

THE MATTER OF AN APPEAL BY
SYLVIA OGRODZINSKI on her own behalf and
on behalf of EARTH EDGE CONSULTING LTD. as its Director
and President

Appellants

and

THE DIRECTOR OF THE *FAIR TRADING ACT* (AS DELEGATED)

Respondent

DECISION OF THE APPEAL BOARD

APPEAL BOARD PANEL: VIRGINIA MAY, CHAIR
LYLE BERGE, PANEL MEMBER
JB ISAACS, PANEL MEMBER

ORDER APPEALED: DIRECTOR'S ORDER DATED DECEMBER 22 2015

1. Sylvia Ogrodzinski and Earth edge Consulting Ltd, individually or through any employee, representative or agent must immediately cease engaging in collection activities in Alberta.
2. Sylvia Ogrodzinski and earth Edge Consulting Ltd., individually or through any employee, representative or agent must immediately cease engaging in practices prohibited by the Collection and Debt Repayment Regulation

APPEARANCES

For the Director: Mike Areshenko (acting Director), hereinafter referred to as the Director)
Mui Nguyen, witness
Xuan Ly, witness
Jenni Nguyen, witness
Scott Esau, Investigator, Consumer Investigation Unit, witness
Betty Lam, Vietnamese interpreter, member of ACIA

For the Appellants: Sylvia Ogrodzinski on her own behalf and as a Director and President of Earth Edge Consulting Ltd. (collectively referred to as the Appellants or individually Sylvia and EEC Ltd.)

Patrick Sawyer, Bailiff, witness.

Decision The panel unanimously confirms the Director's Order of December 22nd, 2015 pursuant to Section 179(6) of the *Fair Trading Act*. The Appeal of February 2nd, 2016 is denied.

Observers: Ian Munro, Senior Investigator
Rene Degagne, Senior investigator
Larissa Kevorkyan, Investigator

Hearing Location: Room 301, 7015 Macleod Trail, Calgary, Alberta T2H2K6

Hearing Date September 22nd, 2016

Award Date November 14th, 2016

Appendix List of Directors Documents:

Exhibit Binder D1

Exhibit Binder D2 including Tabs 1 to 21

Exhibit D3

List of Appellants' documents:

Exhibits A1 to A18

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APPENDIXLIST OF EXHIBIT

The following documents were submitted into evidence during the Appeal..... 42

Received from the Director (D1) Document Binder D2, Tab 1 to 21, Document D3

Received from the Appellants, Exhibits A 1 to A18 44

INTRODUCTION

1. The Appellants, Sylvia Ogrodzinski ("Sylvia") and Earth Edge Consulting Ltd. ("EEC Ltd.") filed a Notice of Appeal, pursuant to Section 179 of the *Fair Trading Act* (the Act) from the Decision of the Director of Fair Trading (the Director) to issue a Director's Order to Sylvia and EEC Ltd. under Section 157 of the Alberta *Fair Trading Act*.
2. The Order is dated December 22, 2015. The Appeal Notice is dated February 2nd 2016.
3. Pursuant to Section 179 of the *Fair Trading Act* (the Act) Tim Grant, Deputy Minister of Service Alberta, appointed an appeal board to hear the Appeal of EEC Ltd. and Sylvia. (the Appellants). The appointment is dated 2nd March 2016.
4. The appeal board hearing took place on September 22nd, 2016 for a full day. It was heard by a three person panel, Virginia May, Chair and JB Isaacs, panel member and Lyle Berge, panel member.
5. The Appellants case was heard first. Oral evidence was called by the Appellants and by the Director. Documentary evidence was entered by the Director and by the Appellants at the hearing.
6. A list of the Exhibits entered is attached as an Appendix to this Decision.
7. This Decision is provided under the Jurisdiction of section 15(1) of the Appeal Board Regulation 195/99 (ABR) and relies upon the Statutory Framework under which the Order, Appeal and hearing took place.
8. The appeal board panel invited the parties to provide written submissions by the 30th October.2016. Both parties did so by October 25th and those submissions have been considered in reaching this Decision.

JURISDICTION

9. The Jurisdiction for the hearing and for the Director of Fair Trading to decide to issue a Director's Order to Sylvia and EEC Ltd comes from the Fair Trading Act RSA 2000 C F 2 and its Regulations , Collection and Debt Repayment Practice Regulation Alta Reg 194/1999 and Appeal Board Regulation Alta Reg 195/1999. Copies of these are contained in Exhibit D1 together with the Appointment documents , the Order and the Appeal as listed below.
10. They include:
 - A. The Director's Order

Director's Order under Section 157 of the *Fair Trading Act* to Sylvia, EEC Ltd., and any employee, representative or agent of the above, dated December 22nd 2015. The Order is dated 22nd December 2016

Section 157(1) If, in the opinion of the Director

(a) a person is contravening or has contravened this Act or the regulations, the Director may issue an order directed to the person or the publisher.

(2) An order may direct the person or publisher

(a) to stop engaging in anything that is prescribed in the order, subject to any terms or conditions set out in the order

B. Appeal of the Appellants under Section 179 (1) of the *Fair Trading Act*

Section 179 (1) A person

(d) to whom an order under section 129 or 157 is directed may appeal the decision, order or administrative penalty by serving the Minister with a notice of appeal within 30 days after being notified in writing of the decision or order or being given the notice of administrative penalty.

The Appeal of the Order by Sylvia and EEC Ltd. pursuant to Section 179 (1) is dated February 2nd 2016.

C. Service Alberta's acknowledgment of the Appeal, is dated February 5th, 2016

D. The Appointment documents from the Director. They include the Order in Council from Tim Grant Deputy Minister pursuant to Section 179(4) of the Act. They are dated 2nd March 2016.

E. Service Alberta's notifications to the panel members and to Sylvia of the appointments, dated 3rd March 2016

11. A hearing date was set in May 2016 for the last two weeks of September to accommodate the Appellants lack of availability before the last two weeks of September.
12. No objection was made to the composition of the appeal board panel at any time from the appointment date to the completion of the hearing, including the receipt of written submissions from the parties by 30th October 2016.
13. The Jurisdictional documents, together with copies of the relevant legislation, the *Fair Trading Act* RSA 2000 ch-F-2 (the Act), the Debt and Collection Repayment Practices Regulation 194/1999 (the Regulation) and the appeal board Regulation 195/1999 (ABR) were all made available to the parties and the panel in March 2016. The Jurisdictional documents listed above were entered at the beginning of the hearing. (Exhibit D1)
14. Pursuant to section 179(6) of the Act an appeal board panel hearing an Appeal under this Act may CONFIRM, QUASH or VARY the Order of the Director.
15. The panel acknowledges pursuant to section 179(8) an Appeal under this section is a new trial of the issues.

PROCEDURAL GUIDELINES FOR THE HEARING PROVIDED BY THE PANEL TO THE PARTIES IN MAY 2016

16. The Chair provided procedural guidelines to both the Appellants and the Director by email on 2nd May and set the hearing date as 22nd September 2016.
17. The Chair wrote as follows:
 - (a) The location of the hearing and its time from 9 a.m. to 4 p.m. on September 22nd, 2016. She also provided the phone number of the Board room, where the hearing was to be held.
 - (b) If the Appellants wished to attend by telephone they could do so.
 - (c) The names of witnesses and any Affidavit witnesses be provided to the Chair by 1st September 2016.
 - (d) that if any counsel were appointed by either party that they advise her of the counsel's names by September 1st so she could directly contact such counsel.
 - (e) That all matters of disclosure and such related issues, be sorted out between the parties by 8th September and that such be confirmed to the Chair.
 - (f) That both parties provide the hearing panel with four copies of all documents on the morning of the hearing.
 - (g) The Chair provided all parties with her cell number and invited them to call her in advance, if necessary on any of these procedural matters.
18. There were some discussions raised with the Chair that the Appellants might need to attend by telephone and also the Director advised that one of his witnesses might need to attend by phone. In the end all witnesses attended in person. The Chair also learned of the need for a Vietnamese interpreter for Mui Nguyen and Xuan Ly. Such arrangements were made.
19. By September 1st the Appellants did not advise that they would be calling any witnesses, although one witness was called at the hearing. No objection was made.
20. The Director advised of three witnesses before the hearing. Mr Esau's name was added at the Hearing.
21. Nobody contacted the Chair with reference to Disclosure or related matters by 8th September as requested. The Chair's availability as offered in the email of 2nd May to deal with any such issues was not sought by the Appellants prior to the hearing.

PROCEDURAL MATTERS DEALT WITH AT THE HEARING ITSELF

- a. No recording

The Chair advised that there would be no recording of the oral evidence and this was accepted. No request for a recording was made.

- b. All witnesses sworn.

The Chair advised that all witnesses would be sworn and that they could take the oath on the Bible or affirm. All witnesses chose to take the oath on the Bible.

c. Constitution of the panel

There was no objection made to the constitution of the panel.

d. Jurisdiction of the panel

There was no challenge raised to the Jurisdiction of the panel to hear the appeal.

e. Hearing open to the public

22. Pursuant to section 10 of the ABR the hearing was open to the public.

23. Three members of the Consumer Investigation Unit attended as observers at the back of the hearing Room. They were Ian Munro, and Rene Degagne, Senior investigators and Larissa Kevorkyan, investigator. The Appellants did not object to their presence.

24. During the Director's case a self identified Mr Michael Brice came in to the hearing room just before the witnesses Mui Nguyen and Xuan Li, the Judgment Debtors were to give evidence. Mr. Brice's name was made known to the panel as an agent operating in the small claims court agency arena. His name was mentioned in Exhibit A15 by the Appellants.

25. Mr Brice said he intended to sit at the back with the other observers as a member of the public. The Appellants said they did not want him in the hearing room and asked for him to leave. The Appellants said they did not know him but it was established that Sylvia did know who he was and he knew her.

26. After a brief discussion between the panel and Mr. Brice in which it was acknowledged that the hearing was open to the public, Mr Brice voluntarily withdrew from the hearing before any more oral evidence commenced. He did not return.

f. Written submissions requested

27. At the end of the hearing the panel advised the parties that they wished to receive written submissions by October 30th 2016. The Panel said they would provide a Decision by November 14th. 2016. The submissions were to concentrate on whether the evidence at the hearing did or did not justify the Order. They could be in point form and be sent by email rather than in hard copy.

28. On Friday October 21st the Chair received an email from a lawyer Darren Mahoney, who acted on behalf of Sylvia on other matters. He asked for an extension of time to assist Sylvia in preparing her submissions. He said he had only just been asked to prepare them.

29. The Chair spoke directly with Mr Mahoney and advised him that the administrative hearing had occurred on September 22nd, 2016 and that the evidence was not recorded and that she would have to talk with the panel members and the Director first.

30. The panel had received the Director's submissions on October 21st, 2016.

31. The panel by email on Monday October 25th invited Mr. Mahoney, on behalf of Sylvia to state the kind of timeframe for an extension that he was looking for, since a month had passed already. The Director did not object to a short extension.
32. The submission of the Appellants was received directly from Sylvia on October 25th, 2016. No lawyers name was attached to them. No further contact has been received from Mr Mahoney. He did not respond to the email of October 25th, 2016.
33. Since the submission was received in the time frame given by the panel no further decision was required.

DECISION BY THE PANEL ON PRELIMINARY PROCEDURAL MATTER RAISED BY THE APPELLANTS AT THE HEARING RELATING TO THE DIRECTOR'S DOCUMENT BINDER

34. At the beginning of the hearing the Appellants raised an issue with respect to the timing of the service of the Director's Binder of documents prepared by the Director (subsequently entered as **Exhibit D2, Tabs 1-21.**)
35. The Appellants stated that they had only received the Director's binder (later known as **Exhibit D2**) on the September 21st, 2016 in the early afternoon. The binder of documents had been served by Mr. Esau, the investigator.
36. The Appellants had not opened the package prior to the hearing to review its contents but sought an Adjournment at the beginning of the hearing on the basis that the Director's binder of documents had not been properly served or served in a timely manner.
37. No statutory authority was cited for an adjournment to be considered.
38. The Director's response to the Appellant was to state that its binder of documents had been provided to the Appellants on September 21st as a matter of referral convenience for the hearing. Many of the documents, as reflected in its index were those of the witness Jenni Nguyen. They were largely known to the Appellants since they had been provided to or by the Appellants during the investigation and had been written or received by the Appellants. Many were duplicates of the Appellants own documents (**Exhibits A1 to A18**). Many of the documents in the binder were the evidence of the witness Jenni Nguyen who was involved in an email exchange with Sylvia, which lies at the centre of this appeal (**Exhibits A1 to A18.**) As either their writer or the recipient, the documents would have been well known to the Appellants. Jenni Nguyen was scheduled as a witness to speak to the documents as evidence.
39. Mr Esau was also to give evidence and could speak to the public documents. The other main group of documents in the binder were mainly documents of public record from land titles, the court house and government websites. Some of them were duplicated in **Exhibit A4** of the Appellants Exhibits. These documents were written evidence arising in the investigation to be introduced by the investigator Mr Esau. Again they could have been known, or were known, to the Appellants. A brief review of the index to the binder and the documents themselves revealed their nature.
40. The objection by the Appellants occurred after the Appellants had produced their own documents for the first time that morning. Copies of their documents were provided to the Director and the

panel. No objection was made by the Director or the panel members to the introduction of the documents (**Exhibit A1 to A18**) which provided the written evidence of the Appellants.

41. At the hearing the panel offered to the Appellants that they could have a brief time to review the binder before the next witness but the Appellant did not take that time.
42. The adjournment was denied. The binder was then entered as an exhibit, **Exhibit D2** with no objection to its entry being made at that time or any other time in the hearing.

DECISION BY THE PANEL IN RESPONSE TO THE APPELLANT'S WRITTEN SUBMISSIONS CONCERNING THE DENIAL OF AN ADJOURNMENT AT THE HEARING WITH REFERENCE TO THE DIRECTOR'S DOCUMENT BINDER

43. The panel considered the submission on the objection of the Appellants to the service by the investigator and to the timing of the service.
44. There was no objection made to the content of the binder or to suggest that the contents were not known to the Appellants.
45. The panel considered the objection and the applicable Regulation 7 of the ABR. The Regulation is as follows:

Adjournments

- (7) An appeal board may grant an adjournment of a hearing for any period and on any terms it considers appropriate if the appeal board is satisfied that
 - (a) there are compelling reasons for granting the adjournment, or
 - (b) not granting the adjournment would amount to a denial of fairness to one or more parties to the appeal.

