

Citation: Gavin Henderson-Peal  
2025 BCEST 11

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Gavin Henderson-Peal

- of a Determination issued by -

The Director of Employment Standards

PANEL:	David B. Stevenson
SUBMISSIONS:	Gavin Henderson-Peal, on his own behalf
FILE NUMBER:	2024/089
DATE OF DECISION:	January 29, 2025

## DECISION

### OVERVIEW

1. Sophie Stow, Selene Morales-Serrano, and Ana Mendes (collectively, the “Complainants”) filed complaints under section 74 of the *Employment Standards Act* (the “ESA”) alleging PBH Wellness Group Ltd. (“PBH Wellness”) had contravened the ESA by failing to pay all wages owed.
2. The complaints were investigated, and a Determination was issued against PBH Wellness (the “corporate determination”), finding PBH Wellness had contravened Part 3, section 18 of the ESA, and that the Complainants were owed wages and interest by PBH Wellness in the total amount of \$4,630.34. An administrative penalty in the amount of \$500.00 was imposed.
3. PBH Wellness appealed the corporate determination, and that appeal has been dismissed.
4. The Determination under appeal was issued against Gavin Henderson-Peal (“Henderson-Peal”) under section 96 of the ESA on June 26, 2024, by Melanie Zabel, a delegate of the Director of Employment Standards (the “deciding Delegate”).
5. The Determination found Henderson-Peal was a director of an employer found to have contravened provisions of the ESA at the time wages were earned by or should have been paid to the Complainants and, as such, was personally liable under section 96 of the ESA for wages in the amount of \$4,634.15.
6. Henderson-Peal has appealed the Determination under section 112 of the ESA, arguing the deciding Delegate, and other delegates involved in the complaint process, failed to observe principles of natural justice in making the Determination and that new evidence has come available that was not available when the Determination was being made.
7. Appeal submissions filed on behalf of Henderson-Peal were received July 15, 2024, and December 2, 2024. They are similar to those filed on behalf of PBH Wellness, also received by the Tribunal on July 15 and December 2, 2024.
8. The section 112(5) record (the “Record”) has been provided to all the parties and no objection has been raised to its completeness.
9. The Record includes a BC Registry Services Search conducted online on October 25, 2023, with a currency date of May 23, 2023, indicating that Henderson-Peal was the sole director of PBH Wellness between August 15, 2022, and September 2, 2022, when the Complainants’ wages were earned or should have been paid.
10. 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.
11. For the reasons that follow, I dismiss this appeal under the above provision.

## ISSUES

12. Although Henderson-Peal's submission alleges breach of natural justice and seeks to introduce new evidence, the sole issue in this appeal is whether he has shown a reviewable error in the decision to impose a liability on him under section 96 of the *ESA*.
13. It is a well-established principle that a person challenging a determination issued under section 96 is limited to arguing those issues which arise under that provision: whether the person was a director or officer when the wages were earned or should have been paid; whether the amount of the liability imposed is within the limits for which a director or officer may be found personally liable; and whether circumstances exist that would relieve the director or officer from personal liability under section 96(2) of the *ESA*, which reads:
  - (2) Despite subsection (1), a person who was a director or an officer of a corporation is not personally liable for
    - (a) any liability to an employee under section 63, termination pay or money payable in respect of individual or group terminations, if the corporation
      - (i) is in receivership, or
      - ...
    - (c) vacation pay that becomes payable after the director or officer ceases to hold office, or
    - (d) money that remains in an employee's time bank after the director or officer ceases to hold office.
14. Henderson-Peal does not argue any of those issues. He has presented nothing in his appeal that relates to the matters that can be raised and considered in respect of a challenge to a determination issued under section 96 of the *ESA*.
15. The focus of his appeal is the corporate determination. Henderson-Peal, as a director of a corporation, is precluded from raising and arguing the corporate liability in an appeal of a section 96 determination. The right to appeal and raise arguments against the corporate determination belongs to the corporation and as indicated, an appeal by the corporation has been filed and dismissed.
16. For a more complete discussion and analysis on the section 96 liability under the *ESA*, see *Guiying Jiang, a Director or Officer of Grand East Supermarket Inc. and Di Liu, a Director or Officer of Grand East Supermarket Inc.*, BC EST # D074/06 at paras. 62-86.
17. The material in the Record quite clearly shows: Henderson-Peal was a director of PBH Wellness during the time wages were earned by or should have been paid to the Complainants; that the liability imposed on him is within the limits for which a director or officer may be found personally liable under section 96; and there are no circumstances that would relieve him of personal liability under that provision.
18. In sum, Henderson-Peal has not shown any error in the Determination.

## CONCLUSION

19. 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

20. Pursuant to section 115(1) of the *ESA*, I order the Determination dated June 26, 2024, be confirmed in the amount of \$4,634.15, together with any interest that has accrued under section 88 of the *ESA*.

*/S/David B. Stevenson*

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