

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chaudhry v. Employment and Assistance
Appeal Tribunal,*
2026 BCSC 1956

Date: 20260923
Docket: S265116
Registry: Vancouver

Between:

Mohsin Chaudhry

Petitioner

And

**Employment and Assistance Appeal Tribunal,
and The Ministry of Social Development and Poverty Reduction**
Respondents

Before: Associate Judge Peck

Oral Reasons for Judgment

In Chambers

Appearing on own behalf:

M. Chaudhry

Counsel for the Respondent
Employment and Assistance
Appeal Tribunal:

K. Chewka

Place and Date of Hearing:

Vancouver, B.C.
September 23, 2026

Place and Date of Judgment:

Vancouver, B.C.
September 23, 2026

[1] **THE COURT:** This matter comes before the court today as part of the fifth material step of the petitioner's attempt to obtain employment assistance from and after September 2025.

[2] First, he applied for income assistance on September 3, 2025, and was denied on September 26, 2025. He applied for a reconsideration of that decision on September 27, 2025, which was denied on October 17, 2025. He applied for income assistance again and was ultimately approved on or about May 11, 2026.

[3] On June 1, 2026, he filed a notice of appeal, the first page of which references the reconsideration file number set out on page 1 of the reconsideration decision from October 2025. The reasons for appeal section that the petitioner filled out states:

I wish for a retroactive payment for when I started the application on September 26th, 2025, but was denied by Service BC.

[4] The Employment and Assistance Appeal Tribunal (the "EAAT" or the "Tribunal") heard the petitioner's appeal on June 18, 2026, and on June 25, 2026 confirmed the reconsideration decision from October 2025 denying the petitioner assistance at that time. The EAAT further determined that it did not have the jurisdiction to determine retroactive eligibility after a subsequent approval for assistance.

[5] The petitioner has now brought a judicial review proceeding alleging lack of procedural fairness. Though it is beyond the scope of today's application, his general arguments are that the EAAT improperly narrowed the scope of what it considered on his appeal, in his view rendering the appeal essentially moot.

[6] The main application before me today is under Rule 22-1(4)(a) of the *Supreme Court Civil Rules*, BC Reg 168/2009 (the "SCCR") to cross-examine Andrew Ross on his affidavit filed August 4, 2026 in support of the EAAT's response to petition. That affidavit is three pages and 11 paragraphs long. Mr. Ross is the

acting director of the EAAT, and his affidavit attaches the record that was before the Tribunal on appeal, along with some additional correspondence.

[7] The paragraph with which the petitioner takes particular issue is para. 4 of Mr. Ross's affidavit. Paragraph 4 reads:

On June 1st, 2026, the petitioner sent an email to the tribunal, the body of which included a "Release of Personal Information" form and which attached a notice of appeal seeking to challenge a reconsideration decision made by the Minister of Social Development and Poverty Reduction ("the Minister" or "the Ministry"). Now shown to me and attached collectively as exhibit A is a true copy of the petitioner's June 1st, 2026 email to the tribunal with the attached notice of appeal which was received by the tribunal on June 1st, 2026.

[8] The petitioner says that the characterization of the appeal and its scope in that paragraph is problematic. He says it contradicts the attached and referenced Exhibit A, which includes his notice of appeal stating the aforementioned request for retroactive assistance payments. By calling the appeal a challenge to the reconsideration made by the Ministry of Social Development and Poverty Reduction, the petitioner says this exacerbates the problem he sees with the scope of the appeal at first instance, which is precisely what he is challenging. He wants to be able to cross-examine Mr. Ross on his affidavit, and on that paragraph in particular. Alternatively, he seeks an order under Rule 9-5(1)(c) of the *SCCR* to have that paragraph struck from the affidavit as prejudicial to the hearing.

[9] It is not specifically noted in his notice of application, but during submissions the petitioner made reference to the respondents not providing or filing a certified record of what was before the EAAT. In submissions he explained that he believes that some material was omitted from the record before the EAAT that is attached to Mr. Ross's affidavit, in particular, certain reapplications for assistance he says he made.

