

An Application for Reconsideration

- by -

Armand Norman  
(the “Applicant”)

- of a Decision issued by -

The Employment Standards Tribunal  
(the “Tribunal”)

pursuant to section 116 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**PANEL:** Jacquie de Aguayo

**FILE No.:** 2019/154

**DATE OF DECISION:** October 28, 2019

## DECISION

### SUBMISSIONS

Armand Norman on her own behalf

### INTRODUCTION

1. The Applicant applies for reconsideration under section 116 of the *Employment Standards Act* (the “ESA”) of Tribunal Decision Number 2019 BCEST 92 (the “Appeal Decision”) rendered by Member Carol L. Roberts (the “Member”) on August 28, 2019.
2. The Appeal Decision dismisses the Applicant’s appeal of a determination (the “Determination”) made by a delegate (the “Delegate”) of the Director of Employment Standards dated June 12, 2019. As is set out in the Appeal Decision, the Determination dismisses complaints filed by the Applicant alleging, among other things, that the Greater Victoria Volunteer Society (“Volunteer Victoria”) contravened the *ESA* by failing to pay wages from employment (para. 2).

### BACKGROUND

3. Volunteer Victoria is a registered charity whose stated purpose is to encourage voluntary citizen participation within the charitable and government administered/assisted social welfare community (para. 7). It maintained before the Delegate that the Applicant was not an employee but was a client who participated in a Volunteer Access Program run by Volunteer Victoria to support individuals on mental health or addictions journeys (para. 8).
4. Volunteer Victoria also provides accounting services for four programs operated by Mental Health and Substance Use Services, Vancouver Island Health Authority (“VIHA”) (the “Programs”). The Programs are managed and coordinated exclusively by VIHA (para. 9). The information before the Delegate was that under the services contract Volunteer Victoria received requisitions from VIHA to process stipend cheques to clients who participated in vocational training programs to prepare clients for employment in areas such as cleaning services (para. 9). Volunteer Victoria received requisitions from VIHA to issue 29 cheques to the Applicant in respect of the Programs (para. 9). The Delegate determined that the Applicant was not an employee of Volunteer Victoria and dismissed her complaints (paras. 10 – 11).
5. On appeal, the Applicant maintained that the Delegate erred in law, failed to observe the principles of natural justice, and that new evidence had become available that was not available at the time the Determine was made (paras. 3 – 4).
6. The Appeal Decision finds that the Applicant failed to identify any error of law. In any event, the Member went on to review the materials before the Delegate, concluding the Determination was rationally based on the evidence and that the Delegate “properly applied the relevant sections of the *ESA*” (para. 17).
7. The Appeal Decision also finds the Applicant was not denied procedural fairness by the Delegate. Specifically, the Appeal Decision notes the Delegate informed the Applicant of the preliminary finding that

she was not an employee of Volunteer Victoria, gave the Applicant the information received from Volunteer Victoria, and invited the Applicant to respond. The Applicant provided a response “disputing effectively all of Volunteer Victoria’s responses” (para. 19). The Member found the Applicant had every opportunity to advance her case and to respond to Volunteer Victoria’s position and dismissed this ground of appeal (para. 21).

8. With respect to new evidence, the Appeal Decision describes the documents submitted, such as residential tenancy documents, a 2003 Canadian Human Rights Tribunal Decision, family photos, and a Criminal Injury Claim application, among other things (para. 23). The Member found the information, even if it met the test for new evidence, would not have led the Delegate to a different conclusion on the material issue: whether she was an employee of Volunteer Victoria and, if so, whether she was entitled to wages (paras. 23 – 24). For these reasons, the Appeal Decision finds there is no reasonable prospect that the appeal will succeed and dismisses the application (para. 25).

## GROUNDS FOR RECONSIDERATION

9. The application for reconsideration is brief. The Applicant says the Appeal Decision errs by failing to apply the *ESA* to an employment relationship she alleges was forced upon her by Volunteer Victoria. As she did before the Delegate and the Member, the Applicant points to the cheques issued by Volunteer Victoria. The Applicant says the Determination should be changed so that she can be paid “the money owing for the wages and hours of involuntary unpaid work; damages, fees, costs and liability for each of the offensive incidents” she alleges are in breach of the *ESA*.
10. In coming to a decision, I note that whether or not to grant an application for reconsideration is discretionary and the Tribunal exercises its reconsideration power in limited circumstances: *Milan Holdings Inc. (Re)*, BC EST D313/98 (“*Milan Holdings*”). The Tribunal’s approach is to first assess whether an application for reconsideration raises an arguable case of sufficient merit. If it does not, the Tribunal will dismiss the application. If it does, the Tribunal will request submissions from the responding parties and then decide whether the Appeal Decision should be confirmed, varied or cancelled under section 116 of the *ESA*.
11. The reasons for this two-step approach are set out in *Milan Holdings* as follows (p. 7):

The primary factor weighing in favour of reconsideration is whether the applicant has raised questions of law, fact, principle or procedure which are so significant that they should be reviewed because of their importance to the parties and/or their implications for future cases. At this stage the panel is assessing the seriousness of the issues to the parties and/or the system in general. The reconsideration panel will also consider whether the applicant has made out an arguable case of sufficient merit to warrant the reconsideration. This analysis was summarized in previous Tribunal decisions by requiring an applicant for reconsideration to raise “a serious mistake in applying the law”: *Zoltan Kiss, supra*. As noted in previous decisions, “The parties to an appeal, having incurred the expense of preparing for and presenting their case, should not be deprived of the benefits of the Tribunal’s decision or order in the absence of some compelling reasons”: *Khalsa Diwan Society* (BCEST #D199/96, reconsideration of BCEST #D114/96).
12. Accordingly, I will first consider whether the Applicant has raised an arguable case of sufficient merit. In doing so, I have taken into account that the Applicant is self-represented and does not have legal training.

I have considered the grounds for reconsideration in a large and liberal manner and will give the Applicant the benefit of any doubt with respect to whether the application passes the first stage of the *Milan Holdings* test: *Triple S Transmission Inc.*, BC EST # D141/03, *Jordan Enterprises Limited*, BC EST # RD154/16 (Reconsideration of BC EST # D114/16).

13. In coming to a decision, I have had regard to the material question raised by the Applicant's initial complaint: whether Volunteer Victoria contravened the *ESA* by failing to pay her wages. This, in turn, required a determination as to whether she was an employee within the meaning of the *ESA*. The Delegate considered that issue, decided that the Applicant was not an employee of Volunteer Victoria, and dismissed the complaint.
14. I find the application for reconsideration repeats the grounds of appeal considered and rejected by the Member. For the reasons summarized, above, the Member was not persuaded that there was a reasonable prospect of success on appeal. On reconsideration, I am not persuaded that the Appeal Decision errs in confirming the Determination or in finding that it was rationally supported by the evidence and was consistent with the definition of employee in the *ESA*. Moreover, having considered the materials before me, I agree with the Member's conclusions.
15. In coming to this finding, I acknowledge the Applicant strongly disagrees with the Determination and the Appeal Decision. However, for the reasons set out, the Applicant has not raised an arguable case of sufficient merit to warrant reconsideration: *Milan Holdings*.
16. For the reasons given, the application for reconsideration is dismissed.

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**Jacquie de Aguayo**  
**Chair**  
**Employment Standards Tribunal**