

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Campbell, Edgar Inc.  
("CEI")

- of a Determination issued by -

The Director of Employment Standards

pursuant to section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**PANEL:** Carol L. Roberts

**FILE No.:** 2021/003

**DATE OF DECISION:** March 9, 2021

## DECISION

### SUBMISSIONS

Elaine Hay on behalf of Campbell, Edgar Inc.

### OVERVIEW

1. This is an appeal by Campbell, Edgar Inc. (“CEI”) pursuant to section 112 of the *Employment Standards Act* (the “ESA”), against a determination of the Director of Employment Standards (the “Director”) issued December 4, 2020 (the “Determination”).
2. CEI is a company incorporated in British Columbia. Elaine Hay (“Ms. Hay”) is its sole director.
3. CEI operates an employment agency as defined in section 12 of the *ESA*. CEI was issued a one-year agency licence on July 15, 2019. The licence expired July 14, 2020.
4. Following an investigation, the Director’s delegate determined that CEI contravened section 12 of the *ESA* by operating an employment agency without a valid licence. The Director determined this was the second contravention of the *ESA* and imposed a penalty in the amount of \$2,500, pursuant to section 98 of the *ESA*.
5. CEI appeals the Determination on the basis that the Director failed to observe the principles of natural justice in making the Determination.
6. These reasons are based on CEI’s written submissions, the section 112(5) “record” that was before the delegate at the time the Determination was made, and the Reasons for the Determination.

### ISSUE

7. Whether or not CEI has established any basis to interfere with the Director’s Determination.

### FACTS

8. On September 10, 2020, the Director’s delegate spoke with Ms. Hay to discuss details contained in CEI’s renewal application, which was dated August 28, 2020. During that discussion, Ms. Hay acknowledged that the renewal application had been submitted late due to an administrative oversight as well as some personal circumstances. Ms. Hay also confirmed to the delegate that CEI was in the business of recruiting employees for employers, for a fee.
9. The delegate found that CEI’s website remained active during the period in which CEI did not have a valid employment agency licence, contrary to the *ESA*. Ms. Hay informed the delegate that CEI had been largely closed due to the COVID-19 pandemic and that both of her secured recruitment jobs had been cancelled or put on hold.

10. The delegate determined that CEI was in contravention of the *ESA*. Because this was CEI's second contravention, the delegate imposed a \$2,500 administrative penalty pursuant to section 29(1)(b) of the *Employment Standards Regulation* (the "*Regulation*").

### **ARGUMENT**

11. CEI says that, like many other agencies in the business, it has been tremendously affected by the pandemic. Ms. Hay says that she is struggling to pay her bills and keep her business operational. Ms. Hay says that she was also experiencing stressful personal circumstances in the summer and fall of 2020 as a caregiver to an elderly relative facing serious health issues.
12. Ms. Hay does not dispute the Director's finding of a contravention, but seeks, in essence, a "reprieve" from the penalty assessment given CEI's financial circumstances.

### **ANALYSIS**

13. Section 114(1) of the *ESA* provides that at any time after an appeal is filed and without a hearing of any kind, the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:
- (a) the appeal is not within the jurisdiction of the tribunal;
  - (b) the appeal was not filed within the applicable time limit;
  - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
  - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
  - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
  - (f) there is no reasonable prospect the appeal will succeed;
  - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
  - (h) one or more of the requirements of section 112 (2) have not been met.
14. Section 112(1) of the *ESA* provides that a person may appeal a determination on the following grounds:
- the director erred in law;
  - the director failed to observe the principles of natural justice in making the determination;
  - evidence has become available that was not available at the time the determination was being made.
15. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with the decision. I am not persuaded that CEI has met that burden.
16. Natural justice is a procedural right, which ensures a party has a right to know the case against them and an opportunity to be heard, as well as the right to have the dispute decided by an unbiased decision maker. It is not a ground of appeal by which a party may seek out a remedy they consider to be "fair."

17. I am satisfied that CEI was made aware that the licence renewal was late and afforded an opportunity to respond to that information. I have no evidence, and there is no allegation, that the Director's delegate was biased against CEI.
18. Ms. Hay seeks, as I understand it, to have the penalty assessment waived on the basis that CEI's business has been severely affected by the Covid-19 pandemic as well as her extenuating personal circumstances. Neither of these explanations are, unfortunately, grounds for an appeal under section 112 of the *ESA*.
19. I am not able to find that the delegate erred in finding that CEI had contravened section 12 (1) of the *ESA*. That section provides that "a person must not operate an employment agency... unless the person is licensed under this Act." CEI does not dispute that it operated without a licence. The fact that CEI had little or no business due to the pandemic, while unfortunate, is of no consequence to this conclusion.
20. Once a contravention has been found, the Director has no discretion about whether or not to impose a monetary penalty under section 98 (1) of the *ESA*:
- In accordance with the regulations, a person in respect of whom the director makes a determination and imposes a requirement under section 79 is subject to a monetary penalty prescribed by the regulations.
21. Furthermore, the amount of the penalty is established by section 29 of the *Regulation*. Given that CEI had a prior contravention, the legislative scheme mandates a penalty in the amount of \$2,500 under section 29(1)(b).
22. The Tribunal has found that the "legislation does not recognize fairness considerations as providing exceptions to the mandatory administrative penalty regime." (*Acton Super-Save Gas Stations*, BC EST # D067/04)
23. The appeal is dismissed.

## **ORDER**

24. Pursuant to section 115 of the *ESA*, I order that the December 4, 2020 Determination be confirmed in the amount of \$2,500 together with whatever further interest that has accrued under section 88 of the *ESA* since the date of issuance.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**