

An appeal

- by -

Clint Gordon Goyette, a Director or Officer of  
Vici Interactive Multimedia Solutions Corporation  
("Goyette" or "Officer")

- 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:** Paul E. Love

**FILE No.:** 2002/351

**DATE OF DECISION:** September 3, 2002

## DECISION

### OVERVIEW

This is an appeal by Clint Goyette, an officer or Director of Vici Interactive Multimedia Solutions Corporation (“Vici” or “Employer”), from a Determination dated May 30, 2002 (the “Determination”) issued by a Delegate of the Director of Employment Standards (“Delegate”) pursuant to the *Employment Standards Act, R.S.B.C. 1996, c. 113* (the “Act”). This Determination imposed liability upon Mr. Goyette, pursuant to section 96(1) of the Act for up to two months wages for each employee in the total amount of \$14,483.76 for three employees. On January 7, 2002, the Delegate issued a Determination finding Vici liable to the Employees in the amount of \$13,552.88. Vici filed an appeal of the Determination issued by the Director against Vici, however, this appeal was dismissed by the Adjudicator on April 19, 2002: *Vici Interactive Multimedia Solutions Corporation BCEST #D145/02*. In this case Mr. Goyette, filed an appeal of his liability under section 96 of the Act. Mr. Goyette has not filed an appeal responsive to the issues at this stage, but he raises a number of issues and defences which go to whether the Determination against Vici was properly issued. Mr. Goyette has not satisfied me that the amounts set out in the Determination of May 30, 2002 are incorrect, or that he was not a director or officer at the time the wages were earned. I therefore dismissed the appeal and confirmed the Determination.

### ISSUES:

Has Mr. Goyette raised any issue that he was not a director of Vici at the time that the wages were earned or that the amounts set out in the Determination were calculated incorrectly?

### FACTS

I decided this case after considering the submission of Mr. Goyette, Mike Arsenault, Scott Underwood (the “Employees”) and Matthew Arbique (another officer of Vici) and the Delegate. The Employer carried on business in Whistler, British Columbia. As a result of complaints made by Employees, the Delegate investigated the complaints and on April 12, 2002, the Delegate issued a Determination finding that the amount owing to employees Mike Arsenault, Scott Underwood, and Jason Hewko was \$13,552.88, inclusive of interest to that date. A copy of the Determination was sent to the company, and copies to all the directors of the Company including Matthew Paul Arbique, Clint Gordon Goyette, and Suhjit S.S. Shokar. Mr. Goyette, at all material times was a director and officer of the Employer. The Employer filed an appeal of the Determination, which was dismissed by the Adjudicator on April 19, 2002: *Vici Interactive Multimedia Solutions Corporation BCEST #D145/02*.

In the Determination of May 30, 2002, the Delegate found that Mr. Goyette was a director of the Employer and that the following employees were entitled to the following wages:

	Amount	Interest	Total
Mike Arsenault	\$2,495.49	\$167.34	\$2,662.83
Jason Hewko	\$5,772.43	\$398.60	\$6,171.03
Scott Underwood	\$5,284.96	\$364.94	\$5,649.90
Total			\$14,483.76

It is unnecessary for the purposes of this appeal to set out the details of the calculation for each employee, as the calculation has not been challenged by Mr. Goyette. The total amount found by the Delegate to be due and owing for the Employees is \$14,483.76. At the time of the issuance of the Determination against Mr. Goyette as an officer or director of Vici, Vici had not paid the amount Determined to be due and owing on the January 7, 2002 Determination issued against Vici.

I note from the Determination of January 7, 2002, that each of these Employees was employed at an annual salary of \$40,000 per year. The amount set out in the Determination is less than two months wages for each employee.

### **Mr. Goyette's Argument:**

Mr. Goyette raises a number of reasons for appealing the Determination including that one of the employees planned to steal information and discuss the information with a person outside the Employer, that one employee quit his position without notice and took company property, and that one employee was terminated for cause. Mr. Goyette asks this Tribunal to "re-evaluate" whether the signing bonus is due to each employee.

### **Employees' Arguments:**

Mike Arsenault argues that Mr. Goyette's appeal is simply a reiteration of matters which have been investigated by the Delegate, dismissed by the Delegate, and dismissed on appeal. Scott Underwood submits that Mr. Goyette "remained silent" throughout the investigation, and has made submissions only when it is expected that "he pay his portion". Scott Underwood submits that the Delegate correctly decided the issue relating to him. Mr. Hewko did not file a submission.

### **Delegate's Argument**

The Delegate submits that the only issues properly before me, when considering this appeal by the Director are whether Mr. Goyette was a director of the company at the time the wages were earned, and whether the calculation of the liability is correct. The Director says that Mr. Goyette was an officer of the company. The Delegate submits that there are no grounds of appeal raised by Mr. Goyette, and submits that I should dismiss this appeal.

### **ANALYSIS**

In an appeal under the *Act*, the burden rests with the appellant, in this case, Mr. Goyette, to show that there is an error in the Determination, such that the Determination should be canceled or varied.

Section 96(1) of the *Act* sets out the liabilities of an officer or a director, in a situation which does not involve bankruptcy or insolvency. Section 96(1) reads as follows:

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.

Where a Determination has been issued against a Director or Officer of an Employer under s. 96 of the *Act*, the applicable analysis, as pointed out by the Delegate, is whether Mr. Goyette was an officer or director at the time that the wages were earned, and secondly, whether there is any error in the calculation. Mr. Goyette has not made any submissions on either of these points, and therefore I find that he has not shown any error in the Determination.

It is not the task of the Tribunal, in reviewing an appeal of a Determination against directors or corporate officers, to review the “correctness” of the findings of an Adjudicator who decided the corporate Employer’s appeal of the corporate Determination. I am not a “reconsideration” Adjudicator when, I review and decide an appeal filed by a director or corporate officer. My task is simply to decide if the appellants have established an error on the part of the Delegate in the Determination of the personal liability, under section 96 of the *Act*, of the officer or director of the company. If Mr. Goyette chose not to participate in the original investigation relating to the Vici’s liability, as alleged by Mr. Underwood, it is too late for Mr. Goyette to raise these new issues on the appeal of the Determination of his personal liability as an officer or director of Vici. For the above reasons, I dismiss this appeal, and confirm the Determination.

## **ORDER**

Pursuant to s. 115 of the *Act* I order that the Determination dated May 30, 2002 is confirmed with interest in accordance with s. 88 of the *Act*.

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**Paul E. Love**  
**Adjudicator**  
**Employment Standards Tribunal**