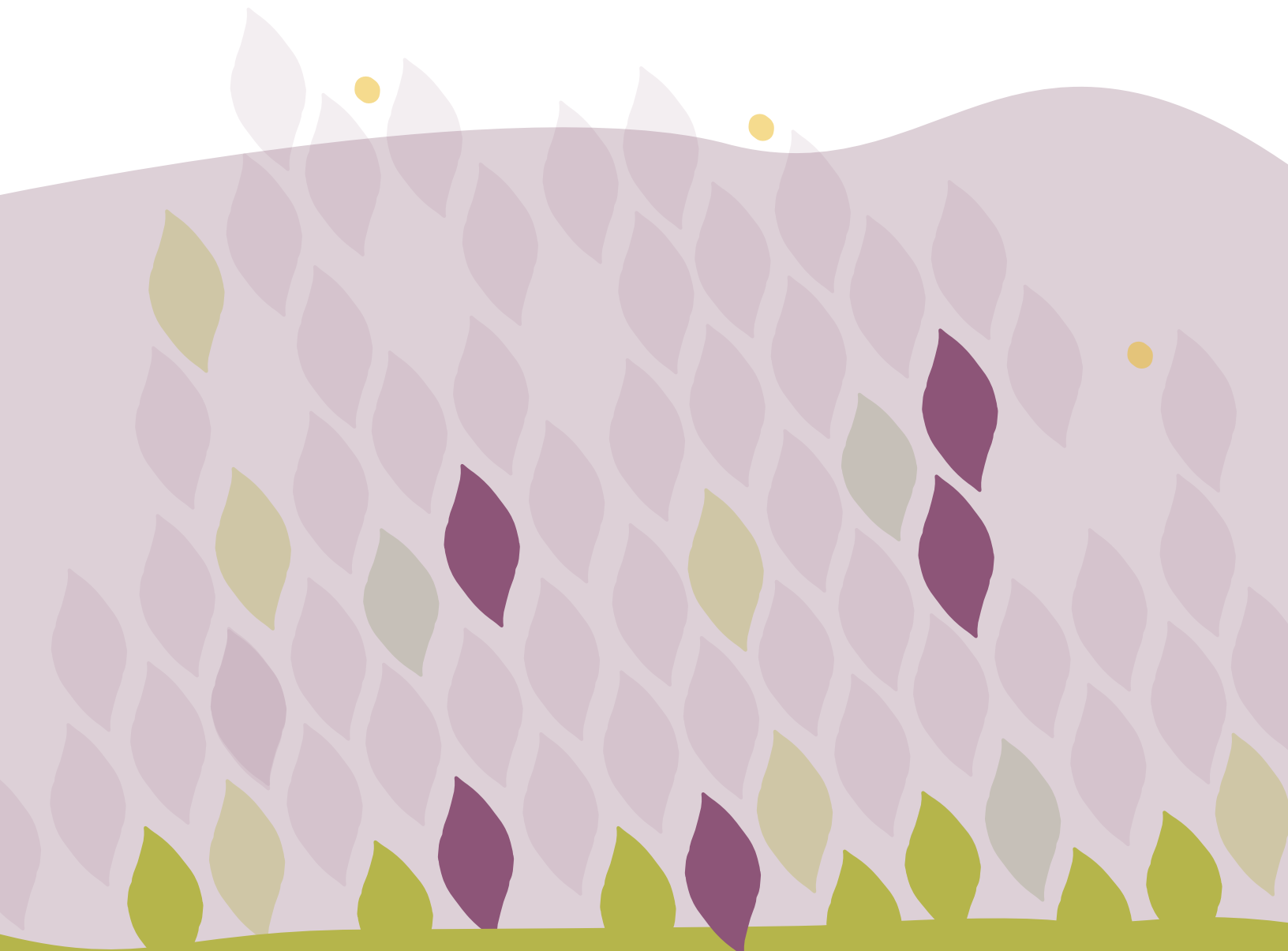


**Employment and Assistance  
Appeal Tribunal** British Columbia

Annual Report 2021/22





# Employment and Assistance Appeal Tribunal British Columbia

June 2022

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, 2021 to March 31, 2022. The report has been prepared in accordance with section 20(1) of the *Employment and Assistance Act*.

Sincerely,



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 Education and Child Care (formerly, the 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, 2021 to March 31, 2022. This report flags 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.

Despite wishes to return to our pre-pandemic normal, the past year saw our operations continue remotely with staff working from home due to the ongoing Covid-19 pandemic unless operationally required to be in the office. Despite two long years working from home, staff have proven resilient and continue to not only meet their performance requirements, but as highlighted below, have come together to initiate numerous process changes that have improved our service to the people of British Columbia.

Despite continuing remote operations, the past fiscal year was an eventful year here at the Tribunal. On April 1, 2021, we launched our new case management system on the Caseload platform. The transition from our legacy system, which had long been unsupported, to the new system went far better than we envisioned. We now have a fully supported case management system that meets or exceeds industry standards.

This development has allowed staff, especially our appeal coordinators, to streamline office processes, which has freed up staff time to devote to personally assisting appellants (and prospective appellants) navigate Tribunal processes.

