

**DECISION OF APPEAL BOARD CONSTITUTED  
UNDER *THE FAIR TRADING ACT***

**Re: Appeal of the Decision of the Director of Fair Trading (as delegated) to Refuse to Issue an Employment Agency Business Licence to Edmonton Alberta Employment Agency.ca and Georgina Pawson**

**March 7, 2012**

*Appeal Board: Paul Alpern (Chair); Rick Kowalik; Wade Riordan Raaflaub*

*Representing Edmonton Alberta Employment Agency.ca and Georgina Pawson: Angus Boyd, legal counsel*

*Representing the Director of Fair Trading: Jennifer Stengel, legal counsel, Alberta Justice*

*Appeal Heard: Tuesday, January 24, 2012 commencing at 9 am.  
Location: Boardroom 3C, 3rd Floor, Commerce Place, 10155 - 102 Street,  
Edmonton, Alberta*

An Appeal Board constituted pursuant to section 179 of the *Fair Trading Act*, R.S.A. 2000, c. F-2, and the *Appeal Board Regulation* thereunder (Alberta Regulation 195/199) met to hear an appeal by Edmonton Alberta Employment Agency.ca and Georgina Pawson (collectively "EAEA") of the August 27, 2010 decision of the Director of Fair Trading (as delegated) (the "Director") pursuant to section 127 of the *Fair Trading Act* to deny the issuance of an employment agency business licence to Edmonton Alberta Employment Agency.ca and Georgina Pawson ("GP"). EAEA had applied to the Director for a business licence on July 17, 2010.

## **THE ISSUES**

The issues in this appeal, as adapted from those set out by the Director in his decision of August 27, 2010, and/or raised by the parties in the course of the appeal, are as follows:

1. Did EAEA, without reasonable excuse or justification, operate an employment agency in Alberta without a licence contrary to s. 104 of the *Fair Trading Act*?
2. Did EAEA directly or indirectly demand or collect a fee or other compensation from a person who is seeking employment contrary to s. 9(1) of the *Employment Agency Business Licensing Regulation*?
3. Did EAEA do anything that might reasonably deceive or mislead a consumer contrary to s. 6(4) of the *Fair Trading Act*?

4. Did EAEA counsel clients to mislead consular, embassy or immigration officials in relation to applications for work permits or entry into Canada?
5. Did EAEA counsel foreign individuals seeking employment under the Low Skills Pilot Program (Temporary Foreign Worker Program) to pay for their own return airfare contrary to Human Resources and Skills Development Canada rules/regulations?
6. Were others, rather than GP, responsible for EAEA's alleged violations of the legislation?
7. Is EAEA vicariously liable for the actions of employees/associates empowered to conduct business on behalf of EAEA?
8. In view of GP's purported attempts to mitigate EAEA's alleged (and, in some cases, admitted) violations of relevant legislation, did the Director appropriately exercise his discretion when refusing to issue the business licence?

## RELEVANT LEGISLATION

### *Fair Trading Act*

- 6(3)** *It is an unfair practice for a supplier*
- (a) *to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;*
- 6(4)** *Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more potential consumers:*
- (a) *a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;*
- 104(1)** *No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.*
- 127** *The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons:*
- (a) *the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held;*
  - (b) *the applicant or licensee or any of its officers or employees*
    - (v) *has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,*
    - (v.1) *fails to comply with any other legislation that may be applicable,*
  - (c) *in the opinion of the Director, it is in the public interest to do so.*
- 128(1)** *Before refusing to issue or renew a licence and before a licence is suspended or cancelled or terms or conditions are imposed, the applicant or licensee must be given*
- (a) *written notice of the proposed refusal, suspension or cancellation or the proposed terms and conditions with reasons, and*
  - (b) *an opportunity to make representations to the Director.*
- 135** *A person*
- (a) *who has been refused a licence or renewal of a licence,*

(b) ...

may appeal under section 179.

