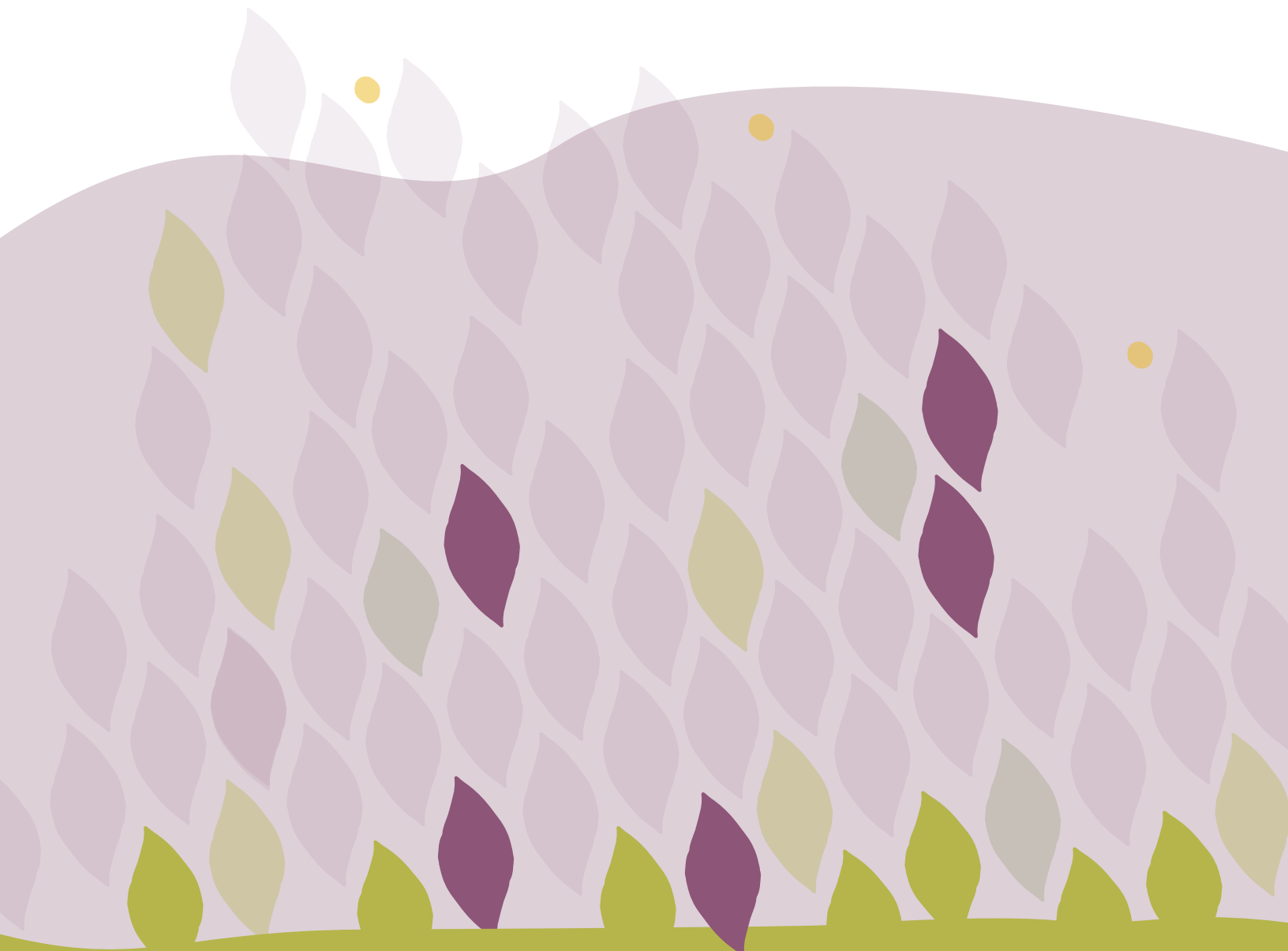


**Employment and Assistance
Appeal Tribunal** British Columbia

Annual Report 2022/23





Employment and Assistance Appeal Tribunal British Columbia

June 2023

The Honourable Sheila Malcolmson

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, 2022 to March 31, 2023. The report has been prepared in accordance with section 20(1) of the *Employment and Assistance Act*.



Emily C. Drown, B.A., LL.B

Chair, Employment and Assistance Appeal Tribunal
(she/her)

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 determinations in regard to child care subsidies.

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Message from the Chair

This annual report covers the period of April 1, 2022 to March 31, 2023. 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.