In June, we received the results of our Active-Sensemaking project, which asked former appellants of the Tribunal to share stories about their experiences at the Tribunal and to weight aspects of the story in various ways. Using mapping technology, the Tribunal was able to not only learn about the experiences shared via personal story from appellants but also was able to map the data to look for underlying patterns. The Tribunal’s full compliment of staff took part in multi-day workshops to analyze and “make sense” of the data. The result was a Tribunal-wide understanding of systemic barriers that our existing Tribunal processes create that stand in the way of access to justice. By taking part in this project, the Tribunal not only uncovered many such barriers, but also worked to shift the office culture to one of continual process improvement and innovation where the full team constantly works to improve access to justice at the Tribunal. The Tribunal hopes



to re-do this project triennially to empirically track whether the changes implemented do in fact remove barriers and improve the appeal system for appellants.

Several other projects that took place during the reporting period stemmed in part from our Active-Sensemaking project:

- All Tribunal written communications were rewritten with plain language in mind. Most now read at a grade 4 level or lower.
- Tribunal forms were reformatted with more accessible font and formatting, plain language instructions, and the inclusion of diverse gender options.
- The Tribunal replaced its website with a more accessible website geared towards appellants and prospective appellants.
- The Tribunal provided ongoing training to its members. This year's training focused on diversity and inclusion, with a focus on persons with disabilities.

In addition to changes stemming from our Active-Sensemaking project, the Tribunal made three other noteworthy changes related to technology. The Tribunal moved both its

online training and member recruitment platforms, both previously hosted on custom third-party vendor web applications, to the Moodle platform. The Tribunal also replaced the platform used to exchange documents amongst Tribunal members with the MS Teams platform. These changes resulted in financial savings, but also streamlined our operations for members, with fewer logons required to access the same information and resources. These new platforms are substantially more affordable than our previous customized web platforms and are all agile allowing us to easily update resources and training material ourselves as needed. The move to MS Teams for document sharing also strengthens online security for the sharing of confidential personal information obtained in the course of appeals hearings.

The staff and members of the Tribunal demonstrated their ongoing commitment to diversity and inclusion in several ways over the course of the reporting period. As mentioned above, diversity and inclusion training with a focus on persons with disabilities was provided to staff and members of the Tribunal. And, importantly, the Tribunal's Reconciliation Working Group

met regularly throughout the reporting period. The dialogue generated by the Reconciliation Working Group is leading to a review of Tribunal processes and it is anticipated that changes, both large and small, will be made to Tribunal operations as we move forward towards our goal of meaningful and lasting reconciliation with the Indigenous Peoples of British Columbia. Thank you to the participants of this important working group. I appreciate and value your insight and commitment to reconciliation.

I would like to thank the Tribunal's staff and members for their hard work over the reporting period. Two years into a virtual workplace, they have shown patience and continued resilience as we navigated several technology changes on top of the changes brought about by the continued pandemic. Further, Tribunal staff and members have

embraced process changes that improve access to justice for those citizens of British Columbia accessing the Tribunal's services.

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.

Sincerely,

Emily C. Drown, B.A., LL.B  
(she/her)





# 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 Education and Child Care under the child care subsidy program (formerly under the Ministry of Children and Family Development). 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, 10 staff and, during the reporting period, 88 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, Ministry of Education and Child Care 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, 25 members were reappointed.

**NOTE: The Tribunal is recruiting new Members, particularly from more rural areas of the province. Anyone interested in being considered for appointment should refer to the Tribunal website, [www.eaat.ca](http://www.eaat.ca), or the Crown Agencies and Board Resourcing Office website [www.gov.bc.ca/cabro](http://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 Education and Child Care on child care subsidies (formerly the Ministry of Children and Family Development). 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 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.

