

An appeal

- by -

Baldeep Kaur Bains a Director of Equation Building Maintenance Limited  
(“Bains”)

- 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.:** 2014A/78

**DATE OF DECISION:** November 27, 2014

## DECISION

### SUBMISSIONS

Pir Indar P.S. Sahota

counsel for Baldeep Kaur Bains a Director of Equation Building Maintenance Limited

Amanda Clark Welder

on behalf of the Director of Employment Standards

### INTRODUCTION & BACKGROUND FACTS

1. On July 24, 2013, Karamjit K. Dhaliwal and Amarjit K. Dhaliwal (the “complainants”) filed separate complaints under section 74 of the *Employment Standards Act* (the “*Act*”) alleging that their former employer, Equation Building Maintenance Limited (“EBML”), failed to pay them all of their earned wages. Prior to filing their complaints, both complainants attempted to resolve their unpaid wage claims directly with EBML using the Employment Standards Branch’s “Self-Help Kit” but EBML seemingly ignored their request to informally resolve their claims.
2. On September 18, 2013, a delegate of the Director of Employment Standards (the “delegate”) sent a letter to EBML, addressed to its registered and records office as recorded in the B.C. Corporate Registry, advising EBML of the two complaints and requesting that EBML provide its response to the complaints by no later than October 3, 2013. The delegate’s September 18 letter was addressed to the attention of EBML’s sole director and the present appellant, Baldeep Kaur Bains (“Bains”).
3. The delegate’s September 18 letter also included a “Notice of Fact Finding Meeting”; the meeting was scheduled to take place on October 3, 2013, at the Employment Standards Branch office in Langley. It is my understanding that Ms. Bains failed to attend the October 3, 2013, meeting. On October 22, 2013, the delegate sent another letter to EBML asking for that company’s response to the complaints by no later than November 5, 2013. The October 22 letter also included a “Demand for Employer Records” requiring the production of the complainants’ payroll records by November 5, 2013. The October 22 letter and accompanying Demand were sent by registered mail to EBML and to Ms. Bains both c/o EBML’s registered and records office (the latter being Ms. Bains’ “mailing address” as recorded in the B.C. Corporate Registry) but both envelopes were subsequently returned to the Employment Standards Branch as “unclaimed”.
4. On March 21, 2014, the delegate sent a letter by way of electronic mail to Ms. Bains to which she attached various documents including the original complaints, the Branch’s correspondence to date and other information about the *Act* and the Branch’s adjudicative processes. Ms. Bains never responded to this e-mail communication. On March 27, 2014, the delegate sent yet another letter to EBML and Ms. Bains, by regular and electronic mail, setting out the preliminary findings of her investigation and asking Ms. Bains to respond by no later than April 18, 2014, and further advising that in the absence of a response a determination would be issued. There was no response. Accordingly, on May 16, 2014, the delegate issued a determination against EBML in the total amount of \$26,211.56 including \$23,711.56 on account of unpaid wages and interest and \$2,500 representing five separate \$500 monetary penalties (see section 98). I shall refer to this determination as the “Corporate Determination”.
5. The Corporate Determination was forwarded, by registered and regular mail, to EBML’s registered and records office. The Corporate Determination contained a notice referring to the personal liability of corporate directors and officers and another notice indicating that an appeal of the Corporate Determination

had to be filed with the Tribunal by no later than June 23, 2014. The registered envelope containing the Determination addressed to EBML's registered and records office was subsequently returned to the Employment Standards Branch as "unclaimed".

6. EBML never appealed the Corporate Determination and the time for appealing has long expired. EBML has never properly applied to extend the appeal period. Accordingly, the Corporate Determination now stands as a final order. I should note, however, that in his October 10, 2014, submission filed with respect to the present appeal, legal counsel for Ms. Bains stated:

If Director is of the view that, no Appeal has been made by Mrs. Bains on behalf of the corporate [sic], we hereby make a formal application for granting us an extension for limitation period for filing an appeal against the decision made on May 16<sup>th</sup>, 2014. [sic] This application should be allowed and Mrs. Bains be allowed to file an Appeal against the decision made on May 16<sup>th</sup>, 2014.

