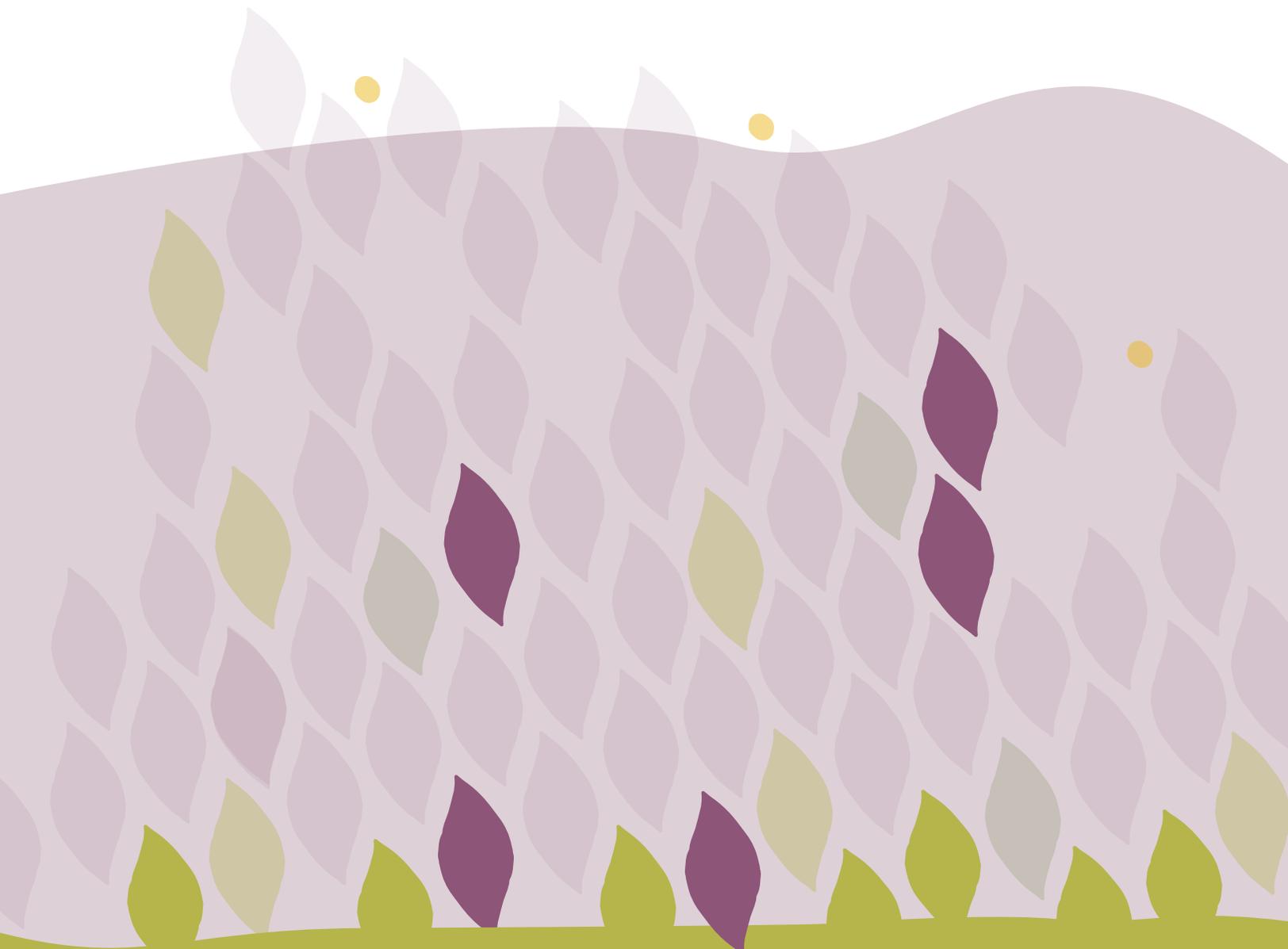


**Employment and Assistance
Appeal Tribunal** British Columbia

Annual Report 2020/21





Employment and Assistance Appeal Tribunal British Columbia

June 2021

The Honourable Nicholas Simons

Minister of Social Development and Poverty Reduction

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 April 1, 2020 to March 31, 2021. The report has been prepared in accordance with section 20(1) of the *Employment and Assistance Act*.



Emily C. Drown

Chair, Employment and Assistance Appeal Tribunal

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 Poverty Reduction determinations in regard to income and disability assistance and Ministry of Children and Family Development determinations in regard to child care subsidies.

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Message from the Chair

This annual report covers the period of April 1, 2020 to March 31, 2021. This report will flag items of importance and initiatives that may be of interest that have affected the Employment and Assistance Appeal Tribunal (the “Tribunal”) during the reporting period.

The Tribunal operated remotely over the reporting period due to the ongoing global COVID-19 pandemic. While the Tribunal has been able to leverage technology to aid access to justice over the past year, many appellants do not have access to email and accordingly one employee still had to attend the office to facilitate mail processing twice-weekly. The Tribunal’s staff and Members have shown resiliency and strength over the last year as they’ve continued to work remotely (staff) and conduct hearings over the phone, video link or in writing (Members). As can be seen from the statistics set out within this report, the pandemic does appear to have caused a reduction in the number of decisions being appealed to the Tribunal.

I am happy to report that this last year saw the Tribunal procure and implement a new case management system to replace our aged and unsupported Oracle-based

system. The Tribunal worked closely with the Ministry of Social Development and Poverty Reduction’s Information Services Division team to source an out-of-the-box technology solution designed for courts and tribunals to effectively manage their caseloads and hearings. The provider worked with us to ensure our needs were met and despite an ambitious timeline to procure and implement the solution within a single fiscal year, working together we were able to have the new system set up and fully implemented by March 31st so that the system could “go live” on the first day of the new fiscal year.

Excitingly, the Tribunal was also able to move ahead with its Active Sensemaking project. This project saw the Tribunal work with specialized contractors to develop an online tool to solicit stories from our users that allowed users to personally weight aspects of the stories in various ways. While the project was designed to be accessed online, we know that many of our appellants do not have reliable access to the internet. Accordingly, we worked with volunteer law students from BC’s three law schools to contact former appellants that did not have access to the internet. Our eager volunteers



attended a series of training workshops and then contacted appellants via telephone to gather stories and information, which they then inputted into the web-based platform. Using mapping technology, we will be able to not only hear the stories collected but will also be able to see underlying patterns amongst the stories with a view to highlighting areas for improvement at the Tribunal. I would like to thank our law student volunteers that worked hard to make this project a success.

Our move to a fully remote environment led to us offering oral hearings via secure video-conference. These hearings are conducted on the secure MS Teams platform and unlike our telephone or written hearings allow participants to see each other and share video screens so digital information can be shared for all to see. While video is often thought of as a modern “nice to have,” with the absence of our traditional in-person hearings, the use of video-conferencing has permitted us to provide the accessibility of in-person hearings from the safety of home. This was particularly highlighted at a hearing I observed where the appellant was able to be assisted by an American Sign-Language interpreter logged in from

the interpreter’s office – things that just can’t happen over telephone. While the pandemic pushed us in the direction of video-conferencing as a replacement for in-person hearings for those with access to video technology, we will continue to offer them going forward along with our in-person, telephone and written hearings once there is a return to normal operating procedures post-pandemic.

