

An appeal

- by -

The Geldart Consulting Group Inc.  
(the “Geldart Group”)

- 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.:** 2015A/65

**DATE OF DECISION:** June 24, 2015

## DECISION

### SUBMISSIONS

Geoffrey R. Geldart

counsel for The Geldart Consulting Group Inc.

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), the Geldart Consulting Group Inc. (the “Geldart Group”) has filed an appeal of a determination issued by the Director of Employment Standards (the “Director”) on April 7, 2015 (the “Determination”). In that Determination, the Director found that the Geldart Group was operating an employment agency without a licence contrary to section 12(1) of the *Act*, and imposed an administrative penalty in the amount of \$500.00 for the contravention.
2. The Geldart Group appeals the Determination contending that the delegate erred in law in making the Determination.
3. Section 114(1) of the *Act* and Rule 22 of the Employment Standard Tribunal’s *Rules of Practice and Procedure* permit the Employment Standard Tribunal (the “Tribunal”) to dismiss all or part of an appeal without seeking submissions from the other parties. I have decided that this appeal is an appropriate case for consideration under section 114(1) of the *Act*. Therefore, I will review the appeal based solely on the Reasons for the Determination (the “Reasons”), the Geldart Group’s written submissions, and my review of the section 112(5) “record” (the “Record”) that was before the Director at the time the Determination was made. If I am satisfied that the Geldart Group’s appeal has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, the Tribunal may invite the Director to file Reply submissions on the appeal, and the Geldart Group will be afforded an opportunity to make a final reply to those submissions, if any. If the appeal is found to be not meritorious, it will be dismissed.

### ISSUE

4. The issue in this appeal is whether there is any reasonable prospect that the Geldart Group’s appeal will succeed.

### THE FACTS

5. The Geldart Group is a company incorporated in British Columbia on April 30, 2007, and operates an employment agency as defined in the *Act*.
6. The Geldart Group was issued an employment agency licence under the *Act* on March 31, 2014, with a stated expiry date of March 30, 2015.
7. The Employment Standards Branch (the “Branch”) received a licence renewal application from the Geldart Group on March 31, 2015, and conducted an investigation to determine whether the Geldart Group contravened section 12 of the *Act* which reads as follows:

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

- (2) Subsection (1) does not apply to a person operating an employment agency for the sole purpose of hiring employees exclusively for one employer.
8. On April 1, 2015, the delegate contacted the Geldart Group to speak with Maureen Geldart (“Ms. Geldart”), the President and Director of the Geldart Group, who had signed the licence renewal application. However, Ms. Geldart was unavailable at the time, and the delegate spoke with Nicola Ehinger (“Ms. Ehinger”), Executive Assistant and Office Manager, of the Geldart Group. Ms. Ehinger confirmed the Geldart Group continued to operate *after* March 30, 2015. Ms. Ehinger further explained to the delegate that the delay in submitting the Geldart Group’s licence renewal application was because she had been away from the office for a few weeks.
9. I note the Record contains a letter, dated April 1, 2014, from the Branch to the Geldart Group to Ms. Geldart’s attention, enclosing the employment agency licence issued to the Geldart Group on March 31, 2014. The letter specifically advises that the licence “will expire on March 30, 2015” and the Branch “does not send out renewal notices”. The letter also reminded the Geldart Group and Ms. Geldart to ensure that the Geldart Group’s application for licence renewal is submitted at least 30 days before the licence expires.
10. The Geldart Group filed its application for the renewal of the employment agency licence on March 31, 2015. As a result, the delegate determined that the Geldart Group had contravened the *Act* by operating an employment agency without a valid licence after March 30, 2015. The delegate also identified, in the Reasons, the contravention date was April 7, 2015, because that was the last day the Geldart Group operated without a valid licence.

## ARGUMENT OF THE GELDART GROUP

11. Counsel for the Geldart Group argues that the Director erred in law in making the Determination, and seeks the Tribunal to cancel the Determination. More particularly, counsel argues that the employment agency licence has to accord with the *Employment Standards Regulation* (the “*Regulation*”) and specifically references section 9 of the *Regulation* which reads in part:
- 9 (1) A licence issued under this regulation
- (a) Is valid for one year after the date on which it was issued...
12. Counsel contends that neither the *Act* nor the *Regulation* define the meaning of “year” and, therefore, the *Interpretation Act*, RSBC 1996, c. 238 (the “*Interpretation Act*”) must apply. More specifically, counsel refers to and relies upon sections 2 and 29 of the *Interpretation Act* which provide:

### Application

- 2 (1) Every provision of this Act applies to every enactment, whether enacted before or after the commencement of this Act, unless a contrary intention appears in this Act or in the enactment.

...

