THE LAW FOUNDATION OF BRITISH COLUMBIA

Legal Aid BC

2022 PROVINCIAL ADVOCATES TRAINING CONFERENCE

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THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Strategies for Clients Dealing with Employment Issues

Kevin Love; Odette Dempsey-Caputo

A review of employment issues that may arise for your clients and a discussion of how to recognize appropriate responses.

EMPLOYMENT LAW

Strategies for advocates

1

Introduction

Kevin Love
Lawyer
CLAS' Community Law Program

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Senior Lawyer
Elizabeth Fry Legal Clinic

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FEDERAL LEGISLATION

Canada Labour Code, RSC 1985, c L-2,: sets out minimum employment standards for federal employees.

Canadian Human Rights Act, RSC 1985, c H-6: covers discrimination in the workplace and the procedure for adjudication before the Canadian Human Rights Commission

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PROVINCIAL LEGISLATION

Employment Standards Act, RSBC 1996, c 113, (ESA) sets out minimum employment standards for provincial employees.

Employment Standards Regulation, BC Reg 396/95, includes provisions on the scope of coverage and the penalty regime.

Human Rights Code, RSBC 1996, c 210, deals with discrimination in employment, among other things.

Labour Relations Code, RSBC 1996, c 244, deals with union membership, collective bargaining, and the role of the Labour Relations Board.

Workers' Compensation Act, RSBC 2019, c 1, governing Act of the Workers' Compensation Board.

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FEDERAL

- Banking
- Airlines
- Interprovincial travel
- Telecommunications
- Fisheries
- Federal departments and agencies (RCMP)
- Indigenous governance

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Provincial

- Healthcare
- Education
- Housing
- Services and facilities to public
- provincial government employees
- Some Indigenous employment
- Most workplaces

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Contractor or Employee

- Employees have greater protections then contractors.
- Harder to enforce your contract if a contractor.
- Tax differences.

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Independant Contractor or Employee

Degree of control	**Contractor has more control than an employee**
Ongoing relationship	**Employee has ongoing relationship**
Connection to business	**Work performed is not integral**
Number of clients	**Has numerous clients**
Risk	**Contractor has more risk and also chance of profit.**

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Dependent Contractor

- Does the employer work for one person.
- If the employer has cotnrol over how much the client works.
- Does the client use the employers tools
- does the employer take deductions off the client's pay (EI et c.)
- Does the client risk loss of profit.
- The length of the employer/employee relationship
- How much the client and the employer relines on and coordinates with the client.

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Employment Standards Act

Common issues under the ESA:

- hours/overtime
- wages
- breaks during workday
- vacation days and stats
- severance (pay when fired)

Rights under ESA cannot be enforced in court.

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Employment Standards Act

Not every work issue, workplace or type of work is covered by employment standards. ESA does not cover:

- Workplace safety or injuries
- Bullying or harassment
- Unionized or federally-regulated workplaces
- contractors and dependent contractors
- Excluded jobs and professions

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Employment Standards Tribunal

- **No fee to submit a complaint.**
- **Complaints are handled in order.**
- **Limitations:**
  - still working with the employer one year.
  - no longer working 6 months.
- **You can submit the complaint online.**
- **They contact the parties and then investigate.**

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Constructive Dismissal

- The employer has fundamentally changed the employment contract in a significant way.
- You must act on this right away or your deemed to have accepted the change.

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WITH CAUSE/WITHOUT CAUSE

- Employers can dismiss an employee at any time without cause if they give reasonable notice or pay in lieu of notice.
- no notice is needed if the employee is guilty of serious misconduct.
- Normally the employer must have warned the employee to be considered with cause.

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NOTICE/SEVERANCE

- Term in the contract that states the amount of notice needed:
  - This amount CANNOT be lower than the ESA.
- If no term in the contract then there are two notices:
  - the ESA
  - Common Law
- Employee can sue in CRT, Small Claims or Supreme Court and make complaint to Employment Standards.
- Employee **MUST** mitigate their losses.

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Notice under ESA section 63(3)(a)

- **One week**s' notice after three consecutive months of employment
- **Two weeks'** notice after twelve consecutive months of employment
- **Three weeks'** notice after three consecutive years of employment,
- after three years **three weeks** notice **plus one** additional week for each additional year of employment, to a maximum of **eight weeks'** notice.

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Common Law Notice Factors

- the character of the employment.
- the length of time employed
- age of the employee
- the availability of similar employment:
  - with same experience
  - with same pay
- location of the employment
- training and qualifications of the employee

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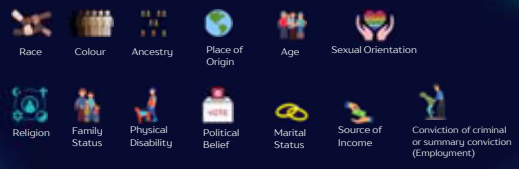
Human Rights Prohibited Grounds



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HUMAN RIGHTS

- A workplace should be free of discrimination it is up to the employer to ensure this.
- An employer or colleague cannot discriminate on the prohibited grounds.
- The workplace should be free of discrimination during hiring and during employment.
- consider if the issue is a bona fide requirment.
- You can get a compensation for injury to dignity and other damages.

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Workers Compensation Act

- Worker can file a claim against an employer who retaliates for raising safety issues.
- Retaliation includes a wide range of conduct such as firing, demotion, discipline etc.
- Rare case where worker can get money directly from employer through WCB system.
- Not limited to "reasonable notice" type damages. Should put worker back in position they would have been.
- **No** damages for injury to dignity, pain and suffering etc.

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What to Consider to determine venue

- What outcomes you want
- How strong the claim is
- How long it might take to get a result
- How much it would cost to bring in the different venues

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Can you do two venues at once?

- You can do ESA and other venues same time.
- When deciding between HRT and the Courts consider:
  - Are there separate issues
- The HRT or court claim may get deferred (postponed)
- When the other claim is finished the HRT may decide to continue or dismiss the claim.

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FIRST QUESITONS YOU NEED TO ASK!

Let's begin!

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Questions

01. Is there an employment contract

02. Was it a fixed term or not

03. Is there a union?

04. How long have they worked there?

05. What position/wage did they start with and what did they end with

06. What if any discipline has occurred in the past.

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Scenario 1

Kay Oss is a waiter. They are constantly late for work, forget orders and drop dishes. Kay Oss has worked at the restaurant for 8 years in the morning shift. The manager changed Kay Oss' hours to the evening and reduced their hours. Kay Oss cannot have their hours changed because of childcare. When Kay Oss tells their manager this, the manger says "too bad" so they quit.

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Scenario 2

Ava Akimoto (55 years old) applied to be a housekeeper. She accepted the job and signed a contract of employment. They asked for a criminal check. She worked for one week when her criminal check came back with a DUI she was fired on the spot.

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Scenario 3

Jack Alvero was working as a school administrator in a remote Indigenous community. He had worked there for 6 years. He was let go one day because he had shown up late for the fifth time that year. He has no education and was making $35 per hour.

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Any Questions?

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THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Update on EI and Related Federal Benefits

Kevin Love

An update on changes in EI and other related federal benefits.

Employment Insurance

Kevin Love
Community Legal Assistance Society
October 26, 2022

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Where Have We Been?

- April 2020 – September 2020: CERB (EI ERB)
- Sept 2020 – October 2021
  - Expanded EI
  - Canada Recovery Benefits for people not covered by EI
- October 2021 to September 2022
  - Expanded EI
  - No parallel benefit scheme for people not covered by EI

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Where are we now?

- Back to the pre-pandemic EI rules.
- No parallel scheme for people not covered by EI.

3

Who is covered by EI?

- Workers employed in "insurable employment" are automatically covered.
- Self-employed people are not automatically covered. Must voluntarily op-in and can only receive special benefits.
- Separate scheme for self-employed fishers

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Types of Benefits

- Regular Benefits – paid when worker loses job for reasons beyond their control.
- Special Benefits.
- Employment (training) benefits – assistance to help workers get back to work.

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Two Concepts

- Qualifying: Getting in the front door.
  - Is worker covered by system?
  - Does worker have enough hours to qualify?
  - Does worker have an interruption of earnings?
  - Has worker done something to disqualify themselves?
- Entitlement: What claimant needs to do to get benefits for a particular week:
  - Doing job search.
  - Being capable of and available for work.
  - Being in Canada (unless an exception applies).

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QUALIFYING FOR REGULAR BENEFITS

7

Interruption of Earnings

- 7 days during which no work is performed and no earnings are received.
- Severance pay does not delay the interruption of earnings.

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Qualifying Period

- Period in which the claimant must accumulate enough insurable hours to qualify for EI.
- Generally 52 weeks before the later of:
  a. the week the person loses their job; or
  b. the week the application for EI is made
- Can be extended in certain circumstances such as illness, pregnancy, or jail.
- Max length of qualifying period is 104 weeks.

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Antedates

- Basically means back-dating an application to the week claimant was laid-off.
- Commission will automatically antedate any application made within 4 weeks of lay-off.
- Beyond 4 weeks, must show "good cause" for the delay.

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Number of Hours Needed

Regional Rate of Unemployment	Hours
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

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DISQUALIFICATIONS

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Disqualifications

- Lose job due to your own misconduct:
  "Misconduct" means willful conduct inconsistent with the due and faithful discharge of employment duties.
- Voluntarily quitting without just cause:
  "Just cause" means the claimant had no reasonable alternative to quitting given all the circumstances, including those set out in section 29(c) of the EIA.

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Juan

- Juan works for a painting company. Juan often has to work on ladders. Juan felt the ladders his company used were unsafe. He raised the issue with his supervisor. His supervisor told him to shut up and keep working or else he'd be fired. Juan hurled some insults at the supervisor and said he wouldn't come back to work unless the company got new ladders. Juan's supervisor said "I don't really need you anyway". Juan hasn't gone back to work since.
- Do you think Juan would be disqualified?
- If you need more information, what would you ask Juan?

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WHAT DO I GET IF I QUALIFY?

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Benefit Period

- Period during which claimant must claim whatever benefits they are entitled to.
- Generally 52 after the later of:
  a. the week the person loses their job; or
  b. the week the application for EI is made
- Can be extended in certain circumstances:
  a. In jail and not found guilty
  b. Receiving severance
  c. Receiving workers' compensation

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Benefit Rate

- 55% of average weekly earnings.
- Top up for low-income families.

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Best Weeks in Qualifying Period

Regional Rate of Unemployment	Best Number of Weeks in Average
not more than 6%	22
more than 6% but not more than 7%	21
more than 7% but not more than 8%	20
more than 8% but not more than 9%	19
more than 9% but not more than 10%	18
more than 10% but not more than 11%	17
more than 11% but not more than 12%	16
more than 12% but not more than 13%	15
more than 13%	14

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Weeks of Benefits

- Determined by number of insurable hours in qualifying period and unemployment rate in region.
- More hours, more weeks.
- Higher unemployment rate, more weeks.
- Must all be claimed before benefit period ends.

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Waiting Period

- All claimants must serve a 1 week waiting period during which they cannot receive benefits.
- Don't lose a week of benefits, just can't collect your benefits that week.

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Staying of Benefits

•Be available and looking for work.

•Accept suitable employment.

•Remain in Canada.

•Follow directions from EI staff.

•Report to EI.

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Emerging Issue – Availability

- People told to collect EI when they really were not available.
- EI didn't assess availability at the time reports were filed.
- EI now assessing availability many months after the fact.
- People who provided complete and truthful information about their (non)availability being asked to repay benefits.

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Emerging Issue – Availability

- Item 17.3.3 of Digest of Benefit Entitlement Principles.
- EI not supposed to retroactively change a discretionary (judgment call) decision absent new information.
- Is a decision to pay benefits a decision the claimant is entitled to those benefits?
- EI people trying to say pandemic related EI changes let them delay decisions (EIA, s. 153.161).

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Emerging Issue: Part-time Availability

- EI often disqualifies people who are not available for full-time work.
- But there is no rule saying claimant must be available for full-time work.
- Availability depends on context.
- Some cases now confirming that requirement to be available for work while on EI should correspond to work done before.

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Rose

- Rose is an international student. She has an international student visa that lets her work, but only up to 20 hours each week.
- Rose had a job working in restaurant on campus for 20 hours per week. However, she was laid-off in November of 2021.
- She applied for EI right after and started getting EI benefits. Her application explicitly told EI that she was a student and that she was restricted to 20 hours per week of work by her work permit.
- Last month, she got a call from the EI people asking her questions about her school and work permit. This was followed by a letter saying that she had to pay back all the EI benefits because she was not available for work.
- What questions would you ask Rose?

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SPECIAL BENEFITS

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6 Kinds of Special Benefits

- Sickness (medical) benefits
- Pregnancy
- Parental
- Compassionate Care
- Family caregiver benefit for children
- Family caregiver benefit for adult

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The Common Basics

- All require 600 hours to qualify.
- 40% reduction in earnings is considered an interruption.
- If you qualify, you get 55% of average earnings.

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Sickness Benefits

- Maximum of 15 weeks
- Should be increased to 26 weeks shortly.
- Unable to work due to illness, injury, or quarantine.
- Must show you would have been available to work had it not been for the illness, injury, or quarantine

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Pregnancy Benefits

- Maximum 15 weeks
- Can begin collecting benefits up to 12 weeks before due date
- Entitlement to pregnancy benefits ends 17 weeks after delivery

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Parental Benefits

- Either parent may collect benefits
- Available to adoptive parents
- Parents can split benefits. Parents get more total benefits if they split!
- To split, both parents must independently qualify

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Parental Benefits

Option 1:
- Get 55% of earnings for 35 weeks
- Must collect within 52 weeks of birth or adoption
- Max 40 weeks, but one parent can't take more than 35

Option 2:
- Get 33% of earnings for 61 weeks
- Must collect within 78 weeks of birth or adoption
- Max 69 weeks, but one parent can't take more than 61

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Compassionate Care Benefits

- Payable if claimant is caring for a family member who faces a significant risk of death in the next 26 weeks
- "Family" is broad and includes anyone who considers you part of their family
- Maximum 26 weeks

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Family Caregiver Benefits for Adults

- 15 weeks of benefits to care or support a critically ill adult
- "Critically ill" means life is at risk due to change in baseline health
- Can be split between family members who independently qualify

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Family Caregiver Benefits for Children

- 35 weeks of benefits to care or support a critically ill adult
- "Critically ill" means life is at risk due to change in baseline health
- Can be split between family members who independently qualify

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Earnings While on EI

- Earning threshold set at 90% of your average weekly earnings:
  - Earnings below threshold: 50% deducted
  - Earnings above threshold: 100% deducted
- In plain English, total of EI and earnings can never be higher than what you were making before

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Earning While on EI

- Claimant earned $400 each week before getting laid off.
- Earnings threshold is $360.
- Claimant earns $380
  - ➢ Deduct 50% up to threshold = $180
  - ➢ Deduct 100% above threshold = $20
- Total deducted = $200

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Penalties

- Can be imposed if claimant knowingly provided false or misleading information
- Generally a monetary penalty, however, Commission may impose a "warning" instead

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Violations

- In addition to a penalty, Commission may impose a "violation".
- Violations increase the number of hours a claimant requires to qualify for EI for the next 260 weeks.
- Increase in weeks depends on severity of violation measured by benefits wrongly paid.

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Appeal System

	Deadline	New evidence?
Commission Reconsideration	30 days	Yes
Appeal to Social Security Tribunal General Division	30 days	Yes
Appeal to Social Security Tribunal Appeal Division	30 days	Generally no. - Error of law or jurisdiction - Procedural unfairness - Perverse and capricious finding of fact unsupported by the record

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Insurability Appeals

- The Canada Revenue Agency has exclusive power to determine certain EI matters, such as:
  - Whether the employment is covered by EI
  - How many hours and earnings the person had
- Appeals from CRA decisions go to the Minister of National Revenue, then to the Tax Court.

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QUESTIONS?

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Writing-off EI Debt

- "Write-off" means to wipe the debt off the government's books.
- Does not mean debt is not legally owing.
- EI has provisions specifically dealing with write-offs.
- CERB and CRBs have no specific write-off provisions.

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Writing-Off EI Overpayments

- General EI Overpayments:
  - Section 56 of the Employment Insurance **Regulation**
- EI ERB Overpayments:
  - Section 153.1306(1) Of the Employment Insurance **Act.**

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Writing-Off EI Overpayments

- Undue hardship.
- Severance becomes payable after EI paid if no misrepresentation by claimant.
- Later decision from CRA impacting insurable hours and earnings if no misrepresentation by claimant.
- Bankruptcy.
- Death.
- Very small or uncollectable debts.
- Note: Always discretionary! These do not automatically get a write-off.

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Writing-Off EI Overpayments

- Some reasons for write-off apply only if overpayment is declared more than a year after the week for which benefits were paid:
  - Commission delay or error.
  - Employer error on RoE or about hours or earnings.
- Must not be due to false or misleading information from claimant (accidental or deliberate).
- Generally requires that claimant could not have reasonably known benefits were being wrongly paid.

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Writing-Off EI Overpayments: Process

- Lots of confusion and very little information.
- Call Service Canada at 1(800)206-7218.
  - Say you want to apply for a write-off, which needs a "level two decision-maker".
- CRA apparently makes "recommendations" to Service Canada about undue hardship.
- Often get bounced back and forth.
- No right to reconsider or appeal write-off decisions.

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Writing-Off Other Federal Benefit Overpayments

- No explicit right for individual claimants to request a write-off.
- Exception: Self-employed people who qualified for CERB with $5,000 gross as opposed taxable income.

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Payment Plans

- CRA collects all EI debts.
- Call CRA 1-866-864-5841.
- A payment plan does not necessarily stop CRA from scooping other benefits.
- A partial payment is a debt acknowledgement which can restart the clock for CERB \ CRB collections.

CLAS Community Legal Assistance Society

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2022 PROVINCIAL ADVOCATES TRAINING CONFERENCE

Child Support Recalculation

Sandra Wolfe; Christian Lett

Government staff who are very familiar with child support recalculation services now avaiable in BC will present information about their work and answer questions from advocates working on these issues.

CHILD SUPPORT RECALCULATION SERVICE

WHAT IS CSRS?

The Child Support Recalculation Service helps families with child support orders and written agreements maintain a fair standard of support for their children by reviewing the amount of child support to be paid each year. The recalculation service adjusts the amount of child support if income has gone up or down so that parents do not have to return to court to have their child support amounts reviewed.

CSRS EXPANSION

- All Provincial Court locations
- Expanded eligibility criteria
- Opt-in or court-ordered

March 1, 2022
Regulation changes take effect & soft launch of service province wide

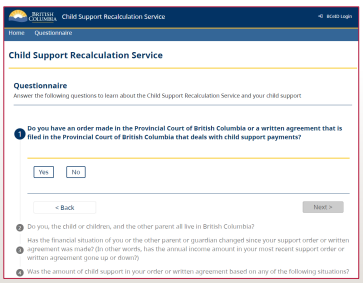
Public announcement & full program launch
April 4, 2022

GETTING STARTED

Order or Filed Agreement	CSRS Website	Apply Online	Decision
• British Columbia Provincial Court	• Questionnaire • About the service	• BCeID • Complete application • Upload order	• Recalculation officer determines eligibility

ONLINE QUESTIONNAIRE

childsupportrecalc.gov.bc.ca/questionnaire



ELIGIBILITY - 1ST TEST

Child Support Recalculation Service (CSRS) Eligibility Criteria under Section 18 of the FLA Regulation

- Do both parties live in BC?
- Order or Agreement from BCPC?
- Child support amount based on CSG?
- Includes essential information?

If "YES" to all of the above, proceed to 2nd test…

ELIGIBILITY - 2ND TEST

Child Support Recalculation Service (CSRS) Eligibility Criteria under Section 18 of the FLA Regulation

YES, if…

- Shared/Split parenting
- Age of majority
- s. 7 expenses
- Orders made under *ISO Act*

NO, if…

- Imputed income
- Self-employment
- Pattern of income
- Undue hardship
- Payor stands in place of parent

ELIGIBILITY - CONSIDERATIONS

Shared Parenting

- Based on CSG table amount & both incomes
- FLA Regulation 18(2)(b)

Age of Majority

- Parties must agree
- CSRS does not determine eligibility

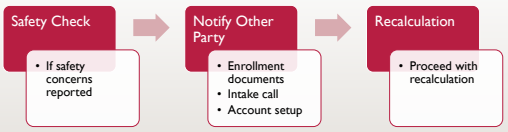
Section 7 Expenses

- Proportion based Order/Agreement
- Both incomes included

Complex Terms

- Timelines
- Income & deductions

ENROLLMENT



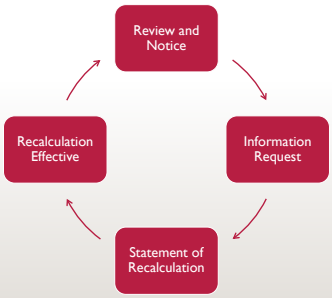
ANNIVERSARY DATE

Order/Agreement	Anniversary date based on
Within last 7 months	Date Order/Agreement was made
Older than 7 months	5 months from date of enrollment

- At least 1 year after Order/Agreement made
- Recalculation is never retroactive

RECALCULATION PROCESS

- Annual cycle
- About four months to complete
- Timelines base on FLA Regulation



INCOME INFORMATION

Income verification:

- Tax assessment and income tax return

Who provides:

- Any party whose income was a factor in the original Order/Agreement
- Both parties provide if:
  - Shared parenting
  - Split parenting
  - Special or extraordinary expenses

NO INCOME INFORMATION? NO PROBLEM!

