

Citation : Kevin Doyle  
2025 BCEST 3

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Kevin Doyle

- of a Determination issued by -

The Director of Employment Standards

PANEL: Warren Insell  
SUBMISSIONS: Kevin Doyle, on his own behalf  
FILE NUMBER: 2024/115  
DATE OF DECISION: January 8, 2025

## DECISION

### OVERVIEW

1. The Appellant, Kevin Doyle, is a director of Kaleira Contracting Ltd. (“**Kaleira**”). Mr. Doyle appeals a determination (the “**Section 96 Determination**”) made by a delegate of the Director of Employment Standards (the “**Director**”) on November 15, 2022. The Director determined that, as a director of Kaleira, Mr. Doyle was personally liable for wages which were earned but not paid to James Liew.
2. The deadline to file the appeal was December 23, 2022. The Tribunal received the appeal on September 9, 2024, through email.
3. Mr. Doyle checked off boxes on the Appeal Form to indicate that the appeal was based on the following grounds: the Director erred in law; the Director failed to observe the principles of natural justice in making the Determination; and evidence has become available that was not available at the time the Determination was being made. Mr. Doyle says that he was not aware of the Section 96 Determination or given an opportunity to respond to the matter.
4. For the reasons that follow, I dismiss the appeal without seeking submissions from the other parties, pursuant to section 114(1)(b) of the *Employment Standards Act (ESA)*, because the appeal was not filed within the applicable time limit.

### ISSUE

5. Whether the Tribunal should extend the time period for requesting this appeal even though the period has expired.

### BACKGROUND FACTS

6. The Section 96 Determination follows a separate determination against Kaleira that was issued on July 4, 2022 (the “**Corporate Determination**”). In the Corporate Determination, the Director found that Kaleira was liable for administrative penalties and wages which were earned but not paid to Mr. Liew.
7. Kaleira did not appeal the Corporate Determination. At the time of the Section 96 Determination, no wages had been paid to Mr. Liew.
8. The issue before the Director in the Section 96 Determination was whether Mr. Doyle was liable for up to 2 months’ unpaid wages and administrative penalties found owing in the Corporate Determination. The Director conducted a search in the Government of Canada Federal Corporation database. An active listing confirmed that Mr. Doyle was the only director or officer for Kaleira, including at the time that Mr. Liew had earned the unpaid wages.
9. The Director found that Mr. Doyle was personally liable for the unpaid wages. The Director concluded that Mr. Doyle was not liable for the administrative penalties because there was “insufficient [sic] that Kevin Doyle authorized, permitted or acquiesced in the contravention(s) of Kaleria.”

## LATE FILING OF THE APPEAL

10. The deadline to file the appeal was December 23, 2022. The appeal was received by the Tribunal on September 9, 2024, nearly 21 months past the deadline.
11. In *Niemisto* (BC EST # D099/96) the Tribunal held that extensions of time should not be granted as a matter of course. The Tribunal also established the following criteria to provide guidance in determining whether to grant an extension of time to appeal periods:
- (i) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
  - (ii) there has been a genuine and ongoing *bona fide* intention to appeal the Determination;
  - (iii) the respondent party (i.e., the employer or employee), as well the Director, must have been made aware of this intention;
  - (iv) the respondent party will not be unduly prejudiced by the granting of an extension; and
  - (v) there is a strong *prima facie* case in favour of the appellant.
12. In addressing this appeal, I will first consider criteria one from *Niemisto*: that there is a reasonable and credible explanation for failing to request an appeal within the statutory time limit. I will also consider criteria two from *Niemisto*: that there is a genuine and ongoing *bona fide* intention to appeal the Determination. Finally, I will consider criteria five from *Niemisto*: that there is a strong *prima facie* case in favour of Mr. Doyle. I find it unnecessary to address, and make no findings on, the other two criteria of *Niemisto*.

### Reasonable and credible explanation

13. Mr. Doyle argues that he was not formally notified of the Director's investigation and Section 96 Determination because he had moved and was not receiving mail at his old addresses. Mr. Doyle states that he became aware of those matters when his bank account was frozen in March 2023.
14. In May 2022, the Director had mailed an Investigation Report to three different addresses. The mail sent to two of those addresses, Mr. Doyle's last known personal address and an address from the Federal Corporation database, were "returned to sender" because the recipient was "moved / unknown." The Director also mailed that document to the registered address for Kaleira and that mail was not returned to sender.
15. The Director attempted to contact Mr. Doyle at his last known telephone number and the company email address for Kaleira. The telephone number was no longer in service and the email was returned as undeliverable.
16. Section 122(1)(a) of the *ESA* states that:
- 122 (1)** A determination or demand, a notice under section 30.1 (2) or a written report referred to in section 78.1 (1) (a) that is required under this Act to be served on a person is deemed to have been served if it is

- (a) sent by ordinary mail or registered mail to the person's last known address according to the records of the director,

[...]

