

An Application for Reconsideration

- by -

Sardar Barahmand, a Director of Diar Restaurant Ltd. also known as Diyar
Restaurant
("Mr. Barahmand")

- 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 (as amended)

TRIBUNAL MEMBER: Shafik Bhalloo

FILE No.: 2013A/61

DATE OF DECISION: September 10, 2013

DECISION

SUBMISSIONS

Sardar Barahmand

on his own behalf

OVERVIEW

1. This application is made pursuant to section 116 of the *Employment Standards Act* (the “*Act*”) for reconsideration of an appeal decision by Tribunal Member Thornicroft, on June 25, 2013 (BC EST # D050/13) (the “original decision”). The original decision considered an appeal of the determination issued by a delegate of the Director of Employment Standards (the “Director”) on February 28, 2013, that ordered Mr. Barahmand, as a Director of Diar Restaurant Ltd. (“Diar”), to personally pay a former employee of Diar, Shahram Shamsian (“Mr. Shamsian”), a total sum of \$6,587.91, representing not more than two (2) months’ unpaid wages, vacation pay and interest (the “S.96 Determination”). Further, and also by way of the S.96 Determination, the delegate levied three mandatory penalties of \$500 each, pursuant to section 98(2) of the *Act*, against Mr. Barahmand for authorizing, permitting or acquiescing in Diar’s contravention of sections 17, 18 and 28 of the *Act*. Thus, the total amount payable under the S.96 Determination was \$8,087.91.
2. Mr. Barahmand’s reconsideration application is based on his contention that Mr. Shamsian was not hired by him and was not his employee. Mr. Barahmand feels that Mr. Shamsian “scammed” him, and Mr. Barahmand is asking the Tribunal to cancel the original decision.
3. Section 116 of the *Act* affords the Tribunal a discretionary authority to reconsider and confirm, cancel or vary its own orders or decisions. However, as indicated by the Tribunal in *Re: Eckman Land Surveying Ltd.* (BC EST # RD413/02), the Tribunal should exercise that discretionary authority with caution:

Reconsideration is not a right to which a party is automatically entitled, rather it is undertaken at the discretion of the Tribunal. The Tribunal uses its discretion with caution in order to ensure: finality of its decisions; efficiency and fairness of the appeal system and fair treatment of employers and employees.
4. In *Director of Employment Standards (Milan Holdings Inc.)* (BC EST # D313/98), the Tribunal established a two-stage process for adjudicating reconsideration applications. At the first stage, the Tribunal considers whether the application is timely, relates to a preliminary ruling, is obviously frivolous, or is simply a clear attempt to have the Tribunal revisit factual matters that have already been appropriately determined. If the application can be so characterized, the Tribunal will summarily dismiss it without further consideration of the underlying merits. However, if the application raises a serious question of fact, law or principle, or suggests that the Tribunal’s decision should be reviewed because of its fundamental importance or because of its possible implications for future cases, the Tribunal will proceed to the second stage, at which point the underlying merits of the application are given full consideration.
5. Having said this, at this point, I will only address the first stage of the *Milan Holdings* test. If I am satisfied that Mr. Barahmand’s application passes the first stage, the Tribunal will inform the respondents, Mr. Shamsian and the Director, and seek their submissions on the merits of Mr. Barahmand’s application. If, however, Mr. Barahmand’s application does not pass the first stage, it will be summarily dismissed pursuant to Rule 27 of the Tribunal’s *Rules of Practice and Procedure* (the “*Rules*”).

6. I will adjudicate Mr. Barahmand's reconsideration application based on his written submissions, the original section 112(5) "record" that was before the delegate, the delegate's Reasons for the Determination (the "Reasons"), as well as the material before Tribunal Member Thornicroft when he was adjudicating the appeal.

PRIOR PROCEEDINGS

7. By way of background, on May 29, 2010, Mr. Shamsian filed a complaint under section 74 of the *Act* in which he claimed that his former employer, Diar, owed him unpaid wages (the "Complaint"). A delegate of the Director conducted a hearing into the Complaint on September 30, 2010, and, on March 25, 2011, issued a determination finding that Diar had employed Mr. Shamsian as its business manager and that he quit his employment at the end of March 2010 when Diar failed to pay him his earned wages, and ordered Diar to pay Mr. Shamsian \$16,464.63 on account of unpaid wages (s. 18 of the *Act*), compensation for length of service (s. 66), 4% vacation pay (s. 58), compensation for some work-related expenses he incurred (s. 21) and interest (s. 88) (the "Corporate Determination"). The delegate also levied three separate \$500 monetary penalties against Diar and, thus, the total amount payable under the Corporate Determination was \$17,964.63.
8. Diar appealed the Corporate Determination on the grounds that the delegate erred in law and failed to observe the principles of natural justice in making the determination. Both grounds of appeal were rejected by the Tribunal which issued, on June 29, 2011, written reasons confirming the Corporate Determination (see *Diar Restaurant Ltd.*, BC EST # D070/11). Diar did not apply for reconsideration of the Corporate Decision under section 116 of the *Act*.
9. Subsection 96(1) of the *Act* imposes a personal two-month unpaid wage liability on corporate officers and directors:

Corporate officer's liability for unpaid wages

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.

10. Subsequently, on February 28, 2013, the delegate issued the S.96 Determination against Mr. Barahmand in his capacity as a corporate director. The delegate determined that he was a Director of Diar between January 2, 2010, and March 31, 2010, when Mr. Shamsian's wages were earned or should have been paid. Accordingly, the delegate ordered Mr. Barahmand to pay Mr. Shamsian two months' wages of \$5,600.00, plus 4% vacation pay and additional accrued s. 88 interest. The delegate also included in the Section 96 Determination three separate \$500 monetary penalties totaling \$1,500 (see subsection 98(2)). The total of the S.96 Determination is \$8,087.91.
11. On April 8, 2013, Mr. Barahmand, through counsel, filed an appeal of the S.96 Determination based on the grounds that the delegate erred in law and failed to observe the principles of natural justice in making the S.96 Determination and sought an order cancelling the Section 96 Determination or, alternatively, referring the matter back to the Director.
12. Tribunal Member Thornicroft, in the original decision, succinctly delineates the thrust of Mr. Barahmand's appeal by referring to the following excerpts in the written submissions of Mr. Barahmand's counsel on both grounds of appeal:

No oral hearing was held for the [Section 96] Determination and it appears to have been decided based on only the BC Online Register of Companies Corporate Searches. Mr. Barahmand was not afforded

with a pre-determination opportunity to provide any documentary evidence related to his personal liability.

Mr. Barahmand was not a director of Diar when the unpaid wages were earned or should have been payable. The Delegate committed an error in law in determining that Mr. Barahmand was a director when the unpaid wages were earned or payable and therefore personally liable for unpaid wages ... The Corporate Determination found that Mr. Shamsian earned unpaid wages from November 1, 2009 until March 31, 2010 ... [and] found that Diar had terminated Mr. Shamsian's employment on March 31, 2010 and as such the unpaid wages became payable on April 2, 2010. The Determination confirms that the time period for wages earned or to become payable is between January 2, 2010 and March 31, 2010 ... Mr. Barahmand was not named a director of Diar in the corporate records until April 10, 2010 and this was 8 days after the unpaid wages became payable. From the incorporation of Diar on June 19, 2009 until April 9, 2010, a time period that encapsulates the relevant time period of January 2, 2010 to April 2, 2010, Abdolla Nozadgagin was the sole director and officer of Diar. As such only Mr. Nozadgagin may be held personally liable for the unpaid wages ... [The] corporate records clearly indicate that Mr. Barahmand was not a director or officer of Diar at the relevant times when the wages were earned and when they became payable on April 2, 2010. As such the Delegate committed an error in law in finding him personally liable for wages under section 96 of the Act as he not a named director in the corporate records.

13. Tribunal Member Thornicroft also notes in the original decision that counsel for Mr. Barahmand advances a similar "natural justice" argument regarding Mr. Barahmand's personal liability for the three monetary penalties under subsection 98(2) of the *Act*.
14. After thoroughly reviewing the submissions of counsel and the Reasons for the S.96 Determination, Member Thornicroft states, with respect to the natural justice ground of appeal, the gist of Mr. Barahmand's appeal is that the delegate issued the S. 96 Determination without first providing him with any notice and opportunity to make submissions regarding his personal liability under subsections 96(1) and 98(2) of the *Act*. While, according to Member Thornicroft, section 77 of the *Act* obliges the Director to provide at least some form of notice coupled with an invitation to provide relevant evidence and argument before issuing a determination against a director or officer under section 96(1), he does not accept that that the delegate was required to hold an oral hearing before issuing the S.96 Determination. Simply affording Mr. Barahmand an opportunity to make written submissions in advance would have sufficed, according to Member Thornicroft. Although this was not done, Member Thornicroft, based on the following analysis, concludes that the delegate did not breach any principles of natural justice and, if she did, then that breach is now cured by virtue of the appeal proceedings:

... Mr. Barahmand clearly was very much aware of the fact that he might be held personally liable for a portion of [Mr. Shamsian's] unpaid wages as well as for the three \$500 monetary penalties. At page R3 of the delegate's reasons supporting the Corporate Determination, she notes that Mr. Barahmand was advised at the complaint hearing about his possible personal liability under the *Act*. The Corporate Determination, at pages D4 – D5, included a notice to Diar Restaurant's two directors (both of whom were served with copies of the Corporate Determination) regarding their possible liability under both subsections 96(1) and 98(2) of the *Act* and the salient provisions of both sections 96 and 98 were reproduced in full (see also delegate's reasons regarding the Section 96 Determination, page R2). Finally, in the appeal of the Corporate Determination, Diar Restaurant's legal counsel, who appears to have been taking his instructions from Mr. Barahmand, made the point that Mr. Barahmand was now solely exposed to potential personal liability since his fellow director, Mr. Nozadgagin, was bankrupt.

...

... I am fully satisfied that Mr. Barahmand was aware of his possible personal liability under the *Act* and that when the Section 96 Determination was issued, it did not come as a surprise to him. I also note that he was instructing legal counsel on Diar Restaurant's behalf and I think it reasonable to conclude from the

record before me that Mr. Barahmand discussed his potential personal liability with legal counsel prior to the issuance of the Section 96 Determination. Had Mr. Barahmand wished to do so, he certainly could have provided the delegate with any relevant material regarding his potential personal liability. Nevertheless, it undoubtedly would have been preferable if the delegate had given Mr. Barahmand a specific opportunity to provide any relevant evidence or argument prior to the Section 96 Determination being issued. On balance, I am not satisfied that, in the circumstances of this case, the delegate breached the principles of natural justice as is asserted by counsel for Mr. Barahmand.

Even if it could be said that the delegate *did* fail to observe the principles of natural justice by not *specifically* inviting a submission from Mr. Barahmand regarding his personal liability prior to issuing the Section 96 Determination, I am of the view that any such breach has been cured by the present appeal proceedings.

...

In the present case, Mr. Barahmand's legal counsel has provided a complete submission – including some documents that were not before the delegate – and he submits that a full consideration of this evidence inevitably leads to the conclusion that Mr. Barahmand ought not to have been held personally liable under subsections 96(1) and 98(2) of the *Act*. I could, of course, simply refer this entire matter back to the delegate to be reconsidered but that would open up the possibility of yet another appeal to the Tribunal if Mr. Barahmand were dissatisfied with the delegate's decision. In that event, the Tribunal would be in the same position as is presently the case, namely, it would have to determine if the delegate correctly determined that Mr. Barahmand was personally liable under subsections 96(1) and 98(2) of the *Act*. ... I believe that the most efficient way to “cure” any natural justice breach that occurred in this case is for the Tribunal to address the matter rather than by unnecessarily prolonging these proceedings (and increasing costs for all parties) by referring the matter back to the delegate.

Accordingly, although I am not persuaded that, in this case, the delegate failed to observe the principles of natural justice, I have considered Mr. Barahmand's new evidence and argument regarding his personal liability under the *Act* and it is to this matter I now turn.

15. Member Thornicroft then turned to the written submissions and supporting corporate documents from counsel contesting Mr. Barahmand's liability under Section 96 because he was not showing as Diar's director in the corporate search the delegate relied upon during the period Mr. Shamsian's unpaid wage claim spanned, namely November 1, 2009, to March 31, 2010. Member Thornicroft noted that counsel relied upon supporting documents which included Consent to Act as Director, Notice of Change of Directors and a special resolution increasing the directors from one to two, which indicated that Mr. Barahmand became a “new director” of Diar effective April 8, 2010, and subsequently the sole director on June 19, 2010. Member Thornicroft also noted that counsel argued that Mr. Barahmand's role in January 2010 to April 9, 2010, was that of an investor or a debtor who had loaned monies but had no authority or control over the business of Diar and it took a longer period of time for the director of Diar, Mr. Nozadgagin, to relinquish or hand over control to him. However, Member Thornicroft, based on the following analysis, concluded that Mr. Barahmand, while not formally a director in the corporate records of Diar, performed a significant role akin to a corporate director and was effectively a director of Diar from early January:

Corporate records are not necessarily determinative of a person's status although the Tribunal has repeatedly stressed that corporate records raise a rebuttable presumption regarding the matters recorded in the records (see, e.g., *Director of Employment Standards and Michalkovic*, BC EST # RD047/01). Corporate records may indicate that a person is a director or officer when, in fact, a *bona fide* resignation has not yet been reflected in the corporation's, or the B.C. Corporate Registry's, records. Alternatively, although a person is not listed as a corporate officer or director, that person may nonetheless be effectively functioning as a corporate officer or director.