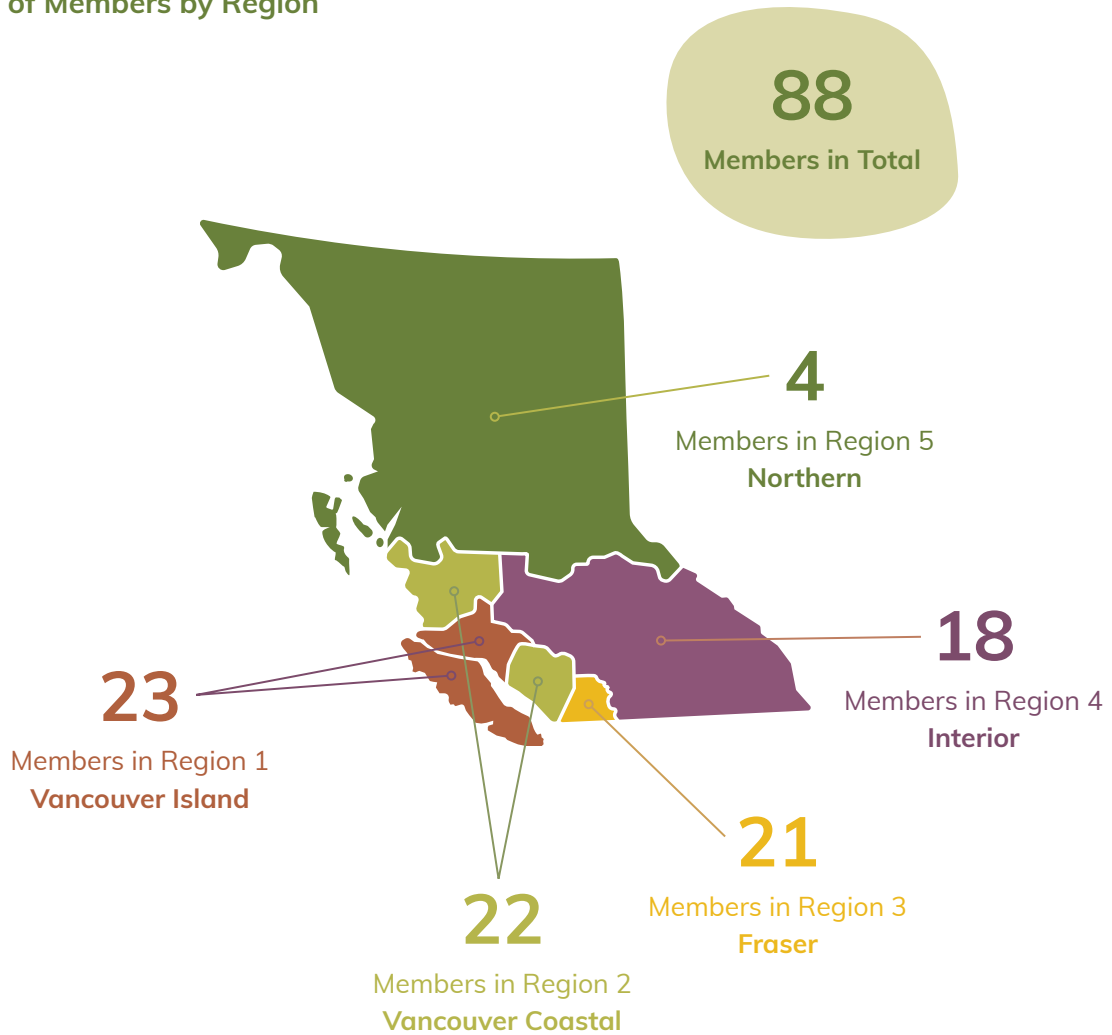


Hearings are conducted in person, usually in or near the appellant's community, by teleconference, by video-conference or, if both parties consent, in writing.

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 sends 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](http://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**



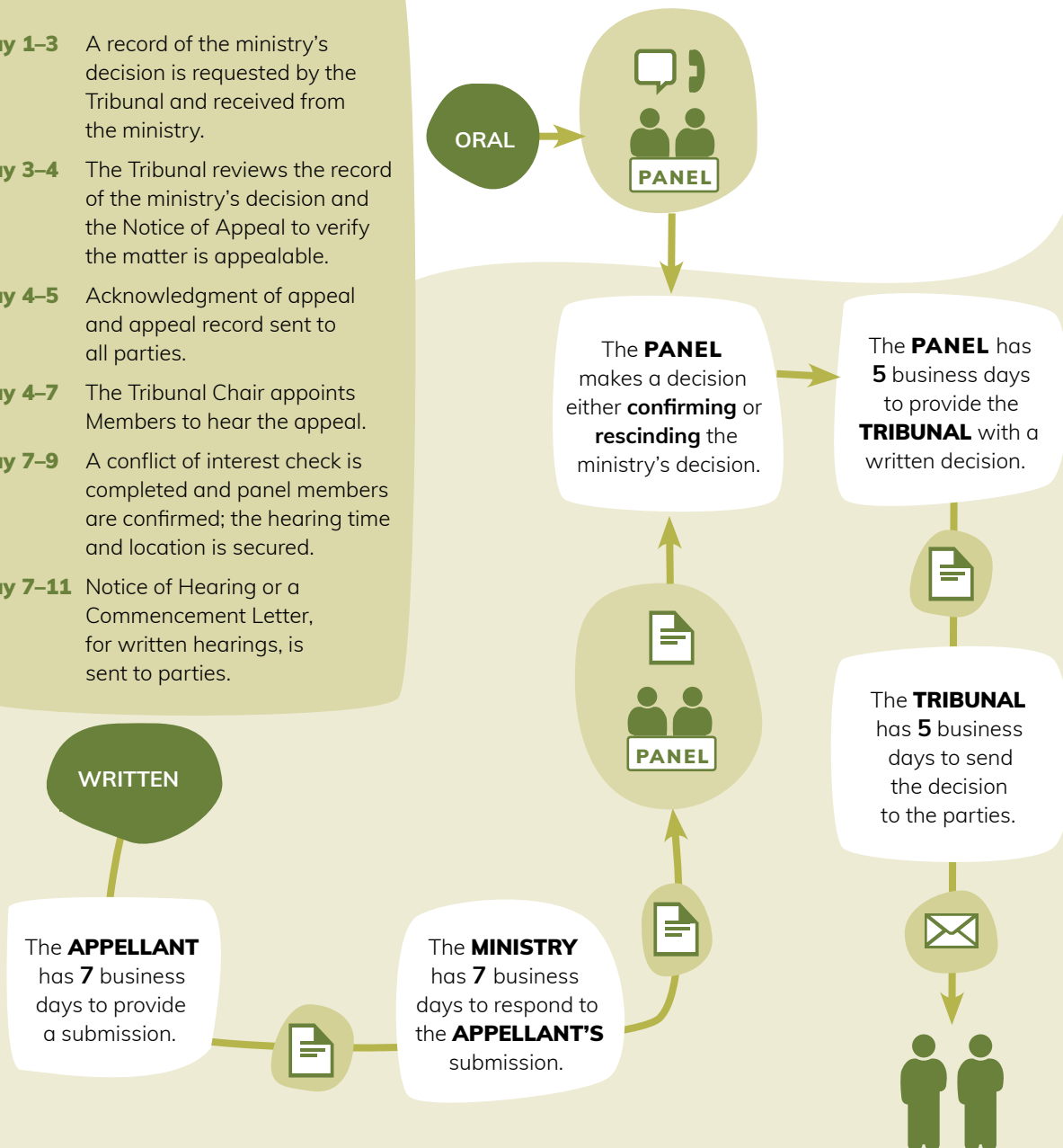
In person, by tele-conference or by video-conference.

