

**Ontario Labour
Relations Board**

505 University Avenue
2nd Floor
Toronto, Ontario M5G 2P1
Telephone: 416-326-7500
Facsimile: 416-326-7531

**Commission des relations
de travail de l'Ontario**

505, avenue University
2^e étage
Toronto (Ontario) M5G 2P1
Téléphone: 416-326-7500
Télécopieur: 416-326-7531



Our File Number/Numéro de dossier: 2687-11-ES; 0740-12-ES

April 23, 2013

TO THE PARTIES LISTED ON APPENDIX "A"

Dear Sir/Madam:

**David Mortman and Alexander Mortman, Directors of IQT,
Ltd. AKA IQT Solutions AKA Integrated Quality Technologies
v. Adam J. Akey et al. and Director of Employment Standards
EPB File No. 70093806-4**

**David Mortman and Alexander Mortman, Directors of IQT,
Ltd. AKA IQT Solutions AKA Integrated Quality Technologies
v. Nilour Abedi et al. and Director of Employment Standards
EPB File No. 70093806-4**

Attached is a copy of the Board's Decision dated April 23, 2013 in the above matter which is being sent to you by facsimile, regular mail, courier or e-mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Gallus".

Peter Gallus
Registrar

PG/wt
Enclosure

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ONTARIO LABOUR RELATIONS BOARD

2687-11-ES David Mortman and Alexander Mortman, Directors of IQT, Ltd. AKA IQT Solutions AKA Integrated Quality Technologies, Applicants v. Adam J. Akey et al. and Director of Employment Standards, Responding Parties.

Employment Practices Branch File No. 70093806-4

0740-12-ES David Mortman and Alexander Mortman, Directors of IQT, Ltd. AKA IQT Solutions AKA Integrated Quality Technologies, Applicants v. Nilour Abedi et al. and Director of Employment Standards, Responding Parties.

Employment Practices Branch File No. 70093806-4

BEFORE: Matthew R. Wilson, Vice-Chair.

DECISION OF THE BOARD: April 23, 2013

1. These are director applications for review under section 116 of the *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended (the "Act"), in respect of orders to pay issued under the Act.
2. The respondent employees ("Employees") in these applications are former employees of IQT, Ltd. AKA IQT Solutions AKA Integrated Quality Technologies ("IQT"), which ceased operations on or about July 15, 2011, and which was petitioned into bankruptcy in or around December, 2011.
3. In a decision dated February 22, 2013, the Board set out a conditional offer made by IQT's directors to settle all amounts owing to the Employees. Employees were given the option to reject the settlement offer within a 30-day window. The Board extended this time period in its decision dated March 27, 2013, for an additional 30 days so that employees could consider new information about the Department of Justice's position with regards to subrogation rights under the Wage Earners Protection Program Act ("WEPPA").
4. Following this decision, the Board received a letter from a respondent employee, Mr. Bob Brigaitis, dated April 3, 2013 objecting to the decision dated March 27, 2013. Although the letter was framed as an objection to the decision, it is appropriate to consider it as a request for reconsideration. The Board also received a request for reconsideration from IQT on April 5, 2013.

- 2 -

5. This decision will deal with the requests for reconsideration from both IQT and Mr. Brigaitis.

SUBMISSIONS OF THE PARTIES

IQT

6. IQT had written to the Board on the same day the Board issued the March 27, 2013 decision. Its request for reconsideration also relies on these submissions. IQT submits that the timeline for employees to consider their settlement options should not be extended since employees already had information about their repayment obligations when they applied for payments under the WEPPA. Additionally, IQT argued the Board should be cautious about giving advice to the employees through its decision. Ironically, IQT submitted that if the Board did extend the timelines, further advice should be given to the employees so that they can make a fully informed decision.

7. IQT also submits that not all employees had repayment obligations under the WEPPA and therefore any timeline extension should only be limited to those specific employees.

Mr. Bob Brigaitis

8. Mr. Brigaitis' counsel states that he is concerned for the employees who are compromising the claims of the Crown without understanding those implications. Additionally, he is concerned that an employee would be settling the Crown's subrogated claim without ensuring that the Crown will receive its full entitlement.

