

An appeal

- by -

Macenna Business Services Corp. carrying on business as  
Macenna Staffing Services  
("Macenna")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2014A/51

**DATE OF DECISION:** June 4, 2014

## DECISION

### SUBMISSIONS

Leanne McArthur

on behalf of Macenna Business Services Corp. carrying on business as Macenna Staffing Services

### INTRODUCTION

1. Macenna Business Services Corp. carrying on business as Macenna Staffing Services (“Macenna”) appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “delegate”) on April 17, 2014, pursuant to which Macenna was assessed a \$500 monetary penalty based on its contravention of section 12 of the *Employment Standards Act* (the “*Act*”). The delegate determined that Macenna was operating an employment agency without being licensed under the *Act* to do so.
2. Macenna appeals the Determination on the ground that the delegate failed to observe the principles of natural justice in making the Determination (see subsection 112(1)(b) of the *Act*). At this juncture, I am adjudicating this appeal based solely on the written submissions filed by Macenna. I have reviewed Macenna’s submissions as well as the subsection 112(5) record that was before the delegate.

### FINDINGS AND ANALYSIS

3. The following factual summary is taken from the delegate’s “Reasons for the Determination” that were issued concurrently with the Determination and my review of the record. Macenna operates, and has for many years, an employment agency under the business name “Macenna Staffing Services” in Fort St. John, British Columbia. Macenna was originally licensed under section 12 of the *Act* on February 1, 2006, and successively obtained licences annually thereafter. The licence giving rise the instant penalty was issued on April 10, 2013, and expired one year later on April 10, 2014. Macenna completed an application to renew the licence on April 9, 2014, but this application was not filed with the Employment Standards Branch until April 14, 2014.
4. The delegate spoke with Macenna’s principal, Ms. Leanne McArthur, on April 15, 2014, inquiring about the failure to file a timely renewal application and was advised that Ms. McArthur inadvertently failed to mail the application in time (the renewal application, addressed to the Employment Standards Branch’s Prince George office, was actually mailed on April 10, 2014). In her appeal documents, Ms. McArthur, on behalf of Macenna, states: “It was never my intention to operate without a licence and as soon as I realized the licence was expiring I promptly submitted the required payment and documents”.
5. Ms. McArthur raised a few other points in her appeal documents including a query regarding why a reminder notice was never sent to her; her frustration with being penalized \$500 for failing to file a timely renewal (and it was only late by a few days) of a licence that costs \$100; and that she considers the penalty to be a mere “tax grab” without legitimate justification. Finally, Ms. McArthur seeks a \$507 refund (the penalty plus a \$7 money order fee she paid), in the form of a “money order” or a “registered cheque” to be paid within 5 days and also seeks “a change in the Agency’s policies and procedures for doing business”. I note that none of Ms. McArthur’s assertions even remotely speak to the basis for her appeal, namely, that the delegate failed to observe the principles of natural justice. Indeed, Ms. McArthur’s evidence clearly shows that natural justice principles were followed – she was contacted and given an opportunity to explain her situation before the Determination was issued. What more could have been demanded of the delegate? In my view, nothing.

6. While I can, to a degree, empathize with the appellant's frustrations, the simple fact is that Ms. McArthur is solely the author of her present difficulty. When she applied for a licence she acknowledged her understanding that a person must be licenced under the *Act* at all times when operating an employment agency. The Employment Standards Branch is not subject to any legal requirement to notify parties that their current licence is about to expire (and the licence itself contains a form of notice to the licensee in the sense that it is expressly only valid for one year) – surely, parties can (and should) diarize the expiration date so that they can make a timely renewal application. Ms. McArthur was obviously aware of the fact that her licence was about to expire but simply failed to deal with the matter promptly. The \$500 penalty is not a matter of discretion; the \$500 penalty is fixed by section 29 of the *Employment Standards Regulation* and if Ms. McArthur wishes to lodge a complaint about this aspect of government policy, her complaint lies with the provincial government, not the Employment Standards Branch which must enforce the law as it is written. I also note, as stated previously, that her appeal does not raise even a *prima facie* assertion regarding her actual ground of appeal – that the delegate failed to observe the principles of natural justice.
7. The section 98 penalty is a civil, not a criminal, sanction and accordingly the criminal concept of *mens rea* (i.e., a person must have intended to commit the crime in order to be convicted) plays no role whatsoever. Further, this penalty is not a strict liability regulatory offence for which the “due diligence” defence is available and, even if that were the case, Ms. McArthur's own words belie any suggestion that she acted with due diligence.
8. This appeal has no prospect of success; indeed, it is a frivolous appeal (I do not wish to characterize Ms. McArthur's actions in appealing as frivolous – I am sure she believes she is acting in good faith in appealing the Determination, but, at least in a legal sense, this is a frivolous appeal). I see no need to seek submissions from the Director and, accordingly, I propose to summarily dismiss this appeal.

## **ORDER**

9. Pursuant to subsections 114(1)(c) and (f) of the *Act*, this appeal is dismissed. Pursuant to subsection 115(1)(a) of the *Act*, the Determination is confirmed as issued in the amount of \$500.

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