

An appeal

- by -

L2 Talent Management Inc.
(“L2”)

- 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 (as amended)

TRIBUNAL MEMBER: Shafik Bhalloo

FILE No.: 2014A/146

DATE OF DECISION: February 4, 2015

DECISION

SUBMISSIONS

Philip Ackerman

on behalf of L2 Talent Management Inc.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), L2 Talent Management Inc. (“L2”) has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on September 22, 2014 (the “Determination”).
2. The Determination found that L2 contravened section 38.1(e) of the *Employment Standards Regulation* (the “*Regulation*”) in respect of its clients, Dustin Adamson, Hayley Bennett, Kristy Bennett, Allyson Lowry, Savannah Way, Kayla Clarke, Maria Medina, Ashley Jakes, James Brion, Marlena Kwasny, Duncan Lee and Maryan Lee (collectively, the “Complainants”), and ordered L2 to pay the Complainants wages, including accrued interest, totaling \$5,404.07. The Determination also levied three administrative penalties against L2 for \$500 each pursuant to section 29(1) of the *Regulation* for contraventions of sections 38.1(e), 38.1(j) and 46 of the *Regulation*. The total amount of the Determination is \$6,904.07.
3. The time for appealing the Determination expired on October 30, 2014. While Philip Ackerman (“Mr. Ackerman”), the sole director and officer of L2, filed an Appeal Form on behalf of L2 on October 30, 2014, the appeal was incomplete as it lacked full submissions of L2. Mr. Ackerman did, however, submit a handwritten request with the Appeal Form for an extension of time for L2 to file its complete submissions.
4. On November 6, 2014, the Employment Standards Tribunal (the “Tribunal”) sent all concerned parties a letter advising that it had received L2’s appeal with a request to the Tribunal to extend the deadline to file the appeal. In the same letter, the Tribunal asked L2 to provide written submissions in support of its request for a time extension to file the appeal and any additional supporting documentation, no later than November 10, 2014. The Tribunal also requested the delegate to provide, by November 21, 2014, a complete copy of the Record that was before the Director at the time the Determination was made.
5. On November 10, 2014, the Tribunal received L2’s submissions which it forwarded to the other parties with specific instructions that no submissions were being sought from them at this point.
6. Subsequently, on November 18, 2014, the Tribunal received the Director’s Record. The Tribunal sent a copy of the record to L2 with the specific instruction that any objections of L2 to the completeness of the Record should be provided to the Tribunal by December 5, 2014.
7. On December 8, 2014, Mr. Ackerman requested an extension of time to submit L2’s objections to the completeness of the Record because of some personal health reasons that interfered with his ability to respond in a timely fashion. On December 9, 2014, the Tribunal acceded to Mr. Ackerman’s request and granted him an extension to December 12, 2014.
8. On December 12, 2014, Mr. Ackerman presented a single page of submissions setting out his objections to the Record, particularly identifying those documents in the Record that he had not previously seen and, therefore, did not have “a proper opportunity to address”. He identified the documents in question as appearing at the following pages of the Record: 1 – 15, 24, 33 – 47, 50 – 53, 55 – 83, and 97.

9. On December 15, 2014, the Tribunal requested the Director to provide a written response to L2's objections to the Record by December 31, 2014. The Tribunal received the Director's submissions on December 29. Thereafter, the Tribunal provided L2 an opportunity to make a final reply in response to the Director's submissions by January 14, 2015, but L2 did not make a final reply.
10. This appeal is an appropriate case for consideration under section 114 of the *Act*. At this stage, I will assess the appeal solely on the Reasons for the Determination (the "Reasons"); the Appeal Form; the written submissions (including the late submissions) of Mr. Ackerman on behalf of L2; L2's written objections to the Record; the Director's written response to those objections; and the Record that was before the Director when the Determination was being made.
11. If I am satisfied that the appeal, or part of it, has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, the Complainants and the Director may be invited to file a reply to the question of whether to extend L2's deadline to file the appeal, and L2 may be given an opportunity to make a final reply to these submissions, if any. Conversely, if it is found that the appeal is not meritorious, it will be dismissed under section 114(1) of the *Act*.

ISSUE

12. At this stage of the proceeding, the sole issue is whether there is a reasonable prospect that L2's appeal can succeed.