9. Mr. Brigaitis' counsel submits that it should be the Crown who is in control of the claim, not the employee. Using principles from insurance law, counsel argues that an insured individual who compromises a claim they do not control is exposed to an action by the insurer. In this instant, it is submitted that the Crown is the insurer.

10. Finally, it is submitted that there are issues with the notice of the offer to settle since many employees may have moved, without notifying the Board, since the closing of the business. Mr. Brigaitis requests that the settlement offer be fundamentally changed and also that the Crown be given formal notice of the settlement offer.

DECISION

11. Section 119(13) of the Act provides that the decisions of the Board are final. However, the Board has the power to reconsider and rescind decisions it has made pursuant to section 21.2 of the *Statutory Powers and Procedures Act* and Rule 18 of the Board's Rules of Procedure, which give the Board the power to reconsider any of its decisions when it considers it advisable to do so. In order to provide parties before the Board with a substantial degree of certainty the Board normally declines to grant

reconsideration requests in the absence of compelling reasons or where the Board has made an error in a decision.

12. Section 21.2 of the *Statutory Powers and Procedures Act* states:

Power to review

21.2 (1) A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order.

Time for review

(2) The review shall take place within a reasonable time after the decision or order is made.

13. In *1128636 Ontario Inc. (Automotive Prototype & Tooling Co.)*, 2012 CanLII 68663 (ON LRB), the Board stated that it will not normally reconsider a decision unless:

- A party wishes to make representations or objections not already considered by the Board that it had no opportunity to raise previously;
- A party wishes to adduce evidence which could not previously have been obtained with reasonable diligence and which would be practically conclusive of the issue or make a substantial difference to the outcome of the case; or
- The request raises significant and important issues of Board policy which the Board is convinced were decided wrongly in the first instance.

14. The basis for IQT's request for reconsideration is that the Board's decision is incomplete because, in its view, it does not provide enough information to the employees. It argues that the Board should have included information about the repayment obligations to the Department of Justice Canada.

15. This is not sufficient basis for the Board to reconsider its decision. The Board agrees with IQT's earlier correspondence where it stated that the Board ought not to give advice to employees. It is not the role of the Board to advise the workplace parties of their rights.

16. The second reason for IQT's request for reconsideration is that the timeline should not be extended for those employees who did not receive payments under the WEPPA. The Board's decision extended the timeline for all employees to consider the settlement offer. IQT did not claim that there was any prejudice and none appears to have occurred.

- 4 -

17. IQT's request for reconsideration is denied.
18. Mr. Brigaitis' request for reconsideration is based on insurance law principles of subrogation rights. While it is far from clear whether such principles extend to payments made under the WEPPA, these are issues for employees to consider, not the Board.
19. These types of group settlements are not new to the Board. See for example *1333833 Ontario Inc. v. Lewis*, 2006 CanLII 32030; *2000676 Ontario Ltd. v. Akter*, 2005 CanLII 44696. The impetus for the group settlement process is a conditional offer by the responding party. This is not a Board initiative. If the responding party makes a conditional offer of settlement, it is for the individual employees to make a decision about whether it is acceptable. Although Mr. Brigaitis may have concerns for the claimants' ability to make a decision, it is not appropriate for the Board to provide legal advice to the individual claimants.
20. It is also important to note that the Department of Justice is not a party to the claim. It may have subrogation rights to portions of the monies paid to some claimants. However, this does not make the Department of Justice a party to the application before the Board.
21. Finally, the notice delivered to the employees complies with the Board's Rules of Procedure. It is the most recent address on file and is the same address used to give employees notice of a hearing (if one were to occur) and all other correspondence.
22. Mr. Brigaitis has not raised any issues that give the Board concern that the group settlement process used in this particular case was improper. The threshold for reconsideration of the Board's earlier decision has not been met.
23. Mr. Brigaitis' request for reconsideration is denied.
24. In summary, the Board declines to reconsider its earlier decision in this matter.

"Matthew R. Wilson"
for the Board