46. The panel reviewed the index to the Documents **Tab 13 to 21** in the Director's binder .It shows emails written to, or received by, the Appellants in the period of time from September 25th, 2015 to December 14th, 2015. There is some duplication with the Appellants own Documents **Exhibits A1 to A18**. The Director's binder provides a more complete picture of the correspondence in which the Appellants were involved concerning the Judgment Debtors, the Nguyens. They form the written evidence of Jenni Nguyen.
47. **Documents 1 to 12** are publicly obtainable documents from the court house, land titles and government websites and publicly retrievable. They are the written evidence of the investigator Mr. Esau who gave oral evidence.
48. The panel also considered section 177(1) (a) of the Act allowing documents to be personally served and section 169.1(3) (a) and (b) allowing the Director to accept any oral or written evidence that the Director considers proper, whether or not it would be admissible in a court of law and (b) that the Director is not bound by the law of evidence applicable to judicial proceedings.

DECISION BY THE PANEL ON THE WRITTEN SUBMISSIONS RELATING TO THE SERVICE OF THE DIRECTOR'S DOCUMENT BINDER

49. The panel concluded that there had been no compelling reason to grant the Appellants an adjournment and that no prejudice or lack of fairness to the Appellants resulted. The decision made at the hearing remains unchanged after considering the Appellants' submission and the statutory framework.
50. In reaching its conclusion the panel considered the following:
- a) The opportunity to raise an issue about documents and disclosure had been made available early on to both parties by the Chair in the procedural email of May 2nd. The Appellants did not use that opportunity to discuss documentary exchange issues by September 8th as offered in the email.
 - b) The documents were largely known to the Appellants and a large number were written or received by the Appellants themselves or were duplicates of their own Exhibits.
 - c) The Appellants had not availed themselves of the opportunity to review the Binder of documents on the 21st September when it was received.
 - d) The Appellants had not availed themselves of the chance offered by the panel to have some time to take a brief look at the documents in the hearing.
 - e) The Director's binder was entered by the panel as Exhibit D2 in the hearing with no objection being made by the Appellants
 - f) There was cross examination by the Appellants on the documents at the hearing with no objection being made.
 - g) The applicable statutory sections as set out above.

TWO FURTHER PROCEDURAL ISSUES RAISED BY THE APPELLANTS IN THEIR SUBMISSION

A. Service of an Unrelated Document

50. In addition to raising a service issue over the Director's document binder, the Appellants complained of inaccurate service of a document that had nothing to do with them. The document, an Affidavit of service of summons was in another unconnected name and was clearly served in error.
51. Decision: It is of no interest or relevance to the panel.

B. Evidence of Patrick Sawyer of Western Civil Enforcement

52. The appellants also complain that their witness Patrick Sawyer had not been allowed to give evidence, was denied testimony and the ability to express himself.
53. The Appellants state that the evidence was ended by the panel because "it was not necessary for an enforcement agency to work on this case file in that testimony showed that the Debtors PAID DEBT IN FULL AT Queens bench Calgary Courts."
54. These submissions bare no relation to the thinking of the Panel during the Appellants questioning of Mr Sawyer. The Appellants seem to be acknowledging that there was no debt left to enforce upon.

55. It was difficult for the panel to comprehend from some of the questions asked of the witness why Mr Sawyer had been called.
56. Mr. Sawyer did in fact give evidence for about 30 minutes as set out in the oral evidence section found below.
57. When the direct questions put to him by the Appellants went beyond his personal knowledge to answer, the examination questions were ended. The Appellants were asking him questions unrelated to the issues at hand and to which he could not know the answer.
58. For example he was asked to confirm that EEC always operated within the law, and other such general questions about their general business practice. He could not know the answer to those questions. They were not appropriate questions and had nothing to do with the issues before the hearing.
59. When the panel asked further questions and verified that the witness had no personal knowledge or involvement in the matters involved in this appeal his evidence ended and the Appellant had no more different kinds of questions for him. The Appellants general evidence had been that they would hire Western Civil Enforcement for their enforcement issues. Mr. Sawyer was very clear that he had nothing to do with the issues of this appeal and had never been retained on it for any purpose.

Law cases cited- Listed in Submission

60. The Appellant provided one case to the panel at the end of the hearing, *Radford v. Stewart*, 2006 ABCA 157 with three other case cover sheet attached. Copies of those cases were not provided. No argument was presented in the submission as to why they might have some relevance to this administrative hearing and the panel did not feel it was their obligation to develop an argument for her. (Exhibit A16)

SUBSTANTIVE ISSUE TO BE DETERMINED

SHOULD THE ORDER OF THE DIRECTOR ISSUED ON DECEMBER 22ND, 2015 TO THE APPELLANTS BE CONFIRMED, QUASHED OR VARIED PURSUANT TO SECTION 179(6) OF THE ACT

61. On December 22, 2015, Darren Thomas, Director of Fair Trading as delegated under the Act, issued an Order to the Appellants.
62. The Order can be found as part of Exhibit D1, of the Director's binder.

DIRECTOR'S ORDER UNDER SECTION 157 OF THE FAIR TRADING ACT

TO

SYLVIA OGRODZINSKI, EARTH EDGE CONSULTING LTD.,

AND ANY EMPLOYEE, REPRESENTATIVE, OR AGENT

OF THE ABOVE

ALLEGATION:

Service Alberta has investigated allegations related to breaches of the requirements of the *Fair Trading Act* and Collection and Debt Repayment Practices Regulation and found evidence that:

1. SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD. have engaged in collection activities in Alberta without the required Collection Agency Licence and,
2. SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD. have engaged in breaches of the Collection and Debt Repayment Practices Regulation, including the following prohibited practices:
 - s. 12(1)(a) collecting or attempting to collect money for a creditor except on the belief in good faith that the money is due and owing by the person to the creditor;
 - s. 12(1)(h) directly or indirectly threaten or state an intention to proceed with an action for which the collection agency or the collector does not have the prior express consent of the creditor or for which there is no lawful authority;
 - s.12(1)(i) contact or attempt to contact the debtor, any member of the debtor's household, any relative of the debtor, the debtor's employer, or any neighbour, friend or acquaintance of the debtor by any means in such a manner as to constitute harassment;
 - s.12(1)(j) give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including but not limited to, references to the police, a law firm, prison, credit history, court proceedings, or a lien or garnishment.

Based on the available evidence, the Director has reached the opinion that SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD. have breached the *Fair Trading Act* and Collection and Debt Repayment Practices Regulation.

KEY LEGISLATION

The *Fair Trading Act* RSA 2000 Chapter F-2 states:

- s.111 No person may carry on the activities of a collection agency unless the person is the holder of a collection agency licence issued under this Act.

The Collection and Debt Repayment Practices Regulation 194/1999 states:

- s.3(2) No person may carry on the activities of a collection agency described in section 1(b)(i) unless the person holds a collection agency licence.

S.12(1) No collection agency or collector may:

- (a) collecting or attempting to collect money for a creditor except on the belief in good faith that the money is due and owing by the person to the creditor;
- (h) directly or indirectly threaten or state an intention to proceed with an action for which the collection agency or the collector does not have the prior express consent of the creditor or for which there is no lawful authority;
- (i) contact or attempt to contact the debtor, any member of the debtor's household, any relative of the debtor, the debtor's employer, or any neighbour, friend or acquaintance of the debtor by any means in such a manner as to constitute harassment;
- (j) give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including but not limited to, references to the police, a law firm, prison, credit history, court proceedings, or a lien or garnishment.

ORDER

SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD., individually or through any employee, representative or agent, must immediately cease engaging in collection activities in Alberta.

SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD., individually or through any employee, representative or agent, must immediately cease engaging in practices prohibited by the Collection and Debt Repayment Practices Regulation.

NON COMPLIANCE WITH ORDER

ANY PERSON WHO FAILS TO COMPLY WITH AN ORDER OF THE DIRECTOR UNDER SECTION 157 OF THE FAIR TRADING ACT CONTRAVENES THIS ACT AND IS GUILTY OF AN OFFENCE AND MAY BE PROSECUTED PURSUANT TO SECTION 163 OF THE FAIR TRADING ACT.

"Darren Thomas"

Director of Fair Trading (as delegated)

December 22, 2015

SUMMARY OF THE APPEAL OF FEBRUARY 2, 2016

In their response the Appellants confirmed service of the Director's Order

The full appeal can be found in Exhibit D1 and Exhibit A15

63. In summary the Appellants response to the Order is to argue:
- (1) that they do not engage in collection activities;
 - (2) that they have never engaged in collection activities nor any other prohibited seizures or activity related thereto
 - (3) that they have never breached any prohibited practices;
 - (4) that they have never breached the requirements of the Fair trading Act specifically or other wise (section 157 and (179)
 - (5) that they only use licensed civil authority agents to deal with any enforcement ,such as consolidated civil enforcement
 - (6) that they do not seize property nor do they seize vehicles
 - (7) that she has never breached legislation or collection activities under Collection and Debt repayment Practices Regulation
64. THE APPELLANTS describe their work as administrative work to assist private individuals and corporations to collect provincial court judgments. This work comes out of acting as court agent in Provincial court civil matters.
65. THEY argue that there were two Actions and two Judgments in the exact same amount of \$28,943.32 and that they were dealing with both on behalf of Ms Chau.
66. They blame Mr. Brice, the Judgment Debtors' agent in the provincial court trial, for conduct such as harassment against other agents, and make negative remarks against him as part of her Appeal.
67. At the commencement of the Appeal they write:
- “Our information shows that a very vexatious AB independent court agent by the name of Michael Brice, owning a company by the name of Alberta small claims court agents, enjoys harassing various agents on a regular basis...” The Appellants then states “I have never met Mr. Brice and I do not know who he is and I have never spoken to Mr Brice”.

ORAL EVIDENCE OF THE APPELLANTS**SYLVIA OGRODINZKI FOR BOTH APPELLANTS**

68. The Appellant, Sylvia Ogrodinzi (referred to as "Sylvia") and the company, Earth Edge Consulting Ltd. of which Sylvia is the Director (referred to as "EEC Ltd.") were represented at the hearing by Sylvia.
69. The corporate Appellant was an active company and she was its President.
70. Sylvia gave evidence on behalf of both Appellants and acknowledged that she was authorized so to do.
71. Sylvia gave her own background and stated that she had been doing this kind of small claims agency work since the age of 18 years old. She has conducted her business in Alberta for the last 10 years.
72. Sylvia defined herself as an independent civil provincial court agent with a right to administer fees for debts.
73. Sylvia stated that there are hundreds of agents in small claims court doing the same kind of work that she does as an agent in the court, and that there was a lot of competition. She said that she advertised on Kijiji and on social media.
74. Sylvia acknowledged under cross examination that the debt that she was carrying on activity to collect, as created 10th June 2014 was not a debt in her own name but was owed to a third party creditor.
75. Sylvia further agreed that she was attempting to collect debts from the Judgment Debtors of the Judgment Creditor, Ms. Chau.
76. Under cross examination Sylvia agreed that there was no direct correspondence from Jenni Nguyen clarifying the Appellants as the agent for the Judgment Debtor, unless an email of September 25th could be said to prove that authority.
77. She agreed that she had authority to act and speak for EEC Ltd.
78. She agreed that she had no collection agent licence.
79. She agreed she was never licensed as an enforcement agent.
80. She agreed that she was not a lawyer, so obtained no authority from that professional designation.
81. She agreed Jenni's interest in contacting her was to have the liens removed from her parents property.
82. In her email of September 25th 2015 to Jenni (**Exhibit D2, Tab 12**) Sylvia wrote:

"I confirm that liens placed will be released and discharged upon and after full payment of the judgment including the original amount plus all interest, court costs, agent fees and agent disbursements. Liens will only be released until the funds are in our hands payable to the Plaintiff, our client and any other costs associated. AS YOU HAVE ELECTED TO PAY DIRECTLY INTO COURT – I confirm that this procedure takes much longer and can take up to and more than 90 days working with the courts system. ENFORCEMENT WILL CONTINUE AGAINST ALL PARTIES. HOWEVER YOU HAVE THE OPTION OF paying the agent directly to release the liens more quickly and to bring this matter to a more efficient close, including our corporate undertaking to release the liens upon full payment.

If you choose to pay the agent directly which funds will be held in trust for the plaintiff via interac bank e-transfer OR certified bank cheque or via bank draft – then we are able to discuss this more efficiently. Payment can be made to the Agent: S. Ogradzinski however, we will continue our enforcement until the payment has been made, if you elect to pay into court".

83. Under cross-examination by the Director when taken to this document, she disagreed with the Director that these words could leave an impression that she held both a collection agency license and an enforcement agency license.
84. The document heading only shows as part of Exhibit A9.
85. She was directed to her document of September 28 2015 sent to Jenni (Exhibit A9 and Tab D2 12).
86. She agreed that she did not know that the balance of the judgment had been paid by the date of September 28th.2015

EXHIBIT A9

From: "jenni Q" jenninguven1@gmail.com
 Date: October-1-15 1:20 PM
 To: "Sylvia Ogradzinski" sylviamonica@shaw.ca
 Subject: Re: Civil Enforcement

Sylvia,

Sounds good, I will await your list of costs and we can go from there.

Kind Regards,
 Jenni N.

On Sep 28, 2015, at 8:38 AM, Sylvia Ogradzinski <sylviamonica@shaw.ca> wrote:

hello Jenni...I'll prepare the costs and lists later this week, by the end of this weekend.
YES there are considerable savings particularly the interest, extra fees, filing costs and my agent fees which I WILL OFFER TO REDUCE if paid upon receipt of all costs which I will forward to you within a week.

This can be a substantial savings AND I WILL HONOUR TO DISCONTINUE THE ENFORCEMENT AND RELEASE YOUR PARENTS FULLY in all liens and all court filing matters – I WILL DO

THIS promptly on your behalf but only once everything is paid in full.

