



An appeal

- by -

Ron Wright operating as Durol Computer Services  
(“Wright”)

- 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:** Lorne D. Collingwood

**FILE No.:** 2001/449

**DATE OF DECISION:** August 8, 2001

## DECISION

### OVERVIEW

The appeal is by Ron Wright operating as Durol Computer Services (who I will refer to as both “Wright” and “the Appellant”) and it is pursuant to section 112 of the *Employment Standards Act* (“the *Act*”). Wright appeals a Determination issued on May 18, 2001 by a delegate of the Director of Employment Standards (“the Director”). The Determination orders Wright to pay Susan Epp \$4,578.38 in wages and interest. It also awards Paulett Larocque \$7,597.93 in wages and interest.

The appeal was delivered to the Tribunal after the statutory period for appealing the Determination had expired. Wright asks that the Tribunal exercise its discretion to extend the time limit for the appeal. He claims that it was his intention to file the appeal in time but he was prevented from doing so because it was not until after the period for appealing the Determination had expired that he was sent an appeal form by an office of the Employment Standards Branch and actually in a position to appeal the Determination.

The request to extend the time limit for the appeal has been decided on the basis of written submissions. I have decided to extend the time limit for requesting the appeal.

### ISSUE TO BE DECIDED

The sole issue before me is whether the Tribunal should or should not exercise its discretion to extend the time period for appealing the Determination. Wright claims that his appeal was immediate and timely upon learning of the Determination and receiving an appeal form.

### FACTS

Wright is, or at least was, operating as Durol Computer Services.

Susan Epp and Paulett Larocque worked for Wright. The employees both quit on September 20, 2000 and filed complaints pursuant to the *Act*. Both of the employees claimed a failure to pay wages.

Wright, through a Demand for Employer’s Records, issued April 6, 2001, was ordered to produce payroll records. That order was sent by registered mail but there was no response.

The investigating officer tried to contact the employer by telephone but he was unsuccessful. The Determination was then issued without any input from the employer.

The Determination was sent to Wright by registered mail. The Determination includes notice of the right to appeal. In the Determination, the parties are advised that the deadline for an appeal of the Determination is 4:30 PM on June 11, 2001.

The appeal was not received until the 12<sup>th</sup> of June.

Wright, for a period of months, did not accept any registered mail, nor did he pick up registered mail. That is said to be for reason of advice received from legal counsel in his divorce case. He tells me that it was not until a Friday, the 11<sup>th</sup> of June, that he learned of the Determination and the order to pay Epp and Larocque. According to Wright, immediately on realizing that the Determination had been issued, he contacted the Director's delegate and, on his advice, phoned the Victoria office of the Employment Standards Branch and asked that they send him an appeal form. He claims that it was not until the following Monday that he was sent an appeal form and, hence, his appeal is late.

Wright is confused. June 8, 2001 is a Friday. June 11, 2001 is a Monday. He was sent the appeal form on the last day of the prescribed period for appealing the Determination. On receiving the form, he completed the form and sent it in (by fax) to the Tribunal but not until the evening of the 11<sup>th</sup>. As such, it was not until the 12<sup>th</sup> that the Tribunal received the appeal.

Neither Epp, nor Larocque have had anything to say in respect to whether the time limit for the appeal should or should not be extended. The Director's delegate is not asking that the requested extension be denied but rather he asks that the employer be heard. He is concerned that important evidence may not been submitted for reason of bad legal advice and that rejecting the appeal "may cause a disservice to the *Act*".

## ANALYSIS

Section 112 of the *Act* establishes a 15 day period for appealing Determinations.

- 112** (1) Any person served with a determination may appeal the determination to the tribunal by delivering to its office a written request that includes the reasons for the appeal.
- (2) The request must be delivered within
- (a) 15 days after the date of service, if the person was served by registered mail, and
  - (b) 8 days after the date of service, if the person was personally served or served under section 122 (3).

The Tribunal may dismiss an appeal without holding a hearing if it is satisfied that the appeal is not in time, the appeal is not within the Tribunal's jurisdiction, or the appeal is frivolous,

vexatious, trivial or not in good faith. The Tribunal may also extend the time limit for filing an appeal.

- 114** (1) The tribunal may dismiss an appeal without a hearing of any kind if satisfied after examining the request that
- (a) the appeal has not been requested within the time limit in section 112 (2),
  - (b) the appeal is not within the tribunal's jurisdiction, or
  - (c) the appeal is frivolous, vexatious or trivial or is not brought in good faith.
- 109** (1) In addition to its powers under section 108 and Part 13, the tribunal may do one or more of the following:
- ...
  - (b) extend the time period for requesting an appeal even though the period has expired;
  - ...

The statutory period for appeals will not be overridden lightly but only where there is a compelling reason to do so. Where there is a reasonable explanation for the failure to file the appeal in time, no actual prejudice to other parties, and it appears that there is a serious issue to address, I am satisfied that the Tribunal should not deny the appellant access to the Tribunal but accept the appeal even though late. And, in my view, the Tribunal should be more inclined to extending the time limit for an appeal where the appeal is only late by a few days and much less inclined to doing so if deadline is missed by a wide margin.

I have decided to extend the time limit for the appeal. The statutory deadline for the appeal was missed but only by what is a matter of hours. I am prepared to accept that the appeal would have been in time but for a decision to accept legal advice and that it is reasonable for a person that is not legally trained to act on such advice, even where it is bad advice. I am given no reason to believe that any prejudice will flow from a decision to extend the time limit for the appeal. I am led to believe, moreover, that the delegate is himself uncomfortable with the Determination and that there may well be a serious issue to address: The matter of the amount awarded to each of the employees. On that I note that the Determination awards Epp and Larocque what are relatively large sums of money.

**ORDER**

I order, pursuant to section 109 (1)(b) of the *Act*, that the time limit for an appeal of the Determination dated May 18, 2001 be extended so that further submissions are received in respect to the appeal.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**