Automatic increase of income as stated in previous Order/Agreement or statement of recalculation.

Time passed since last order or recalculation decision	Income increased by:
Less than 2 years	10%
More than 2 years, but less than 5 years	15%
More than 5 years, but less than 10 years	20%
More than 10 years	30%

DISPUTE PROCESS

Statement of Recalculation → Dispute Period (30 Days) → Recalculation Effective

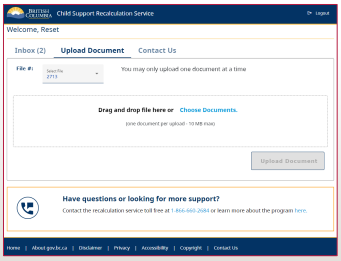
- Party files an Application About a Family Law Matter or Notice to Resolve a Family Law Matter (Early Resolution Registries)
- CSRS suspends recalculation and current child support remains in effect until:
  - New order is made; or
  - Application is dismissed or withdrawn; or
  - 60 days have passed without the applicant taking the necessary steps to move matter forward

COMMUNICATION

Portal
- Apply
- Upload Documents
- Send and receive messages

Phone

Canada Post



KEEP IN MIND

Limits of administrative service

We do the math, we don't make decisions on entitlement.

Criteria restrictions

BCFMA

Recalculation does not guarantee enforcement.

Regulations

Determine timing, not terms in the agreement

KEY TAKEAWAYS

Timelines
4 to 5 months

No retroactive recalculation

Financial information
Tax return & assessment

LEGISLATION – *FAMILY LAW ACT*

Section 154
Establishment of child support service

(1) The minister may establish a child support service for the purposes set out in this section.

(2) The child support service may do all of the following:
- (a) assist courts in determining child support;
- (b) recalculate child support under section 155 [recalculation of child support];
- (c) perform additional duties as required by the minister.

LEGISLATION – *FAMILY LAW ACT REGS*

***Family Law Act Regulation* – Part 5**

- Income information to be provided to child support service
- Notification of recalculated amount
- Child support service must decline recalculation
- Requirements for recalculation under child support agreements
- Application respecting recalculated amount

INFORMATION RESOURCES

- CSRS portal: *childsupportrecalc.gov.bc.ca*
- BC Government website
- CSRS General Information Fact Sheet
- More printed materials to come

BRITISH COLUMBIA

THANK YOU

Child Support Recalculation Service
General Information Fact Sheet

The Child Support Recalculation Service (CSRS) is a free, administrative program that reviews eligible orders and written agreements for child support each year. CSRS adjusts the amount of child support payable if the paying parent's income has gone up or down.

Our goal is to help families keep child support amounts updated so they can avoid the time and expense of having to ask a court to review their child support.

Who can use CSRS? Parents (recipients and payors) may use the service if:

- ✓ They both live in BC.
- ✓ Have an order made or an agreement filed in a British Columbia Provincial Court.
- ✓ Their child support is for a table amount (an amount that is fixed using the *Child Support Guidelines* tables) and is generally based on the parent's actual income.

Can CSRS recalculate all child support orders? No, the service cannot recalculate when a payor's income (and the recipient's income if their income was also used for the calculation of child support) was based on:

- x Imputed income,
- x Self-employment income or partnership income,
- x Pattern of income,
- x Undue hardship,
- x Age of majority (where factors other than the table amounts have been applied),
- x Shared parenting time (where factors other than the table amounts of each parent have been applied),
- x Income over $150,000 and the table amount not applied, or
- x Payor stands in the place of a parent (eg. step-parent).

We can't recalculate child support arrears (unpaid amounts) either. If parents can't agree on arrears, it would be a judge who can cancel or reduce child support arrears through a court application.

What if an order includes special expenses? We may recalculate the proportion each parent owes if the order or agreement includes the proportionate share each of them must pay for the expense based on their incomes.

How do you enrol? Either parent can apply to enrol in the service. If one parent enrols, the other parent named in the order or agreement is automatically enrolled. You can apply by contacting the CSRS (contact information below), and as of April 4, 2022 you will be able to apply online at **childsupportrecalc.gov.bc.ca**

We may also receive orders directly from a court registry if a judge makes an order for child support and determines that it be recalculated by the service.

Questions?
Contact us:

Ministry of Attorney General
Child Support Recalculation Service

PO Box 2074 Stn Main
Vancouver BC V6B 3S3

Toll-free: 1-866-660-2684
Facsimile: (604) 660-2678

Child Support Recalculation Service
General Information Fact Sheet

How is child support recalculated? Child support recalculation does not happen immediately. For eligible orders and agreements, the **recalculation process takes about four months** before a new child support amount becomes payable. This is because the service must send important notices to parties prior to recalculation and allow them time to review and respond, if appropriate.

Each year, the service:

1. **Sets a recalculation schedule, which includes a "recalculation anniversary date",** the date when a new child support amount will start. Generally, the anniversary date falls on the date of the order; however, CSRS may use another date instead if other circumstances impact the timing of recalculation.
2. Asks payors (and some recipients if their income is also required), before the recalculation anniversary date, **to provide their income tax information** filed with Canada Revenue Agency for the most recent tax year.
3. Sends both parents a **Statement of Recalculation**, a copy of which is filed with the court and includes:
   - the new child support amount (if there is a change of at least $5.00 from the current amount),
   - the parent's income information used to arrive at the recalculated amount, and
   - the date when the new amount becomes payable.

CSRS will also send a copy of a Statement of Recalculation to the Family Maintenance Enforcement Program (FMEP) at the BC Family Maintenance Agency if parents have an FMEP file.

What happens if the other parent doesn't cooperate and provide income information as requested? The service can apply a "deemed" income increase by adding **10 to 30 percent** to the most recent income amount used in the child support order, agreement or a recalculation statement. The rate of increase depends on how much time has passed since child support was last reviewed. We then recalculate child support using the increased income amount.

What if the other parent or I disagree with the recalculated child support amount? You can make an application to court within 30 days of receiving the recalculation statement. If this happens, the new recalculated support amount does not take effect. A judge will decide on child support.

Can I withdraw from the service? You can withdraw if:

- your order doesn't require you to have your child support recalculated by the service;
- we receive your written request to withdraw at least 60 days before the annual recalculation date ("recalculation anniversary date"); and
- the other parent also agrees to withdraw. (Both parents **must** agree.)

Can I speak to a Recalculation Officer? Yes, call the CSRS toll-free line at: 1-866-660-2684

Questions? Contact us:
Ministry of Attorney General
Child Support Recalculation Service
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Vancouver BC V6B 3S3
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THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Family Case Law Update

Agnes Huang

A perennial favourite - a survey of important family law cases from the last year.

Provincial Advocates Conference

Family Law Update

November 15, 2022

Agnes Huang
Saltwater Law

1

Relocation

Barendreght v. Grebliunas, 2022 SCC 22

- The issue was a relocation case: Telkwa or Kelowna.
- The Trial Judge allowed the children to be relocated to Telkwa with the Mother.
- The B.C. Court of Appeal held that the children's best interests were best served by staying in Kelowna with both parents.
- The S.C.C. allowed the appeal and restored the Trial Judge's decision to permit the Mother to move to Telkwa.
- Intervenors at the S.C.C. included the West Coast LEAF and the Rise Women's Legal Centre.

2

Relocation

- At trial, Justice Saunders' primary concern was that, if the Mother stayed in Kelowna, she would be subjected to ongoing dynamics of abuse in light of the Father's "overbearing personality", his history of physically and emotionally abusing the Mother, and the Mother's lack of a support system in Kelowna.

3

Relocation

- The S.C.C. set out the two-part inquiry in the leading relocation case, *Gordon v. Goetz*, [1996] 2 SCR 27.
- First step: the party seeking to relocate must show a material change of the child's circumstances
- Second step: the Judge must determine what order reflects the best interests of the child in the new circumstances. Determining the child's best interests will often constitute the crucial question.

4

Relocation

- The new *Divorce Act* (which came into force on March 1, 2021) has largely codified the *Gordon* framework.
- The common law relocation framework can be restated as follows:

1) Courts must determine whether relocation is in the best interests of the child, having regard to the child's physical, emotional and psychological safety, security and well-being.

5

Relocation

2) The inquiry is highly fact-specific and discretionary.
3) A court shall consider all factors related to the circumstances of the child, which may include:
   a) The child's views and preferences
   b) The history of caregiving

6

Relocation

c) any incidents of family violence

d) a child's cultural, linguistic, religious and spiritual upbringing

4) The Court must also consider each parent's willingness to support the development and maintenance of the child's relationship with the other parent

7

Relocation

5) The Court must give effect to the principle that a child should have as much time with each parent, as is consistent with the best interests of the child.

6) The Courts should not consider whether the parent who intends to move would relocate without the child.

8

Relocation

The S.C.C. had a lot to say about family violence considerations (at paras. 142 to 147), including:

- Since *Gordon*, courts have increasingly recognized that any family violence or abuse may affect a child's welfare and should be considered in relocation decisions. Courts have been significantly more likely to allow relocation applications where there was a finding of abuse.

9

Relocation

- The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives.

10

Relocation

- Domestic violence allegations are notoriously difficult to prove. As the interveners West Coast LEAF Association and Rise Women's Legal Centre point out, family violence often takes place behind closed doors and may lack corroborating evidence. Thus, proof of even one incident may raise safety concerns for the victim or may overlap with and enhance the significance of other factors, such as the need for limited contact or support.

11

Relocation

- The prospect that such findings could be unnecessarily relitigated on appeal will only deter abuse survivors from coming forward. And as it stands, the evidence shows that most family violence goes unreported.

12

Relocation

- The recent amendments to the *Divorce Act* recognize that findings of family violence are a critical consideration in the best interests analysis: s. 16(3)(j) and (4). The *Divorce Act* broadly defines family violence in s. 2(1) to include any violent or threatening conduct, ranging from physical abuse to psychological and financial abuse. Courts must consider family violence and its impact on the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child.

13

Relocation

- Because family violence may be a reason for the relocation and given the grave implications that any form of family violence poses for the positive development of children, this is an important factor in mobility cases.

14

Relocation

The S.C.C. also addressed the importance of the relocating parent's need for emotional support (paras. 169 to 173), including:

- The mother's need for emotional support was a relevant consideration in the best interests analysis. The mother followed the father to Kelowna, but her family remained in Telkwa. A move that can improve a parent's emotional and psychological state can enrich a parent's ability to cultivate a healthy, supportive, and positive environment for their child. Courts have frequently recognized that a child's best interests are furthered by a well-functioning and happy parent.

15

Relocation

- It is also simplistic to suggest that emotional support for the mother was the only benefit that weighed in favour of relocation. The trial judge described, in great detail, how the continuing animosity between the parents would impact the children should they stay in Kelowna. He also noted that the move would provide the mother with the benefit of housing support, childcare, better employment, and opportunities to advance her education.

16

Relocation

- These considerations all have direct or indirect bearing on the best-interests-of-the-child assessment. Relocation that provides a parent with more education, employment opportunities, and economic stability can contribute to a child's well-being.

17

Relocation

- Similarly, the additional support of family and community at the new location can enhance the parent's ability to care for the children. Extended family, for example, can provide additional support to children while their parents begin to navigate the new terrain of post-separation life.

18

Relocation

- It is often difficult to disentangle the interests of a parent from the interests of a child. Indeed, "the reality that the nurture of children is inextricably intertwined with the well-being of the nurturing parent" is far from novel. A child's welfare is often advanced in tandem with improvements in the parent's financial, social, and emotional circumstances. The trial judge found this to be the case here.

19

Barendreght Applied

K.H.D. v. O.O.M., 2022 BCSC 1525 (Master Bilawich)

- Master Bilawich cited the S.C.C.'s decision in *Barendreght* at length in granting the Mother permission to relocate to Florida with the children on an interim application.
- Master Bilawich granted the order so that the Mother and the children could receive the support of the Mother's family and have some distance from the Father.

20

Barendreght Applied

- Although the court stated that there were many conflicts in the evidence that it could not resolve, it was able to make sufficient findings of fact about a history of family violence and ongoing family violence, particularly ongoing harassment of the mother and of people associated with her which adversely impact the children.

21

Barendreght Applied

- Harassment included a complaint about the children's counsellor to her governing body, which interfered with needed counseling for the children, and repeated complaints to the police and other third parties about the mother's partner, which resulted in repeatedly subjecting the children to interviews by the authorities.

22

Interim Sale of Property

Grenier v. Carrat, 2022 BCSC 1531 (Master Keighley)

- The Claimant sought an order to sell the family residence, which was a modular home. The home was occupied by the Respondent, when he was in town working.
- Master Keighley understood the Claimant's rationale for seeking the sale to be: a) to expedite a settlement of the case, and b) to provide her with an opportunity to obtain an order for payment from the proceeds to assist her in funding her legal fees (under s. 89 of the *Family Law Act*).

23

Interim Sale of Property

- The test for interim sales of property (under the *Supreme Court Family Rules*) is two-fold:
  1) whether a sale is necessary, and
  2) If the sale is not necessary, in a legal sense, whether the sale is expedient
- "Expedient" has been defined by the authorities to be read as "advantageous to both parties".

24

Interim Sale of Property

- Master Keighley dismissed the application for the sale of the modular home.
- Master Keighley found that the sale was not necessary. The mortgage was not in default; the property was not wasting; and there were no suggestions that the value of the property would deteriorate significantly if steps were not taken to market it immediately.

25

Interim Sale of Property

- Master Keighley found that the sale was not expedient; that is, not advantageous to both parties.
- On the Claimant's side - The Claimant might be able to access some of the funds, but there was no guarantee that the Claimant would succeed in her application for an interim distribution from the sale proceeds.
- On the Respondent's side – The modular home provided him with a place to live and he indicated a wish to buy out the Claimant's interest in the home; the Respondent set out in his affidavit the steps he has taken to assure that he has the means to do so.

26

Property/Debt Division after Death

Weaver Estate v. Weaver, 2022 BCCA 79

- The Appellant sought to overturn an order dismissing his application to strike the Notice of Family Claim filed by the administrator of the estate of his former spouse.
- The Appellant and his former spouse had separated 15 years before the former spouse's death. The separation triggered the entitlement to an undivided half interest in family property and equal responsibility for family debt (section 81 of the *Family Law Act)*.
- The family property was said to include real property in B.C., Washington State and Hawaii that was held jointly by the parties.

27

Property/Debt Division after Death

- The former spouse had taken no action to enforce her interest in family property before she died.
- But… the parties never got divorced. That meant that the time limit for bringing a claim for the division of property/debt had not expired. Such claims must be brought within 2 years of an order for divorce (s. 198 of the *Family Law Act*).

28

Property/Debt Division after Death

- The Court of Appeal dismissed the appeal holding that on the reading of the relevant statutory provisions – the *FLA*, the *Supreme Court Family Rules* and the *Wills, Estates and Succession Act* – as a whole, it is clear that in B.C. an administrator of an estate of a separated and deceased spouse may commence a claim for division of family property and family debt after the spouse's death.
- For example, section 150 of *WESA* provides that the "personal representative of a deceased person may commence or continue a proceeding the deceased person could have commenced or continued…"

29

Property/Debt Division after Death

- The Court of Appeal held that the property interest underlying the cause of action crystalized on separation and did not abate on death.
- Unfairness would be created if the estate of a deceased spouse could not advance a claim against the living spouse, but a living spouse could advance a claim against the deceased spouse's estate.

30

Divorce

Gill v. Benipal, 2022 BCCA 49

- The Trial Judge dismissed the Appellant's application for a divorce in exercising discretion after finding that granting a divorce would risk prejudicing the Respondent.
- The Court of Appeal considered the circumstances where a Trial Judge ought to exercise their discretion to grant a divorce order "on the application of one spouse prior to the parties settling or obtaining judgment on property and support issues if there is not a substantial risk of prejudice to the other spouse".

31

Divorce

- The Trial Judge set out the "potential risk of prejudice" to the Respondent Wife of granting a divorce, and held that ordering a divorce was premature arising out of the following:
  a) the Wife's residence in India, the current pandemic restrictions, and her difficulty in instructing counsel;
  b) the Husband's stated position in the response to counterclaim that she is not entitled to either spousal support nor a division of family property;
  c) the Wife's counsel's expressed concerns as to the insufficiency of the Husbands' financial disclosure to [date]; and
  d) the Husband's unavailability as of today for an examination for discovery.

32

Divorce

- The Court of Appeal held that the Trial judge articulated and applied an incorrect legal test.
- It was not on the Appellant to provide reasons to grant him a divorce that outweighed the risk of prejudice the respondent alleged.
- Rather, the party opposing the divorce must establish that granting the order would give rise to actual prejudice or a reasonable likelihood of prejudice that arises from their loss of status as a spouse before the burden shifts to the other party to show that the order should be granted in any event.

33

Divorce

- The Court of Appeal held that the Respondent failed to show such actual prejudice, so there was no principled basis on which to refuse a divorce.
- The Court of Appeal also held that the Trial Judge erred in principle by declining to grant a divorce to incentivize the Appellant to resolve corollary issues.

34

Spousal Support

O.C. v. M.V.S.G., 2022 BCCA 140

- The Trial Judge ordered an amount of spousal support ($1,750) that was more than double the high end of the applicable range under the *Spousal Support Advisory Guidelines*.
- The Court of Appeal held that it was an error by the judge to do so and reduced the Appellant's monthly spousal support to $720.

35

Spousal Support

- The Court of Appeal noted that a judge is not obliged to use the *SSAG* when determining spousal support.
- However, an award that is substantially lower or higher than the applicable range may justify appellate interference in the absence of an explanation for the anomaly based on exceptional circumstances or otherwise.

36

Spousal Support

- The Court of Appeal found that there is no such explanation for the Judge to have strayed outside the applicable range.
- Instead, it is apparent from the reasons, read as a whole and in context, that the Judge's use of a shared parenting range was likely inadvertent and as a result of neither party having produced primary parenting calculations at the trial.

37

Spousal Support

- The Court of Appeal also stated that, depending on the circumstances, a mistake in the use or application of a DivorceMate calculation can form the basis for correction on appeal.
- The Trial Judge had declined to reconsider his findings after the Appellant had brought the inappropriate DivorceMate calculations to the Judge's attention.

38

Lump Sum Spousal Support

***Sebok v. Babits*,** 2022 BCCA 2

- The parties had been together for 28 years. During the marriage, the Husband was a real estate agent, gambled and dabbled in "questionable income-generating activities. The Husband was the primary earner during the relationship, while the Wife was responsible for the household and raising the children.
- The Trial Judge found that the Wife was entitled to compensatory spousal support based on her role as the primary caregiver of the children.

39

Lump Sum Spousal Support

- The Trial Judge awarded the Wife a lump sum of spousal support in the amount of $50,000, despite the fact that her post-separation income was higher than the Husband's income.
- The Trial Judge imputed a modest amount of income to the Husband but declined to impute $180,000 of income to the Husband, as sought by the Wife, which would have resulted in the Husband's income being more than double that of the Wife's income.

40

Lump Sum Spousal Support

- The Court of Appeal set aside the award of lump sum spousal support award.
- The Court of Appeal stated that reference to the *Spousal Support Advisory Guidelines* is "required as a part of the process of quantifying spousal support", and that "exceptional circumstances may be required to justify a substantial departure form the SSAG".

41

Lump Sum Spousal Support

- The Court of Appeal found that the Trial Judge neither referred to the SSAG nor identified any justification for an award of lump sum spousal support that was wholly at odds with the SSAG.
- The Court of Appeal could not discern any basis for the award made by the Trial Judge. The Trial Judge had not identified any unmet needs of any special conditions or circumstances affecting either party.

42

Lump Sum Spousal Support

- The Court of Appeal concluded that the Trial Judge made no findings of exceptional circumstances that could support a spousal support award to the higher-earning former spouse.
- So, although the Wife had a compensatory claim for spousal support, her entitlement gave her nothing given the Husband's income.

43

Imputing Income – Step-parent

Livingston v. King, 2022 BCSC 1906 (Chief Justice Hinkson)

- The Claimant sought to have the income of the Respondent's spouse imputed to the Respondent in determining the income of the Respondent for child support purposes.
- Chief Justice Hinkson dismissed the application stating that the Claimant cannot do indirectly what he cannot do directly. That is, the Respondent's spouse aka the step-parent has not obligation to pay the child support unless the step-parent has separated from one of the parents (s. 149(3) of the *Family Law Act*).

44

Imputing Income – Step-parent

- A party's spouse's income would only come into play in 3 scenarios:
- 1) when hardship is claimed by a party (s. 10 of the *Federal Child Support Guidelines)*
- 2) when the parties are in a shared parenting regime (s. 9 of the *FCSG*); and
- 3) when a party's income in over $150,000 (s. 4 of the *FCSG*)

45

Imputing Income – Step-parent

- In such cases, the Court will consider relative household incomes, the conditions, means, needs and other circumstances of the children, and the financial ability of each spouse.

46

Calculating Income

Boon v. Boon, 2022 BCSC 1444 (Justice Edelmann)

- At issue in this case was:
  1) whether the Mother's withdrawal from an RRSP that had been equalized in the division of property should be included in her income; and
  2) whether a depreciation of equipment should be allowed when determining the Father's income.