If you go through the courts then all the interest and extra costs and agent fee costs sky rocket in price because it takes over 90 days – sometimes over 110 days for the funds to be released and then the discharges still have to be done several weeks after that time period.

If you provide a CERTIFIED BANK DRAFT which when paid in trust has to be made payable to Agent in the name of S. Ogrodzinski – the bank provides you with an initial receipt and I will provide you immediately with a confirmation of receiving the funds.

Once the cheque clears in 7 business days and I get the go ahead from the bank, I then provide you with a RELEASE and confirmation that the liens ARE FULLY LIFTED, once attending at the registries.

You can hand deliver the certified bank draft to me personally and I will provide you with a receipt at my offices that I received the cheque and it is subject to bank clearing.

OR you can send it via Express Canada Post overnight delivery, either way will work.

Liens take a couple of days to release once cheque clears and I will honour to make this a priority. If you go the other way, I still can do enforcement AND it takes a long time to release which makes the procedure very vulnerable to you.

I am a licensed professional so there is no funny business and I have a reputation of trust with the courts and with anyone that I deal with – whether it be a plaintiff or a defendant.

I have the ability to reduce the costs TO YOU directly, the courts do not have that ability if you pay them.

standby for my info to you... .

regards
Sylvia

From: Jenni Q
Sent: Friday, September 25, 2015 4:35 PM
To: Sylvia Ogrodzinski
Subject: Re: Civil Enforcement

87. Then in Exhibit A9, Sylvia writes and underlines the sentence: "I am a licensed professional so there is no funny business." When questioned on this statement as to a license that she held she said she could say that because of being a licensed Commissioner for Oaths. She felt it showed she had some standard as a professional. She could not explain when questioned what that could mean in this context, or what relevance that would have to Jenni, nor could she explain why she used the phrase "so there is no funny business" except to say she wanted to encourage trust.
88. She stated that she was "obtaining" not "collecting" and that she regarded it as "settling" debts.
89. She also went on to say that she had been a stock broker, an insurance agent, an auxiliary officer in the Ontario Police Force. No evidence of these categories of professional activity was provided, nor were they relevant to the proceedings at hand.
90. She stated that there were two judgments and one unpaid in the exact amount as the paid judgment.
91. Sylvia testified that she and EEC Ltd. act for the Client and charge Debtor with costs.

92. She acknowledged that no debt was in her name and said "The debt is not owed to me".
93. She then said yes to a question from the Director that she was "attempting to collect debts from these debtors on behalf of Chau"
94. She acknowledged she was not professionally a lawyer.
95. The Appellants do not conduct enforcement or collection activities and at all times use Civil Enforcement Agencies, which they instruct, to carry out such activities.
96. No evidence of instructions to any enforcement agency was provided by the Appellants.
97. She entered an August 7, 2015 6 page email from Consolidated Civil Enforcement showing their fees for various actions in the sale of Land. It was Consolidated Civil Enforcement who the Appellants planned to use in this matter **Exhibit A8**.
98. The Appellants never provided Consolidated with a letter of instruction from Chau to enforce.
99. The Appellants would use Western Civil Enforcement. The Appellants did not use them in this matter.
100. She entered an email dated November 10, 2015 which Sylvia states shows the Appellants only works with Clients from monies paid into court and does not engage in collection activities. The writing on the email was her own comments as to the content, **Exhibit A10**.
101. Sylvia testified that Earth Edge Consulting Ltd. has four administrative divisions; Accounting, Landlord and Tenant, Collection, and Enforcement. These are internal administrative divisions for the purposes of; filing emails, categorizing disbursements, and administrative filing. She stated Lien Chau and Lam came under the category of Enforcement.
102. Sylvia entered an email dated August 27, 2015 to Gia Lam, sister of the Creditor which outlines how she and Earth Edge Consulting would conduct the business of enforcing the judgments against the, Mui Duc Nguyen and Xuan Ngoc Ly, **Exhibit A7**.
103. The Appellants entered an email dated January 29, 2016 in which Gia Lam authorizes Sylvia Ogradzinski to sign on behalf of Lien Chau, **Exhibit A17**.
104. She stated that she made a decision earlier not to change the name of the student-at-law as the agent for the creditor and to leave him as the registered agent.
105. On March 15 2016 filed a notice of change because they were close to settlement. By that time the Director's Order had been issued and she had filed an Appeal.
106. Sylvia testified that the Debtor's, Mui Duc Nguyen and Xuan Ngoc Ly, were not the Appellants' clients.
107. Sylvia testified that the Appellants on behalf of the Debtor had orchestrated liens against properties of the Debtor's and their son Daniel's property.

108. Sylvia testified that the Appellants were contacted by Jenni Nguyen, daughter of the Debtor's enquiring about the liens placed against the properties of the parents and her brother's Daniels property and that Jenni asked about how to have the Liens discharged.
109. Sylvia testified she advised Jenni that there was a lien registered against her parents' home, there are five different properties involved and one car which a PPRA lien has been placed and the Appellants have instructions to seize and sell it, that the Appellants, on behalf of their client, filed the liens.
110. Sylvia stated that the Appellants information was that Daniel Nguyen and the Debtor's were the same.
111. Sylvia made no reference to knowing of any debt owed by Daniel Nguyen to support a lien on his property.
112. Jenni's interest when she contacted her was the removal of the liens on the properties.
113. Sylvia testified that the object of her communication with Jenni was settlement.
114. Sylvia testified Jenni was not aware of two judgments.
115. Jenni told her, she was aware of one judgment for \$28,943.32 which was the one where \$22,000 was paid into court on December 14 2014, leaving a balance of \$6,943.32 to be paid. Jenni was not aware of any second judgment.
116. Sylvia entered an email from of October 6, 2015 which shows that Jenni only wishes to work with Sylvia and did not retain Mr. Brice. The handwriting on the email is her comments about its contents that Jenni had not retained the trial agent Mr Brice (see Exhibit A1).
117. Sylvia entered an email dated October 5, 2015, the contents of which show how closely the Appellants and Jenni were working, Exhibit A14.
118. Sylvia entered an October 6, 2015 email with an October 5, 2015 email from her to Jenni. Sylvia states that the October 6 email shows that Mr. Brice was no longer their agent and the October 5th email shows the Debtor's court agent is not willing to assist according to the Appellants interpretation in handwriting. (Exhibit A1 and A2 and Tab D2 12).
119. Sylvia entered documents; Exhibit A4 (there is a Bill of Costs, schedule A thereto, Certificate of Assessment Officer, Certificate of Judgment, Provincial Court of Alberta (Civil) Action No. P1190104042, Writ of Enforcement to Judgment, Addendum to Writ, and 3page Personal Property Register). That this document contains the lists of costs referenced in the October1, 2015 email. Further that the Appellants work through the courts in establishing costs as shown in her report to Lam, Exhibits A11, A12. This document also contained the filed certificates of judgment of June 10th 2014. (Exhibit A4).
120. Sylvia entered a Writ of Enforcement with Court File 1401 – 10809 with – 10809 crossed out and numbers 10808 written in followed by the initials S.O. (Exhibit A5).

121. Sylvia suggests that if the writ was filed in error the debtors could have applied to have it removed.
122. Sylvia testified she received an email on December 21, 2015 Scott Esau, Investigator, which email establishes a Writ of Enforcement 1401-10808 does exist. The writing on the email is her comments on the contents. The investigator advises Sylvia to cease trying to collect on P140110808 because it may not be valid. (Exhibit A6 and Tab D2 19).
123. Sylvia says that as an agent of the court she may file administrative Queens Bench forms and engage in hiring civil enforcement agents. As a civil provincial court agent she may represent a claimant and file administrative documents.
124. Sylvia entered a 4 page document from the Appellants to the Minister of Service Alberta – Consumer Programs with a transmission verification report of February 3, 2016 confirming Service of the Director’s Order and appealing it, Exhibit A15.
125. Sylvia entered a copy of; *Radford v. Stewart* ABCA 157, and cover pages of *Murphy Oil Company Ltd. v. Predator Corporation Ltd.*, 2004 ABQB, *Kwan v. Superfly Inc.*, 2011 ABQB 343, *Boyd v. Cook*, 2012 ABQB 284, with unexplained writing on the cover pages. Her testimony was these were relevant to her appeal.
126. Sylvia testified that the Appellants did not directly contact the Debtors in any manner.
127. She agreed she had done all the filing of liens and taken no action to notify the debtors of what she had done.

Under cross examination:

128. Sylvia stated with reference to Exhibit A7 that she did not personally conduct the civil enforcement process. She would advise the debtor that a civil enforcement agency would be involved and then she would work with the enforcement officer and the client.
129. She agreed that no letter of instruction was ever sent to Consolidated Civil Enforcement with reference to the package dated August 7th 2015. (Exhibit A8).
130. Under cross examination she acknowledged that Chau was the creditor and that she did not obtain a letter of instruction from the creditor to instruct the bailiff.
131. She was in touch with the daughter Jenni, only after Jenni contacted her in September 2015.
132. In September she knew that the trial agent for the Judgment Debtors was Michael Brice. He has the same position as she does, as agent of the provincial court.
133. She did not provide Jenni with any documents as requested by Jenni at any time.
134. When asked about her reference in Exhibit A9 to being a licensed professional she said she was referring to being a commissioner for oaths. When asked what that had to do with the subject matter of this appeal she agreed it had nothing to do with it but she just thought the words might increase Jenni’s trust in her. She was introducing herself so that they would settle.

135. With reference to her words in **Exhibit A9** "so there is no funny business", she was asked if there had been some previous discussion about 'funny business ' and Sylvia said no.
136. She said that the use of the word "enforcement "on her emails was just an administrative tag for internal filing. It was just another administrative division of her business like 'clients', 'small claims' and accounting.
137. She acknowledged that she sometimes attended with a bailiff when they seized and that it could involve nastiness and difficulties particularly with children but that she did not actually take part in physical enforcement.
138. With reference to **Exhibit A9** containing emails of September 28th and October 1st, at those dates Sylvia did not know that the Judgment Debtor had paid the balance owing in full on 15th September 2015. Her comment was that the debtor must have "been having her on "when Sylvia did find out that it was paid into court. (**Exhibit D 2, Tab 12**).
139. She acknowledges that she writes in **Exhibit A9** that she will still continue on with enforcement and not release liens until she has received directly the balance owing by the Judgment Debtor.
140. She stated that she was not collecting, just "obtaining money".
141. She was asked questions with respect to **Exhibit D2, Tab 8**, a Writ of Enforcement and **Tab 9**, land titles certificate on the property of Daniel Nguyen, brother of Jenni with writ on his house. She acknowledged there was no judgment against Daniel and nothing to connect him with the Judgment Debtors. The property is 1202 24th Street SE.
142. She produced **Exhibit A18**, a mortgage on Daniel's house showing his mother Xuan Ly as the mortgagor in 2005. There is no evidence as to when Sylvia obtained **Exhibit A18**, the mortgage document or wrote on it, wrongly, that Mui Nguyen and Xuan Ly own that property.
143. She never removed liens or sought instructions so to do from client.
144. She never searched the status of the alleged debt at the court file.
145. The panel members asked the Appellants why they didn't take the lien off Daniel's property, since there were other people who had money to satisfy the lien. They asked for confirmation that in 2014 she was not retained by Ms. Chau. She was only retained in 2015. The panel asked with reference to comments made in **Exhibits A12** and **Exhibit A13** how she equated them with her professional conduct by making comments about another professional in the same field as being a bully and other negative comments. This was referencing Mr. Brice. The Plaintiff acknowledged that she had met him over four years ago. She acknowledged that her comments in **Exhibits A12** and **Exhibit A13** were hearsay and she was making them to protect herself.

Patrick Sawyer, Bailiff with Western Civil Enforcement

146. Patrick Sawyer testified he is a Bailiff with Western Civil Enforcement and that Western Civil Enforcement has been engaged by the Appellants on several occasions.

147. Patrick Sawyer testified that he was not a lawyer. He acted under the *Civil Enforcement Act* and Regulations with a Bailiff's License.
148. Patrick Sawyer testified he has no knowledge of the Appellants acting or holding themselves out to be a collection agency, seizing property or engaging in enforcement activities.
149. He understood that the Appellants did not seize on their own, he understood they arranged settlements.
150. Patrick Sawyer testified that in all his past dealings the Appellants have provided proper instructions within the law.
151. Patrick Sawyer testified it is his understanding that the standing policy and procedure of the Appellants was to use agencies such as Western in enforcement activities.
152. Patrick Sawyer testified it his opinion that the Appellants are of good character.
153. *At this point then in the evidence of Mr. Sawyer the panel intervened in the Questioning and stated to Sylvia that it was not possible for Mr. Sawyer to answer some of the questions that she was asking him about the general business conduct of the Appellants.*
154. *Questioning then continued by the Appellant.*
155. In answer to further Questioning Mr. Sawyer stated that the corporate Appellant accepted cash payments in trust.
156. When asked if there would be a letter of instruction when notified of a transfer he said 'yes'.
157. He was asked when a debtor gives settlement in trust to the Corporate Appellant by email, could it be by cash or cheque. He said 'yes'.
158. He was then asked if this satisfied Charter Standards. He said 'yes'.
159. He was asked, if you allowed the Corporate Appellant to negotiate fees on his behalf. He answered 'yes'.
160. Then he was asked if the Corporate Appellant illegally seized, and he answered 'no'.
161. He was asked what type of business fees he usually charged for seizing vehicles and land sales. He answered, he would account after several files and charge \$70.00/hour plus mileage.
162. He said that he only worked from Writs of Enforcement with a judge's stamp.
163. *At this point the panel intervened and asked the following question.*
164. Had Mr. Sawyer received any writs relating to the Judgment Debtors involved in this appeal. Mr. Sawyer replied that he never received the two writs involved on this file. He said he never saw them and he was never sent them at all. He was not acting on them. He never saw anything on the file. So he knew nothing first hand on this case.

