



Citation: Stefanie Crosby  
2025 BCEST 23

EMPLOYMENT STANDARDS TRIBUNAL

An application for reconsideration  
pursuant to section 116 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

- by -

Stefanie Crosby

- of a Decision issued by -

The Employment Standards Tribunal

PANEL:	Carol L. Roberts
SUBMISSIONS:	Stefanie Crosby, on her own behalf
FILE NUMBER:	2024/154.ESA.RE
DATE OF DECISION:	February 4, 2025

## DECISION

### OVERVIEW

1. This is an application by Stefanie Crosby for a reconsideration of 2024 BCEST 94 (the “**Original Decision**”), issued by the Tribunal on October 17, 2024.
2. The Original Decision sets out the complaint history and determination that led to this reconsideration application and will not be repeated in full.
3. In summary, on November 10, 2023, a delegate of the Director of Employment Standards (the “**Director**”) determined that a corporate employer, RYU, contravened the *Employment Standards Act (ESA)* in failing to pay two former employees wages and vacation pay. The Director issued a determination (the “**Corporate Determination**”) ordering RYU to pay the two employees a total of \$40,371.06 in wages, vacation pay and interest. The Corporate Determination included a notice to all RYU directors informing them of their possible personal liability under section 96(1) of the *ESA*.
4. The Corporate Determination was delivered by regular and electronic mail to all RYU’s directors and by regular mail to RYU’s business office and to its registered and records office. RYU did not appeal the Corporate Determination and did not pay the amounts owing.
5. On May 13, 2024, a delegate of the Director of Employment Standards determined that since Ms. Crosby was a director of RYU between February 10, 2021, and July 26, 2022, when one of the employee’s wages were earned and should have been paid, she was personally liable under section 96 of the *ESA* for two months’ unpaid wages plus interest to the former RYU employee. (the “**Section 96 Determination**”)
6. Ms. Crosby appealed the Section 96 determination on all three statutory grounds of appeal.
7. The Tribunal Member sought submissions from the parties. After reviewing the submissions and the section 112(5) record, the Member denied the appeal.
8. The Member first considered Ms. Crosby’s argument that she had “new evidence,” which consisted of an “Advisory Board Agreement” dated January 4, 2022, and a “Consent Resolution of the Audit Committee” dated April 29, 2021. Ms. Crosby explained that the reason she had not previously provided the evidence to the delegate was because she had been locked out of her DocuSign account. The Member determined that both documents were clearly available at the time the determination was being made and were thus presumptively inadmissible on appeal. (Original Decision, paragraph 23) The Member also noted that even had the documents been submitted to the delegate, they were not relevant to the issue on appeal. He found that “simply because an individual is not a member of a corporation’s audit committee, it does not follow that the individual is not a corporate director.” (Original Decision, paragraph 24) He further concluded that “...the mere fact that the appellant was apparently not a member of RYU’s audit committee has no probative value whatsoever with respect to her status as a corporate director.” (Original Decision, paragraph 25)
9. The Member also noted that while Ms. Crosby asserted that the documents were “previously inaccessible due to [her] DocuSign account being locked,” she had provided no evidence to support

that assertion nor any particulars regarding any efforts she had made, if any, to retrieve the documents so that they could be provided to the delegate. (Original Decision, paragraph 26)

10. The Member further noted that, in any event, Ms. Crosby expressly acknowledged that she was a director of RYU until she resigned on June 26, 2022, effective July 26, 2022. (Original Decision, paragraph 27).
11. The Member found that Ms. Crosby had not discharged her evidentiary burden of demonstrating that the corporate registry records showing that she was a director of RYU to be inaccurate. He further found no error in the delegate's finding that Ms. Crosby was a director of RYU effective February 10, 2021, until July 26, 2022, and was thus personally liable for unpaid wages for one of the employees.
12. The Member dismissed Ms. Crosby's argument that the delegate erred in calculating her two-month unpaid wage liability. The Member noted that the employee's employment contract provided for 7.7% vacation pay, which was the amount calculated by the delegate. He also found no basis to allow the appeal on the grounds that Ms. Crosby was experiencing financial hardship, writing that "financial hardship is not a defence to section 96(1) liability." (Original Decision, paragraph 34)
13. The Member further found no breach of the principles of natural justice, noting that Ms. Crosby was notified of her potential liability in October 2023, well before the section 96 Determination was issued in May 2024. He further noted that Ms. Crosby in fact presented arguments regarding her status as a director and her personal liability, and the fact that the delegate did not accept her position did not constitute a failure to observe the principles of natural justice. (Original Decision, paragraph 35)