47

Calculating Income

- Regarding the first issue, Justice Edelmann confirmed that a post-equalization RRSP withdrawal can be included in income but doing so would be unfair to the mother in the circumstances of the case because the withdrawals were made to buy a home and a vehicle, shortly after the parties had finalized their separation agreement which provided that the father would retain the former family home and a vehicle.
- The Court considered that it would be unfair to include the funds that the mother needed in order to establish a home for her and the children and buy a vehicle as well.

48

Calculating Income

- Regarding the second issue, Justice Edelmann found that while capital depreciation can be a legitimate deduction from income for child support, it was not reasonable in this case.
- During the relationship, the father had worked as a grader for a company owned by him, his parents, and the mother. Following separation, his father gifted him a grader and the father began working as a grader through his own sole proprietorship, using the grader and deducting depreciation from his income.
- The Court disallowed the deduction from the father's Guideline income, finding that he was essentially doing the same work and for the same clients as before, that there was no evidence about why his income should be lower (while working for the family company, depreciation were paid/claimed by the company), and that the personal income available to him actually remained the same as when he was working for the family company.

49

Decisions re School

Reda v. Birch, 2022 BCCA 60

Question: Can the Court make an order that a child attend a specific school, or can the Court only allocate the decision making authority /parental responsibility over education to one parent, thus allowing that parent to choose a specific school?

50

Decisions re School

- The Father sought leave to appeal of an order of a Chambers Judge who gave a direction as to whether the parties' son was to attend secondary school.
- The Father argued that the court did not have power to make such an order and should have instead allocated the parenting responsibility for education to him.

51

Decisions re School

- The Court of Appeal dismissed the Father's application for leave to appeal.
- The Court of Appeal did comment on the questions of law raised by the Father's application and clarified the impact of the Court of Appeal's earlier decision in ***N.R.G. v. G.R.G.***, 2017 BCCA 207 on decisions and orders about parental responsibilities and the interplay of section 45 (orders respecting parenting arrangements) and section 49 (referral of questions to the court) of the *Family Law Act.*

52

Decisions re School

- The Court of Appeal stated that the Chambers Judge had correctly applied the Court of Appeal decision in *N.R.G.*, which clearly states that there will be occasions when courts will be called upon to resolve disputes.
- "While *N.R.G.* cautions courts not to take over the entire parenting regime, as the judge did in *N.R.G.*, it does not say courts can never make decisions on a specific aspect of a child's life, including education. Nor does it say judges cannot give directions on matters typically considered parental responsibilities when guardians seek guidance under s. 49. *N.R.G.* held that while such decisions should be left to guardians in the first instance, when agreement cannot be reached the court may need to step in and make orders on an *ad hoc* basis at the behest of guardians."

53

Decisions re School

- The Court of Appeal went on to say that: "This approach is consistent with the language and scheme of the legislation. It is also the approach the judge took in this case. She could have allocated parental responsibility for education to the mother, recognizing this would mean sending the son to the Vernon school. However, she was equally entitled to recognize the potential negative impact of doing so, as there were two other children in this family. So, on the narrow application before her, she ordered the education direction."

54

Choice of School

White v. Schultz, 2022 BCCA 297

- The father in this case appealed the dismissal of his application that the parties' 9-year-old child attend a school by his home. The child has been attending a school near her mother's home that was about 15km from the father's home. The parties had equal parenting time and the choice of school had already been addressed previously by a PC determination and a court order.

55

Choice of School

- Due to a disability, the father did not drive and claimed that using public transportation posed a health risk to him due to his disability and Covid-19 (in addition to pain and fatigue). He argued that commuting to school by public transportation was not in the child's best interests and was discriminatory against him under the *Charter*.
- The mother was already providing some of the school transportation for the child during the father's parenting time.

56

Choice of School

- The Chambers Judge stated that the health risk to the Father was "within reasonably tolerable levels" given public health protocols and vaccination.
- The Chambers Judge further stated that it was in the child's best interests to go to school close to her mother's home, as the mother could easily attend the school in an emergency (since she drove and had a car), the child's half-brother would soon be attending the school; and the child benefitted from stability in social and educational relationships.

57

Choice of School

- The Court of Appeal dismissed the Father's appeal, finding that there was no meaningful evidence about the health risk posed to the father (the only evidence was a "to whom it may concern" letter), and that the Chambers Judge nonetheless recognized the heightened risk to the Father but properly took judicial notice of public health protocols and the availability of vaccines.
- Note: There was no discussion of what would be an "unreasonable risk level".

58

Choice of School

- Regarding the Father's *Charter* argument, the Court of appeal confirmed that courts should not ignore *Charter* values when deciding private family law matters, though within limits.
- The Court of Appeal stated that if the Chambers Judge had ignored the father's disability, that would have been an error in law.
- However, the Chambers Judge had properly considered the issue and her order reflected a choice of accommodations within the available options. The Father's disability was "considered, respected and accommodated, not for its own sake, but in relation to [the child's] best interests and [the father's] ability to continue to participate in [the child's] life and meet her needs".

59

Unequal Division of Family Property

Hannon v. Hopson, 2022 BCCA 314

- This appeal addressed the application of section 95 (unequal division) of the *Family Law Act*.
- The parties had been in a marriage-like relationship for about 14 years, initially in the UK (where they originally from), and then in B.C., having immigrated to Canada together.

60

Unequal Division of Family Property

- During the relationship, the Appellant received a settlement for a medical malpractice claim regarding damage to his vision (which was subsequently corrected with further surgery).
- The funds were deposited into joint accounts and were used over time for various expenses and to purchase a house.

61

Unequal Division of Family Property

- The Trial Judge declined to divide family property unequally.
- The Appellant appealed on the ground that the Trial Judge erred in her analysis under section 95(2) of the *Family Law Act*, both in her treatment of the settlement funds and in failing to consider the significant unfairness arising from the differences in the legal regimes between the England and B.C. regarding property division between unmarried spouses (specifically, property would not have been divided under the English regime).

62

Unequal Division of Family Property

- The appeal was dismissed.
- The Court of Appeal stated that the case turned on detailed findings of fact and that the Appellant has shown no error in the trial judge's findings or application of the law and exercise of her discretion.

63

Unequal Division of Family Property

- Regarding the Judge's treatment of the settlement funds, the Court of Appeal stated that the Trial Judge correctly recognized that she could consider their source but that their origins as excluded property did not render equal division unfair.
- The Court of Appeal held that the Trial Judge correctly considered the source of the settlement funds as part of her overall assessment of the parties' financial contributions over the years and in the context of finding that they operated as a single financial unit during the relationship.

64

Unequal Division of Family Property

- The Court of Appeal rejected the proposition that differences between legal regimes is a significant factor in and of itself.
- The "purpose of the analysis is to consider all of the enumerated factors in s. 95 along with other economic considerations, including the parties' legitimate and reasonable expectations and any plans they may have made under a different legal regime, to determine whether the application of the regime established by the FLA would be significantly unfair in the circumstances".
- The Court of Appeal held that the Trial Judge properly found that there was no evidence that the parties' expectations were based on English law.

65

Excluded Property - Lost

Haley v. Haley, 2022 BCSC 1945 (Justice Horsman)

- The parties owned a house in Prince George, which was at one time the Claimant's excluded property, as it was acquired by the Claimant before her relationship with the Respondent.
- The Trial Judge stated that "the real question is whether the evidence supports an intention by the claimant to retain the Prince George House as excluded property, rather than gifting it to the respondent, or alternatively whether the presumption of advancement applies."

66

Excluded Property - Lost

- Justice Horsman stated that she did not need to address the issue of the presumption of advancement as she could come to a conclusion based on her findings of the Claimant's actual intention.
- The Judge found that evidence supported a finding that the Claimant intended to gift her interest in the Prince George house to the Respondent a the time the parties married.

67

Excluded Property - Lost

What was the evidence?

a) The Prince George House was the family residence from the time the parties were married;
b) The Claimant did not testify that she intended to maintain her interest in the Prince George Property, rather than gift it to the respondent, and such an intention is not reflected anywhere in the evidence;
c) The Claimant sold the Prince George House when the parties moved to Red Deer in 1999, and the parties used the proceeds to purchase a house in their joint names;

68

Excluded Property - Lost

d) Further properties were purchased by the parties in their joint names, in Red Deer and Calgary, with proceeds from the sale of the first house in Red Deer; and
e) There is no evidence that the claimant took any steps over the course of the parties' 24-year marriage to maintain the excluded property despite the growing financial interdependence of the parties.

69

Reapportionment (1)

Paseska v. Paseska, 2022 BCSC 1862 (Justice Walkem)

- The Respondent sought an unequal division of the former family home on the basis that he had paid the house expenses, including the mortgage, since separation.
- Justice Walkem dismissed the application, as the Claimant had to pay for housing for herself and the children, largely because of family violence by the Respondent.

70

Reapportionment (2)

- The Respondent moved back to the basement suite in the former family home and refused to move out.
- The Claimant ultimately moved out with the children out of fear for their safety and of another apprehension by MCFD.
- Justice Walkem ordered that the family home be listed for sale.

71

Reapportionment (2)

See also ***Salman v. Astifan***, 2021 BCSC 1395 (Justice Kirchner)

- Justice Kirchner reapportioned property in favour of the survivor of family violence, in part because of the impact of the violence.
- Justice Kirchner noted that *Chang v. Chang*, 2020 BCSC 1783, provides some authority to reapportion family assets in circumstances where there has been bullying conduct on the part of one of the spouses but there were a number of other factors at play in that case that led the court to reapportion the family assets on a 75%-25% basis.

72

Reapportionment (2)

- While not all factors were present, Justice Kirchner did find that the Claimant's abuse and violent outbursts is a factor he may consider in this case because it does have a connection to the economic characteristics of the spousal relationship.
- Justice Kirchner found as a fact that the Claimant's conduct made it very difficult for the Respondent to devote herself to the restaurant business in the manner that she would have liked and had intended in the final years of the relationship.

73

Reapportionment (2)

- Justice Kirchner accepted the Respondent's evidence in this respect. Were it not for the Claimant's violent, abusive, and degrading conduct towards the Respondent, it was more likely than not that the restaurant would have been more successful in those years.
- Justice Kirchner was not able to quantify the impact but took it into account as part of the totality of the evidence in considering whether an equal division of the assets is substantially unfair and, if so, what reapportionment should be ordered.
- Justice Kirchner reapportioned the family home in favour of the Respondent.

74

Date of Valuation

Banh v. Chrysler, 2022 BCCA 74

- The Appellant challenged an order for the division of family property in in which the Trial Judge determined it would be significantly unfair to divide certain properties based on their value at trial.
- Instead, the Judge divided the properties based on the values at separation.

75

Date of Valuation

- The judge identified six factors to justify his decision to depart from the usual valuation date for the division of family property:

1) the short duration of the marriage;
2) the fact that the Respondent was not the owner of any of the Claimant's rental properties;
3) the Claimant's essentially exclusive efforts to develop, manage and maintain the rental properties;

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Date of Valuation

4) the considerable growth in the value of the rental properties that occurred primarily after the parties separated;
5) financial advances made by the Claimant to the Respondent prior to and during their marriage; and
6) the Respondent's unilateral" setting of a trial date three and a half years after the parties separated.

77

Date of Valuation

- The Court of Appeal allowed the appeal, stating that while the Judge accurately summarized the property division regime, he relied on factors that do not fall under any specifically enumerated factor under s. 95(2) and also fall outside the scope of s. 95(2)(i) of the *Family Law Act.*

78

Date of Valuation

Those factors were that:

- the Respondent did not own any of the Claimant's properties
- the considerable growth in the value of the rental properties
- the financial advances made by the Claimant to the Respondent; and
- the Respondent's unilateral setting of the trial date

79

MOU – legally binding?

Isfeld v. Isfeld, 2022 BCSC 1925 (Justice Elwood)

- The parties participated in the Virtual Family Mediation Project offered through Access Pro Bono.
- The outcome was a Memorandum of Understanding, which was to be converted into a Separation Agreement and signed by the parties.

80

MOU – legally binding?

- The parties did not execute a Separation Agreement.
- The issue before Justice Elwood was whether the MOU was a binding agreement.
- The Respondent argued that the MOU was tentative and subject to further legal advice and subsequent acceptance.

81

MOU – legally binding?

The test for whether a contract was formed by the parties is whether it would be clear to an objective reasonable bystander, informed of the material facts, that the parties intended to contract, and whether the essential terms of that contract can be determined with reasonable certainty.

a) there must be an intention to contract;
b) the essential terms must be agreed to by the parties;
c) the essential terms must be sufficiently certain;

82

MOU – legally binding?

d) whether the requirements of a binding contract are met must be determined from the perspective of an objective reasonable bystander, not the subjective intentions of the parties; and
e) the determination is contextual and must take into account all material facts, including the communications between the parties and the conduct of the parties both before and after the agreement is made.

83

MOU – legally binding?

- Justice Elwood held that the Memorandum of Understanding was legally binding as it contained all of the essential terms of a final agreement. It did not contain any written clause that would make the agreement subject to either party obtaining legal advice or communicating their acceptance following the mediation.
- That is, the MOU was unambiguous, was a "final agreement", and was a "settlement reached by the parties".

84

MOU – legally binding?

- Justice Elwood also noted that the parties' conduct before, during and following the mediation indicates an intent to enter into a contract that was not subject to further legal advice or subsequent acceptance.
- the Respondent's conduct immediately following the mediation was consistent with having accepted the essential terms of a settlement, and inconsistent with his only having listened to terms that still required his acceptance.

85

Child Support – Disabled Adult

James v. James, 2022 BCSC 1402 (Justice Burke)

- The Father applied to terminate support for his child, who has disabilities.
- Since the previous order, the parties' child became an adult and began receiving PWD benefits. Together with his part-time job, the child's income was higher than his estimated expenses.
- The child continued to reside with his Mother in coop housing for low income earning families.

86

Child Support – Disabled Adult

- Justice Burke accepted that there has been a material change of circumstances since the previous order, but relying on *Martin v Martin*, 2021 BCSC 2015, and the evidence from the mother and the child's physician, the Court concluded that the child required ongoing care and supervision that were provided by the mother and were taking up most of her non-work time.
- Justice Burke also concluded that the child's work hours may be reduced in the future because of difficulties arising from his disabilities.

87

Child Support – Disabled Adult

- Based on these findings, Justice Burke estimated a shortfall for the child of $500 per month, which was allocated equally between the parents.
- This resulted in a significant reduction in child support, from $1,062 to $250, "reluctantly" according to a comment by the Court.

88

Child Support – Fractured Relationship

Thompson v. Thompson, 2022 BCSC 1431 (Justice MacNaughton)

- The Father sought to terminate child support on the basis that the adult child had unilaterally terminated her relationship with him.
- The adult child was 21 years old and attend full-time university.

89

Child Support – Fractured Relationship

- Justice MacNaughton accepted the proposition that on its own, termination of the parent-child relationship would rarely justify termination of child support except in extreme or egregious circumstances.
- The circumstances were not present in this case. Rather, the court found that the child had not unilaterally withdrawn from the care of the Father, and that his conduct and rigidity played a role in their fractured relationship.

90

Appointment of Guardian

H.S.A. v. S.K.A., 2022 BCSC 1492 (Justice Edelmann)

- The Father has a history of mental illness and was represented by a litigation guardian.
- The Father's sister sought to be named a guardian of the child and share parental responsibilities with the Mother.

91

Appointment of Guardian

- Justice Edelmann held that it was in the best interests of the child for the paternal aunt to be granted guardianship and to increase the parenting time of the child with the Father and the paternal family.
- Justice Edelmann did accept that a multigenerational collectivist family structure can present a number of benefits for a child.

92

Appointment of Guardian

- The Court noted the tension between the Mother and the paternal aunt and other family members and commented that it is in the child's best interests for both the paternal aunt and the Mother to support each other's respective roles in the child's life.
- Justice Edelmann was satisfied that the paternal aunt understood the importance of clarity for the child and would not seek to present herself as the child's mother.

93

Appointment of Guardian

- Justice Edelman allocated the parental responsibilities to the Mother.
- The paternal aunt could make day-to-day decisions when the child was in her care and obtain information directly from third parties.

94

Extension of a Protection Order

R.D. v. R.S.D., 2022 BCSC 1290 (Justice Tucker)

- The Mother had previously obtained a one-year Protection Order that was subsequently extended multiple times, by consent.
- The Protection Order was only in relation to the Mother and not the children, as the Father had not parenting time.
- The Mother applied to extend the Protection Order for another year; this time the Father opposed the extension.
- The Court granted the extension.

95

Extension of a Protection Order

- Justice Tucker considered the detailed evidence of the Mother about severe abuse during the relationship.
- Other than denying claims of financial abuse, the Father's affidavits have never responded to the mother's evidence about family violence.
- Justice Burke noted that while one of the Father's affidavits stated that "his failure to respond to any allegations should not be construed as an admission", it is not for the Father to dictate to the Court whether his failure to respond amounts to an admission in the circumstances.

96

Extension of a Protection Order

- Justice Burke noted that the incidents of family violence set out by the Mother were squarely at issue on the application to extend the prior protection Order.
- Justice Burke was satisfied that the Father's failure to respond to, let alone refute, the incidents of family violence detailed in the Mother's affidavits does constitute an admission that the incidents occurred as described.

97

Extension of a Protection Order

- In terms of ongoing risk, the Court took into account the following:

a) some of the Father's actions towards the mother are prohibited by criminal law, but the father nonetheless engaged in them;

b) the Father minimized his actions (for example, by describing the relationship as "turbulent");

98

Extension of a Protection Order

c) the Father deposed to having taken six counseling sessions but provided no evidence about the "type, scope or focus of that counselling, nor any report indicating whether the counselling sessions were effective or sufficient";

d) the Father had smashed the window of his former girlfriend's car years after their separation; and

e) the parties will have to address difficult issues in the litigation, which combined with the Father's past conduct, require the continuation of the protection order.

99

Parental Alienation

M.S.R. v. D.M.R., 2022 BCSC 1398 (Justice Thomas)

- The Court had to decide if the child, who was 13-1/2 years old, had become estranged from his Mother or if he was alienated from his Mother by the Father.
- Justice Thomas accepted the expert evidence of the section 211 report writer about alienation.
- The Court considered the legal admissibility of the section 211 report – based on the tests in *R. v. Mohan* and *White Burgess* – and found the report to be admissible expert opinion evidence.

100

Parental Alienation

- The Mother had a solid relationship with the child and was the primary caregiver until everything changed in the Fall of 2018 when the child started distancing himself from his Mother.
- There were several judicial interventions to enforce parenting time, and several attempts at mediated reunification, which were unsuccessful.

101

Parental Alienation

- Justice Thomas found there was substantial evidence indicating enmeshment has occurred between the Father and the child.
- The section 211 report writer stated that "Often enmeshment can result in a triangulation situation, which involves an inter-parental dispute and the forming of an alliance with one parent against the other parent. Literature indicates that in this case the child will have difficulty transitioning between the homes and exhibiting healthy bonding with the other parent. The enmeshed/intrusive parent tends to behaviourally control the child; and his or her thoughts and feelings so that the thoughts, behaviours and feelings of the child will conform to the parent's agenda. The child will have an exaggerated alignment with one parent at the expense of the other parent… The concept of enmeshment is often present when there is a dynamic of alienation."

102

Parental Alienation

- The Court found that the Father had alienated the child from his Mother, and that there was ongoing and long-term harm to the child as a result.
- The Court ordered a program (Family Bridges) that involved removing the child from the "favoured" parent to an undisclosed location for therapy, with a third-party professional to transport the child.

103

Parental Alienation

- Justice Thomas acknowledged that the decision involved a choice between two harms: short term harm and distress, and ongoing and long-term harm.
- There was clear evidence of harm, in that the child suffered anxiety, his school attendance was inconsistent, and he had no peer relationships and activities.

104

Family Violence

O.P. v. J.D.P., 2022 BCSC 1823 (Justice Donegan)

- The focus of this case was extensive findings and analysis about family violence and its significance for the parties' 17- and 12-year-old children.
- Justice Donegan found that each party perpetrated family violence.
- There had been multiple Protection Orders and conduct orders, and each party had been ordered to pay a penalty to the other.

105

Family Violence

- The Court found that the Mother perpetrated physical, psychological, and emotional abuse against the parties' older child, during the relationship and following separation, which eventually led to the child unilaterally leaving her care and moving in with the Father, where she remained.
- The older child, testified at trial, including about her Mother's family violence towards her. The Court determined the child to be a credible witness.
- The Mother perpetrated emotional and psychological abuse against the Father and both children in the frequent arguments between the parties in the presence of the children that included derogatory language.

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Family Violence

- The Court found that the Father perpetrated family violence against the Mother and the children as well.
- The Father had surreptitiously filmed the Mother naked and in sexual activity, on multiple occasions, and saved the videos with other pornographic materials that he was watching. The Father was charged and pleaded guilty and completed a "respectful relationships" course.
- The Court found that the Father neither took responsibility for his actions nor appreciated their gravity and profound and long-term harm they caused the Mother.
- The Father perpetrated emotional and psychological abuse against the Mother and both children, in the frequent arguments between the parties in the presence of the children that included derogatory language.

107

Family Violence

Justice Donegan ordered that:

a) the older child would live with the Father (by consent) and all of the parental responsibilities would be allocated to the Father. The Court declined to order specified parenting time for the Mother.
b) The younger child would have equal parenting time with the Mother and Father and a parenting coordinator was appointed to deal with disputes.