Over the course of the reporting year, after two and a half years working remotely, staff were finally able to return to the office. However, it quickly became clear that the long-awaited return to “normal” post-pandemic was anything but a return to normal. Rather than returning to our previous in-office environment, Tribunal staff developed a hybrid environment where some staff are in the office daily, some staff work primarily from home and others choose to work in the office a set number of days per week. While a hybrid work environment has brought some challenges, it has also allowed staff to choose to work in the environment that best suits their unique personal circumstances.

While the advent of hybrid offices is new to many, the Tribunal’s members have always worked remotely. Accordingly, while there was a change to our office structure, staff adapted quickly, being used to having the bulk of our workforce working remotely since the Tribunal’s inception.

For the Tribunal, the highlight of the reporting period was winning the Premier’s Award in the evidence-based design category for our

Active-Sensemaking Project (mentioned in detail in last year’s annual report). Our team at the Tribunal is very proud of the innovative work done to solicit user feedback on our services and I am very proud of them.

While the Active-Sensemaking Project took place during the previous reporting period, the project continues to deliver results. Staff have fully embraced a culture of continuous process improvement and the Tribunal regularly implements changes that we hope remove barriers identified by our users. Examples of recent changes made include:

- reviewing the amount of correspondence sent to appellants on each appeal and reducing the volume where possible;
- providing plain language training for members;
- having staff make introductory calls to appellants to introduce themselves and explain the appeal process; and
- making “reminder phone calls” to appellants about their upcoming hearings.

While none of these changes are particularly huge, anecdotal evidence suggests that they are making a large difference to our users.

The reporting period also saw a continued commitment to member training with multi-day workshops delivered to our members. Recently appointed members

received training in Tribunal processes, hearing skills, decision writing, and other matters relating to adjudication. Advanced level training in the adjudication of appeals under the *Employment and Assistance for Persons with Disabilities Act* was also offered to all Tribunal members. This training focused on adjudicating appeals where the issue is the denial of designation as a person with disabilities.

The Tribunal's Reconciliation Working Group met regularly throughout the reporting period and many of the process changes outlined above were also endorsed by the working group as steps that would remove barriers for Indigenous Appellants. One issue of note raised by the working group is whether Indigenous clients of the Ministry of Social Development and Poverty Reduction appeal to the Tribunal at the same rate as other client populations. The Tribunal is working with the ministry to see if data-sharing in this area is possible and is keenly interested in using such disaggregated data to inform future processes and policies as we work towards reconciliation.

I would like to thank the Tribunal's staff and members for their hard work over the reporting period. After two years in a virtual workplace, they have navigated a return to the office, and continue to show patience and resilience. Further, our staff and

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

I also wish to thank the members of the Tribunal's Reconciliation Working Group for their commitment and dedication to helping the Tribunal move forward on its pathway towards reconciliation.

Finally, I would 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 through these interactions gain new insight into how the Tribunal needs to adapt to best serve 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. 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, 85 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 initially appointed 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, 17 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, 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 Education and Child Care 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 Education and Child Care'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.



