



Citation: Richard Lee Pemble
2025 BCEST 33

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 -

Richard Lee Pemble

- of a Decision issued by -

The Employment Standards Tribunal
(the “Tribunal”)

PANEL: Carol L. Roberts

SUBMISSIONS: Janine Pemble, on behalf of Richard Lee Pemble

FILE NUMBER: 2025/017.ESA.RE

DATE OF DECISION: March 19, 2025

DECISION

OVERVIEW

1. This is an application by Richard Lee Pemble for a reconsideration of 2025 BCEST 2 (the “Original Decision”), issued by the Tribunal on January 3, 2025.
2. On May 30, 2024, a delegate of the Director of Employment Standards (the “Director”) determined that Capt’n Crunch Recycling Ltd. and Capt’n Crunch Holdings Ltd. were an associated employer (the “Employer”) under section 95 of the *Employment Standards Act* (“ESA”), that the Employer had contravened section 63 of the *ESA* in failing to pay a former employee compensation for length of service, and found that the former employee was entitled to wages and interest in the amount of \$9,704.32 (the “Corporate Determination”). The Corporate Determination included a notice to the Employers’ directors informing them of their possible personal liability under section 96(1) of the *ESA*.
3. Capt’n Crunch Holdings Ltd. appealed the Corporate Determination. That appeal was dismissed. (*Capt’n Crunch Holdings Ltd.*, 2025 BCEST 1)
4. The delegate also determined that as Mr. Pemble was a director and officer of an employer found to have contravened provisions of the *ESA* at the time the employee’s wages were earned and should have been paid, he was personally liable under section 96 for wages in the amount of \$9,704.32 (the “Section 96 Determination”).
5. Appeals of the Corporate Determination and the Section 96 Determination were filed on the same day, and the submissions were identical in both appeals. The grounds of appeal were that the delegate erred in law by associating the two corporate entities and that new evidence had become available that was not available at the time the Determinations were made.
6. After reviewing the submissions and the section 112(5) record, the Tribunal Member (the “Member”) determined that there was no reasonable prospect the appeals would succeed and dismissed the appeals without a hearing or seeking submissions from the parties pursuant to section 114(1) of the *ESA*.
7. The Member considered whether Mr. Pemble had demonstrated any basis for appeal under section 96; that is, whether he had established that he was not a director or officer at the time when the wages were earned or should have been paid, whether the amount of the liability was within the limits of what a director or officer might be found personally liable, or whether circumstances existed that would relieve him from personal liability under section 96(2) of the *ESA*.
8. The Member found that Mr. Pemble did not advance any argument or evidence on any of these issues. The Member determined that Mr. Pemble had presented nothing on 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*.” (para. 14)

9. The Member noted that the focus of the appeal was the Corporate Determination and that, as a director and officer of a corporation, Mr. Pemble was precluded from raising and arguing corporate liability in an appeal of the Section 96 Determination. The Member found that the right to appeal and raise arguments against a corporate determination belonged to the corporation, and that the corporation's appeal had been dismissed.
10. The Member further noted that the record clearly demonstrated that Mr. Pemble was a director and officer of Capt'n Crunch Holdings Ltd. at the time the wages were earned or should have been paid to the employee, that the liability imposed on him was within the limits for which a director or officer might be found personally liable under section 96, and that there were no circumstances that would relieve him of his personal liability under that provision.
11. The Member dismissed the appeal under section 114(1) of the *ESA*, finding that there was no reasonable prospect it would succeed and that the purposes and objects of the *ESA* would not be served by requiring the other parties to respond to it.

Reconsideration Application

12. The reconsideration application was filed by Mr. Pemble's spouse. She contends that he suffers from a disability that leaves him with a "lack of understanding" of written statements, writing and reading, and that he requires her constant help on a daily basis.
13. Mr. Pemble claims that Employment Standards "discriminated" against him by holding him, rather than the other corporate director and officer, responsible for the unpaid wages. Mr. Pemble says that the other officer and director, who identifies herself as the "Managing Director," operated the business and conducted such tasks as hiring employees and writing cheques, from 2016 until the company dissolved in 2023. Mr. Pemble says that, due to his disability, his responsibilities were limited to operating an excavator, and that he has no ability to satisfy any judgements against him.
14. Mr. Pemble advanced other arguments that are not relevant to the Section 96 Determination, including the company's financial difficulties and its dealings with the Canada Revenue Agency. He also continued to advance arguments about the delegate's decision to associate the corporations.

ISSUES

15. 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

16. 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.

17. 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.”

18. 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.

19. 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)

20. 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.

21. I find that Mr. Pemble has not met the threshold test. He has not raised any, let alone a significant question of law, fact, principle or procedure. I also find that Mr. Pemble has not made out an arguable case of sufficient merit to warrant the exercise of the reconsideration power.

22. At issue before the Member was whether Mr. Pemble had demonstrated that the delegate’s decision finding him personally liable for outstanding wages was in error. Mr. Pemble’s arguments relate,

essentially, to his inability to pay and questioning why the other director of the corporate employer is also not being held liable. None of these arguments demonstrate that the Member erred in his analysis.

23. Sympathetic as I may be to Mr. Pemble's asserted financial situation, I find that his arguments do not meet the test outlined in *Milan Holdings*.

24. The request for reconsideration is denied.

ORDER

25. Pursuant to section 116(1)(b), I confirm the Original Decision (2025 BCEST 2) issued January 3, 2025.

/S/ Carol L. Roberts

Carol L. Roberts
Member
Employment Standards Tribunal