THE FACTS

13. At all material times, L2 operated as a talent agency within the jurisdiction of the *Act*.
14. Based on a BC Online: Registrar of Companies search (the "Search") conducted by the delegate of the Director on October 24, 2013, L2 was incorporated on September 27, 2010, and Mr. Ackerman is listed as its sole director and officer.
15. Between October 23 and November 1, 2013, five (5) of the twelve (12) Complainants, namely, Dustin Adamson, Hayley Bennett, Kristy Bennett, Allyson Lowry and Savannah Way, filed complaints under section 74 of the *Act* against L2 alleging that the latter contravened the *Regulation* by failing to pay them wages collected, less the talent agency fee of 15% (the "Complaints").
16. A delegate of the Director contacted Mr. Ackerman on October 24, 2013, with respect to one (1) of the Complaints (the first) that had been filed on October 23, 2013, that alleged that L2 had arranged for seven (7) clients for a Nivea Canada promotional tour by a production company known as Convex e2, and that none of the clients had been paid. This initial complaint also alleged that L2 had received payment from the production company for the work performed by the clients. When the delegate contacted Mr. Ackerman on October 24 to seek information regarding that complaint, Mr. Ackerman requested that the delegate provide him with a letter specifying the information he required in the investigation.
17. The delegate acceded to Mr. Ackerman's request and sent him a letter dated October 25, 2013, advising him of the investigation and provided him with a copy of the redacted complaint form, together with a Demand for Talent Agency Records (the "Demand for Records"), with a deadline of November 12, 2013, to produce the records requested. The Demand for Records specifically asked L2 to produce all employment records between July 1 and July 31, 2013, for the complainant in that single complaint; all employment records for all

other performers (or clients) hired for the Nivea Canada tour between July 1 and July 31, 2013; and all employment records for all other performers (or clients) on the L2 roster that are owed wages.

18. On November 12, 2013, Mr. Ackerman responded to the delegate's request by email, enclosing a spreadsheet for the single client who had filed the complaint, and advised that he would provide other requested information by the end of the week.
19. Subsequently, on November 17, 2013, Mr. Ackerman provided, by email, a number of spreadsheets delineating outstanding wages owed to an additional thirteen (13) clients for four (4) productions or events worked by them between April 14, 2013, and July 27, 2013. The productions, namely, include the following: (i) Paramalat Grocery Showcase by Convex e2 during April 14 and 15, 2013; (ii) Hand Model Shoot by Fluid Creative on May 3, 2013; (iii) the Engagement Shoot by Surrey College on May 15 and 18, 2013; and (iv) Nivea Canada Promotion by Convex e2 during July 17 – 27, 2013.
20. In the Reasons, the delegate meticulously summarized the contents of the spreadsheets Mr. Ackerman provided which included the hours L2's clients worked, the wage rate for the production, the gross wages earned and the deduction of L2's talent agency commission.
21. With respect to the Paramalat Grocery Showcase shoot by Convex e2, the delegate notes that Mr. Ackerman's spreadsheets indicate that L2 arranged for three (3) clients to perform at this event for a total of 22 hours at a rate of pay of \$20.00 per hour. The spreadsheets indicate that the gross income for this performance was \$440.00 and, after deducting \$66.00 for the 15% commission and \$25.00 in photo fees each for two (2) of the clients (\$50.00), the balance in wages owing to the three (3) clients was \$324.00. The one (1) client who worked 11 hours was owed \$187.00 and the two (2) other clients, who each worked only 5.5 hours, were each owed \$68.50. Mr. Ackerman said he only was able to provide the names of two (2) of the clients for this event since the third one was a last-minute replacement, and had since passed away.
22. With respect to Hand Model shoot of Fluid Creative, Mr. Ackerman's spreadsheets indicate that L2 arranged for one (1) client to work at this photo shoot for two (2) hours at a rate of pay of \$75.00 per hour, and that the gross income for this photo shoot was \$150.00. After deducting \$22.50 for the 15% commission of L2, the balance in wages owing to that one client was \$127.50.
23. With respect to the Engagement shoot of Surrey College, Mr. Ackerman's spreadsheet indicate that L2 arranged for three (3) clients to work at this photo shoot for a total of eight (8) hours at a rate of pay of \$40.00 per hour. L2 earned a gross income for this event of \$320.00. After deducting \$48.00 for the 15% commission of L2, the balance in total wages owing to the clients was \$272.00. The one (1) client who worked four (4) hours was owed \$136.00 and the two (2) other clients who each worked two (2) hours were each owed \$68.00.
24. Lastly, in the case of the Nivea Canada Promotion of Convex e2, Mr. Ackerman's spreadsheets show that L2 arranged for seven (7) clients to work at this event at a rate of pay of \$10.25 per hour, plus 4% vacation pay, for a total of \$10.66 per hour. The spreadsheets also indicate that five (5) of the clients each worked 67.5 hours and, as such, the gross wages of each client was \$719.55. Mr. Ackerman deducted a \$100.00 advance and \$25.00 photo fee from each of these clients, and, therefore, each was owed a balance of \$594.55 in unpaid wages.
25. In addition, on the same Nivea Canada Promotion, two (2) clients worked only part-time during the event. One (1) worked 42 hours at a rate of pay \$10.66 per hour for a total of \$447.72 in gross wages. Mr.