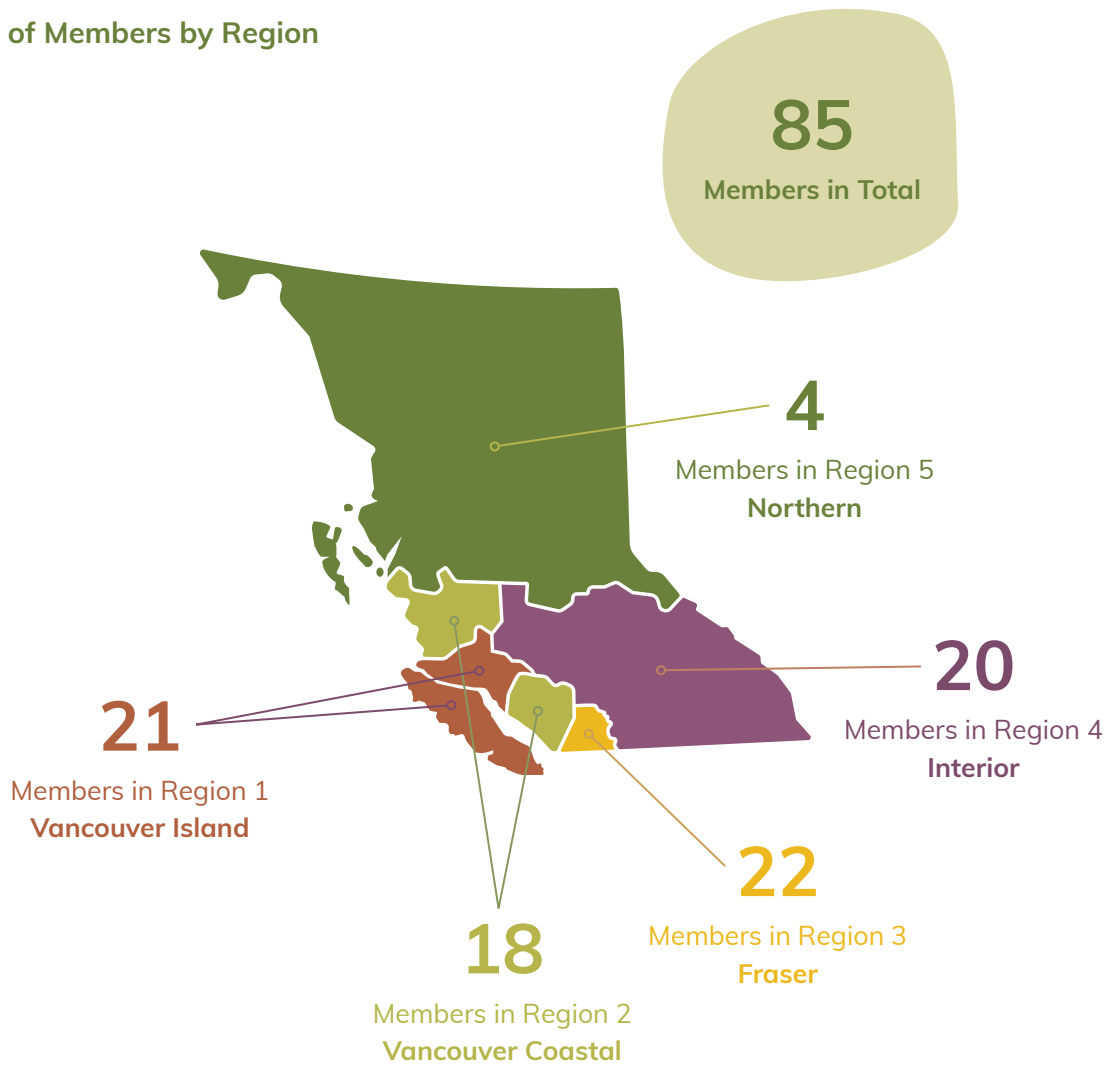
Hearings are conducted in person, usually in or near the appellant's community, by teleconference, by video-conference or, if both parties consent, in writing.

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 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



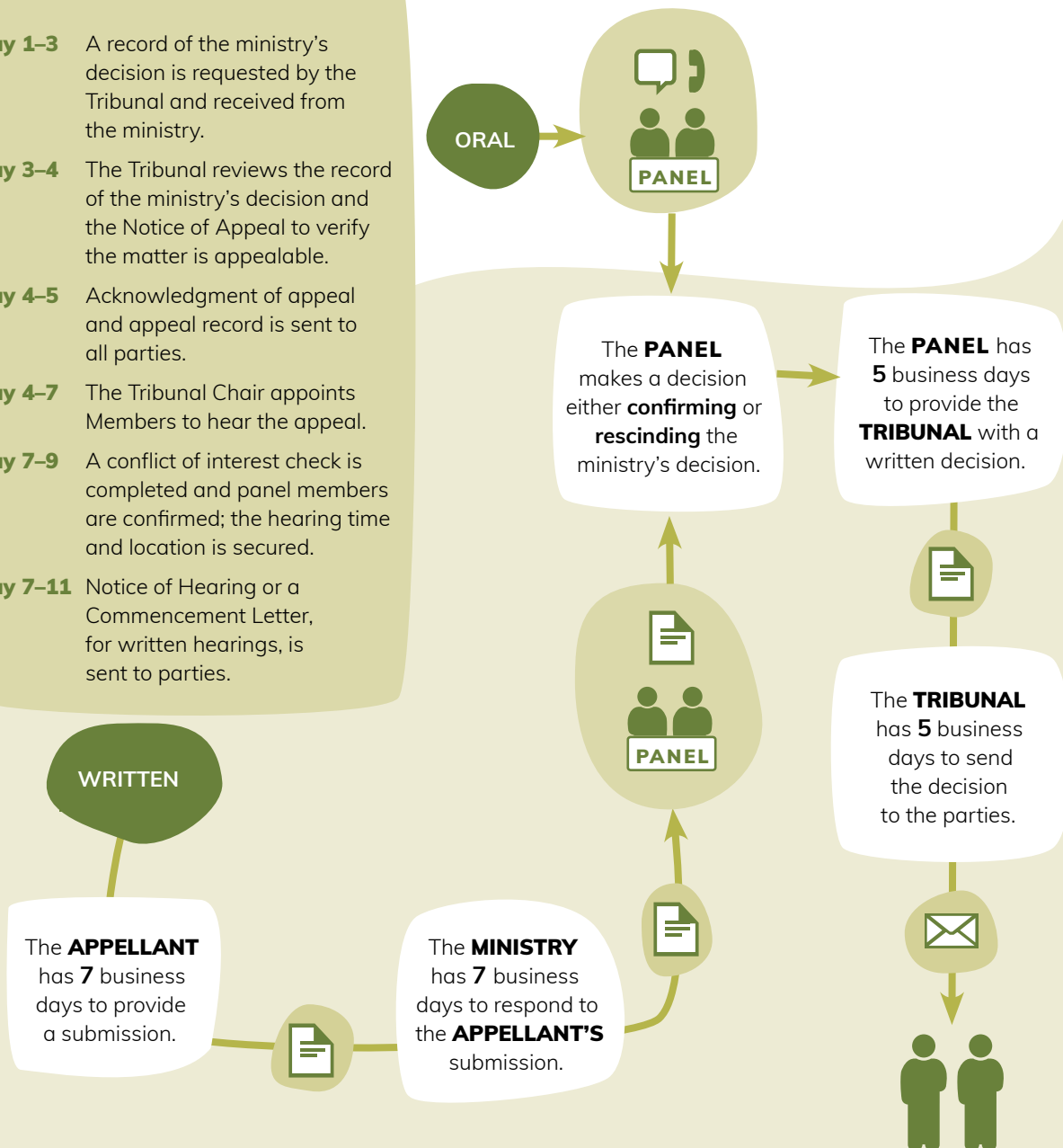
In person, by tele-conference or by video-conference.

