

**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-

Varinder Chohan

(“Chohan”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 97/818

**DATE OF DECISION:** June 23, 1998

**DECISION**

**OVERVIEW**

This is an appeal brought by Varinder Chohan (“Chohan”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on October 20th, 1997 under file number 085776 (the “Determination”).

The Director determined that Chohan was a director and officer of KCC 179 Holdings Ltd. (“KCC”) and as such was personally liable, by reason of section 96 of the *Act*, for unpaid wages and interest in the amount of \$23,655.19 owed to 32 former KCC employees.

**FACTS**

Based on the information set out in the Determination, which has not been contradicted by the appellant, KCC operated an “ABC Family Restaurant” franchise. On or about August 12th, 1997, the franchisee’s landlord exercised its right of distraint for unpaid rent. The restaurant closed down and did not reopen until approximately September 18th, 1997 under the auspices of a new franchisee. The monies set out in the Determination represent unpaid regular hourly wages, vacation pay and termination pay owed to KCC’s former employees. None of the individual employees’ claims exceeds the 2-month wage threshold set out in section 96.

**ISSUE RAISED ON APPEAL**

There is no dispute regarding Ms. Chohan’s status; indeed, her solicitors, in a letter to the Tribunal dated February 11th, 1998 acknowledge that she was a director of KCC at the material time. Chohan’s appeal is based on the assertion that the Director’s delegate erred in calculating the amount of unpaid wages owed to 21 of the 32 former KCC employees. Specifically, Chohan says that the Director erred “in calculating the number of hours worked by certain employees and has erred in making certain assumptions with regards to statutory holiday pay and vacation pay entitlements of certain employees”.

**ANALYSIS**

There are a limited number of exceptions to the statutory vicarious liability imposed on directors and officers under section 96 of the *Act* [*cf.* section 96(2) and section 45 of the *Employment Standards Regulation*], none of which applies here.

A determination was also issued against KCC and on January 5th, 1998, an appeal was filed on behalf of KCC by the very same law firm that filed Chohan's appeal. In a covering letter appended to KCC's appeal form, KCC's solicitors stated:

“We are enclosing a copy of the Determination issued by the director in respect of KCC Holdings Ltd...We confirm that the reasons for appeal are identical to those filed in respect of Varinder Chohan.”

In my view, a director or officer is not entitled, in an appeal of the determination issued against them in their personal capacity under section 96, to, in effect, litigate (or re-litigate) the issues that more properly ought to be dealt with in the appeal of the underlying corporate determination (see *e.g.*, *Steinemann*, EST Decision No. 180/96 and *Perfekto Mondo Bistro Corporation*, EST Decision No. D205/96). The policy underlying these latter decisions is that there should only be one appeal on the substantive question of the employees' wage entitlement and that appeal ought to be brought by the employer--in this case, KCC.

I am of the opinion that the only issues properly before me in this appeal are whether or not Chohan was a director or officer of KCC at the material time, and whether the Determination issued against her exceeded the 2-month wage limit set out in section 96(1) of the *Act*. Chohan's appeal cannot be sustained on either issue and thus this appeal should be dismissed.

In the event that KCC's appeal is ultimately successful, it follows that Chohan's liability under the Determination now before me would be reduced. Should KCC's appeal be successful, Chohan would be entitled to apply to the Director under section 86 of the *Act* for a variance or cancellation (as may be appropriate) of the section 96 Determination.

## **ORDER**

Pursuant to section 115 of the *Act*, I order that Determination be confirmed as issued in the amount of **\$23,655.19** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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