- 166** For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred
- (a) in the course of the employee's employment with the person, or
  - (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

**179** (1) A person

- (a) who has been refused a licence or renewal of a licence,
- (b) ...

may appeal the decision or order by serving the Minister with a notice of appeal within 30 days after being notified in writing of the decision or order.

- (2) The Minister must, within 30 days after being served with a notice of appeal under subsection (1) and payment of the fee for the appeal as established by the regulations, refer the appeal to an appeal board appointed in accordance with the regulations or to an appeal board designated under subsection (4).
- (3) The Minister may appoint an individual as the chair of the appeal board who serves as the chair whether or not an appeal is being considered by the appeal board.
- (4) The Minister may designate a board or commission established by or under an Act of the Legislature to be an appeal board for the appeals specified in the designation.
- (5) The Minister may set the time within which an appeal board is to hear an appeal and render a decision and may extend that time.
- (6) An appeal board that hears an appeal pursuant to this section may confirm, vary or quash the decision or order that is being appealed.
- (7) The Minister may set the rates of remuneration for and provide for the payment of reasonable living and travelling expenses to the members of an appeal board.
- (8) An appeal under this section is a new trial of the issues that resulted in the decision or order being appealed.

### **Employment Agency Business Licensing Regulation (Alberta Regulation 189/199)**

- 4** The Director may refuse to issue or renew a licence if the applicant is unable to satisfy the Director that the applicant is complying with the laws, including municipal bylaws, that apply to the operation of the employment agency business.
- 9(1)** No business operator may directly or indirectly demand or collect a fee, reward or other compensation
- (a) from a person who is seeking
    - (i) employment, or
    - i. (ii) information respecting employers seeking employees,

or

(b) from a person

- (i) for securing or endeavouring to secure employment for the person, or
- (ii) for providing the person with information respecting any employer seeking an employee.

## DISCUSSION

In her testimony, GP characterized herself as an unsophisticated novice in respect to employment agency business practices in Alberta, having in 2009 moved to Alberta from Ontario where she had worked both as a real estate agent and, for some 15 years, operated an employment agency.

GP stated that she was approached to establish an employment agency in Alberta by “LA”, with whom she had operated an employment agency business in Ontario.

In or about September 2009, GP applied for and received a business licence from the City of Edmonton under the name Edmonton Alberta Employment Agency.ca (EAEA). She registered this name as a trade name in Alberta on May 4, 2010.

### **Did EAEA, without reasonable excuse or justification, operate an employment agency in Alberta without a licence contrary to s. 104 of the *Fair Trading Act*?**

GP claims that she was unaware of the need for an employment agency specific licence in Alberta. She claims to have thought she had satisfied all legal requirements by having obtained a City of Edmonton business licence. She claims that when she applied for a business licence with the City of Edmonton, she was not told she also had to apply for an employment agency licence from the Province of Alberta.

Members of the public are not expected to be experts in the law. However, ignorance of the law is no excuse or defence to violations of the law. Persons alleged to have contravened legislation cannot be excused from liability/responsibility by claiming that they did not know they were breaking the law (although tribunals may consider honest mistakes of fact). The duty to know the law means that citizens should take steps to be sure they are acting legally. Information is available from federal, provincial and municipal government offices, public libraries, public legal education and information associations, the police, lawyers, the internet and other sources. Information about the operation of employment agencies in Alberta is readily available online.

GP may have been new to Alberta but she was not new to the employment agency business having admittedly practiced in that field for many years in Ontario. Moreover, various Labour Market Opinions (“LMOs”) sent to GP at her offices in Edmonton by Service Canada (Foreign Worker Recruitment Branch) as early as February 9, 2010 (and, perhaps, earlier) included the following text (emphasis added):

*“If the services of an agency or recruiter are being utilized, please be aware that employment agencies operating in Alberta must be licensed under the provincial*

Alberta Fair Trading Act. Section 9 of the Employment Agency Business Licensing Regulation of the Fair Trading Act states that “no business operator may directly or indirectly demand or collect a fee, reward or other compensation from a person who is seeking employment, or information respecting employers seeking employees or from a person for securing or endeavoring to secure employment for the person or for providing the person with information respecting any employer seeking an employee.”