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 is 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 of receiving the reconsideration decision.

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.

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

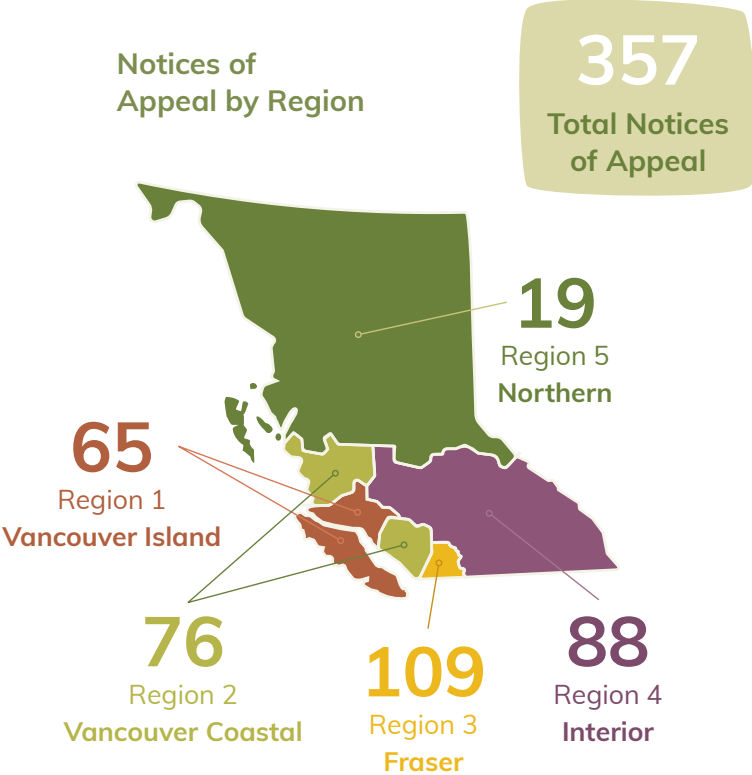
You can contact the Office of the Ombudsperson if you feel that we were unfair.

How We Did in 2022/23

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.

Summary of Appeals Statistics

357 Notices of Appeal Received	18 Appeals Dismissed by the Parties
43 Appeal Files Assessed Not Within the Jurisdiction of the Tribunal	
21 Appeals Carried Over*	*Appeals opened between 01/04/2022 and 31/03/2023 and not either closed, heard or rejected by 31/03/2021.



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

4	20 Business Days
1	Burial/Cremation Supplement
4	Bus Pass
21	Child Care
1	Confirmed Job Supplement
40	Crisis Supplement
9	Moving Supplement
13	Other
1	Other – Hardship
1	Overpayment
27	TBD
Disabilities	
2	PPMB
96	PWD

Eligibility

1	Dependency/Living	10	Inc/Earning Exemption
23	Excess Inc/Asset	2	Residency
1	Failure to provide information	5	Shelter Allowance
7	Full time student	1	Undeclared Inc/Asset

Health Supplement

14	Dental	7	Med Transport	3	S/T Nutritional
1	Diet/Natal	19	MNS	1	Therapies
12	Med Equipment	1	Optical		
4	Med Supplies	4	Orthoses		

Ministry of Social Development and Poverty Reduction

256	Appeals heard
195	Decisions confirmed
59	Decisions rescinded

Ministry of Education and Child Care

21	Appeals heard
15	Decisions confirmed
6	Decisions rescinded

Judicial Review Outcomes

The Tribunal did not receive any petitions for judicial review in the reporting period.

