

**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 -

Hank Gauw, Director/Officer of  
Care Concepts Home Support Service Inc.  
("Gauw")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Paul Love

**FILE NO.:** 98/345

**DATE OF DECISION:** July 29, 1998

**DECISION**

**OVERVIEW**

This is an appeal by Hank Gauw of a Director's Determination holding that he was an officer or director of Care Concepts Home Support Services Inc. and obliged to pay to Holly Ferbey vacation pay. At the relevant time that the wages were earned Mr. Gauw was an officer or director of the employer and thus liable under Section 96 to pay vacation pay earned during the period of his Directorship, which was unpaid by the company.

**ISSUE TO BE DECIDED**

Did the Director's delegate decide correctly that Hank Gauw was a director or officer of the employer ?

**FACTS**

Holly Ferbey was a former employee of care Concepts Home Support Services Inc. (the "company"). On January 21, 1998 the Director's delegate issued a Determination finding that the sum of \$431.22 was due and owing to Ferbey. The determination was sent to the registered and records office of the company, to Ingrid Gauw, the operator of the company and to Hank Gauw as a director of the company.

The Director's delegate determined that the unpaid vacation pay was earned by Ferbey during the period July 1995 to March 1996.

The Director's delegate conducted a search using the B.C. On-line system and determined that Hank Gauw of 3919 Dryden Road, Peachland, BC was a director or officer of the company. The Director's delegate determined that Mr. Gauw was a director or officer of the company at all material times.

There is some suggestion that Ingrid Gauw, the operator of the company as in personal bankruptcy at the time of the investigation in the liability of the company to Ms. Ferbey. There was a suggestion in the submission of Mr. Gauw that the company had ceased its operations as of the end of March 1996. At a critical time during the investigation the company. Ms. Gauw and Mr. Gauw failed to respond to requests for information, made by the Director's delegate.

**ANALYSIS**

In this case the company did not appeal the finding that the employee was entitled to vacation pay. The appeal period has expired. The only issue is whether Mr. Gauw was a director or officer of the company at the time that the vacation pay was earned. In this proceeding the appellant, Mr. Gauw, bears the burden to establish that the Determination ought to be varied or cancelled.

Mr. Gauw alleges on his written decision that he was a director of the company as a matter of formality, as a result of his relationship to the principle of the company. He further argued that he was never involved in the daily operations of the business and therefore had no knowledge of the payment procedures in place.

Section 96 of the *Act* is intended to provide the Director with a method of collecting unpaid wages that are due and owing by a company to an employee. It ensures that the employees are protected against insolvent employers: *Petriniotis*, (BC EST #D251/97).

Section 96 of the *Act* does not require a director to have an active involvement in a business at the time the wages were earned. The section merely requires that the person be a director or officer of the corporation at the time the wages were earned. The argument that Mr. Gauw was not an “active” director, is therefore not a defence to liability under Section 96. Since Mr. Gauw is identified in the records of the Registrar of Companies as a Director, in my view, that ends the analysis. It is unnecessary to measure the extent of a person’s contribution to management of a company, where that person is named as a director of the company in the records of the Registrar of Companies.

The second argument raised by Mr. Gauw is that the company ceased operations on March 22, 1996, and that therefore the annual report required to maintain registration of the company was not filed. I have found as a fact that the wages were earned between July 1995 to March 1996. The fact that the company failed to file an annual report because it ceased carrying on business is irrelevant to the issue of liability for accruing vacation pay.

The third argument raised is that Mr. Gauw is not now financially able to pay the amount Determined to be due in owing because of his personal circumstances. While this may impact on the ability of the Director to enforce the Determination, it is not a defence to liability under Section 96 of the *Act*.

I find therefore that Mr. Gauw has failed to establish any reason why I ought to vary or cancel the Determination imposing liability on him as a director or officer for vacation pay due and owing from Care Concepts Home Support Services Inc. to Holly Ferbey.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter dated May 13, 1998 be confirmed.

**Paul Love**  
**Adjudicator**  
**Employment Standards Tribunal**

PL:sa