108

Family Violence

- Justice Donegan made a conduct order prohibiting the Father from filming the Mother, even for the purpose of showing to the court that the Mother is breaching Court Orders.
- Justice Donegan stated that the Court generally discourages surreptitious recordings and that any filming of the Mother by the Father would be triggering and frightening to her.

109

Termination of Guardianship

R.F. v. T.M., 2022 BCPC 215 (Judge Golinski)

- The Father sought to terminate the Mother's guardianship of the child.
- The Father has had no contact with the Mother since May 2018.
- The Mother was served but did not participate in the hearing.

110

Termination of Guardianship

- Judge Golinski declined to terminate the Mother's guardianship. The Judge distinguished the case from other cases cited.
- Judge Golinski held that there was insufficient evidence to show that the parents would be incapable of co-parenting if that was required, there is no evidence that there is ongoing family violence or sexual impropriety that would have a negative impact on the best interests of the child, nor is this a situation similar to an adolescent child clearly expressing a desire to have nothing to do with the largely absent parent.

111

Termination of Guardianship

- The Judge would not go as far as to say that because the Mother did not file a reply in the legal proceedings that she clearly demonstrated she has no interest in the outcome. "There are a myriad of reasons why a person does not participate in litigation and I will not speculate why that is the case here".
- Judge Golinski did allocate all of the parental responsibilities for the child to the Father.

112

Grandparent Contact

L.P. v. D.P. and C.C., 2022 BCPC 34 (Judge Archer)

- The Respondents are the paternal grandparents of the child. Both grandparents are indigenous.
- The Applicant is the Mother of the child. The Mother is not indigenous.
- The Father of the child had died.

113

Grandparent Contact

- Judge Archer granted the Grandparents contact with the child.
- The Court found that the Mother, by intentionally alienating the child from his Grandparents and through them, from his Indigenous culture and heritage, was not in alignment with the child's best interests.
- Judge Archer stated that the child has a right to his Indigenous culture and heritage and the law shows that it is important that it is made accessible to him.
- The denial of the child's access to that culture and heritage is not in his best interests. Here that access will be provided through child's contact with his Grandparents.

114

Grandparent Contact

- Judge Archer found that allowing contact between the Grandparents and the child is in the best interests of the child in that it "protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being." An integral part of the Grandparents' application was that contact with them would allow the child to access his own Indigenous culture and heritage.
- There is no denying that the child has Indigenous ancestry and the child's connection to his Indigenous culture and heritage cannot be separated from his relationship and contact with his Grandparents, who played a very significant role in the child's life until recently.
- Given their own Indigenous ancestry and their close prior caregiver relationship with the child, the Grandparents are in the best position to help the child access his Indigenous heritage, including TFN and Nuu-chah-nulth culture, language, traditional practices, language and connection to the land.

115

Covid Vaccinations

A.T. v. C.H., 2022 BCPC 121 (Judge W. Lee)

- The Mother wanted to vaccinate the children (ages 7 and 9); the Father did not want to.
- Judge Lee made it clear that the parties both love their children, but they disagree on this one issue, "which has been subject to debate throughout or society since the advent of the pandemic and the development of vaccines".
- "Good parents can have a difference of opinion."

116

Covid Vaccinations

- Judge Lee stated that his decision did not require an analysis of scientific evidence about the vaccine.
- Case precedent has already established that this Court may take judicial notice of various facts, without having to prove them.

117

Covid Vaccinations

- Judge Lee took judicial notice of the following facts:

a) Canada has been in a COVID-19 pandemic , resulting in a number of health restrictions being imposed to control the spread of the virus;

b) contracting the COVID-19 virus poses a serious and significant health risk to both children and adults;

c) the Pfizer COVID-19 vaccination is safe and effective for use in both children and adults.

118

Covid Vaccinations

- Judge Lee went on to say that from a review of the case law about the COVID-19 vaccine, the following principles emerge:

1) The lack of a universal mandatory COVID-19 vaccination requirement does not mean the vaccines are unsafe.

2) The Court may take judicial notice of the effects of COVID-19, including the risk of serious illness and death.

3) The Court may take judicial notice of the safety of COVID-19 vaccines, especially when compared to the risks of COVID-19 itself.

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Covid Vaccinations

4) COVID-19 vaccination is deemed to be in the best interests of a child.

5) The adoption of a "wait and see" approach to receiving the COVID-19 vaccine is not in the best interests of a child, especially when weighed against the risks of COVID-19 itself.

6) Each of these principles may be rebutted by way of compelling evidence to the contrary.

120

Covid Vaccinations

- Judge Lee ordered that the Mother will have parental responsibility and authorization to obtain for the children the Covid-19 vaccination, including two doses, and a booster if and when recommended, without the consent of the Father.

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Covid Vaccinations

See also:
J.F.P. v. J.A.G., 2022 BCPC 44 (Judge Patterson)

G.W. v. C.M., 2022 BCPC 29 (Judge Burnett)

T.K. v. J.W., 2022 BCPC 16 (Judge Heinrichs)

R.S.C. v. A.C.L., 2022 BCPC 9 (Judge Gouge)

122

Setting Aside a Default Final Order

Batool v. Siddiqui, 2022 BCSC 1220 (Justice Schultes)

- In April 2019, the Claimant obtained an order to serve the Respondent with her Notice of Family Claim by email, WhatsApp and at the address of the Respondent's son from a previous marriage. The Respondent was living in Pakistan at the time.
- The Respondent did not file a Response to Family Claim.

123

Setting Aside a Default Final Order

- In August 2020, the Claimant obtained a Final Order in Chambers.
- The significant orders granted were that:
  a) the Respondent's guardianship of the child was terminated;
  b) the Respondent was to have no contact with the child without making a court application;
  c) c) income of $45,000 was imputed to the Respondent; and
  d) d) the Respondent's child and spousal support obligations be paid from his share of family property in trust, until those funds ran out.

124

Setting Aside a Default Final Order

- The Respondent sought to set aside the Final Order.
- The Court can set aside a final order obtained in an undefended proceeding under Rule 10-10 of the *Supreme Court Family Rules* and its inherent jurisdiction to prevent miscarriages of justice.

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Setting Aside a Default Final Order

- The test to set aside such an undefended final order is three-fold:
  1) The Respondent must establish that they did not wilfully and deliberately fail to file a Response;
  2) The Respondent must establish they applied to set aside the order as soon as reasonably possible; and
  3) The Respondent must establish that they have a meritorious defence or at least a defence "worthy of investigation"

126

Setting Aside a Default Final Order

- The Respondent stated that he never received service of the Notice of Family Claim. The Respondent said he checked his email infrequently, which the Claimant knew; he never received a WhatsApp message; and his son had not lived at the addressed noted for 15 years.
- The Respondent stated that the Claimant had multiple ways to contact him: his address was mentioned in the affidavit of her counsel's legal assistant; he provided the Claimant with his updated phone number; he was in regular contact with the Claimant's parents; their realtor had a power of attorney for the Respondent; and the Claimant's brother lived in Karachi and was in regular contact with the Respondent.

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Setting Aside a Default Final Order

- Requirement #1: Justice Schultes did not find it believable that the Respondent did not check his email for 16 months, or that he did not get the WhatsApp message (especially when he received the final order through WhatsApp) or that he did not get the NOFC from his son, who told the Claimant he had provided the copy to his sister. The Justice found that the Respondent made a deliberate decision not to take any action after being served.

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Setting Aside a Default Final Order

- Requirement #2: Justice Schultes did accept that the Respondent took steps to set aside the order as soon as reasonable possible as he did not receive the order until February 2021 and then could not arrange a flight to Canada until September 2021. The Respondent filed the application the month after.

129

Setting Aside a Default Final Order

- Requirement #3: Justice Schultes found that the Respondent had a defence worthy of investigation: the debts attributed solely to him may be family debt; his income was considerably lower than imputed to him; and it may not be in the child's best interest to have such restrictions on the Respondent's parenting involvement.

130

Setting Aside a Default Final Order

- Justice Schultes held that although the Respondent did not meet the first requirement, the weight to be allocated to the second and third prongs meant that setting aside the order was required in the interests of justice.
- "To be clear, Mr. Siddiqui's inaction after being served does him no credit, but the manner in which the final order disposed of his financial interests and his parenting role is so comprehensive, and has sufficient arguable flaws, that it would be unjust to prevent him form arguing in favour of a more balanced outcome."

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Setting Aside a Default Final Order

- Justice Schultes set aside the Final Order, gave the Respondent 30 days to file a Response and Counterclaim, and awarded the Respondent costs of the application.

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THE LAW FOUNDATION OF BRITISH COLUMBIA

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Legal Aid BC

Family Violence

Andrea Bryson

This interactive workshop will be building upon the New Advocates Training on understanding abuse and screening for family violence. We will be doing a collaborative deeper dive into screening for family violence and how to talk about family violence with diverse populations.

Homework

Screening of family violence is often best done by asking questions rooted in the evidence required under the *Family Law Act*. Having a plain language definition available and comfortable to use will help you to be able to explain the definition in a way that your client can understand and relate to.

For each part of the definition of family violence below, come up with an example or two to describe that (you may want to try to come up with a term you would use to describe this concept to an English language learner).

Family violence includes	FLA Term	Our example	Low income/ no income folks	Indigenous & Racialized folks	Accessibility needs, neurodiverse & mental health consumers	Newcomers & English Language Learners	2Spirit, trans, non-binary, & gender diverse
A)	physical abuse of a family member	Grabbing you by your wrist					
	forced confinement	Not letting you out of your bedroom					
	deprivation of the necessities of life	Locking you out of your home without your coat or phone					

	not including the use of reasonable force to protect oneself or others from harm	If you push him away to get to safety					
B)	sexual abuse of a family member,	Not allowing you to go to sleep until you have intimate relations					
C)	attempts to **physically** abuse a family member,	If you run away during an escalating incident					
	attempts to **sexually** abuse a family member,	If you consent to sex to stop him from assaulting you* (*this is still sexual assault*)					
D)	psychological or emotional abuse of a family member	Making you feel like you are the problem					

i)	intimidation	Making you fearful that there will be physical abuse unless you agree					
	harassment	Sending you facebook messages after you've told him to stop					
	coercion	Saying "I will kill myself if you leave"					
	Threats	Saying "If you leave I will hurt you"					
	Threats respecting other people	Saying "if you leave, I will tell your boss that you are stealing from your company"					
	Threats respecting pets	Saying "if you leave, I will not feed the cats"					

	Threats respecting property	He has a history of destroying your clothes and he threatens to do that again.					
ii)	unreasonable restrictions on, or prevention of, a family member's **financial** autonomy,	He doesn't show up for his parenting time, so you miss work.					
	unreasonable restrictions on, or prevention of, a family member's or **personal** autonomy, (*freedom of choice around: education, religion, culture, and health care*)	He picks a fight with you on the nights before your exams or when you have papers due, so you fail at school.					

iii)	Stalking or following of the family member	If he asks your friends or family if you will be at events					
iv)	Intentional damage to property	He tears up family photos					
E)	in the case of a child, **direct** exposure to family violence	He tells the children that you are a bad mother					
	in the case of a child, **indirect** exposure to family violence	Him and his friends badmouth you when the children are nearby					

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
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Legal Aid BC

Family Violence: Creating Safety in a Broken System

Vicky Law; Haley Hrymak

This presentation will discuss legal system abuse by describing the ways abusers use coercive control through the family court process. We will go through ways to address legal system abuse and support clients to prepare for court.

USE OF A SUPPORT PERSON IN CIVIL AND FAMILY PROCEEDINGS

1. A litigant in a civil or family case who does not have a lawyer representing him/her, may ask the presiding judge or master to allow the litigant to have a support person sit with the litigant at the counsel table in the courtroom to provide assistance to the litigant.

2. A support person may be a friend or a relative.

3. A support person must not be someone who:

    a. may be a witness in the hearing or trial; or
    b. is paid for their services.

4. A support person may provide the following assistance in court:

    a. taking notes;
    b. organizing documents;
    c. making quiet suggestions to the litigant;
    d. providing emotional support; and
    e. any other task approved of by the judge or master.

5. A support person is only permitted to address the court or speak on behalf of the litigant in exceptional circumstances and only with the advance permission of the judge or master.

6. A judge or master has discretion to refuse to allow a support person to sit with a litigant in any circumstance that the judge or master considers appropriate including where the presence of the support person could be or becomes disruptive to the proceedings or would otherwise be unfair to an opposing party.

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Creating Safety in a Broken System – Key Takeaways

Haley Hrymak & Vicky Law

The lack of understanding of violence against women means that the legal system often makes their situation more dangerous. This presentation covered potential safety concerns client may experience at the courthouse, and the ways abusers may use violence within the court process. We also discussed some ways advocates can mitigate these harms and this handout includes a summary of some things you may consider in your practice.

What To Ensure Your Clients Know Before They Attend Court

1. What to expect inside the courthouse:
    a. Where will they go?
    b. Is there a lack of space?
    c. What is the best spot to wait?
        i. Do they have to wait in the courtroom to hear if their matter is being called?
        ii. Is there a paging system or does a sheriff come out and let people know when their matter is being called?
    d. Can they speak with duty counsel?
    e. If they have a question while they are at court, who can they talk to?
2. What to expect on a court date:
    a. Even if their matter is scheduled at 9:00am … it may not be heard until the end of the day, or it may not be heard at all that day (worst case scenario). Let clients know they may be waiting around for the whole day. People may want to know that they can bring snacks and something to drink that they can have outside the courtroom/courthouse during the break.
    b. Depending on what the appearance is, there are difference things to consider. Always prepare clients that what they are anticipating may not end up happening (OP may decide in the morning they want to adjourn so they can speak to a (new) lawyer etc.)
3. What to expect when they arrive at court:
    a. Often only one entrance/exit
    b. Parking/transit considerations
    c. Safety plan pre-post court?
    d. Speak with sheriffs before court/after court

Litigation Abuse- Things to Consider and Potential Remedies

1. Court-Related Abuse and Harassment, Andrea Bryson https://ywcavan.org/sites/default/files/resources/downloads/Litigation%20Abuse%20FINAL.pdf

2. The following are common tactics of coercive control and litigation abuse:
    - Withholding child support and financial disclosure

        - s. 213 to enforce financial disclosure (fines, adverse inference)
    - False affidavits
    - Frivolous or vexatious claims
        - s. 221 of FLA allows the Court to make an order prohibiting the OP from making any further applications without leave of court
    - Ignoring court orders
        - Ignoring conduct orders – s. 228 (pay fines or draw adverse inference)
        - Ignoring orders generally – s. 230 (give security, pay legal fees, pay fines)
    - Scheduling extracurricular activities during mom's parenting time
        - Related to s. 41 – parental responsibilities
        - Discuss with CL what activities they want the child to participate in. Are there other activities the child wants to attend? Can the CL take the child to those additional activities?

3. Things to discuss with your clients to assist them when they are experiencing litigation abuse
    - Get legal advice – help client show the pattern of litigation abuse to lawyer.
    - Help clients gather evidence:
        - Screenshots with text messages that show exact date (not "Yesterday)
        - Save emails
        - Ask CL to keep a journal of OP's behaviour
        - If OP has consistently made applications, a list or calendar of all the applications he has done with a total number
        - Show that client is prejudiced by OP's behaviour. Is client missing work because of court? Did CL receive a written warning from their employer? Does the CL need to pay extra for babysitter?
    - Imputing Income
        - Does client have any evidence of OP's income? Pictures of paystubs or tax documents
        - www.workbc.ca – to find out annual provincial median salary of a position
    - Use very specific court orders with no room for interpretation. For example, "holiday parenting time as agreed upon by the parties" without specifying a schedule or "liberal and generous parenting time" is not enough. Perpetrators of violence will use this vague terminology to continue their control.
        - Use the court picklists[1] or DivorceMate separation agreement section to help come up with specific terms
4. Practical Considerations
    - Ask your client the magic wand question. If they had a magic wand, what would they like?
    - Survivors of violence are often not allowed a choice in an abusive relationship. They want to mitigate violence, which means they are constantly changing their behaviour and monitoring OP's behaviour.
    - Abusive behaviour will continue but help brainstorm ways to keep CL safe. Up to clients to determine what is best for them, they know how to keep themselves safe.

[1] BCPC Picklist: https://www.provincialcourt.bc.ca/downloads/pdf/Dars%20FLA%20Orders%20Bench%20Picklist%20-%20for%20website.pdf
BCSC Picklist: https://www.bccourts.ca/supreme_court/practice_and_procedure/family_law_orders/picklist_family_orders.pdf

THE PROVINCIAL COURT
OF BRITISH COLUMBIA

Effective Date: *17 May 2021*
NP 11 *Revisions in red*

NOTICE TO THE PROFESSION AND PUBLIC

USE OF A SUPPORT PERSON IN CIVIL AND FAMILY PROCEEDINGS

Purpose

The objective of this Notice to the Profession and Public is to outline the guidelines for using a support person (also referred to as a courtroom companion or "McKenzie friend") in Provincial Court small claims or family proceedings. A support person may also be subject to any applicable provisions of the *Legal Profession Act*.

Notice

1. Unless a judge orders otherwise, a litigant may have a support person sit with them in a Provincial Court small claims or family trial or hearing except for:

    a. a small claims settlement or trial conference;
    b. a family settlement conference; or
    c. a family management conference.

2. A support person may be a friend or a relative.

3. A support person must not be someone who:

    a. may be a witness in the hearing or trial; or
    b. is paid by the litigant for their services.

4. A support person may provide the following help in court:

    a. taking notes;
    b. organizing documents;
    c. making quiet suggestions to the litigant;
    d. providing emotional support; and
    e. any other task approved of by the judge.

5. A support person shall not address the court, or speak on behalf of the litigant except in exceptional circumstances and only with the advance permission of the judge.

6. A judge may refuse to allow a support person to sit with a litigant where the presence of the support person could be or becomes disruptive to the proceedings or would otherwise be unfair to an opposing party.

7. A support person may be allowed to attend a small claims settlement or trial conference or family settlement conference or family management conference, with the permission of the judge, and usually only where the opposing party agrees. If the support person is not allowed to attend, the litigant may ask the judge for a break during the conference to speak to their support person outside the conference room.

History of Notice to the Profession and Public

- Original Notice to the Profession and Public dated April 10, 2017.
- Amended Notice to the Profession and Public dated January 9, 2020 (clarifies "Purpose" and para. 3b that a support person may also be subject to any applicable provisions of the *Legal Profession Act* and must not paid by the litigant for their services).
- May 17, 2021: Amended to change "family case conference" to "family settlement conference" and to add "family management conference" to be consistent with the new *Provincial Court Family Rules* that came into force May 17, 2021.

Melissa Gillespie
Chief Judge
Provincial Court of British Columbia

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Hands on Work on Provincial Court Forms

Brittany Goud; Vicky Law; Haley Hrymak

Hands on work for family law advocates who help clients complete Provincial Court Forms. Fact patterns will cover parenting and relocation issues.

USE OF A SUPPORT PERSON IN CIVIL AND FAMILY PROCEEDINGS

1. A litigant in a civil or family case who does not have a lawyer representing him/her, may ask the presiding judge or master to allow the litigant to have a support person sit with the litigant at the counsel table in the courtroom to provide assistance to the litigant.

2. A support person may be a friend or a relative.

3. A support person must not be someone who:

    a. may be a witness in the hearing or trial; or
    b. is paid for their services.

4. A support person may provide the following assistance in court:

    a. taking notes;
    b. organizing documents;
    c. making quiet suggestions to the litigant;
    d. providing emotional support; and
    e. any other task approved of by the judge or master.

5. A support person is only permitted to address the court or speak on behalf of the litigant in exceptional circumstances and only with the advance permission of the judge or master.

6. A judge or master has discretion to refuse to allow a support person to sit with a litigant in any circumstance that the judge or master considers appropriate including where the presence of the support person could be or becomes disruptive to the proceedings or would otherwise be unfair to an opposing party.

Preparing an Application for Case Management Order Without Notice or Attendance

Form 11

Provincial Court Family Rules

Complete this form if you need a case management order that can be made without notice or attendance at a court appearance.

Usually, an application for an order must be made with notice to all other parties so that they can decide if they want to participate in the application. There are circumstances when the court may make an order without notice and without you having to attend a court appearance, such as when you are asking for an order to help you serve the other party with documents or you need a court order about how you may attend court or about filing a document.

When you make an application without notice or attendance, it is up to the judge to decide if the order can be made without notice or attendance at a court appearance. After reviewing your application, if the judge thinks notice to another party or your attendance in court is needed, the registry staff will let you know. Usually, the order will be made without having a court appearance.

The following case management orders can be requested without notice or attendance by filing this form:

- allowing a person to attend a court appearance using a different method of attendance;
- waiving or modifying any requirement related to service, or giving notice to a person, including allowing an alternate method for the service of a document;
- waiving or modifying any other requirement under these rules, including a time limit set under these rules or a time limit set by an order or direction, even after the time limit has expired;
- requiring access to information in accordance with section 242 [*orders respecting searchable information*] of the *Family Law Act*;
- recognizing an extraprovincial order other than a support order.

Note: If you want to make one of these applications with an appearance or by consent of the other party, you can make your application using the Application for Case Management Order Form 10.

Legal Assistance

Understanding the law and making sure you get correct information is important. Getting advice from a lawyer can help.

Lawyers – To find a lawyer or to have a free consultation with a lawyer for up to 30 minutes, contact the Lawyer Referral Service at 1-800-663-1919.

