

An appeal

- by -

Colleen Gillis carrying on business as Target Professionals  
(“Ms. Gillis”)

- 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 (as amended)

**TRIBUNAL MEMBER:** Shafik Bhalloo

**FILE No.:** 2010A/24

**DATE OF DECISION:** April 14, 2010

## DECISION

### SUBMISSIONS

Colleen Gillis	on her own behalf
Joy Archer	on behalf of the Director of Employment Standards

### OVERVIEW

1. This is an appeal pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) brought by Colleen Gillis carrying on business as Target Professionals (“Ms. Gillis”) of a Determination that was issued on December 11, 2009, by a delegate of the Director of Employment Standards (the “Director”). The Determination found that Ms. Gillis contravened section 12<sup>1</sup> of the *Act* by operating as an employment agency without a valid licence and imposed on Ms. Gillis, for the said breach, an administrative penalty of \$500.00 pursuant to section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”).
2. Ms. Gillis appeals the Determination on the sole basis that the Director failed to observe the principles of natural justice in making the Determination.
3. Ms. Gillis is seeking the Tribunal to cancel the Determination. However, Ms. Gillis filed the appeal of the Determination with the Employment Standards Tribunal on February 9, 2010, approximately 21 days after the expiry of the time limit for filing the appeal. However, I note that she intended to appeal the Determination in advance of the said expiry date and served her appeal on the Employment Standards Branch (the “Branch”) within the time period for appealing but mistakenly failed to file it with the Employment Standards Tribunal until February 9, 2010. As there is neither an objection nor any prejudice shown by the Director as a result of the late filing of the appeal by Ms. Gillis, the Tribunal will exercise its discretion and consider Ms. Gillis’ late appeal pursuant to section 109(1)(b) of the *Act*.
4. Pursuant to Section 36 of the *Administrative Tribunals Act* (the “*ATA*”), which is incorporated in the *Act* (s.103), and Rule 17 of the Tribunal’s *Rules of Practice and Procedure*, the Tribunal may hold any combination of written, electronic and oral hearings. I note that Ms. Gillis is not seeking an oral hearing and in my view, this appeal can be adjudicated on the basis of the section 112(5) “record”, the written submissions of the parties and the reasons for the Determination.

### ISSUES

5. The issue in this appeal is whether the Director failed to observe the principles of natural justice in making the Determination.

### FACTS

6. Since November 2002, Ms. Gillis has been operating an employment agency, as defined under the *Act*, under the name Target Professionals (“Target”).

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<sup>1</sup> *Employment and talent agencies must be licensed*

12 (1) A person must not operate an employment agency or a talent agency unless the person is licensed under this Act.

7. On October 5, 2009, the Branch received information that Ms. Gillis or Target was operating without a license under section 12 of the *Act*. As a result, the Branch conducted an investigation under Part 10 of the *Act* and contacted Ms. Gillis. The latter informed the Delegate that she had not applied for a license to operate as an employment agency nor was she aware of the licensing requirement or the application process for the same.
8. The Delegate explained to Ms. Gillis the licensing requirement, the process for obtaining a license and provided her with a copy of the application form. Subsequently, Ms. Gillis made an application for the license to the Branch and on December 9, 2010, the Branch granted Ms. Gillis a license to operate her employment agency effective December 10, 2009 and expiring on December 9, 2010.
9. Thereafter, on December 11, 2009, the Delegate issued a Determination against Ms. Gillis finding the latter to have contravened section 12 of the *Act* for failing to operate her employment agency, Target, with a valid licence and imposed on Ms. Gillis an administrative penalty of \$500.00 pursuant to section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”). The effective date of the contravention was December 9, the latest date on which the contravention occurred.

### **SUBMISSIONS OF MS. GILLIS**

10. While Ms. Gillis appeals the Determination on the ground that the Director breached the principles of natural justice in making the Determination, she makes no submissions in support of the said ground of appeal. Instead, Ms. Gillis largely repeats the evidence she provided to the Delegate during the latter’s investigation. More specifically, Ms. Gillis states:

The reason for my appeal:

1. I was not aware of the need for this license and believed a business license was all that was required of me on a yearly basis with the Government to carry on business. I’ve always maintained the business license up to date.
  2. Once recognized as a necessary registration, I immediately complied with all paperwork and payment necessary to be in accordance with the Act as noted in Part-2-Section 2. See attached emails and bank information. I was since provided a License as attached.
11. Ms. Gillis concludes her submissions by pleading that the Determination be cancelled as her failure to obtain a licence under the *Act* “was not a deliberate contravention of the Act”.

### **SUBMISSIONS OF THE DIRECTOR**

12. The Director submits that Ms. Gillis’ appeal should be dismissed because her failure to investigate and discover the licensing requirement for her employment agency business does not amount to a breach of natural justice on the part of the Director. According to the Director, Ms. Gillis should have investigated the necessary requirements for operating an employment agency before carrying on such business.

### **ANALYSIS**

13. As indicated previously, Ms. Gillis’ appeal of the Determination is based on the natural justice ground of appeal. In *Re: 607730 B.C. Ltd.* (c.o.b. English Inn & Resort) [2005] B.C. E.S.T.D. no. 55 (Q.M.) the Tribunal explained that principles of natural justice are, in essence, procedural rights ensuring the parties have an opportunity to learn the case against them, the right to present their evidence and the right to be heard by an independent decision-maker.

14. In *Imperial Limousine Service Ltd.*, BC EST # D014/05, the Tribunal expounded on the principles of natural justice as follows:

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; their right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the *Act* and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity respond to the evidence and arguments presented by an adverse party: see *B.W.I. Business World Incorporated*, BC EST # D050/96.

15. Having reviewed the Determination including the section 112(5) “record” and the submissions of the parties, I find that Ms. Gillis has not only completely failed to advance an argument in support of the natural justice ground of appeal but there is also no evidentiary basis for Ms. Gillis to ground her appeal on any of the other permissible grounds of appeal in section 112 of the *Act*.
16. Further, Ms. Gillis’ appeal submissions effectively amount to a reargument, which is not permissible on appeal as an appeal is not a forum for the unsuccessful party to have a second chance to advance arguments already advanced in the investigation stage and properly rejected in the Determination. More specifically, in this case, in the written appeal submissions, Ms. Gillis reiterates the evidence she provided the Delegate during the investigation wherein she effectively admitted that she was ignorant of the licensing requirement but requested to be relieved of the statutory obligation as she did not act intentionally and because she acted immediately, upon being informed of the licensing requirement, to secure a license.
17. In my respectful view, ignorance of the law is not a defence and this Tribunal will not countenance such. In my view, the Delegate, on the facts, correctly found Ms. Gillis to have contravened section 12 of the *Act* and upon making that finding had no discretion to do otherwise than to impose an administrative penalty pursuant to section 29(1) of the *Regulation*.
18. I therefore dismiss the appeal of Ms. Gillis.

## **ORDER**

19. Pursuant to Section 115 of the *Act* I order that the Determination be confirmed as issued.

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**Shafik Bhalloo**  
**Member**  
**Employment Standards Tribunal**