**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 may file an appeal within 7 business days.

**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.

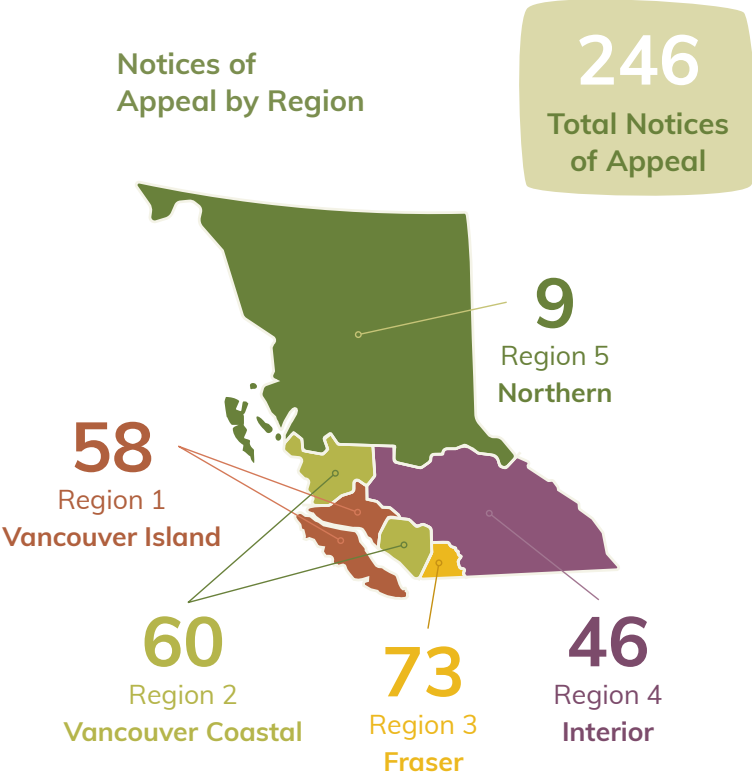
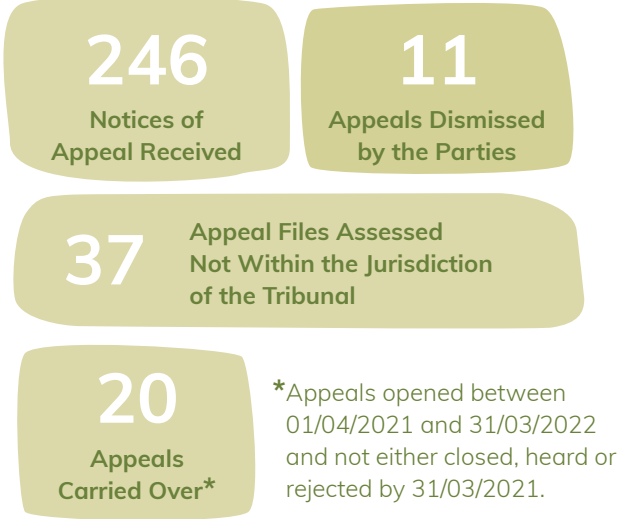
#### 3. Office of the Ombudsperson

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

# How We Did in 2021/22

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. Two appeals were not held within the legislated time frame in the reporting period due to staff error and mail delivery delay.

## Summary of Appeals Statistics



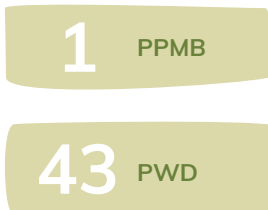
## Appeal Outcomes

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.

### Appeal Files with a Disposition by Appeal Type



### Disabilities



### Eligibility



### Health Supplement



### Ministry of Social Development and Poverty Reduction



### Ministry of Children and Family Development



## Judicial Review Outcomes

The Tribunal received two petitions for judicial review in the reporting period. One petition was settled and discontinued. The other petition resulted in a decision which is summarized below.

### ***Eggberry v. British Columbia (Minister of Social Development and Poverty Reduction), 2022 BCSC 424.***

This was a judicial review of a Tribunal decision confirming a Ministry of Social Development and Poverty Reduction (“Ministry”) determination that the Appellant was ineligible for income assistance. Specifically, the Tribunal upheld the Ministry’s determination that, as of April 2, 2020, the Appellant was ineligible for income assistance and therefore, any income received from the Canada Emergency Response Benefit (“CERB”) and the Canada Recovery Benefit (“CRB”) must be included in the Appellant’s net income calculation.

The Appellant had applied for and received income assistance as of January 2020. In February 2020, the Appellant worked two jobs and received income from that employment which was greater than the amount of income assistance the Appellant would have been eligible for in April 2020.