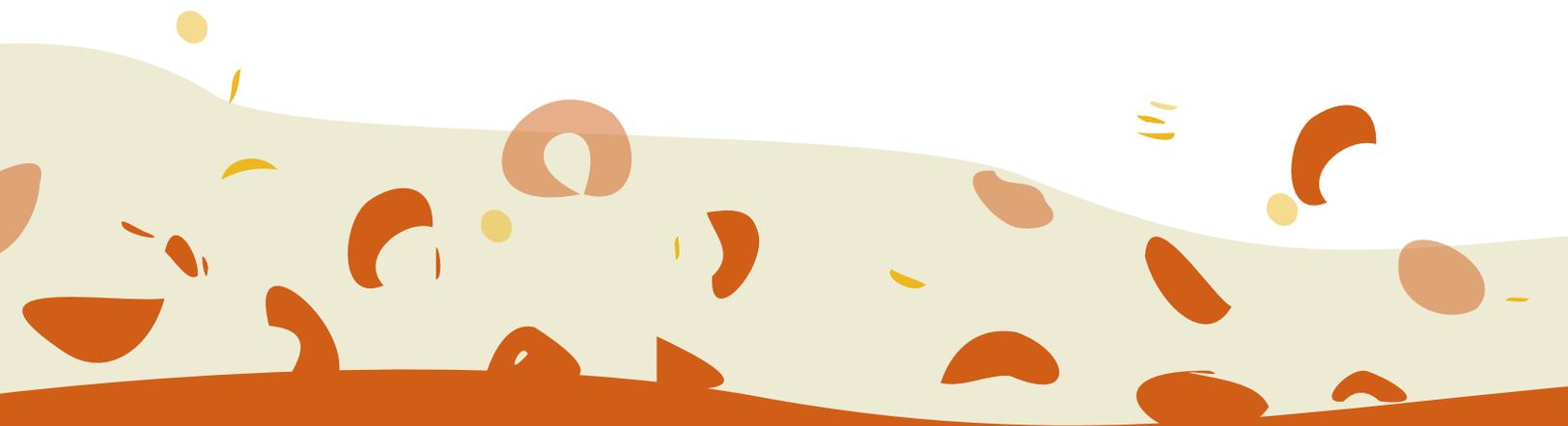
I am a firm believer in the importance of continuing education and Member training continued over the past year. While we had hoped to hold Member workshops for our Okanagan and Northern BC Members in person in April 2020, these workshops proceeded via video conference in the autumn when it became clear that there would be no quick return to in person gatherings. These multi-day workshops were well attended and provided an opportunity for our adjudicators to learn more about important matters such as the changes to evidence before the Tribunal, hearing skills, plain language decision writing and the importance of reconciliation. Further, a half-day session on trauma informed practices was also offered to all Members.

In our ongoing quest for improved access to justice at the Tribunal, we have continued with our plain language initiative. This is an area of constant process improvement and I anticipate we will continue to make changes that improve access to justice and increase accessibility as we move through the coming fiscal year. The Tribunal also submitted a request to update our Notice of Appeal form, which is specified by the Minister, to include improved readability with larger font sizes, the removal of “all caps” headings, and inclusion of personal pronoun choice for appellants. This request was approved shortly after the end of the reporting period and our updated Notice of Appeal is now in use.

In an effort to reduce our reliance on the postal system during the pandemic and to help our Members limit their contacts outside of their homes, we have moved to a fully paperless system and documents are now provided digitally to Members. This initiative also resulted in a material decrease in the Tribunal’s office expenses. It is our intent to keep this process in place going forward. Further, we have provided our Members with Tribunal issued laptops. The use of Tribunal

laptops, which connect to government servers via secure VPN, will ensure that appeal materials containing confidential material are only accessed digitally in a secure environment and also provides the information technology base to support the increased use of video-conference hearings. The cost of the devices is substantially offset by the savings from moving to digital communications with our Members.

Finally, the Tribunal continued with the important work of reconciliation with the Indigenous Peoples of British Columbia. As I have said before, the importance of reconciliation cannot be understated for a Tribunal like ours, which often must address the lived experience of poverty created for many via our colonial institutions. During the reporting period, the Tribunal published its reconciliation plan: Pathway to Reconciliation. Further, as mentioned above, the Tribunal provided training to its Members about the importance of reconciliation as well as training in trauma informed practices. Together with the Indigenous Research Law Unit at the University of Victoria, I also organized a one-day workshop on Indigenous legal

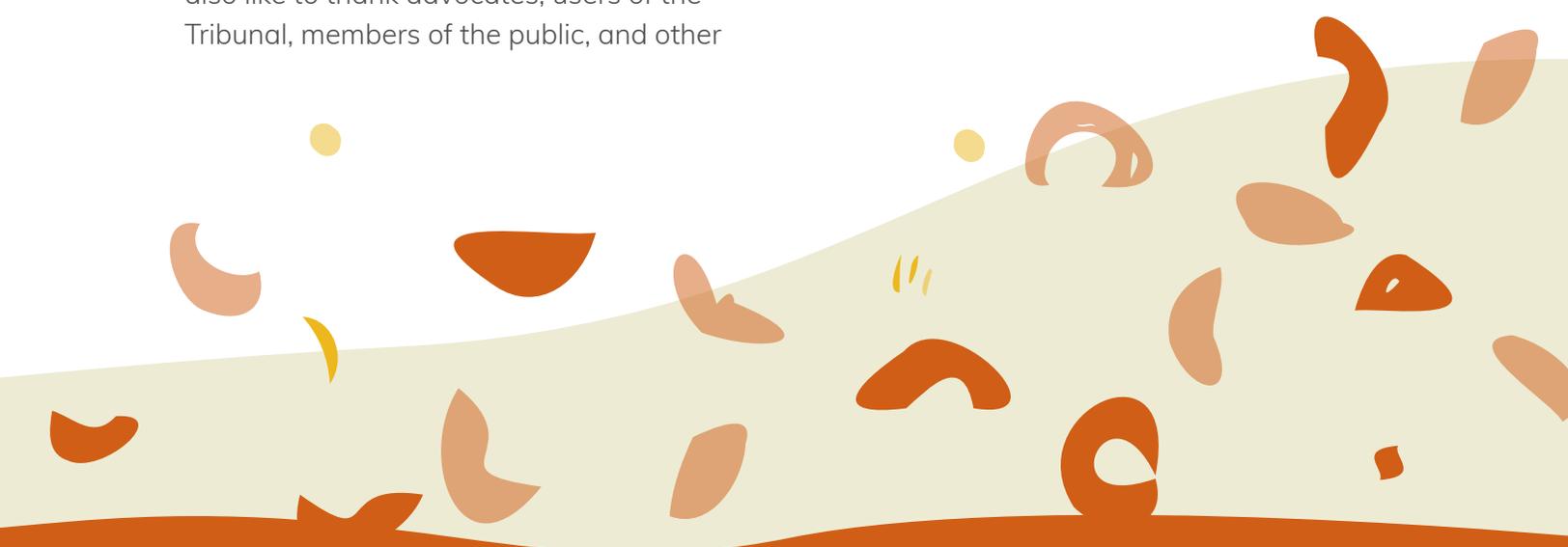


traditions for my fellow tribunal chairs and colleagues. The session served to further understanding on the need for reconciliation work at tribunals sector-wide and provided learnings for serious consideration regarding possible steps forward. I am humbled by the task of reconciliation and while it will take time, reconciliation is a high priority for the Tribunal and I fully commit to doing everything I can to move the Tribunal towards this important goal.

Finally, I would like to thank the Tribunal's staff and Members for their hard work over the reporting period. In particular, I would like to recognize the patience and resiliency of our team as we completed a year of fully remote operations due to COVID-19. I recognize that our staff and Members have themselves lived through the pandemic over the course of the last year. While doing so, they have provided the people of British Columbia with access to our appeal process despite the ongoing pandemic that disrupted many other parts of our society. I would also like to thank advocates, users of the Tribunal, members of the public, and other

stakeholders that have contacted me with complaints, compliments, and suggestions for improvement of the Tribunal. I always appreciate hearing from you and often gain particularly helpful insight into how the Tribunal needs to grow to better suit the needs of the people of British Columbia.

It is a pleasure to serve as Chair of the Tribunal and I look forward to the coming year.



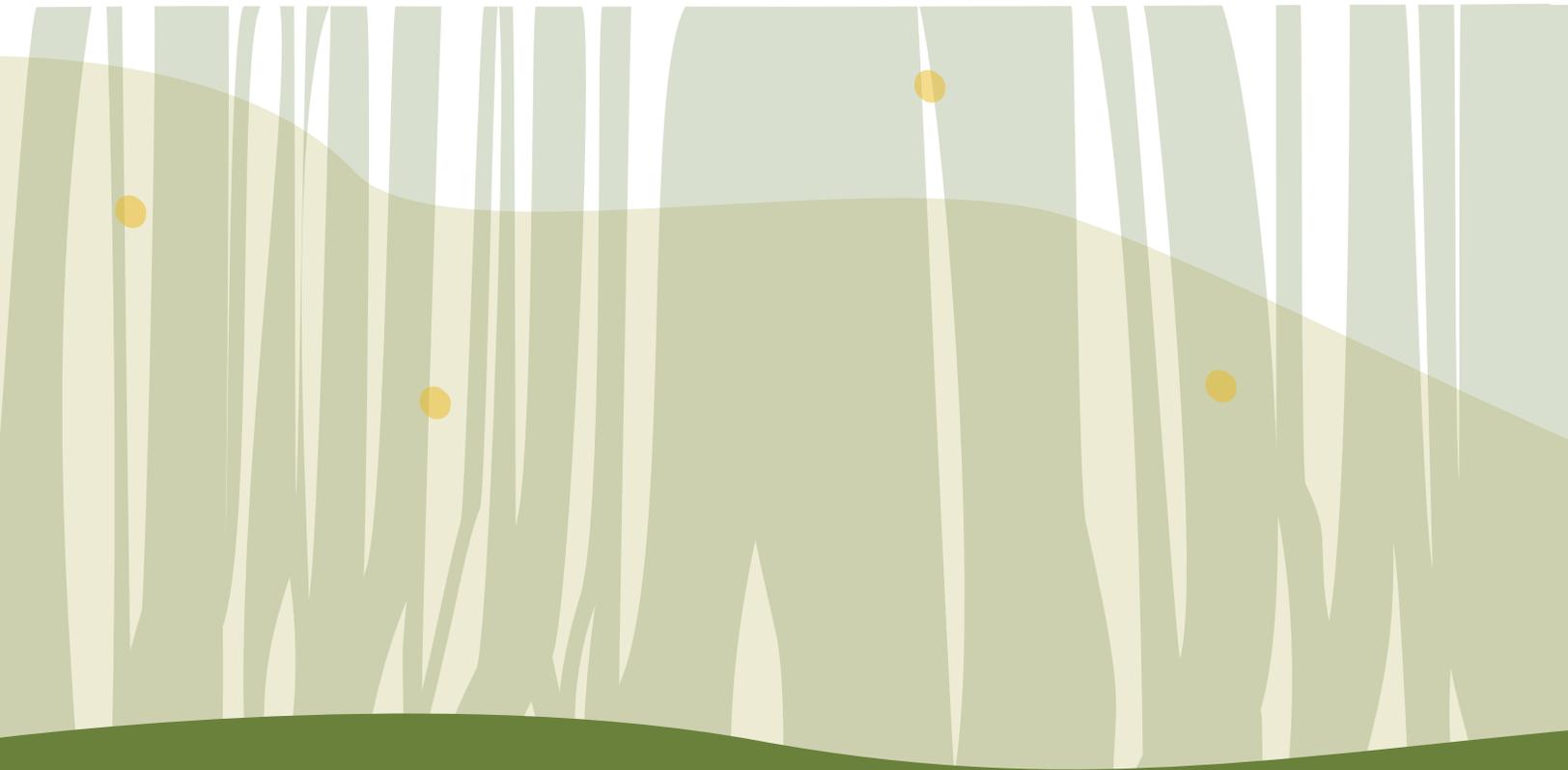
Vision

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.



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 Poverty Reduction 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 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, a Vice Chair, 9 staff and, during the reporting period, 86 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 Poverty Reduction 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, among other requirements, 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. References 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 Poverty Reduction 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.



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 and feel comfortable in the role of an adjudicator they are then assigned the role of panel chair. When 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 87(1) of the Employment and Assistance regulation.

Reappointment of Members

Members are appointed initially for a period of two years and may be reappointed for further terms of two or four years. Member performance is evaluated prior to making recommendations to the Minister of Social Development and Poverty Reduction for reappointment. The Competency Assessment, which clarifies the requirements and expectations of Members, is used for coaching and evaluation. At the time of writing this report, 38 members were reappointed.



NOTE: The Tribunal is recruiting new Members, particularly Indigenous individuals, those with a diverse cultural or gender background and those from more rural areas of the province. Anyone interested in being considered for appointment should refer to the Tribunal website, www.eaat.ca, or the Crown Agencies and Board Resourcing Office website www.gov.bc.ca/cabro, for information on how to apply.

The Appeal Process

The Tribunal hears appeals of reconsideration decisions made by the Ministry of Social Development and Poverty Reduction on income and disability assistance and the Ministry of Children and Family Development on 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 Poverty Reduction's reconsideration process is available from the ministry's offices by calling 1-866-866-0800 or by visiting their website.

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.

Those who disagree 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 it has jurisdiction to hear the appeal. 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.

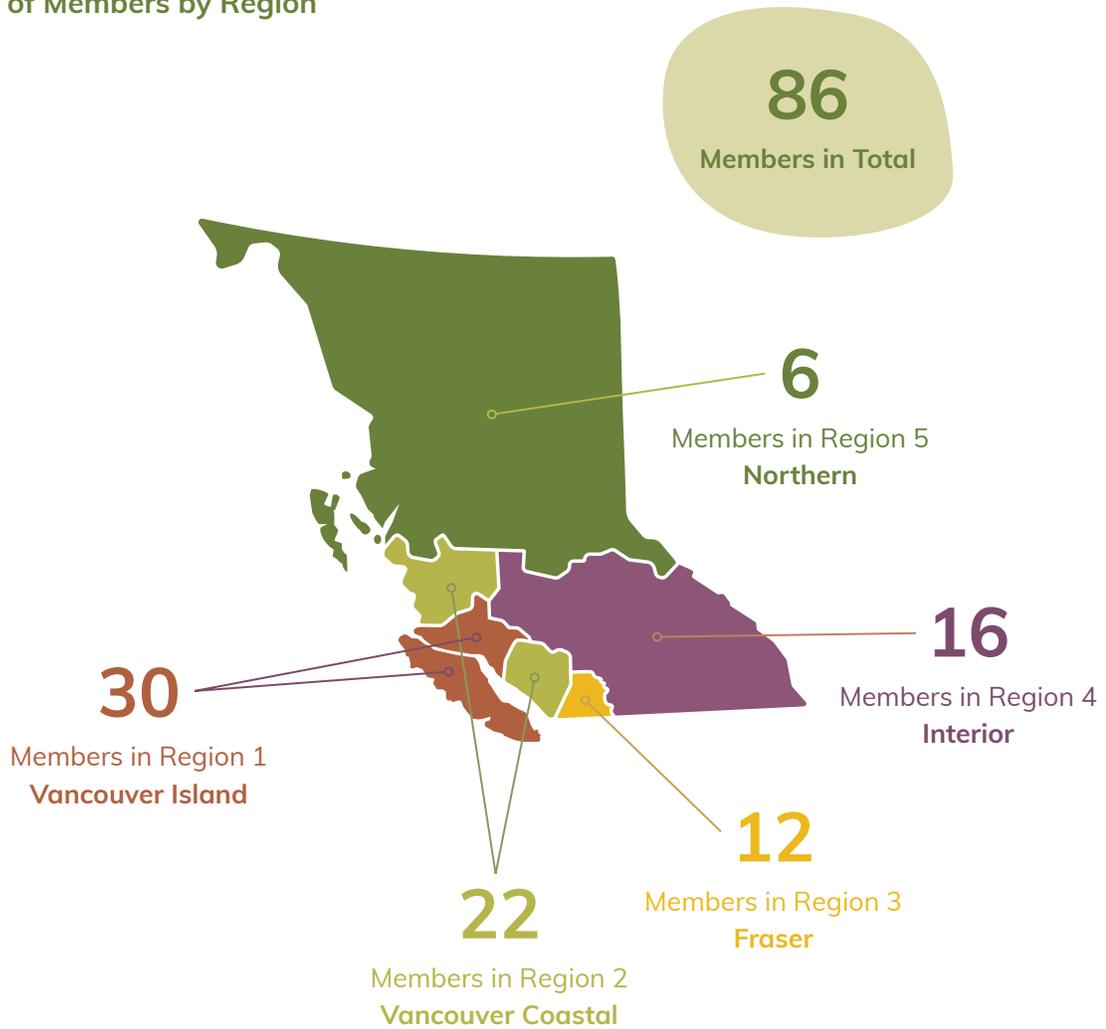


Hearings are conducted in person, usually in or near the appellant's community, by teleconference, by video-conference or, if both parties consent, in writing. However, this year, due to the ongoing Covid-19 pandemic, no hearings were conducted in-person.

The panel reviews the ministry's reconsideration decision and the appeal record, considers any evidence provided by the appellant or the ministry, and provides a written decision to the Tribunal, generally within 5 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 5 business days of receiving it from the panel.

NOTE: Summaries of certain Tribunal decisions are included in Section 4, "What Our Decisions Look Like." Tribunal decisions issued since 2012 are available on the Tribunal's website: www.eaat.ca

Number of Members by Region



The Appeal Process

If a person disagrees with a reconsideration decision from the ministry, they 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



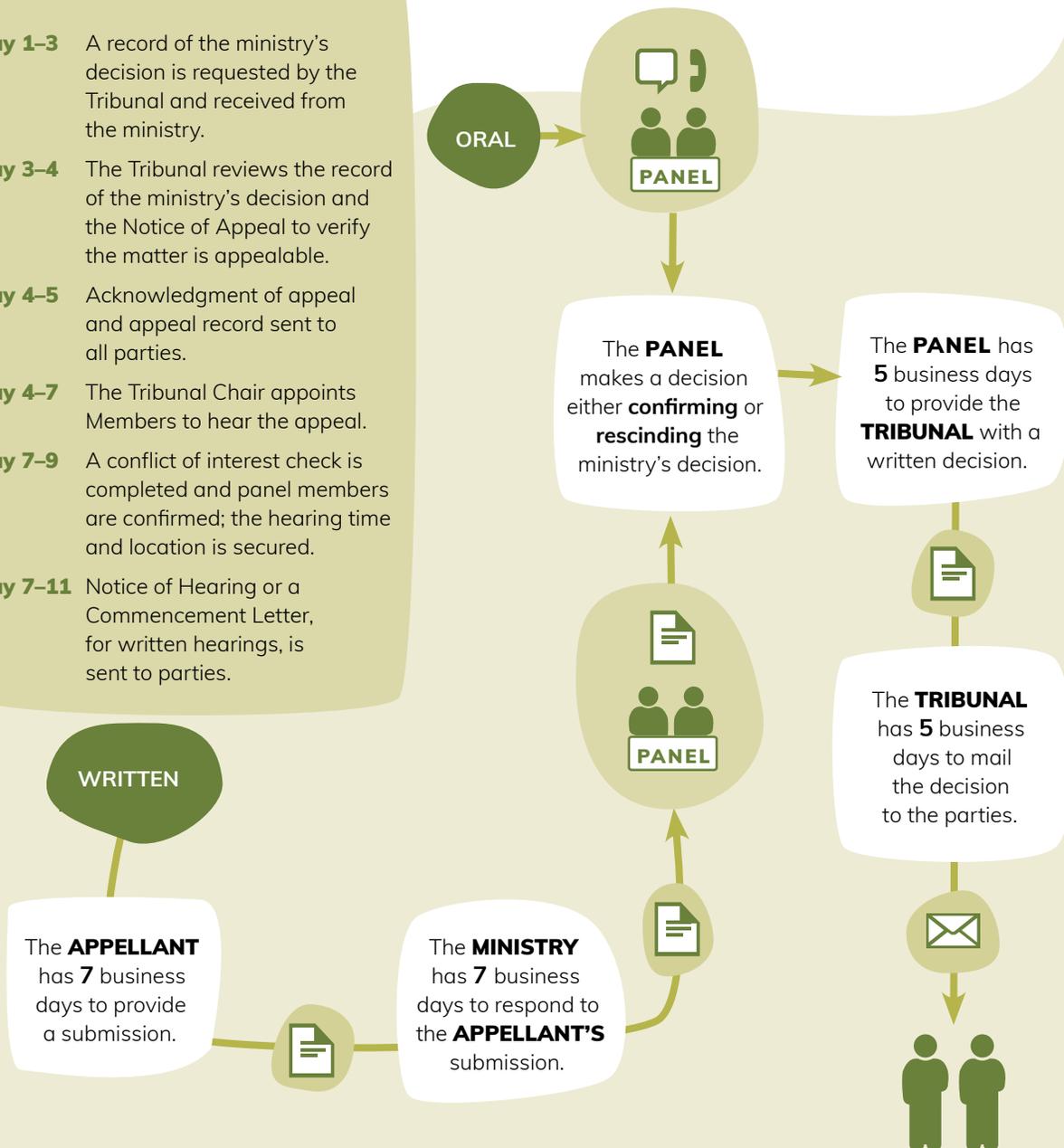
In person, by tele-conference or by video-conference.

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.



If You Want to Appeal

How to Appeal

If you disagree with the ministry's reconsideration decision you have 7 business days to file an appeal.

Prepare for Your Hearing

In this brochure you will find the following information:

- ✓ How to prepare for your hearing;
- ✓ The types of hearings you can have;
- ✓ How to move your hearing to a later date or cancel your appeal; and
- ✓ What happens after your hearing.

Employment and Assistance
Appeal Tribunal British Columbia

Type of Hearing

You can have your hearing in person, via tele-conference, video-conference or in writing. We will do our best to hold the type of hearing you request. Sometimes we are unable to do so. If that is the case, we will let you know. In most cases a panel of three members of the Tribunal will hear your appeal.

In-Person Hearing

An in-person hearing is where the parties and the panel members hearing the appeal meet in person. At the hearing, the panel will listen to the parties and any witnesses. The panel will also look at any written material or submissions sent to the tribunal. You will have an opportunity to ask questions of the ministry representative. You might have to answer questions from the ministry representative. The panel members might also ask you questions. The ministry representative or a panel member might attend the hearing by telephone. After the hearing, the panel will make its decision. We will send you a letter setting out the time and location of an in-person hearing.

In response to the COVID-19 pandemic, to protect the safety of Members and users of the Tribunal, on March 16th, 2020 in-person hearings were suspended. In-person hearings will resume when it is safe to do so.

Teleconference Hearing

A teleconference hearing is a hearing held by telephone. At the hearing, the panel will listen to the parties and any witnesses. They will also look at any written material or submissions that you have sent to the Tribunal. You may ask questions of the ministry representative. You might have to answer questions from the ministry representative. The panel members might also ask you questions. After the hearing, the panel will make its decision. We will send you a letter with the time of your hearing and the phone number to dial to join the teleconference.

Video-conference Hearing

A video-conference hearing is a hearing by video-conference. At the hearing, the panel will listen to the parties and any witnesses. They will also look at any written material or submissions that you have sent to the Tribunal. You may ask questions of the ministry representative. You might have to answer questions from the ministry representative. The panel members might also ask you questions. After the hearing, the panel will make its decision. You will need to have a computer or mobile phone that can do video-conferencing. We will send you an email with the time of your hearing and a link to join the video-conference.

Written Hearing

A written hearing is a hearing held by the exchange of written submissions and evidence. The Tribunal will forward any material you send us to the ministry, and

they will reply in writing. You will receive a copy of anything the ministry sends to the Tribunal. The panel will look at the documents the ministry had when it made its decision. The panel will also look at any new material submitted by the parties. The panel will not speak with you, any witnesses or the ministry. After reviewing the material, the panel will make its decision. We will send you a letter setting out a schedule for sending us your evidence and submissions.

After the Hearing

After the hearing, the panel will make its decision and we will send you their written decision. The panel will either confirm or rescind the ministry's decision. Confirming means that the ministry's decision stays in place. Rescinding means that your appeal was successful.

Decisions of the Tribunal are final decisions. If you have a complaint about your hearing or the decision you have three options:

1. Judicial Review

You can file a petition in the B.C. Supreme Court asking a judge to review the decision.

2. Complaint to the Tribunal

You can call or write to the Tribunal Chair.

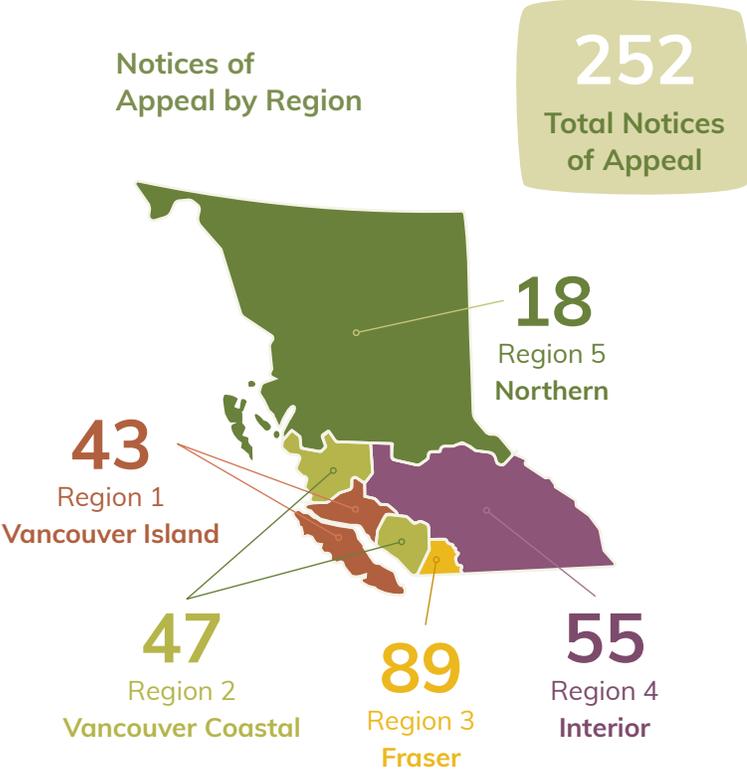
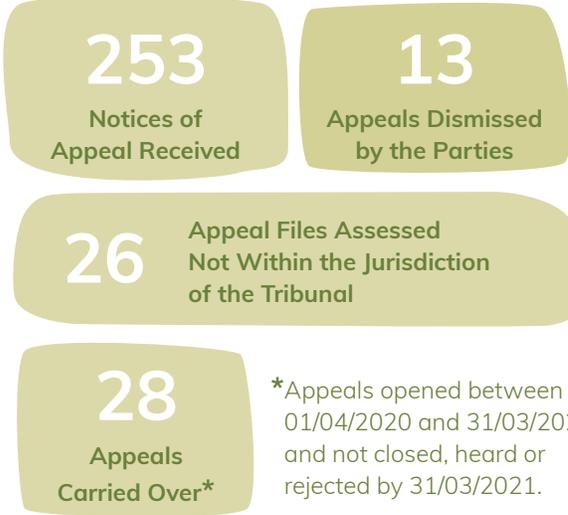
3. Office of the Ombudsperson

You can contact the Office of the Ombudsperson if you feel that we were unfair.

How We Did in 2020/21

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; a party must receive a notice of hearing at least 2 business days prior to the hearing; the panel must provide the decision to the Tribunal Chair within 5 business days of the hearing, and the Tribunal must mail the decision to the parties with 5 business days of receiving it from the panel. Three appeals were not held within the legislated time frame in the reporting period due to Member error, staff error and mail delivery delay.

Summary of Appeals Statistics



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 similar reasons. The following statistics relate to appeal files that were closed in this reporting period.

Judicial Review Outcomes

The Tribunal received one petition for judicial review in the reporting period. No judicial review decisions were released in the reporting period.

