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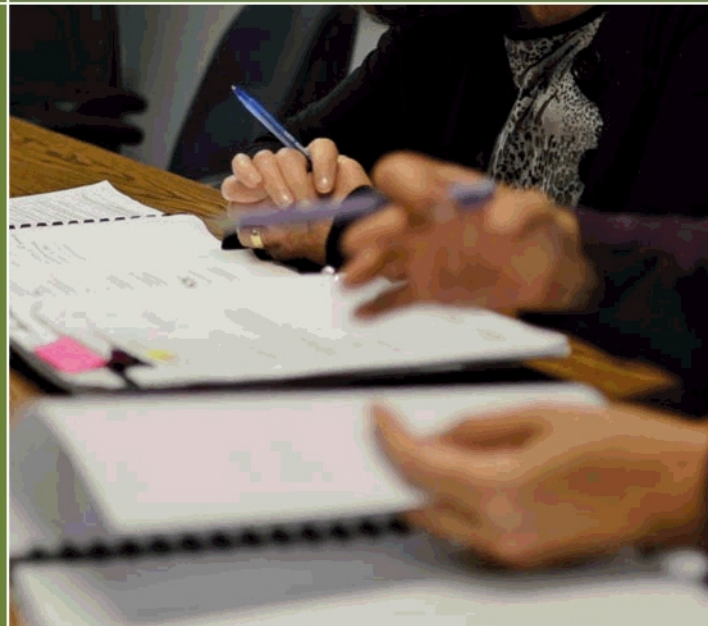


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# Employment and Assistance Appeal Tribunal



Annual Report 2015/16

Respectful

# Our staff in Victoria





November 2016

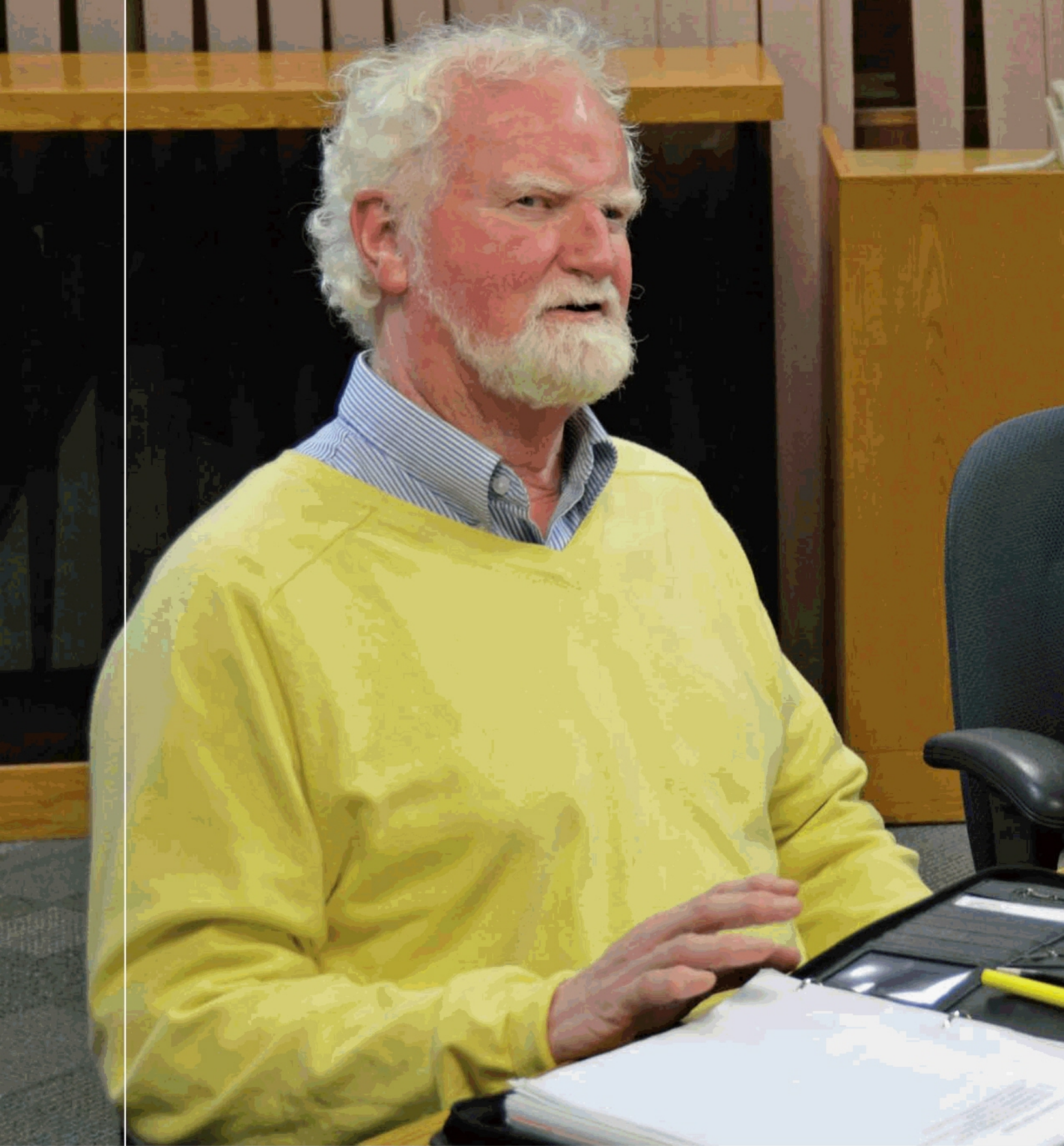
The Honourable Michelle Stilwell  
Minister of Social Development and Social Innovation

Dear Minister:

It is my pleasure to present the annual report for the Employment and Assistance Appeal Tribunal of British Columbia covering the period of October 1, 2015 to September 30, 2016. The report has been prepared in accordance with section 20(1) of the *Employment and Assistance Act*.

**Marilyn R. McNamara**  
Chair, Employment and Assistance Appeal Tribunal





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# Our Mission

The mission of the Employment and Assistance Appeal Tribunal is to provide an independent and accessible appeal process that delivers timely and fair decisions reviewing Ministry of Social Development and Social Innovation determinations in regards to income and disability assistance and Ministry of Children and Family Development determinations in regards to child care subsidies.



# Message from the Chair



The Tribunal reports to the Honourable Michelle Stilwell, Minister of Social Development and Social Innovation.

I would like to take this opportunity to report on the Tribunal's progress in meeting goals set for the past reporting period.

Our focus was to explore available options for a new case management system to support the Tribunal's business needs. The Tribunal approached the Ministry of Justice to work cooperatively to begin development of a case management system that could be utilized by other tribunals in the future, aligning with their business transformation initiatives. Capital funding is undergoing approval for this project.

A recruitment poster was designed for posting in community centers throughout the province and the response has been positive. Fifty percent of current online applications are as a result of this recruitment campaign.

The User Satisfaction Survey has now been posted to the website, enabling feedback on the Tribunal's appeal process to ensure the service provided supports the Tribunal's mission and values.

