

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act*, R.S.B.C. 1996, c. 113

-by-

Paul John Gordon

(“Gordon”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 97/471

**DATE OF HEARING:** October 2nd, 1997

**DATE OF DECISION:** November 21st, 1997

**DECISION**

**APPEARANCES**

Neil C. Carfra           for Paul John Gordon

Wendy Sylvester       )  
Annabel Paterson     )  
Jennifer Coyle        ) on their own behalf  
Tracy Rice            )  
Mary Dice             )

No appearance                   for the Director of Employment Standards

**OVERVIEW**

This is an appeal brought by Paul John Gordon (“Gordon”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on May 28th, 1997 under file number 078228 (the “Determination”).

The Director determined that Gordon was an officer and/or director of Horseshoe Bay Inn (1985) Ltd. (“Horseshoe Bay” or the “employer”) and in that capacity was personally liable for unpaid wages, in the amount of \$7,272.78, owing to 12 former Horseshoe Bay employees. The Director relied on section 96 of the *Act* in imposing personal liability on Gordon for the employees’ unpaid wages. I should perhaps note at the outset that there appears to be some confusion on the face of the Determination regarding the particular alleged status of Gordon--he is referred to as both a director and an officer although the Determination seems to have been issued primarily on the basis that Gordon was a director of Horseshoe Bay.

The appeal was heard in Victoria, B.C. on October 2nd, 1997 at which time I heard evidence and submissions from Gordon, his wife Laura Ann Gammon (who testified via a telephone conference call), and a former director and principal of Horseshoe Bay, Warren Arnold Gammon, all on behalf of Gordon. Laura Ann Gammon and Warren Arnold Gammon are sister and brother. Further, five of the twelve employees attended the appeal hearing and each made a brief submission to me.

**ISSUE TO BE DECIDED**

Gordon’s appeal is predicated on the simple assertion that when the employees’ various wage claims crystallized, he was neither an officer nor a director of Horseshoe Bay.

## FACTS AND ANALYSIS

It is conceded that Gordon was never formally appointed or registered as an officer or director of Horseshoe Bay and this fact is reflected in the various corporate records that were submitted into evidence at the appeal hearing. However, this Tribunal has consistently held that although a person may not appear on the official corporate records as an officer or director, that person may nonetheless be an officer or a director for purposes of section 96 of the *Act* if that person carries out the functions usually ascribed to corporate officers or directors.

The uncontroverted evidence before me is that sometime in the late summer of 1996 Gordon, who had been working in the Horseshoe Bay Inn (a complex consisting of a restaurant, a beer and wine store and guest house located in Chemainus, B.C.) in some sort of managerial capacity, had a serious “falling out” with his wife’s brother and Horseshoe Bay principal, Warren Gammon. Gordon then moved to Banff, Alberta and, in due course, he purchased a pub business in nearby Canmore which he and his wife now operate.

The Gammon family purchased the Horseshoe Bay Inn sometime in the fall of 1994. Originally the business was owned by Laura Gammon and her two brothers although one of the brothers left the business about six months after the initial purchase leaving Laura Gammon and Warren Gammon as the sole officers, directors and shareholders.

As noted above, Gordon had a serious falling out with Warren Gammon regarding the management of the Horseshoe Bay Inn. In the summer of 1996, Gordon left for Banff, Alberta. Laura Gammon followed Gordon to Alberta a short time later. The evidence of Gordon, Laura Gammon, Warren Gammon and the five employees is to the effect that after having left the Horseshoe Bay Inn in the latter part of the summer of 1996, Gordon had absolutely nothing to do with the management of the Horseshoe Bay Inn thereafter. In short, by no later than September 1996 Gordon severed whatever ties he may have had with the business.

Sometime in the early part of 1997, Horseshoe Bay either made a voluntary assignment, or was petitioned, into bankruptcy. The business closed down operations, and effectively terminated the employees’ employment, in early to mid-February 1997. In each and every case, the employees’ regular wage claims date from, at the earliest, late January 1997, a point in time when Gordon had long ceased to have any functional role whatsoever in the business affairs of the Horseshoe Bay Inn. The employees’ various vacation pay claims accrued from as early as October 1996, but in any event, this latter date still falls after Gordon had severed all ties with Horseshoe Bay. Further, the employees’ vacation pay claims were not *payable* until the employees’ employment ended in February 1997 [see section 58(3) of the *Act*] and thus, by reason of section 96(2)(b) of the *Act*, Gordon could only be held liable for the employees’ vacation pay if he was a Horseshoe Bay director or officer in late February 1997.

I note that there is nothing in the Determination setting out the factual or legal basis underpinning the Director’s conclusion that Gordon was a director or officer of Horseshoe Bay at the time the employees’ wage claims crystallized. The Director’s delegate simply asserts that “based on my investigation” she finds that Gordon was a director of Horseshoe Bay.

Certainly, there is absolutely nothing in the evidence before me that leads me to conclude that Gordon was an officer or director of Horseshoe Bay after late August or perhaps early September 1996. I pass no comment, as the issue is not before me, as to whether or not Gordon could be considered to have been an officer or director of Horseshoe Bay prior to this latter period.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination in this matter be cancelled.

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