7. I do not consider this so-called "application" to be properly before the Tribunal. If EBML, at this very late stage, wishes to appeal the Corporate Determination it must file a formal appeal and concurrent subsection 109(1)(b) application setting out, in full, its reasons for having failed to file a timely appeal. Based on the material before me, I find it hard to conceive that such an application would succeed.
8. On May 23, 2014, the delegate issued the determination that is now under appeal – a determination against Ms. Bains in her personal capacity issued under section 96 of the *Act*. This latter provision states that corporate directors and officers are liable for unpaid wages up to 2 months' wages per employee. I shall refer to this determination as the "Section 96 Determination". The Section 96 Determination, in the amount of \$13,894.23, was sent by registered and regular mail to the very same address as the Corporate Determination and all of the delegate's prior correspondence but, curiously, Ms. Bains apparently did receive the Section 96 Determination since she has now filed a timely appeal. Ms. Bains may have been motivated to appeal since, as is recounted in her counsel's submission, her bank account has now been "frozen", presumably due to enforcement proceedings undertaken by the Director.
9. The issue before me, at this juncture, is whether Ms. Bain's appeal should be summarily dismissed under subsection 114(1)(f) of the *Act* as having no reasonable prospect of succeeding. As will be seen, I consider this appeal to be wholly without merit and, accordingly, must be summarily dismissed.

## FINDINGS AND ANALYSIS

10. Ms. Bain's legal counsel filed an Appeal Form on Ms. Bain's behalf. Ms. Bains' counsel has invoked all three statutory grounds of appeal – error of law; breach of the rules of natural justice; and "new evidence" (see subsection 112(1) of the *Act*). The reasons for appeal are more fully explicated in a one-page memorandum appended to the Appeal Form and while the separate arguments for each ground of appeal are not delineated, counsel has essentially raised only two points: i) Ms. Bains never received the Corporate Determination or other documents relating to the delegate's investigation; and ii) the complainants were independent contractors rather than employees.
11. Counsel does not contest Ms. Bain's status as an EBML director when the complainants' unpaid wage claims crystallized nor does he contest the delegate's calculation as to the amounts owing on account of unpaid wages (although, as noted above, he does say that the two complainants were independent contractors rather than employees).
12. I find the first argument to be particularly disingenuous. First, given that Ms. Bains apparently *did* receive the Section 96 Determination, it certainly strains credulity to suggest that she never received the Corporate

Determination – or any of the other documents sent to EBML and Ms. Bains prior to its issuance – that were mailed to very same address. Second, by my count, Ms. Bains had no fewer than six separate communications about this matter prior to the Corporate Determination being issued including letters from the complainants enclosing the “Self-Help” form and various communications from the delegate – I find it very hard to believe that each and every one of those communications apparently went astray and was never delivered to Ms. Bains. Third, the delegate relied on the B.C. Corporate Registry’s records for the mailing address of Ms. Bains and for the registered and records office address of EBML. It was up to EBML and Ms. Bains to ensure that those records were accurate and kept current. The Corporate Determination was validly served in accordance with section 122 of the *Act*.

13. The issue of whether the complainants were employees or contractors could have been addressed in a valid appeal of the Corporate Determination – since there never was an appeal, the findings relating to that determination are now a matter of *res judicata*. Further, and in any event, counsel’s argument that the complainants were independent contractors rather than employees seems extremely tenuous. There is nothing in the record that would even remotely suggest that the delegate failed to observe the principles of natural justice in making either of the two determinations but, particularly, the Section 96 Determination. The delegate went to great lengths to ensure that Ms. Bains was given an opportunity to provide her side of the story but, at every turn, she simply apparently took a determined stance to avoid any involvement in the matter. Finally, there is absolutely no “new evidence” before me as that ground has been explicated in the *Davies et al.* decision (BC EST # D171/03). Although Ms. Bain’s legal counsel appended a number of documents to the Appeal Form, all of them pre-date the issuance of the Corporate Determination (and thus were “available” when the determinations were issued) and, in any event, are not relevant to the issues that may be properly raised in an appeal of a determination issued under section 96 of the *Act* (for example, whether the person was actually a director or whether the amount of the determination falls within the “2 months’ wages/employee ceiling”).
14. In my view, this appeal has no reasonable prospect of succeeding. Further, and although I am not resting my decision on this basis, in light of the factual record before me, I consider this appeal to be frivolous, vexatious or trivial and an abuse of process within subsection 114(1)(c) of the *Act*.

## ORDER

15. Pursuant to subsection 114(1)(f) of the *Act*, this appeal is dismissed. Pursuant to subsection 115(1)(a) of the *Act*, the Section 96 Determination is confirmed as issued in the amount of \$13,894.23 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

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