

An Application for Reconsideration

- by -

Eva Daniel  
("Daniel")

- 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

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 2002/527

**DATE OF DECISION:** December 17, 2002

## DECISION

### INTRODUCTION

This is an application filed by Eva Daniel (“Daniel”) pursuant to section 116 of the *Employment Standards Act* (the “*Act*”) for reconsideration of an adjudicator’s decision issued on March 1st, 2000 (B.C.E.S.T. Decision No. D100/00). The adjudicator confirmed a Determination that was issued by a delegate of the Director of Employment Standards on October 5th, 1999 (the “Determination”).

By way of the Determination, the Director’s delegate dismissed Ms. Daniel’s complaint pursuant to the provisions of section 76(2)(a) and (b) of the *Act*--firstly, the complaint was untimely and, secondly, the complaint was outside the purview of the *Act*. More particularly, the delegate determined that Ms. Daniel’s complaint, which alleged that her employment with a hair salon known as Geometrics Coiffure Ltd. (“Geometrics”) ended on June 21st, 1997, was statute-barred since the complaint was not filed until August 24th, 1999 [well outside the 6-month limitation period provided for in section 74(3) of the *Act*].

Further, and in any event, the delegate also concluded that during the relevant time period, Ms. Daniel was, in fact, a principal of Geometrics (namely, a 50% shareholder and a director/officer) and, accordingly, was not in an employment relationship with that firm. The wage recovery provisions of the *Act* may be invoked by employees; on the other hand, principals of a business must sort out their disputes in the civil courts, or perhaps (if they agree) through private arbitration. It might be noted that in her original dealings with the Employment Standards Branch, Ms. Daniel referred to herself as an “owner/partner” in the hair salon business operated under the auspices of Geometrics.

As was her statutory right, Ms. Daniel appealed the Determination to the Tribunal. The appeal was heard on January 17th, 2000 and, as noted above, reasons for decision were issued on March 1st, 2000. The adjudicator specifically addressed the question of whether there was an employment relationship between the parties (and found that there was no such relationship) but did not expressly address the timeliness of the original complaint. It should be noted, however, that this latter issue was “moot” in light of the adjudicator’s finding on the jurisdictional issue and, further, the adjudicator’s final order confirmed the Determination “as issued”--in other words, by necessary implication, the delegate’s decision with respect to timeliness was also confirmed.

### THE TIMELINESS OF THE REQUEST FOR RECONSIDERATION

Ms Daniel’s request for reconsideration, although dated July 25th, 2002, was not filed with the Tribunal until October 21st, 2002--*i.e.*, over 2 1/2 years after the adjudicator’s decision was issued.

While there is no specific time limit contained in the *Act* governing applications for reconsideration, the Tribunal has held in a number of decisions that applications for reconsideration must be filed within a reasonable time after the adjudicator’s original decision. While parties have a right to appeal and, correspondingly, the Tribunal has a duty to hear and decide such appeals, the Tribunal is not obliged to consider all applications for reconsideration on their merits. If an application is untimely, the Tribunal may choose to exercise its discretion not to adjudicate the substantive merits of the application. In this latter regard, it should be noted that one of the explicit policies underlying the *Act* is the “efficient” resolution of disputes [see section 2(d)].

The Tribunal has observed that the determination of a “reasonable time” for filing an application depends on, among other considerations, the particular complexities of the case at hand, unusual circumstances that prevented a timely application and prejudice to other parties. A party who does not file a reconsideration application within a “reasonable time” must provide a cogent explanation for their tardiness (see *Unisource Canada Inc.*, B.C.E.S.T. Decision No. D122/98 and *MacMillan Bloedel*, B.C.E.S.T. Decision No. D279/00). In the absence of a reasonable excuse for filing an untimely application, the Tribunal will exercise its discretion to simply refuse to reconsider the decision in question.

This is undeniably a case where the applicant must advance a cogent explanation as to why the application is untimely.

Immediately upon receipt of the application, the Tribunal’s vice-chair wrote to all parties and asked that they file submissions regarding the timeliness of the application. In her submission filed on December 2nd, 2002, Ms. Daniel did not explain why her application was not filed promptly; she simply reiterated previously advanced arguments that her former partner in the business was dishonest and harrasing her. Ms. Daniel’s former co-shareholder in the company asks that the application be summarily dismissed as untimely; the delegate, in her submission, concurs.

It is abundantly clear from the material before me that Ms. Daniel’s original complaint was untimely and that, in addition, she was not an employee of the business during the relevant time--she was one of two principals. The dispute between these latter two individuals is in the nature of a shareholder’s dispute and ought to be addressed, as was stated by the adjudicator in her reasons, in the civil courts.

Quite apart from the fact that this application is entirely devoid of merit, it was not filed within a reasonable time and there is nothing in the material before me that would excuse or even explain the extraordinary and inordinate delay in this case.

## **ORDER**

The application to reconsider the decision of the adjudicator in this matter is summarily dismissed. The adjudicator’s decision is confirmed.

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**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**