Accordingly, this appeal board finds that EAEA and GP did, without reasonable excuse or justification, operate an employment agency in Alberta without a licence contrary to s. 104 of the *Fair Trading Act*.

While the Director conceded that he might not have refused to issue a business licence to EAEA and GP, had the failure to previously obtain a licence been the only contravention of the legislation, there are other alleged contraventions that must be considered by this appeal board in deciding whether a business licence should be issued.

**Did EAEA directly or indirectly demand or collect a fee or other compensation from a person who is seeking employment contrary to s. 9(1) of the *Employment Agency Business Licensing Regulation*?**

GP claims that her associate, LA, without GP’s approval or knowledge, collected fees from potential employees prior to GP’s relocation to Alberta and, accordingly, GP should not be held responsible for any contravention under s. 9(1) of the *Employment Agency Business Licensing Regulation*. She claims that another associate, “AC”, also collected fees without her knowledge.

In a letter of August 23, 2010 to the Director, however, a lawyer on behalf of GP does acknowledge that she did knowingly collect fees from at least nine non-skilled clients in Grande Prairie, Alberta.

Evidence presented on behalf of the Director included:

- February 10 and 13, 2010 emails from GP’s personal email account to LA and AC referring to fees charged to foreign workers ranging from \$4000 to \$5000;
- March 26, 2010 “Receipt” on EAEA letterhead and signed by GP on behalf of EAEA showing payments received from approximately 22 persons totaling ~\$44,900 ostensibly “for the purpose of obtaining an LMO (Positive Labor Market Opinion) from HRSDC under the non-skill Construction Services and Pilar Cleaning Services”;
- Two page document on EAEA letterhead entitled “ATTENTION APPLICANTS:” including the following (emphasis added):
  - “Light Duty Cleaners: ... Our fee is \$5,000 Canadian Dollars and half of the fee \$2500 Canadian Dollars is payable immediately to commence your application on the above described positions... the

other half of \$2500 Canadian Dollars of the fee is payable upon notifying you of LMO is granted from HRSDC ready to be given to the applicant upon payment of the fee.”

- “Labourers General Construction Services: ... Fee is \$6000 Canadian Dollars and half of the fee \$3000 is payable immediately to commence your application on the above described positions. the other half of \$3000 Canadian Dollars of the fee is payable upon notifying you of LMO is granted from HRSDC ready to be given to the applicant upon payment of the fee”
- “Applicant responsibilities: You are responsible for your own plane tickets and all the expenses this process incur, accommodation you are responsible and is \$500 per person monthly.”
- “Method of payments: Will be paid to Georgina Pawson via Western Union at the address of: ...”
- “Sincerely, Georgina Pawson” (typed – no signature).

While GP acknowledges having collected fees from foreign workers, GP claims that she stopped collecting fees from non-skilled workers when she learned of the prohibition against that activity. Moreover, GP claims that she attempted to refund monies previously collected both by her directly and by her associates, LA and AC. She says that she had a meeting with her associates in March or April 2010, at which she told them that they must refund the fees.

As evidence of her attempts to refund monies improperly collected, GP presented:

- copies of a number of “Refund Receipts” dated variously June 2, 2010 or July 15, 2010 allegedly evidencing payments by EAEA to AC totaling \$40,400;
- copies of various cheques written on a Royal Bank of Canada personal account in the name of “Georgina Pawson” and a Royal Bank of Canada account in the name of “Edmonton Alberta Employment Agency.ca” dated variously June 2, 2010, June 30, 2010 or July 15, 2010, payable to AC totaling \$36,400.

There is no indication that any of the cheques presented were cleared by any bank as only copies of the front of the cheques were entered into evidence.

