

**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 -

Karen Slinger  
("Slinger")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 98/574

**DATE OF DECISION:** October 8, 1998

## DECISION

### OVERVIEW

This is an appeal by Karen Slinger (“Slinger”) under Section 112 of the Employment Standards *Act* (the “*Act*”) against a Determination which was issued by a delegate of the Director of Employment Standards on August 12, 1998. The Director’s delegate determined that she would not proceed with Slinger’s complaint as it was not received within the time limits specified in Section 74 of the *Act*.

This appeal has been decided on the basis of the written submissions and documents before me.

### ISSUE TO BE DECIDED

Did the Director’s delegate err in determining that she did not have jurisdiction to investigate Slinger’s complaint?

### FACTS

Slinger commenced employment with Detsen Holdings Ltd. operating as Peppermill Family Restaurant on August 8, 1995. Her last day of work was January 15, 1997.

Slinger’s complaint under the *Act* is dated May 11, 1998 and it was delivered to the Employment Standards Branch office on May 19, 1998.

The Director’s delegate determined that she did not have jurisdiction to investigate Slinger’s complaint because it was not made within the time limits contained in Section 74(3) of the *Act*.

### ANALYSIS

Section 74 of the *Act* sets out the requirements of how and when a complaint may be made under the *Act*:

#### 74. Complaint and Time Limit

- (1) An employee, former employee or other person may complain to the director that a person has contravened
  - (a) a requirement of Parts 2 to 8 of this *Act*, or
  - (b) a requirement of the *Regulations* specified under section 127(2)(1).

(2) A complaint must be in writing and must be delivered to an office of the Employment Standards Branch.

(3) A complaint relating to an employee whose employment has been terminated must be delivered under subsection (2) within 6 months after the last day of employment

(4) A complaint that a person has contravened a requirement of section 8, 10 or 11 must be delivered under subsection (2) within 6 months after the date of the contravention.

Subsection 74(3) is of particular relevance to this appeal.

The Tribunal set out its view on the proper interpretation of Section 74(3) in a recent Decision - *Director of Employment Standards* (BC EST#D301/98; Reconsideration of BC EST#D014/98) - as follows:

Section 74(3) of the *Act* requires that a complaint relating to an employee whose employment has been terminated must be delivered, under subsection (2) of section 74, within six months after the last date of employment. The Tribunal has consistently interpreted this provision as being mandatory: see for example, *Burnham* (BCEST #D035/98).

...If the Director is aware that the complaint is not timely under section 74(3), she is empowered to refuse to investigate it. If there is doubt about the matter at the outset of the investigation, or if the lack of timeliness only becomes apparent during the course of the investigation, the Director is empowered by section 76(2) to stop or postpone it (perhaps pending further submissions from the parties on timeliness) once the investigation has begun.

...Clearly, the Director has no authority to investigate a complaint to which the *Act* does not apply. In our opinion, the Legislature has put untimely complaints into the same category as complaints to which the *Act* does not apply.

When I review the relevant facts of this appeal I find that the Director's delegate did not err in determining that she had no jurisdiction to investigate Slinger's complaint as it was not delivered within 6 months after her last day of employment. Slinger's last day of employment was January 15, 1997 and her complaint was delivered on May 19, 1998. That is, the complaint was not delivered within 6 months after the last day of employment. It was delivered 16 months after the last day of employment

Slinger appears to claim that she was on a temporary layoff effective January 15, 1997. However, even if I were to accept that she was on a temporary layoff, she still failed to file a timely complaint. A temporary layoff is defined as being a period of layoff of up to 13

weeks in any period of 20 consecutive weeks and if an employee is not recalled within that period then his/her employment is deemed to be terminated and the employee would have 6 months after the expiration of the 13 weeks to file a timely complaint. If Slinger had been on a temporary layoff and was not recalled after 13 weeks, she had to deliver her complaint to the Employment Standards Branch by the middle of October 1997 for it to be considered timely. She did not, however, deliver her complaint to the Employment Standards Branch until May 19, 1998.

As noted above, when the Director (or her delegate) is aware that a complaint is not timely under Section 74(3), she lacks jurisdiction to investigate the complaint.

For these reasons I am unable to conclude that the Director's delegate erred in concluding that she would not proceed with Slinger's complaint.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that the Determination dated August 12, 1998 be confirmed.

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**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**