- Ackerman deducted \$21.35 for an advance made to this client and a further \$25.00 for a photo fee, leaving the balance of wages owing to the client of \$401.37.
26. The second client, according to Mr. Ackerman's spreadsheets, worked 25.5 hours at a rate of pay of \$10.66 per hour for a total of \$271.83 in gross wages. With respect to this client, Mr. Ackerman deducted \$100.00 for an advance payment and \$25.00 for a photo fee, resulting in a balance owing to this client of \$146.83.
 27. The total wages owing to all seven (7) clients at the Nivea Canada Promotion, according to Mr. Ackerman's records, is \$3,520.95.
 28. The total wages owing to all Complainants for all four (4) events is \$4,244.45, according to Mr. Ackerman's records.
 29. In addition to the spreadsheets of Mr. Ackerman, the delegate, in the course of his investigation, also obtained records from both Convex e2 and Fluid Creative in relation to three (3) of the four (4) events. He was unable to obtain records from Surrey College for the fourth event. The delegate noted in the Reasons that the information received from Convex e2 and Fluid Creative for the three (3) events conflicted with the evidence in Mr. Ackerman's spreadsheets and went on to describe the conflicting evidence.
 30. With respect to the Paramalat Grocery Showcase, the delegate notes that Convex e2 provided a copy of the invoice L2 submitted to it on April 16, 2013. The invoice confirmed that L2 was billing Convex e2 for 22 hours at a rate of pay of \$21.67 per hour, plus an additional \$69.00 in parking charges for the clients for the two (2) days. The invoice also included an agency booking fee in the amount of \$95.35 for a total payment of \$641.09. Convex e2 also submitted to the Director a copy of the cashed cheque, dated May 12, 2013, issued directly to Mr. Ackerman.
 31. With respect to the Nivea Canada Promotion, Convex e2 provided the delegate with a copy of the invoice it received from L2 on July 28, 2013. This invoice confirmed that L2 billed for six (6) Customer Service Representatives working 71 hours between July 17, 2013, and July 27, 2013. The rate of pay for each client was billed at \$14.99 per hour and L2 received gross wages of \$6,385.74. Convex e2 provided copies of two (2) cancelled cheques, dated July 17, 2013, and August 21, 2013, totalling \$6,664.74, payable to Mr. Ackerman directly.
 32. With respect to the Engagement shoot of Surrey College, the delegate did not obtain any further information, and relied upon the spreadsheets of Mr. Ackerman.
 33. On April 11, 2014, by regular and registered mail, the delegate sent Mr. Ackerman a letter containing his preliminary findings with respect to the Complaints. The letter included copies of the Complaints filed by five (5) of the Complainants, supporting evidence from Convex e2 and Fluid Creative, and an information sheet on Director and Officer liability. The delegate requested, in the same letter, that L2 provide the name and address for each employer, the name and address for each client employed as a performer and copies of the invoices showing payments received by L2 for each event.
 34. After receiving the preliminary findings letter, Mr. Ackerman requested an extension of time to respond until May 12, 2014, and the delegate granted him that extension.
 35. By way of a letter dated May 11, 2014, Mr. Ackerman acknowledged receiving the preliminary findings letter of the delegate and went on to address the items in that letter in the order in which the delegate had set them out. In particular, Mr. Ackerman submitted that, with respect to the Paramalat Grocery Showcase, Hand

Model shoot and the Surrey College shoot, no complaints had been filed by the clients involved in these events and that it was his belief that the affected parties “would rather wait for him to be in a financial position to pay them”. He also gratuitously added that he had put one (1) of the Complainants in touch with someone who had used her in a shoot previously.