Public Interest Disclosure Act

As of April 1st, 2022, the Tribunal was designated as a government body under the *Public Interest Disclosure Act*. The Tribunal has established procedures and provided information as required by the Act.

The Tribunal received no disclosures in the reporting period.

Appellants who consented to Email Communications

246 Consent

111 No Consent

Cases with a Special Status

6 Accessibility

27 Interpreter

Languages requested for Interpreters

5 Arabic 1 Polish

2 Cantonese 1 Portuguese

7 Farsi 4 Punjabi

2 Korean 1 Swahili

2 Mandarin 1 Vietnamese

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* (Act). Section 2 of the Act 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 duration requirements (criteria (1) and (3)). However, the Ministry was not satisfied that the Appellant met the severe impairment, restrictions on DLA or significant help requirements (criteria (2), (4), and (5), above).

Summary of Facts

Medical Report

A specialist in nephrology completed the Medical Report. The specialist stated that the Appellant has severe end stage renal disease secondary to membranous nephropathy and severe anxiety. The Appellant required dialysis four to five times a week which caused fatigue, pain, nausea and restless legs. The pain and fatigue fluctuated; the condition would not improve without a kidney transplant. The Appellant developed severe anxiety because of the kidney disease and it impaired her ability to communicate and participate in stressful situations.

The specialist stated that the Appellant can walk unaided 4+ blocks, climb 5+ steps, lift 7-16 kg and remained seated 2 to 3 hours. The specialist did not answer whether the Appellant has significant deficits with cognitive and emotional functioning but identified a deficit in emotional disturbance.

The Appellant had restrictions in meal preparation, basic housework, daily shopping, mobility inside and outside the home and social functioning. The specialist did not indicate whether these restrictions were continuous or periodic. The specialist also indicated the Appellant can have difficulty expressing herself to others, and noted that the Appellant's spouse helps to share her perspective. The Appellant was reported to receive help from family.

Assessor Report

A social worker identified the Appellant's impairments as end-stage renal disease and anxiety. They indicated that the Appellant's ability to communicate depends on rapport and approach. The Appellant was independent in all aspects of mobility and physical ability, but fatigued and can become weak when walking or climbing stairs.

The social worker indicated the Appellant needs periodic assistance for laundry and basic housekeeping, going to and from stores, food preparation and cooking. The social worker did not provide any explanation or description of assistance required. The Appellant received help for daily living activities from family and health authority professionals and used hemodialysis supplies to help compensate for their impairment. The social worker indicated the Appellant was independent in all other aspects of daily living activities, including social functioning.

Self Report

The Appellant stated her stage 5 kidney failure requires her to be on dialysis four times a week which leaves her very weak. She said her restless legs cause a lot of pain and she has "great difficulty getting up and sitting down." Her "walking is not the greatest" but she does not use an assistive device. The Appellant stated she has severe anxiety but does not take medication for it due to anxiety about taking medication.

The Appellant also provided that she can walk one block with a lot of pain; she needs help to walk two blocks or more, has difficulty getting up from a chair without help and has pain and difficulty dressing herself. She said she must rely on her spouse for "pretty much everything."

Additional Evidence

On appeal, the Appellant provided a letter from an advocate to the specialist on which the specialist wrote answers to questions presented by the advocate. The specialist indicated agreement with the following statements:

- the Appellant is only able to walk one block at a time before she has to stop, commenting that the Appellant has marked shortness of breath and weakness secondary to renal failure;
- The Appellant is unable to climb any stairs without the use of handrails or support of another person, commenting that the Appellant has gait unsteadiness and lower extremity weakness;
- The Appellant is able to lift under 5 pounds, commenting that the Appellant has muscle weakness due to renal failure;
- The Appellant can only sit up for one hour before suffering pain from restless legs, commenting that the Appellant has marked restless legs that are unresponsive to medication;
- The Appellant can only stand for ten to fifteen minutes, commenting that due to renal failure the Appellant has weakness and fatigue;
- Impaired cognitive and emotional functioning have a major impact on the Appellant's daily functioning due to severe anxiety;
- The Appellant needs continuous assistance or is unable to do the following daily living activities due to her health conditions/diagnosis:
 - Transfers in and out of bed: needs assistance daily;
 - Transfers on and off a chair: needs assistance to get up from a chair;
 - Laundry

- Basic housekeeping: husband does all laundry and housekeeping; she can only do dishes for a short time, leaning on the counter;
- Going to and from stores: needs someone with her at all times due to physical limitations and anxiety;
- Carrying purchases home: can carry no more than 5 pounds;
- Meal planning
- Food preparation and cooking: husband does these tasks due to her physical imitations and fatigue levels; she is unable to carry pots and pans;
- Getting in and out of a vehicle: needs assistance getting out of a vehicle due to physical limitations;
- Dealing appropriately with unexpected demands: she has anxiety when met with unexpected demands.