Our goal was to have an electronic records system which would over time eliminate the need for offsite storage of records and this has been implemented. It was also a requirement for the transition to an electronic appeal process. Utilizing the Member Portal on our website, members have begun accessing electronic appeal documents and posting decisions for review and comment. Most forms have been amended to allow completion online. For those forms still requiring signatures, an electronic solution is being implemented.

I am committed to continued development of members in the work they do for the Tribunal. Member workshops in Kelowna and Prince George provided an opportunity for members to review practices and procedures and continue to improve their decision making and decision writing skills. In addition, it provided the opportunity to meet with advocacy and support agencies in the area.

I would like to thank staff and members whose efforts support the provision of an efficient, fair, respectful and timely appeal process.



# Our Vision

The Employment and Assistance Appeal Tribunal will be known for:

- Providing an independent, ethical, community-based appeal process which is accessible and conducted in a fair, timely and respectful manner.
- Supporting members to provide quality service to promote public confidence in the integrity and competency of the Tribunal.
- Creating a healthy work environment that supports staff to provide quality service and to continually learn and develop knowledge, skills and expertise.



# 1. Who We Are and What We Do

## The Employment and Assistance

### Appeal Tribunal

The Tribunal was established on September 30, 2002 to hear appeals of most types of decisions made by the Ministry of Social Development and Social Innovation under the income assistance and disability assistance programs. Since 2006, the Tribunal also hears appeals of decisions made by the Ministry of Children and Family Development under the child care subsidy program. The Tribunal provides a streamlined and efficient one-step appeal process and is independent of both ministries.

*The Employment and Assistance Appeal Tribunal's authority is established under section 19(1) of the Employment and Assistance Act.*

The Tribunal hears appeals of reconsideration decisions that refuse, reduce or discontinue income assistance, disability assistance or a supplement; reconsideration decisions regarding the amount of a supplement; and reconsideration decisions that refuse to grant hardship assistance under:

- Section 17 of the *Employment and Assistance Act*, and
- Section 16 of the *Employment and Assistance for Persons with Disabilities Act*.

The Tribunal also hears appeals of reconsideration decisions that refuse, reduce or discontinue a subsidy under:

- Section 6 of the *Child Care Subsidy Act*.

The Tribunal consists of a Chair, two Vice Chairs, 10 staff, and, during this reporting period, 121 members located throughout the province. (See Appendix A for a list of staff and Appendix B for a list of members.)

## Tribunal Members

Members are appointed by the Minister of Social Development and Social Innovation after a merit-based process and consultation with the Tribunal Chair.

### Candidates

To be considered for appointment to the Tribunal, a person must have an understanding of the essential elements for the conduct of a fair and objective hearing and the key aspects of the relevant legislation as per section 82 of the Employment and Assistance Regulation.

Members commit to respect diversity and are expected to possess the ability to interpret and apply legislation, write decisions in a clear and concise manner, communicate clearly and effectively, and be proficient in the use of computers and common software applications.

The application process is conducted using an interactive online program that provides information to prospective members so that they can acquire and demonstrate the prescribed knowledge and skills prior to consideration for appointment.

The online process enables recruitment from a broader sector of the community and has enhanced the efficiency of the application process. Reference and criminal record checks are completed prior to a recommendation for appointment.





To ensure independence and that hearings are fair and just, a member must not:

- be or have been an employee of the Ministry of Social Development and Social Innovation or the Ministry of Children and Family Development in the past six months,
- be an employee of the provincial government,
- be a recipient of benefits under any of the acts for which the Tribunal has responsibility, or
- have any real or perceived interest in matters that come before the Tribunal.

**NOTE:** The Tribunal is recruiting new members, specifically from the more rural areas of the province. Anyone interested in being considered for appointment should refer to the Employment and Assistance Appeal Tribunal website, [www.eaat.ca](http://www.eaat.ca), or the Board Resourcing and Development Office website, [www.brdo.gov.bc.ca](http://www.brdo.gov.bc.ca), for information on how to apply.

### **Members**

Members must complete Initial Training before being appointed to hear an appeal with an experienced panel chair who serves as a mentor.

Once members have attended a number of hearings, they complete Decision Writing Training before being assigned the role of panel chair. Once assigned the role of panel chair, a mentor will be appointed to provide support and guidance. Further coaching occurs at the decision review stage to ensure that the decision meets the legislative requirements outlined in section 86 of the Employment and Assistance Regulation.

### **Reappointment of Members**

Members are appointed initially for a period of two years and may be reappointed for a further term of two or four years. Member performance is evaluated prior to making recommendations to the Minister of Social Development and Social Innovation for reappointment. The Competency-Based Learning and Development Tool, which clarifies the requirements and expectations of members, is used for coaching and evaluation. In this reporting period, 30 members were appointed and 14 members were reappointed.

“Professionals are not created by hope or desire – but through a combination of some innate ability and study and experience.”

*Toronto (City) v. CUPE, Local 79 (1982), 35 OR (2nd) 545 (Ont CA)*

## The Appeal Process

The Tribunal hears appeals of reconsideration decisions made by the Ministry of Social Development and Social Innovation in regards to income and disability assistance and the Ministry of Children and Family Development in regards to child care subsidies. A person must receive a reconsideration decision prior to requesting an appeal from the Tribunal. The appeal process, which is set out in the *Employment and Assistance Act* and Regulation, is the same regardless of which ministry made the reconsideration decision.

A person who applies for or receives assistance under the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act* can request reconsideration of a decision that resulted in refusal, reduction or discontinuance of income or disability assistance, or a supplement; a decision regarding the amount of a supplement; or a decision that refuses to grant hardship assistance. More information about the Ministry of Social Development and Social Innovation's reconsideration process is available from the ministry's offices by calling 1-866-866-0800 or by visiting their website.

## Number of Members by Region



Region 1	Vancouver Island	46
Region 2	Vancouver Coastal	31
Region 3	Fraser	14
Region 4	Interior	23
Region 5	Northern	7
TOTAL		121



A person who applies for or receives a child care subsidy can request reconsideration of a decision that resulted in the refusal, discontinuance or reduction of a child care subsidy. More information about the Ministry of Children and Family Development's reconsideration process can be obtained by calling 1-888-338-6622 and asking to speak with an adjudicator.

Those who are dissatisfied with the outcome of their request for reconsideration from either ministry can, in most cases, appeal to the Employment and Assistance Appeal Tribunal. They must submit a Notice of Appeal form to the Tribunal within seven business days of receiving their reconsideration decision.

Upon receipt of a completed Notice of Appeal, the Tribunal decides whether the matter can be appealed. Considerations include whether the Notice of Appeal was submitted within the prescribed timelines and whether the issue is appealable under the legislation.

If the matter is eligible for appeal, a panel of up to three members is appointed and the appeal is heard within 15 business days from the day that the completed Notice of Appeal was received by the Tribunal. Most hearings are conducted in person, usually in or near the appellant's community. Hearings can also take place by teleconference or, if both parties consent, in writing.

The panel reviews the ministry's reconsideration decision and the appeal record, considers any supporting evidence provided by the appellant or the ministry, and provides a written decision to the Tribunal, generally within five business days of the hearing. This time limit may be extended by no more than 10 additional business days if the Tribunal Chair is satisfied that the panel is making all reasonable efforts to provide its determination in a timely manner, and the best interests of the parties are served by the extension. The Tribunal mails a copy of the decision to the appellant and the ministry within five business days of receiving it from the panel.