The *Employment and Assistance Regulation* (“EAR”) at the time provided that CERB and CRB payments would be exempt for recipients who were eligible for income assistance as of April 2, 2020. The Ministry determined that the Appellant was not

eligible for income assistance as of April 2, 2020 due to the Appellant’s February income, and therefore, any subsequent CERB and CRB payments were also not exempt from the Appellant’s net income calculation.

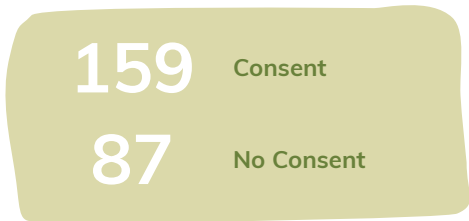
The Tribunal confirmed the Ministry’s decision. It found that the EAR, in its determination of who is eligible for income assistance, did not specify the calendar month for which income assistance is received or income received. The Tribunal reasoned that eligibility for assistance cannot be determined until income is reported. It found that the legislative scheme provided for income to be reported by the 5th day of the month after it is received which the Ministry uses to determine eligibility for assistance for the next benefit month. In this case, that meant that February income was reported on the 5th of March and determined April eligibility. Though the Tribunal sympathized with the Appellant’s circumstances, it found the Ministry’s determination to be reasonable on the facts and applicable legislation.

The Court reviewing the Tribunal’s decision found that it was not patently unreasonable. The Court stated that at issue was whether the reporting cycle is consistent with the *Employment and Assistance Act* (“EAA”) and EAR. It found that the two-month lag between receipt of income and its effect on eligibility for assistance was both a reasonable and necessary approach to administering the EAA and EAR. Further,

it found the Appellant’s argument that income and eligibility be calculated for the same month, and any miscalculation to be treated as an overpayment not to be practical; it would mean a continuation of their payments even though they were not qualified for them.

The Court also found that the Tribunal’s conclusion that the Ministry was reasonable in determining that the Appellant was not eligible for income assistance on April 2, 2020 was not patently unreasonable. The applicable sections of the EAR were clear and provided for no alternative interpretation.

### Appellants who consented to Email Communications



### Languages requested for Interpreters



### Cases with a Special Status



# 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 requirement (criterion (1)). However, the Ministry was not satisfied that the Appellant met the severe impairment, two-year duration, restrictions on DLA or significant help requirements (criteria (2) - (5), above).

### Summary of Facts

#### Self-Report

In the Self-Report (SR) the Appellant reported mental health conditions including Post-traumatic Stress Disorder (PTSD), depression, anxiety, and obsessive-compulsive disorder (OCD). Further, the Appellant stated experiencing inadequate and abusive treatment in foster care. The Appellant described being underweight, difficulty keeping adequate sleep schedule, no motivation to function and making rash and unsafe choices. In terms of restrictions on DLA, the Appellant reported only making one meal a day, difficulty with bathing, and extreme difficulties with relationships. The Appellant stated requiring mental health and medical assistance.

#### Medical Report

In the Medical Report (MR), the Appellant was diagnosed with depressive disorder and anxiety disorder with progressive symptoms of depression and anxiety. The doctor described these as moderate to severe. The doctor did not check the marked box for the duration of the impairment stating it was unknown as there was relapse and remitting. Later in the MR, the doctor stated that the impairments fluctuate over time but were omnipresent for the Appellant. The doctor reported that the Appellant has significant deficits with executive, memory, emotional disturbance and attention.

The doctor reported that the DLA of personal self-care, meal preparation and daily shopping were continuously restricted. The DLA of management of finances and social functioning were periodically restricted. The doctor explained that the periodic restrictions depend on the severity of symptoms and the degree of function varied significantly.



Finally, the doctor stated that the Appellant would benefit with assistance for meal preparation, transportation, finances and finding suitable employment. The doctor stated that although the medication prescribed for the Appellant did not interfere with the Appellant's DLA, the medication would be required for likely the rest of the Appellant's life.

### **Assessor Report**

In the Assessor Report (AR), the doctor indicated that the Appellant's mental impairment impacted 9 of the 14 areas of cognitive and emotional functioning: a major impact for emotion and executive functioning; a moderate impact for attention/concentration, memory and motivation; and a minimal impact for bodily functions, impulse control, insight and judgment, and other neuro-psychological problems. The doctor stated that the Appellant has a labile/unstable mood, difficulty establishing stable, secure relationships and difficulty with self-organization which impacts self-care/hygiene, finances and social functioning.

The doctor reported that the Appellant requires periodic assistance with basic housekeeping, and shopping (going to and from stores and paying for purchases). The Appellant requires continuous assistance with meals, paying rent and bills, and transportation (using public transit and using transit schedules). The doctor commented that the Appellant struggles with organization and that mood instability affects many areas of life. The doctor reported that the Appellant requires both periodic or continuous support with all areas of social functioning: appropriate social demands; interacting appropriately with others; ability to deal appropriately with unexpected demands; ability to secure assistance from others; and ability to develop and maintain relationships.

Finally, the doctor reported the Appellant would benefit from therapy, currently lives alone with little support and needs support to manage DLA through counselling.

### **Additional Evidence**

The Appellant submitted additional evidence which the Panel admitted as it was required for a full and fair disclosure of all matters related to the decision under appeal.