165. *The Appellant did not have any further questions of the witness.*

ORAL EVIDENCE OF THE DIRECTOR

ORAL EVIDENCE OF JENNI NGUYEN

166. Jenni Nguyen ("Jenni") is the daughter of Mui Nguyen, her father and Xuan Ly, her mother. (the Judgment Debtors).
167. Jenni lives in Colorado and travelled up to Calgary for this hearing.
168. Jenni stated that after her parents had received a letter from Alberta land Titles advising them of the lien registered on their properties and her brother Daniels, her parents requested that she assist them. This was in the early fall of 2015. Her parents are elderly and speak very little English. They are Vietnamese.
169. Jenni contacted the court house to see if there was any money outstanding on the trial judgment of 10th June 2014.
170. Jenni described that the court case her parents had been involved in concerned the leasing and ownership of a restaurant business.
171. Jenni was present at the trial. In small claims court her parents claim for money as Plaintiffs was dismissed by the Judge and Lien Chau became the judgment Creditor on essentially what was a counterclaim and was awarded over \$ 28000. The two actions were heard together. \$22,000 from trust had been paid into court and a balance of around \$6,900 remained to be paid.
172. Jenni was given full authority by her parents to deal with this matter.
173. Jenni directed the panel to **Exhibit D2, Tab 6**, which was a lien which was placed on 4413 – 17 Avenue SE, Calgary, and 4409 – 17 Avenue SE, Calgary, two addresses for property belonging to her parents.
174. Her parents are shown as owning the two properties, and as being Debtors involved in a loan to the Creditor who is named in the document found at **Exhibit D-2, Tab 6**, as Lien Chau.
175. This document appears to have been prepared on July 30, 2015. There is a signature of the agent of the Creditor, and then beside the signature of the agent of the Creditor is the signature S. Ogradzinski. So on that date Sylvia Ogradzinski is claiming on a document to be the agent of the Creditor, Lien Chau.
176. An attached Certificate of Title at **Exhibit D2, Tab 6** shows that a writ was registered in the name of Lien Chau on the property of her parents on August 8, 2015 in the amount of \$28,943.00.
177. Jenni also points out that at **Exhibit D2, Tab 8** is the Writ of Enforcement with the same date, also signed by Sylvia Ogradzinski as the Agent for the Creditor, Lien Chau, listed at the top.
178. In this document the names of the Debtors are again Jenni's parents, and the Debtors are suggested as owning property at 1202 – 24th Street SE, Calgary.

179. Attached to **Exhibit D2 Tab 8** is a Certificate of Title that shows that 1202-24th Street SE Calgary was owned by Jenni's brother, Daniel Nguyen, who has nothing to do with the lawsuits, or any relationship with any debts that may have ever been owed by his parents.
180. The Appellants appear to have posted a lien and Writ of Enforcement against her brother's property; this time the amount is not stated on the Certificate of Title, nor on the Writ of Enforcement.
181. Jenni gave evidence that she contacted Michael Price, who had been her parents' small claims court agent during the trial and asked him who this person Sylvia was and EEC Ltd.
182. He advised that she could look Sylvia up on Kijiji or social media and she found her.
183. Jenni's first contact with Sylvia was September 5th 2015 when she discussed with Sylvia why liens had been registered without any contact with the family.
184. Jenni asked Sylvia what the total amount owing was as per PPR searches and Judgment.
185. Jenni asked if anything owing was paid in a settlement, would the properties be released.
186. Jenni asked what the Appellants fees might be .Was there anything else extra.
187. She was told by the Appellants there would be more fees.
188. Jenni told Sylvia the balance of just over \$6,900 had been paid into court September 16th, 2015.
189. Jenni felt there was no outstanding judgment and the agent's fees were unknown.
190. The Appellants then told her there was another judgment.
191. Jenni asked for the judgment but never received it. She did not know why.
192. Jenni never received any documentation from the Appellants, only emails.
193. Jenni did not enter into any agreement or contract with the Appellants for administration fees or fees as her agent.
194. Michael Brice, the debtors' trial agent advised Jenni to contact Service Alberta to find out how to remove the liens from the properties. She was told that Land Tittles would have to sign off on the liens because the Appellants would not do so.
195. The creditor Chau said she would sign off to get rid of liens. Sylvia was still talking of a debt of over \$28,000 being out there. Jenni said that her mother Xuan Ly went with the sister to Land Titles to get the Lien discharged.
196. The CERTIFICATE OF SATISFACTION OR WITHDRAWAL OF WRIT OF EXECUTION OR ENFORCEMENT was filed April 18th 2016. (**Exhibit D3**). This was seven months after it had been placed on the properties.

197. She had no idea why her brother, Daniel's property had a lien placed on it. He had no involvement in any court action.
198. Jenni said the last time the Appellants made any suggestion of trying to collect on a second judgment was after the complaint form was received by Service Alberta November 23rd 2015. (Exhibit D2, Tab 18). On December 8th 2015 the Appellants sent an email to ascca@shaw.ca (Michael Brice's Company), cc'd to Jenni. (Exhibit D2 tab 19)
199. In that Exhibit D2, Tab 19, in an attached email dated December 10th, Jenni describes ascca as her agent.
200. December 8th 2015 was the Appellants' last attempt to collect from Jenni.
201. On October 8th 2015 Jenni had texted the Appellants and said "Do not contact me again for any reason. My parents and I consider your conduct to be harassment..."
202. They did, however, as set out above.
203. Jenni was asked, after seeing the footages "enforcement "or "collection" at the bottom of the Appellants' emails what was her impression, opinion or belief about Sylvia's ability to collect. For example Exhibit D2, Tab13 in the heading states "EEC Collection and EEC Enforcement".
204. Jenni said that she believed that she had that ability. She had been left with the impression and the opinion that Sylvia was entitled to collect. As she stated "I was under the impression that she had the authority to execute as a bailiff and to collect as well." The Appellants stated that she would continue to enforce matters until the money was paid.
205. Sylvia suggested that Jenni's parents' cars could be towed away or her parents could be arrested if they did not pay her directly for both judgments. Jenni had no doubt that EEC Ltd. was acting as a collection agency and demanding money be paid directly to the Appellants rather than to the courts.
206. Under Exhibit D2, Tab 19, Jenni stated that she was left with the impression that the Appellants could exert authority to arrest her parents for a second Judgment which did not exist.
207. In the second paragraph of the email at Exhibit D2, Tab 19, it is stated that she could use force to get money paid. The Appellants wrote to Michael Brice's company.
208. "As I understand you attended at the trial where your clients (the Plaintiffs) had two (2) UNFAVOURABLE judgments issued against them, on the same day, for the same amount, back in June 2014..." The Appellants claim \$345 DUE TO BE PAID ON THE FIRST JUDGMENT 140110809. They then go on to say under 10808.
209. "...an additional judgment exceeding \$28,900 was levied against your clients...".
210. The Appellants then appear to blame Mr Brice for not telling his past clients this.
211. Finally in an underlined paragraph the Appellants write:

“Please advise if you wish to accept service of QB documents on their behalf for an arranged motion/application that we have instructions to file and serve. If your clients do not attend the motion, we can request the judge to command an attendance and to issue a warrant for the directors of your clients and for an arrest.” (Exhibit D2, Tab 19)

212. The Appellants then threaten Mr. Brice.” We have been successful in this area for many years- as you appeared to call our bluff in your letter. This is unwise to do so.
213. The Appellants sign off this email with the footage.
- “ S Ogradzinski President.-EEC- We do all types of Civil Enforcements and we are Small Claim Court SUCCESSFUL agents up to \$50000 in claims as well as SUCCESSFUL collections on Court Issued Certificates of Judgments and Court Order” (Exhibit D2, Tab 19)
214. As Jenni explained, there was only one Judgment. The two cases were heard together in the Courts, as is shown on the document at Exhibit A4. She believes that Sylvia never attempted to exercise any due diligence at the Courthouse to understand this. Two copies of a Writ had been filed. None of these Writs had ever been received by her parents.
215. At Exhibit A4 the Personal Property Register does not give any addresses. The parents reside at 4409 – 17 Avenue SE, Calgary and live next door to business address. From July 30, 2015 Sylvia appears to have been trying to collect on two Judgments when only one existed.
216. At “Exhibit D2, Tab 16, on October 8, 2015 when she had paid the money into Court in September to finalize the debt, Sylvia told her she had been “leading her on.” At Exhibit D2, Tab 10, December 10th, notes “collections successful Court”. In 2014 she knew, as did the counsel involved in the trial itself, that \$22,000.00 of the total amount ordered was held in trust and paid into court following.
217. Jenni Nguyen testified that Sylvia advised her that more fees than the \$6,900 were accumulated on the first matter and that there was second judgment in the amount of \$28,000 still existed. That communications were usually from her and EEC Collection or EEC Ltd. Enforcement and there was no doubt in her mind there was a demand they pay money directly to the Appellants. That EEC Ltd. was acting as a collection agency was very clear to her.
218. Jenni Nguyen testified she sent Sylvia an email and told her not to contact her or her parents. That she considered Sylvia’s conduct to be harassment, Exhibit D2, Tab 19 October 8, 2015 email.
219. Jenni Nguyen testified she was present throughout the Provincial Court Trial and understood the two claims were amalgamated and the counterclaim was dismissed and that there was only one Writ of Enforcement received (Exhibits D22, Tab 6 and 8).

ORAL EVIDENCE OF MR MUI NGUYEN AND MS XUAN LY, (with interpreter Jenny Lam)

220. Mr. Mui Nguyen and Ms. Xuan Ly, the parents of Jenni were then called. Their English is not good, so Betty Lam of ACIA attended with them to translate their evidence and the questions that they were being asked.
221. They were asked if they were aware of any Judgments in June of 2014, and were they aware of the total amount that was eventually paid of \$28,943.32. They knew of this.
222. They were next asked about their son Daniel against whose property Sylvia had registered a Writ of Enforcement on July 30th, 2015. See **Exhibit D2, Tab 8**.
223. Both parents advised the hearing that their son had absolutely no involvement in any Judgment.
224. They both said the Appellants had never contacted them directly at their residence. They had asked their daughter Jenni to handle everything for them.
225. They said that they had retained Mr. Brice since 2014. He had been present at the trial as their agent.
226. They confirmed that Daniel Nguyen was their son, and that he lived at 1202 – 24th Street SE, Calgary. (See Certificate of Title for that address **Exhibit D-2, Tab 8** with Writ).
227. There is only one Provincial Court Judgment against them, not two. They were asked about **Exhibit A18**, provided by Sylvia.
228. The parents were asked about a mortgage document **Exhibit A18**, with reference to the property of 1202 – 24th Street SE, Calgary, owned by Daniel Nguyen, Jenni's brother. Sylvia had presented the document so as to suggest that she had not wrongly filed a Writ on this property and that the document showed the parents to be owners on the property.
229. As the parents stated, the document had the mother's signature on it because she signed for her son at the bank when the mortgage was obtained in 2005. Their only obligation on that property was in relation to the mortgage.
230. At the end of their evidence, Ms. Xuan Ly told the hearing that they had felt attacked by Sylvia.
231. Mui Duc Nguyen and Xuan Ngoc Ly testified they never received any documentation from the Appellants.
232. Mui Duc Nguyen and Xuan Ngoc Ly testified the debt in the matter with Chau was all there ever was and that their son Daniel owed nothing.

ORAL EVIDENCE OF SCOTT ESAU

233. The last witness called by the Director was Scott Esau a Peace Officer and Investigating Inspector for the Consumer Investigation Unit of Service Alberta.
234. Scott gave evidence to say that as at October 2015 it was his belief that Sylvia and EEC were acting as a collection agency, and EEC was acting as a debt replacement company and that the activities of the Appellants clearly fell within the definition of collection agency under 1(b)(1) of the Regulation.
235. Continually EEC was acting as collection agents with reference to an outstanding debt of a Creditor, Ms. Chau. Sylvia acknowledged that she and EEC Ltd. were trying to collect the debt.
236. Sylvia herself was not the Creditor, so was therefore in violation under the Act, because without a collection agency licence, she could not so collect, and she did not fall under any of the other exemptions that existed under the Act.
237. When asked about what was due and owing from the original Civil Court Action, Mr. Esau stated that a Certificate of Judgment that was filed on the properties as shown on **Exhibit A4** of the Appellants' documents showed a debt or Judgment owing originally of \$28,943.32.
238. \$22,000 had been held in trust at Field LLP and the Judgment allowed that money to go to the Creditor, Ms. Chau. That was the Order of the Court.
239. Mr Esau became involved when Jenni contacted him with reference to Sylvia, about Writs of Enforcement and apparently debts that were owing. There were two Writs of Enforcement, 1401-10809 and 1401-10808 called 1809 and 1808 by Mr Esau.
240. Mr. Esau said he found it unusual to have two Writ numbers on one Judgment. He identified a discrepancy. He tried to check with Queen's Bench accounting and learned that the second Writ of Enforcement had been issued in error. There should only have been one Writ of Enforcement. There was no process, however, for removing a mistake by the Court of Queen's Bench. He looked at the Judgment (**Exhibit A4**) and saw that there were two Action Numbers at the top and that the two Action Numbers had been held together in one Trial.
241. One of the Actions was dismissed. It took him a matter of seconds to understand where the issue had occurred.
242. He has reviewed the Order and feels that under his knowledge of the Regulation, the actions of Sylvia and the EEC Ltd. were indeed actions of a collection agency.
243. There was evidence to show contact and dealing with Debtors, directly or on behalf of somebody else, with that person's apparent consent.
244. On December 14th 2015, Sylvia sent a letter saying that there were two Writs because there were two Judgments. He got the Provincial Court file to find out the status of the Judgments. He knew that the Court knew the status. It was a very outside chance that there would have been a second Writ. He ordered the Court files to be brought up. (**Exhibit D2, Tab21**).