36. With respect to the Nivea Canada Promotion, Mr. Ackerman submitted that all of the Complainants involved in this event “fail[ed] to mention the advance payment they received on site on the opening day of the promotion”. More particularly, three (3) of the clients each received \$70.00 for mileage and toll reimbursement on July 19, 2013. Mr. Ackerman submitted a copy of the document signed by the three (3) clients acknowledging the payment in question. He also noted that one (1) of the three (3) clients had not filed a complaint against L2.
37. Mr. Ackerman further noted that seven (7) clients received a \$100.00 advance on July, 2013, from L2. Mr. Ackerman included a copy of the document signed by all seven (7) clients acknowledging such payment.
38. Mr. Ackerman further noted that two (2) of the seven (7) had not filed a complaint, and he believed that they would rather wait for him to be in a financially-capable position to pay them.
39. Mr. Ackerman also submitted that the delegate’s calculation of wages owing for the clients in the preliminary findings was incorrect. He stated that the rate of pay for the clients was \$10.25 per hour, plus 4% vacation pay, for a total of \$10.66 per hour. Based on this rate, L2’s 15% talent agency commission was \$1.60 and there was a further agency, or booking, fee of \$2.73 for a combined total wage rate of \$14.99 per hour.
40. He concluded his submissions stating that he did not have the financial means to satisfy the claims of the Complainants and that “there are no business or personal assets to draw from”.
41. Mr. Ackerman did not provide the contact information for the employers or clients requested by the delegate, nor did he provide any evidence of the payments he received from each event as requested by the delegate in the preliminary findings letter.
42. In making the Determination, I note the delegate first dealt with the question raised by Mr. Ackerman with respect to the seven (7) clients who did not file formal complaints with the Employment Standards Branch (the “Branch”) against L2. More particularly, Mr. Ackerman contended that the Branch should not be adjudicating claims on behalf of the seven (7) clients who did not file formal complaints and only adjudicate the claims of the five (5) who filed formal complaints. In rejecting Mr. Ackerman’s argument, the delegate relied on section 76(2) of the *Act*, which provides that the Director may conduct an investigation to ensure compliance with the *Act* and with the *Regulation*, whether or not the Director receives a complaint. Since Mr. Ackerman provided information regarding a number of clients of L2 who were not paid their wages, the delegate reasoned that section 76(2) afforded him the authority to proceed and take the necessary actions in order to ensure compliance with the *Act*.
43. In response to Mr. Ackerman’s belief that those clients who did not file complaints against L2 preferred to wait until L2 was able to pay them, the delegate responded to this submission stating that section 4 of the *Act* provides that the requirements of the *Act* and the *Regulation* are minimum requirements, and any agreement to waive those requirements has no effect.
44. The delegate then went on to deal with each of the four (4) productions under separate sub-headings in the Reasons. With respect to each production, the delegate noted that Mr. Ackerman did not dispute wages were owed to clients but failed to provide “any evidence to substantiate the amount of wages owing” to them. I

note that Mr. Ackerman did provide spreadsheets he had prepared in relation to each production but there was not any additional source information from the four (4) productions except those spreadsheets.

