

Citation: Chemistry Consulting Group (2019) Inc. (Re)  
2023 BCEST 34

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Chemistry Consulting Group (2019) Inc.

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** Richard Grounds

**FILE No.:** 2023/020

**DATE OF DECISION:** May 24, 2023

## DECISION

### SUBMISSIONS

Kim Osborne

on behalf of Chemistry Consulting Group (2019) Inc.

### OVERVIEW

1. This is an appeal by Chemistry Consulting Group (2019) Inc. (the “Appellant”) of a determination issued by Jean Linden, a delegate (the “Delegate”) of the Director of Employment Standards (the “Director”), dated February 16, 2023 (the “Determination”). The Appellant appeals the Determination pursuant to section 112(1) of the *Employment Standards Act* (the “ESA”).
2. In the Determination, the Delegate concluded that the Appellant contravened section 12 of the *ESA* by operating an employment agency without a valid licence and applied a mandatory \$500 penalty.
3. The Appellant submits that the Director failed to observe the principles of natural justice in making the Determination and requests that the fine be reversed.
4. I have considered the Determination, the reasons for the Determination, the Appellant’s appeal submission and the *ESA* section 112(5) record (the “record”). Submissions were not requested from the Appellant or the Director.
5. For the following reasons, the Appellant’s request to reverse the fine is denied and the Determination is confirmed.

### ISSUES

6. The issue to be decided in this appeal is whether the Director failed to observe the principles of natural justice in making the determination.

### THE INVESTIGATION AND DETERMINATION

7. The Appellant operates an employment agency which requires a valid licence. The Appellant was issued an employment agency licence with an effective date of November 13, 2021. The licence expired on November 12, 2022, and the Appellant did not apply for renewal of the licence until December 15, 2022.
8. In January 2023, an investigation was conducted to determine whether the Appellant contravened the *ESA* by operating an employment agency without a valid licence.
9. The Delegate reviewed the Branch’s database and found that the Appellant’s licence had expired on November 12, 2022. The Delegate reviewed the Appellant’s website and spoke to the Appellant’s owner and director, Kim Osborne. Ms. Osborne confirmed that the Appellant continued to conduct business after the expiry of the licence. Ms. Osborne advised the Delegate that she was unaware that the licence renewal

had been submitted late because this was done by the Appellant's administration and they had not received any notice that the licence was going to expire.

10. Ms. Osborne advised the Delegate that a previous delegate had contacted them to remind them of the licence renewal date the previous year. The Delegate informed Ms. Osborne that it was not typical practice for the Branch to send renewal reminders for licence expiries and this information is usually provided in correspondence when the licence is issued. Ms. Osborne asked the Delegate to waive the penalty.
11. The Delegate concluded that the Appellant had operated an employment agency after November 12, 2022, without a current licence which amounted to contravention of section 12 of the *ESA*. The Delegate applied a mandatory \$500 penalty. The Delegate found the contravention date to be January 17, 2023, being the last day the Appellant operated without a valid licence.

## **ARGUMENTS**

12. Ms. Osborne, on behalf of the Appellant, submitted that in past years a representative from the Employment Standards Branch reached out to her with a "courtesy call" to remind her that the licence renewal time was approaching and to submit payment. This year, she was contacted after the licence had expired and told that she would be issued a fine. Ms. Osborne submitted that when they realized their licence required renewal they sent in the application and the payment immediately.
13. Ms. Osborne confirmed she did ask the Delegate to waive the penalty due to the Appellant's good standing for many years, but not because the Appellant was in a difficult financial position as the Delegate wrote in the Determination. Ms. Osborne also submitted that the Appellant submitted its licence renewal application on December 12, 2022, and the licence was issued immediately but the Employment Standards Branch used an incorrect address and an amended licence was not received until January 17, 2023.
14. The Appellant appeals the Determination on the basis that the Director failed to observe the principles of natural justice in making the Determination. The Appellant requests that the \$500 be reversed because of its prior good standing, its stellar operation and that it had been misled due to having previously received reminders to renew its licence before it expired.

## **ANALYSIS**

15. The Appellant does not dispute that it did not renew its employment agency licence in time or that it operated its employment agency for a period of time when it did not have a valid licence. Instead, it disputes that a fine should have been levied against it because it had previously always renewed its licence on time, with assistance from a different delegate who would give it a courtesy reminder to renew its licence before the expiry date.
16. The Delegate informed the Appellant that it was not a typical practice to provide a reminder and that it was the Appellant's responsibility to renew its licence before the expiry date. This is consistent with the letter that accompanied the Applicant's licence (effective November 13, 2021 to November 12, 2022) that

states “The Employment Standards Branch does not send out renewal notices” and to “Please ensure that you submit your application to have your licence renewed at least 30 days before your licence expires”.

17. It was the Appellant’s responsibility to ensure its licence was renewed before it expired. Although the Appellant may have previously received a courtesy reminder to renew its licence before it expired (which assertion does not appear to have been investigated further by the Delegate), this does not relieve the Appellant of the requirement to “not operate an employment agency or a talent agency unless the person is licensed under this Act “ as mandated in section 12(1) of the *ESA*.
18. The principles of natural justice relate to the fairness of the process and ensure that the parties know the case against them, are given the opportunity to respond to the case against them and have the right to have their case heard by an impartial decision maker. The principles of natural justice include protection from proceedings or decision makers that are biased or where there is a reasonable apprehension of bias.
19. The fact that the Delegate did not exercise discretion to not enforce the provisions of the *ESA* does not raise an issue of procedural fairness.<sup>1</sup>
20. The Appellant’s submission about the characterization of it being in a difficult financial position also does not raise an issue of procedural fairness.
21. There appears to be a lack of clarity about the various dates involved because the Appellant submits on appeal that it applied for a licence renewal on December 12, 2022, but the application was not submitted until December 15, 2022 (Director’s Record starting at page 1). The licence was originally approved effective December 13, 2022 (Director’s Record at page 29) but with the wrong address. The Appellant brought this to the attention of the Delegate and another licence was then approved effective January 18, 2023 (Director’s Record at page 30) with the correct address.
22. Upon being advised of the incorrect address by Ms. Osborne, the Delegate stated that the (incorrect) address had been “pulled from the information that was given to us with your application for Employment Agency” (page 20 of the Director’s Record). The Appellant’s December 15, 2022 application for renewal of its licence included the Appellant’s correct address. Accordingly, the effective date of the Appellant’s licence should have been December 13, 2022, and not January 18, 2023.
23. The Delegate’s finding that the “contravention date” was January 17, 2023 is, therefore, incorrect and the contravention date should be December 12, 2022. This date is still well beyond the November 12, 2022 expiry date of the previous licence. Accordingly, this mistake on the part of the Delegate does not provide a basis to allow the appeal.
24. I am satisfied that the Delegate did not fail to observe the principles of natural justice in making the Determination.

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<sup>1</sup> There is a legal principle in the criminal law related to officially induced error but there are various requirements for such a defence to be available which are not present in this case, including, among others, that advice be given, that the legal consequences be considered, and that the advice be relied upon. See *R. v. Jorgenson* [1995] 4 S.C.R. 55 at paragraphs 28-35.

**ORDER**

25. The Appellant's appeal is dismissed, and the Determination is confirmed under section 115(1)(a) of the *ESA*.

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**Richard Grounds**  
**Member**  
**Employment Standards Tribunal**