While there is some evidence that LA collected fees without GP’s knowledge, the argument presented by GP that LA was entirely responsible for the collection of improper fees is not substantiated by the evidence and by GP’s own testimony that she was personally involved in the collection of fees from prospective foreign workers.

Moreover, the purported attempts by GP to refund monies collected contrary to s. 9(1) of the *Employment Agency Business Licensing Regulation* appear to have been made at or about the same time as GP becoming aware of complaints filed with Service Alberta on June 2, 2010, the inference being that GP was caught and was accordingly motivated to refund fees improperly collected to avoid legal repercussions.

Although, in a letter to the Director dated August 23, 2010, a lawyer on behalf of GP refers to refunds being made in March/April 2010, and he says that GP can provide copies of the cheques showing the refunds, no such cheques were entered into evidence. Only copies of cheques dated June 2, June 30 and July 15, 2010 were presented..

Considering all the evidence, this appeal board concludes that GP and/or her associates, LA and AC, did, directly or indirectly, demand or collect a fee or other compensation from a person who is seeking employment contrary to s. 9(1) of the *Employment Agency Business Licensing Regulation*.

This appeal board also concludes that EAEA and GP collected fees having known or ought to have known (given documents in her possession at relevant times, including LMOs) that such activity was prohibited by law.

Furthermore, GP demonstrated an awareness of the prohibition on collecting fees from applicants by the content of various communications to those applicants, as discussed below, in which EAEA counseled them to lie to immigration authorities about whether any fees were paid by those applicants.

**Did EAEA do anything that might reasonably deceive or mislead a consumer contrary to s. 6(4) of the *Fair Trading Act*?**

EAEA had a website that stated, in part, the following:

- (1) *“Edmonton Alberta Employment Agency.ca has built its reputation by being in the business for 25 years...”*
- (2) *“Foreign workers sponsored from overseas are guaranteed for at least 1 year of employment.”*
- (3) *“Edmonton Alberta Employment Agency does not charge any fee for application submission, pre-qualification or registration.”*
- (4) *“Our service is free to employers willing to sponsor our applicants from overseas.”*

In respect to (1), at the time of the Director’s Order, EAEA had been in business for less than a year.

In respect to (2), EAEA could not guarantee continuous employment to any foreign worker.

In respect to (3), contrary to the provisions of the *Employment Agency Business Licensing Regulation*, EAEA does charge fees to applicants.

In respect to (4), EAEA did charge fees to employers.

Accordingly, this appeal board finds that EAEA did publish information deceiving or misleading to consumers contrary to s. 6(4) of the *Fair Trading Act*.

GP states that the web designer she retained was responsible for the content of the website, that the content of the website could be easily changed to comply with the legislation, and that GP should not be held responsible for the website content. These and GP's similar arguments that she should not be held responsible for the conduct of others are discussed further below.

**Did EAEA counsel clients to mislead consular, embassy or immigration officials in relation to applications for work permits or entry into Canada?**

Under s. 126 of the *Immigration and Refugee Protection Act*, R.S.C. 2001, c. 27, it is an offence if a person "knowingly counsels, induces, aids or abets or attempt to counsel induce, aid or abet any person to directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of this Act". In turn, under section 127(b)(v.i) of the *Fair Trading Act*, failing to comply with any other legislation can be a factor in refusing to issue a business licence.

The Director entered into evidence the following documents:

- December 29, 2009 email purportedly from GP to LA with the following text:

*"Hi LA:*

*Please pass the below information to the applicants due to the fact the down below info will be happening to every individual who applies through the foreign workers program (non skill).*

*I need your address in Airdrie and full address from applicants Philippines or any country they are applying like Ciprus*

*Best regards,  
Georgina.*

*Subject: info about Canadian Embassy inquire!*

*Dear Applicants:*

*If the Canadian Embassy calls you and inquire you regarding paying the recruitment fees and plane tickets please say the following:*

*Please inform everybody the same if the person from the Canadian Embassy calls you say:*

