

An appeal

- by -

A.C.T. Immigration and Business Consulting Inc.  
(“ACT”)

- 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:** Carol L. Roberts

**FILE No.:** 2016A/18

**DATE OF DECISION:** March 8, 2016

## DECISION

### SUBMISSIONS

Anthony Cochlan

on behalf of A.C.T. Immigration and Business Consulting Inc.

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), A.C.T. Immigration and Business Consulting Inc. (“ACT”) has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on December 18, 2015.
2. ACT operates an employment agency as defined in the *Act*. Incorporated July 9, 2014, it was first issued a one-year employment agency licence on May 14, 2014.
3. On December 4, 2015, ACT’s President, Charles Scott (“Mr. Scott”), delivered a renewal application for an agency licence to the Employment Standards Branch (the “Branch”). Following an investigation, a delegate of the Director concluded that ACT had contravened section 12 of the *Act* by operating an employment agency without a valid licence and imposed a \$500 administrative penalty for the contravention.
4. ACT contends that the Director both erred in law and failed to observe the principles of natural justice in making the Determination and seeks to have the Determination cancelled.
5. Section 114 of the *Act* and Rule 22 of the Tribunal’s *Rules of Practice and Procedure* provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria.
6. These reasons are based on ACT’s written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made and the Reasons for the Determination.

### ISSUE

7. Did the delegate err in law or fail to observe the principles of natural justice in concluding that ACT had contravened section 12 of the *Act*?

### ARGUMENT

8. On December 17, 2015, a delegate of the Director telephoned Mr. Scott to review the information contained in the renewal application. During the conversation, Mr. Scott acknowledged that the application was submitted late, and explained that it was due to an administrative oversight. Mr. Scott agreed that ACT had continued to operate after May 13, 2015, the expiration date of its initial licence.
9. The delegate found that ACT had contravened the section 12 of the *Act*.
10. ACT contends that, in not giving prior notice of the reason for the telephone call or the issue to be decided and “not allowing one to be in possession of the evidence in advance” the delegate failed to give ACT a fair opportunity to respond.

11. ACT also submits that the delegate did not consider all of the evidence. Specifically, ACT says the delegate ought to have considered “the full definition stated on the website under policy interpretation of an employment agency and when one is and is not consider being an employment agency. The ability to use discretion in deciding matters, and to demonstrate other options were considered.” [reproduced as written]
12. Finally, ACT says the Determination and penalty and the reasons for Determination are all signed by the same delegate of the director, which it asserts supports a finding of lack of independence. ACT further contends that the licence was issued by the same delegate, which “lacks accountably [*sic*]”.
13. ACT seeks to have the Determination set aside.

### ANALYSIS

14. Section 114(1) of the *Act* 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 that 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.
15. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
  - (a) the director erred in law
  - (b) the director failed to observe the principles of natural justice in making the determination;
  - (c) evidence has become available that was not available at the time the determination was being made.
16. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds.
17. In *J.C. Creations* (BC EST # RD317/03), the Tribunal concluded that, given the purposes and provisions of the legislation, it is inappropriate to take an “overly legalistic and technical approach” of the appeal document: “The substance of the appeal should be addressed both by the Tribunal itself and the other parties, including the Director. It is important that the substance, not the form, of the appeal be treated fairly by all concerned.”
18. I am not persuaded that the delegate was unfair to ACT. After ACT delivered the licence renewal to the Branch, a delegate spoke with one of the partners about the timeliness of the application. Mr. Scott had full opportunity to respond to the delegate’s questions. There is no suggestion that Mr. Scott was unable to respond to any questions or that he was denied any opportunity to obtain any documents if he felt he required additional documentation to respond to the delegate’s questions. There is no suggestion, or

evidence, that Mr. Scott required any additional evidence. ACT has provided no information to suggest that, if the delegate had informed Mr. Scott in advance that she would be calling him to discuss the status or timeliness of the licence renewal application, he would have provided her with any different information.

19. In my view, ACT has not established a reviewable error of law (see *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)* [1998] B.C.J. No. 2275 (BCCA)).
20. Although ACT suggests that the delegate had a duty to consider all of the evidence, it is unclear in the appeal submissions what evidence the delegate failed to consider. She had before her the licence renewal application, Mr. Scott's information that the application was delivered late, and ACT's licence history. Section 12(1) of the *Act* prohibits a person from operating an employment agency unless that person is licensed under the *Act*. ACT did not dispute the fact that it operated without a valid employment agency licence from May 13, 2015, until December 19, 2015, either during its discussion with the delegate on December 17, 2015, or on appeal. I find that the delegate's decision was both correct and amply supported by the evidence before her.
21. Finally, ACT suggests that the delegate lacked "independence". Apart from noting that the same delegate issued the Determination, including the reasons and the penalty, as well as the renewed licence, ACT has not demonstrated any bias or lack of independence. Bias must be established rather than merely asserted (see *Milan Holdings*, BC EST # RD313/98). In the absence of any evidence of bias, I find none.
22. In my view, ACT's arguments are entirely without merit. The appeal is dismissed.

## **ORDER**

23. I Order, pursuant to section 115 of the *Act*, that the Determination, dated December 18, 2015, be confirmed, together with whatever interest may have accrued since the date of issuance.

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