245. He sent Sylvia a letter and reviewed the file.
246. He reviewed the Court file and found that there was only ever one Certificate of Judgment. **Exhibit A4** is where the document exists and shows the two Provincial Court Numbers, one ending in 4042 and one ending in 5067, both being heard together.
247. One Action was dismissed and only one money Judgment was made.
248. He made efforts to contact Sylvia and made phone calls to her.
249. She did not return his calls. He noted that Sylvia had not contacted the Court to advise them that she was now acting as the Agent for Ms. Chau in debt collecting, and had not replaced the SOA Student whose name was on the original writ as a law student.
250. As a result it was never possible for the Court to contact Ms. Ogrodzinski in relations to these matters and update her on the status of the debt so that she could update her client.
251. It was quite clear to Mr. Esau that the Appellants acted as a collection agency and tried to enforce two Writs of Enforcement and two Judgments. And that only one Judgment for money had existed.
252. Scott Esau testified that in October 2015 he entered into an investigation into the actions of Sylvia Ogrodzinski and Earth Edge Consulting as he was assigned a complaint that they were carrying on the conduct of a Collection Agency as defined in the Collection and Debt Repayment Practices Regulation AR194/99, **Exhibit D1, Tab 4, Page 2 1 (b) (i)**.
253. Scott Esau testified that Sylvia Ogrodzinski and Earth Edge Consulting started actions seeking to collect a debt for which they were not the original creditor.
254. Scott Esau testified he could not find anything that exempted the Appellants from requiring a licence.
255. Scott Esau testified as a result of receiving information from Jenni Nguyen he had occasion to obtain and examine Certificate of Judgement, Provincial Court of Alberta (Civil), Action No. P1190104042. His examination identified there are two action numbers on this certificate P1190104042 and P1290105067. The document states these actions were held together and P1290105067 was dismissed.
256. Scott Esau testified any person could apply to the Court Clerk's Office to obtain a copy of this Certificate of Judgment.

DECISION OF THE PANEL

THE PANEL UNANIMOUSLY CONFIRMS THE DIRECTOR'S ORDER OF DECEMBER 22ND 2015 PURSUANT TO SECTION 179 (6) OF THE ACT. AS A RESULT THE APPEAL OF FEBRUARY 2ND, 2016 IS DENIED

FINDINGS OF FACT OF THE PANEL

257. The appellants never had a collection Agency license under the Act.
258. The Appellants never had an enforcement agency license under the Act.
259. The Appellants tried to collect a debt for a named person other than themselves.
260. The Appellants had no juristic qualification allowing them to act in the collection enforcement arena.
261. The Appellants engaged in collection activities with the judgment debtors' representative, and the Judgment Creditor's representative.
262. The Appellants breached the regulation section 12 (1) a by attempting to collect money from a creditor without a good faith belief that the money was due and owing.
263. The appellants breached regulation 12(1)(h) by attempting to proceed with an action without express consent of the creditor or lawful authority so to do.
264. The Appellant breached section 12 (1)(i) by attempting to contact any relative, friend of the debtor by any means in such manner as to constitute harassment.
265. The Appellant breached section 12(1)(j) with reference to false and misleading information with reference to their authority, court and references to the court proceedings and a lien and arrest.
266. A business transaction between Lien Chau and a restaurant business operated and owned by Mui Nguyen and Xuan Ly resulted in two claims being filed in the civil Provincial Civil Court of Alberta on June 5, 2014. They were provincial court action numbers 1190104092 and 1290105067.
267. The two actions were heard together in one trial held on June 10th 2014.
268. Judgment in the net amount of \$28,943.32 was granted on the 10th of June, 2014 on action number ending 4042 to the Defendant Lien Chau, the Judgment Creditor.
269. The action of the Plaintiffs, action number ending 5067, was dismissed with no award granted. Mui Nguyen and Xuan Ly became the Judgment Debtors.
270. A Certified judgment was filed on both small claim civil court action numbers so providing a final judgment document on both civil small claim court file numbers. The judgment was filed on June 13th 2014. Copies of the Certified judgment was in the possession of the Appellants by the fall of 2015.
271. The certified judgment awards one net sum of money to be paid once to one party Lien Chau, the Judgment Creditor.
272. As of June 5th, 2014 the agent of record for Lien Chau was Shaun Leochko of Student Legal Assistance. Leochke was the Judgment Creditor's agent at the trial.

273. The Appellants did not file a notice of change of agent for EEC Ltd. for Lien Chau until March of 2016 when the Appellants finally registered a notice of change of agent after the Order and its Appeal was in process.
274. Gia lam was the representative and sister of the creditor and the person with whom the Appellants had been corresponding on the Chau matter since at least August 2015. (Exhibits A7, A10, A11, A12 and A17).
275. On January 29th, 2016 the Appellants asked Gia lam to complete a form for Queens Bench confirming that EEC Ltd. acted on behalf of Chau and that she wishes EEC Ltd. to collect on the balance still owing on the judgment that she has been successful on for Chau. (Exhibit A17).
276. The Appellants testified they chose not to make a change to the name on the file in 2015.
277. As a result they received no notifications from the court of payment activities on the file.
278. The Appellants failed to provide any evidence of express instructions to commence or discontinue enforcement through the use of liens.
279. By August 27th, 2015 the Appellants had established a relationship with Gia Lam the sister of Lien Chau the Judgment Creditor. Lam and the Appellants agreed that Lam would instruct them on Chau's behalf with reference to collecting the debt. In December Gia wrote to the Appellants and asked them to collect the balance of the debt for them (Exhibit A7).
280. Mr. Michael Brice of ASCCA a small claims civil court agent represented the Nguyens at the June 10th trial.
281. Sylvia makes many derogatory comments about Mr Brice. They are scattered throughout the email Exhibits to Jenni and to his company directly in the December 2015 correspondence and in the Appeal document itself received by the panel in March 2016. (Exhibits A15, A1, A2, A12 and A13)
282. EEC and ASCCA are competitors in the small claims civil court agency arena.
283. A true copy of a Writ of Enforcement that was originally filed October 2nd, 2014 on QB file number 1401-10809 by Shawn Leochko is in Exhibit A4. Lien Chau is named as the Creditor and Mui and Xuan company as the Debtor. The Writ is against the address 202 908 17 Avenue SW. The original judgment is reduced to \$6,943.32 owing as the result of \$22,000 paid into court. (Exhibit A4)
284. A second Queen's Bench action number had also been assigned 1401-10808.
285. At the beginning of September 2015 Jenni's parents received documents from Alberta Land Titles office referring to a Lien on their property and on the property of their son Daniel Nguyen. They asked Jenni to handle the matter for them and she did. Jenni researched the problem.
286. On reviewing the Writ of Enforcement documents (Exhibit D2, Tab 6 and Exhibit D2, Tab 8) Jenni noticed the signature of S. Ogrodzinski as agent for Chau. The document had a filing stamp of July 30th, 2015. The certificate of title of her parents' house showed the writ filed on

August 8th, 2015. At **Exhibit D2, Tab 8** was the same writ, same signature and same date stamp and a certificate of title showing it filed on her brothers property.

287. Jenni knew that \$20,000 had been paid off on the debt from money paid into court from trust at the time of the trial. Jenni had been present at the trial. That is why she kept asking to see another judgment.
288. The only evidence of any judgment involved in this case is the one in **Exhibit A4**.
289. Jenni never received any documents from Appellants.
290. Jenni found Sylvia's number and contacted her on September 5th by phone to find out how to remove the liens filed against the titles with no notice given to the Judgment Debtors and with the lien being placed on her brother's home.
291. The panel accepts that Daniel Nguyen had no judgment against him and nothing to do with Chau.
292. Jenni contacted the court house to find out how much owed and on September 15th, 2016 and paid off the balance of just over \$6,900 owing on the debt.
293. The original lien entered by Shaun Leochko in October 2014 showed a credit for \$20,000, but the liens filed by Sylvia were for the full amount of the judgment. (**Exhibit D2, Tab 6 and 8**)
294. From September 25th onwards through to October 8th, 2015 email correspondence continued between Jenni and the Appellants about collection and enforcement activities. Sylvia talked about money to be paid into her bank account for the creditor. The Appellant suggested it was cheaper for the debtor not to pay money into court. She gave Jenni the opinion that the Appellants had the ability to remove the liens or to continue them.
295. Around October 6th the Appellants introduced the concept of the existence of a second outstanding judgment (QB 1401-10808) in the exact same amount as the first paid QB judgment 1401-10809. Sylvia suggests costs and disbursements still due on 140-10809. The Appellants did not want Jenni talking with Mr. Brice who had been present at the trial. (**Exhibits A1, A2, A3, A9, A11, A13, A14 and Exhibit D2 19**)
296. The nature of the correspondence between the Appellants and Jenni demanding money, threatening not to remove liens until money was paid and referring to the power and authority of EEC Ltd. to do what it wanted until money was paid directly to them, was overwhelming. (**Exhibit A9**)
297. On October 8th, 2015 Jenni emailed the Appellants and requested they not contact her again on these matters. **Exhibit D2, Tab 14** Jenni gave oral evidence on the matter.
298. **Exhibit A11** shows that the Appellants did contact Jenni again. A text message is sent by the Appellants to Jenni on December 13, 2015 complaining that she has failed to respond to **Exhibit D 2, Tab 19**, a email from the Appellants to Mr. Bryce and copied to Jenni.

299. On or about November 2014 Mui Duc Nguyen, Xuan Ngoc Ly and their son Daniel Nguyen complained in writing to Service Alberta, Consumer Services Branch about the conduct of the Appellants (**Exhibit D2, Tab 18**).
300. On or about December 21, 2015 Consumer Services Investigator Scott Esau commences an investigation into the conduct of the Appellants (**Exhibit D2, Tab 20**).
301. On January 29, 2016 the Appellants requested Gia Lam to provide them with a letter of authority to become agent of record for Ms. Chau.
302. On or about the 22nd of December, 2015 Darren Thomas, Director of Fair Trading (as delegated) sent a letter to Appellants advising that he has issued a Director's Order for the Appellants to cease engaging in collection activities in Alberta and to cease in breaches of the legislation. The letter also advised the Appellants of their right to appeal the Director's Order as set out in Section 179 of the *Fair Trading Act* (**Exhibit D1**).
303. The Appellants never produced written proof of authority from the Creditor to place writs of enforcement on the properties of the Judgment Debtors.
304. The Appellants never provided evidence that they engaged any enforcement agency to enforce on the Chau file.
305. The Appellants agreed they never contacted the Debtors directly and provided them with warning of the placement of the Writs of Enforcement on the properties.

REASONS FOR THE PANELS' DECISION

The panel bases these reasons for its decision on the findings of fact, both oral and written provided in this hearing as set out above and with full consideration of the statutory framework around debt collection and enforcement activities.

The panel finds that the evidence presented in this new trial confirms the Director's Order.

306. The Panel has determined that the Appellants did engage in collection activities as defined in the Act without having a Collection Agency license.

307. Collection Agency is defined as follows:

Definitions

1 In this Regulation,

a. "Act" means the Fair Trading Act;

b. "collection agency" means a person, other than a collector or debt repayment agent,

i. *who carries on the activities of collecting or attempting to collect a debt or debts from a debtor in Alberta under any name that differs from that of the creditor to whom the debt is or was originally owed, regardless of to whom or where the payment is made,*

(A) *on behalf of another person, or*

(B) *where the person has purchased a debt or debts that is or are in arrears,*

...

Section 111(1) of the *Fair Trading Act* states that:

'No person may carry on the activities of a collection agency unless the person is the holder of a collection agency license issued under this Act.'

308. The Appellants acknowledged in their oral evidence that they do not have a Collection Agency License. They also acknowledge that they attempted to collect the debt of Chau from the Judgment Debtor.

309. The Appeal Panel accepts testimony from witnesses including Sylvia Ogrodzinski, Jenni Nguyen, Patrick Sawyer and Scott Esau that Earth Edge Consulting is an Alberta Corporation.

310. The Appeal accepts the testimony of Sylvia Ogradzinski that she is Director and Officer of Earth Edge Consulting Ltd. and acts as such in dealing with the Courts and individuals. That such is evidenced by:

Exhibit A7 signatory of “Sylvia, President, EEC – Enforcement Specialists”

- **Exhibit A11** signatory of “Sylvia- EEC Enforcement.
 - **Exhibit A13** signatory of “Sylvia – Enforcement”.
 - **Exhibit A14** signatory of “Sylvia – EEC Enforcement.
 - **Exhibit A15** signatory of “S. Ogradzinski. Earth Edge Consulting Ltd.
311. The panel accepts testimony of Sylvia Ogradzinski that she and EEC Ltd. were acting on behalf of a client, Lien Chau, in their dealings with Jenni Nguyen.
312. The panel took into consideration the testimony and numerous exhibits from the various witnesses including the Appellants regarding the existence of a legal debt and what collection activities they could legally engage in with Jenni Nguyen.
313. The *Fair Trading Act* is very clear that in order to enter into activities of a collection agency they must have a license under the Act.
314. The panel found the testimony of the Appellants that they wished to “settle” the debt on behalf of their client not to be compelling. Settlement may have many definitions however in the context of acting on behalf of their client. The panel examined the conduct of the Appellants and concluded that they were trying to make some arrangement to collect monies on an outstanding debt. That is certainly what is evidenced in their correspondence. (**Exhibits A2, A3, A7, A9, A10, A11, A13, and A14**)
315. The panel further found that the Appellants used Writs of Enforcement placed by them on properties of the Judgment Debtor to leverage the collection of money paid directly to them.
316. The panel finds that the Writs of Enforcement were placed on the Judgment Debtor’s property in August 2015 and were not removed until eight months later, and with the help of the Judgment Creditor.
317. The panel further finds that the Appellants placed Writs of Enforcement on the property of the Judgment Debtor’s son with no evidence that he owed anything to anybody or to the Judgment creditor.
318. The panel found Sylvia’s email (**Exhibit A9**) sent September 28th, 2015 set out in full under her oral evidence illustrates her conduct in writing in trying to collect money as unprofessional, bordering on threatening with components of non truth and definitely collection within the meaning of the Act. She states as follows:

“I will honour to discontinue the enforcement and release your parents fully in all liens and all court filing matters-I will do this promptly on your behalf but only once everything is paid in full.” she goes on to suggest that the courts will only increase the cost, and she is better to deliver to her name and bank account.

...

“If you go the other way, I still can do enforcement and it takes a long time to release which makes the procedure very vulnerable to you.”