*No I am not paying any recruitment fees*

*My employer will be assuming the cost of plane ticket.*

*...*

*Kindly please pass this message to all the candidates and the group is going to work for us.*

*Applicants: that is why the employer's who I am helping to obtain personnel told me they didn't was to pay as is too much for them. I did explain to employers all the candidates are willing to assume and absorbed the costs of plane ticket and recruitment fees as employers do not have the time and willingness to wait and have to pay for all this costs, and that is why they felt attracted to deal with me as I promised you and all candidates are willing and have the money to absorbed the costs this process implies.*

*Please help me to pass the info above for them to say the same.  
Best regards,  
Georgina”*

- Document entitled: “INFO YOU NEED TO KNOW WHEN FILLING THE APPLICATION TO SEND YOUR DOCUMENTS TO THE CANADIAN EMBASSY” with the following content (sections omitted):

*“Dear Applicant in the attachments please find your LMO and Employer/Employee sample contract.*

*...*

**REMEMBER THE FOLLOWING:**

*If the Canadian Embassy calls you and ask you the following please respond the same as I am outlining here:*

- 1. Did you pay any recruitment fees? You say no not at all*
- 2. How did you find this employer? You say through the Kijiji add dated on November it is direct hiring*
- 3. Did your employer interview you? You say yes and explained me the duties to be performed ...*
- 4. The employer said I would be responsible for the processing fees in the Canadian Embassy*
- 5. The employer will pay the airline ticket? You say yes*
- 6. The employer said she needed personnel who is healthy, and can be bondable...*
- 7. If the Canadian Embassy ask you if you have any relatives in Canada? You say NO*
- 8. ...*
- 9. ...*
- 10....*

*Explain your employer said not to pay any extra fees or fees to the Agency that is assisting her on doing this paperwork as the employer has paid the Agency for doing this job.”*

GP states that the above documents were not prepared by her and if they were given to applicants by EAEA, GP was not involved. GP states that she suspects LA is responsible for both the creation and distribution of the documents, notwithstanding that the December 29, 2009 email appears to emanate from GP's personal email. GP states that LA occasionally had access to GP's email account and must have created/sent the December 29, 2009 from GP's account.

In any event, this appeal board concludes that EAEA, whether by GP, LA or others did counsel clients to mislead consular, embassy or immigration officials in relation to applications for work permits or entry into Canada.

**Did EAEA counsel foreign individuals seeking employment under the Low Skills Pilot Program (Temporary Foreign Worker Program) to pay for their own return transportation contrary to Human Resources and Skills Development Canada rules/regulations?**

As indicated in a sample Employment Contract taken from the website of Human Resources and Skills Development Canada, employers agree to assume the transportation costs of the round trip travel of an employee between his or her country and Canada.

The Director entered into evidence the following documents:

- Two page document on EAEA letterhead entitled "ATTENTION APPLICANTS:" including the following (emphasis added):
  - "Applicant responsibilities: You are responsible for your own plane tickets and all the expenses this process incur, accommodation you are responsible and is \$500 per person monthly."
  - "Method of payments: Will be paid to Georgina Pawson via Western Union at the address of: ..."
  - "Sincerely, Georgina Pawson" (typed – no signature).

This appeal board concludes that EAEA did counsel and/or require foreign individuals seeking employment under the Low Skills Pilot Program (Temporary Foreign Worker Program) to pay for their own return transportation contrary to Human Resources and Skills Development Canada rules/regulations.

