

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C. 113

- by -

William Kenneth Scott  
("Scott")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	Cindy J. Lombard
<b>FILE NO.:</b>	1999/43
<b>DATE OF DECISION:</b>	April 20, 1999

## DECISION

### OVERVIEW

This is an Appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by William Kenneth Scott (“Scott”) of a Determination issued on January 11, 1999, by a Delegate of the Director of Employment Standards (the “Director”). In that Determination, the Director found that Scott had not filed his complaint within the time prescribed by Section 74 of the *Employment Standards Act*, namely, within six months after the date of contravention. The Determination furthermore stated that in any event with respect to Scott’s claim for overtime pay allegedly owed to him by his former employer, Alberni Glass Ltd., was the proper avenue was the grievance procedure pursuant to Scott’s union collective agreement which procedure he had pursued but was unsuccessful. Scott says that the reason that he missed the six month limitation period was because he was pursuing the collective agreement grievance procedure and it was only when it failed that he entered a complaint with the Employment Standards Office.

The Tribunal has decided that an oral hearing is not required.

### ISSUE TO BE DECIDED

The issue raised by this appeal is whether the Tribunal has discretion to waive or extend the limitation period set out in Section 74 of the *Act* and if so, is Scott entitled to overtime pay from Alberni Glass Ltd.

### FACTS

Scott worked for Alberni Glass Ltd. from November 1992, until February 6, 1998. In May 1994, Scott gave the owner of Alberni Glass Ltd., Paul Cairney, a cheque for the sum of \$9,400.00 with which he says he thought he was purchasing an interest in Alberni Glass Ltd. Scott says that subsequently he worked overtime hours but did not claim pay for them because he thought he was an owner of the company and consequently did not expect remuneration.

On February 6, 1998, Scott was laid off from Alberni Glass Ltd. Subsequently Scott took the following action:

- a) He commenced a Small Claims action in March, 1998, claiming that since his agreement to purchase an interest in Alberni Glass Ltd. never completed, that Alberni Glass Ltd. return to him the sum of \$9,400.00;

- b) In February, as well, Scott filed a grievance pursuant to his collective agreement claiming that overtime pay was owing by Alberni Glass Ltd. This grievance was not pursued by the union because of Scott's claim that he had an interest in the company;
- c) In June, 1998, Scott filed a grievance with the Labour Relations Board against his union for not pursuing the grievance. That complaint was dismissed in July, 1998;
- d) A complaint was filed on December 16, 1998, with the Employment Standards Branch.

Section 74 of the *Act* provides as follows:

- (3) A complaint relating to an employee whose employment has terminated must be delivered under subsection (2) within 6 months after the last day of employment.

The last possible date of the alleged contravention by Alberni Glass Ltd. would be Scott's last date of employment on February 6, 1998. Scott did not file his complaint until December 16, 1998, a period in excess of six months from the last date of employment.

Section 74(3) is clear. A complaint must be delivered in writing within six months after the last day of employment. The complaint here was delivered considerably outside of the six month time limit. The Employment Standards Tribunals have consistently interpreted this provision as mandatory. The appeal is therefore dismissed.

## **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated January 11, 1999, be confirmed.

**Cindy J. Lombard**  
**Adjudicator**  
**Employment Standards Tribunal**