Notices of Appeal by Type

35 Crisis Supplement

56 Persons with Disabilities Designation

1 Moving Supplement

16 Other - Child care

26 Other - Other

1 Special Transportation Subsidy

Eligibility

12 Deductions on income/ earnings exemptions

2 Dependency/living Arrangements

2 Failure to provide information/verification

3 Full Time Student

3 Shelter Allowance

19 Excess Income

2 Residency

2 Undeclared income/assets

1 Excess Assets

1 Time limit for IA

Health Supplement

2 Orthoses

4 Diet/natal supplements

7 Medical Transportation

22 Dental supplement

11 Medical Equipment

15 Monthly Nutritional Supplement (MNS)

7 Medical Supplies

3 Therapies

Ministry of Social Development and Poverty Reduction

216 Appeals heard

180 Decisions confirmed

38 Decisions rescinded

Ministry of Children and Family Development

13 Appeals heard

10 Decisions confirmed

3 Decisions rescinded

What Our Decisions Look Like

CASE 1 Persons with disabilities designation

Ministry Decision

The Ministry of Social Development and Poverty Reduction (Ministry) determined that the Appellant was not eligible for designation as a Person with Disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA). Section 2 of the EAPWDA sets out five criteria for a person to be designated as a PWD:

- (1) The person has reached the age of 18;
- (2) The Minister is satisfied the person has a severe mental or physical impairment;
- (3) In the opinion of a medical practitioner, the severe impairment will continue for at least two years;
- (4) In the opinion of a prescribed professional, the impairment directly and significantly restricts the person's ability to perform daily living activities (DLA), either continuously or periodically for extended periods; and
- (5) In the opinion of a prescribed professional, as a result of the restriction in DLA, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform those DLA.

The Ministry found that the Appellant met the age and two-year duration requirements (criteria (1) and (3) above). However, the Ministry was not satisfied that the Appellant met the severe impairment, restriction on DLA or significant help requirements (criteria (2), (4) and (5), above).

Summary of Facts

The Appellant was diagnosed by a medical practitioner (Doctor) with several conditions including a stroke, right hemiparesis (weakness in the right-side) and dysesthesia (abnormal sensations); hypertension; obstructive sleep apnea, hepatitis C; and substance abuse disorder. The Doctor further reported that the Appellant has "very low mood", sleep apnea causes daytime sleepiness, hypertension is controlled with medication, hepatitis C is chronic and stable, and substance abuse is presently controlled.

Functional skills

The Appellant stated that after the stroke, he could not get out of bed for 4 months. Through exercise and physiotherapy, he was able to walk again with a permanent limp and the use of a cane. The Appellant reported continuing numbness and "constant tingling", and not being able to walk any distance or stand for a long period.

In the Medical Report (MR), the Doctor checked "unknown" for how many stairs the Appellant can climb and how much weight he can lift. The Doctor reported that the Appellant can walk less than 1 block unaided and had no limitations with remaining seated. In the Assessor Report (AR), the Doctor checked "uses an assistive device" for all 6 areas listed: walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying/holding.

In the MR, the Doctor indicated significant deficits with cognitive and emotional functioning in 5 of the 12 areas listed on the form: executive, memory, emotional disturbance, impulse control and attention/sustained concentration. In the AR, the Doctor indicated impacts in 8 of the 14 areas listed: a minimal impact in motor activity and other emotional or mental problems; a moderate impact in impulse control, attention/concentration, and memory; and a major impact in emotion.

At the hearing, the Appellant described recently attending the hospital because he felt dizzy, was sleeping all weekend, his elbow was “dropping down”, he was tripping on everything including stairs, he stumbled while walking and “had trouble hanging onto utensils”. In written submissions, the Appellant stated that he cannot walk more than a block without suffering pain and exhaustion. The Appellant reported not being able to stand for more than 20 minutes or sit in the same position for longer than 10 minutes. Further, the Appellant said he is unable to walk without a cane.

Daily Living Activities (DLA)

The Doctor reported that the Appellant’s medication for hypertension interfered with his ability to perform DLA. In the MR, the Doctor indicated that 5 DLA are continuously restricted: personal self-care, management of medications, mobility inside the home, mobility outside the home and management of finances. The Doctor marked that the DLA of daily shopping was restricted, but did not indicate whether it was continuous or periodic. No information was provided for the DLA of social functioning, and the Doctor reported “unknown” for the DLA of basic housework and use of transportation.

In the AR, the Doctor indicated the Appellant required assistance with 3 of the 8 DLA listed. For Shopping the Appellant needed periodic assistance with going to and from stores; continuous assistance with carrying purchases home and was otherwise independent. For Transportation, the Appellant needed periodic assistance when getting in and out of a vehicle, used an assistive device and needed continuous assistance in using transit schedules and arranging transportation. For Social Functioning, the Appellant required periodic support/supervision with being able to develop and maintain relationships; the Appellant was otherwise independent.

The Doctor did not provide additional comments in the AR, and listed the remaining 5 DLA as independent (personal care, basic housekeeping, meals, pay rent and bills, and medications).

Need for Help

In the MR and AR, the Doctor marked that the Appellant requires a cane for safe ambulation. In the MR, the Doctor noted that the Appellant requires periodic assistance to manage domestic activities and in the AR, that family and friends provided assistance.

In written submissions, the Appellant reported that he needs a family member to “do most things for me” including remembering appointments, filling out forms, and talking to doctors/specialists.

At the hearing the Appellant’s Advocate reported that the Appellant needs help every day. Family members manage his finances, help him with time management and do the shopping. The Advocate said that the Appellant can now manage his medications and drive, but cannot walk further than 1 block and sitting is very uncomfortable.

Tribunal Decision – The Panel rescinded the Ministry’s decision.

Reasons for Decision

Severe mental or physical impairment

At the outset of the decision, the Panel discussed the weight to be given to the three forms included in a PWD application: the MR, AR and Self-Report (SR). As the SR is optional and included in the PWD application, in the Panel’s view each report must carry some weight where it is material to PWD eligibility.

Severe Mental Impairment

The Panel found the Ministry’s assessment of severity based on cognitive and social functioning and restrictions to mental DLA to be a reasonable interpretation of the legislation. However, the Panel found the Ministry’s conclusion that the Appellant did not have a severe mental impairment to not be reasonably supported by the evidence.

In the Panel's view, the evidence established that the Appellant has significant deficits and impacts in several areas of cognitive and emotional functioning due to the stroke and sleep apnea. As a result, and evidenced by the support required from his family, the Appellant has severely diminished cognitive and social functioning. Although the MR and AR had some inconsistencies, more weight was given to the MR where there was conflict because it was corroborated by the evidence of the Appellant and the Advocate.

Severe Physical Impairment

The Panel found the Ministry's assessment of severity based on daily physical functioning to be a reasonable interpretation of the legislation. However, the Panel found the Ministry's conclusion that the Appellant did not have a severe physical impairment to not be reasonably supported by the evidence.

In the Panel's view, the evidence established that the Appellant had significant restrictions with his physical functioning. The evidence throughout the submissions (AR, MR, SR and other submissions) indicated the Appellant had significant restrictions on walking, climbing stairs, lifting/carrying, standing and remaining seated. Although the Ministry argued that more elaboration from the Doctor was required, the Panel found several instances in the MR where the Appellant was indicated as significantly restricted. Further, when the SR was looked at in conjunction with the information from the Doctor, it provided a more fulsome explanation where the Doctor had provided limited detail or indicated something was unknown.

Restrictions on DLA

The Panel began by outlining the legal test from the legislation and finding that the Ministry's interpretation of that test was reasonable. For this criterion to be met, in the opinion of a prescribed professional, the severe impairment must directly and significantly restrict the Appellant's ability to perform DLA either continuously or periodically for extended periods. Further, the restriction must be "direct" and "significant"; it must have a large impact on the Appellant's life.