[10] Counsel for the EAAT says that they have engaged the petitioner in discussions about whether or not there is some substantive issue with the record as opposed to the fact that it is simply not certified, but it appears as though he did not

communicate specifics about what may be missing until his submissions on this application.

[11] Making an order for cross-examination on an affidavit is a discretionary one. The court in *Szeto v. Shon Yee Benevolent Association of Canada*, 2019 BCSC 2015 ("Szeto") at para. 22, makes some useful and succinct commentary on the applicable principles to cross-examination on affidavits writ large, citing *Cowichan Valley (Regional District) v. Cobble Hill Holdings Ltd.*, 2015 BCSC 1995 at paras. 26 through 31 as follows:

[26] ... Normally, where the affidavit on which cross-examination is sought includes facts that are in issue, the deponent will be ordered to attend for cross-examination [citations omitted].

[27] Factors to be considered in the exercise of the court's discretion include whether there are material facts in issue; whether the cross-examination is relevant to an issue that may affect the outcome of the substantive application; and whether the cross-examination will serve a useful purpose in terms of eliciting evidence that would assist in determining the issue [citations omitted].

[28] In exercising its discretion, the court may also consider whether cross-examination will lead to unreasonable delay or unreasonable cost [citations omitted].

[29] Minor discrepancies in the evidence, or conflicts that may be resolved by reference to documentary evidence will not warrant the exercise of the court's discretion. However, where there is conflicting evidence on a material fact in issue which would result in the inability of the judge hearing the petition to decide the case, cross-examination will be ordered [citations omitted].

[30] Normally, before the court exercises its discretion to order cross-examination, the applicant will have filed affidavit materials that put in issue a material fact by contradicting the opposing party's affidavit evidence [citations omitted].

[31] Where credibility is in issue, out of court cross-examination will often have little persuasive value because the chambers judge can "seldom assess a deponent's credibility just by reading an affidavit or a copy of the cross-examination transcript": *Ulrich v. Ulrich*, 2004 BCSC 95, at para. 49.

[12] It appears as though the dispute about Mr. Ross's affidavit evidence stems from a lack of clarity or agreement as to the scope of the EAAT's powers and jurisdiction. On the appeal, the EAAT confirmed the reconsideration officer's decision and found that it did not have jurisdiction to make an award for retroactive assistance on any other basis. In other words, it only had the jurisdiction to

reconsider the October 2025 decision, which it did and dismissed the petitioner's appeal.

[13] In effect, had the EAAT found that reconsideration decision to be properly challenged by the petitioner, there would likely have been an order for "retroactive" assistance from on or about the date of the original denial. However, given that the EAAT confirmed the October 2025 decision, there was no other basis on which it says it could order assistance payable to the petitioner for that interim period.

[14] I am not satisfied that the criteria justifying a cross-examination on Mr. Ross's affidavit has been met in this case. In particular, I am not satisfied that there is a true conflict on the evidence. The petitioner wanted a broader reconsideration of his assistance applications but the Tribunal found that it did not have jurisdiction to do so. That is not an evidentiary conflict, it is a legal one.

[15] Counsel for the Tribunal in submissions pointed me to s. 19 of the *Employment and Assistance Act*, SBC 2002, c 41 which sets out what the Tribunal was statutorily established to determine. In particular, there are three limited things that the Tribunal can assess and two of those are reconsideration decisions. Though it is also beyond the scope of this application to determine whether that was correct or not, and is the main subject matter of the petition, that is clearly the position that the Tribunal is taking and that position is consistent with Mr. Ross's affidavit evidence.

[16] It is not the fact that a more limited scope of appeal than the petitioner wanted occurred that is in issue. Rather, it is whether or not that limited scope was warranted. To paraphrase the factors in *Szeto*, in these circumstances there are no material facts in issue, the cross-examination is not relevant to an issue that may affect the outcome of the substantive application, and the cross-examination will serve no useful purpose in terms of eliciting evidence that would assist in determining the case.

[17] The petitioner says that there are drastic differences between what Mr. Ross says and what the petitioner says, which if unresolved will result in a different outcome at the hearing of the judicial review petition, but I disagree.

[18] He also says that Mr. Ross was not present at the appeal, so his evidence is of questionable value in general. That is an argument that remains open to him to make, and in fact suggests that cross-examination would not be fruitful since Mr. Ross does not have the firsthand information that the petitioner is seeking.

[19] Counsel for the Tribunal pointed out in submissions that it is actually quite unusual for anyone with firsthand information to swear an affidavit in the context of a judicial review proceeding and pointed me to the case of *Eastside Pharmacy Ltd. v. British Columbia (Minister of Health)*, 2019 BCCA 60 ("*Eastside Pharmacy*"). In that case the respondent had submitted an affidavit directly from the decision-maker in a petition seeking to review that decision, and cross-examination was ordered of that person who had firsthand information.

[20] The court in *Eastside Pharmacy* does discuss how an affidavit from the decision-maker themselves is quite unusual and in fact is potentially problematic since, by their nature, judicial review proceedings are supposed to be determined based on the record that was before the decision-maker at first instance. Having additional affidavit evidence from someone with direct knowledge starts to wade into issues of expanding the scope and admitting additional evidence on the review, which is uncommon and often inappropriate.

[21] As the EAAT also points out, this is a petition proceeding. By design, petitions are a simplified procedure where there is limited, if any, pre-hearing fact-finding, and in this case, being a review of the decision of a public official, it is ordinarily based on the record that was before the tribunal in question and no more. Presenting additional *viva voce* evidence, such as would be elicited on a cross-examination, would be highly unusual. The Tribunal says that is a relevant context for the exercise of the court's discretion and relies on *Eastside Pharmacy* at paras. 58 and 59 for that point.

[22] Regardless of the nature of the proceeding, I find that cross-examination is not warranted in this case, but I do acknowledge that the fact that this is a petition proceeding reviewing the EAAT's appeal decision provides further justification for the denial of the petitioner's application.

[23] I say that in particular in the context of the petitioner's submission that in his proposed cross-examination he intends to ask for production of notes and other materials from the Tribunal. Obtaining additional evidence to be used in the proceeding is not the purpose of cross-examination on an affidavit in a petition. The discovery rules applicable to civil actions may be ordered on a case-by-case basis on application or by consent, but is not part of petition proceedings as of right, and it is not an appropriate basis on which to order cross-examination where otherwise not justified.

[24] The petitioner can still argue that the EAAT declining jurisdiction was incorrect, or that there were other elements of procedural unfairness or problematic steps taken or not taken. However, these are legal arguments not based on an inconsistent factual matrix. The difference in opinion between the parties as to the proper scope of the appeal is not a basis on which to order the cross-examination the petitioner seeks.

[25] I am also not satisfied that it is appropriate to strike para. 4 from Mr. Ross's affidavit under Rule 9-5(1)(c) of the *SCCR*. The petitioner's notice of application suggests that paragraph contains inadmissible and improper material that is misleading to the court, but I see no basis for that assertion at this stage.

[26] If the presiding judge at the hearing of the judicial review disagrees, it can be dealt with at that point. For now, in my view, there is nothing in that paragraph that will prejudice, embarrass or delay a fair trial or hearing of the proceeding. Rather, knowing that is the EAAT's sworn position will help frame the issues the judge will have to decide.

[27] Again, the petitioner may argue that Mr. Ross is wrong in how he characterized the scope of the appeal, but having the EAAT's position on that scope via Mr. Ross's evidence in the record does not compromise or otherwise restrict the petitioner's ability to do so or the fairness of the hearing in which those positions are argued.

[28] Costs of this application will be in the cause.

"Associate Judge Peck"