Mr. Barahmand's current position is that he was not formally named as a corporate director until April 10, 2010, (although the Corporate Registry records appended to the Appeal Form indicate that the relevant date was April 8, 2010 – given my view of the matter, nothing turns on this discrepancy). However, there

is a considerable amount of evidence indicating, at the very least, Mr. Barahmand *functioned* as a corporate director as and from early January 2010 (persons who ‘function’ as corporate directors can be held personally liable for unpaid wages under subsection 96(1) even though they may not be formally named in the corporate records as a director – see *Penner and Hauff*, BC EST # D371/96, and *Michalkovic, supra*).

Mr. Barahmand, during the course of his testimony at the complaint hearing relating to the Corporate Determination, testified that he became a corporate director on January 8, 2010, – see delegate’s reasons, page R15 – ‘...*Mr. Barahmand testified that when he became a Director at Diar on January 8, 2010, there was an outstanding wage amount owed to Mr. Shamsian, which according to the partnership agreement was the responsibility of Mr. Nozadgagin, and Mr. Nozadgagin acknowledged this debt*’ (my *italics*).

The record before the delegate included a ‘Partnership Agreement’ between Mr. Nozadgagin and Mr. Barahmand, signed by both men on January 7, 2010. Although described as a ‘partnership agreement’, it is clear that the relationship envisioned by the document was not a partnership under the *Partnership Act* but, rather, it was a unanimous shareholders’ agreement relating to their joint interest in Diar Restaurant. I have reproduced some of the salient provisions of this agreement, below:

- Para. 2: “The name of the partnership will be “Diar Restaurant Ltd.”;
- Para. 4: “The Partnership will begin on January 7th, 2010 and will continue until terminated as provided in this Agreement”;
- Para. 14 states that the partners will vote on “decisions regarding distribution of profits, allocation of losses, and the requirements for Additional Capital”;
- Para. 15 states that profits and losses will be divided equally and para. 17 states that both men will have equal rights to inspect and examine Diar Restaurant’s books of account;
- Para. 22 states that the “Managing Partner will have management and control of the day-to-day business of the Partnership’ and by para. 23 Mr. Barahmand was designated as the “Managing Partner”; and
- Para. 28: “Each Partner will have authority to bind the Partnership in contract.”

The evidence before the delegate at the complaint hearing relating to the Corporate Determination also provides ample evidence about Mr. Barahmand’s significant role in the business affairs of Diar Restaurant as and from early January 2010. Mr. Shamsian testified that, faced with straitened finances, Mr. Nozadgagin started looking for a new ‘partner’ and that ‘On January 7, 2010, Mr. Barahmand became a director of Diar [and]...injected money into Diar’ (page R3). Mr. Nozadgagin testified that Mr. Barahmand invested in Diar Restaurant in January 2010 and that by May 2010, arrangements were being undertaken whereby Mr. Barahmand would have total control of the company (page R5). Mr. Barahmand testified about the various management matters he attended to after he ‘became a part of Diar’ in January 2010 (pages R7-R8). In *Michalkovic, supra*, the Tribunal provided some guidance about what constitutes ‘functioning’ as a director including: negotiating business transactions, regularly attending the company’s office, provided operating funds, and generally “manage, supervise or control the business and affairs” of the corporation (page 7).

It may be that Mr. Barahmand did not formally become recorded in Diar Restaurant’s corporate records as a director until April 8, 2010, but, in my view, the evidence overwhelmingly shows that as and from early January 2010 Mr. Barahmand played a significant role in Diar Restaurant’s business affairs consistent with those duties typically exercised by a corporate director in a small firm. I also wish to note, simply for the sake of completeness, that Mr. Barahmand was also identified in various Diar Restaurant documents as the company’s ‘president’ and while the Section 96 Determination named Mr. Barahmand as a Diar Restaurant director, it would appear that Mr. Barahmand might have been held equally liable for Mr. Shamsian’s unpaid wages as a corporate officer. I do not rest my decision on that position, however, since that was not the basis for the issuance of the Section 96 Determination.

