cards, I have contacted him to pay some money as he was threatening to seize a Tow truck leased by VIP which wasn't in operation I told the bailiff that I will file bankruptcy with the company, He told me I should file personal bankruptcy. Made a few calls to Employment Standards Branch kept getting the run around and the bailiff will call me back. I called Employment Standards again and spoke to the acting Regional Director and asked why I didn't receive the determination, they said they couriered it but was refused, we never had nothing sent to the above address to my knowledge. In Sept. before I received the determination that I forwarded to your office, that was the first time I seen that letter. I have spoken to my Lawyers they told me I do have a case but go through this channel first. Ryan was always a subcontractor with VIP AUTO RESCUE INC. and never was an employee. He received 30% commission 70% received by VIP was for rental of the Tow Truck, Insurance, normal maintenance of the tow truck, the Taxes, EI and other deductions were never deducted on his cheques. He was aware of his position. Employment Standards branch was also aware that if he was determined a employee he will need to repay monies owed for the deductions. The damages he caused to the vehicle he dropped was also his responsibility as he rented the truck so he needed to either pay the deductible or pay for the damages. That is why in his statement he is not pursuing that particular matter but the Employment Standards Branch says I owe him that money back as it is cost of doing business, we do not agree. There is a lot of case log in the courts regarding this issue. The Employment Standards Branch has also put an debt for an additional company that I am a Director of which is not named in any court order. These are some of the basis of my appeal. [sic]

25. On October 16, 2007, the Delegate, on behalf of the Director, made written submissions on the issue of extension of time to appeal arguing that VIP and Pal should not be granted an extension of time to appeal because VIP previously responded to the Delegate's correspondence and was aware of the Complaint but chose not to participate in the Complaint process since September 2006 and refused to accept mail from the Branch at its last known address.
26. On October 23, 2007, the Tribunal sent a letter to all the parties advising that the Tribunal had received and was enclosing the submissions of the Delegate dated October 16, 2007 and Pal's submissions dated September 28, 2007 and advised the parties that they had until 4:30 p.m. on November 6, 2007 to make a final reply.
27. On October 30, 2007, McCaffrey made his written submissions on the issue of extension of time to appeal the Determinations stating, *inter alia*, that VIP and Pal had failed to give a good reason or for that matter any reason for not meeting the deadline for filing the appeals. McCaffrey further submits that an unreasonable length of time has passed since the expiry of the date for filing the appeals and that Pal and VIP are only trying to delay the payment due to him in the Determinations. McCaffrey also indicates that he was never aware of VIP's intention to appeal, as neither VIP nor the Branch approached him about VIP's appeal. McCaffrey also argues that the grounds of appeal in VIP's and Pal's appeals have already been ruled upon and that there is no new issue raised by the appeals, and therefore an extension of time to file the appeals should be denied.
28. On November 5, 2007, Pal made a further submission to the Tribunal, in advance of the deadline of November 6 for final replies, wherein he indicates that VIP received some but not all letters from the Branch. He further states that other companies also operate from the same address as VIP's Office Address (although he does not indicate whether he or VIP are associated with those companies). Pal also indicates in the said submission that the Branch was aware that he would be out of town for approximately a year and if McCaffrey is found to be an employee of VIP then McCaffrey "needs to pay all back taxes, CPP, EI, etc..." Pal also reiterates the argument he made during the investigation of the Complaint by the Delegate that McCaffrey was not an employee of VIP but a subcontractor and that the Branch had no jurisdiction to consider McCaffrey's Complaint. Pal also challenges the Personal Determination and particularly the administrative penalties he is responsible to pay under the Personal Determination as the director and officer of VIP. He further submits that McCaffrey has been overpaid by VIP and that McCaffrey is responsible to pay VIP damages. He further indicates that the Branch has not acted fairly with him "by not contacting (him) about the mail-in dates for the Judgment" and claims that the Branch has violated his Charter rights.
29. On November 7, 2007, the Tribunal sent a letter to VIP, McCaffrey and the Director enclosing the final submission of McCaffrey dated October 30, 2007 and Pal's submission of November 5, 2007. The Tribunal also advises in the letter that a member, based on the written submissions received from the parties, would decide the appeals of the Determinations. The Tribunal did not request any further submissions from the parties.
30. On November 14, 2007, Pal, on behalf of VIP and himself, made a further written submissions, which either reiterate his previous submissions or say very little, if anything, of

relevance to the extension application or the merits of the appeals. Accordingly, the Tribunal has rejected this submission of Pal as late and in any event irrelevant to the extension issue.

ANALYSIS

Section 112 of the Act sets out the governing code for any party wishing to appeal the Director's determination including the appeal period or time limit for filing an appeal. Subsection 112(3)(a) and (b) 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).

If a party is late in filing its appeal under Section 112 of the Act, Section 109(1)(b) of the Act sets out the Tribunal's authority to extend the time period for requesting an Appeal:

109(1) In addition to its powers under Section 108 and Part 13, the tribunal may do one or more of the following:

...

