

An Application for Reconsideration

- by -

Parm K. Pooni a Director or Officer of  
Securcom Security & Communication Services Ltd.

- of a Decision issued by -

The Employment Standards Tribunal  
(the "Tribunal")

pursuant to Section 116 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**TRIBUNAL MEMBER:** Ian Lawson

**FILE No.:** 2004A/187

**DATE OF DECISION:** January 13, 2005

## DECISION

### SUBMISSIONS

Parm K. Pooni	on her own behalf
Rod Bianchini	on behalf of the Director of Employment Standards
T. (Teri) M. Kitney	on her own behalf

### OVERVIEW

On October 31, 2003, a Determination was issued against Securcom Security and Communication Systems Ltd. (“Securcom”) in the amount of \$4,873.67, respecting wages owing to former employee Therese Kitney (“Kitney”). Securcom did not pay the amount owing and on July 14, 2004, a Determination was issued against Parm K. Pooni (“Pooni”) as a Director/Officer of Securcom. Pooni appealed that Determination to this Tribunal and her appeal was dismissed by Member David B. Stevenson on October 15, 2004 (BC EST #D177/04). Pooni filed a Request for Reconsideration of Member Stevenson’s decision on October 27, 2004. This Request is now decided on the basis of written submissions and all the material before the Tribunal.

### FACTS

The wages which were the subject of the initial Determination against Securcom were earned by Kitney between July 1, 2002 and July 28, 2002. Kitney has therefore been awaiting payment of these wages for two and a half years, a scenario which certainly runs contrary to the efficiency principle set out in section 2 of the *Act*. The initial Determination found as a fact that Securcom was incorporated on September 6, 2000, that Pooni was a director/officer of the company at the time the wages were earned, and that she continued to be listed with the Registrar of Companies as a director/officer on October 2, 2003 and on April 7, 2004.

In her appeal from this Determination, Pooni argued that she was a director/officer “in name only” and did not participate in any operational aspects of the business. She also raised as a ground of appeal that the Director failed to observe the principles of natural justice by: limiting the investigation to a BC Online search of the corporate registry; failing to give Pooni an opportunity to state her case; and making no attempt to contact or interview Pooni prior to making the Determination. In dismissing the appeal, Member Stevenson found Pooni had not shown there was any error in the corporate records, on which the Director was entitled in law to treat as presumptively reliable. Further, the question whether Pooni had any functional role in the company’s operation was irrelevant under section 96 of the *Act*. In the course of that appeal, Pooni also alleged she had resigned as a director in December, 2001, which Member Stevenson found she had failed to prove on a balance of probabilities.

Pooni’s Request for Reconsideration lists five reasons for the request, which I reproduce *verbatim*:

- (a) Tribunal Member David B. Stevenson mentioned in first paragraph that “credibility is central to the issue of whether Ms. Pooni performed any of the functions of a director of Securcom between

June 1, 2002, July 28, 2002". (An oral hearing was not specifically requested and also in the last paragraph that Pooni has not shown there was requirement on the Director to contact or interview her in order to ensure principles of natural justice were observed in making the determination). I called Tribunal office asked that I would like to speak to someone about my situation as to what my involvement was and I was told that I should put everything in writing and that's how our office works. Therefore, I wrote exactly how things were and no one even considered what I had to say. Of course the best way would have been if someone from Tribunal Dept. would set up an hearing to determine the best possible decision after hearing my side.

- (b) Same facts were used for me as they were used for the Company.
- (c) Page 3 last paragraph says that I did not provide any corporate records. I do not have any records. It is either with Kitney or owners (Simons) who have everything. I don't have any records what so ever. So how can I provide anything if there is something. I only could write my side of the story as to what the truth is.
- (d) Yes the letter was signed by me sent on February 20, 2003. I was not with the company at that time and they (Simons) called me that they will look after Kitney's situation and I should authorize Karen R. Nicolai to act on behalf of the Company. I did whatever they asked me to do, not knowing the result of this letter.
- (e) The counsel did not provide any written argument because it was costing me too much so he suggested that I should write a letter.

## ISSUES

In any request for reconsideration there is a threshold issue whether the Tribunal will exercise its discretion under section 116 of the *Act* to reconsider the original decision.

## ANALYSIS OF THE THRESHOLD ISSUE

The Tribunal's power to reconsider its decisions is discretionary. A principled approach to the exercise of this discretion has been developed. The rationale for the Tribunal's approach is grounded in the language and the purposes of the *Act*. One of the purposes of the *Act*, found in subsection 2(d), is "to provide fair and efficient procedures for resolving disputes over the interpretation and application" of its provisions. Another stated purpose, found in subsection 2(b), is to "promote the fair treatment of employees and employers." The general approach to reconsideration is set out in *Milan Holdings Ltd.*, BC EST #D313/98, which can be usefully summarized as follows:

- Any party exercising its right to request the Tribunal to reconsider must first pass the threshold of persuading the Tribunal that it is appropriate to enter upon a reconsideration of the adjudicator's decision. The obligation to satisfy the Tribunal that it ought to embark on a reconsideration may be seen as roughly analogous to the obligation, in some statutory contexts, to obtain leave to appeal before a Tribunal decision may be appealed to the Courts.
- In recognition of the importance of preserving the finality of adjudicator's decisions, the Tribunal will agree to reconsider those decisions only to the extent that it is first satisfied that one or more of the issues raised in the reconsideration application is important in the context of the *Act*.

- The Tribunal tends not to be favourably disposed to entering upon a reconsideration where the reconsideration application is untimely, where it asks the panel to re-weigh evidence, and where it seeks what is in essence interlocutory relief.
- Where the Tribunal agrees to enter upon a reconsideration of a decision, the Tribunal moves, at the second stage, directly to the merits. The standard of review at this stage is the correctness of the decision.
- Unlike the process for seeking leave to appeal in the Courts, the party requesting the Tribunal to reconsider must address in one submission both the test for reconsideration and the merits of the decision.

Pooni has filed no submissions in support of her Request for Reconsideration other than the brief statement of reasons quoted above. Upon carefully reading Member Stevenson's decision, and carefully considering the reasons Pooni advances, I find without hesitation that Pooni's request is completely without merit.

Pooni raises no issue that could remotely be described as important in the context of the *Act*. While her application is certainly made in a timely way, it is made in the faint hope I might re-weigh the evidence and argument put before Member Stevenson and come to a different result. That hope amounts to an abuse of the reconsideration power, which is to be used with restraint in order to preserve the integrity of the appeal process (*Re Valoroso*, BC EST #RD046/01; *Milan Holdings, supra*). An "automatic reconsideration" would delay justice for parties waiting to have their disputes heard (*Re Zoltan T. Kiss*, BC EST #D122/96), and it is an indisputable truth that Kitney has waited long enough to collect the wages owing to her. Pooni has therefore failed to even come close to meeting the heavy burden that rests upon her to persuade me that the reconsideration power ought to be exercised in this case.

## **ORDER**

Pursuant to section 116 of the *Act*, the request for reconsideration is denied. The amount owing to Kitney may be collected from Pooni pursuant to section 96 of the *Act*, together with interest pursuant to section 88.

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**Ian Lawson**  
**Member**  
**Employment Standards Tribunal**