

An appeal

- by -

Select Introductions Inc.  
("Select")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**TRIBUNAL MEMBER:** David B. Stevenson

**FILE No.:** 2004A/174

**DATE OF DECISION:** January 13, 2005



was not unreasonable to deny the request for adjournment. Ms. Sakve was offered an opportunity to call her office or her client in order to re-schedule the appointment. She declined that offer, indicating there was no staff in her office.

Notwithstanding the denial and a warning to Ms. Sakve of the potential consequences of her non-attendance, Ms. Sakve chose to leave. The hearing proceeded in her absence.

The Director found McAllister was an employee for the purposes of the *Act* and was owed wages. That finding is not appealed.

## ARGUMENT AND ANALYSIS

The burden is on Select, as the appellant, to persuade the Tribunal that the Director committed some error in making the Determination and that the Tribunal should intervene to correct that error. The grounds upon which an appeal may be made are found in Subsection 112(1) of the *Act*, which says:

112. (1) *Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:*
- (a) *the director erred in law;*
  - (b) *the director failed to observe the principles of natural justice in making the determination;*
  - (c) *evidence has become available that was not available at the time the determination was made.*

As indicated above, the appeal is grounded on an assertion that evidence has become available that was not available at the time the Determination was made. The appeal does not, however, contain anything that supports this ground of appeal. There is no indication in the appeal of what evidence is now being provided that was not available at the time the Determination was made.

There is some suggestion from comments on the appeal form that the appeal is actually seeking a review of the decision to deny Ms. Sakve's request for an adjournment of the complaint hearing, but there is no reason, in the circumstances, to find the Director erred in denying the adjournment and completing the complaint process. As noted in the Determination, Select had 30 days notice of the intention of the Director to hold the complaint hearing.

Select had already stated its position to the Director on the merits of the complaint, one which in my view was totally untenable given the nature of McAllister's employment.

The design of the administrative penalty scheme under Section 29 of the *Regulations* provides mandatory penalties where a contravention of the *Act* or *Regulations* is found by the Director in a Determination issued under the *Act*. Ms. Sakve's non-attendance had no bearing on the administrative penalties imposed on Select. It is noteworthy that Select does not appeal the finding that McAllister was an employee and was owed wages or the finding that Select had contravened Section 46 of the *Regulations*.

This appeal is dismissed

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination, dated August 31, 2004, be confirmed in the amount shown, together with any interest that has accrued under Section 88 of the *Act*.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**