

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* S.B.C. 1995, C. 38

- by -

TLC West Inc.  
("TLC")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 96/684

**DATE OF HEARING:** February 14, 1997

**DATE OF DECISION:** February 18, 1997

## DECISION

### APPEARANCES

Michael Melenchuk                      on behalf of TLC West Inc.

Angelika Opic                              on her own behalf

### OVERVIEW

This is an appeal by TLC West Inc. (“TLC”), under Section 112 of the *Employment Standards Act* (“the Act”), against Determination No. CDET 004485 which was issued by a delegate of the Director of Employment Standards on October 28, 1996. The Determination found that TLC had contravened Section 8 of the *Act* by misrepresenting to Angelika Opic (“Opic”) the type of work available at its laser surgery clinic.

TLC argues that Opic did not possess the skills or aptitude to fill the position of Surgical Coordinator and, therefore, did not contravene Section 8 of the *Act*.

### ISSUE TO BE DECIDED

Did TLC misrepresent the type of work available to Opic, in contravention of Section 8 of the *Act*?

### FACTS

The following key facts were set out in the Determination, and are not in dispute:

- In early 1996, TLC was planning to open a laser surgery clinic and obtained the services of a placement agency, Medi-Office Services, to assist in recruiting for several positions at the clinic.
- Opic was referred to TLC by Medi-Office Services for the position of Surgical Coordinator.
- Opic’s resume was sent to TLC and was reviewed by Michael Melenchuk.
- Opic was interviewed by Melenchuk on February 29, 1996.
- On March 8, 1996, Opic met with Melenchuk and Sally Roth (principal of Medi-Office Services).
- On March 15, 1996, Opic was interviewed by Melenchuk a second time.
- Opic received a letter from TLC offering her employment as a Surgical Coordinator.
- On March 18, 1996, Opic began working for TLC at the clinic.

- On March 19, 1996, Opal was told by Melenchuk that he had hired the wrong person and she was dismissed.
- TLC paid Opic the sum of \$400.00.
- The complainant stated that she had turned down a position with another medical facility as she was about to begin with TLC. She provided a written statement from R. Hayden, MD confirming this information.

The duties and responsibilities of the Surgical Coordinator were described by TLC in writing in the following terms:

#### Surgical Coordinator

As the Surgical Coordinator for TLC Northwest-Vancouver, you will be responsible for the development and implementation of the clinical management system. This will require a consumer-patient orientation to the clinical operations and require strong leadership in the development, planning and execution of all aspects of the clinical operations in the refractive surgical center. You are extremely detail orientated and are able to demand excellence in patient care. You will be able to prepare clinical service quality, clinical service productivity, and clinical outcome analysis reports using Microsoft based software. You bring proven planning and organizational experience to the clinical operations and are able to demonstrate above average communication and interpersonal skills. You possess post secondary education in one of the health care related occupations .

At the hearing, TLC's representative (Melenchuk) argued that the Surgical Coordinator position was not an administrative one and the primary duties were not understood by Opic. He testified that the implementation of a clinical management system required medical skills, aptitude and knowledge which Opic did not possess. He also testified that he relied on Medi-Office Service to refer only qualified candidates and to check their references.

In his testimony, Melenchuk described the clinical management system as being composed of the following processes for LASIK, PRK, PTK:

- surgical assessment process
- pre-operative processes
- intra-operative processes
- post-operative processes
- day 1,2,3 follow-up process

Under cross examination, Melenchuk described the medical skills associated with those activities as: giving medications to patients; being responsible for infection control protocols; ensuring medications and instruments are available as required; working with the surgeon during “operatory processes”; and helping the surgical assistant.

Melenchuk argued that neither he nor TLC misrepresented the type of work involved in the Surgical Coordinator position. He also argued that at the time that he interviewed Opic she was not employed, but he was aware that she had been offered a position at another doctor’s office. However, Melenchuk testified that he told Opic that “...it was her decision to take that job if she wanted it and that I was not ready to make my decision right then.”

Opic’s resume describes her career objectives in the following terms:

To exercise my experience and skills as an executive secretary. To conduct studies of organizational structure, methods, systems and procedures; then implement approved recommendations and instruct staff in new work methods. To plan, organize and carry out with other members of the management team, a program of information designed to have a positive impact on the corporation, enabling them to achieve their goals .

Her resume summarizes her qualifications and work experience as encompassing:

needs assessment/proposal writing  
administrative skills  
book-keeping/MSP billing  
purchasing  
scheduling/coordinating  
diplomatic communications  
dictatyping (100 wpm)

Opic testified that she was offered a full-time position by Dr. S Hayden and Stewart which was to be effective April 1, 1996. When she was offered the Surgical Coordinator’s position by TLC, she declined the position offered by Drs. Hayden and Stewart. She also testified that when she contacted Dr. Hayden after March 19, 1996 the position was no longer available. For the next several months, she testified, Opic worked in a number of temporary assignments through a placement agency.

**ANALYSIS**

Section 8 of the *Act* states:

*An employer must not induce, influence or persuade a person to become an employee, or to work or to be available for work, by misrepresenting*

- (a) the availability of a position,*
- (b) the type of work,*
- (c) the wages, or*
- (d) the conditions of employment.*

The Determination found that TLC misrepresented the type of work available in contravention of Section 8(b), and required TLC to pay Opic \$2,400.00 plus interest under Section 79(4)(c) of the *Act*.

When I review the facts in this appeal I find that the position description which TLC set out for the Surgical Coordinator position does not specify that medical skills are required to carry out the duties and responsibilities. The position description does not require a qualified nurse for example, but states: “You possess post secondary education in one of the health care related occupations.” Also, the position description does not make any reference to surgical assessment processes or LASIK/PRK/PTK processes. The evidence is also clear that Melenchuk reviewed Opic’s resume and interviewed her twice prior to offering her employment as the Surgical Coordinator. However, Melenchuk’s testimony at the Employment Standards Tribunal hearing casts the Surgical Coordinator’s duties and responsibilities in a considerably different light than the position description used by TLC to select Opic for the position.

It would not be fair, in my opinion, to allow TLC to abrogate or escape its responsibilities as an employer under the *Act* by attempting to assign that responsibility to Medi-Office Services. I make no finding about quality of the services provided by Medi-Office Services to TLC. If TLC believes that it did not receive quality service from Medi-Office, that is a matter for it to resolve in another forum.

The evidence shows that Opic declined another permanent, full-time position with Drs. Hayden and Stewart (which she was to begin on April 1, 1996) in order to accept the position with TLC.

When I review all of the evidence in this appeal I am unable to conclude that the Director’s delegate erred in finding that TLC contravened Section 8(b) of the *Act*. I am satisfied that the Determination should not be varied or cancelled.

**ORDER**

I order, under Section 115 of the *Act*, that Determination No. CDET 004485 be confirmed.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**