The first piece of evidence was from the doctor which sought to clarify the information contained in the MR and SR. The doctor included diagnoses of borderline traits and severe iron deficiency which, along with the previous diagnoses, led to ongoing, severe cognitive and emotional impairments. The Appellant has a severe impairment with several DLA including taking medication as prescribed and basic housework in addition to significant deficits with personal self-care, meal preparation and daily shopping. The doctor explained that these DLA require significant higher order cognitive functioning along with the capacity to self-regulate emotions. The doctor expressed the opinion that the restrictions are severe and occur frequently (most days of the week) in an unpredictable manner and that the Appellant will need assistance for a continuous period of time. The doctor explained that the severe iron deficiency which the Appellant has a history with creates symptoms of extreme fatigue, worsening anxiety and agitation which contribute to restrictions with DLA.

The second piece of evidence were letters from another doctor that were 10 or more years old. These letters detailed the Appellants conditions and provided background to the Appellant's current mental health struggles.

**Tribunal Decision** – The Panel rescinded the Ministry's decision.

## Reasons for Decision

### Duration

The Panel found that the Ministry's reliance on the check box in the application form was not reasonable. In the Panel's view, the doctor had confirmed the 2 year duration requirement in various other comments, including that the Appellant's symptoms of anxiety and depression were progressive and that medication will likely be required for a lifetime. Further, the new evidence from the doctor stated that the Appellant would need ongoing assistance for a continuous period of time and that the Appellant's symptoms are omnipresent. Further, the evidence as a whole indicated a lengthy history of mental health issues.

### Severe mental or physical impairment

The Panel found that the Ministry's conclusion that a severe mental impairment was not established was not reasonable. The Panel relied on the doctor's evidence of significant deficits for emotion, executive functioning, and attention/concentration; while the severity of the symptoms may fluctuate, the impairments were omnipresent and the doctor confirmed a lifelong treatment for moderate to severe impairments. Further, the Panel placed more weight on the explanations provided by the doctor when describing the effects of the severe mental impairment on the Appellant's DLA. Finally, the new evidence provided by the doctor detailed the deficits with higher order cognitive function and sustained difficulty with emotional regulation.

### Restrictions on DLA

The Panel found that the Ministry was not reasonable in determining that at least 2 DLA were not restricted as required by the EAPWDA. The Panel noted some discrepancies in the MR and AR, but reasoned that the doctor explained in the narrative to the MR that the Appellant has a variable degree of function depending on the severity of symptoms. The Panel placed more weight on the MR given the doctor's narratives. It was comfortable doing so in light

of the Appellant's longstanding mental health issues and the corroboration in the SR. Finally, the new evidence from the doctor unequivocally established significant restrictions to DLA that are continuous. Specifically, the Appellant has significant deficits with Personal Care, Meals and Shopping, requiring continuous support with these activities due to her struggles with cognitive functions, emotional self-regulation, and increased anxiety that stem from mental health conditions.

### Help

The Panel found the Ministry's determination on the requirement for help to not be reasonable. The Panel found that the doctor provided evidence that the Appellant requires help with housework, shopping, preparing meals and managing finances as the Appellant's mood instability affects organization and prioritization. Further, in the new evidence submitted, the doctor reiterated the need for assistance with DLA for a continuous period of time.

# What Our Decisions Look Like

## CASE 2 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 for rent. Under section 59 of the *Employment and Assistance Regulation* (EAR) 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 rent. However, the Ministry found that rent not an unexpected expense or an item unexpectedly needed, and failure to pay the rent would not result in imminent danger to a member of family unit's physical health or the removal of a child.

### Summary of Facts

The Appellant was an income assistance (IA) recipient whose family unit included a spouse and four dependent children.

The Appellant was receiving \$1765.34 monthly in IA. The Appellant requested a crisis supplement of \$3600 for two months' rent. The Appellant had provided a bank statement showing an available balance of over \$7500 at the beginning of one month and a closing balance of \$48.23 at the end of the month. In response to questions from

the Ministry, the Appellant explained that: \$5000 had been used to pay back a friend for a loan; \$2000 was used to partially pay for a car; \$2300 was used to paint the Appellant's home, for pest control, and dog food; and \$1480 was used for rent for the month prior to the two months of rent requested.

The Appellant could not provide a formal eviction notice stating that the landlord refused to give one.

The Appellant provided a letter from the landlord stating \$3600 of rent was due.

**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 rent would need to be paid monthly.

Finally, the Panel found that the Ministry's determination that there was no risk of imminent danger to the physical health of the Appellant or removal of a child was also a reasonable application of the legislation and reasonably supported by the evidence. The Panel noted that the landlord's letter evidences that rent is owed; however, there was no evidence of an eviction notice or a notice of removal of a child.

# What Our Decisions Look Like

## CASE 3 Affordable Child Care Benefit

### Ministry Decision

The Ministry of Children and Family Development (Ministry) found that the Appellant was not eligible for the Affordable Child Care Benefit for the period of August to November because the Appellant's application was submitted in December. Further, the Ministry found no evidence of an administrative error which would have allowed for backdated eligibility of 30 days.

### Summary of Facts

In September, the Ministry received a copy of the Affordable Child Care Benefit Child Care Arrangement form indicating care for the Appellant's child began in August. The Ministry did not receive any further information, most notably, an Affordable Child Care Benefit Application. In October, the Ministry contacted the Appellant by telephone and left a voice message advising the Appellant to contact the Ministry.