#### *Reconsideration Application*

14. In her application, Ms. Crosby contends that the Member failed to give proper consideration to her arguments, failed to "evaluate the context of [her] case," failed to adhere to the principles of natural justice, erred in applying the law in calculating the amount owing, and "dismissed new evidence by relying on assumptions rather than seeking clarification."
15. Ms. Crosby says that the determination of her liability "appears to be based on default judgements, notably due to non-payment of the Corporate Determination by RYU of some wages" and that she is being "held liable" for the failure of other corporate directors to be held responsible.
16. Ms. Crosby argues that it is unfair to hold her responsible without affording her the "presumption of innocence" and relies on the Canadian Charter of Rights and Freedoms as well as case authority.
17. In her submissions, Ms. Crosby outlined the history of the complaint investigation and the evidence she submitted to the delegate. She contends that she exercised little control or authority over decisions made by other corporate directors and shareholders and that she should not be held liable for matters over which she had little to no authority.
18. Ms. Crosby also argues that because she resigned two years before she received the Corporate Determination, she had no access to corporate records and was thus unable to appeal it. She adds

that she also did not want to, because she believes the corporation should be held liable (for the unpaid wages) but does not agree she should be held personally liable.

19. Ms. Crosby contends that her new evidence had substantial merit and could have led to a different outcome regarding her role as a director, had it been properly considered. She argues that the Member relied on assertions and overlooked the reality of her situation in suggesting that she ought to have retained a copy of her contract at a time when all operations were conducted online. She also asserts that the Member unfairly rejected the evidence she presented as new evidence on the basis that it was available at the time the Determination was issued. In Ms. Crosby's view, the Member ought to have sought clarification about how and why she obtained the evidence after the hearing rather than rejecting it outright.
20. Ms. Crosby further argues that section 96 of the *ESA*, which explicitly limits a director's liability to "up to two months' wages," is "inherently conditional," implying that her liability is contingent on the amount claimed. In her case, given that the employee sought two weeks' regular wages and vacation pay, her liability should be determined proportionately to the amount claimed.
21. Ms. Crosby says that the award of \$27,053.50 plus interest included wages, vacation pay, and interest. She contends that the Member erred in including vacation pay and interest to the wage award, thereby misapplying the *ESA*.
22. Ms. Crosby also relies, as she did before the Member, on arguments relating to her personal financial circumstances. She contends that imposing "excessive financial penalties" on directors who have acted appropriately is inconsistent with Canadian legal principles. She also relies on *R. v. Wholesale Travel Group Inc.* ([1991] 3 S.C.R. 154) contending that fines imposed on corporate directors should not be so harsh as to be deemed unreasonable, and that they should be proportionate.

## ISSUES

23. 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

24. The *ESA* 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.

...

(2.1) The application may not be made more than 30 days after the date of the order or decision.

25. The Tribunal uses its discretion to reconsider decisions with caution 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 *ESA* detailed in section 2 “to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act.”

26. 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 out an arguable case of sufficient merit to warrant the reconsideration.

27. The Tribunal may agree to reconsider a decision for several 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)

28. 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 is not meant to allow parties another opportunity to re-argue their case.

29. I find that Ms. Crosby has not met the threshold test. I am not persuaded that she has raised significant questions of law, fact, principle or procedure. I am also not persuaded that she has made out an arguable case of sufficient merit to warrant the exercise of the reconsideration power.

30. Ms. Crosby’s arguments are simply arguments already made before the Member in a repackaged form. I am not persuaded that the Member erred in his analysis, nor am I persuaded that the application has raised significant questions of law that warrant reconsideration.

31. I will address Ms. Crosby’s arguments in turn.

32. Ms. Crosby argues that the Member ought to have sought clarification from her about the new evidence rather than “relying on assumptions.” The Member noted that the ‘new evidence’ consisted

of documents dated April 2021 and January 2022, and that the Determination was issued May 13, 2024. He found that the evidence could have been discovered and presented to the Director during the investigation. He further noted that copies of the electronic communications submitted on appeal were all dated prior to the Determination.