45. In the case of the three (3) productions that Convex e2 and Fluid Creative were involved in, the delegate found the evidence produced by these two production companies, including the invoices L2 sent them, constituted the best evidence available setting out the hours worked and the hourly wage rate paid by the production companies. The delegate used this information to determine the amounts owed by L2 to each of the Complainants. In the case of one (1) unidentified client involved in the Paramalat Grocery Showcase of Convex e2 who passed away, the delegate stated that he could not award wages, but levied an administrative penalty of \$500.00 against L2 for failing to keep the required records (name and address of client and each employer) for this client, contrary to section 38.1(j) of the *Regulation*.
46. In the case of the Engagement shoot of Surrey College, the delegate relied upon the spreadsheets of Mr. Ackerman to calculate the outstanding wages owed to three (3) clients, since the delegate was unable to obtain any further evidence from Surrey College with respect to this event.
47. With respect to Fluid Creative's Hand Model shoot, the delegate again noted that the best evidence available setting out the hours worked and wage rate of the clients is in the records provided by Fluid Creative, and the delegate relied on these records to calculate outstanding wages owed to the one (1) client.
48. In the case of Convex e2's Nivea Canada Promotion, while Mr. Ackerman did not dispute the number of hours worked by the clients and their rate of pay, he submitted that pay advances should be deducted from the outstanding wages. In this case, the delegate acknowledged that while Mr. Ackerman, in his submissions in response to the preliminary findings, indicates that he billed Convex e2 at \$14.99 per hour, the delegate concluded that \$12.54 per hour is the wage rate that each client was entitled to receive for the work performed at the Nivea Canada Promotion and calculated the outstanding wages using that rate.
49. With respect to Mr. Ackerman's contention that any pay advances, mileage and toll fees advanced to clients should be deducted from wages, the delegate considered section 38.1(1) of the *Regulation* and concluded that this section does not permit L2 to make any other deductions to the wages of its clients than those set out therein. Therefore, neither the \$700.00 in advance payments Mr. Ackerman said L2 made to some of its clients, nor the \$210.00 L2 advanced to three (3) clients for mileage and toll charges could be deducted or offset from wages owed to clients. The delegate further noted that, in the case of the Nivea Canada Promotion, Mr. Ackerman was reimbursed \$225.00 for mileage expenses and \$54.00 for toll charges by Convex e2.
50. In total, the delegate awarded the Complainants \$5,404.07 in the Determination, inclusive of accrued interest, and also levied three (3) administrative penalties of \$500.00 each against L2 for:
 - (i) failing to keep records of the one (1) unidentified client in the Convex e2 Paramalat Grocery Showcase event in contravention of section 38.1(j) of the *Regulation*;
 - (ii) failing to pay wages to the clients, less the 15% agency commission and \$25.00 maximum photo fee, within five (5) business days from receiving payment; and
 - (iii) failing to deliver the complete records requested of L2 on October 25, 2013, within the specified timeframe, contrary to section 46(1) of the *Regulation*.

SUBMISSIONS OF L2

51. In the Appeal Form, L2 has checked off the error of law and natural justice grounds of appeal, and has asked the Tribunal to change or vary the Determination or refer it back to the Director.
52. In the written submissions attached to the Appeal Form, L2 also adds to the two (2) grounds of appeal that the Director “failed to consider and apply intent of legislation”.
53. I will not reiterate here the submissions of L2 relating to its request for an extension to file the appeal as that is not being considered in this decision.
54. In the subsequent written submissions, on November 10, 2014, Mr. Ackerman, in the preamble, states that L2 “simply has no assets” to pay the Complainants and that he himself has “outstanding debts of some \$50,000.00” and is seeking employment.
55. Mr. Ackerman also submits, in the preamble, L2 is not disputing that monies are owing to the Complainants but “does dispute the amount owing”.
56. Lastly, in the preamble, Mr. Ackerman also submits that the Director erred in the Determination by “not allowing wages paid in advance to certain individuals as wage payment”.
57. In the balance of his submissions, Mr. Ackerman goes on to elaborate on his points in the preamble.
58. With respect to his dispute with the delegate’s determination of the amounts owing, he states that the Director failed to allow for booking fees which are often collected to assist with the administration or management of projects. He submits that there was an agency fee of \$2.45 per hour for booking fees (although I note that in his May 11, 2014, letter to the delegate in response to the latter’s preliminary findings, Mr. Ackerman had a figure of \$2.73 for booking fee).
59. He argues that there was no “prescribed manner in which to invoice booking fee in the Nivea Canada Promotion and therefore it was rolled into a single figure”. Mr. Ackerman appears to contend that the booking fee portion should not have been included as part of the wage rate of the clients who worked on the Nivea Canada Promotion. He states that the true rate of pay of those who worked on the said event is \$10.25 per hour, plus 4% vacation pay, which totals \$10.66 per hour. The \$14.99 per hour wage rate that Convex e2 paid on this project to L2 included \$1.60 for the 15% commission on the wage rate, plus \$2.45 in agency/booking fee, plus \$0.28 in GST on the latter amount. All these numbers added together total \$14.99 per hour.
60. Mr. Ackerman also disagrees with the Director’s decision that none of the advance payments made by L2 to various Complainants should be taken into account by the Director in reducing the amounts L2 owed to them.
61. With respect to the administrative penalty levied against L2 for failure to keep contact information for one (1) of the clients of L2 who worked on the Convex e2 Paramalat Grocery Showcase project and subsequently died, Mr. Ackerman states that this client was a last-minute replacement. Presumably, Mr. Ackerman is arguing that, in these circumstances, he did not have an opportunity to get the client’s information.
62. With respect to parking and toll charges, Mr. Ackerman argues that the Director failed to consider them as “L2 staff expenses” for attending events and is “part of ‘all-in’ invoicing”.