Legal Aid, Duty Counsel and Family Advice Lawyers – To find out if you qualify for free legal advice or representation, contact Legal Aid BC at 1-866-577-2525.

Legal Services and Resources – Visit Clicklaw at www.clicklaw.bc.ca/helpmap to find other free and low-cost legal services in your community.

Step 1: Complete the Application for Case Management Order Without Notice or Attendance form ☐

This form is available online at www.gov.bc.ca/court-forms or at any Provincial Court Registry.

You can complete the form online and print it for filing. You can also complete it by hand. If you complete it by hand, be sure it's readable.

Registry staff and staff at any Justice Access Centre or Family Justice Centre can help answer questions about the forms but they cannot help complete your forms or give advice about legal problems. If you need help filling in the forms and do not have a lawyer, ask the court registry staff or staff of the Justice Access Centre or Family Justice Centre to refer you to someone who can help.

You need to complete and file the main part of the form and only the schedules that apply to your application.

Follow the instructions in the form and include all the information that is asked for.

To prepare the form for filing:

- collect the form and schedules you completed, and any additional documents as referenced in the form
- print or make copies of all documents: one set for you, one set for the Court, and one set for each other party
- staple each package of documents together
- bring all copies to the court registry for filing **or** send by mail or by fax filing using the Fax Filing Cover Page Form 52.

Step 2: File the Application for Case Management Order Without Notice or Attendance form at the Provincial Court Registry ☐

You must file at the Provincial Court Registry:

- where the existing Provincial Court case with the same parties is filed, or
- nearest to where the child lives most of the time, if the case involves a child related issue, or
- nearest to where you live, if the case does not involve a child-related issue.

The registry clerk will review your package to make sure it is complete before filing it. You will be given a copy for your records.

Step 3: Wait for a judge to review your application ☐

A judge reviewing an application for a case management order without notice or attendance may do any of the following:

- approve and sign the order without the need for you to come to court
- ask you to provide more information or evidence in writing or by coming to court to give that information
- require that notice be given to any other parties
- reject the application with an explanation

Depending on what you are requesting on your application, it may take the judge a few days to review your application. The registry staff will let you know when you can expect to hear from them. If you have provided an email address in your address for service, they can usually let you know the results of your application by email.

Step 4: Serve a copy of the order on each other party ☐

If the judge grants your order without notice to any other party, you must serve a copy of the order each other party.

The order must be served to the address for service of each other party in any of the following ways:

- by leaving the documents at the party's address for service
- by mailing the documents by ordinary mail to the party's address for service
- by mailing the documents by registered mail to the party's address for service
- if the party's address for service includes an email address, by emailing the documents to that email address
- if the party's address for service includes a fax number, by faxing the documents to that fax number

Note: If your application was made to allow service of a document using an alternative method, the order can be served along with the document using the method ordered by the judge.

Tips for Completing the Form:

Registry location and court file number –
Copy this information from the top right corner of the Application About a Family Law Matter or other document filed with the court.

If you don't have an existing court file, registry staff will give your case a file number when you file this document.

Information about the parties –
Party names: Copy your full name and the full name of each other party from the first document filed in your case with the court. If this is the first document in your case, see the instructions for the Application About a Family Law Matter for more information about how to complete this section.

Contact Information –
The court needs to know where to send documents to you and how to reach you. If your contact information and/or address for service has changed, you can give updated information here. If this is the first document you are filing, see the instructions for the Application About a Family Law Matter for more information about how to complete this section.

Copy of order –
It is important that each other party know if the court made an order.

If the judge grants your order without notice to any other party, you must serve a copy of the order on the other party.

Children –
It is helpful for the court when they are considering making a case management order to know if the case involves a child-related issue and, if so, some information about the children.

Filing location –
Select the reason why you are filing your form at this court registry. Refer to the list of courthouse locations on the BC Government website to find the right Provincial Court registry for you. If two locations are both close or the child resides equally in two different locations, you can decide which registry is closest for filing your application. If the other party doesn't agree, they can ask the court to transfer the file to the other location. It will then be up to the court to decide where the file is located.

Case management order –
You can apply for one or more case management orders using this form. Select each option that you would like to make an application for and complete the appropriate schedule(s).

Use Schedule 1 to ask for an order that allows you or your lawyer to attend a court appearance using a different method of attendance.

Use Schedule 2 to ask for an order that:

- allows your application to proceed without the other being served
- allows your application to proceed with less than the required amount of notice, or
- waives or modifies the requirement for service/notice or allows another method of service because you have not been successful serving the other party with a document using the methods allowed under the rules.

Use Schedule 3 to ask for an order that waives (cancels) or modifies (changes) a requirement under the rules so that you can continue your case, for example, waiving or delaying the completion of early resolution requirements. It is also used if you need a time limit changed (made shorter or longer), for example the amount of notice to be given before a court appearance or the time to file a reply.

Use Schedule 4 if you are a search officer to ask for an order that requires a person who has refused to comply with a request for searchable information to provide that information.

Use Schedule 5 if you have an order from another province or territory in Canada for parenting arrangements, contact with a child, guardianship or similar that you would like recognized in British Columbia so that it may be treated as if it were an order made in British Columbia.

Application for Case Management Order Without Notice or Attendance

Form 11
Provincial Court Family Rules
Rules 65 and 78

Registry Location:
Salmon Arm
Court File Number:
12345

1. My name is Sophia Apple (full name of party/person) . My date of birth is _____ (mmm/dd/yyyy)
My contact information and address for service of court documents are:

Lawyer (if applicable):		
Address: 234 Moving Ave		
City: Salmon Arm	Province: BC	Postal Code: V2B 2B2
Email: sophiaapple@apple.com	Telephone: 250-987-6543	

2. The other party is James Apple (full name of other party/parties) .

3. ☑ I am applying for a case management order without notice to any other party and I understand that I will be required to serve a copy of any order I receive on each other party along with a copy of this application and any supporting document(s).

4. *Select only one of the options below and complete the required information*

- ☐ I am not a party to the case
- ☐ I am a party to the case and the case does not involve a child-related issue
- ☑ I am a party to the case and the case involves a child-related issue about the following child or children:

Child's full name	**Child's date of birth** (mmm/dd/yyyy)
Steven Apple	February 22, 2018
Kate Apple	May 5, 2020

5. I am filing this form in the court registry:
Select only one of the options below

- ☑ where the existing case with the same party/parties is located
- ☐ closest to where the child lives most of the time, because the case involves a child-related issue
- ☐ closest to where I live because the case does not involve a child-related issue
- ☐ permitted by court order

About the Order

6. I am applying for the following case management order(s):
Select all that apply and complete the required schedule(s)

- ☑ allowing a person to attend a court appearance using another method of attendance *[complete and attach Schedule 1]*
- ☐ waiving or modifying any requirement related to service or giving notice to a person, including allowing an alternative method for the service of a document *[complete and attach Schedule 2]*
- ☐ waiving or modifying any other requirement under the rules *[complete and attach Schedule 3]*
- ☐ requiring access to information in accordance with section 242 [orders respecting searchable information] of the *Family Law Act* *[complete and attach Schedule 4]*
- ☐ recognizing an extraprovincial order other than a support order *[complete and attach Schedule 5]*

ATTENDANCE USING ANOTHER METHOD OF ATTENDANCE
Complete this schedule to ask for an order that allows you or your lawyer to attend a court appearance using another method of attendance.

About the order -
Who: Who is it that needs to be able to attend the court appearance using a different method of attendance?

You, your lawyer, or both of you. Select all options that apply.

If you are a lawyer completing this form, complete the form as though you are the party. If it is just you that needs to appear by another method, you would need to select the option for 'my lawyer' and include your name.

Type of appearance: Select the type of court appearance you have scheduled that someone needs to be able to appear at by telephone, video, or another electronic communication method. The application or notice from the court should tell you what type of appearance is scheduled.

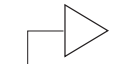
Scheduled appearance: Provide the date and time when the court appearance is scheduled for. This information can be found on the filed application or the notice from the court.

Indicate the scheduled date (day/month/year) and time.

Indicate the method of attendance the appearance is scheduled for.

Method of attendance: How do you want to appear at the court appearance?
The court can usually arrange an appearance in-person, or by telephone or video using MS Teams.

If you want to appear by video using a different video conference platform or some other electronic means of communication, it is a good idea to contact the court registry to find out what the process is for scheduling other equipment or making those arrangements before you file your application.



Refer to the list of courthouse locations on the BC Government website to find the contact information for the Provincial Court registry you need to contact.

Materials for court –
The court wants to know if you have given whatever materials you may plan to use or reference during the court appearance to the other party. If you are asking to attend the court appearance using any method other than in person, you should also make sure the court has a copy of those same materials.

Reasons for attending by another method of attendance –
Explain why you and/or your lawyer need to attend the court appearance using a different method of attendance. You do not need to use any special wording. The key is to be clear about why you want the court to give permission to attend using another method of attendance.

SCHEDULE 1 – ATTENDANCE USING ANOTHER METHOD OF ATTENDANCE
This is Schedule 1 to the Application for Case Management Order Without Notice or Attendance

This schedule must be completed only if you are applying for an order allowing a person to attend a court appearance using another method of attendance.

1. I am applying for an order to allow:
Select all options that apply

☑ me
☐ my lawyer, _____ (full name of lawyer)
to attend at the:
Select only one of the options below
☐ family management conference
☐ family settlement conference
☐ trial preparation conference
☐ hearing
☑ other *(specify)*: first court appearance
Scheduled for November 3, 2022 (mmm/dd/yyyy) at 9:30 am (time) by in person (method of attendance)

By another method of attendance as follows:
☐ in person
☑ telephone
☑ video conference
☐ other means of electronic communication *(specify)*: _____

2. The documents I may want to refer to in court have been submitted to the court registry and received by the other party.
☑ Yes ☐ No

3. I (and/or my lawyer) need to attend the court appearance by another method of attendance because:

I am currently out of town from November 1 to 4, 2022 and not able to attend in person. I would like to attend this court appearance by video conference. I understand that this court date is a “list day” appearance and thta Mr. Apple will be asking for a trial or hearing to be scheduled in relation to the matters of relocation of the children. I am able to discuss this matters via video conference on November 3, 2022 at 9:30 am.

WAIVING, OR MODIFYING ANY REQUIREMENT RELATED TO SERVICE OR GIVING NOTICE
Complete this schedule if you need a court order waiving (cancelling) or modifying (changing) the requirement for service/notice or allowing another method of service because:

- you believe the application should go to court without the other being served,
- you believe the application should go to the court with less notice to the other party than would normally be required, or
- you have not been successful serving the other party with a document using the methods allowed under the rules

There are two parts to this schedule. You must only complete the part that applies to the order you are asking the court to make.

What are you applying for -

Part 1, Waive or modify a requirement related to service or giving notice, is to be used if you are asking for the court's permission to waive (cancel) the requirement to serve a document, or modify (change) the amount of notice you give another person or party.

Part 2, Allow service of a document using an alternative method, is to be used if you are asking for the court's permission to serve someone a court document in some way other than what the rules already allow.

Select all applicable options and complete the required part(s). It may be that you want to serve someone a document using an alternative method AND give them less than the required amount of notice, so you would need to complete both parts.

Part 1 Waive or modify a requirement related to service or giving notice

About the order –
You can ask the court for permission to waive (cancel) or modify (change) a service, delivery or notice requirement for any document under the rules.

Select the option based on what document your application for a case management order is about.

Details of the order –
You need to tell the court what order you want made. You do not need to use any special wording, but you do need to tell the court if you want to waive (cancel) the requirement or modify (change) it. The key is to be clear about what you mean and what you are asking the court to order.

SCHEDULE 2 – WAIVING OR MODIFYING ANY REQUIREMENT RELATED TO SERVICE OR GIVING NOTICE, INCLUDING ALLOWING AN ALTERNATIVE METHOD OF SERVICE
This is Schedule 2 to the Application for Case Management Order Without Notice or Attendance

This schedule must be completed only if you are applying for an order to waive or modify any requirement related to service or giving notice, including allowing an alternative method for the service of a document.

1. I am applying for an order to:

Select all applicable options and complete the required part(s)

- ☐ waive or modify a requirement related to service or giving notice *(complete Part 1 of this schedule)*
- ☐ allow service of a document using an alternative method *(complete Part 2 of this schedule)*

PART 1 – Waive or Modify a Requirement Related to Service or Giving Notice

Complete this part only if you are applying for an order to waive or modify a requirement related to service or giving notice.

Judges normally hear from all parties before making decisions. Where there is urgency or risk of harm for example, the court could hear from only one party. If obtaining an order from the court is time sensitive, the court may allow less than the required amount of notice. The court may also allow more than the required amount of notice if there are special circumstances that would require more time to prepare to attend court.

1. I am applying to the court to waive or modify the requirement for service or giving notice to a person under the rules of the following document(s):

Select all options that apply

- ☐ Application about Priority Parenting Matter
- ☐ Application about Family Law Matter
- ☐ Subpoena
- ☐ Order
- ☐ other (specify):_____

2. The details of the order I am applying for are as follows:

Tell the court the specifics of the order you are applying for, including if you want the court to waive (cancel) the requirement for service or giving notice and what the requirement for service or giving notice should be changed to.

The facts –
What are the facts that support what you are asking the court to order?

Give a short summary of the facts. You do not need to use any special wording. The key is to be clear about what you mean and why you are asking the court to make the order, including what you believe will happen if the court does not make the order.

3. The facts on which this application is based are as follows:

Provide the facts you want the court to consider, including:

- *why the other party should not be served or given notice of the application or other document before you attend court or why the service or notice requirement should be modified (changed)*
- *why the application or your situation is urgent or what special circumstances exist*
- *if applicable, what you believe will happen if the other party is served or given notice of your application or other document and a chance to attend court so that you can both be heard at the same time*

Part 2 Allow service of a document using an alternative method

Sometimes, it can be hard to find a person so that they can be served with court documents or they may be trying to avoid being served. If this happens, you can ask the court for permission to allow the documents to be served in another way. What the other way is will depend on the circumstances.

About service –

Tell the court who it is that needs to be served and with what documents. Be sure to list all of the documents you need included in the court order.

Alternative method of service –

It is up to you to tell the court what order you want the court to make about how the documents can be served.

Some options the court might allow, if appropriate in the circumstances, include:

- posting the documents on the door of the other party's residence
- leaving the documents with a relative or roommate of the other party
- mailing the documents by registered or regular mail
- sending the documents to the other party's email
- leaving the documents at the other party's last known address, or
- posting an advertisement in a newspaper.

Try to include as much detail as possible about how you want the documents served. You do not need to use any special wording. The key is to be clear about what you mean and what you are asking the court to order.

The facts –

What are the facts that support what you are asking the court to order?

Give a short summary of the facts. You do not need to use any special wording. The key is to be clear about what you mean and why you are asking the court to make the order.

Try to include:

- what has already been done to try to serve the person (for example, who tried to serve them, when did they try, how many times, where did they try). Be specific.
- if you don't know where the person is, what has been done to try to find them (for example, you talked to family and friends or searched online)
- if the court gives you your order, why do you think the person will get the documents if they are given in the way you asked – what did you learn when you tried to find the person that makes you believe the method you are asking for would get the documents to their attention.

PART 2 – Allow Service of a Document Using an Alternative Method

Complete this part only if you are applying for an order to allow service of a document using an alternative method. Service of a document must be done according to the rules unless the court makes an order allowing another method to be used.

1. I need to serve _____ with the following document(s):
   (name of person who must be served)
   List each document you need an order from the court to serve using an alternative method

2. I am applying for an order to be allowed to serve the document(s) in the following manner:
   Tell the court the specifics of the how you believe the documents should be served so that they come to the attention of the person indicated above. Include the name of any other person, mailing address, email or other information that would be required to serve the documents.

3. The facts on which this application is based are as follows:
   Provide the facts you want the court to consider. Include the following:
   - *efforts to try to serve the other party*
   - *efforts to locate the other party*
   - *why you believe the method of service you outlined above will bring the documents to the attention of the party to be served*

WAIVING OR MODIFYING ANY OTHER REQUIREMENT UNDER THE RULES

Complete this schedule if you are unable to meet a requirement under the rules, other than those related to service or giving notice, and you need a court order waiving (cancelling) or modifying (changing) the requirement in order to take some other step. This schedule is to be used to ask for the following orders:

- waiving the requirement to file at the court registry that applies under Rule 7
- waiving or delaying the completion of early resolution requirements, if you need a court order to be exempt from an early resolution requirement or would like to postpone completion of an early resolution requirement until you have completed some other step
- waiving or modifying the requirement to file or exchange a document, for example if you have to file your financial statement with your application or reply, but you do not have all of your tax returns, you can ask the court to exempt you from the requirement to file the complete financial statement so that you can file your application or reply first

About the order –

You can ask the court for permission to waive or modify any requirement under the rules or a time limit set by a judge or family justice manager.

Select the option based on which requirement or time limit you want waived (cancelled) or modified (changed).

Details of the order –

You need to tell the court what order you want made. You do not need to use any special wording. The key is to be clear about what you mean and what you are asking the court to order.

Remember to include if you want the requirement or time limit waived (cancelled) or modified (changed). If you want it changed, be clear about what it should be changed to.

SCHEDULE 3 – WAIVING OR MODIFYING ANY OTHER REQUIREMENT UNDER THE RULES
This is Schedule 3 to the Application for Case Management Order Without Notice or Attendance

This schedule must be completed if you are applying to waive or modify any other requirement under the rules, including a time limit set by an order or direction, even after the time limit has expired.

1. I am applying for an order to waive or modify the following requirement(s) under the rules:

Select all options that apply

- ☐ filing at a court registry other than the court registry required by Rule 7
- ☐ attending a needs assessment
- ☐ completing a parenting education program
- ☐ participating in consensual dispute resolution
- ☐ filing a completed financial statement with my application, counter application or reply
- ☐ filing the required documents for an application about guardianship of a child
- ☐ time to file a reply, including permission to file a reply after the time to reply has passed
- ☐ time to provide/exchange document(s)
- ☐ time limit set by an order or direction made on _____ (mmm/dd/yyyy) by _____ (name of judge or family justice manager)
- ☐ other (specify): _____

2. The details of the order I am applying for are as follows:

Tell the court the specifics of the order you are applying for. Include if you are applying for the court to waive (cancel) the requirement or to modify (change) the requirement. If you are applying to modify the requirement, specify how you want the requirement changed, for example, additional time to meet the requirement or completing the requirement after taking some other step.

The facts –
What are the facts that support what you are asking the court to order?

Give a short summary of the facts. You do not need to use any special wording. The key is to be clear about what you mean and why you are asking the court to make the order.

Try to include:

- why you want the time limit shortened or extended
- why you think the court should grant you permission
- how you plan to make sure the case can continue with the changes to the time limit you are requesting

3. The facts on which this application is based are as follows:

Provide the facts you want the court to consider, including:

- *why you are making the application to waive (cancel) or modify (change) a requirement*
- *why you need the court to make the order*
- *whether you are able to complete the requirement at a later date and when you expect to be able to complete the requirement*
- *if you are applying to waive or modify any early resolution requirements, what your family law matter is about and who is involved (names of any other party and children the application would be about)*
- *how waiving or modifying the requirement will benefit the case proceeding*

ACCESS TO INFORMATION SECTION 242

Complete this schedule if you are a search officer and you need a court order to require a person who has refused to comply with a request for searchable information to provide that information.

Details of the order –

You need to tell the court what order you want made. You do not need to use any special wording. The key is to be clear about what you mean and what you are asking the court to order.

The facts –

What are the facts that support what you are asking the court to order?

Give a short summary of the facts. You do not need to use any special wording. The key is to be clear about what you mean and why you are asking the court to make the order.

SCHEDULE 4 – ACCESS TO INFORMATION SECTION 242
This is Schedule 4 to the Application for Case Management Order Without Notice or Attendance

This schedule must be completed only if you are applying for access to information in accordance with section 242 [orders respecting searchable information] of the Family Law Act.

1. The details of the order I am applying for are as follows:
Tell the court the specifics of the order you are applying for

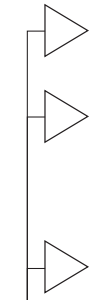
2. The facts on which this application is based are as follows:
Provide the facts you want the court to consider

RECOGNIZING AN EXTRAPROVINCIAL ORDER OTHER THAN A SUPPORT ORDER

Complete this schedule if you have an order from another province or territory in Canada for parenting arrangements, contact with a child, guardianship or similar that you would like recognized in British Columbia so that it may be treated as if it were an order made in British Columbia.

If you have a support order from another province or territory in Canada, you can register the order under the *Interjurisdictional Support Orders Act* for enforcement in BC by contacting the designated authority:

Interjurisdictional Support Services
www.isoforms.bc.ca
Vancouver Main Office Boxes
P.O. Box 2074
Vancouver, BC V6B 3S3
Phone: 604-660-2528
Toll-free: 1-866-660-2684



Extraprovincial order –

Date of order: Provide the date the order from another province or territory in Canada (extraprovincial order) was made and the court location, city and province or territory where the order was made.

Certified copy: You will need to attach a certified copy of the order to your application. A certified copy is a copy of the original order from the other court, usually a photocopy, that has been endorsed using a stamp or certificate by the court to say that it is a true copy of the original.

If you do not have a certified copy of the order, you will need to contact the original court location to get a certified copy from them.