33. The Member was under no obligation to “seek clarification” about why the new evidence was not presented to the Director. As the Tribunal has often said, the burden is on an appellant to persuade the Member that there was an error in the determination. After noting that Ms. Crosby had not adequately explained why the documents had not been provided to the delegate, he found that, in any event, they were not relevant to the issue of whether she was a director of RYU at the time the employee’s wages were earned, or to the calculation of her liability under section 96. He found that the mere fact that Ms. Crosby was apparently not a member of RYU’s audit committee had no probative value with respect to her status as a corporate director (Original Decision, paragraph 25).
34. Although Ms. Crosby further argues that the Member “overlooked” the realities of her situation in rejecting as new evidence an “Advisory Board Agreement” which she said she could not access at the time of the investigation, the Member ultimately concluded that the agreement “does not, and could not, *prohibit* her from being an RYU board member” and thus did not have high probative value regarding her status as an RYU director in any event. The Member further noted that in her submission, Ms. Crosby expressly acknowledged that she was an RYU director until July 26, 2022.
35. Consequently, I find no basis for this argument.
36. I also find no basis for Ms. Crosby’s argument that the Member failed to give proper consideration to her arguments. In her reconsideration application, Ms. Crosby advances virtually the same argument regarding the delegate’s asserted error calculating her two-month unpaid wage liability as she made to the Member on appeal. The Member noted that the employee’s annual wage was not in dispute, and that the Director’s calculation of the employee’s two months’ wage entitlement plus his contracted for amount of 7.7% vacation pay, were accurately calculated and set out in the section 96 Determination. The Member noted that the vacation pay amount was fixed by contract and recoverable under the *ESA*. I would add that the *ESA*’s definition of “wages” is expansive and inclusive. Furthermore, section 18 of the *ESA* provides that an employee is entitled to recover unpaid vacation pay that was earned or payable during the recovery period. As the employee was entitled to recover unpaid vacation pay he earned from January 2020 to the end of his employment (June 2022 when Ms. Crosby continued to be a director) there is no basis to conclude that the Member made a serious (or any) mistake in applying the law or misunderstood or overlooked a significant issue in the appeal.
37. The Member also considered Ms. Crosby’s argument that she resigned her directorship before the second employee’s wage claim crystallized and noted that she was not being held liable for the second employee’s wages.
38. I am not persuaded that the Member failed to “evaluate the context” of Ms. Crosby’s case or erred in law in calculating her personal liability under section 96 of the *ESA*. The Member clearly understood her argument and determined that it lacked merit. He noted that she conceded she was a director of RYU when the wages of one of the employees were earned. That fact, not her asserted lack of authority or control over the company as a director, is what attracts liability under the *ESA*.

Section 96 (2) sets out the exceptions for personal liability for outstanding wages. Ms. Crosby does not fall within any of those categories.

39. I also find no basis for Ms. Crosby's argument that the Member failed to adhere to the principles of natural justice. Natural justice is a procedural right which includes the right to know the case being made, the right to respond, and the right to be heard by an unbiased decision maker. On August 26, 2024, the Tribunal informed the parties that the Member was not dismissing Ms. Crosby's appeal under section 114 of the *ESA* (that section which provides that Members may dismiss an appeal based solely on the written submissions of an appellant). Ms. Crosby was invited to make final reply submissions on the merits of the appeal. Ms. Crosby made submissions which the Member considered on appeal. I find no basis for Ms. Crosby's argument in this respect.
40. Finally, Ms. Crosby relies on case authority to advance arguments regarding fairness as well as her ability to pay the award. These arguments are the same as those she advanced before the Member. I am not persuaded that the Member erred in law in his consideration of Ms. Crosby's submissions. I would also note that the legal principles advanced by Ms. Crosby are relevant to fines imposed in criminal proceedings. The administrative penalties imposed under the *ESA* are not fines and are not assessed based on the financial circumstances of the parties or, as Ms. Crosby argues, her degree of participation in the affairs of the corporate employer.
41. I conclude that there is nothing in the submissions in the reconsideration application that raise 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.
42. The application has not made out a case of significant merit that warrants the exercise of the reconsideration power.
43. I find that the application does not meet the test outlined in *Milan Holdings*.
44. I confirm the Original Decision.

## ORDER

45. The request for reconsideration is denied. Pursuant to section 116(1)(b) of the *ESA*, I confirm Tribunal decision 2024 BCEST 94.

*/S/Carol Roberts*

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