The Ministry did not receive any communication from the Appellant until December when the Appellant submitted an Affordable Child Care Benefit Application.

In the Request for Reconsideration, the Appellant wrote that the day care provider stated the Appellant would be eligible for the subsidy and it didn't matter when the application was submitted. Further, during the pandemic it was difficult to connect with a family doctor to have the medical information completed and due to health issues, the Appellant is not currently able to work.

In the Notice of Appeal, the Appellant stated that a doctor's error also delayed completing the form, that it is difficult to connect with the Ministry and that the child care provider stated that even a late application would allow for two months of backdated subsidy amounts.

**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 Affordable Child Care Benefit for August to November was a reasonable application of the legislation and reasonably supported by the evidence. The Panel found that the completed application was submitted in December and that the Ministry has no discretion to change the eligibility date. Further, there was no evidence of an administrative error. The Panel was sympathetic to the Appellant's difficult circumstances and the struggle to get correct information.

# 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

As we embark on the 2022/23 fiscal year, I am certain of one thing: change. While change is often feared, the last two pandemic years have taught us that change will occur and that if we embrace it, good things can happen.

It is anticipated that as we move through the next reporting period that the Tribunal will have a hybrid work environment. Those needed in office for operational purposes will be back in our Victoria office daily. Others will work almost entirely remotely from home. Others yet will split their time between working from home and in-office. This will be a new way of working and I am sure that it will present challenges, much like our unprecedented shift to a fully remote office presented in 2020 when we responded to the pandemic by sending our staff to work from the safety of their homes. However, given the commitment to public service demonstrated by staff over the last two years, I am confident that we will meet any challenges as they arise.

It is also anticipated that over the course of the reporting period that we may transition to offering in-person hearings again, something that has been suspended since March 2020. That said, we will continue to offer hearings by video-conference once we return to offering in-person hearings as

appellants and advocates have indicated in many cases that they appreciate being able to see panel members adjudicating a hearing without having to travel to a hearing location. This means that we will be able to give appellants the choice of the following formats for their hearing before the Tribunal: by writing, in-person, by teleconference, and by video-conference.

Our Active-Sensemaking project, mentioned earlier in this annual report, has created a staff culture that embraces continuous process improvement. Accordingly, I expect to see further process improvements that ameliorate barriers to accessing Tribunal services over the course of the next reporting period. Also, further changes will likely be suggested by the Tribunal's Reconciliation Working Group.

As just mentioned, the Tribunal's Reconciliation Working Group is anticipated to continue to meet bi-monthly. It is hoped that during this coming reporting period several recommendations made by the group will be studied in depth by the Tribunal and will be implemented.

During the 2022/23 reporting period I also hope to see Tribunal's Anti-Systemic Discrimination Working Group formally established. Mentioned in last year's annual

report as the Disaggregated Data Working Group, this group has had a name change to better reflect the purpose of the group's work. The group's launch was delayed as we awaited the creation of much anticipated anti-discrimination legislation. It is hoped that this working group will provide guidance to the Tribunal as we move to collect disaggregated data to better understand the existence of systemic barriers within the Tribunal and its processes. The working group will also be responsible for oversight of how any data gathered is ultimately used, providing accountable transparency for those groups potentially impacted by the collection and/or use of the disaggregated data. Are you interested in being part of this working group? Anyone identifying as a member of historically underrepresented communities that is interested in serving on the Anti-Systemic Discrimination Working Group may apply to the Tribunal Chair via email to [info@eaat.ca](mailto:info@eaat.ca).

Finally, it is my hope that this coming autumn will see a continued focus on member training here at the Tribunal. Current plans

entail holding multi-day training workshops as follows:

- a) New member training – a multi-day workshop to provide additional training in Tribunal processes, hearing skills, decision writing, etcetera to newly appointed Tribunal members (this is in addition to the Tribunal's robust initial online training members receive upon being appointed).
- b) PWD training – a multi-day workshop to provide advanced level training in the adjudication of appeals under the *Employment and Assistance for Persons with Disabilities Act*, particularly those appeals where the issue is the denial of designation as a person with disabilities.

I look forward to the coming reporting period. It is my pleasure to serve as the Chair of the Employment and Assistance Appeal Tribunal.

Sincerely,

Emily C. Drown, B.A., LL.B  
(she/her)

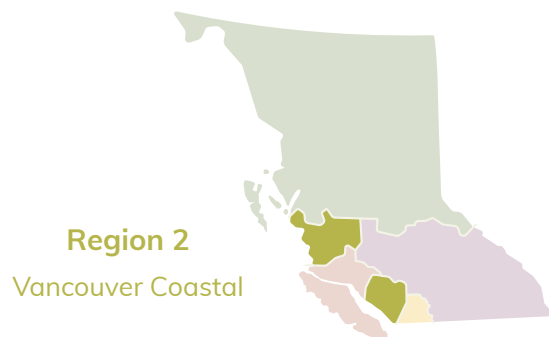
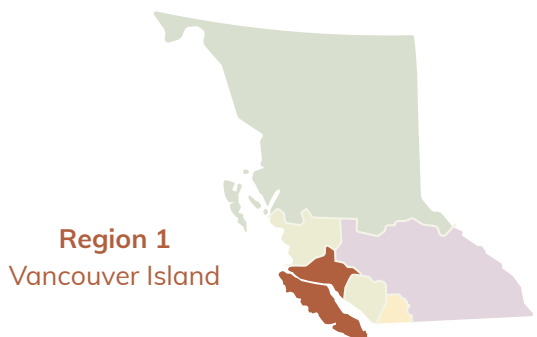
# Appendix A