319. The Appellants' emails are directed towards collecting money.
320. The guiding purpose is to collect money .
321. The panel found Sylvia's email of October 5th, 2015, **Exhibit A14**, containing: “the purpose of the call is to confirm you are ready to payout of judgments to our offices, on or before Wednesday of this week” and “This will give you ample time to go to your banking institution and obtain a bank draft or certified funds; payable in the name of: EEC.” to be very compelling that Sylvia and EEC Ltd. were engaging in collection practices as defined in Collection and Debt Repayment Practices Regulation 194/1999, 1(b).
322. The panel also accepted the testimony of Jenni Nguyen and Scott Esau that Sylvia and EEC Ltd. were attempting to collect money through Jenni Nguyen for the debt owed to Lien Chau.
323. The panel finds it difficult to accept the testimony of Sylvia that she believed in good faith that a second Writ of Enforcement was valid. Sylvia entered documents obtained from Court of Queens Bench, **Exhibit A4**, clearly on the Certificate of Judgment, contained therein, is the information that P1190104042 and P1290105067 were heard together that contained only one Writ of Enforcement.
324. Jenni contacted the Appellants to remove the liens of which her parents had been given no notice. She did not phone to get the Appellant's help to pay outstanding debts to the Creditor.
325. The Appellant's knew or could have known that as at July 30, 2015 only approximately \$6,900 was left to be paid on the Provincial Court debt of June 10th, 2014.
326. The panel find it hard to believe that the Appellants genuinely agreed in a second identical judgment that was available to be collected. It was always open to the Appellants to review the evidence that Mr. Esau was able to review in Queen's Bench Court. The Appellants never conducted any due diligence. They never provided Jenni with evidence for the existence of a second judgment. They had not filed as an agent at the court house so received no information directly from the court. They did not contact Mr. Brice, the agent of the Judgment debtors at trial.
327. They continued to argue there were two judgments in the identical amounts granted on the same day in correspondence to Mr. Brice and Jenni dated December 8, 2015. (**Exhibits A11, A6 and Tab D19**)
328. This was after Mr. Esau had asked the Appellants to cease trying to collect on a second judgment, because there were two QB numbers and thought one was in error.
329. The panel accepts the evidence of Jenni and that of her parents that it was only in September 2015 that they learned of the liens on their property and that of their son, that they had never received any notice from the Appellants and that an individual named Sylvia Ogradzinski and her company EEC Ltd. had been involved in placing the Writs of Enforcement.

330. The panel accepts the testimony of Jenni that she never believed there was a second judgment and that in her belief there was no such thing. Jenni told this to the Appellants and asked for proof which she never received.
331. The Appellants never registered themselves as the creditor's agent at the court house until March 2016, after her Appeal of the Director's Order had been filed.
332. The panel accepts the testimony of the Appellants that they never had an enforcement agency licence and that they never provided evidence of any instruction documentation was given to civil enforcement agent on this matter.
333. The panel is satisfied that during Jenni's communication with the Appellants either directly or through inference suggested they had authority from and special relationships with the courts of Alberta.
334. Jenni and her parents believed from the communications of the Appellants that they had the power to do what they were doing, and that they could have them arrested, vehicles seized and properties sold. Exhibits A2, A7, A9, A11, A13 and A14, all contrary to the Regulations.
335. The panel cannot conclude the motivation for Sylvia's conduct in trying to continue to collect the debt after receiving the documentation from the Courts, and information from Jenni Nguyen. The panel is satisfied that a reasonably prudent person with such would not in good faith believe the debt owed. Given the expertise and experience that Sylvia testified she had in being an agent, the panel can only conclude there was some other standard other than good faith, for continuing.
336. The panel accepted the testimony of Jenni Nguyen, that in October 8th of 2015 Jenni advised Sylvia to not contact her or her parents directly for any reason and that they considered Sylvia's conduct in this matter to be harassment.
337. The tone of the correspondence between Sylvia is and Jenni is recorded in a flurry of emails in September and October 2015. They are part of the documentary exhibits of the Appellants and the exhibits of Jenni contained in the referral binder of the Director . There is quite a lot of duplication between them.
338. The emails themselves, their style, manner of presentation and language used are threatening. They show Writs of Enforcement used as a collection tool and threats used to obtain money directly to Sylvia rather than to the court .
339. The panel accepted the testimony of Jenni Nguyen that she received an email from Sylvia and EEC that caused her to believe her parents were at threat of arrest and the second Writ of Enforcement was valid. The panel found no valid second writ of enforcement to exist.
340. The Panel is satisfied that the conduct of Sylvia in continuing to attempt to collect the debt is contrary to section 12 (1) (a) of the Regulations;

12(1) No collection agency or collector may

- (a) *collect or attempt to collect money for a creditor except on the belief in good faith that the money is due and owing by the person to the creditor;*

341. The panel is satisfied that during communication with Jenni Nguyen, Sylvia made representations without the express consent of the Creditor in that communications with the Creditor clearly show that Sylvia was taking action and then at the best was having it ratified by the Creditor, as evidenced in **Exhibits, A7, A12, and A17.**

342. Such actions and communications are evidenced in **Exhibits A2, A7, A9, A11, A13, and A14** were contrary to 12(1)(h) of the Regulations;

12(1) *No collection agency or collector may*

- (h) *directly or indirectly threaten or state an intention to proceed with any action for which the collection agency or the collector does not have the prior express consent of the creditor or for which there is no lawful authority;*

343. The panel is satisfied that Sylvia acting as an Employee, Agent or Representative of EEC Ltd. continued to contact Jenni Nguyen in a manner that a reasonably prudent person ought to know is unwelcome. That such communication continued after Sylvia was advised of such, as evidenced in **Exhibit A9**, contrary to 12(1)(i) of the Regulations;

12(1) *No collection agency or collector may*

- (i) *contact or attempt to contact the debtor, any member of the debtor's household, any relative of the debtor, the debtor's employer or any neighbour, friend or acquaintance of the debtor by any means in such a manner as to constitute harassment, including without being limited to*

344. The panel is satisfied that Sylvia in communications suggested that she was licensed by, had a greater relationship with and greater powers from the Courts and Statutes than existed, as evidenced in **Exhibit A9.**

345. The panel accepted the testimony of Jenni Nguyen that she received an email from Sylvia and EEC that caused her to believe her parents were at threat of arrest and the second Writ of Enforcement was valid, contrary to 12(1)(j) of the Regulations; (**Exhibit D2 19**)

12(1) *No collection agency or collector may*

- (j) *give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including, but not limited to, references to the police, a law firm, prison, credit history, court proceedings or a lien or garnishment;*

346. The panel accepts all of the oral evidence of Jenni Nguyen as to how and why she first contacted Sylvia and the nature of her email relationship with the Appellants from September 5th, 2015 to

October 8th, 2015 when Jenni requested Sylvia not to contact her any more since she considered it harassment and threatening.

347. The panel accepts that Jenni felt threatened and harassed by the emails from the Appellants. Their tone never changed. Jenni had only wanted to know how to remove the liens. The Appellants left her with the impression that only they could remove them but only upon receipt of money paid directly to them rather than into court. The Appellants left the impression that they had special powers including towing of vehicles and threatened arrest. The Appellants gave the impression they were licensed to do what they were doing.
348. The panel accepts the evidence of Mr Scott Esau with reference to the ease with which he was able to discover that a second QB number had most likely been issued in error and why he wrote to Sylvia in December and asked her to stop trying to collect on a second judgment.
349. The panel accepts the evidence of Mui Nguyn and Xuan Ly, given through an interpreter, that they asked their daughter Jenni to sort it all out for them when they learned of the liens.
350. The panel accepts that their son Daniel Nguyen had nothing to do with any judgment or lawsuit involving Lien Chau.
351. The panel appreciates it is not bound by case law however is very open being guided by relevant principals. It is not however the Panels place or duty to search case law for such guidance and the submission of case law cover sheets is of little value as in the case of **Exhibit A16, ABQB688, ABQB343, ABQB284.**

352. The panel is satisfied that upon a brief review of the *Radford v. Stewart* case provided by the Appellants at the hearing together with face pages of three other cases, without the guidance of argument from the Appellant' in her submission as to their applicability or relevance of these cases to this administrative order hearing and trial de novo, the panel can draw no reasoned legal conclusion as to their relevance and possible assistance to the Appellants.

Signed and dated at Calgary, Alberta this
11/14/2016 day of November, 2016.



Virginia May
Hearing Chair

Signed and dated at Calgary, Alberta this ^{11/14/2016} day
of November, 2016.



Lyle Berge,
Panel Member

Signed and dated at Calgary, Alberta this
11/14/2016 day of November, 2016.



J.B. Isaacs
Panel Member

APPENDIX LIST OF EXHIBIT

The following documents were received into evidence during the hearing

Received from the Director (D):

Item #	Item Description	Date	Pages
D1	Director's Appeal Binder containing Director's Order, Appeal of Sylvia and EEC Ltd., Government response to Sylvia and EEC Ltd., Order in Council appointing Appeal Hearing Panel, relevant legislation and applicable regulations	Various dates contained thereon	175
D2	Director's Disclosure Binder for Hearing, containing memorandum of Scott Esau, Directors Order and Exhibit Tabs: No. 1: CORES My Xuan Deli Ltd., presented by Esau, dated No. 2: CORES My Xuan Deli (2010) Ltd., presented by Esau, dated No. 3: Land Titles Certificate M. Nguyen and Ly, restaurant location, presented by Esau, dated No. 4: Judgment from Civil Court, presented by M. Nguyen, dated No. 5: Personal Property Registry for M. Nguyen and Ly, presented by M. Nguyen, dated No. 6: Land Titles Lien Certificate for M. Nguyen and Ly, presented by M. Nguyen, dated No. 7: Land Titles Certificate for M. Nguyen and Ly, presented by M. Nguyen, dated No. 8: Land Titles Lien Certificate for D. Nguyen, presented by D. Nguyen, dated No. 9: Land Titles Certificate for D. Nguyen, presented by D. Nguyen, dated No. 10: Email between Esau and J. Nguyen, presented by J. Nguyen, dated December 10, 2015 No. 11: Listing of Civil Enforcement Agencies in Alberta, presented by Esau, dated No. 12: Queen's Bench receipt for payment of \$6,943.32, presented by M. Nguyen, dated No. 13: Email between J. Nguyen and Ogrodzinski, presented by J. Nguyen, dated September 25, 2015 No. 14: Email between J. Nguyen and Ogrodzinski, presented by J. Nguyen, dated October 4, 2015 No. 15: Email between J. Nguyen and Ogrodzinski, presented by J. Nguyen, dated October 5, 2015	Various dates contained thereon	182

Item #	Item Description	Date	Pages
	<p>No. 16: Email between J. Nguyen and Ogrodzinski, presented by J. Nguyen, dated October 7, 2015</p> <p>No. 17: Email between J. Nguyen and Ogrodzinski, presented by J. Nguyen, dated October 8, 2015</p> <p>No. 18: Consumer Complaint Form CATS 32038, presented by J. Nguyen, dated November 23, 2015</p> <p>No. 19: Email between Brice and Ogrodzinski, presented by Brice, dated December 10, 2015</p> <p>No. 20: Email to Ogrodzinski from Esau, presented by Esau, dated December 14, 2015</p> <p>No. 21: Email from Ogrodzinski to Esau, presented by Esau, dated December 14, 2015</p>		
D3	Certificate of Satisfaction or Withdrawal of Writ of Execution or Enforcement	Clerk of Court date April 18, 2016	1

Received from the Appellants (Ap.):

Item #	Item Description	Date	# Pages
A1	Email Jenni to Sylvia (handwritten notes of Sylvia)	October 6 th , 2015	
A2	Email Jenni to Sylvia, return email Sylvia to Jenni, I (Exhibit 1) repeated. (handwritten notes of Sylvia on Jenni's 2 emails)	October 5 th , 2015 October 6 th , 2015	
A3	Email Jenni to Sylvia	October 1 st , 2015	
A4	Package of Documents from Court House filed, including Bill of Costs prepared by Sylvia, Provincial Court Judgment action number ending 4042 heard with provincial court number ending 5067, Provincial Court Judgment action number ending 5067 heard with action number 4042 both judgment documents filed, Writ of Enforcement entered Writ of Enforcement Addendum, PPR Verification Statement dated July 29 th , 2015	December 3 rd , 2015 October 2 nd , 2014 October 7 th , 2014 June 10 th , 2014 July 29 th , 2015	
A5	Writ of Enforcement against Corporate Debtor filed entered against Corporate debtor	October 2 nd , 2014, October 7 th , 2014	
A6	Email Scott Esau to Sylvia (handwritten notes of Sylvia)	December 21 st , 2015	
A7	Email Sylvia to Gia Lam	August 27 th , 2015	
A8	Email dated from Saran Grewal to Sylvia, attaching email from Lori Van Waes of Consolidated Civil Enforcement addressed to Sylvia attaching a blank seizure document package with fee schedule	August 7 th , 2015 August 7 th , 2015	
A9	Email from Jenni to Sylvia dated, responding to second email from Sylvia to Jenni (written by Sylvia)	October 1 st , 2015 September 28 th , 2015	
A10	Email from Sylvia to Gia Lam responding to second email on page November 10th from Gia Lam to Sylvia (handwritten notes of Sylvia)	November 10 th , 2015 November 10 th , 2015	
A11	Text from Bell number 4034831954 to Jenni, attaching emails from Gia Lam and Sylvia's email; emails from Christina Lam to Sylvia; emails between Sylvia and Gia Lam; emails between Jenni and Sylvia (handwriting of Sylvia on documents)	December 13 th , 2015 November 30 th , 2015 December 1 st , 2015 November 30 th , 2015 December 17 th , 2015 December 27 th , 2015 January 12 th , 2016 October 5 th , 2015.	
A12	Emails between Sylvia and Gia lam (Handwriting of Sylvia)	October 21 st , 2015	
A13	Emails between Sylvia and Jenni. (handwriting of Sylvia)	October 6 th , 2015	

Item #	Item Description	Date	# Pages
A14	Emails between Sylvia and Jenni	October 4 & 5 th , 2015	
A15	EEC and Sylvia Appeal Notice to the Director	February 2 nd , 2016	
A16	Court of Appeal case <i>Radford v. Stewart</i> 2006ABCA 157		
A17	Emails between Gia Lam and Sylvia	January 12 th & 29 th , 2016	
A18	Land title document copy of Mortgage on Daniel Nguyen, undated request, mortgage 20 June 2005, document registered as 051234175	June 20 th , 2005	

October 25, 2016

CC: Mr. Tim Grant, Deputy Minister of Service Alberta

File No. 160664892P1 – Appellants S. OGRODZINSKI and EARTH EDGE CONSULTING LTD.