The additional letter from the specialist was admitted as evidence reasonably necessary for the full and fair disclosure of all matters related to the decision under appeal.

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

Reasons for Decision

Severe Impairment

The Panel found that the additional evidence from the specialist established that the Ministry’s conclusion that the Appellant did not have a severe mental or physical impairment was no longer reasonably supported by the evidence. The additional letter from the specialist identified symptoms secondary to renal failure that affected the Appellant’s physical functioning. The letter outlined that the Appellant had marked shortness of breath, lower extremity and general muscle weakness, gait unsteadiness, fatigue and

restless legs. As a result, the specialist confirmed that the Appellant can only walk one block at a time, cannot climb stairs without the use of a handrail or the help of another person, can lift less than five pounds and can sit for one hour. The specialist also confirmed that the Appellant’s severe anxiety had a major impact on emotion, consciousness, memory, motor activity and language.

Restrictions to Daily Living Activities

The Panel found that the additional evidence from the specialist established that the Ministry’s conclusion that the Appellant did not have restrictions to DLA as required by the Act was no longer reasonably supported by the evidence. The specialist confirmed continuous, significant restrictions to the following DLA: prepare own meals; shop for personal needs; perform housework to maintain the person’s resident in an acceptable sanitary condition; move about indoors and outdoors; and relate, communicate or interact with others effectively.

Help

The Panel found that the additional evidence from the specialist established that the Ministry’s conclusion that the Appellant did not require help with DLA was no longer reasonably supported by the evidence. The specialist confirmed that the Appellant’s spouse prepares all meals, does all the housekeeping, and assists her with mobility inside and outside the home every day. Further, the specialist confirmed that the Appellant needs someone with her whenever she shops.

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 utilities, specifically internet. 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 and that the expense was unexpected. However, the Ministry was not satisfied that failure to pay the rent would result in imminent danger to a member of family unit's physical health or removal of a child.

Summary of Facts

The Appellant was a sole recipient of income assistance.

The Appellant requested a crisis supplement to cover internet charges. The Appellant had submitted an undated notice from an internet service provider which showed a balance owing of \$1,221.15 as of September 2022. In the Appellant's request for reconsideration, the Appellant explained the circumstances that led

to the internet account being overdue, including the discontinuance of federal COVID-19 benefits, the Appellant's lack of transportation, and the fact that a number of business expenses were due between June and September 2022. The Appellant also stated that he expected to find work shortly.

In his Notice of Appeal, the Appellant stated that having access to internet was a necessity for his business. The Appellant also submitted a more recent overdue notice from the internet service provider in the amount of \$1,730.97.

At the hearing, the Appellant described how long he had been in business and the struggles he faced as a result of an accident. He stated he understood that not all of the required criteria were met.

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

Reasons for Decision

The Panel found that the Ministry's determination that the physical health of the Appellant was not facing imminent danger was reasonably supported by the evidence and a reasonable application of the legislation in the Appellant's circumstances.

The Panel found that though the Appellant gave evidence of the essential nature of the internet to his business, he failed to address the issue of how failure to obtain a supplement for overdue internet charges would result in an imminent danger to his physical health. The only evidence submitted by the Appellant related to his efforts to maintain his physical health.

What Our Decisions Look Like

CASE 3 Affordable Child Care Benefit

Ministry Decision

The Ministry of Education and Child Care (Ministry) found that the Appellant was not eligible for the Affordable Child Care Benefit (ACCB) for the period between May 17 and June 30, 2022 because the ACCB may only be paid from the first day of the month in which the parent completes an application. The Ministry found that the Appellant did not submit a completed application until July 2022.

Summary of Facts

In July 2022, the Ministry received the Appellant's ACCB application, form CF2900 and found the Appellant eligible for the period beginning July 1, 2022. In August, the Appellant informed the Ministry that her child had been in care since May 2022 and that she submitted forms on the first day of attendance. The Appellant stated that the child care provider did not fill out their portion of the application until July 2022.

In the Appellant's request for reconsideration, the Appellant explained that the child care provider was under the impression that the ACCB could be backdated. The child care provider stated that they were given incorrect information which they passed onto parents; specifically, that parents can wait to apply for the ACCB. The Appellant also stated that she was advised by the care provider that they were sending ACCB forms to the Ministry with the care provider's portion filled out. The Appellant also included two messages from the Ministry dated May 2022 stating that the application for the ACCB was incomplete.

