

An application for Reconsideration

- by -

M.S.I. Delivery Services Ltd.  
("MSI")

- 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:** Carol L. Roberts

**FILE No.:** 2006A/62

**DATE OF DECISION:** July 18, 2006



## ARGUMENT

9. Mr. Savage outlined his reasons for seeking a reconsideration of the Decision as follows:
  1. I believe that there are discrepancies in the time line
  2. I believe there are misconceptions in regards to how Mr. Campbell was required to go about his deliveries daily
  3. I believe that the new evidence that was supplied (and was denied) played a major role in showing that Mr. Campbell was fully aware that he was an independent contractor.
10. The reconsideration application refers to comments made in the Tribunal decision, and sets out “rebuttals” to those comments. Those comments refer to the Tribunal member’s recitation of the delegate’s findings of fact, the member’s reference to documents before the delegate and the evidence the member refused to admit as “new evidence”.
11. The Director seeks to have the reconsideration application dismissed, but does not set out any further comments or submissions.
12. Mr. Savage’s reply submission consists of comments about general practises of courier companies in the Vancouver area, and does not refer to the Tribunal’s decision, or the issues I must consider on a reconsideration application.

## ISSUES

13. There are two issues on reconsideration:
  1. Does this request meet the threshold established by the Tribunal for reconsidering a decision?
  2. If so, should the decision be cancelled or varied or sent back to the member?

## ANALYSIS

14. The *Employment Standards Act*, R.S.B.C. 1996 c. 113 (“Act”) confers an express reconsideration power on the Tribunal. Section 116 provides
  - (1) On application under subsection (2) or on its own motion, the tribunal may
    - (a) reconsider any order or decision of the tribunal, and
    - (b) confirm, vary or cancel the order or decision or refer the matter back to the original panel or another panel.

### ***The Threshold Test***

15. The Tribunal reconsiders a Decision only in exceptional circumstances. The Tribunal uses its discretion to reconsider decisions with caution in order to ensure finality of its decisions and to promote efficiency and fairness of the appeal system to both employers and employees. This supports the purposes of the *Act* detailed in Section 2 “to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act.”
16. In *Milan Holdings (BCEST # D313/98)* the Tribunal set out a two-stage analysis in the reconsideration process. The first stage is for the panel to decide whether the matters raised in the application for reconsideration in fact warrant reconsideration. The primary factor weighing in favour of reconsideration is whether the applicant has raised 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 for future cases. The reconsideration panel will also consider whether the applicant has made out an arguable case of sufficient merit to warrant the reconsideration.
17. The Tribunal may agree to reconsider a Decision for a number of reasons, including:
- The member fails to comply with the principles of natural justice;
  - There is some mistake in stating the facts;
  - The Decision is not consistent with other Decisions based on similar facts;
  - Some significant and serious new evidence has become available that would have led the member to a different decision;
  - Some serious mistake was made in applying the law;
  - Some significant issue in the appeal was misunderstood or overlooked; and
  - The Decision contains a serious clerical error.
- (*Zoltan Kiss BC EST#D122/96*)
18. While this list is not exhaustive, it reflects the practice of the Tribunal to use its power to reconsider only in very exceptional circumstances. The Reconsideration process was not meant to allow parties another opportunity to re-argue their case.
19. After weighing these and other factors, the Tribunal may determine that the application is not appropriate for reconsideration. Should the Tribunal determine that one or more of the issues raised in the application is appropriate for reconsideration, the Tribunal will then review the matter and make a decision. The focus of the reconsideration member will in general be with the correctness of the decision being reconsidered.
20. In *Voloroso (BC EST #RD046/01)*, the Tribunal emphasized that restraint is necessary in the exercise of the reconsideration power:
- .. the Act creates the legislative expectation that, in general, one Tribunal hearing will finally and conclusively resolve an employment standards dispute...
21. There are compelling reasons to exercise the reconsideration power with restraint. One is to preserve the integrity of the process at first instance. Another is to ensure that, in an adjudicative process subject to a

strong privative clause and a presumption of regularity, the “winner” is not deprived of the benefit of an adjudicator’s decision without good reason. A third is to avoid the spectre of a tribunal process skewed in favor of persons with greater resources, who are best able to fund litigation, and whose applications will necessarily create further delay in the final resolution of a dispute.

22. Having reviewed the material, I am not persuaded that a reconsideration of the matter is warranted.
23. MSI has not raised 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 for future cases. The reconsideration submissions are factual matters specific to MSI only, and I find that they are not properly the subject of a reconsideration application.
24. Furthermore, I am not persuaded that MSI has made out an arguable case of sufficient merit to warrant the reconsideration. The basis for the reconsideration application is essentially a re-argument of the arguments advanced before both the delegate and the Tribunal at first instance.

## **ORDER**

25. Pursuant to Section 116 of the *Act*, I deny the application for reconsideration.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**