As per Virginia May's email dated September 26, 2016 (attached) – EEC Ltd. and S. Ogrodzinski (Appellants) provide Submissions to respond to the Appeal Hearing of EEC Ltd and S. Ogrodzinski, held September 22, 2016 at Service Alberta Calgary office.

Firstly – Appellants EXPRESSED objection to the hearing on September 22, 2016 in that Disclosure Evidentiary Documentation was ONLY SERVED September 21, 2016 on Appellants at 1:15 PM (i.e. less than 1 day prior to the hearing) by Scott Esau, Investigator, for Service Alberta. PANEL denied and dis-allowed OBJECTION. The disclosure package was OPENED at the hearing with no opportunity to review the documentation inside. Appellants requested hearing be adjourned to allow Appellants a chance to review same – IT WAS DENIED. This hearing had been scheduled since May 2016 and Service Alberta offices and its Board Chairperson Virginia May and its Panel Members had ample opportunity to provide and serve documentation in a reasonable time frame prior to September 22, 2016. The BOARD and SERVICE ALBERTA **FAILED TO serve the Appellants with Disclosure Documents against them and in accordance with Appeal Board Regulation 195/1999.**

The Board and the Deputy Minister should note that:

***** In addition - Appellants were INACCURATELY served with an Affidavit of Service of Summons MADE OUT TO AN UNKNOWN PERSON by the name of "Raymond Leslie GORZEN served at the address of Edmonton Courthouse, 1A Sir Winston Churchill Square Edmonton in the City of Edmonton and that a copy of the Summons was sworn/affirmed on January 6, 2015" – such person having nothing to do with this hearing (????) . Original Copy of this Unknown Summons Affidavit of Service is available for review.**

Secondly – Appellants called a witness at hearing – Mr. Patrick Sawyer – Bailiff of Western Civil Enforcement Agency which witness was called to show to the Board Panel that Appellants use civil enforcement agencies to conduct any seizure or civil enforcement and this is a character witness as well as an overall policy and procedure witness for Appellants personally and for the Appellant company EEC Ltd. WITNESS WAS DENIED TESTIMONY and DENIED ABILITY TO EXPRESS HIMSELF at the panel – thus his attendance was excused – Reason given by Panel: it was NOT NECESSARY for an enforcement agency to work on this case file in that TESTIMONY SHOWED THAT the Debtors (Ly and Nguyen) PAID DEBT IN FULL at Queen's Bench Calgary Courts before any seizure documentation was served on the Debtors and BEFORE Creditors/Agent had any knowledge that monies were paid into Court. There could not have been any breach if the monies were already paid into Court.

Appellants submit that this is a BREACH OF CHARTER RIGHTS.

Appellants have NOT BREACHED the Fair Trading Act and Collection and Debt Repayment Practices Regulation.

Service Alberta FAILED to abide by the Minister's rules of Service Delivery of any Disclosure or Evidentiary Documentation in accordance with such rules of Service and Delivery. Appellants hereby request dismissal of all allegations related to any alleged breaches of said Act and Regulation.

FACT: There was no enforcement activity or collection of monies at any time made by or monies given to Appellants. Debtors (Ms. Ly and Mr. Nguyen) confirmed they paid all monies to Queen's Bench Calgary and never paid any monies to Appellants PRIOR to their contact with Appellants. At no time were Debtors harassed to pay since they had already paid the debt in full to the Queens Bench Calgary Courts.

THIS IN ITSELF proves that Appellants: S. Ogrodzinski and EEC Ltd. DID NOT CARRY OUT ANY ENFORCEMENT OR COLLECTION against the Debtors. Testimony by Debtors Ly and Nguyen PROVED that Payment In Full was made directly to the Queen's Bench Calgary Courts on September 15, 2016 BEFORE and PRIOR TO Debtors contacting

Appellants. AT NO TIME did the Appellants ever contact the Debtors (Ly and Nguyen) personally, or in writing, or telephone or any other means of communication. Debtors' daughter requested Bill of Costs and this was provided.

Appellants – DO NOT ENGAGE in collection activities;

Appellants – DO NOT SEIZE PROPERTY, LANDS OR VEHICLES – licensed Western Civil Enforcement Agency is our enforcement agency of choice to carry out Writs of Enforcement.

Appellants – DO NOT ENGAGE in any prohibited seizure or activity related thereto or have breached any Act/Reg'n.

CASE LAW SUBMITTED AT HEARING in support of Appellants:

- ✓ Radford v. Stewart, 2006 ABCA 157 – provided to Board Panel
- ✓ Kwan v. Superfly Inc. 2011 ABQB 343 – provided to Board Panel
- ✓ Murphy Oil Co. v. Predator Corp. 2006 ABCA 69, Par. 24 – provided to Board Panel
- ✓ Boudreault v. Barrett 1998 ABCA 232, Par. 9 – provided to Board Panel

Evidence shows that:

- Emails Oct 1 + October 5 + October 6 2015 Jenni to Sylvia – written evidence shows from daughter Jenni on behalf of Debtors LY & NGUYEN that their former court agent unable to provide their trial documentation as too long ago and archived AND Jenni wished to ONLY work directly with Appellants Sylvia / EEC and all other evidentiary documentation provided.
- Evidence shows that EEC has 4 administrative departments for filing emails and categorizing disbursements and administrative filing – these are: EEC- Accounting + EEC – Landlord&Tenant + EEC – Collection + EEC – Enforcement. These 4 administrative departments and categories are strictly **for internal administration**.
- EEC Ltd nor S. Ogrodzinski – **DO NOT CARRY OUT UNLAWFUL OR UNAUTHORIZED Enforcement or Collection and as Appellants – CATEGORICALLY NO EVIDENCE THAT COLLECTION TOOK PLACE and NO COLLECTION RECEIVED and NO ENFORCEMENT TOOK PLACE and NO ENFORCEMENT seizures or process of seizures took place.** Only licensed civil enforcement agencies are used hence the Bailiff Witness: Mr. Patrick Sawyer.
- Evidence in emails above shows that Debtors did not disclose that their Debt was paid into Queens Bench Calgary Courts thus a clandestine rouse was used against Appellants. If an honest disclosure had been made, there would be no need to contact Creditors and debt would have been normally discharged. Creditors have every right after a Writ of Enforcement has been filed with the Courts to place liens on personal property, vehicles, land titles where it is shown that they have an interest and a vested interest which the Debtors had personal interest in land and in personal vehicles which were liened by the Creditors.

Debtors (Ms. Ly and Mr. Nguyen) were NEVER CONTACTED in person, or via telephone or in writing by Creditors' Agent (Appellants) – at any time.

Debtors conducted a rouse against Appellants in that Debtors failed to mention debt paid in full in Queens Bench Calgary Courts.

- EEC Ltd nor S. Ogrodzinski – **Appellants DO NOT CARRY OUT UNLAWFUL OR UNAUTHORIZED Enforcement or Collection and as Appellants – CATEGORICALLY NO EVIDENCE THAT COLLECTION TOOK PLACE and NO COLLECTION RECEIVED and NO ENFORCEMENT TOOK PLACE and NO ENFORCEMENT seizures or process of seizures took place.** Only licensed civil enforcement agencies are used hence the Bailiff Witness: Mr. Patrick Sawyer.
- **Mortgage Evidence:** Appellants provided to the Board copy of Mortgage Land Titles Act, Alberta – shows that Debtor "LY" being the "registered owner of an estate in fee simple in possession of Plan 4946T, Block 13": which the Creditors instructed Agent (Appellants) to place a lien on the property in July 2015 such property

owned and held by the Debtor "LY". Debt was NOT PAID OFF IN FULL until September 15, 2015. Agent (Appellants) have authority to file liens and to file Writs of Enforcement in Queens Bench Calgary Courts.

The Board and the Deputy Minister should note that:

***** In addition - Appellants were INACCURATELY served with an Affidavit of Service of Summons MADE OUT TO AN UNKNOWN PERSON by the name of "Raymond Leslie GORZEN served at the address of Edmonton Courthouse, 1A Sir Winston Churchill Square Edmonton in the City of Edmonton and that a copy of the Summons was sworn/affirmed on January 6, 2015". This unknown person has nothing to do with this hearing and is an unknown person (????) This is another furthering service and delivery error by Service Alberta and a breach of the Appellants' Rights. Original Copy available for review.**

CONCLUSION

- The test for an Order or Judgment favourable to the Appellants is that "the obvious facts and if any misunderstandings or incorrect doings by Service Alberta or a FAILURE IN SERVICE DELIVERY OF EVIDENCE or any breach of Charter of Rights " are in Appellants' favour – that actions brought against Appellants by Service Alberta WILL FAIL and/ or if the action is BOUND TO FAIL and Appellants are successful – Service Alberta and the Minister has/or have NO PROSPECT OF SUCCESS and thus the Appellant is immune to any liability.
- This test is carried forward into present by Rules of Court.
- Appellants S. Ogrodzinski and EEC Ltd. were **NOT INSTRUMENTAL** in setting the allegations in motion and any tests can be satisfied including character, written evidence, proof of no collection or money exchange, proof of no seizure of any property or goods, and the Appellants' credibility and the Appellants policy and procedure to **ONLY WORK** with licensed Civil Enforcement Agencies.

Appellants seek that the Appeal of the Directors Order be granted.

Submitted by: S. Ogrodzinski
Earth Edge Consulting Ltd.

Darlene Decker

From: VIRGINIA MAY <virginiamay@shaw.ca>
Sent: Wednesday, October 26, 2016 5:45 PM
To: Darlene Decker
Cc: Lyle Berge; Bev Isaacs
Subject: Fwd: Appeal Hearing of EEC Ltd and Sylvia Ogrodzinski of Directors Order of December 22nd 2015 Follow up re submissions following Hearing held on September 22nd.
Attachments: SUBMISSIONS.docx

Sylvia provided me with her submissions today within the timeframe provided, so no extension of time is required beyond the December 2nd drop dead time .

Thank you for keeping us on our toes with these deadlines .

Sent from my iPhone

Begin forwarded message:

From: "Sylvia Ogrodzinski" <sylviamonica@shaw.ca>
Date: October 26, 2016 at 4:30:45 PM MDT
To: "Virginia May" <virginiamay@shaw.ca>
Subject: Appeal Hearing of EEC Ltd and Sylvia Ogrodzinski of Directors Order of December 22nd 2015 Follow up re submissions following Hearing held on September 22nd.

bcc

Written
Submission attached.

From: Virginia May
Sent: Monday, September 26, 2016 2:28 PM
To: SYLVIA OGRODZINSKI
Subject: Re Appeal Hearing of EEC Ltd and Sylvia Ogrodzinski of Directors Order of December 22nd 2015 Follow up re submissions following Hearing held on September 22nd.

As promised I am enclosing my list of the Exhibits entered during the Hearing held on September 22nd 2016.

I requested at the Hearing some written submissions from yourself on behalf of the Appellants and from Mr Mike Areshenko on behalf of the Director.

I have asked that they be provided to me by October 30th. Email is sufficient. I do not need hard copies.

A decision will be provided by November 14th 2016

I reserve the right to delay the decision by the number of days that the submissions may be late.

Submissions.

As the Appellant you are responding to the Order of the Director. There is no special format or layout . Point form arguments are acceptable. Essays not required.

I would like you to focus on your view of the Evidence both written and oral using names of witnesses and Exhibit number to explain why you think the Director may have failed to prove the Orders against you and your company.

That section will be the Evidence section

There will then be second section called the Argument or Discussion section.(The same section)

In that section you will summarize your view of the evidence overall, much as you did orally at the Hearing ,and mention any case law you want to rely on.

You will then reach your conclusion on why your Appeal of the Directors Order should be granted.

Length Anything between 4 and 8 pages is fine .If it is longer that is also acceptable but not required.

HEARING EXHIBIT NUMBERS

APPELLANTS EXHIBITS.

A1 Email October 6th 2015 Jenni to Sylvia (handwritten notes of Sylvia)

A2 Email October 5th 2015 Jenni to Sylvia,return email Sylvia to ,October 6th 2015 email (Exhibit 1) repeated . (handwritten notes of Sylvia on Jenni's 2 emails)

A3 Email October 1st 2015 Jenni to Sylvia

A4 Package of Documents from Court House filed December 3rd 2015, including Bill of Costs prepared by Sylvia , Provincial Court Judgment action number ending 4042 heard with provincial court number ending 5067,

Provincial Court Judgment action number ending 5067 heard with action number 4042 both judgement documents filed October 2nd 2014, Writ of Enforcement entered October 7th 2014 , Writ of Enforcement Addendum ,PPR Verification Statement dated July 29th 2015

A5 Writ of Enforcement against Corporate Debtor filed October 2 2014, entered October 7th 2014 against Corporate debtor

A6 Email December 21 2015 Scott Esau to Sylvia (handwritten notes of Sylvia)

A7 Email August 27 2015 Sylvia to Gia Lam

- A8 Email dated August 7th 2015 from Saran Grewal to Sylvia, attaching email of August 7 2015 from Lori Van Waes of Consolidated Civil Enforcement addressed to Sylvia attaching a blank seizure document package with fee schedule
- A9 Email from Jenni to Sylvia dated October 1st 2015 ,responding to second email dated September 28 2015 from Sylvia to Jenni (handwritten by Sylvia)
- A10 Email from Sylvia dated November 10 2015 to Gia Lam responding to second email on page dated November 10th from Gia Lam to Sylvia (handwritten notes of Sylvia)
- A11 Text from Bell number t 4034831954 to Jenni ,dated December 13 2015, attaching emails from Gia Lam dated November 30th 2015 and December 1 st 2015 and Sylvia's Email dated Novmeber 30th 2015, emails from Christina Lam to Sylvia dated December 17 2015 and December 27th 2015 Emails dated January 12th 2016 between Sylvia and Gia Lam. Emails between Jenni and Sylvia dated October 5th 2015. (handwriting of Sylvia on documents)
- A12 Emails dated October 21st between Sylvia and Gia lam (Handwriting of Sylvia)
- A13 Emails between Sylvia and Jenni dated October 6th 2015. (handwriting of Sylvia)
- A14 Emails between Sylvia and Jenni dated october 4th and october 5th 2015
- A15 EEC and Sylvia Appeal Notice to the Director dated February 2nd 2016
- A16 Court of Appeal case Radfordv Stewart 2006ABCA 157
- A17 Emails between Gia Lam and Sylvia dated January 12 2016 and January 29th 2016.
- A18 Land title document copy of Mortgage on Daniel Nguyen,undated request,mortgage dated 20 June 2005, document registered as 051234175

DIRECTORS EXHIBITS

- D1 Director's Appeal Binder containing Director's Order , Appeal of Sylvia and EEC Ltd (Same as A15 above) ,Government response to Sylvia and EEC ,Order in Council appointing Appeal Hearing Panel,relevant legislation and applicable regulations
- D2 Director's Disclosure BInder for Hearing , containing memorandum of Scott Esau, Directors Order and Exhibit tabs number 1 to 21.