**Were others, rather than GP, responsible for EAEA's alleged violations of the legislation?**

GP claims that email messages appearing to be sent by GP, and referenced above, were actually sent by others, that others were responsible for the content of the EAEA website and other EAEA marketing materials, and that she is otherwise not responsible for alleged violations of the legislation, for a variety of other reasons. She states variously that:

- she is responsible for all activities of EAEA, as it is her business – but she should be excused for any violations of the legislation because they occurred without her knowledge;
- she was not responsible for the content of the EAEA website – the web designer was;
- she is not responsible for certain emails sent from her personal email account over her name – LA was;
- she did not create or distribute documents for applicants on EAEA letterhead – LA or others did;
- she did not counsel or require applicants to pay for their own return transportation – LA or others did;
- she did not counsel clients to mislead consular, embassy or immigration officials in relation to applications for work permits or entry into Canada – LA or others did;
- she did collect fees from foreign applicants seeking employment in Canada – but she did not know it was unlawful to do so, even though she continued to do so when she had in her possession LMOs and other documents which clearly stated that collection of such fees was unlawful;
- she operated an employment agency in Alberta without a licence contrary to s. 104 of the *Fair Trading Act* – but it was the City of Edmonton’s fault for not advising her that such a licence was necessary.

GP acknowledges that EAEA was her business, but she suggests a remarkable disengagement from much of the core activities of the business. GP would have this appeal board believe that anything that occurred in the business that was in any way unlawful was the responsibility of others, but not her. GP’s arguments in this respect are simply not credible. In fact, given the evidence presented and GP’s purported years of experience in the employment agency business in Ontario, it is incredible to suggest that GP was not aware of what was going on in her company.

At the appeal hearing, GP presented two witnesses who testified that they had concerns about LA’s collection of fees and other conduct on the part of LA in the course of her business dealings. These two individuals, and a third individual, made complaints about LA to the RCMP and Service Alberta. However, the witness testimony, and any evidence of misconduct on the part of LA, does not change this appeal board’s finding that GP was involved in the illegal collection of fees.

### **Is EAEA vicariously liable for the actions of employees/associates empowered to conduct business on behalf of EAEA?**

Section 166 of the *Fair Trading Act* establishes vicarious liability as a standard. Accordingly, acts or omissions by an agent or supplier, including associates of GP such as LA, are deemed to be acts of EAEA. EAEA is responsible for all conduct of LA or others acting in the course and scope of their engagement by EAEA.

GP acknowledges that EAEA is vicariously liable for the alleged (and, in some cases, admitted) violations of the *Fair Trading Act* and *Employment Agency Business Licensing Regulation*. While she argues that she should be excused, on the basis that she did not knowingly contravene the legislation, this appeal board does not accept her version of events or find that she or EAEA should be absolved of responsibility, for the reasons already set out.

**In view of GP's purported attempts to mitigate EAEA's alleged (and, in some cases, admitted) violations of relevant legislation, did the Director appropriately exercise his discretion when refusing to issue the business licence?**

GP has purported to attempt to refund fees improperly collected from potential employees, once she realized that the fees were illegal. She also took steps to apply for an employment agency business licence, once she realized that one was required.

Both of these efforts to correct past EAEA misconduct occurred after complaints were made to Service Alberta. While that is not necessarily fatal to GP's application for a business licence, this appeal board must weigh the credibility of GP and the context in which her remedial actions were taken.

This appeal board must also consider the impact of EAEA's actions on a vulnerable class of individuals. Contrary to the law, EAEA knowingly charged significant fees to foreign workers in return for minimal service and a false "guarantee" of at least one year of employment.

Section 127 of the *Fair Trading Act* gives the Director discretion to refuse to issue or renew a licence, to cancel or suspend a licence, or to impose terms and conditions on a licence for any of the following reasons (only those sections relevant to the issues at hand are reproduced below):

- (a) *the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held;*
- (b) *the applicant or licensee or any of its officers or employees*
  - (v) *has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,*
  - (v.1) *fails to comply with any other legislation that may be applicable,*
- (c) *in the opinion of the Director, it is in the public interest to do so.*

GP argues that the Director failed to properly exercise his discretion in that he should have considered issuing her a licence with terms and/or conditions. She says that she would like to operate for one year, would work in consultation with a law firm, and would accept closer monitoring and supervision. While she admits to engaging in business without a licence and being vicariously responsible for EAEA associates charging improper fees, GP argues that the Director failed to consider her efforts to mitigate or remedy her wrongdoing by trying to refund the fees back to applicants, and telling her associates to do the same.