- (c) extend the time period for requesting an appeal even though the period has expired;

It should be noted that the Tribunal will exercise its statutory discretion to extend the time for filing an appeal only where there are compelling reasons, and the burden is on the appellant to show that such reasons exist. As indicated by the Tribunal in *Re: Tang, BC EST # D211/96*.

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.

What then constitutes compelling reasons for the Tribunal to exercise its statutory discretion to extend the time for filing an appeal? Some non-exhaustive factors the Tribunal may consider in determining whether or not to extend the time for filing an appeal include the following:

1. There is a reasonable and credible explanation for the failure to request an appeal within the statutory time limits;
2. There is a genuine and ongoing *bona fide* intention on the appellant's part to appeal the Determination;
3. The respondent party as well as the Director was aware of the appellant's intention to appeal prior to the expiry of the appeal period;

4. The respondent party will not be unduly prejudiced by the granting of the extension;
5. There is a strong *prima facie* case in favour of the appellant; and
6. There has not been an unreasonably long delay on the appellant's part to appeal.

In the case at hand, after taking into consideration the submissions of all the parties, I am satisfied, based on my reasons in the enumerated paragraphs that follow and correspond with the aforementioned criteria, that VIP and Pal ought not to be granted an extension of time to file their appeals.

1. First, I do not find VIP's and Pal's explanations for failing to file the appeals within the statutory time limit reasonable or credible. Pal, the sole director and officer of VIP, was aware of the Delegate's investigation of the Complaint in and during July to September 2006 as he received from the Delegate the First Letter dated July 18, 2006 as well as the Second Letter dated August 18, 2006 and responded to both. I note that Pal in his submissions states that he had informed the Delegate that he was leaving the country for a year and the said discussion is confirmed in the Delegate's First Letter wherein the latter notes that Pal told her (on July 18, 2006) that in two days time he would be leaving the country for a year. However, that clearly did not happen, as Pal was around to receive and respond to the First Letter and the Second Letter. More specifically, Pal sent VIP's Second Response to the Branch in early September 2006 and the Branch received it on September 7, 2006.

Furthermore, Pal received the Third Letter from the Delegate containing the latter's preliminary investigative findings as this correspondence was sent to VIP's Office Address (the same as the first two letters from the Delegate) and never returned to the Branch. It is noteworthy that Pal does not specifically deny receiving the Third Letter from the Delegate. In the Third Letter, the Delegate informed Pal of her view that McCaffrey was an employee of VIP and VIP owed him a total sum of \$1,717.41 comprising of regular wages, vacation pay and an amount in respect of the business costs of VIP that McCaffrey paid. The Delegate also instructed Pal to send her the payment of the said sum by October 20, 2006, or alternatively provide her with a reply by the same date with any evidence or documentation disputing the Delegate's findings and warned Pal that if VIP failed to send the payment or reply to the Third Letter by October 20, 2006, she would be forced to proceed based on the available information and legal action in the form of a Determination would be issued with accrued interest and the total administrative penalty amount. As no response or payment was forthcoming from VIP within the time set by the Delegate in the Third Letter, the Delegate, on January 18, 2007, issued the Corporate Determination against VIP and sent it to VIP by registered mail in accordance with Section 122(1) of the Act. However, Canada Post returned the Corporate Determination to the Branch on January 22, 2007 marked "Refused". The Delegate thereafter, on January 24, 2007, again mailed to Pal by registered mail the Corporate Determination and on March 14, 2007 the registered mail was returned to the Branch marked "Refused" by Canada Post. All correspondence or mail the Delegate sent to VIP and Pal was to VIP's Office Address, which incidentally is the address that consistently appears on all correspondence from Pal and VIP to the Delegate during the Delegate's investigation of the Complaint and most recently in the appeal submissions of Pal and VIP. Clearly the office

address of VIP has remained the same throughout period commencing with the investigation of the Complaint by the Delegate and continuing into the Appeal periods.

While Pal indicates in the Appeal form that he only received the Determinations by mail on September 6, 2007, the letter of the Delegate dated September 6, 2007 enclosing the Determinations to the attention of Pal indicate that Pal had requested copies of the Determinations. This was not the first time that the Determinations were sent to Pal at VIP's Office Address. What is telling is that Pal only contacted the Branch to obtain copies of the Determinations after the Bailiffs had initiated or commenced the collection process to satisfy the Determinations. What Pal does not explain is why, if indeed he was out of the country for a year, he did not stay in touch with the Delegate knowing full well that the Delegate's investigation could lead to a Determination. There is nothing in the submissions of VIP or Pal suggesting that Pal was incapable of contacting the Delegate from outside the country. Alternatively, Pal could have provided the Delegate with forwarding address, a telephone number or a fax number where he could be reached. Pal could have also arranged for pick-up and forwarding of VIP's mail to him at his location outside the country, since VIP clearly maintained the same office address during his purported absence from the country. That would have been the reasonable thing to do.

