

An Application for Reconsideration

- by -

0862284 B.C. Ltd.

(“0862284”)

and

Paul Bourassa also known as Paul A. (Alexander) Bourassa, a Director and Officer  
of 0862284 B.C. Ltd.

(“Mr. Bourassa”)

- 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.:** 2013A/79

**DATE OF DECISION:** December 13, 2013

## DECISION

### SUBMISSIONS

Paul Bourassa on his own behalf as a Director and Officer of 0862284 B.C. Ltd., and on behalf of 0862284 B.C. Ltd.

### OVERVIEW

1. This is an application by Paul Bourassa on his own behalf as a Director and Officer of 0862284 B.C. Ltd. (“Mr. Bourassa”) and on behalf of 0862284 B.C. Ltd. (“0862284”) for a reconsideration of Tribunal Decision BC EST # D090/13 (the “Original Decision”), issued by the Tribunal on November 14, 2013.
2. On June 28, 2013, the Director issued a Determination against 0862284 B.C. Ltd., 0862284 B.C. Ltd. carrying on business as Fun City Sightseeing, and Fun City Sightseeing Inc. (collectively the “Employer”) on behalf of forty two former employees, many of whom had complained that they had not received all wages owing. The Director conducted an investigation in respect of those employees who had complained, as well as some who had not filed complaints. Following the investigation, the Director found that the Employer had contravened the *Employment Standards Act* (the “*Act*”) and on June 28, 2013, issued a Determination in the amount of \$50,466.16, representing wages and interest owed to the employees. The Director also imposed administrative penalties in the amount of \$4,000 under section 29(1) of the *Employment Standards Regulation*. On July 31, 2013, the Director issued a Determination against Mr. Bourassa in his capacity as a Director and Officer of 0862284.
3. Mr. Bourassa appealed both Determinations and sought a suspension under Section 113 of the *Act* pending the outcome of the appeal of the Corporate Determination. The Director did not oppose the suspension application provided that either 0862284 or Mr. Bourassa deposited the full amount of the Determination in trust with the Director. The Director objected to the Tribunal accepting a lesser amount as an appropriate deposit.
4. The Tribunal concluded that neither 0862284 nor Mr. Bourassa had demonstrated a suspension of the Determinations was warranted. The Tribunal found that neither Mr. Bourassa nor 0862284 had provided any evidence that the collection efforts by the Director or a requirement to deposit the full amount of the Determinations would pose a unique financial hardship on either of them.
5. The Tribunal was also not satisfied that 0862284’s appeal demonstrated sufficient merit to warrant a suspension. The Tribunal Member noted that while the Tribunal does not conduct an in-depth review of the merits of an appeal in a suspension request, it did make a general assessment of the strength of the appeal.
6. The Member considered that the appeal would require the Tribunal to accept that the Director’s delegate exhibited actual or a reasonable apprehension of bias against 0862284 in making the Determination and relied heavily on the Tribunal reaching different factual conclusions than the Director in several areas of the Determination. The Tribunal Member considered that the burden on the appellant in both of those areas was not an easy one to meet.
7. The Member found that Mr. Bourassa’s appeal was entirely dependent on the merits of the appeal by 0862284. Finally, the Member added that even if he found the appeal had demonstrated some merit, other

circumstances would not have allowed for any suspension except on the condition that the full amount of the Determination be deposited with the Director.

8. Mr. Bourassa filed a reconsideration application on November 20, 2013, seeking to have the Original Decision cancelled.

## ISSUE

9. 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?

## ARGUMENT

10. In his reconsideration application, Mr. Bourassa states that important questions about how the Director arrived at the list of claims have not been resolved. He says that the amount of money he has been ordered to pay in the Determination is double the amount originally indicated to be owing. He further contends that the claims are past the six month statutory deadline.
11. Mr. Bourassa states that the delegate's "biased attitude" is very clear.

## ANALYSIS

12. The *Employment Standards Act*, R.S.B.C. 1996 c. 113 (the "*Act*") confers an express reconsideration power on the Tribunal. Section 116 of the *Act* 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

13. 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."
14. In *Milan Holdings* (BC EST # D313/98) the Tribunal set out a two-stage analysis in the reconsideration process. The first stage is for the Tribunal 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 an arguable case of sufficient merit to warrant the reconsideration.

15. 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)
16. 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.
17. 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 panel will be with the correctness of the decision being reconsidered.
18. 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...
19. 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 favour 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.
20. I find that Mr. Bourassa and 0862284 have not met the threshold test.
21. Mr. Bourassa 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.
22. In my view, the Tribunal Member denied Mr. Bourassa’s suspension requests for reasons that are clear and in keeping with Tribunal jurisprudence. Mr. Bourassa has not addressed any of the Member’s conclusions or analysis in his reconsideration application. Rather, Mr. Bourassa raises questions about the conduct of the Director’s delegate and the conclusions arrived at by the delegate. Those questions are currently being considered by the Tribunal Member in 0862284’s appeal of the Corporate Determination and were relevant only in a general sense in the suspension applications. None of Mr. Bourassa’s submissions relate to the issue before the Tribunal Member, which was whether the suspension requests should be granted.

23. Mr. Bourassa has not demonstrated, or even suggested, that the Tribunal Member failed to comply with the principles of natural justice, made a mistake in stating the facts or in applying the law or misunderstood the issue before him. Further, Mr. Bourassa has neither suggested nor established that significant and serious new evidence has become available that would have led the Tribunal to a different decision or that the Original Decision contains a serious clerical error.
24. I find that the applicant has not made out an arguable case of sufficient merit to warrant the exercise of the reconsideration power.
25. The request for reconsideration is denied.

**ORDER**

26. Pursuant to section 116(1)(b), I order that the Original Decision be confirmed.

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