



An appeal

- by -

Leo Ouellett, a Director or Officer of Coquihalla Towing Co. Ltd.

- 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

ADJUDICATOR: Ib S. Petersen

FILE No.: 2001/107

DATE OF DECISION: May 23, 2001

DECISION

SUBMISSIONS:

Mr. Leo Ouellet	on behalf of the himself
Mr. Dana Paynter	on behalf of himself
Mr. Rod Bianchini	on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by Ouellet pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on January 15, 2001 which determined that he was liable as a corporate director or officer for two months wages to former employees of Coquihalla Towing Co. Ltd. (the “Employer”), Dana Paynter and Gary Schramm (the “Employees”) for a total of \$2,473.30.

A corporate Determination was issued on June 27, 2000 against the Employer (the “Determination”). Ouellet appealed that Determination. I confirmed the Determination in BCEST #D565/00 (the “Decision”), first, because he did not have standing to appeal on behalf of the bankrupt Employer without the authority of the trustee in bankruptcy and, second, in any event, because the Employer had failed to cooperate with the delegate’s investigation.

FACTS AND ANALYSIS

It is trite law that the Appellant has the burden to show that the determination is wrong.

Section 96 of the *Act* provides for personal liability for corporate directors and officers. They may be liable for up to two month’s unpaid wages for each employee, if they were directors and officers at the time the wages were earned or should have been paid. Section 96 provides, in part:

96.(1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months’ unpaid wages for each employee.

The issues that arise under Section 96 are limited, including, whether a person was a director/officer at the material time, or whether the amount of personal liability was calculated correctly (see, for example, *Pacific Western Vinyl Windows & Doors Ltd.*, BCEST #180/96).

In this appeal, Ouellet takes issue with the Determination and the Decision. He says that the Tribunal was wrong in declining to deal with the merits of the appeal. He also says that the trustee in bankruptcy has consented that he, as a director of the Employer, act on behalf of the

Employer in these proceedings. In my view, while these matters may be subject of an application for reconsideration under Section 116 of the *Act*, they are not properly before me in the instant case. The proper avenue for Ouellet to pursue his disagreement with the Decision is through reconsideration. Ouellet does not, unfortunately, address the issues under Section 96, namely whether he was a director/officer and the calculation of wages owed. In the result, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated January 15, 2001 be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal