

Citation: PBH Wellness Group Ltd.  
2025 BCEST 10

EMPLOYMENT STANDARDS TRIBUNAL

An appeal  
pursuant to section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

- by -

PBH Wellness Group Ltd. formerly known as 1334442 B.C. Ltd. carrying on  
businesses as G.R. Marketing Group, Pure Body Health Wellness Group, Pure  
Body Health Victoria, Pure Body Health Online and Pure Body Health Sidney  
("PBH Wellness")

- of a Determination issued by -

The Director of Employment Standards

PANEL:	David B. Stevenson
SUBMISSIONS:	Gavin Henderson-Peal, on behalf of PBH Wellness Group Ltd.
FILE NUMBER:	2024/088
DATE OF DECISION:	January 29, 2025

## DECISION

### OVERVIEW

1. This decision addresses an appeal filed under section 112 of the *Employment Standards Act* (the “ESA”) by PBH Wellness Group Ltd. (“PBH Wellness”) of a determination issued by Melanie Zabel, a delegate of the Director of Employment Standards (the “deciding Delegate”), on June 21, 2024 (the “Determination”).
2. The Determination addressed complaints filed by Sophie Stow, Selene Morales-Serrano, and Ana Mendes (collectively, the “Complainants”). Each alleged they were owed wages by PBH Wellness.
3. The deciding Delegate found PBH Wellness had contravened Part 3, section 18 of the *ESA* in respect of the employment of the Complainants, and ordered PBH Wellness to pay the Complainants wages in the total amount of \$4,630.34, an amount which included interest under section 88 of the *ESA*, and to pay an administrative penalty in the amount of \$500.00.
4. PBH Wellness has appealed the Determination under section 112(1) of the *ESA*, submitting the deciding Delegate failed to observe principles of natural justice and that new evidence has come available that was not available when the Determination was being made.
5. The Appeal Form, which was initially received by the Tribunal before the statutory appeal period expired but was incomplete, included a request for extension of time period for filing an appeal, citing medical reasons. The final submission on the appeal was received by the Tribunal on December 12, 2024.
6. Delegates of the Director investigated the complaints and one of those delegates, the investigating Delegate, issued an investigation report (the “IR”). A copy of the IR was delivered to PBH Wellness to its registered and records office by ordinary mail and email and to its sole director of record, Gavin Henderson-Peal (“Henderson-Peal”), to the address shown in the corporate record by ordinary mail and email. A copy of the IR was delivered to each of the Complainants by ordinary mail and email. An opportunity to respond to the IR was provided to all of the parties. No response was received from any of the parties.
7. The section 112(5) record (the “Record”) has been provided to all the parties and no objection has been raised to its completeness.
8. Under section 114(1) of the *ESA*, the Tribunal may, without a hearing of any kind, dismiss all or part of an appeal if, among other things, the Tribunal finds no reasonable prospect the appeal will succeed: section 114(1)(f) of the *ESA*.
9. For the reasons that follow, I dismiss this appeal under the above provision.

## ISSUES

10. The appeal raises four issues, which I will address in the following order:
- Should the Tribunal extend the statutory appeal period;
  - Should the Tribunal accept the additional evidence provided with the appeal;
  - Have any of the delegates of the Director of Employment Standards failed to observe principles of natural justice in making the Determination; and
  - Is there any reasonable prospect the appeal will succeed on its merits?

### **Issue 1: Should the statutory appeal period be extended?**

11. This appeal was not filed within the statutory appeal period.
12. The *ESA* imposes a deadline on appeals to ensure they are dealt promptly: see section 2(d). The *ESA* allows an appeal period to be extended on application to the Tribunal. In *Metty M. Tang*, BC EST # D211/96, the Tribunal expressed the approach it has consistently followed in considering requests to extend the time limit for filing an appeal:
- Section 109(1)(b) of the *Act* provides the Tribunal with the discretion to extend the time limits for an appeal. In my view, such extensions should not be granted as a matter of course. Extensions should be granted only where there are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.
13. The Tribunal has developed a principled approach to the exercise of its discretion as set out in *Re Niemisto*, BC EST # D099/96. The following criteria must be satisfied to grant an extension:
- i. There is a reasonable and credible explanation for failing to request an appeal within the statutory time limit;
  - ii. There has been a genuine and ongoing *bona fide* intention to appeal the Determination;
  - iii. The responding party and the Director have been made aware of the intention;
  - iv. The respondent party will not be unduly prejudiced by the granting of an extension; and
  - v. There is a strong *prima facie* case in favour of the appellant.
14. The above criteria have been considered and applied in numerous decisions of this Tribunal. These criteria are not exhaustive. Other, perhaps unique, criteria can be considered. The burden of demonstrating the existence of such criteria is on the party requesting an extension of time.
15. In this case, PBH Wellness has identified a serious medical issue afflicting its sole director, Henderson-Peal, as the reason for the delay in meeting all the requirements for filing an appeal within the statutory period. This medical issue has been separately identified in correspondence from three physicians.

16. This medical issue also speaks to the failure of PBH Wellness, and Henderson-Peal, to participate in the complaint investigations.
17. I accept this information provides a reasonable and credible explanation for the failure of PBH Wellness to file an appeal within the statutory appeal period and, In the circumstances, it is appropriate to exercise my discretion to extend the appeal period to December 12, 2024.

**Issue 2: Should the Tribunal accept additional evidence?**

18. This ground of appeal is commonly described as the “new evidence” ground of appeal. The Tribunal has discretion to accept or refuse new evidence. For the same reasons as I have agreed to extend the statutory appeal period, I will accept the ‘additional’ evidence submitted with this appeal and will consider it in addressing the merits of the appeal.

**Issue 3: Have any of the delegates of the Director of Employment Standards failed to observe principles of natural justice?**

19. A party alleging a failure to comply with principles of natural justice, as PBH Wellness has done, must provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST #D043/99.
20. The Tribunal has briefly summarized the natural justice principles that typically operate in the complaint process, including this complaint, in *Imperial Limousine Service Ltd.*, BC EST # D014/05:
- Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the *Act*, and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party. (see *BWI Business World Incorporated* BC EST #D050/96).
21. Provided the process exhibits the elements of the above statement, it is unlikely a failure to observe principles of natural justice in making the Determination will be found. I find, on the information contained in the Record, that the process met the requirements of the statute and the principles of natural justice.
22. I find nothing in the Record that would support a finding that any delegate of the Director of Employment Standards failed to comply with principles of natural justice in making the Determination.
23. The Record indicates Henderson-Peal, the sole director of PBH Wellness, was contacted by phone on April 6, 2023, by a delegate of the Director of Employment Standards, who confirmed the address, email and telephone number for PBH Wellness and Henderson-Peal.

24. Henderson-Peal suffered a serious medical issue on April 11, 2023. I accept his ability to attend to matters raised by the Complainants was hampered by this event and he was effectively unavailable, but the delegates of the Director of Employment Standards did what the *ESA* allows in attempting to communicate with him and to provide an opportunity to respond. Several delegates of the Director of Employment Standards attempted to communicate with Henderson-Peal by phone; communications, notices and Demands were sent by ordinary mail and email to the registered and records office address, to the street address provided by Henderson-Peal, and by email to Henderson-Peal personally. All of that was, based on the information provided to the delegates of the Director of Employment Standards, reasonable and supported by provisions of the *ESA*.
25. The circumstances are unfortunate, but the failure of Henderson-Peal to receive and respond to the many attempts to communicate with him cannot be placed at the feet of any of the delegates involved in the complaints. I find PBH Wellness has not shown there was a failure by any delegate to observe principles of natural justice.
26. However, I accept there was a breakdown in the process; the Tribunal has the authority to correct that deficiency. In fairness to PBH Wellness, their failure to participate in the complaint process cannot, as suggested in the Reasons, adversely impact their ability to argue the Determination was wrong. In my view, an appropriate response is to do what I have already allowed—to extend the appeal period, to accept information and evidence into the Record that has been provided by PBH Wellness with their appeal, and consider that information and evidence in considering the merits of the Determination, none of which would have occurred but for Henderson-Peal’s medical issue.
27. Having extended the appeal period and accepted the material and information submitted with it, I will address the merits of the appeal.

#### **Issue 4: Does the appeal have any reasonable prospect of succeeding on the merits?**

28. An appeal is an error correction process, with the burden in an appeal being on the appellant to persuade the Tribunal there is an error in the determination under one of the statutory grounds.
29. PBH Wellness has raised the natural justice ground of appeal. As indicated above, they have no chance of succeeding on that ground.
30. That is not, however, the only question raised in the appeal.
31. In its initial submission, PBH Wellness asserted they were not an employer. That assertion is repeated in their December 2, 2024, submission: PBH Wellness “is not a staffed company, staffing company or deemed employer.” The logical corollary of that contention is that the Complainants were not employees of PBH Wellness.
32. The submission of PBH Wellness has not addressed their appeal in the context of the definition of “employee” and “employer” in section 1 of the *ESA*, which broadly defines the term “employee” to include a person “receiving or entitled to wages for work performed for another” or a person “an employer allows, directly or indirectly, to perform work normally performed by an employee.” An “employer” is defined as including a person “who has or had control or direction of an employee,” or “who is or was responsible, directly or indirectly, for the employment of an employee.”

33. On analysis, PBH Wellness falls squarely within the definition of “employer”; the sole director of PBH Wellness, Henderson-Peal, was both responsible for the hiring of each of the Complainants and exhibited direction and control of each of them during their respective employment periods.
34. An examination of the material in the Record indicates the Complainants were almost entirely answerable in their day-to-day work to Henderson-Peal who was controlling all of the finances of the business including accounts payable, expenditures, and wages.
35. The Complainants fall within the definition of “employee” in the *ESA*.
36. I find the deciding Delegate made no error in finding PBH Wellness was the employer of the Complainants and thus responsible for their unpaid wages.

## CONCLUSION

37. As I find there is no reasonable prospect this appeal will succeed, the purposes and objects of the *ESA* would not be served by requiring the other parties to respond to it. The appeal is dismissed.

## ORDER

38. Pursuant to section 115(1) of the *ESA*, I order the Determination dated June 21, 2024, be confirmed in the amount of \$5,130.34, together with any interest that has accrued under section 88 of the *ESA*.

/s/David B. Stevenson

**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**