

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act*

-by-

Mary Budgell

(“Budgell”)

-of a Determination issued by-

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 96/416

**DATE OF DECISION:** October 10, 1996

## DECISION

### OVERVIEW

This is an appeal brought by Mary Budgell (“Budgell”) pursuant to section 112 of the Employment Standards Act (the “Act”) from Determination No. CDET 002655 issued by the Director of Employment Standards (the “Director”) on June 24, 1996. The Director determined that Budgell and Joan Kams, operating under the firm names Angelo House and Jasmine House, owed fourteen former employees a total of \$34,773.10 on account of unpaid overtime [section 40(1) of the Act], failure to wages based according to the statutory daily minimum hours requirement [section 34(2) of the Act] and interest (section 88 of the Act).

Budgell’s solicitors have advanced three grounds of appeal, namely:

- i) the Ministry of Social Services was the employer, not Budgell;
- ii) the amounts set out in the Determination were incorrectly calculated;
- and
- iii) certain claims may fall outside a statutory limitation period.

The appellant has not provided any particulars or other supporting information or documentation with respect to any of the three grounds noted above.

### FACTS

According to the Determination (and this has not been challenged by the appellant), Budgell and Kams operated two group homes pursuant to a funding contract with the Ministry of Social Services. The two group homes, known as “Angelo House” and “Jasmine House”, were located in Surrey and Port Coquitlam, respectively. Apparently the funding contract was terminated effective April 30, 1996 at which time the fourteen employees named in the Determination were terminated.

The other principal named in the Determination, Joan Kams, acknowledged that the former employees had worked overtime hours for which they had not been paid. Kams provided some payroll records upon which the Director relied in issuing the Determination. Budgell apparently wrote a letter to the employees in which she stated that she was not aware of the legal requirement to pay overtime and that had she so known, she would not have permitted any employee to work overtime.

## **ANALYSIS**

As noted above, neither Budgell, nor her solicitors, have provided any information in support of the appeal. There is no evidence before me that the provincial government was the employer in this case; indeed, the overwhelming weight of evidence suggests otherwise. I am not able to fathom how or why the monies ordered to be paid under the Determination have been incorrectly calculated. The Director has, in my view, taken a conservative approach to the calculation of the monies owed and has, so far as I can gather, properly applied the relevant provisions of the Act.

As for the argument that the employees' claims fall outside an applicable limitation period, I am similarly unable to accede to that argument. The "oldest" claims date from June 26, 1995. The complaints were filed with the Employment Standards Branch in April 1996. In my view, the complaints were filed in a timely manner as directed by section 74(3) of the Act; the unpaid wages found to be owing all fall well within the 24 month limitation period set out in section 80(a) of the Act.

## **ORDER**

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 002655 be confirmed as issued.

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