While Pal may have been out of the country when the Corporate Determination was made and sent by registered mail to VIP's office, he was certainly forewarned, in the Third Letter from the Delegate, of the consequences of failing to pay McCaffrey or to respond to the Delegate's investigative findings by October 20, 2006. This combined with Pal's failure to provide the Delegate with his contact information and his failure to contact the Delegate when out of the country, knowing full well that the Delegate could proceed with a Determination against VIP, leads me to conclude that Pal's and VIP's actions were unreasonable and they were the author of their own misfortunes. Surely, after the Third Letter from the Delegate, Pal and VIP could not have reasonably expected nothing would happen for a year with McCaffrey's Complaint simply because Pal was leaving the country for a year. I am also not satisfied that Pal made any attempts to contacted the Delegate upon his return to British Columbia until after the collections proceedings had begun. I simply find Pal's and VIP's explanations for failing to file the appeals within the statutory time limits unreasonable and not credible.

2. Second, while Pal indicates in his written submissions, without any specifics, that he had many conversations with the Branch and that the Branch was aware of VIP filing an appeal or filing for insolvency, there is absolutely no evidence in the Record of any conversations with anyone at the Branch on the subject of VIP intending to file an appeal of the Corporate Determination or Pal filing an appeal of the Personal Determination before the Bailiffs attempted to collect on the Determinations. In fact, Pal admits that he was not aware of the Determinations until after the Bailiffs came to VIP's Office Address to collect, which is well past the expiry of the appeal periods of the Determinations. In the circumstances, I find that there is really no evidence whatsoever in Pal's submissions supporting a genuine or ongoing bona fide intention on the part of Pal or VIP to appeal the Determinations until after the expiry of the appeal periods and after the collections proceedings had begun.
3. Third, I find that there is no credible evidence that Pal made any attempts to inform the Director or McCaffrey of his or VIP's intention to appeal the Determinations at any time other than his bare assertion that he had informed the Delegate and McCaffrey of VIP's intention to

appeal. Moreover, Pal clearly cannot have informed the Delegate or McCaffery of VIP's intention to appeal before the collections process was initiated by the Bailiffs, after the expiry of the appeal period, since he was not aware of the Determinations until the Bailiffs initiated the collections process.

4. Fourth, as indicated previously by this Tribunal, one of the essential purposes of the Act is to provide fair and efficient procedures for resolving disputes over the application and interpretation of the Act. McCaffery initiated the Complaint in or about June 2006, approximately 17 months ago. He received a resolution in the form of the Corporate Determination almost 10 months ago on January 18, 2007 and the Personal Determination on January 24, 2006. The time for filing the appeal on the Corporate Determination expired on February 26, 2007 and on the Personal Determination on March 5, 2007. Thereafter, collections proceedings commenced. To allow VIP and Pal an extension of time to file their appeals is both unfair and prejudicial to McCaffery as it would delay him in collecting his award as well as contravene one of the essential purposes of the Act, namely, fair and efficient resolution of disputes.
5. Fifth, in the Appeal form, VIP and Pal have checked off all three grounds of appeal, namely, the Director of Employment Standards erred in law and failed to observe the principles of natural justice in making the Determinations, and there is evidence that has now become available that was not available at the time the Determinations were being made. However, with respect to the error of law and the natural justice grounds of appeal, VIP and Pal did not present any submissions with the Appeal form. With respect to the new evidence ground of appeal, Pal, on behalf of VIP, simply states on the Appeal form, "I owe Revenue Canada taxes if (McCaffery) is an employee" and attaches a single-page from the website of Canada Revenue Agency entitled "Payroll Deductions Online Calculator" with some calculations without any explanation. In his subsequent written submissions dated September 28, 2007 as well as his undated submissions received by the Tribunal on November 5, 2007, Pal essentially repeats the assertions he made to the Delegate during the latter's investigation of the Complaint. It is not my intention to reiterate those submissions here except to state that an appeal is not an opportunity for a party dissatisfied with the Determinations to have "a second kick at the can" and have its position reheard. Having said that, insofar as the onus on VIP and Pal to persuade the Tribunal that they have a strong *prima facie* case in their favour, I can unequivocally state that in this case both VIP and Pal have failed to discharge that onus.
6. Finally, in view of my conclusion in paragraph 1 above that both VIP's and Pal's explanations for failing to request appeals of their Determinations within the statutory time limit were unreasonable and not credible, I find that VIP's and Pal's delay of approximately 7 months in filing their appeals is an unreasonably long delay.

Accordingly, I am unable to grant VIP and Pal an extension of time to file their appeals.

While, at this point, I am not required to examine VIP's and Pal's appeals on their merits, I would like to reiterate my previous observation in context of the applications for extension of the appeal period that VIP and Pal have failed to make any submissions in support of the error of law, natural justice and new evidence grounds of appeal. It is unequivocally clear to me that VIP's and Pal's appeals are motivated by, and a reaction to, the collection efforts of the Bailiffs relating to the Determinations. Further, having reviewed the appeal submissions of VIP, I can unreservedly state that VIP is

essentially re-arguing its case with a view to obtaining a different conclusion and in my view that is not an appropriate use of the appeal process.

ORDER

Pursuant to Section 109(1)(a) of the Act, I deny the applications to extend the time to file the appeals.

Shafik Bhalloo
Member
Employment Standards Tribunal