

An appeal

- by -

Efren (Sonny) R. Serion and Josefina Serion operating as Terrens Nannies  
(the "Agent")

- 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

**ADJUDICATOR:** Ib S. Petersen

**FILE No.:** 2001/208

**DATE OF HEARING:** June 28, 2001

**DATE OF DECISION:** July 12, 2001

## DECISION

### APPEARANCES:

Mr. Efre Serion (“Serion”)	on behalf of himself and Josefina Serion operating as Terrens Nannies (the “Agent” or the “Serions”)
Ms. Wernita Santos (“Santos”)	on behalf of herself
Ms. Sharon Charboneau	on behalf of the Director

### OVERVIEW

This is an appeal by the Agent pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director’s delegate issued on February 15, 2001. In the Determination, the Director’s delegate found that the Serions contravened Sections 10 and 12 of the Act. The delegate found that two written agreements, both dated July 5, 1998, between Santos and the Serions, pursuant to which Santos paid the Serions US \$1,500 (CDN \$2,232.15) and US \$1,000 (CDN \$1,488.10) contravened Sections 10 and 12. The Determination ordered the Serions to repay Santos the amount paid, \$3,916.79 including interest.

### ISSUES TO BE DECIDED

The Agent appeals the Determination. A hearing was held in the Tribunal’s offices on June 28, 2001. At the hearing the Agent advanced two grounds of appeal--appropriately, the Agent did not advance the ground that the delegate was biased. The issues to be decided in this appeal are (1) whether Santos was an agent of her sister, the person seeking employment, as found by the delegate, and (2) whether the complaint was filed outside the time limit set out in Section 74. The Serions maintained that Santos’ complaint was filed outside the 6 months’ provided for in Section 74(4).

### FACTS

The material facts were essentially not in dispute and the issues before me were mostly of a legal nature, *i.e.*, the proper interpretation of Sections 10, 12 and 74.

From the evidence presented at the hearing, I find as follows:

1. On or about July 5, 1998, Santos and the Agent entered into two agreements. One agreement provided that Santos pay the Serions CDN \$2,232.15 “as our cost of locating an employer for [her sister]” and another agreement for CDN \$1,488.10 to get her sister into Canada legally, “to make sure [her sister] passes the interview and gets a visa.”

2. The Serions operated Terrens Nannies which, according to the Determination, was a licensed employment agency under the Act in 1987-88, 1990-91, 1997-December 1999.
3. Santos acted on her sister's behalf and, she explained, Serion knew this.
4. Santos paid the amounts required under the agreements on or about July 5, 1998.
5. Between July 5, 1998 and May 23, 2000, Santos had numerous conversations with Serion regarding prospective employers for her sister. It is fair to say that she was not happy with the services she received and, ultimately, in May sought legal advice with respect to the agreements with the Serions.
6. The legal advice she received caused her to file a complaint with the Branch on or about July 5, 2000.
7. The Serions were looking for employers for Santos' sisters, at least until May 23, 2000, when the last conversation with respect to obtaining employment for Santos' sister took place.
8. It is, as well, clear that Serion lied to the delegate, as mentioned in the Determination, when he denied receiving money from Santos.

## ANALYSIS

Section 10, 12 and 74 of the *Act* provide (in part):

10. (1) A person must not request, charge or receive, directly or indirectly, from a person seeking employment a payment for
  - (a) employing or obtaining employment for the person seeking employment, or
  - (b) providing information about employers seeking employees.
- ...
- (3) A payment received by a person in contravention of this section is deemed to be wages owing and this Act applies to the recovery of the payment.
12. (1) A person must not operate an employment agency or a talent agency unless the person is licensed under this Act.
74. (4) A complaint that a person has contravened a requirement of section 8, 10 or 11 must be delivered under subsection (2) within 6 months after the date of the contravention.

On the facts of this case, there is little doubt in my mind that the Serions contravened Section 12 of the *Act*. The Act defines an “employment agency” to “mean a person who, for a fee, recruits or offers to recruit employees for employers.” In my view, that is precisely what the Serions did for Santos--and I accept her evidence that she was acting on behalf of her sister--and by Serion’s own admission, what he did for others seeking employment. At least in Santos’ case, he attempted to find prospective employers for her sister well into 2000, after his license had expired. In the result, I agree with the delegate’s conclusions that the Serions contravened Section 12.

With respect to the contravention of Section 10, I agree with the delegate that the payment received from Santos, at least with respect to the agreement to obtain employment for her, constitute an “indirect” payment from a person seeking employment. I agree that the payment would constitute a contravention of Section 10(1).

However, that does not end the matter. As noted above, the agreement to obtain employment for Santos’ sister was entered into in July 1998. That was also the time payment was made. The complaint was not filed until July 2000, *i.e.*, about two years to the date of the agreement(s) and the payment(s). The delegate urges me to adopt a “broad and liberal interpretation of the limitation period provided for in Section 74. The delegate’s interpretation is succinctly stated in the Determination, at page 2:

“...It is ... the Director’s position that the initial contravention of Section 10 occurred on July 5, 1998, and that Section 10 was contravened each and every time Mr. Serion stated to Ms. Santos that he was continuing his attempts to locate employment for her sister. The last conversation occurred on May 23, 2000, therefore the complaint filed July 5, 2000, was within 6 months of the last contravention of Section 10, and meets the requirements of Section 74(4).”

She argues that this interpretation is necessary to protect vulnerable groups, and she pointed to domestics who may have limited English, limited understanding of the legal process etc. In short, she points to the remedial nature of the legislation.

While I agree that the delegate’s interpretation has a certain intuitive appeal, I am unable to agree with her. I prefer the interpretation urged upon me by the appellant, Serion. He argues that the contravention occurred when the payment was made, *i.e.*, on July 5, 1998.

On a plain reading of Section 10(1), the contravention contemplated is the payment of money to a person, “directly or indirectly” for “employing or obtaining employment for the person seeking employment,” or “providing information about employers seeking employees.” In the instant case, Serion received money from Santos for the purpose of “obtaining employment” for her sister or “providing information about employers seeking employees.” The Serions contravened Section 10(1) and the payment received by them, therefore, would have constituted “wages” recoverable under the *Act*. The problem, in my view, is that the complaint was filed outside the time limit provided for in Section 74(4), namely within 6 months of the “contravention.” In

short, in my view, the delegate erred in her interpretation of the limitation period and I set aside the order for payment of \$3,916.79.

Aside from the foregoing, I am, as well, concerned that the delegate, in her award, failed to distinguish between the two agreements--one, which on its face appeared to be for obtaining employment, and another, which on its face appeared to be for immigration services--nevertheless ordered the Serions to repay the amounts paid under both agreements. If I am wrong with respect to the limitation period under Section 74, I would set aside the Determination insofar as it purports to order re-payment for immigration services, the agreement in respect of which Santos paid CDN \$1,488.10.

In this case, I conclude that the Determination should be set aside in part.

### **ORDER**

Pursuant to Section 115 of the Act, I order that the Determination in this matter, dated February 15, 2001 be confirmed with respect to the contravention of Sections 10 and 12. I cancel the order that the Serions pay Santos \$3,916.79.

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**Ib S. Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**