In the Panel's view, the evidence established that the Appellant has continuous restrictions with mobility – a permanent limp and the requirement to use a cane. The Panel found that taken together, the MR, AR, SR and submissions show that DLA are directly impacted by the Appellant's stroke, and significantly restricted continuously. Specifically, at the very least, shop for personal needs, and move about indoors and outdoors met the applicable legal test.

Help

The Panel found that the Appellant uses an assistive device (cane) for DLA involving mobility. Further, the Appellant's family provides significant help with shopping, managing finances and other daily tasks and therefore this requirement was also met.

What Our Decisions Look Like

CASE 2 Affordable Child Care Benefit

Ministry Decision

The Ministry of Children and Family Development (Ministry) determined that the Appellant was not eligible for amounts of Affordable Child Care Benefit (ACCB) they received for several months. The Ministry determined that the Appellant and their spouse were not attending work; rather, both were receiving benefits intended to allow them to take a leave from work to care for a new child. The Ministry determined that the information provided by the Appellant, which included specific work days and hours, did not accurately reflect their circumstances and resulted in an inaccurate eligibility assessment. Specifically, the Ministry found that the Appellant did not require child care and was therefore liable for repayment of the amounts for which they were ineligible.

Summary of Facts

The Appellant had a spouse and two children. They applied for an ACCB in early 2019 and were found to be eligible. In the middle of the year, the Appellant submitted a renewal application for continued receipt of the ACCB and were found eligible.

In early 2020, the Appellant's spouse informed the Ministry that they and the Appellant had both been on leave (maternity and parental) in 2019 when the younger child was born. In late 2020, the Ministry sent a notice to the Appellant advising that the Appellant had received the ACCB in 2019 when they did not have an eligible reason for needing child care.

Tribunal Decision – The Panel confirmed the Ministry's decision.

Reasons for Decision

The Panel found that the Ministry's determination that the Appellant was not eligible for the ACCB received for certain months in 2019 was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the Appellant. The Panel found that the Appellant misunderstood a central aspect of the benefits scheme, namely, that the benefit is provided because an applicant needs childcare for one of the reasons outlined in section 3 of the *Child Care Subsidy Regulation*. In the Panel's view, the Ministry did not find the Appellant ineligible because the Appellant was not employed, but rather because the Appellant did not need the benefit because they and their spouse were on leave from their employment to care for their new child.

The Panel also found that the Ministry's conclusion that the Appellant was liable to repay the amount of ACCB they were not eligible for was also a reasonable application of the legislation in the Appellant's circumstances. The Panel had sympathy for the Appellant's argument that the wording of the legislation was confusing; however, the Panel found that the liability to repay automatically flowed from the finding that the Appellant was not eligible for the benefit.

What Our Decisions Look Like

CASE 3 Crisis supplement

Ministry Decision

The Ministry of Social Development and Poverty Reduction (Ministry) determined that the Appellant was not eligible for a crisis supplement to pay overdue strata fees. Under section 57 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) a crisis supplement may be provided to a family unit if:

- (1) The family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed;
- (2) The family unit is unable to meet the expense or obtain the item because there are no resources available; and
- (3) Failure to meet the expense or obtain the item will result in:
 - a. Imminent danger to the physical health of any person in the family unit, or
 - b. Removal of a child under the *Child, Family and Community Service Act*.

The Ministry was satisfied that the Appellant did not have the resources to pay the outstanding strata fees. However, the Ministry found that the strata fees were not an unexpected expense. Though the Appellant had discussed other expenses (detailed below), there was also no indication that these other expenses were unexpected. Finally, since the notice from the strata only mentioned the possibility of a lien and had no mention of impending eviction, the Ministry was not satisfied that there was imminent danger to the Appellant's physical health (the Appellant did not have any children).

Summary of Facts

The Appellant was a single recipient of disability assistance and submitted a letter from the strata detailing overdue strata fees and mentioned potential legal action. Prior to the hearing, the Appellant provided a submission which included a second letter from the strata management and other expenses the Appellant had recently incurred.

The second letter from the strata provided an updated amount of unpaid strata fees and clarified that the legal action the strata was entitled to take was the registration of a lien to enforce unpaid strata fees.

The other expenses included in the Appellant's submission were for the purchase and installation of a new dishwasher, a new refrigerator, the purchase and installation of a new furnace and the purchase of a new oven.

At the hearing, the Appellant described the replacement of the oven and dishwasher as unexpected expenses as the oven was a fire hazard and the dishwasher was several decades old and a flooding hazard. The Appellant explained that the refrigerator was making unusual noises and required replacing. Finally, the furnace had died and needed replacing. The Appellant advised that the stove and dishwasher were paid in full but payments were still being made for the refrigerator and furnace.

The Appellant also confirmed that the strata management had not threatened to seek an order for sale of the property.

The Ministry submitted that the Appellant had no mortgage and that these strata fees, levied monthly, were not unexpected expenses. Further, a lien against the property would not pose an imminent risk of losing the property and therefore there was no imminent risk to the Appellant's physical health.

Tribunal Decision – The Panel confirmed the Ministry's decision.

Reasons for Decision

The Panel found that the Ministry's determination that there was not an unexpected expense was a reasonable application of the legislation and reasonably supported by the evidence. Specifically, the Panel found that the Appellant was aware that strata fees are levied monthly. Further, given the age of the appliances that were replaced, it should not have been unexpected that they would need to be replaced.

Finally, the Panel found that the Ministry's determination that there was no risk of imminent danger to the physical health of the Appellant was also a reasonable application of the legislation and reasonably supported by the evidence. The letters from the strata did mention the possibility of a lien; however, there was no indication that any further action was imminent. As a result, the Panel found it difficult to see how the Appellant's physical health would be in imminent danger.

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



Looking Forward

Last year, in our Annual Report, I wrote:

It is perhaps optimistic to look forward as this annual report is being prepared in the middle of the province's emergency response to the global COVID-19 pandemic.

However, the last year has shown that our staff and Members here at the Tribunal are a resilient bunch as they have continued to not only keep us running smoothly but have successfully pushed forward with new initiatives. I know that this coming year will be no different regardless of whether we continue to weather the pandemic storm or whether there is a return to normalcy as vaccination rates increase across the province.

The strength and resiliency of our staff and Members has been highlighted this last year as they have worked under stressful circumstances fully remotely. Knowing that our staff and Members have worked this way for over a year with demonstrated integrity and trust has me looking to the future and reimagining our workplace. While our Members have always worked remotely, it is anticipated that our office will change going forward. When permitted to safely return to the office, I expect that only some of our staff will want to do so full-time. Others may want to work entirely remotely as they have been doing for over the last year and many may want a hybrid model that enables them to have the best of both workplaces. I anticipate working with our management

team and staff to find employment solutions that allow our staff to thrive in the workplace, wherever that might be.

Whatever our office arrangements end up looking like, we are looking forward to seeing the completion and/or continuation of several projects that we have been working on. Our projects for the upcoming fiscal year focus on improved access to justice and reconciliation.

In June we will learn the results of our Active Sensemaking project. Unlike a traditional survey where an agency asks its users to respond to several questions, Active Sensemaking solicits stories from users and then asks them to weight aspects of the story in various ways. Using mapping technology, the agency can then not only hear the stories solicited but can also see underlying patterns. I hope that the feedback we receive will shine a light on areas of needed improvement for access to justice and we will then be able to spend the remainder of the fiscal year working to find solutions to these problems.