### Expressions defined

- 29 In an enactment:

‘year’ means any period of 12 consecutive months; but a reference to a ‘calendar year’ means a period of 12 consecutive months beginning on January 1, and a reference by number to a

dominical year means a period of 12 consecutive months beginning on January 1 of that dominical year;

13. Counsel submits that when the Geldart Group applied for a licence in 2014, it was entitled to have a licence issued in accordance with the *Act* and the *Regulation* but that did not happen because the licence had an expiry date of March 30, 2015. He reasons that “the true expiry date” of a licence issued on March 31, 2014 is April 1, 2015, as 12 consecutive months starting on the date following March 31, 2014 is April 1, 2015.
14. Counsel also submits that the Director was influenced to conduct an investigation as a result of the apparent “expiry date of March 30, 2015” once the Director received the licence renewal application on March 31, 2015.
15. Counsel also submits that the Director, instead of processing the renewal application of the Geldart Group, decided to investigate the Geldart Group for contravening the *Act*. He also points out that while the delegate concluded that the Geldart Group contravened the *Act* on April 7, 2015, the cheque submitted with the Geldart Group’s license renewal application was processed on April 2, 2015. He states that the delay in processing the application was caused by the Director’s own “mischaracterization of the expiry date and subsequent investigation”. Counsel argues that if the Director had not conducted an investigation, a new licence would likely have been issued before the “true expiry date” of the licence being April 1, 2015.
16. In these circumstances, counsel argues that the Tribunal should find that the Geldart Group’s licence was not issued in accordance with the *Act* and the *Regulation*, and that the licence was valid until the date the renewal application was submitted, being March 31, 2015. He further submits that the mischaracterization of the expiry date caused an administrative delay on the part of the Director in processing the renewal application of the Geldart Group, and the latter should, therefore, be “granted relief from such a violation in accordance with the principles of natural justice and the duty of fairness.”

## ANALYSIS

17. 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.
18. The Tribunal has consistently stated that the burden is on the appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds delineated in section 112(1) of the *Act*.
19. In this case, as indicated previously, the primary ground invoked by the Geldart Group is that the Director erred in law in making the Determination. The Tribunal has employed the test delineated in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] BCJ. No. 2275 (BCCA.) to determine whether an error of law has been made. An error of law could result from:
  1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment Act*];
  2. a misapplication of an applicable principle of general law;
  3. acting without any evidence;

4. acting on a view of the facts which could not reasonably be entertained; and
  5. adopting a method of assessment which is wrong in principle.
20. Having reviewed the submissions of counsel for the Geldart Group, the Reasons and the Record, I am not persuaded that the delegate made any error of law within the meaning of the test set out by the Tribunal in *Gemex, supra*. While I find counsel's argument interesting and indeed creative, I am not persuaded that the employment agency licence issued to the Geldart Group on March 31, 2014, had a "true expiry date of April 1, 2015". The licence, in my view, was operational from and including March 31, 2014, up to and including March 30, 2015, which is 12 consecutive months, or 365 days from the start date to the end date. Therefore, in my view, the term of the license was in compliance with section 9 of the *Regulation*.
21. I think it is also noteworthy that when the licence was issued to the Geldart Group, the letter from the Branch to the Geldart Group enclosing the licence expressly indicated that the licence "will expire on March 30, 2015" and that the Geldart Group should ensure that it submits its application for licence renewal at least 30 days before it expires. Unfortunately, the Geldart Group failed to comply with those instructions. Ms. Ehinger confirmed to the delegate that the reason for the delay in submitting the renewal application was that she was away from the office for some time. In these circumstances, I find the delegate correctly interpreted and applied the *Act* in finding that the Geldart Group was in breach of section 12 of the *Act*. I further find that the delegate properly applied section 29 of the *Regulation* which mandates non-discretionary penalties for contraventions of the *Act*.
22. I note that counsel, in his concluding remarks in the written submissions, appeals to "the principles of natural justice and the duty of fairness" to seek relief for the Geldart Group from the finding of violation and resulting administrative penalty. He argues that the Director mischaracterized the expiry date which caused an administrative delay in the processing of the renewal application and the Geldart Group should not be saddled with liability in the circumstances. While I have already rejected counsel's argument that the "true expiry date" of the licence is April 1, 2015, I do however want to address counsel's suggestion of "administrative delay in the processing of the renewal application" by the Branch as there is implicit in counsel's submissions the expectation that the Branch or the Director should be able to instantaneously process renewal application or that the application process is automatic.
23. In *Aerrotek ULC* (BC EST # D048/14), the Tribunal noted, and I agree, that the "licence renewal is not an automatic process". The renewal process takes some time after the renewal application is received by the Branch, as the Branch must review the application to make certain all information in the application is in order and if so then it renews the licence and sends the new license to the applicant by mail. Therefore, it stands to reason that because the renewal process takes some time the Branch's sends a letter with the issued license expressly instructing recipients of licenses to submit their applications to have their licences renewed at least 30 days before their licence expires. In this case, I do not find there to have been any objectionable delay in the processing of the licence by the Branch, nor do I find any evidence of violation of any principles of natural justice or duty of fairness on the part of the Director.
24. In the result, I find that this appeal has no reasonable prospect of success and, thus, must be dismissed under subsection 114(1)(f) of the *Act*.

**ORDER**

25. Pursuant to subsection 114(1)(f) of the *Act*, this appeal is dismissed. Pursuant to subsection 115(1)(a) of the *Act*, the Determination is confirmed in the amount of \$500.00.

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