- 17. Mr. Doyle was deemed to have been served the Investigation Report when it was mailed to the last known addresses according to the records of the Director. If Mr. Doyle had moved, it was his responsibility to set in place processes to respond to his obligations and keep records current: *Nature's Choice Foods Ltd.* (BC EST # D206/04). Furthermore, I am not persuaded that Mr. Doyle did not receive the mail sent to Kaleira's registered address because, unlike the other two mail attempts, this mail was not returned to sender.
- 18. The Section 96 Determination was sent to the registered address of Kaleira and, by operation of section 122(1)(a) of the *ESA*, it is deemed to have been delivered to Mr. Doyle. The fact that Mr. Doyle did not accept service of a determination served in accordance with section 122 at his last known address does not, without more, excuse him from the deemed service provisions: *Nature's Choice Foods Ltd., supra.*
- 19. The appeal was filed nearly 21 months late. I find that Mr. Doyle has not provided a reasonable and credible explanation for that significant delay in filing the appeal.

#### **Genuine and ongoing *bona fide* intention to appeal**

- 20. Even if I were to accept that that Mr. Doyle was not aware of the Investigation Report and Section 96 Determination until March 2023, when his bank account was frozen, I would still find that he has not made a genuine and ongoing *bona fide* intention to appeal the Section 96 Determination.
- 21. Mr. Doyle included email correspondence with the Director in his appeal submissions. This email correspondence shows that Mr. Doyle contacted the Director in March 2023, after his bank account was frozen. In that email correspondence, the Director provided the Section 96 Determination and advised Mr. Doyle that he could file an appeal. Mr. Doyle filed an appeal 18 months later in September 2024. Mr. Doyle did not provide an explanation for that significant delay.
- 22. I find that Mr. Doyle has not demonstrated a genuine and ongoing *bona fide* intention to appeal the Section 96 Determination.

#### **A strong *prima facie* case in favour of Mr. Doyle**

- 23. Section 96 of the *ESA* provides as follows:

- 96** (1) 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.
- (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
- (ii) is subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency act,
- (b) [Repealed 2019-27-30.]
- (c) vacation pay that becomes payable after the director or officer of the corporation ceases to hold office, or
- (d) money that remains in an employee's time bank after the director or officer of the corporation ceases to hold office.

[...]

24. The Tribunal has consistently held that the doctrine of *issue estoppel* limits appellants to certain issues when appealing a decision made under section 96 of the *ESA*: *Abram Neudorf* (BC EST D076/07). Those limited certain issues are:

- 1) whether the person was a director or officer of the company at the time wages were earned or should have been paid;
- 2) whether the calculation of the amount determined to be owed by them is correct; and
- 3) whether the person should not be liable for the penalty, where a penalty has been imposed, on the grounds that they did not authorize, permit or acquiesce in the company's contravention.

25. Mr. Doyle has not raised any arguments or adduced evidence to dispute that he was a director of Kaleira at the time that wages were earned and should have been paid to Mr. Liew. Records in the Federal Corporation database show that Mr. Doyle was the only director of Kaleira during the relevant time periods.

26. Mr. Doyle argues that Mr. Liew was a subcontractor, rather than an employee, and not entitled to seek a remedy through the *ESA*. Kaleira was already found liable for wages in the Corporate Determination and, barring exceptional circumstances that are not met in this case, Mr. Doyle is precluded from rearguing the merits of the Corporate Determination in this appeal: *Steinemann (Pacific Western Vinyl Windows & Doors Ltd.)* (BC EST #180/96). Mr. Doyle did not otherwise dispute the calculation of wages owed.

27. No issues were raised or evidence adduced that would indicate Mr. Doyle is exempt from personal liability under section 96(2).

28. Mr. Doyle has not raised any arguments relevant to the limited issues in a section 96 appeal. I find that there is not a strong *prima facie* case in favour of Mr. Doyle.

## CONCLUSION

29. I find that there are no compelling reasons for granting an extension to the time period for filing an appeal. I dismiss the appeal pursuant to section 114(1)(b) of the *ESA*.

**ORDER**

30. Pursuant to section 115(1)(a) of the *ESA*, I confirm the Section 96 Determination dated November 15, 2022.

*/S/ Warren Insell*

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**Warren Insell**  
**Member**  
**Employment Standards Tribunal**