16. With respect to the three \$500 penalties Mr. Barahmand was ordered to pay pursuant to subsection 98(2) of the *Act* in the S.96 Determination, Member Thornicroft stated:

Since I have determined that Mr. Barahmand, at the very least, was functioning as a Diar Restaurant director as and from early January 2010, counsel's argument regarding Mr. Barahmand's subsection 98(2) liability is, in my view, misconceived. The evidence before the delegate clearly shows that Mr. Barahmand was well aware of Mr. Shamsian's unpaid wage claim during the period from January to March 2010; however, Mr. Barahmand was operating on the assumption (false though it was) that Mr. Shamsian's unpaid wages were solely Mr. Nozadgagin's responsibility. As recounted in the delegate's reasons supporting the Corporate Determination, Mr. Barahmand testified as follows (page R7): 'He made it clear to both Mr. Shamsian and Mr. Nozadgagin that [Mr. Shamsian's unpaid] wages were a debt incurred by Diar before he came on board [and that] the money owed to Mr. Shamsian up until January 7, 2010 was a debt owed by Mr. Nozadgagin, that he [Mr. Barahmand] was only responsible for debts incurred from January 8, 2010 onward.'

Given his position as a corporate director and company president, Mr. Barahmand could, but chose not to, have arranged for Diar Restaurant to pay Mr. Shamsian's wages in a timely manner. That being the case, in my view, the delegate did not err in law by imposing a subsection 98(2) liability on Mr. Barahmand.

17. In the result, Member Thornicroft, in the original decision issued on June 25, 2013, rejected Mr. Barahmand's appeal and confirmed the S. 96 Determination.

SUBMISSIONS OF MR. BARAHMAND

18. On August 26, 2013, Mr. Barahmand filed his reconsideration application without the assistance of counsel. The application was filed almost one month after the expiry of the deadline for filing a reconsideration application.
19. With respect to his reasons for filing his application late, Mr. Barahmand states that he is unemployed and has lost his business and "didn't know about the reconsideration time" until August 8 when he contacted the Tribunal's office.
20. He also states that his file was with his lawyer and he "just received [it]".
21. In terms of the substantive arguments in the reconsideration application, Mr. Barahmand does not specifically dispute Member Thornicroft's analysis in the original decision but states that he wants to tell "a short story with evidence" to explain why he is "not willing to pay" Mr. Shamsian the amount ordered in the S.96 Determination. As a preamble to his substantive submissions he states that Mr. Shamsian was not his employee and that he never made any agreement with Mr. Shamsian "about payment". He also states that Mr. Shamsian "scammed" him, together with Mr. Nozadgagin.
22. He then goes on to explain under the heading "story" in his written submissions, how he got to connect with Mr. Nozadgagin who was, at the time, looking for an investor in Diar on a 50-50 basis who would be a silent partner. He states that Mr. Nozadgagin showed him "some fake papers" that indicated both CIBC and BMO had given him a loan and he also had some land in Iran that would serve as "backup" or collateral if required. He states that Mr. Nozadgagin explained to him that he needed money to pay some cheques he had written for his business because the banks would not release the loan monies to him until those cheques were paid and he was requiring more time to sell his property in Iran.

23. To assist Mr. Nozadgagin to obtain the loan funds from the banks, Mr. Barahmand states that on January 5, 2010, he agreed to loan Mr. Nozadgagin \$50,000 (to be deposited in Diar's bank account) plus another \$24,000 for construction work related to Diar. He attaches a cheque payable to Diar for \$50,000.
24. He submits that he contacted the landlord of the restaurant premises and decided that he wanted to open a Persian teahouse in unit D, the lower floor of the Diar Restaurant, as a separate business of his own and pursued that objective. He includes some pictures of construction and budget for the construction of the teahouse premises. He also includes a picture of the outside of the property, Unit C, which is the Diar Restaurant. He seems to submit that he did not have much to do with Diar except to loan monies to Mr. Nozadgagin. He then reiterates in his submissions the following information his counsel previously submitted in the appeal of the S.96 Determination:
- the lease of Diar's premises was in Mr. Nozadgagin's name (he attaches the face page of the lease),
 - all cheques on account of Diar's business were signed by Mr. Nozadgagin and he did not have any authority to sign cheques (he includes some cheques payable to Mr. Shamsian and also to the landlord which were previously submitted in the appeal of the S.96 Determination); and
 - Mr. Nozadgagin and Mr. Shamsian worked together previously before he met them.
25. He also submits that he went to CIBC on January 12, 2010, and spoke with a bank representative who informed him that the bank refused to loan monies to Diar or Mr. Nozadgagin. He subsequently asked Mr. Nozadgagin to return his money and he attended at Diar's bank, the Royal Bank of Canada, with Mr. Nozadgagin to obtain a repayment of his monies but found Mr. Shamsian there. He states the bank representative confirmed that there was \$41,410 in Diar's account, but Mr. Shamsian asked the bank representative to "block the account" because there were some uncashed cheques that needed to go through the account. As a result, he states, the bank representative did not write him a draft for the balance in the account.
26. He concludes his submissions by stating that if more evidence is required, he is prepared to meet to further explain.