**NOTE:** Summaries of Tribunal decisions from 2015/16 are included in Section 4, "What Our Decisions Look Like." Complete decisions are available on our website: [www.eaat.ca](http://www.eaat.ca).

**“Those who are dissatisfied with the outcome of their request for reconsideration from either ministry can, in most cases, appeal to the Employment and Assistance Appeal Tribunal.”**

## The Appeal Process

If a person is dissatisfied with a reconsideration decision from the ministry, he or she may submit a Notice of Appeal to the Employment and Assistance Appeal Tribunal. There are two parties to an appeal: the person requesting an appeal (“appellant”) and the ministry.



A person has **7** business days to submit a Notice of Appeal to the Tribunal with a choice of:



**ORAL**

(IN PERSON OR BY  
TELECONFERENCE)



**WRITTEN**

### WHEN AN APPEAL IS INITIATED

- Day 1-3** A record of the ministry's decision is requested by the Tribunal and received from the ministry.
- Day 3-4** The Tribunal reviews the record of the ministry's decision and the Notice of Appeal to verify the matter is appealable.
- Day 4-5** Acknowledgment of appeal and appeal record sent to all parties.
- Day 4-7** The Tribunal Chair appoints members to hear the appeal.
- Day 7-9** A conflict of interest check is completed and panel members are confirmed; the hearing time and location is secured.
- Day 7-11** Notice of Hearing or a Commencement Letter, for written hearings, is sent to parties.

**ORAL**



**HEARINGS**  
Day 14-15

The **PANEL** makes a decision either **confirming** or **rescinding** the ministry's decision.

The **PANEL** has **5** business days to provide the **TRIBUNAL** with the written decision.



The **TRIBUNAL** has **5** business days to mail the decision to parties.

**WRITTEN**

The **APPELLANT** has **7** business days to provide a submission for the hearing.



The **MINISTRY** has **7** business days to respond to the **APPELLANT'S** submission.



## 2. If You Want to Appeal

### How to Appeal

If you are dissatisfied with the ministry's reconsideration decision, complete a Notice of Appeal form and submit it to the Tribunal within seven business days of receiving your reconsideration decision.

### Type of Hearing

The Tribunal will attempt to accommodate your request for the type of hearing indicated on your Notice of Appeal: oral (in person or by teleconference) or written.

### Oral Hearing - In Person

If your hearing is proceeding as an oral hearing in person, the Tribunal will send you a Notice of Hearing, which you will receive at least two business days before the hearing is to take place, notifying you of the date, time and location of the hearing. Hearings will usually take place in or near your community. You have the right to call witnesses and present evidence in support of the information and records before the minister at reconsideration. You also have the right to make arguments in support of your case, and to have a family member, friend or advocate assist you during the appeal process.

### Oral Hearing - By Teleconference

If your hearing is proceeding as an oral hearing by teleconference, the Tribunal will send you a Notice of Hearing, which you will receive at least two business days before the hearing is to take place. The Notice of Hearing will include the date and time of the hearing, as well as instructions for accessing the teleconference. As in an oral hearing in person, you have the right to call witnesses and present evidence in support of the information and records before the minister at reconsideration. You also have the right to make arguments in support of your case, and to have a family member, friend or advocate assist you during the appeal process.

### Written Hearing

If you request a written hearing, and the ministry consents, the Tribunal will send you a letter establishing a schedule for the written submission process. You will be given seven business days to provide a submission to support your case. Upon receipt of your submission, the Tribunal will forward it to the ministry and give the ministry seven business days to provide a written response. The Tribunal will then forward the appeal record, including the submissions, to the panel for review.

### After the Hearing

The panel will provide the Tribunal Chair with a written decision within five business days of the conclusion of the hearing. Upon request of a panel chair, the Tribunal Chair may extend the time limit by no more than 10 additional days if satisfied that the panel is making all reasonable efforts to provide its determination in a timely manner, and the best interests of the parties are served by the extension. The decision will either confirm or rescind the ministry reconsideration decision. The Tribunal will mail a copy of the decision to the parties within five business days of receiving it from the panel. Decisions will not be provided over the telephone.

The appeal decision is the final decision; however, you can file a petition in the BC Supreme Court asking a judge to review our decision. This is called a judicial review. Generally, this must be done within 60 days of our decision. As well, if you believe you were treated unfairly, you can contact the Office of the Ombudsperson or write to the Tribunal Chair about any concerns.



This Tribunal brochure is included with every reconsideration decision denying the request.

This Tribunal brochure is sent to every appellant on acceptance of their Notice of Appeal.

# How to Appeal...

**You only have  
7 Business Days**

If you are dissatisfied with the ministry's reconsideration decision:

1. Complete and submit the Notice of Appeal form to the TRIBUNAL

MAIL: PO Box 9994 Stn Prov Govt  
Victoria BC V8W 9R7

FAX: Toll free 1-877-356-9687  
in Victoria 250-356-9687

EMAIL: [info@eaat.ca](mailto:info@eaat.ca)

2. It must be received by the Tribunal within 7 business days of receiving your ministry reconsideration decision or you will lose your right of appeal
3. You can send additional information to the Tribunal once your Notice of Appeal form is submitted.

Notice of Appeal forms are available online, from the Tribunal and from the ministry.

**If you have questions, contact the  
Employment and Assistance  
Appeal Tribunal**

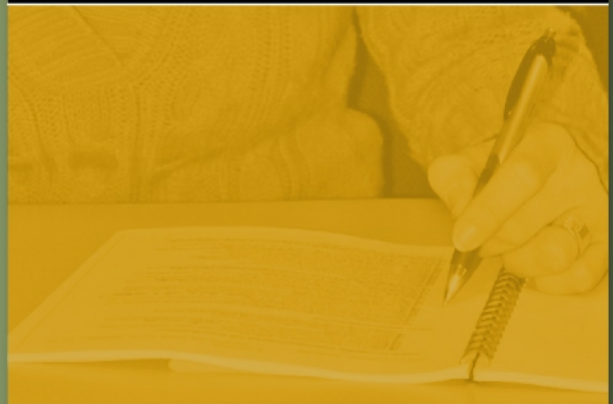
TEL: Toll free **1-866-557-0035**  
In Victoria **250-356-6374**

WEB: [www.eaat.ca](http://www.eaat.ca)

NOVEMBER 2016

## Employment and Assistance Appeal Tribunal

### How to Prepare for Your Appeal



### 3. How We Did in 2015/16

Meeting the timelines established by the legislation is one way of measuring the Tribunal's performance. The Tribunal must hold a hearing within 15 business days of receiving a Notice of Appeal. The Tribunal encountered three instances where the timeline was missed:

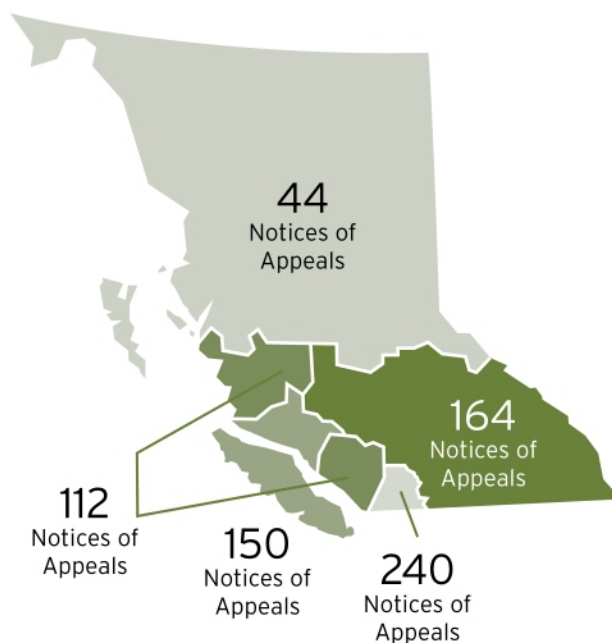
- In two instances, a delay in service delivery by Canada Post resulted in the appellant not receiving notification of their hearing at least two business days in advance of their scheduled hearing.
- An administrative error occurred when two double-sided Notices of Appeal were submitted, resulting in a processing oversight whereby one Notice of Appeal was not entered into the Tribunal's case management system.

Here is a brief summary of the results of our work for the reporting period of October 1, 2015 to September 30, 2016.

#### Summary of Appeals Statistics

<b>Notices of Appeal Received</b>	<b>710</b>
<b>Appeals Assessed as Not Within the Jurisdiction of the Tribunal</b> (did not proceed to hearing)	<b>52</b>
<b>Appeals Dismissed by the Parties</b> (before or during hearing)	<b>39</b>
<b>Files Carried Over</b> (Appeals opened between 01/10/2015 and 30/09/2016 and not closed, heard or rejected by 30/09/2016)	<b>58</b>

#### Notices of Appeal by Region



Region 1	Vancouver Island	21%
Region 2	Vancouver Coastal	16%
Region 3	Fraser	34%
Region 4	Interior	23%
Region 5	Northern	6%

### Notices of Appeal by Type

20 Business Days	11
Crisis Supplement	93
Disabilities - Persons with Disabilities-Designation	193
Disabilities - Persons with Persistent Multiple Barriers	54
Eligibility - Deductions on Income/Earnings Exemptions	15
Eligibility - Dependency/Living Arrangements	24
Eligibility - Excess Assets	9
Eligibility - Excess Income	40
Eligibility - Failure to Accept/Pursue Income/Assets	2
Eligibility - Failure to Provide Information/Verification	21
Eligibility - Full Time Student	5
Eligibility - Identification	1
Eligibility - Residency	2
Eligibility - Shelter Allowance	17
Eligibility - Undeclared Income/Assets	6
Employment - Dismissed/Quit/Refused Employment	3
Employment - Employment Plan/Failure to Look for Work	32
Employment - Requirement for Two-Year Financial Independence	5
Employment - Three Week Reasonable Work Search	1
Health Supplements - Hearing Aids	1
Health Supplements - Orthoses	4
Health Supplements - Dental Supplement	12
Health Supplements - Diet/Natal Supplements	5
Health Supplements - MSP/Other Health Supplements	2
Health Supplements - Medical Equipment	22
Health Supplements - Medical Supplies	9
Health Supplements - Medical Transportation	22
Health Supplements - Monthly Nutritional Supplement	21
Health Supplements - Short-Term Nutritional Supplement Products	1
Health Supplements - Therapies	3
Moving Supplement	25
Other - Child Care	13
Other - Hardship	4
Other - Other	28
Special Transportation Subsidy	4

## Appeal Outcomes

The total number of Notices of Appeal received differs from the number of appeals closed because of files carried over from the previous year or into the following year and various other factors. The number of decisions confirmed and rescinded may not equal the number of appeals heard for the same reason. The following statistics relate to appeal files that were closed in this reporting period.

### Ministry of Social Development and Social Innovation

Appeals heard	614
Decisions confirmed	567
Decisions rescinded	47

### Ministry of Children and Family Development

Appeals heard	15
Decisions confirmed	14
Decisions rescinded	1

## Judicial Review Outcomes

*Sayhoun v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2016 BCCA 312

This was an appeal from a dismissal of the Appellant's judicial review application indexed at 2015 BCSC 456. At issue was a decision of the Chair of the Tribunal to refuse to accept an appeal from a refusal by the Ministry to reopen its decision regarding the Appellant's application for benefits which had previously been denied. The Chair declined to accept the Appellant's appeal on the basis that the Tribunal lacked jurisdiction under s. 17 of the *Employment and Assistance Act (Act)*. The Court of Appeal observed that the Chair's interpretation of the Act was entitled to deference. The Court agreed that the right to reconsideration under s. 17 of the Act only applies to listed classes of decisions and that a refusal to reopen a decision was not subject to a right of reconsideration. As a consequence, the Court held that the Chair correctly concluded that the Tribunal lacked jurisdiction to hear the appeal.



## 4. What Our Decisions Look Like

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### CASE 1

### Person with Persistent Multiple Barriers

#### Ministry Decision

Not eligible for re-qualification as a Person with Persistent Multiple Barriers (PPMB) to employment.

#### Summary of Facts

In support of his application, the appellant provided copies of his current and previous PPMB Medical Reports and a questionnaire completed by his physician.

In the current PPMB Medical Report, the physician wrote that the appellant has longstanding post-traumatic stress disorder (PTSD) for which the treatment is medication with the outcome of treatment described as “stable.” While a former medical report indicated the appellant was receiving ongoing psychotherapy, all subsequent medical reports identify PTSD as the primary medical condition.

The appellant is reported to be unable to cope in a social or work environment. In the questionnaire, the physician responded that the appellant’s anxiety is more marked in social settings; he is easily overwhelmed, does not interact well with other people and tends to isolate himself. He is unable to cope in a typical work environment and is not capable of working more than a few hours a week.

The appellant works part-time delivering papers. His earnings were under \$100 monthly and recently increased to \$320 - \$380 monthly. On one occasion, his monthly earnings were greater than \$500, due to the correction of an error made by his employer that resulted in back pay. As a PPMB, the appellant is entitled to an earnings exemption of \$500 per month under the legislation.

#### Tribunal Decision - ministry decision rescinded

#### Reasons for Decision

The issue on appeal was whether the ministry decision that determined the appellant did not qualify for PPMB as he had not met the requirement of section 2(4)(b) of the Employment and Assistance Regulation (EAR) was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence.

The appellant argued the ministry’s decision was unreasonable because it makes assumptions about his capabilities that are not supported by the evidence. His employment activity is very limited and well within the earning exemption, and his physician confirms that he is only capable of working a few hours weekly. Furthermore, “stable” does not mean cured. Finally, the ministry placed too much emphasis on the one time his earnings exceeded the exemption amount, especially considering the reason for higher earnings that month.