Contact information for the other party –

Copy the name(s) of each other party from the extraprovincial order you are applying to have recognized in British Columbia.

Provide the contact information for the other party. If you do not have an address or contact information for the other party, complete as much information as you do know. Talk to the staff at the court registry about how they might be able to help you find contact information.

SCHEDULE 5 –RECOGNIZING AN EXTRAPROVINCIAL ORDER OTHER THAN A SUPPORT ORDER
This is Schedule 5 to the Application for Case Management Order Without Notice or Attendance

This schedule must be completed only if you are applying for recognition of an extraprovincial order other than a support order.

1. I am applying for recognition of an extraprovincial order made on _____ (mmm/dd/yyyy) at _____ (court location, city, province) about parenting arrangements, contact with a child, guardianship, or an order that is similar in nature.

2. A certified copy of the order is attached.

3. The contact information, as I know it, for the other party is:

Full name of party		Date of birth (mmm/dd/yyyy)
Lawyer (if applicable):		
Address:		
City:	Province:	Postal Code:
Email:	Telephone:	

Preparing an Application for Order Prohibiting the Relocation of a Child

Form 16

Provincial Court Family Rules

Complete this form if you need an order prohibiting the relocation of a child under s. 69 of the *Family Law Act***.**

Section 69 [*orders respecting relocation*] of the *Family Law Act* applies if:

- a guardian wants to change the location of their residence or a child's residence that can reasonably be expected to have a significant impact on the child's relationship with another guardian or person having a significant role in the child's life; **and**
- **there is an existing written agreement or court order about parenting arrangements for the child.**

An application prohibiting the relocation of a child under s. 69 of the *Family Law Act* must be filed within 30 days after receiving written notice that the guardian plans to relocate the child (s. 68 of the *Family Law Act*).

If there is no written agreement or court order about parenting arrangements for the child, you may apply for an order under s. 46 [*changes to child's residence if no agreement or order*] of the *Family Law Act* using an Application About a Priority Parenting Matter Form 15 or an Application About a Family Law Matter Form 3 to determine the parenting arrangements for the child including the location of the child's residence.

Legal Assistance

Understanding the law and making sure you get correct information is important. If you get the wrong information or do not know how the law applies to your situation, it can be harder to resolve your family law case. Getting advice from a lawyer can help.

Lawyers – To find a lawyer or to have a free consultation with a lawyer for up to 30 minutes, contact the Lawyer Referral Service at 1-800-663-1919.

Legal Aid, Duty Counsel and Family Advice Lawyers – To find out if you qualify for free legal advice or representation, contact Legal Aid BC at 1-866-577-2525.

Legal Services and Resources – Visit Clicklaw at www.clicklaw.bc.ca/helpmap to find other free and low-cost legal services in your community

What you need to get started

Try to collect as much information as possible before you start to complete the form.

You will need:

- birth dates, names, and other related information about the other party and your children
- the agreements or court orders you already have about parenting arrangements
- a copy of the written notice of relocation or information about the proposed relocation if no written notice was provided

Step 1: Complete the Application for Order Prohibiting the Relocation of a Child form ☐

This form is available online at www.gov.bc.ca/court-forms or at any Provincial Court Registry.

You can complete the form online and print it for filing. You can also complete it by hand. If you complete it by hand, be sure it's readable. Registry staff and staff at the Justice Access Centre or Family Justice Centre can help answer questions about the forms but they cannot help complete your forms or give advice about legal problems. If you need help filling in the forms and do not have a lawyer, ask the court registry staff or staff at the Justice Access Centre or Family Justice Centre to refer you to someone who can help.

Follow the instructions in the form and include all the information that is asked for.

To prepare the form for filing:

- print or make copies of the completed form: one set for you, one set for the Court, and one set for each other party
- staple each package of documents together
- bring all copies to the court registry for filing **or** send by mail or by fax filing using the Fax Filing Cover Page Form 52

Step 2: File the Application for Order Prohibiting the Relocation of a Child form at the Provincial Court Registry ☐

You must file at the Provincial Court Registry:

- where the existing Provincial Court case with the same parties is filed, or
- nearest to where your child lives most of the time

Step 3: Serve the Application for Order Prohibiting the Relocation of a Child on each other party ☐

Service is the act of giving or leaving documents with the required person. It is important that each other party know that a case is going on, are aware of what step is being taken, and are given a chance to tell their side of the story to the court.

You must serve the other party with at least 7 days' notice of the date and time of the court appearance, unless the court has ordered something else. This means there must be at least 7 days between the date the application is served on the other party and the date and time of the court appearance.

An Application for Order Prohibiting the Relocation of a Child must be served to the address of service of each other party in any of the following ways:

- by leaving the documents at the party's address for service
- by mailing the documents by ordinary mail to the party's address for service
- by mailing the documents by registered mail to the party's address for service
- if the party's address for service includes an email address, by emailing the documents to that email address
- if the party's address for service includes a fax number, by faxing the documents to that fax number

A party's address for service is the address they have provided to the court. A party who does not have an address for service must be served by leaving a copy of the documents directly with the person (this is called personal service).

Personal service requires that an adult (at least 19 years old) who is not a party hand deliver the documents to the party to be served.

The court may need proof you had the documents served. The person serving the documents must complete a Certificate of Service Form 7 so that you can prove service of the documents. You must attach a copy of the documents to the Certificate of Service. Remember to make a copy before the documents are served.

Step 4: Attend the Court Appearance ☐

A judge can make decisions based only on the information presented by the parties as evidence. Your evidence includes your appliction, any additional affidavit(s), and spoken evidence provided in court.

If you can't attend court using the method of attendance set out in your application for the court appearance, you can request the court's permission to attend using a different method of attendance by filing an Application for Case Management Order without Notice or Attendance Form 11.

Tips for Completing the Form:

Registry location and court file number –
Copy this information from the top right corner of the Notice to Resolve a Family Law Matter or other document filed with the court.

If you don't have an existing court file, registry staff will give your case a file number when you file this document.

Information about the parties –

Party names: Copy your full name from the first document filed in your case with the court. Copy the full name of the relocating guardian(s) from your existing case or from the written agreement or order about parenting arrangements. If this is the first document in your case, see the instructions for the Application About a Family Law Matter for more information about how to complete this section.

Contact Information: The court needs to know where to send documents to you and the other party and how to reach each of you. If your contact information and/or address for service has changed, you can give updated information here. If this is the first document you are filing, see the instructions for the Application About a Family Law Matter for more information about how to complete this section.

Who to give notice to: It is important that each other party know that you are making this application to the court and are given a chance to talk to the court. To give notice, you must serve a copy of the application on the relocating guardian(s) at least 7 days before the date of the court appearance.

Scheduling –
The registry will work with you to schedule a date for the court appearance and will fill in the actual date and method of attendance on the form. Be prepared to talk about your availability.

Application for Order Prohibiting the Relocation of a Child

Form 16
Provincial Court Family Rules
Rule 80

Registry Location:
Salmon Arm
Court File Number:
12345

1. My name is James Apple (full name of party) . My date of birth is January 3, 1980 (mmm/dd/yyyy). My contact information and address for service of court documents are:

Lawyer (if applicable):		
Address: 1010 Not Moving Street		
City: Salmon Arm	Province: BC	Postal Code: V1A 1A1
Email: jamesapple@apple.com	Telephone: 250-123-4567	

2. ☑ I understand I must give notice of this application to the relocating guardian(s). The relocating guardian is the other party. To give notice, they must be served with the application and supporting documents at least 7 days before the date set for the court appearance unless the court allows the application to be made without notice or with less than 7 days notice.

3. ☑ The other party is Sophia Apple (full name of party) . Their date of birth is March 3, 1982 (mmm/dd/yyyy).

Their contact information, as I know it, is:

Lawyer (if applicable):		
Address: 234 Moving Ave		
City: Salmon Arm	Province: BC	Postal Code: V2B 2B2
Email: sophiaapple@apple.com	Telephone: 250-987-6543	

Additional party (complete only if applicable)

Full Name:		Date of Birth:
Contact Information		
Lawyer (if applicable):		
Address:		
City:	Province:	Postal Code:
Email:	Telephone:	

For registry use only

This application will be made to the court at _____ (court registry, street address, city)

on _____ (date) **at** _____ (time) **am/pm.**

You must attend the court appearance _____ (method of attendance) **, unless otherwise allowed by the court.** ☐ See attached for details.

NOTE TO THE OTHER PARTY: If you do not attend court on the date and time scheduled for the court appearance, the court may make an order in your absence. You may also choose to file a written response in reply to the application in Form 19 Written Response to Application.

The court must be satisfied that

a. the proposed relocation is being made in good faith,
b. the relocating guardian has proposed reasonable and workable arrangements to preserve the relationship between the child and the child's other guardians, persons who are entitled to contact with the child, and other persons who have a significant role in the child's life, and
c. the relocation is in the best interests of the child.

Filing location –
Select the reason why you are filing your form at this court registry. Refer to the list of courthouse locations on the BC Government website to find the right Provincial Court registry for you. If two locations are both close or the child resides equally in two different locations, you can decide which registry is closest for filing your application. If the other party doesn't agree, they can ask the court to transfer the file to the other location. It will then be up to the court to decide where the file is located.

Order –
You can only apply under s. 69 of the *Family Law Act* for an order prohibiting the relocation of a child or children if:

- a guardian wants to change the location of their residence or a child's residence that can reasonably be expected to have a significant impact on the child's relationship with another guardian or person having a significant role in the child's life; and
- there is an existing written agreement or court order about parenting arrangements for the child.

Confirm that you are applying for an order to prohibit the relocation of a child or children.

NOTE: If you also need an order about long-term parenting arrangements, including parental responsibilities and parenting time, you must also complete an Application About a Family Law Matter Form 3.

Identification of the children –
Include each child that the application to prohibit relocation is about.

To fill out the table indicate:

- the child's legal name - usually their name from their birth certificate, unless they have had a legal name change
- the child's date of birth by indicating mmm/dd/yyyy example: Jan 12 2001 or January 12, 2001 if the child's birthday is not known indicate Unknown
- who the child is currently living with

The "best interests of the child" is a test that the court uses to make decisions about children. Before making a decision, both parents and courts must consider the child's physical, psychological and emotional safety, security and well-being. Always think about the best interests of the child when you are asking the court for decisions about them.

Existing written agreements or court orders –
You can make an application prohibiting the relocation of a child under s. 69 of the *Family Law Act* if there is an existing written agreement or court order about parenting arrangements.

Attach a copy of the written agreement or court order and include the date the written agreement was signed, or order was made.

Notice of relocation –
If you received written notice of relocation, select the first option and attach a copy of the notice of relocation you received to your application. Please indicate the date you were given the notice.

If you were not given written notice of relocation, select the last option and indicate the date you became aware of the planned relocation and explain how you learned the other guardian is planning to relocate.

Best interests of the child –
When you make parenting arrangements, such as where a child lives, you must consider what is in the best interests of the child. Every family situation is unique, and the court needs to know why you believe prohibiting the relocation is best for the child.

To determine what is in the child's best interests when making parenting arrangements, you must consider factors including:

- the child's emotional health and well-being
- the child's views, unless it would be inappropriate to consider them
- the child's relationships with parents, guardians, and other important people
- the history of care, and
- the impact of any family violence

You do not need to use any special wording. The key is to be clear about why you think the court should make an order prohibiting the proposed relocation.

4. I am filing this form in the court registry:
Select only one of the options below

- ☐ where my existing case with the same party/parites is located
- ☑ closest to where the child lives most of the time, because my case invloves a child-related issue
- ☐ closest to where I live because my case does not involve a child-related issue
- ☐ permitted by court order

ABOUT THE ORDER

5. ☑ I am applying for an order to prohibit the relocation of a child or children.

6. The application is about the following child(ren) that I am guardian of:

Child's full name	Child's date of birth (mmm/dd/yyyy)	Child is currently living with
Steven Apple	February 22, 2018	both parents
Kate Apple	May 5, 2020	both parents

7. ☑ I understand that I must consider the child(ren)'s best interests with respect to each order I am asking the court to make.

8. ☑ I am attaching a copy of the written agreement or order respecting parenting arrangements referred to in section 65 of the *Family Law Act* made on June 6, 2021 (mmm/dd/yyyy) that applies to the child(ren) that are the subject of this application.

9. *Select only one of the options below and complete the required information*

- ☐ I am attaching a copy of the notice of relocation given to me on _____ (mmm/dd/yyyy) .
- ☐ I did not receive written notice of relocation but became aware of the planned relocation on _____ (mmm/dd/yyyy) .
  I understand the date of the relocation of the child(ren) to be _____ (mmm/dd/yyyy) to _____ (proposed location) . I learned about the planned relocation:
  Briefly explain how you found out about the planned relocation if you did not receive written notice

10. ☑ I believe it is in the child(ren)'s best interests to prohibit the proposed relocation because:
I want to see my children on a regular basis and Sophia is proposing that I only see the children during the term breaks of her program. It is not in the children's best interests to only see me 3 -4 times out of the year.

THIS IS A SEPARATION AGREEMENT DATED June 6, 2021

Between

James APPLE

and

Sophia APPLE

Definitions

1.1 In this Agreement:

(a) "child(ren)" means either Steven Apple or Kate Apple or both;

(b) "cohabit" means to live with another person in a relationship resembling marriage;

(c) "CRA" means Canada Revenue Agency;

(d) "Guidelines" means the Federal Child Support Guidelines, as defined in s. 2(1) of the *Divorce Act*;

(e) "section 7 expenses" means the special or extraordinary expenses for the children referred to in s.7 of the Guidelines.

1.2 Any reference to a statute means the legislation bearing that name at the time the Agreement is signed and includes its regulations and any amending or successor legislation. For example, "*Family Law Act*" means the *Family Law Act*, S.B.C. 2011, c. 25, as amended, and includes B.C. Reg. 347/2012.

2. Background

2.1 James Apple and Sofia Apple began cohabitating on July 7, 2016.

2.2 James Apple and Sofia Apple separated on November 30, 2020. They will continue living separate and apart.

2.3 James Apple was born on January 3, 1980 and is currently 42 years old.

2.4 Sophia Apple was born on March 3, 1983 and is currently 39 years old

2.5 They have 2 children, Steven Apple, born on February 22, 2018 and Kate Apple, born on May 5, 2020.

2.6 James Apple worked full-time as a software engineer and Sophia was a home-maker ever since Steven was born.

2.7 James and Sophia each intend this Agreement to be:

(a) a settlement of guardianship, parental responsibilities, parenting time, and support with respect to the children;

3. Parenting

3.1 Both parties are guardians of the children pursuant to the *Family Law Act*, and are entitled to the parental responsibilities and parenting time with respect to the children set out in this Agreement.

3.2 With respect to the parental responsibilities for the children:

(a) James and Sophia will share parental responsibilities with respect to the children, as follows:

(i) Each party will have the obligation to advise the other party of any matters of a significant nature affecting the children;

(ii) Each party will have the obligation to discuss with the other party any significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;

(iii) The parties will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;

(iv) In the event that the parties cannot reach agreement on a significant decision despite their best efforts, Sophia Apple will be entitled to make those decisions and James Apple will have the right to apply for directions on any decisions the party considers contrary to the best interests of the child; and

(v) Each party will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.

3.3 The parenting time with the children will be allocated as follows:

(a) The children will live primarily with Sophia Apple.

(b) The children will live secondarily with James apple as follows:

(i) alternate weekends, from Friday at 5pm to Sunday at 5pm

(ii) both parties are meet at Tim Hortons, located at 123 Coffee Shop Road to exchange the children.

TO EVIDENCE THEIR AGREEMENT AND HAVE SIGNED THIS AGREEMENT BEFORE A WITNESS.

DATE:

Witness

DATE:

Witness

DATED: _____

Between

and

SEPARATION AGREEMENT

[Law Firm]

Provincial Court Family Forms
Brittany Goud, Vicky Law, and Haley Hrymak

James v. Sophia – Fact Pattern

Facts:

- James Apple (DOB January 3, 1980) and Sophia Apple (DOB March 3, 1983) have an agreement to share parenting time of their two children.
- Children:
    - Steven Apple – DOB February 22, 2018 (currently 4 years old)
    - Kate Apple – DOB May 5, 2020 (currently 2 years old)
- The agreement was signed on June 6, 2021
- Sophia has parenting time with the children, every Sunday at 5pm to Friday at 5pm and the first weekend of every month.
- James has parenting time with the children on the other weekends from Friday at 5pm to Sunday at 5pm.
- Exchanges are done at the Tim Hortons located on 123 Coffee Shop Road.
- Both parents and children currently live in Salmon Arm, British Columbia.
- Sophia wants to move with the children from Salmon Arm to Victoria because she was just accepted into a program at a college in Victoria. She tells you that this program will allow her to earn more upon completion. The school has a childcare program for students who are enrolled so that parents can focus on studies. Sophia is eligible for the childcare program at a reduced rate due to her income.
- Both James and Sophia grew up in Victoria and moved to Salmon Arm after their marriage because James was able to get a better job. In fact, James' parents are still living in Victoria as well and Sophia still maintains a relationship with James' parents as she acknowledges that they are her children's grandparents. Sophia knows that James travels to Victoria at least 3 times a year to visit his parents and spends extended periods of time with them in Victoria.
- Sophia has family in Victoria, including a sister who has children around the same age as Steven and Kate. They are all very close with each other, and Sophia feels that Victoria can provide better family and community support to her and the children.

- Sophia knows she needs to tell James that she wants to move with the children. She doesn't think he will take it well and doesn't know if he would let her move with the children. She is not concerned about her safety or the children's safety.

1. What section(s) of the *Family Law Act* does Sophia need to follow to give James notice that she wants to move?
2. How many days prior to Sofia's move does notice need to be given?
3. What are the two pieces of information that Sofia must give to James? (Put both in your answer)

Please help Sofia draft the notice that she must give James

Facts:

- James has received Sophia's written notice, dated October 1, 2022 of her intention to move to Victoria for December 15, 2022. The two of them try to work out a schedule where he sees the children during Sophia's school term breaks but they're not able to agree on anything. He wants to see them on a regular basis and seeing them every 3-4 months is not going to work for him. He proposes that he takes the children on a full-time basis and Sophia can see them during her breaks from school. He sees no other way but to go to court to stop her from moving with the children.

Questions:

4. What section of the Family Law Act does James need to follow to bring this type of application to court?
5. What Provincial Court Family Rules apply?
6. When must James bring this type of application to court?
7. What section of the Family Law Act stipulates this timeline?
8. James is coming to you for help to file an application to prevent Sophia moving with the children. What provincial court forms does James need to complete?

Using the facts in this scenario, please complete Form 16 for James Apple. Neither party have lawyers at this point

- James' info
  - Address: 1010 Not Moving Street, Salmon Arm, BC, V1A 1A1
  - Email: jamesapple@apple.com
  - Telephone: 250-123-4567
- Sophia's info:
  - Address: 234 Moving Ave, Salmon Arm, BC, V2B 2B2

- Email: sophiaapple@apple.com
- Telephone: 250-987-6543

- James and Sophia have a first court appearance to hear James' application. This is scheduled for Thursday November 3, 2022 at 9:30 am

9. What is the default method for attendance at this first court appearance?
    a. In person
    b. Audioconference (telephone or Microsoft Teams) or videoconference (Microsoft Teams)
    c. Hybrid

10. Where is this information located?
    a. BC Provincial Court Rules
    b. Family Law Act
    c. BC Provincial Court Practice Direction
    d. BC Provincial Court Notices to the Profession and Public

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Facts:

- Sophia is not able to attend the court appearance in person on November 3, 2022 as she is in Victoria looking for potential housing from November 1-4.
- Sophia called the registry to see if she could change the date. The registry informed her that this is just a "list day" appearance and she can submit an application to appear remotely.
- Sophia knows that James wants to go to trial for the matter of relocation. The registry also informed her if a trial is ordered, the court date on November 3, 2022 is to adjourn it to the JCM so that James and Sophia can discuss with JCM when the trial should be.

You are Sophia's legal advocate and you explain to Sophia what these terms mean:

- "list day"
- JCM

Sophia says she would like to apply to attend the court date by video conference and asks you for help for this application.

Question: What form does Sophia need to complete to request remote appearance?

Please help Sophia draft this form.

THE PROVINCIAL COURT
OF BRITISH COLUMBIA

Effective Date: *17 May 2021*
NP 11 *Revisions in red*

NOTICE TO THE PROFESSION AND PUBLIC

USE OF A SUPPORT PERSON IN CIVIL AND FAMILY PROCEEDINGS

Purpose

The objective of this Notice to the Profession and Public is to outline the guidelines for using a support person (also referred to as a courtroom companion or "McKenzie friend") in Provincial Court small claims or family proceedings. A support person may also be subject to any applicable provisions of the *Legal Profession Act*.

Notice

1. Unless a judge orders otherwise, a litigant may have a support person sit with them in a Provincial Court small claims or family trial or hearing except for:

    a. a small claims settlement or trial conference;
    b. a family settlement conference; or
    c. a family management conference.

2. A support person may be a friend or a relative.

3. A support person must not be someone who:

    a. may be a witness in the hearing or trial; or
    b. is paid by the litigant for their services.

4. A support person may provide the following help in court:

    a. taking notes;
    b. organizing documents;
    c. making quiet suggestions to the litigant;
    d. providing emotional support; and
    e. any other task approved of by the judge.

5. A support person shall not address the court, or speak on behalf of the litigant except in exceptional circumstances and only with the advance permission of the judge.