ANALYSIS

27. Having reviewed the S.96 Determination, the section 112(5) "record" of the Director, the original decision, and the written submissions of Mr. Barahmand, I am not persuaded that the matter warrants reconsideration, and I dismiss Mr. Barahmand's application summarily, pursuant to Rule 27 of the *Rules* for the reasons set out below.
28. First, the reconsideration application is not timely. Rule 25(2) of the *Rules* provides that "the applicant should deliver the application for reconsideration as soon as possible after the Tribunal decision, but in any event within 30 days after the date of the tribunal decision". The original decision was issued on June 2, 2013. It was sent on the same day to counsel for Mr. Barahmand. There is nothing in the submissions that suggests that counsel did not inform Mr. Barahmand of the decision or provide it to him in a timely fashion.
29. While Mr. Barahmand says that he cannot afford a lawyer to file the application for him, the delay in filing cannot be excused, in my view, based on his unaffordability of legal counsel. The overwhelming majority of reconsideration applications are made by laypersons without legal representation.

30. I also note that he states he contacted the “help desk” of the Tribunal on August 8 and discovered then how to file an application. I query why he did not contact the Tribunal within 30 days of the Tribunal’s appeal decision. The cover letter enclosing the decision contains the Tribunal’s phone number and expressly directs parties interested in applying for reconsideration to the Tribunal’s website and provides a direct link to the page on the website containing relevant information for prospective applicants.
31. He also indicates that he only “just received the file” from his counsel’s office. He does not indicate when he requested the file from his counsel or if he required the file for his application for reconsideration. If he was delayed in filing his application for reconsideration because of some delay in getting the file from his counsel, then one would think that he would have contacted the Tribunal earlier and explained his situation.
32. Having said this, it is important to note that a fundamental purpose of the *Act* is to provide fair and efficient procedures to resolve disputes (s.2(d)) and it is important that parties be cognizant of this objective of the *Act* and act in a timely fashion at all stages of the proceeding, including when filing an application for reconsideration. In this case, I do not find any convincing explanation from Mr. Barahmand justifying his delay in filing his reconsideration application.
33. Second, I cannot find anything in the written submissions of Mr. Barahmand that challenges specifically the analysis of Member Thornicroft in the original decision and particularly his reasons for confirming the S. 96 Determination, which reasons I find very persuasive and am in agreement with them.
34. I also do not find Mr. Barahmand’s submission raise any questions of law, fact, principle or procedure which are so significant that they should be reviewed because of their importance to the parties and/or their implications to future cases.
35. However, I do find Mr. Barahmand’s reconsideration application, effectively, attempts to have the reconsideration panel “re-weigh” the evidence he already provided in earlier proceedings with a view to obtaining a more favourable outcome this time around. While I note that Mr. Barahmand has added in his reconsideration application an allegation that Mr. Shamsian and Mr. Nozadgagin together “scammed” him, which is not “new” evidence *per se* and would not qualify as new evidence under the test for new evidence set out in *Re: Merilus Technologies Inc.* (BC EST # D171/03), even if I were to consider this evidence, it does not change nor detract from my view of the correctness of Member Thornicroft’s analysis and decision in the original decision, and it does not change my view that Mr. Barahmand is attempting to re-argue the evidence presented in previous proceedings. The reconsideration process in section 116 of the *Act* is not meant to allow dissatisfied parties a further opportunity to re-argue their cases. In the circumstances, I find that Mr. Barahmand’s application for reconsideration fails at the first stage of the *Milan Holdings* test.
36. Mr. Barahmand’s application under section 116 of the *Act* to reconsider the original decision (BC EST # D050/13) is dismissed.

ORDER

37. Pursuant to subsection 116(1)(b) of the *Act*, the original decision is confirmed.

Shafik Bhalloo
Member
Employment Standards Tribunal