63. Mr. Ackerman also submits that the delegate failed to observe the principles of natural justice by failing to provide the “investigation evidence” that informed the Determination. He contends L2 only received the original Complaints but was not provided with “correspondence and records of discussions with other parties”. Therefore, he contends that L2 was not in a position to properly respond to specifics the delegate relied upon in making the Determination.
64. Mr. Ackerman also contends that the Director claims that L2 did not comply with the Director’s requests for information but, had the Director provided L2 all materials, L2 “would have been in a position to properly address same”.
65. Lastly, Mr. Ackerman submits that the Director failed to fully consider “the intent of legislation to protect and best serve employees”. He contends that if the intent of the legislation is “to see employees are properly paid” the Director is failing those who did not formally lodge complaints against L2 by including them in the Determination.
66. He further submits that the Director is also failing “the [C]omplainants by not giving them an option for L2 to be in a position to pay them”. He states the Director is aware of L2’s financial position and “L2 may well face bankruptcy should collection action commence”. If L2 becomes bankrupt, he states it is unlikely that any of the parties will receive monies and, if they do, it will be a very small amount.

ANALYSIS

67. Section 112 of the *Act* sets out the grounds upon which an individual may appeal a determination. It provides:

Appeal of director’s determination

- 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 being made.

68. L2 has appealed the Determination on the basis of the first two grounds of appeal, namely, the “error of law” and the “natural justice” grounds of appeal. I propose to deal with each ground under a separate heading below.

(i) *Error of Law*

69. In *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275 (BCCA), the British Columbia Court of Appeal described error of law to include the following:
- 1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment Act*];
 - 2. a misapplication of an applicable principle of general law;
 - 3. acting without any evidence;

4. acting on a view of the facts which could not reasonably be entertained; and
5. adopting a method of assessment which is wrong in principle.

70. In his submissions under the error of law ground of appeal, Mr. Ackerman argues, among other things, that the Director erred in the Determination by “not allowing wages paid in advance to certain individuals as wage payment”. I do not share Mr. Ackerman’s view that the Director’s decision not to offset or deduct from wages owed to some of the Complainants certain advance payments L2 made to them previously constitutes an error of law as defined in *Gemex, supra*. On the contrary, I find the delegate’s decision is supported in law. I agree with the delegate that section 38.1(1) of the *Regulation* specifically describes the fees that a talent agency is permitted to charge to its clients. More specifically, sub-section 1(a) defines the maximum commission that can be charged as 15% of the wages owing to the performer. Sub-section 1(b) requires the net income of the client, after the 15% commission is deducted, to meet or exceed the applicable minimum wage plus vacation pay. Sub-section 1(c) allows a talent agency to charge a photograph fee that should not exceed \$25.00 per year. Lastly, sub-section 1(d) provides that only fees described in parts (a) and (c) may be charged by a talent agency. Therefore, I find the Director in this instance to have correctly interpreted and applied the applicable law in refusing to permit any other deductions –such as advance pay, mileage and toll charges- to be made from the wages owed to the Complainants by L2.
71. In addition, I also find very instructive section 21(1) of the *Act* which provides “except as permitted or required by this Act or any other enactment of British Columbia..., an employer must not, directly or indirectly...deduct...all or part of an employee’s wages for any purpose”. In my view, the latter provision would also apply to prevent L2 from deducting from wages owed to the Complainants any pay advances, mileage and toll fees previously by L2 to some of the Complainants. In these circumstances, I do not find that the delegate erred in law in concluding that the advances in question could not be deducted from the wages owing to the Complainants
72. Also, under the error of law ground of appeal, Mr. Ackerman argues any booking fees on each production paid by production companies to L2 should not be counted as part of the clients’ wage rate. As an example, he notes that in the case of the Nivea Canada Promotion, Convex e2 paid L2 the rate of \$14.99 per hour but this included a \$2.75 booking fee, plus \$0.20 of taxes thereon. Therefore, the whole \$14.99 per hour rate is not the Complainants’ wage rate in this production.
73. While I agree that booking fees are not part of a performer’s income and therefore not subject to the requirements of the *Act*, the delegate in this case relied on the invoices of L2 he received from Convex e2 and Fluid Creative for three (3) of the total four (4) events L2 sent some of the Complainants to work. These invoices of L2 did not distinguish or separately list or show any agency or booking fees from the total wage rate paid by the production companies. Therefore, I find it was open, on the facts, for the delegate to conclude that the rate of pay for each client was billed as indicated on the invoices of L2, and not as Mr. Ackerman contends. In the circumstances, I do not find the delegate to have acted on a view of facts that could not reasonably be entertained. To the contrary, I find that the delegate’s conclusion to be amply supported in evidence and persuasive.
74. I also note that, under the error of law ground of appeal, Mr. Ackerman criticizes or disputes the delegate’s reliance on section 76(2) of the *Act* to investigate and subsequently award in the Determination amounts L2 owed to those clients of L2 he refers to as “non-complainants”. More particularly, these are the seven (7) clients who worked on the four (4) productions but did not lodge formal complaints for any wages owed to them by L2.