In response, the Director said that he did not consider a conditional licence because the failure to be licenced and the illegal fees were two main concerns (as opposed to just one of those), and there were also secondary concerns about GP and EAEA taking advantage of foreign workers, contrary to the public interest, failing to take any responsibility at the time of his decision, and lacking general credibility (as discussed above).

GP also alleges that the complaints that precipitated the Director's investigation of EAEA were made by LA and AC in an effort to retaliate against her for demanding that they repay the illegal fees paid by foreign workers. She says that the Director overlooked this when making his decision to refuse to issue a business licence.

Notwithstanding GP's arguments regarding the Director's exercise of discretion, this appeal board has concluded that:

1. EAEA operated an employment agency in Alberta without a licence contrary to s. 104 of the *Fair Trading Act*
2. EAEA directly or indirectly demand or collect a fee or other compensation from a person who is seeking employment contrary to s. 9(1) of the Employment Agency Business Licensing Regulation
3. EAEA's website was deceiving or misleading to consumers contrary to s. 6(4) of the Fair Trading Act
4. EAEA counseled clients to mislead consular, embassy or immigration officials in relation to applications for work permits or entry into Canada
5. EAEA counseled foreign individuals seeking employment under the Low Skills Pilot Program (Temporary Foreign Worker Program) to pay for their own return airfare contrary to Human Resources and Skills Development Canada rules/regulations
6. GP is not credible in her claims that email messages appearing to be sent by GP were sent by others, others were responsible for the content of the EAEA website, others were responsible for collection of fees contrary to the legislation, others were responsible for counseling deception with immigration authorities, and others were responsible for GP not knowing that a employment agency licence was required to run her business.
7. EAEA is vicariously liable for the actions of employees/associates empowered to conduct business on behalf of EAEA, in any event.

For the reasons detailed above, this appeal board finds that:

1. EAEA has contravened the *Fair Trading Act* and the *Employment Agency Business Licensing Regulation*;
2. EAEA has failed to comply with other legislation by counseling applicants to lie to consular, embassy or immigration officials; and
3. the issuance of an employment agency business licence to EAEA or GP under any other trade name or under any terms/conditions would be contrary to the

public interest, could bring the employment agency business regime in Alberta into disrepute and could undermine the trust in and credibility of the licensing authority.

## **DECISION**

Pursuant to s. 179(6) of the *Fair Trading Act*, this appeal board confirms the decision of the Director of Fair Trading (as delegated) to refuse to issue an employment agency business licence to Edmonton Alberta Employment Agency.ca and Georgina Pawson.

Should EAEA and/or GP apply for an employment agency business licence in the future, EAEA and/or GP must, at a minimum, provide to the Director for the Director's consideration:

- An undertaking not to directly or indirectly demand or collect a fee or other compensation from a person who is seeking employment;
- A business plan demonstrating an awareness that income will be generated principally from employer clients;
- Evidence of an understanding of the legislative framework in Alberta for operating an employment agency and an undertaking to comply;
- Drafts of contracts with applicants for employment and with employer clients;
- Copies of draft promotional and/or marketing materials, if any, including websites, brochures or other publications;
- Names of employees, agents and/or associates proposed to be engaged in the employment agency;
- An undertaking by GP to permit the Director to audit the books and records of any employment agency that GP may operate following the grant of a licence in Alberta, if any;
- An undertaking by GP to comply with such other reasonable terms and conditions as the Director may require in the public interest.

ISSUED and DATED at the City of Edmonton in the Province of Alberta this 7<sup>th</sup> day of March, 2012 by the Appeal Board constituted to hear the above referenced matter pursuant to section 179 of the Fair Trading Act and the Appeal Board Regulation thereunder.

Paul Alpern (Chair)

Rick Kowalik

Wade Riordan Raaflaub