## Tribunal Staff as of March 31, 2022

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

# Appendix B

## Tribunal Members by Region as of March 31, 2022



|                      |                      |
|----------------------|----------------------|
| Tina Ahnert          | Jane Nielsen         |
| Kent Ashby           | Margarita Papenbrock |
| Angie Blake          | Glenn Prior          |
| Monika Brandstaetter | Joseph Rodgers       |
| Jan Broocke          | Marlene Russo        |
| Joan Cotie           | Charles Schellinck   |
| Emily Drown          | Michael Skinner      |
| Robert Fenske        | Jennifer Smith       |
| Melissa McLean       | Kenneth Smith        |
| Trevor Morley        | Donald Stedeford     |
| Inge Morrissey       | Donald Storch        |
| Wesley Nelson        |                      |

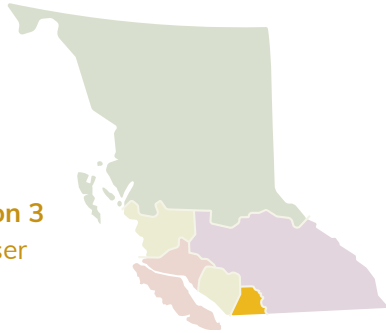
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|------------------|--------------------|
| Anil Aggarwal    | Maryam Majedi      |
| Sandra Chan      | Robert McDowell    |
| Daniel Chow      | Rabinder Nijjar    |
| Susanne Dahlin   | Diane O'Connor     |
| Nancy Eidsvik    | Kim Read        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



# Appendix B

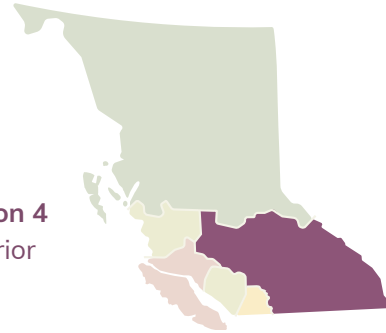
Tribunal Members by Region as of March 31, 2022

**Region 3**  
Fraser



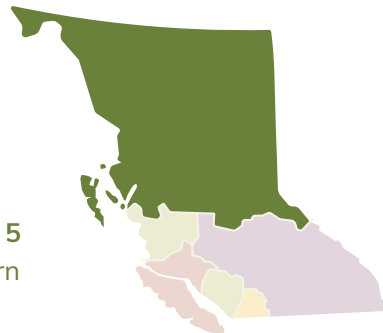
- |                    |                  |
|--------------------|------------------|
| Jennifer Armstrong | Elaine Jeffery   |
| Cynthia Agbozo     | Sameer Kajani    |
| Kulwant Bal        | Neena Keram      |
| Man Lin Chang      | Adeola Olulana   |
| Vivienne Chin      | Barbara Sharp    |
| Simon Clews        | Carla Tibbo      |
| Arshdeep Dhaliwal  | Rosalie Turcotte |
| Ransiri Fernando   | Sandra Walters   |
| Warren Fox         | Dawn Wattie      |
| David Handelman    | Winston Wright   |
| Shirley Heafey     |                  |

**Region 4**  
Interior



- |                    |                    |
|--------------------|--------------------|
| Sarah Bijl         | Wendy Marten       |
| Joan Bubbs         | Dawn Martin        |
| Tara Cescon        | Carmen Pickering   |
| Patrick Cooper     | John Pickford      |
| Cherri Fitzsimmons | Linda Pierre       |
| Bill Haire Robert  | Erin Rennison      |
| Kelly Laurie Kent  | Effrossini Simpson |
| Janet Lingford     | Helene Walford     |
| Jean Lorenz        |                    |

**Region 5**  
Northern



- |              |                |
|--------------|----------------|
| Kevin Ash    | Meghan Wallace |
| Rick Bizarro | Janet Ward     |

# Appendix C

## Budget (April 1, 2021 – March 31, 2022)

The provincial government's fiscal year begins April 1st. This Annual Report covers April 1, 2021 to March 31, 2022. The budget table presents the Tribunal's actual expenditures for the last two fiscal years.

| OPERATING BUDGET                              | APRIL 2021 – MARCH 2022 | APRIL 2020 – MARCH 2021 |
|---|-------------------------|-------------------------|
| Salaries and Benefits                         | \$ 852,597              | \$ 824,658              |
| Boards/Commissions/Courts – Fees and Expenses | 137,712                 | 164,603                 |
| Public Servant Travel                         | (2,735)                 | 377                     |
| Professional Services: Operational            | 100,987                 | 58,061                  |
| Information Systems: Operating                | 235,217                 | 112,469                 |
| Office and Business Expenses                  | 26,385                  | 26,534                  |
| Statutory Advertising and Publications        | 3,011                   | (2,951)                 |
| Amortization Expense                          | 51,432                  | 0                       |
| Building Occupancy Charges                    | 0                       | 0                       |
| Other Expenses                                | 34                      | 0                       |
| <b>TOTAL</b>                                  | <b>\$ 1,404,639</b>     | <b>\$ 1,183,751</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)

