

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Roger Edwards

- of a Determination issued by -

The Director of Employment Standards

PANEL: Kenneth Wm. Thornicroft  
SUBMISSIONS: Roger Edwards, on his own behalf  
FILE NUMBER: 2024/069  
DATE OF DECISION: August 26, 2024

## DECISION

### OVERVIEW

1. Roger Edwards (“appellant”) appeals a determination that was issued against him on May 13, 2024, under section 96(1) of the *Employment Standards Act (ESA)*. This provision states: “A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months’ unpaid wages for each employee.” I shall refer to the determination issued against the appellant on May 13, 2024, as the “Section 96 Determination.” By way of the Section 96 Determination, the appellant was ordered to pay a total sum of \$34,551.54.
2. The appellant appeals the Section 96 Determination on the ground that “evidence has become available that was not available at the time the determination was being made” (see section 112(1)(c) of the *ESA*).
3. I am dismissing this appeal under section 114(1)(f) of the *ESA* since it has no reasonable prospect of succeeding. My reasons for reaching that conclusion now follow.

### PRIOR PROCEEDINGS

4. On November 10, 2023, a determination was issued against RYU Apparel Inc. (“RYU”), ordering it to pay two former employees (“complainants”) the total sum of \$40,371.06 on account of unpaid wages, vacation pay, and section 88 interest. Further, and also by way of this determination, RYU was assessed two separate \$500 monetary penalties based on its contraventions of sections 17 and 18 of the *ESA*. Accordingly, RYU’s total liability under this determination (which I shall refer to as the “Corporate Determination”) is \$41,371.06.
5. The Corporate Determination was delivered by regular mail to RYU’s Vancouver business office and to its registered and records office (a Vancouver law firm). The Corporate Determination was also sent by regular mail and electronic mail (using two separate email addresses) to one of its directors who was also an RYU officer. In addition, the Corporate Determination was sent to all other RYU directors, including the present appellant, as listed in RYU’s corporate records on file with BC Registry Services. The Corporate Determination was sent to the appellant by regular mail (at his address as listed in the corporate registry) and by electronic mail.
6. The Corporate Determination also included a notice to all RYU directors informing them of their possible personal liability under section 96(1) of the *ESA* (see pages D4-D6). Attached to the Corporate Determination were the Director’s delegate’s “Reasons for the Determination,” also dated November 10, 2023. At page R6 of these reasons the appellant’s evidence, provided during the complaint investigation process, was set out:

Mr. Edwards was a director of RYU from May 18, 2020 to October 25, 2022 and provided design consulting services until January of [sic] February 2021. He said he was not really involved in the company in 2022 as he was not happy about the direction the company was going. He recalled that [one of the two complainants] reported directly to [RYU’s former CEO] but he could not recall [the other complainant]. He had no knowledge of [the

former CEO] stepping away from the company in 2022 and letting employees run it. He said it was a “one man show” and [the former CEO] was “the guy in charge”. [The CEO] was ultimately responsible for issuing cheques in payment of wages.

7. On September 21, 2023, during the course of the Employment Standards Branch (ESB) investigation into the two complaints filed against RYU, an ESB officer spoke with the appellant, obtaining his evidence as summarized, above. The ESB officer sent an email to the appellant on that same day, and provided a copy of a preliminary “investigation report” to the appellant on October 5, 2023.
8. RYU never appealed the Corporate Determination and the amounts due under it have never been paid. I am not aware of what steps, if any, the appellant took in relation to a possible appeal of the Corporate Determination. As matters now stand, the Corporate Determination is a final order.

### **THE SECTION 96 DETERMINATION AND APPEAL**

9. As noted above, the Section 96 Determination, along with accompanying “Reasons for the Determination,” were issued on May 13, 2024. This determination concerns the wages owed to the two complainants as set out in the Corporate Determination, adjusted to account for the “2-month” wage liability ceiling. No monetary penalties were levied against the appellant (see section 98(2) of the *ESA*), a fact that essentially confirms the appellant’s position regarding his limited role in RYU’s business and financial affairs, at least as it relates to the two complainants.
10. The complainants’ wages were earned and became payable during the period from June 10, 2021, to October 7, 2022. The BC Corporate Registry records confirm that the appellant was an RYU director during this period. The appellant apparently ceased to be an RYU director as of October 25, 2022. However, that resignation does not foreclose his liability for any unpaid wages that were earned or became payable prior to his resignation.
11. The appellant’s appeal is based on the so-called “new evidence” ground of appeal. New evidence is admissible on appeal provided: i) the “new evidence” is such that, with the exercise of due diligence, it could not have been discovered and presented to the Director of Employment Standards during the investigation; ii) the evidence must be relevant to a material issue arising from the complaint(s); iii) the evidence must be credible in the sense that it is reasonably capable of belief; and iv) the evidence must have high potential probative value, in the sense that, if believed, it could, on its own or when considered with other evidence, have led the Director to a different conclusion on the material issue (see *Davies et al.*, BC EST # D171/03). The appellant’s submission does not in any fashion speak to these considerations.

### **FINDINGS**

12. The appellant’s “new evidence” is not “new,” nor is it otherwise probative or relevant.
13. In this case, the appellant’s new evidence is, essentially, a series of allegations relating to the complainants’ unpaid wage claims, and the operation of the company. The appellant says he was “never aware” of the complainants’ unpaid wage claims until he “received the Determination from The Director of Employment Standards.” This assertion is irrelevant, since whether a director has actual or constructive prior notice of an unpaid wage claim is only relevant if there was a

contravention of section 77 of the *ESA*, (which is not the case here). Further, and more importantly, this assertion is clearly counter-factual. The section 112(5) record and the reasons supporting the Corporate Determination both explicitly demonstrate that the appellant was aware of the complainants' unpaid wage claims prior to the issuance of the Corporate Determination.

14. The position the appellant now takes on appeal is fundamentally the same position he took during his interview conducted as part of the original complaint investigation process. No “new evidence” has been provided to support the appellant’s assertions and, in any event, the appellant’s present arguments are neither relevant nor probative.
15. The appellant says that he was not an active RYU director, but also concedes that he was a director, although one not fully apprised of RYU’s finances: “While I was a director I never had any knowledge of the day to day [*sic*] financial operations of the company” (my underlining). Even if that latter assertion is true, it is irrelevant since he clearly was an RYU director during the period when the complainants’ unpaid wage claims crystallized. The appellant acknowledges signing corporate documents as a director and that he did not resign until sometime “in October of 2022.”
16. The appellant appears to have some complaints about the way in which RYU was managed but, again, that is not relevant here. The appellant does not challenge the calculations with respect to his “2-month” unpaid wage liability. Apart from section 77 (which has no application in this case), a person seeking to successfully challenge a determination issued under section 96(1) of the *ESA* must demonstrate one of the following: i) that they were not a corporate director or officer during the period in question; ii) one of the section 96 statutory defences applies; or iii) their liability has been incorrectly calculated (particularly given the 2-month liability ceiling). The appellant has not shown that any of these considerations applies here.

## CONCLUSION

17. This appeal is wholly misconceived. On its face, it has no reasonable prospect of succeeding. That being the case, it must be dismissed under section 114(1)(f) of the *ESA*.

## ORDER

18. Pursuant to section 114(1)(f) of the *ESA*, this appeal is dismissed. Pursuant to section 115(1)(a) of the *ESA*, the Section 96 Determination is confirmed as issued in the amount of \$34,551.54 together with whatever additional interest that has accrued under section 88 since the date of issuance.

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**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**