

An Application for Reconsideration

- by -

Celltech Research Inc.

- of a Decision issued by -

The Employment Standards Tribunal  
(the "Tribunal")

pursuant to Section 116 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** John M. Orr

**FILE No.:** 2003/024

**DATE OF DECISION:** June 16, 2003

## DECISION

### OVERVIEW

This is an application by Celltech Research Inc. ("Celltech") pursuant to Section 116 (2) of the *Employment Standards Act* (the "Act") for a reconsideration of a Tribunal decision #D071/03 (the "Original Decision") which was issued by the Tribunal on March 4, 2003 following an evidentiary hearing on February 10, 2003.

Celltech employed Shawn McMillen ("McMillen") as a general manager from September 2, 1999 to June 13, 2002 when his employment was terminated by Celltech. McMillen claimed that he was not paid some regular wages and his accrued vacation pay. The Director of Employment Standards ("the Director") found in favour of McMillen. Celltech appealed and an Adjudicator appointed by the Tribunal heard the appeal. As the adjudicator noted the case was complicated by the attitude of the parties in shrouding the essential issues in a host of irrelevant and adversarial allegations. Nevertheless the adjudicator dealt with all of the essential elements of the appeal and, barring a minor calculation adjustment, again found in favour of McMillen.

Celltech has requested that the Tribunal reconsider the adjudicator's decision on one essential element. Celltech alleges that McMillen had signed a contract and promissory note that authorized Celltech to deduct certain loan payments from any money owed to McMillen upon termination of the employment contract. Celltech submits that the adjudicator in the original decision misconstrued the contracts involved and therefore made a significant error in law.

### ISSUE

The issue in this application is whether the applicant has raised sufficient concern that both the Director and the adjudicator in the original decision failed to properly interpret the employment contracts in this case and thereby made significant errors in law warranting reconsideration by the Tribunal.

### ANALYSIS

The test for the exercise of the reconsideration power under section 116 of the Act is set out in *Milan Holdings Ltd.*, BC EST # D313/98. The Tribunal sets out a two-stage analysis in the reconsideration process. The first stage is for the panel to decide whether the matters raised in the application for reconsideration in fact warrant reconsideration. In deciding this question the Tribunal should consider a number of factors such as whether the application is timely, whether it is an interlocutory matter, and whether its primary focus is to have the reconsideration panel effectively "re-weigh" evidence tendered before the adjudicator.

The Tribunal in *Milan* went on to state that the primary factor weighing in favour of reconsideration is whether the applicant has raised significant questions of law, fact, principle or procedure of sufficient merit to warrant the reconsideration. The decision states, "at this stage the panel is assessing the seriousness of the issues to the parties and/or the system in general". Although most decisions would be seen as serious to the parties this latter consideration will not be used to allow for a "re-weighing" of evidence or the seeking of a "second opinion" when a party simply does not agree with the original decision.

It is one of the defined purposes of the Act to provide a fair and efficient procedure for resolving disputes and it is consistent with such purposes that the Tribunal's decisions should not be open to reconsideration unless there are compelling reasons: *Khalsa Diwan Society* BC EST # D199/96.

In my opinion this is a case that meets the first stage of the criteria and the application warrants consideration. If the submissions made by Celltech were to be substantiated then the allegations would amount to an error in law that would warrant further review.

Briefly summarised, the relevant facts are that McMillen was initially hired under a three-year employment contract with a somewhat unusual provision. He was paid a substantial sum of money in advance. This sum was defined as an interest free loan, which was repayable to Celltech on an agreed schedule. The loan was secured by way of a promissory note. This first employment contract provided that upon termination the note would become due forthwith and the employment contract authorized Celltech to deduct any remaining balance against any wages then due or payable to McMillen. However, before the first contract expired a new employment contract was negotiated. This second contract specifically provided that the former employment contract was terminated.

The Adjudicator in the original decision found that there was nothing in either the first or second employment contract that suggested that the loan obligation survived the termination of the first agreement. The adjudicator dismissed Celltech's appeal on this point. Celltech submits the promissory note should have been considered a separate stand-alone document that continued in effect despite the execution of a new employment contract. Celltech submits that to find otherwise would result in a windfall to McMillen that was never intended by the Parties.

I have reviewed all of the documents on file and must disagree with Celltech on this submission. The promissory note could never have stood on its own without reference to the employment contract. It is incorporated by reference into the first employment contract. When the parties re-negotiated the employment relationship and executed a new employment contract the first contract was specifically terminated. I agree with the finding of the adjudicator in the original decision that this termination effectively terminated any obligations secured by the promissory note and therefore any obligations under the note itself.

Accordingly the application for reconsideration is dismissed and the original decision is confirmed.

## **ORDER**

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**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**