6. A judge may refuse to allow a support person to sit with a litigant where the presence of the support person could be or becomes disruptive to the proceedings or would otherwise be unfair to an opposing party.

7. A support person may be allowed to attend a small claims settlement or trial conference or family settlement conference or family management conference, with the permission of the judge, and usually only where the opposing party agrees. If the support person is not allowed to attend, the litigant may ask the judge for a break during the conference to speak to their support person outside the conference room.

History of Notice to the Profession and Public

- Original Notice to the Profession and Public dated April 10, 2017.
- Amended Notice to the Profession and Public dated January 9, 2020 (clarifies "Purpose" and para. 3b that a support person may also be subject to any applicable provisions of the *Legal Profession Act* and must not paid by the litigant for their services).
- May 17, 2021: Amended to change "family case conference" to "family settlement conference" and to add "family management conference" to be consistent with the new *Provincial Court Family Rules* that came into force May 17, 2021.

Melissa Gillespie
Chief Judge
Provincial Court of British Columbia

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid Online / Third Party Applications

Andrea Bryson; Kirk; Shannon; Adina Popescu

This workshop will be presented by a Legal Aid Provincial Supervisor and the Intake Training/Online Applications Coordinator with commentary from the Rise Family Advocate Educator. We will walk advocates through the online applications process for family law, what Legal Aid BC looks for in applications, as well as eligibility reviews, and how to work with Legal Aid BC to ensure they are able to connect with all clients who are eligible for representation services.

Legal Aid BC Intake

Shannon, Training/Online Applications Coordinator
Kirk, Provincial Supervisors, Legal Aid Applications
October, 2022

Legal Aid BC
Support when you need it

Services Overview

Legal Aid

LEGAL INFORMATION
available to anyone;
information is provided by Legal Information Outreach Workers (LIOWs), websites, publications, Community Partners and self-help centers.

LEGAL ADVICE
for those who qualify financially; advice is given through Family, Immigration and Criminal Duty Counsel, including enhanced Duty Counsel in Victoria, the Family LawLINE, Parent Legal Centres.

LEGAL REPRESENTATION
for financially eligible people with serious Family, Child Protection, Immigration, Appeal, or Criminal problems; we contract with private bar lawyers to provide representation.

Collaboration with other organizations to deliver innovative services

Timely and lasting solutions

Legal Aid BC

Applying for Legal Aid

In Person or Over the Phone

Come into one of our 26 **Legal Aid offices** to apply for legal aid and to obtain legal information. Contact information is available on our website www.legalaid.bc.ca.

Call the **Legal Aid BC Provincial Call Centre** at 604-408-2172 in Greater Vancouver or 1-866-577-2525 (toll free).
CP line: 1-888-601-6076/604-601-6076

Clients applying for Immigration matters can call the Legal Aid BC **Immigration Line** at 604-601-6076 or 1-888-601-6076 (toll free).

We also have a designated line for clients who are in custody.

Legal Aid BC

Family Law

Serious family situations (Standard Coverage) regarding parenting issues (guardianship, parenting arrangements or custody/access), protection orders, child support, and more, depending on the issues. And the issues need to be addressed immediately to ensure the safety of the children and/or the client, as well as the parent/child bond. There are exceptions to these guidelines, that we can address under what we call an Exception Review.

For clients that don't fit within the above guidelines we now have **Limited Representation Contracts** that provide support for issues that we don't consider as serious or urgent as our Standard coverage guidelines. Similar to Criminal CERC cases, clients approved for this service would have been refused in the past.

Legal Aid BC

CFCSA (Child Protection and Removal)

Where the Ministry of Children and Family Development (MCFD) or a Designated Agency has removed a child(ren) or where there is a risk or threat of a child(ren) being removed. This could also include custody and/or access issues arising from a child in care.

Legal Aid BC

Financial Eligibility

Representation Income Chart
(Monthly Net Income)

Table of net household monthly income (for representation services)*		
Household size	Standard cases	CFCSA, Criminal Early Resolution, and Family Limited Representation cases
1	$ 1,740	$ 2,740
2	$ 2,430	$ 3,430
3	$ 3,130	$ 4,130
4	$ 3,820	$ 4,820
5	$ 4,520	$ 5,520
6	$ 5,210	$ 6,210
7 or more	$ 5,910	$ 6,910

Effective: April 1, 2021

Legal Aid BC

Financial Eligibility

Personal Property Exemption Limit
(All case types)

Household Size	Exemption
1	$2,000
2	$4,000
3	$4,500
4	$5,000
5	$5,500
6 or more	$6,000

Effective: April 1, 2021

Legal Aid BC

Financial Discretionary Coverage

Legal Representation – Criminal, Family, Immigration, and Appeal Cases

- A file can be sent for a **Discretionary Coverage Review** if an applicant is over the financial eligibility guidelines on income by approximately $100 – $200 for **Criminal** (if a client has a Trial or Pre-Trial set and wouldn't qualify for a CERC), **Family** (if a client's issues are coverable under our Standard guidelines), **Immigration**, and **Appeal cases**, or on assets by $500 for all areas of law, including CFCSA cases, and the matter is a serious and complex case and there is available budget.
- There is no Income Discretionary Coverage Reviews on CFCSA cases as all CFCSA clients are already allowed an additional $1,000 per month for income.

Legal Aid BC

Requesting a Review of a Denial of Legal Aid

A client can request a review of a denial for legal aid

- This request must be in writing.
- The client should state why they disagree with the denial and explain why they believe they should get legal aid.
- The client should include any supporting documents.

Coverage and **Financial Eligibility** Reviews must be submitted within **30 days** of the denial of legal aid to:

Provincial Supervisor
Vancouver Regional Centre
425 – 510 Burrard Street
Vancouver, BC V6C 3A8
Fax: 604-682-0787
Email: provincialsupervisors@legalaid.bc.ca

Legal Aid BC

Working Together

Hopefully this presentation was beneficial and will assist you in helping your clients:

- Understand the intake process
- Prepare for the interview
- Organize documentation
- Make sure they follow up on the status of their file and provide Intake staff with requested information

Legal Aid BC

Presenters: Kirk/Shannon

Phone: 604-601-6210
Fax: 604-682-0787
E-Mail: kirk.Vancouver@legalaid.bc.ca or Shannon.Vancouver@legalaid.bc.ca

Legal Aid BC

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Parenting Tools: Safety Planning

Andrea Bryson; Maggie House

This workshop will walk you through practical and legal options to support clients who are navigating ongoing conflict in co-parenting.

Clients who co-parent in conflict

Maggie House, Lawyer
Andrea Bryson, Family Advocate Educator

1

Territory Acknowledgement

"Law is an intellectual process, not a thing, and it is something that people actually do. [...] No system of law ever lives up to all of its aspirations, but a people's collective aspirations provide direction, order, standards and ethics, and the power of hope. As with all law, Indigenous law contains thinking processes and intellectual resources, and it changes to live in each generation."– Val Napoleon

https://www.uvic.ca/law/assets/docs/ilru/What%20is%20Indigenous%20Law%20Oct%2028%202016.pdf

2

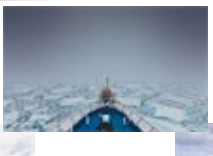
DISCLAIMER

This presentation does not include legal advice.

If you or someone you care about requires legal advice, please consult with a lawyer.

3

In context



4

Practical Considerations

5

What is our role?

- Our role is to help clients to understand what options exist
  - Legal information
- Clients can address parenting issues with abusive ex-partners in practical and legal ways
- Our goal today is to learn to have conversations about:
  - The unfairness of co-parenting with abusive ex-partners
  - What types of practical remedies exist for the client to have more control over their life
  - How to manage expectations of the legal system

6

But it's not fair…

- The legal system is a terrible place to seek justice
- Clients need enforceable remedies to help them have more control over their lives
  - Sometimes that can only come from the legal system
- We need to maintain faith in the system, but it does not need to be blind

7

An activity

- [mentimeter]

8

Common strategies

- 3 types of communication
  - Verbal
  - Written
  - Third party

"We should not write so that it is possible for the reader to understand us, but so that it is impossible for them to misunderstand us"

9

Managing expectations

- We need to have believed-in hope (Vikki Reynolds)
- We cannot force an epiphany in any direction
- We can help clients access:
  - legal remedies, or
  - legal processes, or
  - paths to help the client have more control over her life
- We stay in this system with the client
- Law is "a people's collective aspirations"

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Challenging conversations

- We have a reactive *not proactive* system
- What does best interests of the child really mean?
- There are many ways to be a good and terrible parent

11

Tips

- Look for remedies courts have done in similar situations
- Mitigate the weapon
- What is the clients actual (believed-in) hope?

12

Legal Remedies

13

Tools to manage high-conflict parenting

What can the justice system offer to our clients with high-conflict co-parents?

1) **Conduct Orders**
2) **Protection Orders**
3) Parenting Coordinators
4) Exclusive Occupancy Orders
5) Vexatious Litigant Declaration
6) Peace Bonds

***We will focus on Conduct and Protection Orders

*** We will also be focusing on Provincial Court procedure

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CONDUCT ORDERS

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Conduct Orders

- Conduct Orders are orders that direct a person to say or not say something, or to do or not do something.
- *Family Law Act – Division 5 – Orders Respecting Conduct* lays out the types of conduct orders a family judge may make, the purpose of conduct orders, and specific remedies for breaching conduct orders once they are in place.

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Types of Conduct Orders

- Section 223 deals with case management
- Section 224 deals with dispute resolution, counselling and programs
- Section 225 deals with communication
- Section 226 deals with residency issues
- Section 227 is a "catch-all" clause

Sections 225 and 227 are the two sections most commonly relied on to address bad behaviour and are the most relevant sections to addressing co-parenting conflict.

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FLA Provisions on Communication Conduct Orders

Orders restricting communications

225 Unless it would be more appropriate to make an order under Part 9 *[Protection from Family Violence]*, a court may make an order setting restrictions or conditions respecting communications between parties, including respecting when or how communications may be made.

18

Provincial Court Forms

- What form(s) do I need to apply for a conduct order?
  - Provincial:
  - FORM 10: APPLICATION ABOUT CASE MANAGEMENT and
  - FORM 45: GENERAL AFFIDAVIT in Support of the Conduct Order Sought
    - [If no existing proceeding, FORM 3 AAFLM is required as well and also possibly a FROM 11: APPLICATION ABOUT CASE MANAGEMENT WITHOUT NOTICE to ask the court for an order to shorten the notice period, shorten the response time, and waive any Registry-specific requirements so you can get it in front of a judge faster.]

19

Drafting tips

- PICKLISTS are your FRIENDS!
- "picklists" are lists of common orders using language that judges like to see
- Not always perfect in capturing what you are asking for but they offer a good starting point for most commonly sought orders.
- Feel free to draw outside the lines! (See FLA s 227(c))
- Provincial Picklist: M1 to M9
- Supreme Picklist: G1 to G8b

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Common s 225 Communication Conduct Orders

- 1 party communication restriction
- Mutual Communication restriction
- Childrens' Interests Conduct
- Speech to Children Conduct
- Family Speech Conduct

- (M1 through M5 on the Provincial Picklist in your Materials)

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Section 227

Other orders respecting conduct

227 A court may make an order requiring a party to do one or more of the following:

(a)give security in any form the court directs;

(b)report to the court, or to a person named by the court, at the time and in the manner specified by the court;

(c)do or not do anything, as the court considers appropriate, in relation to a purpose referred to in section 222 [purposes for which orders respecting conduct may be made].

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Purposes of Conduct Orders – FLA s 222

Purposes for which orders respecting conduct may be made

222 At any time during a proceeding or on the making of an order under this Act, the court may make an order under this Division for one or more of the following purposes:

(a)to facilitate the settlement of a family law dispute or of an issue that may become the subject of a family law dispute;

(b)to manage behaviours that might frustrate the resolution of a family law dispute by an agreement or order;

(c)to prevent misuse of the court process;

(d)to facilitate arrangements pending final determination of a family law dispute.

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Draw Outside the Lines!

- Use this section to address behaviours/actions/inactions that do not neatly fall into a defined category (e.g. categories for communication, residency, court case management, counselling/programs)
- For Example, you can use 227(c) to ask to the court to make orders that:
  - Dad will not exit his vehicle during exchanges of the Child;
  - Dad will not make posts on social media about Mom, about the Child, or about court proceedings, or....etc.;
  - Dad (and not Dad's girlfriend), will facilitate parenting time exchanges with Mom;
  - Dad will send a weekly update to Mom via "Our Family Wizard" about Child's soccer games/math homework/other activity that happens while Child is in Dad's care
  - The parties will exchange the child at the RCMP station.

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FACT PATTERN 1

- Maureen Smith has come to you for some legal advice about her family law problem.
- Maureen has separated from her spouse Kuldip Singh. They share parenting time and parenting responsibilities of their son Jake Smith-Singh, 8 years old. They have an existing court file in New Westminster Provincial Court, File No. 22222, and interim orders respecting parenting arrangements and child support.
- Kuldip has started dating a new woman, Raya. Maureen feels uncomfortable with how quickly Kuldip has decided to introduce Raya to Jake and voiced this concern to over the phone on September 15th. Kuldip told Maureen to mind her own business, and that Maureen was being a "jealous b***$". On September 23rd, Maureen's discomfort turned to serious concern when Jake told Maureen that over the weekend at dad's house, dad and Raya told him that Raya was Jake's new mommy and that Jake would be living with daddy and Raya full-time "once we tell the judge about how trashy and poor your mom is. You'll be all mine after court."
- At the next parenting time exchange on September 30th Kuldip exited his car and stormed over to Maureen. In an angry tone of voice and in front of Jake, he told Maureen that he was no longer going to meet Maureen at the Tim Horton's for exchanges like they had been doing. Instead, Kuldip told Maureen she has to drive to and from Kuldip's house for all exchanges. Maureen does not feel like this is fair but will not listen to what Maureen has to say, insisting that she do all of the driving if she wants to see Jake. Kuldip calls Maureen a "selfish b***$" for making him drive half way. The last two times they have met to exchange Jake for parenting time, Kuldip has exited his vehicle and approached Maureen in a physically intimidating manner – puffed up and scowling.

25

Question

- Using the Picklist, what type of conduct orders might Maureen want to ask a judge for?
- Can you think of any orders not in the picklist that Maureen may want to ask for under s 227(c)?

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EXAMPLE PLEADINGS.....in the session materials showing how you may want to draft similar applications for your own clients.

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ENFORCEMENT ORDERS

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- The court made a conduct order.
- The opposing party continues to behave badly and contrary to the conduct order already obtained.

NOW WHAT?

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Enforcement of Conduct Orders

- **Enforcing orders respecting conduct**
- **228** (1)If a party fails to comply with an order made under this Division, the court may do one or more of the following:
  - (a)make a further order under this Division;
  - (b)draw an inference that is adverse to the party, and make an order based on the inference;
  - (c)make an order requiring the party to pay
    - (i)the other party for all or part of the expenses reasonably and necessarily incurred as a result of the non-compliance, including fees and expenses related to family dispute resolution,
    - (ii)an amount not exceeding $5 000 to or for the benefit of the other party, or a spouse or child whose interests were affected by the non-compliance, or
    - (iii)a fine not exceeding $5 000;
  - (d)make any other order the court considers necessary to secure compliance.
- (2)If a party fails to comply with an order made under section 225 *[orders restricting communications]*, the court must consider whether it would be appropriate to make an order under Part 9 *[Protection from Family Violence]*.

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Enforcement: Extraordinary Measures

- Further remedy under FLA Section 231 to apply for a term of imprisonment.
- Extremely rare - only in the most severe, persistent and egregious cases and after every other legal remedy has been exhausted.

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Provincial Court Form

What Form do I need to apply for an order to enforce an existing conduct order in Provincial Court?

FORM 29: APPLICATION ABOUT ENFORCEMENT

FORM 45: GENERAL AFFIDAVIT

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FACT PATTERN 2

Assume Maureen gets a court order:

- Under s 225, Mutual communication restriction conduct order (all communication to be via email unless to facilitate exchanges in which case may be via text and in the case of emergency, by phone).
- Under s 225, Speech to Children conduct order, and Best Interests of the Child conduct order.
- Under s 227, that the exchanges of Jake will continue to take place at the Tim Horton's, Kuldip will stay in his car, Kuldip and Maureen will not speak to one another other than what is necessary to facilitate the exchange.

BUT THEN...

Maureen shows up to the Tim Horton's for the scheduled exchange on October 7, 2022 and Kuldip is not there. Maureen texts Kuldip who responds also via text: "We are at home. If you want him, come get him". Maureen reluctantly drives to Kuldip's house 1 hour and 15 minutes away. When she arrives Kuldip opens the door and yells over his shoulder: "Jake! The raggedy broke-a** B**** showed up after all - get your bag!"

Jake came to the front door, and Maureen could tell he was visibly upset. Jake had tears running down his little face and he was trying to hide it from both Maureen and Kuldip. All the while, Kuldip is totally oblivious, chirping off loudly to Jake: How "sorry" he is that Jake has to leave, how selfish mommy is, that he wishes Jake could stay with him always, and that one day soon he will "get the judge to see how your mom is neglecting you" so Jake can stay with him full-time.

Maureen does not react. She calms Jake down in the car reassuring him that mommy and daddy both love him. When Maureen gets home with Jake, she sees that Kuldip has texted her: "You see how upset you make Jake? This is all your fault. Selfish B****. Just go away and let us be a happy family in peace. Welfare bum. Loser!"

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Questions

Maureen comes to you for further help.

- What enforcement orders can Maureen apply for? (***Hint*** look at your picklists!)
- What Form(s) is she using to apply for those orders?

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EXAMPLE PLEADINGS.....in the session materials showing how you may want to draft similar applications for your own clients.

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PROTECTION ORDERS

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Protection Orders FLA s 183

- A family judge may make an Order of Protection to protect your client and/or other another family member **who has experienced family violence or if there is at risk they will experience family violence.**
- Protection orders restrict contact, attendance, stalking, weapons. See FLA s 183(3).

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Family Violence Definition FLA s1

- "Family Violence" is defined under FLA section 1 and includes physical, sexual, psychological, emotional, and financial abuse and – in the case of a child – direct or indirect exposure to family violence.
- Get ready to be disappointed….
- In practice, judges are much less likely to grant a protection order for conduct falling short of a physical assault.

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Risk Factors s 184

- How do judges assess if a family member is "at risk"?
- FLA s 184 risk factors:
  - A history of family violence against the at-risk family member;
  - Family violence is repetitive or escalating;
  - A pattern of coercive or controlling behaviour;
  - The current status of the relationship including recent or impending separation;
  - Substance abuse, employment or financial problems, mental health problems, access to weapons, a history of violence;
  - The at-risk family member's perception of risk;
  - And other circumstances that increase the at-risk family member's vulnerability.

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Provincial Court Forms

- What forms do I need to apply for a protection order in Provincial Court?
  - FORM 12: APPLICATION ABOUT A PROTECTION ORDER
  - with *optional* affidavit in FORM 45. (Form 12 *is* an affidavit and is technically sufficient by itself but I always include a Form 45 Affidavit – style preference)
  - FORM PFA916: REQUEST FOR SERVICE OF FAMILY PROTECTION ORDER

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Protection Orders – FLA s 183

- Protection Orders can include one or more of:
  - 183(3)(a) An order restraining
    - (i) Communication (direct and indirect) with the at risk family member
    - (ii) Attending, nearing or entering specific locations (e.g. family residence, school, work, church, etc.)
    - (iii) Following the at risk family member
    - (iv-v) Possessing weapons –including firearms and firearms licenses
  - (b) An order specifying a method of communication or contact
  - (c) Direction to the police to
    - (i) Remove the family member from the family home;
    - (ii) Accompany and supervise removal of personal affects;
    - (iii) Seize firearms and other weapons
  - (d) Require the family member to report to the court
  - (e) **Any other term that is necessary** to protect the at risk family member or implement the order.

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Drawing outside the lines - Protection Order Edition

FLA s 183(3)(e) - another opportunity to get creative!

Similar to the catch-all provision for conduct orders under FLA s 227(c), FLA s 183(3)(e) is where you can get creative and draft your application to fit the specific safety promoting orders your client's situation requires.

**NB: the Application about a PO form does not have a spot to include the exact orders you are looking for, which is a pain when dealing with non-standard orders (eg under 183(3)(e)).

You can include them at the very end in schedule 1, #25. See my example PO application.

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EXAMPLE: *AB v. CD and EF*, 2019 BCSC 604

Absentee dad waltzes into his older teen son's life to try to stop his son from having gender-affirming surgery in a very public, humiliating way. Judge issued a Protection Order to protect the son from dad's ongoing public family violence against son:

[93] The protection order is required to be prepared by the Registry. However, I will summarize the substance of the order here:

a) CD shall be restrained from:
   i. attempting to persuade AB to abandon treatment for gender dysphoria;
   ii. addressing AB by his birth name; and
   iii. referring to AB as a girl or with female pronouns whether to AB directly or to third parties;

b) CD shall not directly, or indirectly through an agent or third party, publish or share information or documentation relating to AB's sex, gender identity, sexual orientation, mental or physical health, medical status or therapies, other than with the following:
   i. His legal counsel;
   ii. Legal counsel for AB, EF, and the named respondents in the Petition currently filed as Vancouver Registry S-191565;
   iii. The Court;
   iv. Medical professionals engaged in AB's care or CD's care;
   v. Any other person authorized through written consent of AB; and
   vi. Any other person authorized by order of this court;

c) CD shall not authorize anyone, other than his own retained counsel, to access or make copies of any of the files from the Registry in relation to this proceeding or any related proceeding, including CD's petition proceedings currently filed as S-191565; and

d) The term of the protection order shall be one year, subject to any extension issued by the court.