This fiscal year we also hope to launch an updated version of our Forms. The updates, while not large, will hopefully make a small improvement to increased accessibility and inclusivity at the Tribunal. Featured changes include removing "all caps" formatting so that our forms will be accessible via screen reader, providing more options for gender identification, simplifying instructions for increased comprehension, and, in consultation with our soon-to-be-

established Disaggregated Data Working Group (see below), the opportunity for appellants to disclose relevant demographic data to the Tribunal so that we can assess whether there are any hidden barriers to accessing our services that we might not otherwise know of.

We also plan on implementing website improvements as we are aware that our current website does not meet best practices when it comes to accessibility. Hopefully, we will be able to provide the citizens of BC with an easy to read, fully accessible website that provides them with the information they need to know to easily navigate their way through our appeal process.

Recruitment efforts are continuing. The Members of the Tribunal must reflect the citizens of BC. We hope to see a further increase in the diversity of our adjudicators over the coming year and will continue to advertise for Members throughout the province – particularly in northern and eastern BC and in central and northern Vancouver Island. We will also actively recruit more Indigenous Members.

As mentioned above, we are in the process of creating a Disaggregated Data Working Group to implement the recommendations set out in the BC Human Rights Commission's (the HRC) report: Disaggregated demographic data collection in British Columbia: The grandmother perspective. As highlighted in the report, oftentimes systemic barriers exist that we are unaware of until we

start to track demographic data. Through the establishment of a working group it is my intent to follow the “grandmother principle” set out in the HRC’s report that disaggregated data collection be done in consultation with the various demographic groups whose information is sought in order to provide transparency and demonstrate a commitment that the data gathered will be used for appropriate purposes. In this regard, we intend the working group to provide guidance on the type of data gathered, the timing of the gathering of such data, and the use of the data gathered.

Importantly, we are continuing with our important work towards reconciliation with the Indigenous Peoples of British Columbia. As we work towards implementing our reconciliation plan: Pathway to Reconciliation, we are creating a Reconciliation Working Group to provide guidance and consultation as we move forward. It is expected that training for staff and Members in the areas of cultural knowledge and trauma informed practices will continue and our land acknowledgment policy will be broadened. In consultation with this new working group, I hope to begin the process of revising our tribunal practices and procedures for our appeals process with a view towards the ultimate goal of decolonization through the incorporation of Indigenous legal traditions and culturally appropriate processes.

Emily C. Drown
Chair, Employment and Assistance Appeal Tribunal

Appendix A

Tribunal Staff as of March 31, 2021

| | | |
|-------------------|----------------|-------------|
| Ian Brownlie | Jennine Gates | Amy Power |
| Christina Cumming | Lisa Lee | Janet Preus |
| Michael Doris | Kristen Miller | |
| Emily Drown | Nicholas Paetz | |

Appendix B

Tribunal Members by Region as of March 31, 2021



| | |
|----------------------|----------------------|
| Tina Ahnert | Jane Nielsen |
| Kent Ashby | Margarita Papenbrock |
| Angie Blake | Glenn Prior |
| Jan Broocke | Anne Richmond |
| Monika Brandstaetter | Richard Roberts |
| Sean Carberry | Joseph Rodgers |
| Gurjit Chaplin | Marlene Russo |
| Joan Cotie | Charles Schellinck |
| Emily Drown | Jeremy Scott |
| Robert Fenske | Michael Skinner |
| Keith Lacroix | Jennifer Smith |
| Melissa McLean | Kenneth Smith |
| Trevor Morley | Donald Stedeford |
| Inge Morrissey | Donald Storch |
| Wesley Nelson | Carman Thompson |

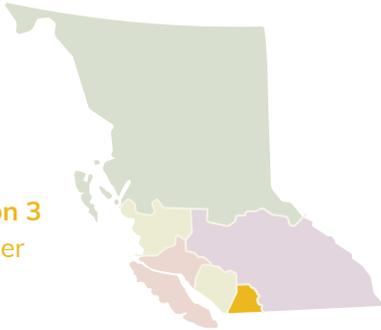


| | |
|------------------|--------------------|
| Anil Aggarwal | Robert McDowell |
| Sandra Chan | Rabinder Nijjar |
| Daniel Chow | Diane O'Connor |
| Susanne Dahlin | Kim Read |
| Nancy Eidsvik | David Roberts |
| Susan Ferguson | Adam Shee |
| Barbara Insley | Connie Simonsen |
| Margaret Koren | Roy Wares |
| Stephanie Korour | Katherine Wellburn |
| Susan Mackey | Edward Wong |
| Maryam Majedi | Reece Wrightman |

Appendix B

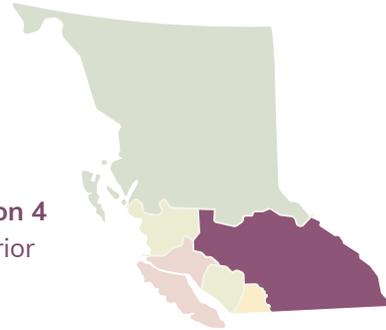
Tribunal Members by Region as of March 31, 2021

Region 3
Fraser



| | |
|--------------------|------------------|
| Jennifer Armstrong | Shirley Heafey |
| Kulwant Bal | Sameer Kajani |
| Vivienne Chin | Neena Keram |
| Simon Clews | Carla Tibbo |
| Arshdeep Dhaliwal | Rosalie Turcotte |
| David Handelman | Sandra Walters |

Region 4
Interior



| | |
|----------------|----------------|
| Sarah Bijl | Laurie Kent |
| Joan Bubbs | Jan Lingford |
| Jeanne Byron | Jean Lorenz |
| Patrick Cooper | Wendy Marten |
| Mel Donhauser | Chris McEwan |
| Bill Haire | John Pickford |
| Robert Kelly | Linda Pierre |
| David Kendrick | Helene Walford |

Region 5
Northern



| | |
|--------------|--------------------|
| Kevin Ash | Linda Smerychynski |
| Rick Bizarro | Meghan Wallace |
| Dawn Martin | Janet Ward |

Appendix C

Budget (April 1, 2020 – March 31, 2021)

The provincial government's fiscal year begins April 1st. This Annual Report covers April 1, 2020 to March 31, 2021. The budget table presents the Tribunal's actual expenditures for the last two fiscal years.

| OPERATING BUDGET | APRIL 2020–MARCH 2021 | APRIL 2018–MARCH 2019 |
|---|-----------------------|-----------------------|
| Salaries and Benefits | \$ 824,658 | \$ 824,171 |
| Boards/Commissions/Courts – Fees and Expenses | 164,603 | 285,882 |
| Public Servant Travel | 377 | 16,783 |
| Professional Services: Operational | 58,061 | 42,713 |
| Information Systems: Operating | 112,469 | 366,904 |
| Office and Business Expenses | 26,534 | 93,822 |
| Statutory Advertising and Publications | (2,951) | 5,579 |
| Gain-Loss on Capital Asset Disposal | 0 | 5,090 |
| Building Occupancy Charges | 0 | 90 |
| TOTAL | \$ 1,183,751 | \$ 1,641,034 |

How to Contact Us

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