

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act*, R.S.B.C. 1996, c. 113

-by-

Lumas Enterprises Ltd.

(“Lumas” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

<b>ADJUDICATOR:</b>	Kenneth Wm. Thornicroft
<b>FILE No.:</b>	1999/155
<b>DATE OF HEARING:</b>	August 9th, 1999
<b>DATE OF DECISION:</b>	August 18th, 1999

## DECISION

### APPEARANCES

Abtar Sumal for Lumas Enterprises Ltd.

James W. Walton &  
Sharn Kaila for the Director of Employment Standards

### OVERVIEW

Lumas Enterprises Ltd. (“Lumas” or the “employer”) appeals, pursuant to section 112 of the *Employment Standards Act* (the “Act”), a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on March 8th, 1999 under file number 78041 (the “Determination”); by way of this Determination, Lumas’ farm labour contractor’s licence was cancelled although I am advised by the delegate that a new licence has now been issued under certain terms and conditions. Of course, the employer’s appeal is predicated on the assertion that its previous licence should not have been cancelled. I might also note that the Determination was varied by the Director’s delegate, pursuant to section 86 of the *Act*, on March 11th, 1999 to correct a few minor typographical or clerical errors.

The employer’s appeal was heard at the Tribunal’s offices in Vancouver on August 9th, 1999 at which time Mr. Abtar Sumal, a Lumas officer and director, appeared as the sole witness for the employer; Messrs. James Walton, I.R.O. and Sharn Kaila, E.S.O., appeared on behalf of the Director

### FACTS AND ANALYSIS

On February 16th, 1999, the Director issued a Farm Labour Contractor Licence (“FLCL”) to Lumas despite its extensive history of contraventions of the *Act* and *Regulation*--some 8 separate contraventions, set out in at least 4 separate determinations issued during 1997 and 1998, are itemized in the Determination.

The triggering events for the cancellation of Lumas’ FLCL relate to its most recent contraventions of the *Act*--contraventions particularized in two penalty determinations issued on March 8th, 1999. In B.C.E.S.T. Decision No. D343/99 (issued on August 13th, 1999), I dismissed the two appeals filed by the employer relating to its most recent contraventions of the *Act*, namely, its failure to pay statutory holiday pay to its employees and to pay wages in a timely fashion in accordance with section 17(1) of the *Act*. Those two appeals were also heard on August 9th, 1999. Thus, not only is there an uncontradicted record of several contraventions dating from August 1997 (detailed in the Determination), but the employer’s most recent contraventions have now been confirmed by the Tribunal.

The licensing of farm labour contractors is governed by Part 2 of the *Employment Standards Regulation*. FLCLs are issued by the Director pursuant to Section 5(2) of the *Regulation* upon receipt of a written application form, completion of an oral and/or written examination testing the applicant's knowledge of the *Act* and *Regulation*, the posting of a performance bond and the payment of a licence fee. All FLCLs expire on December 31st of the year in which they are issued and cannot be transferred or otherwise assigned to another party [see subsections 9(a) and (b) of the *Regulation*].

It should be noted that both the issuance and the cancellation of an FLCL is a discretionary matter--section 5(2) states that the Director "may" (not "must" or "shall") issue a licence even if the applicant has otherwise met the four licensing criteria; section 7 of the *Regulation* states that the Director "may cancel or suspend" and FLCL. The use of the word "may" connotes a permissive or discretionary power--see section 7 of the *Interpretation Act*. Nevertheless, the Director cannot exercise her discretion capriciously; whether issuing or cancelling an FLCL, the Director is required to address the criteria set out in sections 5 and 7, respectively, of the *Regulation*.

Pursuant to section 7 of the *Regulation*, the Director may cancel or suspend a FLCL if the licensee made "a false or misleading statement" in the original licence application, if the licensee breaches "a condition of the licence", or if "the farm labour contractor contravenes the *Act* or this regulation". It is this latter provision that is relevant here.

Given that the employer's most recent contraventions of the *Act--i.e.*, the basis for cancellation of Lumas' FLCL--have now been confirmed, and in the absence of any evidence suggesting that the Director was acting in bad faith in cancelling the licence (see *Ludhiana Contractors Ltd.*, B.C.E.S.T. Decision No. D361/98), I find that this appeal cannot succeed.

## **ORDER**

Pursuant to section 115 of the *Act*, I hereby confirm the Determination cancelling Lumas' farm labour contractor's licence.

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