75. Mr. Ackerman states that the delegate, by including these “non-complainants” in his investigation and awarding them wages in the Determination, has acted inconsistently with the intent of the *Act* and effectively taken away from these individuals “on option to wait for L2 to be in a position to pay them”. He also states that if a bankruptcy occurs, it is not likely that any of the parties will receive their monies.
76. I do not find Mr. Ackerman’s submissions here meritorious. I find that the delegate correctly interpreted the Director’s authority under section 76(2) of the *Act*, and acted consistently with the intentions and purposes of the *Act*. More particularly, section 76(2) of the *Act* permits the Director to conduct an investigation to ensure compliance with the *Act* and the *Regulation*, whether or not the Director receives a complaint. In this case, the delegate received information from Mr. Ackerman regarding a number of clients who were not paid their wages by L2 and, based on this information the delegate exercised his authority under section 76(2) to take the necessary actions to ensure L2’s compliance with the *Act*. Neither the financial status of L2, or the possibility of L2 going into bankruptcy, or the desire of one of more clients to give the latter an opportunity to return to better health are material considerations in the Director’s exercise of jurisdiction under section 76(2) of the *Act*. In the result, I do not find the delegate misapplied or misinterpreted his authority under the said section of the *Act*, nor did he act inconsistently with the intent of the *Act*. To the contrary, his actions accord with one or more purposes of the *Act* set out in section 2 and particularly section 2(a), namely, “to ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment”.

(ii) Natural Justice

77. As indicated previously, L2 has also invoked the natural justice ground of appeal.
78. Natural justice is an administrative law concept referring to procedural rights that ensure that all parties are provided an opportunity to learn the case against them; afforded the opportunity to present their case and challenge the case of the opposing party; and the right to be heard by an independent decision-maker (see *Re: 607730 BC Ltd. operating as English Inn & Resort*, BC EST # D055/05).
79. The burden of proof is on the appellant, L2, to show that the Director breached the principles of natural justice in making the Determination.
80. Having said this, Mr. Ackerman, under this ground, argues that the delegate failed to provide the “investigation evidence” upon which the Determination is based. He contends that L2 only had access to the original complaints but not any “correspondence and records of any discussion with other parties” contained in the Director’s Record. I note in his earlier submissions challenging the completeness of the Record, Mr. Ackerman more particularly identifies the “investigation evidence” he is speaking of is the following pages of the Director’s Record: 1 – 15, 24, 33 – 47, 50 – 53, 55 – 83 and 97. As a result of this failure of the delegate, Mr. Ackerman argues that L2 was not in a position to properly respond to the specifics the delegate relied upon in making the Determination.
81. Having said this, I note the Tribunal has said in previous cases that the Director and his delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the *Act*. Therefore, they must not only act in an unbiased and neutral fashion, but also provide procedural fairness to the parties involved. This includes, *inter alia*, an opportunity to the parties to know the case against them and to respond to the evidence and arguments presented by an adverse party (see *BWI Business World Incorporated*, BC EST # D050/96).