The Appellant stated that she did not realize there was an issue with her ACCB application until mid-July when she received forms and was told to re-do the application because the application submitted in May 2022 had expired for lack of activity.

The Appellant also submitted email correspondence from the care provider. In the correspondence, the care provider states that they had submitted the initial application for approval as a care facility and were waiting for approval. However, the application process took longer than expected; after approval, the care provider was required to complete a section of a form, and give it to the parent for completion, which is what occurred in July 2022.

Additional Evidence

On appeal the Appellant submitted a letter from the care provider. In the letter, the care provider explains that they received their license as a daycare in May 2022. Subsequent to this license, they were required to obtain other approvals, which they completed in late June and were backdated to May 2022. The care provider then completed their ACCB submissions in July 2022.

The letter states that the care provider was advised that the ACCB would be backdated for parents and to wait until all approvals and agreements were in place which was July 2022. The care provider understood the instruction from the Child Care Service Centre to mean that the ACCB applications should wait until all approvals were in place. Finally, the care provider advised the Appellant to appeal explaining the care provider's misunderstanding. The care provider explained that the error they made was inadvertent; they were volunteers and had not been through the process previously.

The Ministry also made written submissions on appeal. The Ministry stated that the care provider was independent of the Ministry and that parents should contact the Ministry if they have questions.

Admissibility

The Panel admitted the Appellant's and Ministry's additional evidence as reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

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 from May – June was a reasonable application of the legislation. The Panel found that the Appellant's application was not complete until July 2022 and under the Child Care Subsidy Regulation, the ACCB is payable from the first day of the month in which the application is complete.

Although the Appellant was waiting for the care provider to submit the forms on her behalf, the Panel found as fact that the complete application was not submitted until July 2022.

Further, although the legislation provides for backdating the ACCB 30 days before an application is completed where there is an administrative error, the Panel found that this section only referred to administrative errors by the Ministry. In the Panel's view, administrative errors made by third parties, such as the care provider in this appeal, would be outside of the Ministry's control and beyond the scope of the childcare subsidy legislation which empowers the Minister, not the care providers, to regulate the ACCB.

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

Looking forward to the 2023/24 reporting year, I am confident that the Tribunal will move forward with its embrace of continual process improvements as our staff work to improve user experience and access to justice for all bringing appeals to the Tribunal.

This reporting year will see the Tribunal provide information to users in languages other than English. We know that understanding the appeal process can be difficult and it is even more so when the only information provided is not in many users' first language. Accordingly, information will be made available about the Tribunal's services in the following languages:

- Arabic
- Chinese Simplified
- Chinese Traditional
- Persian (Farsi)
- Punjabi
- American Sign Language (ASL)

The Tribunal will also revisit the format of its hearings. At the time of writing this annual report, the Tribunal has returned to offering in-person hearings, something that was suspended since March 2020 due to the pandemic. In addition to in person hearings, the Tribunal will continue to offer appellants a wide choice of hearing methods for their appeals. Written appeals and appeals via teleconference and video-conference will remain available. It is important that the Tribunal offer hearings in multiple formats so appellants can choose the format that best meets their individual needs and circumstances.

I also expect the Tribunal's Reconciliation Working Group to continue to meet regularly to further the Tribunal's work towards reconciliation with the Indigenous Peoples of British Columbia. I anticipate that the group will continue to make recommendations for process changes and ongoing education at the Tribunal. Of note, I expect the group to obtain and review data regarding the number of appellants that are Indigenous compared to the number of initial applicants for ministry services. The group will be examining this data to uncover potential systemic barriers that exist and to help

determine where, along the process between initial application and appeal, individuals cease to engage with the existing appeal processes.

As mentioned in the 2021/22 annual report, I continue to hope to see the Tribunal's Anti-Systemic Discrimination Working Group formally established. The group's launch was delayed last year as we awaited the creation of the *Anti-Racism Data Act*. However, while this much anticipated piece of legislation recently came into force, at the time of writing, the Tribunal is not a prescribed public agency governed by the Act. Despite this, I am working with others in the justice sector to move forward with this important work to identify best practices for gathering and using disaggregated data to identify systemic barriers faced by certain populations.

