

**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 -

M.I.E. Stoves Ltd.  
("M.I.E. Stoves" or the "employer")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 2000/267

**DATE OF DECISION:** June 9, 2000

## DECISION

### OVERVIEW

This is an appeal filed in the name of E.R. McDougall, presumably on behalf of M.I.E. Stoves Ltd. (“M.I.E. Stoves” or the “employer”), pursuant to section 112 of the *Employment Standards Act* (the “Act”)--I understand that Mr. McDougall is the employer’s president. The appeal is from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on March 23rd, 2000 under file number 097-892 (the “Determination”).

### THE DETERMINATION

The Director’s delegate determined that M.I.E. Stoves owed its former employee, Robert B. Gilchrist (“Gilchrist”), the sum of \$684.32 on account of 2 weeks’ wages as compensation for length of service payable pursuant to section 63(2)(a) of the *Act*.

### FACTS AND ANALYSIS

Gilchrist alleged that he was employed by M.I.E. Stoves as a truck driver from September 1998 until October 12th, 1999 when he was laid off due to a shortage of work. I understand that M.I.E. Stoves entered into bankruptcy on October 26th, 1999 and that the firm Campbell Saunders Ltd. was appointed as M.I.E. Stoves’ bankruptcy trustee.

It appears from Mr. McDougall’s April 8th, 2000 memorandum appended to the notice of appeal that he may have misapprehended the nature of the Determination. The Determination was *not* issued on the basis that M.I.E. Stoves failed to pay Mr. Gilchrist his regular wages. Rather, the basis of the Determination was M.I.E. Stoves’ failure to give Gilchrist 2 weeks’ written notice of termination or to pay Gilchrist the equivalent of 2 weeks’ wages in lieu of written notice. M.I.E. Stoves does not allege--and there is certainly no evidence before me to suggest--that it had just cause for termination in which case neither written notice, nor pay in lieu of notice, would have been required.

Quite apart from the foregoing, inasmuch as M.I.E. Stoves entered bankruptcy on October 26th, 1999, Mr. McDougall did not have the legal status to file--as he purported to do on April 12th, 2000--an appeal of the Determination on behalf of M.I.E. Stoves. The procedural right to file an appeal of the Determination with the Tribunal lies solely with M.I.E. Stoves’ bankruptcy trustee as set out in the Tribunal’s decision in *Fyfe*, BC EST #D080/00:

Section 71(2) of the federal *Bankruptcy and Insolvency Act* states that “on an assignment [into bankruptcy], a bankrupt ceases to have any capacity to dispose of or otherwise deal with his property, which shall, subject to this Act and to the rights of secured creditors, forthwith pass to and vest in the trustee named in the...assignment...”. The trustee, in turn, is given wide authority to deal with the bankrupt’s property. For example, the trustee may, with the permission of the inspectors, “bring, institute or defend any action or other legal proceedings relating to the property of the bankrupt” [see section 30(1)(d)]. Thus, on bankruptcy, the bankrupt’s property (subject to certain exceptions that have no application in this case) vests in the trustee who is given, for the most part, exclusive authority to deal with that property.

Accordingly, [the appellant] does not have the legal authority to appeal the Determination as that right lies solely with [the appellant's] licensed trustee..."

As a final observation, I should perhaps also note that this appeal appears, in any event, to be moot. According to the information provided to the Tribunal by the delegate, upon liquidation of M.I.E. Stoves' entire assets, the proceeds were remitted to Revenue Canada; there is no money available to satisfy Mr. Gilchrist's claim. In light of section 96(2)(a) of the *Act*, the delegate does not intend (and quite properly so, in my opinion) to issue a determination against Mr. McDougall in his capacity as a director and/or officer of M.I.E. Stoves.

**ORDER**

Pursuant to subsections 114(1)(b) and (c) of the *Act*, I order that this appeal be dismissed.

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