82. In this case, L2 effectively submits that it did not know the full evidence it had to meet, or the complete case against it because the delegate did not provide L2 with the earlier enumerated documents contained in the Record before the Determination was made. However, having reviewed the Record, I do not find any merit in L2's submissions. More particularly, I note that on April 11, 2014, the delegate sent his preliminary-findings letter to L2 containing, *inter alia*, all of the evidence the delegate had obtained during the investigation, including the delegate's preliminary conclusions; supporting evidence from Convex e2 and Fluid Creative; and L2's invoices. In the same letter, the delegate provided L2 an opportunity to respond to the preliminary findings in writing with any additional supporting evidence or records by April 28, 2014. The preliminary-findings letter was sent by regular, and registered, mail to L2's registered and records office address, as well as to Mr. Ackerman's address provided in the BC Online corporate search of L2. Mr. Ackerman appears to have received the said letter and attachments as he acknowledged receipt of the preliminary-findings letter on April 24, 2014, in his May 11, 2014, letter responding to the preliminary findings. In the circumstances, I find it rather suspect that Mr. Ackerman says he did not receive the "investigation evidence" or that he only received the original complaints.
83. With respect to the earlier enumerated pages in the Record that Mr. Ackerman claims L2 was not provided, I do not find that any of these documents were required to be disclosed to L2 nor that their lack of disclosure constituted denial of natural justice to L2.
84. More particularly, in the case of documents enumerated 1 – 15 in the Record,, these are online searches the delegate conducted of L2 on the BC Online Corporate Registry website and the website of the Superintendent of Bankruptcy Canada. The searches are internal documents to the Branch process and not required to be disclosed to L2 nor relevant for L2 to properly respond to the Complaints.
85. With respect to page 24 of the Record, this document is the registered mail trace sheet used to confirm delivery of registered mail sent out by the delegate, and not material to the findings of the delegate in the Determination or necessary for L2 to be able to properly respond to the Complaints.
86. The documents contained at pages 33 – 47 in the Record were disclosed to L2 as enclosures in the delegate's preliminary findings letter of April 11, 2014, to L2. More particularly, they are invoices of L2 and supporting evidence from Convex e2 and Fluid Creative. As indicated previously, Mr. Ackerman confirmed receipt of this letter and all enclosures on April 26, 2014, in his letter of May 11, 2014.
87. Pages 50 – 53 of the Record contain the registered mail trace sheet used by the Branch to confirm delivery of registered mail, and are not material to the findings made in the Determination or necessary for L2 to properly respond the Complaints.
88. Pages 55 – 63 of the Record include an email delivery receipt to L2 and correspondence from the Director to Convex Systems Ltd. and Fluid Creative to obtain relevant evidence for the investigation. The correspondence is neither material to the findings made in the Determination nor necessary for L2 to properly respond the Complaints
89. The documents contained in pages 68 – 83 of the Record contain evidence that was received from Convex Systems and Fluid Creative, and disclosed to L2 as enclosures in the delegate's April 11, 2014, preliminary-findings letter sent to L2 and to Mr. Ackerman.
90. Page 97 of the Record contains a document of hours worked that was included with the Complaint form filed on October 25, 2013, by one (1) of the Complainants and disclosed to L2 as an enclosure to the delegate's preliminary-findings letter of April 11, 2014.

91. In summary, I do not find that there is any basis for L2 or Mr. Ackerman to claim a failure on the part of the delegate to observe the principles of natural justice in this case, as all material “investigation evidence” upon which the Determination is based was produced to L2 in the investigation of the Complaints and most certainly, in advance of the Determination. Any shortcomings of L2 in not being able to respond to any evidence in the investigation cannot be attributed to anyone but L2.
92. Finally, with respect to the administrative penalty levied against L2 for failure to provide contact information for a client who worked on the Convex e2’s Paramalat Grocery Showcase project and subsequently died, I find Mr. Ackerman’s submission that the client was a last-minute replacement unpersuasive and does not mitigate or reduce L2’s obligation under section 38.1(j) of the *Regulation* to keep records of the name and address of its clients. The administrative penalty levied in respect of this contravention stands.
93. I also find that the administrative penalties levied against L2 for contraventions of sections 38.1(e) and 46(1) of the *Regulation* are amply supported in evidence, and I find no basis to disturb those penalties.
94. Pursuant to section 114(1)(f) of the *Act*, I find that L2’s appeal has no reasonable prospect of succeeding, and I dismiss it.

ORDER

95. Pursuant to section 115 of the *Act*, I order the Determination, dated September 22, 2014, to be confirmed in the amount of \$6,904.07, together with whatever further interest has accrued under section 88 of the *Act* since the date of issuance.

Shafik Bhalloo
Member
Employment Standards Tribunal