I look forward to the coming reporting period. It is my pleasure to serve as 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, 2023

Christina Cumming

Lisa Lee

Kristen Ross

Michael Doris

Nicholas Paetz

Chelsea Sumpter

Emily Drown

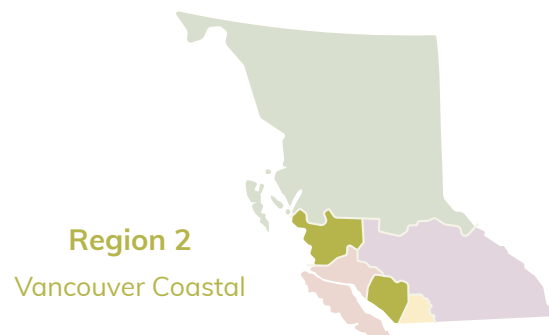
Amy Penner

Jennine Gates

Amy Power

Appendix B

Tribunal Members by Region as of March 31, 2023



Tina Ahnert

Kent Ashby

Jan Broocke

Corrie Campbell

Emily Drown

Robert Fenske

Richard Franklin

Melissa McLean

Trevor Morley

Inge Morrissey

Wesley Nelson

Jane Nielsen

Margarita Papenbrock

Glenn Prior

Joseph Rodgers

Charles Schellinck

Michael Skinner

Jennifer Smith

Kenneth Smith

Donald Stedeford

Gordon Thompson

Anil Aggarwal

Gregory Allen

Daniel Chow

Susanne Dahlin

Susan Ferguson

Barbara Insley

Julie Iuvancigh

Margaret Koren

Kim Louie

Maryam Majedi

Robert McDowell

Peter Mennie

Diane O'Connor

David Roberts

Adam Shee

Connie Simonsen

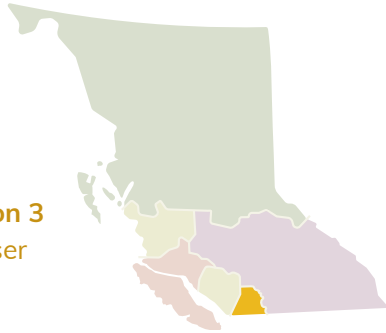
Katherine Wellburn

Edward Wong

Appendix B

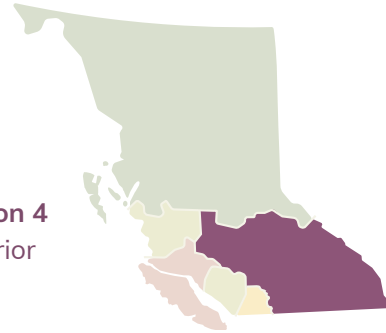
Tribunal Members by Region as of March 31, 2023

Region 3
Fraser



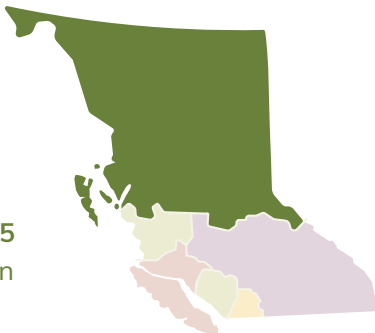
- | | |
|--------------------|----------------|
| Jennifer Armstrong | Elaine Jeffery |
| Cynthia Agbozo | Sameer Kajani |
| Kulwant Bal | Neena Keram |
| Man Lin Chang | Adeola Olulana |
| Vivienne Chin | Barbara Sharp |
| Simon Clews | Rubina Sidhu |
| William Farr | Perihan Sucu |
| Ransiri Fernando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

Region 4
Interior



- | | |
|--------------------|--------------------|
| Sarah Bijl | Jean Lorenz |
| Janet Black | Wendy Marten |
| Shannon Campbell | Dawn Martin |
| Tara Cescon | Shelly McLaughlin |
| Mary Chell | Carmen Pickering |
| Patrick Cooper | John Pickford |
| Cherri Fitzsimmons | Linda Pierre |
| Bill Haire | Erin Rennison |
| Robert Kelly | Effrossini Simpson |
| Laurie Kent | Helene Walford |

Region 5
Northern



- | | |
|--------------|------------------|
| Kevin Ash | Donna Klingspohn |
| Rick Bizarro | Janet Ward |

Appendix C

Budget (April 1, 2022 – March 31, 2023)

The provincial government's fiscal year begins April 1st. This Annual Report covers April 1, 2022 to March 31, 2023. The budget table presents the Tribunal's actual expenditures for the last two fiscal years.

OPERATING BUDGET	APRIL 2022– MARCH 2023	APRIL 2021 – MARCH 2022
Salaries and Benefits	\$ 873,605	\$ 852,597
Boards/Commissions/Courts – Fees and Expenses	237,607	137,712
Public Servant Travel	780	(2,735)
Professional Services: Operational	32,123	100,987
Information Systems: Operating	219,338	235,217
Office and Business Expenses	25,681	26,385
Statutory Advertising and Publications	0	3,011
Amortization Expense	51,432	51,432
Other Expenses	34	34
TOTAL	\$ 1,440,600	\$ 1,404,639

How to Contact Us

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Victoria BC V8W 9R7

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

EMAIL: info@eaat.ca

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