October 21, 2016

Virginia May
Chair of the Appeal Board
(Via email)

Re: SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD. APPEAL HEARING

Service Alberta's written arguments are outlined below with respect to the September 22, 2016 appeal hearing of the Directors Order issued to *SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD.*

The Directors Order is straightforward. The Order itself states:

- 1) *SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD., individually or through any employee, representative or agent, must immediately stop engaging in collection activities in Alberta.*
- 2) *SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD., individually or through any employee, representative or agent, must immediately stop engaging in practices prohibited by the Collection and Debt Repayment Practices Regulation.*

With respect to Part 1 of the Order, verbal and exhibit evidence provided by Sylvia Ogradzinski in the appeal confirmed that she is acting as a Collection Agency collecting a debt for third parties by way of collection activities. Ogradzinski indicated that she was not the creditor, that she acted as agent for the creditor and that she intended to collect the money, as agent, for the creditor.

The definition of collection agency is as follows:

"collection agency" means a person, other than a collector or debt repayment agent who carries on the activities of collecting or attempting to collect a debt or debts from a debtor in Alberta under any name that differs from that of the creditor to whom the debt is or was originally owed, regardless of to whom or where the payment is made

As referenced in the Directors Order, Section 111 of the Fair Trading Act states:

No person may carry on the activities of a collection agency unless the person is the holder of a collection agency license issued under this Act



SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD., do not hold a Collection Agency license that would allow either to carry on collection activities for 3rd party clients. The collection activities associated with collecting a debt are the actions that the Director's Order aims to prevent Ogrodzinski from participating in. Ogrodzinski acknowledged on behalf of EARTH EDGE CONSULTING LTD. as the Director and controlling mind, that the debt was not hers and she was attempting to collect the debt on behalf of a 3rd party creditor. This meets all the elements of the definition of a collection agency. Initially, Ogrodzinski claimed that she was not "collecting" the debt but "obtaining" the debt on behalf of the creditor. The argument of "obtaining" versus "collecting" is semantics to avoid responsibility for unlicensed collection activity.

While collect is not defined under the Act or regulation, under Webster's Dictionary it is defined commonly as:

- "to claim as due and receive payment for"

The definition of "activities" under Webster's dictionary is defined as:

- "a pursuit in which a person is active"

These definitions constitute the "collection activities" Ogrodzinski is ordered to stop participating in. Ogrodzinski clearly claimed in testimony and in writing that she was attempting to collect this debt on behalf of her client. No exemption exists for a self-described agent of the court to be exempt from licensing obligations for conducting collection activities. Clear exemption exists for lawyers acting in their capacity as a lawyer. Ogrodzinski acknowledged she was not a lawyer. Later, Ogrodzinski indicated in her own words without prompting, that she was collecting the debt as agent for the creditor. When asked to clarify if she was collecting the debt, she confirmed her statement.

Evidence entered by Ogrodzinski during the appeal supports the position that Ogrodzinski was conducting collection activities. These include the following exhibits:

- Exhibit A1 - This document indicates in Ogrodzinski's handwriting, that it is her position that Jenni Nguyen only wishes to work with Sylvia. The purpose, as explained by Ogrodzinski in the appeal hearing, is to collect on an alleged debt owed Nguyen's parents.
- Exhibit A2 - Correspondence between Jenni Nguyen and Sylvia Ogrodzinski where Ogrodzinski continues efforts to collect on the alleged debt of Nguyen's parents.
- Exhibit A9 - Ogrodzinski attempts to secure payment on the alleged debt through collection activities.
- Exhibit A13 - Ogrodzinski expresses her desire to Jenni Nguyen to collect on the alleged debt in a timely fashion.
- Exhibit A14 - Ogrodzinski discussing her collection efforts with Jenni Nguyen to realize on the alleged debt.
- Exhibit D2 #19 - Ogrodzinski threatens action against Jenni Nguyen in an effort to collect the alleged debt.

Part 2 of the Directors Order is also validated in Ogrodzinski's oral testimony along with her exhibits submitted at the hearing. Ogrodzinski acknowledged on behalf of EARTH EDGE CONSULTING LTD. as the Director and controlling mind, that she had participated in prohibited practices.

As identified in the Directors Order, the following prohibited practices are identified through supporting documentation and verbal evidence provided by Ogrodzinski and the other witnesses:

Prohibited Practice #1

Collection and Debt Repayment Practices Regulation Section 12(1)(a) - the collecting or attempting to collect money for a creditor except on the belief in good faith that the money is due and owing

- Exhibit A4 and D2 #4 - Ogrodzinski tried to collect a debt twice for her client. A4 Submitted by Sylvia Ogrodzinski and D2 #4 submitted by Areshenko at hearing, evidences a certificate of judgment for action P1190104042 that clearly indicates that two actions (P1190104042/P1290105067) were heard together with a net judgement in favour of the defendant (Lien Chau) for a total judgment of \$28,943.32. Also included in A4 is the action P1290105067, which clearly shows that the action was heard together with action number P1190104042 with the same net judgement in favour of the defendant. There is no indication in the certificate of judgment that these debts were separate independent debts, but in the contrary, were one net debt. Exhibit A4, also has one writ of enforcement submitted that Ogrodzinski obtained by the courts. Two unrelated separate writs of enforcement were not provided as evidence of two independent debts. Jenni Nguyen had provided testimony that she told Ogrodzinski that the debt had been paid. Ogrodzinski refused to accept this position. Investigator Scott Esau had advised Ogrodzinski in writing (Exhibit A6 and D2 #10) that the 2nd debt did not appear to be due and owing and she should not be collecting the debt. Ogrodzinski refused to accept this position. The actions of Ogrodzinski would not stand the test of collecting in "good faith" as written in the prohibited practices section; however, her actions are bordering on fraudulent by attempting to collect on a debt that doesn't exist. The prohibited practices only require the *Actus Reus* on these strict liability offences. Intent is not a requirement, yet this behaviour is nearing the bar for fraudulent collection activity. Due diligence would be the defence to these strict liability offences; however, Ogrodzinski did not exhibit the lowest level of professionalism or competence to verify the existence of a 2nd debt, or provide evidence that her client expected her to collect on a 2nd debt. Ogrodzinski may have been wilfully blind in an effort to collect additional money for her and for her client, potentially in a fraudulent manner.

Prohibited Practice #2

Collection and Debt Repayment Practices Regulation Section 12(1)(h) – Directly or indirectly threaten or state an intention to proceed with an action for which the collection agency or the collector does not have the prior express consent of the creditor or for which there is no lawful authority

This section has two separate elements, of which only one need be proven to constitute a prohibited practice. Those elements are the 'express consent' of the creditor or a 'lawful authority' as required. Ogradzinski provided testimony to the appeal panel that she had, and would provide, evidence that she had authority to collect on, not just the initial valid debt, but the 2nd invalid debt, with the consent of the creditor. She did provide evidence that she had tacit approval from the creditor to collect on the 1st debt; however, that debt had already been paid. No evidence was provided to support her claim that she had any rights to collect on the 2nd invalid debt. Regardless of any position of express consent that may have been provided by the creditor, Ogradzinski did not have lawful authority to collect the 2nd debt. That lawful authority could not be provided by a client or a creditor's written authorization. Further, she did not have a subsisting 'collection agency' license to provide that lawful authority. Her authority must also exist through a certificate of judgment through the courts or other valid means. Again, due diligence would be the defence to this strict liability offence, which was not exhibited by Ogradzinski. Simple steps could have been taken to verify the existence of a 2nd debt or to obtain a collection agency licence.

Prohibited Practice #3

Collection and Debt Repayment Practices Regulation Section 12(1)(i) – contact or attempt to contact the debtor, any member of the debtor's household, any relative of the debtor, the debtor's employer, or any neighbor, friend or acquaintance of the debtor by any means in such a manner as to constitute harassment

Ogradzinski made veiled and direct threats to collect a debt that was not due and owing amounting to harassment of the debtor through family members Jenni Nguyen and Daniel Nguyen. Examples of these threats and harassment include:

- Exhibit D2 #19 – In this December 08, 2015 email from Ogradzinski to Jenni Nguyen, Ogradzinski harassed family members. Ogradzinski confirmed in her testimony that she intended this email to be a warning to Jenni Nguyen, in particular, the last 2 Paragraphs. These paragraphs imply that Ogradzinski has relationships with legal authorities and the courts and that failure to cooperate with her demands may result in a warrant being issued for her parents and suggests they could be arrested among other veiled threats. This bullying tactic is magnified by the fact that a 2nd debt did not exist and it was also being collected illegally without the required license.
- Exhibit A9 – Ogradzinski implies in this September 28, 2016 email that she has some enforcement powers that she does not have. She also references the liens placed on Daniel Nguyen's property, in which her parents were co-signors. Ogradzinski did this for the purpose of leveraging the debtors to pay and acknowledged this in her testimony. This lien is also bordering on a forged and fraudulent document. The criminal aspect would require intent; however, a lack of competence and professionalism shown by Ogradzinski in knowing the rights and obligations prove the *Actus Reus* of harassing the debtors by placing an illegal lien on a family member's property. Threats of legal action and arrest are direct harassment. Further, Ogradzinski tries to inflate her importance or validity in this email by referring to herself as a "licensed professional" without providing any information as to what area of expertise she may be licenced in. This leaves the impression she has some greater relationships with authority and the courts than she actually has.

Prohibited Practice #4

Collection and Debt Repayment Practices Regulation Section 12(1)(j) – give any person, directly or indirectly, by implication or otherwise, any false or misleading information, including but not limited to, references to the police, a law firm, prison, credit history, court proceedings, or a lien or garnishment

- Exhibit D2 #19 - Ogradzinski makes many “implications” to Jenni Nguyen about the potential ramifications of failing to comply with her collection activities. As mentioned earlier, Ogradzinski falsely claimed associations with legal authorities without specifying who or how. She falsely claimed that “We do not have any restrictions...” in collecting the debt, which clearly any authority does. Falsely, by implication, Ogradzinski suggested that the debtors could have a warrant issued for their arrest on this non-existent debt.
- Exhibit A9 – Ogradzinski falsely, by implication, communicated to the debtors directly and indirectly, that she has some enforcement power that doesn’t exist. Falsely, by implication, Ogradzinski suggested that she has some licensed status and credibility with the courts that doesn’t exist. This was verified in her own testimony when she indicated that she is licensed as a “Commissioner of Oaths”, which has little, if any, relevance to the implications made. Ogradzinski tries to inflate her importance or validity in this email by referring to herself as a “licensed professional” without providing any information as to what area of expertise she may be licenced in. This leaves the impression she has some greater relationships with authority and the courts then she actually has.

Summary

SYLVIA OGRDZINSKI and EARTH EDGE CONSULTING LTD. engaged in collection activities without being the holder of a Collection Agency license as required by the Fair Trading Act. The Directors Order does not attempt to make a determination of the validity of the debt being collected, but only seeks to ensure that those authorized to conduct collection activities do so within the limitations imposed by the prohibited practices of the Act and the Regulation. Ogradzinski did not make application to the Court of Queen’s Bench to request a change of agent for her client from the client’s previous agent. The Student Legal Aid office obtained the writ of enforcement for the judgment. This basic administrative change, that Ogradzinski failed to complete, would have prevented the need for any collection activity whatsoever. All documentation was forwarded from the court house to Student Legal Aid, agent on record, including proof that the debt had been paid in its entirety. Ogradzinski could have saved herself and the debtor’s substantial time, money and anxiety. With this information before her, she still considers the 2nd debt due and owing.

SYLVIA OGRDZINSKI and EARTH EDGE CONSULTING LTD. ought to have known that the 2nd debt being collected was not valid and that the original debt had already been paid. Any reasonable person could have verified the existence of the debt through the courts, as was done by Investigator Esau, with little effort. A self-described court agent that collects debts should exercise reasonable diligence in the pursuit of their profession.

SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD. did not provide any reasonable evidence that a 2nd debt existed that would compel the debtors to pay the debt. Further, no documentation was provided to show that a lawful authority existed to collect the 2nd debt or that the creditor provided authority to Ogradzinski to collect the debt.

SYLVIA OGRODZINSKI and EARTH EDGE CONSULTING LTD. harassed the debtors and their family members by making false claims by implication or otherwise, by implying that unrealistic authorities existed, by falsely claiming the scope of their authority was not limited, by exaggerating credentials and by making threats of legal action, including warrants for arrest, which were outside the scope of authority for this unlicensed collection agency.

Ogradzinski objected to the admittance of the exhibit binder D2 due to a delay in providing this binder to her. Her position was that she could not fairly review the contents in preparation for the appeal. Service Alberta's exhibit binder D2 should be accepted as the hearing is held 'De novo' and the majority of the exhibits she submitted herself were contained in the exhibit binder. Service Alberta relied mostly on Ogradzinski's own exhibits to support the Director's Order. There is little risk of bias as the issues contained in exhibit binder D2 were spoken to by Ogradzinski through her own evidence and testimony.



Mike Areshenko
Acting Director of Investigations