The ministry argued the information from the medical practitioner does not establish that the appellant is unable to work in an environment with minimal or no social interaction, such as newspaper delivery. Psychotherapy was not listed on the most recent PPMB Medical Report, suggesting that the appellant’s overall medical condition has shown improvement. Employment earnings of over \$500 suggest the appellant is capable of working more than a few hours a week and as the appellant has been able to maintain employment with his current employer for over two years, it cannot be said that his medical condition precludes him from searching for, accepting or continuing in employment as per the legislative test set out in section 2(4)(b) EAR.

As the ministry noted in its reconsideration decision, the common interpretation of “preclude” is “to make impossible or prevent from happening.” However, the panel found that in reading the legislation as a whole it is clear that the legislative intent is not to interpret “preclude” in such a literal fashion, since the earnings exemption in the legislation anticipates that a PPMB may earn some employment income. The ministry’s policy, which is referenced in the reconsideration decision, acknowledges this less stringent interpretation of “preclude”:

“A medical condition is considered to preclude the recipient from searching for, accepting or continuing in employment when, as a result of the medical condition, the recipient is unable to participate in any type of employment for any length of time except in a supported or sheltered type work environment.”

The ministry appeared to place significant weight on the evidence that the appellant’s medical condition has shown some improvement over the years since he first qualified as a PPMB. However, the evidence shows that his medical condition still limits him to working only a very few hours per week in a low stress/ low pressure environment that allows him to set his own pace and to avoid social interaction. The ministry also appeared to place a substantial amount of weight on the fact that the appellant earned more than \$500 in one month. However, the evidence demonstrates the level of earnings was a one-time event that arose due to a payroll error. Other than this one exception, the appellant’s earnings are consistently within the legislated exemption limit. In the panel’s view, the appellant’s employment represents a “sheltered-type work environment” as referenced in the ministry’s policy.

The panel found the ministry’s decision that the appellant’s medical condition does not preclude him from searching for, accepting or continuing in employment and he therefore did not meet the requirements for qualification as a PPMB under section 2(4)(b) of the EAR was not a reasonable application of the legislation in the appellant’s circumstances and rescinded the ministry’s decision.

**CASE 2****Medical Services Only****Ministry Decision**

Not eligible for Medical Services Only (MSO) because at the time the appellant turned 65 years of age he was a single recipient of hardship assistance, not disability assistance.

**Summary of Facts**

In 2002, the appellant was designated as a Person with Disabilities (PWD). He ceased to be eligible for PWD due to a lifetime ban. The appellant then applied for hardship assistance, which he was still receiving at the time he turned 65 years of age. The ministry switched the appellant's file to MSO when he turned 65, but subsequently determined that the appellant was not and had not been eligible for MSO.

**Tribunal Decision** - ministry decision confirmed**Reasons for Decision**

The issue in this appeal was whether the ministry decision to deny the appellant's request for MSO on the basis that when he turned 65 he was not eligible for disability assistance and therefore did not meet the legislative requirement set out in section 61.1(b) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) was reasonably supported by the evidence or was a reasonable application of the legislation.

The appellant argued that it was unreasonable to find him ineligible because when he turned 65 years of age, the ministry informed him that he must apply for Old Age Security and Canadian Pension Plan and that his file would be converted to MSO and he would always have medical coverage. He stated that he has a serious medical condition and does not have the funds to pay for the life-saving medications.

The ministry argued the appellant never met the requirements for MSO because when he turned 65 he was not in receipt of disability assistance. The ministry had made an administrative error when it determined the appellant was eligible for MSO and the appellant was advised of the error in writing.

The eligibility requirement for MSO benefits are set out in section 61.1 of the EAPWDR. Paragraph (b) provides that a person may be eligible for MSO if the person's family unit ceased to be eligible for disability assistance on the day the person became 65. This circumstance does not apply to the appellant because he ceased to be eligible for disability assistance well before that day.

The panel found that the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirmed the ministry's decision.



**CASE 3****Medical Equipment (CPAP)****Ministry Decision**

Not eligible for a continuous positive airway pressure device (CPAP), because the appellant does not suffer from moderate to severe sleep apnea.

**Summary of Facts**

The appellant, a recipient of disability assistance, requested a CPAP. The Medical Equipment Request and Justification form was completed by a physician who recommended a CPAP. The respirology specialist report stated that tests indicated there is no nocturnal hypoxemia but there is fluctuation in oxygen levels during rapid eye movement (REM) sleep and the appellant suffers from mild overall sleep apnea. However, when in REM sleep, it is severe and further worsens in supine/REM. The specialist explained that REM is a type of sleep that is necessary for a healthy night's sleep and brain functioning, and that the appellant is likely to achieve REM sleep every night, during which time he will have severe pauses in his breathing.

**Tribunal Decision** – ministry decision rescinded**Reasons for Decision**

The issue on appeal was whether the ministry decision to deny the appellant's request for a CPAP under section 3.9 of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) on the basis that the appellant is not suffering from moderate to severe sleep apnea was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The appellant's position was that the ministry had incorrectly interpreted section 3.9(2)(c) of Schedule C as requiring the minister be satisfied that an overall sleep apnea score indicates moderate to severe sleep apnea. In his case, there was ample medical evidence

that he suffers from moderate to severe sleep apnea, if only while in REM sleep, and that the a CPAP is recommended as medically essential for treatment.

The ministry's position was that section 3.9(2)(c) stipulates the ministry must be satisfied the item is medically essential for the treatment of moderate to severe sleep apnea. REM sleep varies - normally averaging 20 - 25% of an adults total sleep time. However, the degree of severity of sleep apnea is based on the number of events of apnea hypoxia over the course of an entire night's sleep. The oximetry test results submitted with the request indicate an apnea hypopnea index rate of 8.8 which is consistent with mild obstructive sleep apnea, and is characterized as such by the appellant's respirology specialist.

When considering whether the ministry reasonably interpreted section 3.9(2)(c) of Schedule C, the exact wording of the legislation is important. At issue in this case is the meaning of "moderate to severe sleep apnea." The panel found that the wording of the legislation does not refer to the overall apnea hypopnea index rate or an average sleep apnea score. Nor does the legislation require or permit the ministry to take into consideration the percentage of an applicant's sleep affected by sleep apnea. Rather, the legislation simply requires that an applicant suffer from moderate to severe sleep apnea, which in the appellant's case occurs in REM sleep.

As such the panel found there was sufficient evidence that the appellant suffers from moderate to severe sleep apnea. That it was only during REM sleep does not change the fact that the circumstances meet the legislative requirements.

The panel found the ministry's decision that the appellant was not eligible for a CPAP under section 3.9(2)(c) of Schedule C of the EAPWDR was not reasonably supported by the evidence and rescinded the ministry's decision.



# Our Organizational Values

In carrying out its mission, the Employment and Assistance Appeal Tribunal is guided by the following values:

- Fairness
- Impartiality
- Excellence
- Efficiency
- Timeliness
- Accessibility
- Accountability
- Transparency
- Independence



## 5. Looking Forward

The Tribunal is looking forward to designing and implementing a new case management system as part of the Ministry of Justice transformation initiative. Once developed, other tribunals would leverage the work done. It is a complex and comprehensive project that will require dedicated resources to succeed.

In the coming year, the Tribunal will continue to transition towards an electronic appeal process, recognizing that most appellants will continue to receive their records in paper form. Currently, the Tribunal is utilizing the Member Portal on the website for secure posting of records. Once completed, the new case management system may offer other options.

Recruitment is ongoing and results in the appointment of a number of new members. Although initial training is available online, workshops have proven to be valuable in reviewing practices and procedures and improving decision making and decision writing skills. Workshops will continue to be provided to members who have been reappointed after serving a two-year term.

As Chair, I firmly believe that decisions made involving members of the public should be fair and principled. This drives my ongoing participation with the Council of Canadian Administrative Tribunals and the British Columbia Council of Administrative Tribunals. In the past reporting period, a Memorandum of Understanding has been signed by both agencies to cooperate on developing a Symposium to be held in Vancouver in 2017 and to develop online training courses for members and staff of administrative agencies.

# Glossary

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**act** the *Employment and Assistance Act*

**appeal record** Initially, the appeal record for the Tribunal consists of the Notice of Appeal and the record of the ministry decision. As the appeal progresses, it also includes submissions, any additional information admitted into evidence at the hearing, and the Tribunal decision.

**appellant** a person who commences an appeal under section 21 of the *Employment and Assistance Act*

**business day** a day other than Saturday, Sunday, or a statutory holiday

**independent** the activities of the Tribunal are separate and operate at “arms length” from both ministries

**members** a member of the Tribunal appointed by the Minister of Social Development and Social Innovation under section 19(2)(c) of the Act

**minister** the Minister of Social Development and Social Innovation or the Minister of Children and Family Development, depending on context

**ministry** the Ministry of Social Development and Social Innovation or the Ministry of Children and Family Development, depending on context

**notice of appeal** the appeal form specified by the Minister of Social Development and Social Innovation that must be submitted to the Tribunal in order to commence an appeal

**oral hearing** a hearing that is conducted with the parties present in person, by teleconference, or by video conferencing

**panel** the member(s) designated by the Tribunal Chair under section 22(1) of the Act to hear an appeal

**panel chair** the chair of a panel designated under section 22(2) of the Act

**party** in relation to an appeal to the Tribunal, the appellant and the Ministry, whose decision is under appeal

**reconsideration decision** the final ministry decision pertaining to the initial request the decision that may be appealed to the Tribunal

**record of the ministry decision** the information and records that were before the minister when the reconsideration decision under appeal was made

**representative** an agent, lawyer, or advocate representing a party during an appeal

**tribunal** the Employment and Assistance Appeal Tribunal established under section 19(1) of the Act

**tribunal chair** the Chair of the Tribunal appointed under section 19(2)(a) of the Act

**witness** a person who provides evidence at a hearing

**written hearing** a hearing that is conducted through the submission of written evidence and written argument



# Appendix A: Tribunal Staff

(October 1, 2015 - September 30, 2016)

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Sophie Abbott  
Dores Baxter  
Danny Courcy  
Willana Gibson  
Tracie Horne  
Kyrstin Kerr

Brittney Lokhorst  
Glenna McEwen  
Carrera Marotto  
Tina Meathrel  
Courtenay Moher  
Nicole Murray

Nick Paetz  
Elaine Parker  
Penelope Rokeby  
Alanna Valentine

# Appendix B: Tribunal Members

(October 1, 2015 - September 30, 2016)

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## Region 1



Angie Blake  
Monika Brandstaetter  
Sarah Brickett  
Janet Brons  
Gregory Bunyan  
Sean Carberry  
Gurjit Chaplin  
Bruce Cline  
Michael Collyer  
Robert Fenske  
Carl Gorham  
Daniel Graham  
Marcus Hadley  
Donna Hains  
Lowell Johnson  
Jim Jones  
Luke Krayenhoff  
Keith Lacroix  
Anne-Marie Lafleur  
Gabriella Lang  
Thomas Lathrop  
Patrick Maguire  
Henry Mathias

Donald McLeod  
Marilyn McNamara  
Stacy Mitro  
Trevor Morley  
Inge Morrissey  
Pat Munroe  
Andrew Murray  
Wesley Nelson  
Jane Nielsen  
Marnee Pearce  
Glenn Prior  
Anne Richmond  
Richard Roberts  
Pierre Rousseau  
Marlene Russo  
Gillian Saxby  
Charles Schellinck  
Jennifer Smith  
Donald Storch  
Carman Thompson  
Gordon Thompson  
Lynn Twardosky  
Joan van der Holt

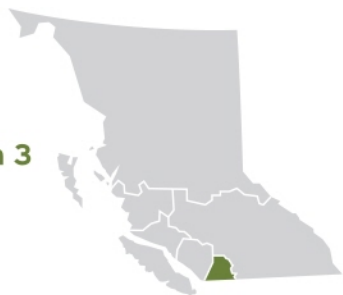
## Region 2



Haydn Acheson  
Brenda Austin  
Scott Brearley  
Jeffrey Chambers  
Sandra Chan  
Susanne Dahlin  
Alexander Danilovic  
Nancy Eidsvik  
Margaret Gaily  
Kathy Grant  
Jessie Hadley  
Margaret Koren  
Stephanie Korour  
Susan Mackey  
Maryam Majedi  
Perry Mazzone

Carole McKnight  
Tajdin Mitha  
Barbara Murray  
Rob Nijjar  
Adam Picotte  
Patrick Poyner  
Kim Read  
Adam Rollins  
Adam Shee  
Connie Simonsen  
Patricia Simpson  
Roy Wares  
Susan Witter  
Marcus Wong  
Reece Wrightman

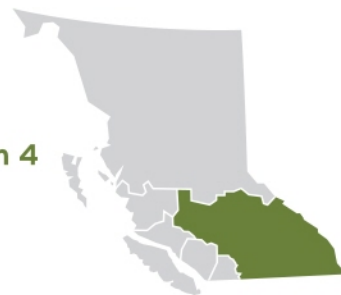
### Region 3



Jennifer Armstrong  
Fazal Bhimji  
Vivienne Chin  
Simon Clews  
Jennifer Duprey  
Sanjay Gulati  
Robert Gunnell

David Handelman  
Susan Johnston  
Neena Keram  
Oscar Khalideen  
Jeremy Sibley  
Rosalie Turcotte  
Sandra Walters

### Region 4



Joan Bubbs  
Jeanne Byron  
Lisa Denham  
Mel Donhauser  
Lauren Forsyth  
Bill Haire  
Michael Hare  
Doug Ivey  
Robert Kelly  
David Kendrick  
Lorraine Kent  
Deborah Kinnear

Raymond Kirzinger  
Shiela Lange  
Janet Lingford  
Jean Lorenz  
David Mattes  
Marilyn McLean  
Marilyn Mellis  
Wayne Reeves  
William Reid  
Ronald Terlesky  
Helene Walford

### Region 5



Kevin Ash  
Zelda Craig  
Lorraine Grant  
Jeanne Robert  
Linda Smerychynski  
Megan Wallace  
Janet Ward

# Appendix C: Budget

(October 1, 2015 - September 30, 2016)

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The provincial government's fiscal year begins April 1st. The Tribunal's reporting year begins October 1st. The budget table presents relevant reporting periods which span the two fiscal years.

OPERATING BUDGET	APRIL 2015–MARCH 2016	APRIL 2016–MARCH 2017
Salaries and Benefits	\$ 937,000	\$ 941,000
Boards/Commissions/Courts - Fees and Expenses	452,000	496,000
Public Servant Travel	10,000	22,000
Professional Services: Operational	150,000	150,000
Information Systems: Operating	17,000	12,000
Office and Business Expenses	130,000	130,000
Statutory Advertising and Publications	5,000	5,000
Recoveries	(1,000)	(1,000)
<b>TOTAL</b>	<b>\$ 1,700,000</b>	<b>\$ 1,756,000</b>



# How to Contact Us

MAIL: PO Box 9994 Stn Prov Govt  
Victoria BC V8W 9R7

TEL: 250-356-6374 or toll free 1-866-557-0035

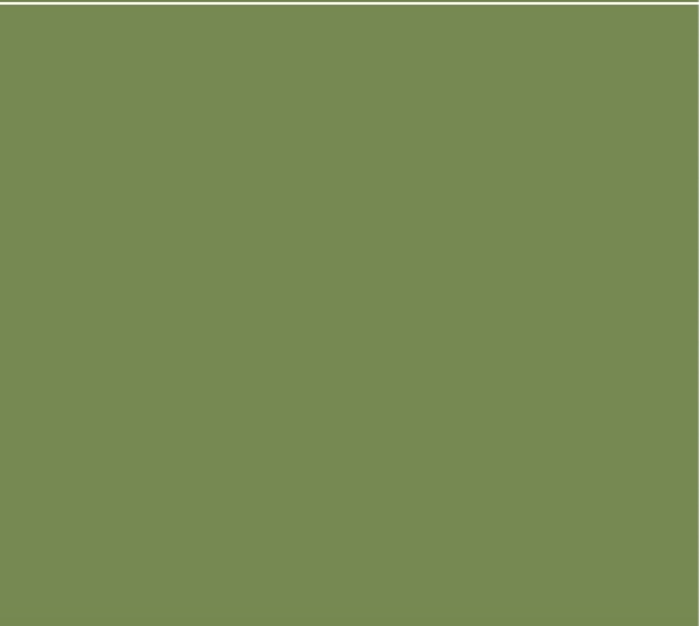
FAX: 250-356-9687 or 1-877-356-9687

EMAIL: [info@eaat.ca](mailto:info@eaat.ca)

WEB: [www.eaat.ca](http://www.eaat.ca)







[www.eaat.ca](http://www.eaat.ca)



## MINISTRY OF SOCIAL DEVELOPMENT AND SOCIAL INNOVATION MEETING NOTE

**DATE:** December 5, 2016

**PREPARED FOR:** Honourable Michelle Stilwell, Minister of Social Development and Social Innovation

**MEETING DETAILS:** Employment and Assistance Appeal Tribunal Annual Report

### **BACKGROUND:**

The Employment and Assistance Appeal Tribunal (the Tribunal) is an independent quasi-judicial agency established to determine appeals of ministry decisions under section 17(3) of the *Employment and Assistance Act*, section 16(3) of the *Employment and Assistance for Persons with Disabilities Act*, and section 6(3) of the *Child Care Subsidy Act*. Although independent, the Tribunal falls within the responsibility of the Minister of Social Development and Social Innovation, and is accountable to the government through the Minister.

### **DISCUSSION:**

As it does each year, the Tribunal will be releasing a public Annual Report.

The Tribunal Chair, Marilyn McNamara, has requested a meeting with the Minister to present the Tribunal's Annual Report for 2015/16 (copy included as attachment), which she plans to release December 13, 2016.

The report describes the work, objectives and mandate of the Tribunal, sets out the mechanics of the appeal process, details the Tribunal's achievements over the past year, provides a number of case studies, reports out on Tribunal statistics, and provides information about Tribunal panel membership.

Key discussion topics may include:

- The Tribunal is working on the design and implementation of a new case management system as part of the Ministry of Justice's tribunal transformation initiative. The case management system could be utilized by other tribunals and will transition the Tribunal toward an electronic appeal process.
- The Tribunal continues to work on various recruitment methods for panel members.
- The report includes a summary of appeal statistics for the reporting period of October 1, 2015 to September 30, 2016.

Appeal Trends (see attachment – Appeal Trends):

- The number of appeals heard by the Tribunal has decreased by approximately 11 per cent over the last three reporting periods; 2013/14 – 690 appeals, 2014/15 – 564, 2015/16 – 614.
- The Tribunal continues to confirm a high percentage of ministry decisions. In 2013/14, 93 per cent of Tribunal decisions confirmed the ministry's decision. In 2014/15, 94 per cent of ministry decisions were confirmed. In 2015/16, 92 per cent of ministry decisions were confirmed.
- The most frequently appealed issues continue to be the Persons with Disabilities designation (31 per cent), Crisis Supplement requests (15 per cent) and Persons who have Persistent Multiple Barriers to employment status (9 per cent). See attachment – Appeal Trends.

**RECOMMENDED RESPONSE:**

- The Minister thanks the Tribunal Chair for the notification of the Annual Report and looks forward to the information being reported.

**Enclosures/Attachments**

- Employment and Assistance Appeal Tribunal Annual Report 2015/16
- Appeal Trends

**Prepared by:**

Name: Melissa Bauer  
Title: A/Director, Reconsideration and Appeals  
Branch: Legislation, Litigation and Appeals  
Phone: (250) 387-1164

**Reviewing path:**

*Michael Turanski, Executive Director; Stacey McGaghey Jones, Issues Manager; Molly Harrington, RIPD ADM; Sheila Taylor, Deputy Minister*

## APPEAL TRENDS

APPEAL OUTCOMES					
	Appeals Heard	Decisions Confirmed		Decisions Rescinded	
<b>2013/14</b>	690	645	93%	45	7%
<b>2014/15*</b>	564	530	94%	30	6%
<b>2015/16</b>	614	567	92%	47	8%

\* Statistics provided by the Tribunal. Decisions confirmed and decisions rescinded do not add up to appeals heard.

APPEAL ISSUES							
	PWD		Crisis		PPMB		Total Appeals*
<b>2013/14</b>	197	29%	93	13%	38	6%	690
<b>2014/15</b>	183	32%	94	17%	30	5%	564
<b>2015/16</b>	193	31%	93	15%	54	9%	614

\* Total Appeals includes some appeal issues not listed.

# **MINISTRY OF SOCIAL DEVELOPMENT AND SOCIAL INNOVATION**

## **DECISION NOTE**

**DATE:** November 30, 2016

**PREPARED FOR:** Honourable Michelle Stilwell, Ministry of Social Development and Social Innovation

**ISSUE:** Specialized Community Assistance Program (SCAP)

### **BACKGROUND:**

Since 2009, the Ministry of Social Development and Social Innovation (SDSI), has provided the Specialized Community Assistance Program (SCAP) to offer long-term case management services to chronically homeless individuals who are also experiencing mental health and/or addictions issues. SCAP provides diagnostic assessment, one-to-one counselling/life skills training, referral and navigation services to assist significantly multi-barriered Income Assistance clients, to improve their quality of life and level of self-sufficiency (see Appendix 1). Services are currently offered in Nanaimo, Victoria, Vancouver, Surrey, Chilliwack/Abbotsford, Kelowna and Prince George.

SCAP evolved from the 2006 Community Assistance Program (CAP) and originally launched as a pilot program using Labour Market Agreement (LMA) funding. While the SCAP pilot was scheduled to end on March 31, 2014, all seven locations were direct awarded contracts from April 1, 2014 to March 31, 2015, which were subsequently extended twice. The current contracts end March 31, 2017, with no further available extensions.

The total annual budget for SCAP is \$1.3 million (see Appendix 2). With the restructuring in 2014 of the LMA and the introduction of the Canada Job Grant, the Ministry of Jobs Tourism and Skills Training (JTST) provided funding using the Canada Job Fund for FY 2014/15. SDSI funded SCAP in 2015/16 and 2016/17 from the provincial budget.

### **DISCUSSION:**

Clients who have participated in SCAP to-date have significant barriers related to mental health, justice and housing, they are normally not ready for programs such as WorkBC. SCAP service providers work closely with other community partners, including BC Housing and health authorities to provide housing and health services or supports, and, to a lesser degree with WorkBC contractors.

Options for SCAP would include transitioning the program to a more appropriate area of government that would better serve these clients. BC Housing has expressed an interest in developing a Memorandum of Understanding to transition SCAP clients and SCAP funding to them from 2017 onwards to expand the Homelessness Outreach Program in the seven SCAP communities. As per current contract terms of the final program year, contractors have stopped new client intakes on September 30, 2016.



# MINISTRY OF SOCIAL DEVELOPMENT AND SOCIAL INNOVATION

## DECISION NOTE

### OPTIONS:

**OPTION 1:** SCAP ends on March 31, 2017 when the current contracts end. Transition SCAP clients to supports elsewhere in the communities.

#### **PROS:**

- SCAP contractors are aware of the current end date of their contracts and that transition plans may be required for each client.

#### **CONS:**

- Loss of a valuable community resource for homelessness in the seven communities which may result in additional costs and impacts to community resources.
- Clients will be referred to agencies such as BC Housing or local mental health teams, but access to services will be inconsistent without long-term case management.
- Although SCAP contractors will support client transition to other services in their communities, ending the program may create a negative perception that these services are being reduced for these vulnerable clients.

**OPTION 2:** Procure to continue to provide SCAP under new contracts within SDSI.

#### **PROS:**

- Provides service continuity for homeless individuals in securing and maintaining housing, reducing homelessness and moving along the employment continuum.
- Mitigates impacts to community resources and associated costs that may result if services are discontinued.

#### **CONS:**

- Delivery of this program is not aligned with SDSI mandate.
- SDSI does not have the resources to provide housing and mental health-related supports to this client group who face significant barriers related to mental health, justice and housing and are normally not ready for programs such as WorkBC.
- Additional funding of \$1.3 million per year is required.
- The timeline for procurement is relatively short and current contractors are not expecting the Ministry to call for proposals, as SCAP is in the last five months of their contract term.
- A compressed procurement timeline may also constrain new contractors, if selected, as they may need time to prepare for an April 1, 2017 service start date.



**OPTION 3:** Transition clients from SCAP to BC Housing's Homeless Outreach/Aboriginal Homeless Outreach programs.

#### **PROS:**

- Leverages existing BC Housing programs that provide similar or complementary services as SCAP to assist chronically homeless individuals in securing and maintaining housing, reducing homelessness and moving along the employment continuum.

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Updated:

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## MINISTRY OF SOCIAL DEVELOPMENT AND SOCIAL INNOVATION DECISION NOTE

- Mitigates impacts to community resources and associated costs that may result if services are discontinued.
- BC Housing is supportive of this option as it aligns with BC Housing mandate.

### **CONS:**

- Transferring the program to BC Housing will result in some changes to the level and intensity of life-skills services available under the current model.
- Requires allocation of \$1 million per year in ongoing funding from SDSI to BC Housing to support the costs of serving these additional clients in the seven communities.

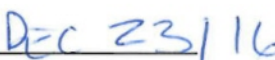
### **RECOMMENDATION:**

**OPTION 3:** Transition clients from SCAP to BC Housing's Homeless Outreach (HOP) and Aboriginal Homeless Outreach (AHOP) programs.

Approved/Not Approved

Date:

  
Michelle Stilwell, Minister

  
Dec 23/16

### **ATTACHMENTS:**

**Appendix 1:** SCAP Service Description

**Appendix 2:** List of SCAP Contracts

#### **Prepared by:**

Patrick Lee  
Senior Advisor, Diversity & Client Inclusion  
ELMSD Program Management Branch  
Phone 778-239-6822

#### **Reviewing path:**

Anita Sharma, A/Director, Program Policy & Inclusion /  
Sergei Bouslov, Executive Director,  
Nichola Manning, Assistant Deputy Minister /  
Michael Lord, ADM and EFO /  
Sheila Taylor, Deputy Minister /

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Version #:

Updated:

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## Appendix 1

### SCAP Service Description (Abridged from Schedule A of Service Contract)

- The Contractor will provide services in five general categories to assist SCAP participants towards greater self-sufficiency and move Clients towards volunteerism or employment.
  - Intake Services;
    - Brief assessment
    - Determine acceptance to program
  - In-depth Assessment Service;
    - Prepare written assessment of barriers and strengths
    - Diagnostic assessments are in rare circumstances
    - Provide supports required
    - Develop Personal Plan
  - Individual Services;
    - Training for required life skills and desirable life skills
  - Follow-up Services;
    - For every participant who Completes Individual Services
      - Contact Participant
      - Support Participant to progress in their transition plan
  - One-on-One Support Services;
    - Personal Coaching/Counselling
    - Regular review, update & revision of the Participant's Personal Plan
    - Issue Supports based on the Participant's needs and within any applicable financial parameters described in Schedule B
    - Maintain records
  - Referral and Navigation Services
    - Provide up-to-date information about community's external services
    - Proactively link with external services
      - Physically accompanying to appointments where required
      - Assisting in completing applications such as PPMB, PWD, etc.
    - Maintain contact with Participant/Conduct periodic assessment of service

## Appendix 2

### SCAP Dollar Value (Abridged from Schedule B of Service Contracts)

The Province will pay the Contractor a flat rate for fees and expenses in the total amount of *\*see annual amount in table\** (inclusive of any Tax) for performing all Services and providing all Supports and Diagnostic Assessment Costs to or for Eligible Individuals and Participants in accordance with this Agreement during the Term.

City	Contract Number	Annual Amount
Victoria	scap46053150010	\$150,000
Nanaimo	scap46053150011	\$150,000
Vancouver	scap46053150012	\$275,000
Surrey	scap46053150013	\$150,000
Abbotsford	scap46053150014	\$150,000
Kelowna	scap46053150015	\$275,000
Prince George	scap46053150016	\$150,000
<b>TOTAL</b>		<b>\$1,300,000</b>