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A note on EVIDENCE

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Evidence

- Document, Document, Document!
- Evidence for conduct orders, enforcement orders, and protection orders will typically be by way of Affidavit
- It is good practice to tell your clients at any stage of the proceeding they come to you to always:
  - Keep a contemporaneous diary of dates and times of incidents
  - Text messages and emails
  - Social media screen shots
  - Photographs
  - Transcribed voice messages, videos
  - Third-party documents where available – e.g. from MCFD, police, hospital records
  - I personally like to include printouts of criminal charges and convictions from "Court Services Online", and particularly if there are assault charges.
  - Note that a criminal charge labelled in CSO as a **"K" charge** is a domestic violence assault charge.
  - CSO website: https://justice.gov.bc.ca/cso/index.do

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More on Affidavits

- If your client is keeping a diary and saving files in an organized, chronological fashion as recommended, then half your work is done.
- The diarized events form the basis of the narrative of the affidavit and the saved texts, emails, screenshots, third-party records etc., become the exhibits to the affidavit.

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Fact Pattern 3

After the last incident with , Maureen decided not to bring an Application for Enforcement or for Application About a Protection Order, but she did take your advice to start keeping a diary to document everything that did. 's behaviours continued and has escalated sharply. Not only has continued to berate Maureen over text and in front of Jake at parenting exchanges, but Maureen started to receive strange emails that she knows is responsible for – 10 or more times a day she receives emails from pornographic websites that her email address has been "subscribed" to. Maureen knows that it was because she took a screenshot of 's facebook page where he states: "I'm basically an evil genius coz I signed up the ex for every gross subscription I could find. B***h gonna B bombarded by ***...lolz". The last straw was yesterday. Maureen began receiving a large number of hang-up calls from blocked numbers as well as 4 separate text messages from numbers unknown to her that included sexually explicit images and threats to assault her. In the afternoon, a friend forwarded Maureen a link to a website for jilted exes to blast their partners. There she found a post from an anonymous poster that included a picture of her and Jake and was captioned: "this is what a loser looks like! The welfare queen herself, Maureen Smith. She lives at 123 Broad Street, Big City, BC. Cell: 555-5555. Email: 12345@email.com. Give her hell, boys! Also pictured – my beautiful son, Jake."

Maureen tells you that she is frightened for her safety. She did not sleep last night. She paid to stay at a hotel down the road from her house for the next week costing her $1000 and she is changing her phone number today, costing her another $100, for $1100 total. She has almost completely depleted her savings because of this and she is worried how she will afford groceries.

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Questions

- Using the Picklist, what type of protection orders should Maureen want to ask a judge for?
- Can you think of any orders not in the picklist that Maureen may want to ask for under s 183(3)(e)?
- What evidence will you ask Maureen to collect for exhibits to her affidavit?

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EXAMPLE PLEADINGS.....in the session materials showing how you may want to draft similar applications for your own clients.

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More Tools for Your Toolboxes

- Parenting Coordinators
- Exclusive Occupancy Orders
- Vexatious Litigant Declaration
- Peace Bonds

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Parenting Coordinators

- Family Law Act – Division 3 - ss. 14-19
- What they do:
  - Assist the parties to implement a court order or agreement respecting parenting arrangements, through help build consensus between the parties
  - Absent consensus – and/or at any time - make binding, court enforceable determinations about parenting issues including communication
- How to appoint:
  - by agreement of the parties or by obtaining an order from the court
- When to appoint:
  - After you have a court order or agreement respecting parenting issues
- Pro/con considerations:
  - Effective in keeping matters out of court
  - Faster outcomes than going back to court, mediation, or negotiation
  - Need to already have a court order or agreement about parenting issues
  - VERY EXPENSIVE and not within reach of most clients. Can cost upwards of $15,000 - $20,000+

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Exclusive Use/Occupation/ Possession of Property

- Family Law Act – FLA s 90
  - S90 Allows the Supreme Court to order that one party temporarily has exclusive occupancy of the family home and/or possession of personal property at the family home
- How to obtain:
  - Notice of Application with Affidavit to the Supreme Court
- When to obtain:
  - Ex refuses to leave the family home and it is impossible to cohabitate
  - threatening to destroy, take etc. personal property
- Pro/con considerations:
  - Can't get in Provincial Court. Supreme only (costly and complicated)
  - In practice, judges expect the person inhabiting the home to pay the expenses of maintaining it (under FLA s 226) and especially if the party inhabiting the home is receiving spousal support

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Vexatious Litigant Order/Declaration

- Family Law Act – s 221 *and/or* Supreme Court Act s 18
- What they do:
  - Prevents a party from bringing further applications without leave of the court
  - Repayment of expenses to applicant
  - Fines
- How to obtain:
  - Court order
- When to obtain:
  - Ex is mis-using the justice system to harass your client such as repeatedly bringing unnecessary, trivial applications before the court

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Peace Bonds

- NOT a Family Law Act remedy but a criminal law remedy under the *Criminal Code* (and by common law)
- What they do
  - like a protection order, restrains contact or attendance but can be applicable to more than family members
- How to obtain:
  - Ask police to recommend to the crown prosecutors to bring application for a Peace Bond
- Pro/con considerations:
  - Don't need a lawyer, no cost and doesn't cut into legal aid hours
  - Enforceable throughout Canada
  - BUT –you're at the mercy of the individual cop or crown lawyer. The police or crown can just decide not to pursue.

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Questions for us?

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516 Richards Street
Vancouver BC V6B 3A2

Contact information:
Maggie House:
mhouse@womenslegalcentre.ca

Andrea Bryson:
abryson@womenslegalcentre.ca

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FLA ORDERS PICKLIST

Your court clerk has near-instant access to these: a quick search and a double-click records the terms as they appear here.
The clerk can then click underlined values to enter names, dates and amounts you specify, and can change wording as you desire.
TIP: Beginning by stating the letter-number code (e.g. A1) will make the process even faster for your clerk.

	RECITAL	
A1	Recital	Upon the Court being advised that the name and birth date of each child is as follows: _____;
THIS COURT ORDERS THAT:		
	GUARDIANSHIP ss. 39 & 51, Rule 18.1	
B1	Guardianship Presumed s. 39(1)	The Court is satisfied that (name(s)) is/are the guardian(s) of the child(ren) under s.39(1) of the *Family Law Act (FLA)*.
B2	Guardianship Presumed s. 39(3)	The Court is satisfied that (name(s)) is/are the guardian(s) of the child(ren) under s. 39(3) of the *Family Law Act (FLA)*.
B3	Guardian Appointed	Under s. 51(1)(a) of the *Family Law Act (FLA)* (name(s)) is/are appointed guardian(s) of the child(ren).
B4	Interim Guardian Appointed Rule18.1	Under Rule 18.1 of the Provincial Court (Family) Rules, (name(s)) is/are appointed guardian(s) of the child(ren) on an interim basis until (date).
B5	Inform Guardians	Each guardian will advise the other guardian of any matters of a significant nature affecting the child(ren).
B6	Consult Guardians	Each guardian will consult the other guardian about any important decisions that must be made and will try to reach agreement concerning these important issues.
B7	Decision Making s. 49	Under s. 49 if the guardians cannot agree on a parental responsibility, (name) shall make the decision and (name) may apply for a review of that decision under s. 49 of the *FLA*.
B8	(Modified Joyce Model)	(a) In the event of the death of a guardian, the surviving guardian(s) will be the only guardian(s) of the child; (b) Each guardian will have the obligation to advise the other guardian(s) of any matters of a significant nature affecting the child; (c) Each guardian will have the obligation to discuss with the other guardians any significant decisions that have to be made concerning the child, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare; (d) The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions; (e) In the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the guardian with the majority of parenting time with the child will be entitled to make those decisions and the other guardian(s) will have the right to apply for directions on any decision the guardian(s) consider(s) contrary to the best interests of the child, under s.49 of the *FLA*; and, (f) Each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party caregivers.
	PARENTAL RESPONSIBILITIES ss. 40, 41 & 45(1)(a)	
C1	Sole Responsibility	Under s. 40(3)(a) of the *FLA* (name) will have all of the parental responsibilities for the child(ren).
C2	Equal Responsibility	Under s. 40(2) of the *FLA* the guardians will share equally all parental responsibilities for the child(ren).
C3	Specified Common Responsibilities	Under s. 40(2) of the *FLA* (name) will have the following parental responsibilities for the child(ren): (a) Making day to day decisions affecting the child(ren) and having day to day care, control and supervision of the child(ren); (b) Making decisions about where the child(ren) will reside; (c) Making decisions respecting with whom the child(ren) will live and associate; (d) Making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location; (e) Making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity; (f) Subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child; (g) Applying for a passport, licence, permit, benefit, privilege or other thing for the child; (h) Giving, refusing or withdrawing consent for the child, if consent is required; (i) Receiving and responding to any notice that a parent or guardian is entitled or required by law to receive; (j) Requesting and receiving from third parties health, education or other information respecting the child; (k) Subject to any applicable provincial legislation; (i) Starting, defending, compromising or settling any proceeding relating to the child; and (ii) Identifying, advancing and protecting the child's legal and financial interests; (l) Exercising any other responsibilities reasonably necessary to nurture the child's development.
C4	List Statutory Responsibilities	Under s. 40(2) of the *FLA* (name) will have the following parental responsibilities: (*specify some or all of ss. 40(2)(a) through (l) responsibilities – they are in DARS in statute language).*
	PARENTING TIME s. 45	
D1	Equal Parenting Time	The guardians will share parenting time equally as agreed between them.
D2	Reasonable Parenting Time	(name) will have reasonable parenting time at dates and times agreed between the guardians.
D3	Liberal and Generous Parenting Time	(name) will have liberal and generous parenting time at dates and times agreed between the guardians.

D4	Parenting Time Every Specified Day	(name) will have parenting time every (day of week) from (time 1) to (time 2), commencing (start date).
D5	Parenting Time Alternate Specified Days	(name) will have parenting time alternate (day of week) from (time 1) to (time 2), commencing (start date).
D6	Parenting Time Every Weekend	(name) will have parenting time every weekend from (day and time 1) until (day and time 2), commencing (start date).
D7	Parenting Time Alternate Weekends	(name) will have parenting time on alternate weekends from (day and time 1) until (day and time 2), commencing (start date).
D8	Stat Holiday Parenting Time	If the day preceding or following the weekend is a statutory holiday or professional development day, the parenting time will include that extra day.
D9	Supervised Parenting Time	(name)'s parenting time will be supervised by (name) or another person agreed between the guardians.
D10	Parenting Time In Presence	(name)'s parenting time will take place in the presence of (name) or another person agreed between the guardians.
D11	Christmas Parenting Time	(name) will have the following parenting time during the Christmas school holidays: ___
D12	Winter Holidays Parenting Time	(name) will have the following parenting time during the winter school holidays: ___
D13	Spring Break Parenting Time	(name) will have the following parenting time during the spring school break: ____
D14	Summer Parenting Time	(name) will have the following parenting time with the child(ren) during the child(ren)'s summer holidays: __
D15	Default Summer Parenting Time	The guardians will each have parenting time for (period) each summer at dates and times agreed between them, but if they are unable to agree, then (name) will have the children for (specified period).
D16	Majority Parenting Time	(name) will have the majority of the parenting time with the child(ren)
D17	All the Parenting Time	(name) will have all the parenting time with the child(ren)
	CONTACT s. 59	
E1	Reasonable Contact	(name) will have reasonable contact with the child(ren) at dates and times agreed between the parties.
E2	Liberal and Generous Contact	(name) will have liberal and generous contact with the child(ren) at dates and times agreed between the parties.
E3	Contact Every Specified Day	(name) will have contact with the child(ren) every (day of week) from (time 1) to (time 2), commencing (start date).
E4	Contact Alternate Specified Days	(name) will have contact with the child(ren) alternate (day of week) from (time 1) to (time 2), commencing (start date).
E5	Contact Every Weekend	(name) will have contact with the child(ren) every weekend from (day and time 1) until (day and time 2), commencing (start date).
E6	Contact Alternate Weekends	(name) will have contact with the child(ren) on alternate weekends from (day / time 1) until (day / time 2), commencing (start date).
E7	Stat Holiday Contact	If the day preceding or following the weekend is a statutory holiday or professional development day, the contact time will include that extra day.
E8	Supervised Contact	Under s. 59(3) of the *FLA* (name)'s contact will be supervised by (name) or another person agreed between the parties.
E9	Contact in Presence	(name)'s contact will take place in the presence of (name) or another person agreed between the parties.
E10	Christmas Contact	(name) will have the following contact with the child(ren) during the Christmas school holidays: __
E11	Winter Holidays Contact	(name) will have the following contact with the child(ren) during the winter school holidays: __
E12	Spring Break Contact	(name) will have the following contact with the child(ren) during the spring school break: __
E13	Summer Contact	(name) will have the following contact with the child(ren) during the children's summer holidays: __
	TRANSPORT, EXCHANGE, TELEPHONE, ALCOHOL & DRUGS ss. 45 & 49	
F1	Parenting Time Transport	(name 1) will pick up and (name 2) will drop off the child(ren) at the beginning and ending of (name)'s parenting times.
F2	Contact Transport	(name 1) will pick up and (name 2) will drop off the child(ren) at the beginning and ending of (name)'s contact.
F3	Exchange	The child(ren) will be exchanged at (location).
F4	Phone/Electronic Communication	(name) will have reasonable telephone and/or electronic communication with the child(ren).
F5	Specified Phone/Electronic Communication	(name) will have reasonable telephone and/or electronic communication with the child(ren) between (time 1) and (time 2) on (day(s) of week).
F6	No Alcohol/Drugs	(name) will not consume or possess any alcohol or controlled substance within the meaning of Section 2 of the *Controlled Drugs and Substances Act*, except as prescribed by a licensed physician, during contact or

		parenting time and for (duration) hours before having contact or parenting time.
	CHILD SUPPORT s. 149	
G1	Income Finding	(name) is found to be a resident of British Columbia and is found to have a gross annual income of $ __ .
G2	Imputed Income	(name) is found to be a resident of British Columbia and is imputed to have a gross annual income of $ __ .
G3	Child Support Payments	(name 1) will pay to (name 2) the sum of $ ___ per month for the support of the child(ren), commencing on (start date) and continuing on the ___ day of each and every month thereafter, for as long as the child(ren) is/are eligible for support under the *Family Law Act* or until further Court order.
G4	Extraordinary Expenses	(name 1) will pay to (name 2) the sum of $ ___ per month commencing on (start date) and continuing on the ___ day of each month thereafter for the child(ren)'s special or extraordinary expenses.
	SPOUSAL SUPPORT ss. 164, 165, 168 & 170	
H1	Spousal Support Until Termination	(name 1) will pay to (name 2) for his or her support the sum of $ ____ per month, commencing on (start date) and continuing on the ___ day of each and every month thereafter until (end date), at which time spousal support will be terminated.
H2	Spousal Support Until Review	(name 1) will pay to (name 2) for his or her support the sum of $ ____ per month, commencing on (start date) and continuing on the ___ day of each and every month thereafter until (end date), at which time spousal support will be reviewed.
	ARREARS	
J1	Arrears Quantum Only	The arrears owing from (name 1) to (name 2) as of (date) are $ ____, including principal and interest.
J2	Arrears Quantum with Default Fees	The arrears owing from (name 1) to (name 2) as of (date) are $ ____, including principal and interest and default fees.
J3	Arrears Payment	(name 1) will pay to (name 2) a minimum of $ ____ per month towards the arrears of maintenance, in addition to regular monthly maintenance payments, commencing on (start date) and continuing on the ___ day of each month thereafter until the arrears are paid in full or until further Court Order.
	FINANCIAL DISCLOSURE	
K1	Form 4 Financial Disclosure	(name) will complete, file with the Registry of this Court, and deliver to (name) a sworn Financial Statement in Form 4 of the Provincial Court (Family) Rules, including all attachments listed on page 2 of that Form by (due date).
K2	Annual Financial Disclosure	For as long as the child(ren) is/are eligible to receive child support, the parties will exchange: (a) copies of their respective income tax returns for the previous year, including all attachments, not later than (date) each year; and (b) copies of any Notice of Assessment or Reassessment provided to them by Canada Revenue Agency, immediately upon receipt.
K3	Penalty	Under Section 213(2)(d) of the *FLA*, (name 1) will pay up to $5000 to (name 2) if he or she fails to file financial information in accordance with this Order. This award is in addition to and not in place of any other remedy.
K4	Changes to the Order	Under s.222 of the *FLA* upon exchange of their income tax returns and notices of assessment, the parties are required to discuss any material change in circumstances which warrant a change in the amount of support payable. If the parties are unable to agree on whether the amount of support payable should be changed, the parties must consult with a family justice counsellor before bringing an application to change this order.
	NON-REMOVAL s. 64; RELOCATION ss. 46, 65-71; and TRAVEL	
L1	Non-Removal	Under s. 64(1) of the *FLA* (name) shall not remove the child(ren) from (area) without the written consent of all guardians or further Court order.
L2	Residence	(name) will not change the residence of the child(ren) from (location) without first obtaining the written approval of all guardians and persons having contact, unless he or she has provided all guardians and persons having contact with 60 days' written notice, and no one receiving such notice has filed an application under ss. 59, 60 or 69 of the *FLA* to maintain contact or prohibit relocation within 30 days of receiving the notice.
L3	Relocating	Under s. 69(2) of the *FLA* (name) may relocate the residence of the child(ren) to (location) upon the following terms: __
L4	Travel	(name) may travel with the child(ren) to (location) from (start date) to (end date) without the written consent of any other guardian of the child(ren).
L5	Consent for Passports	No guardian will apply for a passport for the child(ren) without the written consent of the other guardian.
L6	Passport without Consent	(name) may apply for a passport for the child(ren) without the consent of any other guardian.
L7	Travel Cooperation	Each guardian will cooperate with the other guardian in the provision of passports, consents to travel, and other necessary documents as may be required to allow the child(ren) to travel.

CONDUCT ORDERS ss. 222 - 227	

M1	1 Party Communication Restriction	Under s. 225 of the *FLA* (name 1) will have no communication with (name 2) except (describe means and / or circumstances of permitted communication).
M2	Mutual Communication Restriction	Under s. 225 of the *FLA* the parties will communicate with each other only (describe means and / or circumstances of permitted communication).
M3	Children's' Interests Conduct	The parties will (a) put the best interests of the child(ren) before their own interests; (b) encourage the child(ren) to have a good relationship with the other parent and speak to the child(ren) about the other parent and that parent's partner in a positive and respectful manner; and (c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the child(ren).
M4	Speech to Children Conduct	The parties will not (a) question the child(ren) about the other parent or time spent with the other parent beyond simple conversational questions; (b) discuss with the child(ren) any inappropriate adult, court or legal matters; or (c) blame, criticize or disparage the other parent to the child(ren).
M5	Family Speech Conduct	The parties will encourage their respective families to refrain from any negative comments about the other parent and his or her extended family, and from discussions in front of the child(ren) concerning family issues or litigation.
M6	Report To	Under s. 227(b) of the *FLA* (name) will report in person to (the Court, named supervisor or counsellor) no later than (time) on (date) at (location).
M7	Attend Counselling	Under s. 224(1)(b) of the *FLA* (name) will enroll in (type) counseling, and provide confirmation of attendance to (person or court) by (date).
M8	Complete Counselling	Under s. 224(1)(b) of the *FLA* (name) will enroll in (type) counseling, and provide confirmation of completion to (person or court) by (date).
M9	AA or NA	Under s. 224(1)(b) of the *FLA* (name) will provide to (person or court) proof of his or her attendance at no fewer than (number) meetings of Alcoholics Anonymous or Narcotics Anonymous each week during the duration of this Order.
	ENFORCEMENT ss. 228, 230, 231	
N1	Pay Expenses	(name 1) pay to (name 2) $ ___ on or before (date), being expenses reasonably and necessarily incurred as a result of (name 1)'s non-compliance with the Order of the Honourable Judge _____, made (date).
N2	Pay for Benefit of	(name 1) pay to (name 2) $ ___ on or before (date) for the benefit of (name(s) whose interests were affected by (name 1)'s non-compliance with the Order of the Honourable Judge _____, made (date).
N3	Pay Fine	(name) pay a fine of $ ___ to the Clerk of the Court at the _____ Court Registry on or before (date) for non-compliance with the Order of the Honourable Judge _____, made (date).
N4	Give Security	(name) give security by (date) by (describe nature of security).
N5	Imprisonment	(name) be imprisoned for a term of ____ days for non-compliance with Order of the Honourable Judge _____ made (date), (by *describe non-compliance AND / OR* on *state dates(s) of non-compliance*).
N6	Police Apprehend – Withheld from Guardian	Upon being satisfied that a person has wrongfully withheld a child from a guardian, this Court orders under s. 231(5) of the *FLA* that a police officer apprehend the child(ren) (child name(s)) and take the child(ren) to (name).
N7	Police Apprehend – Withheld by Guardian	Upon being satisfied that a person has been wrongfully denied parenting time or contact with a child by the child's guardian, this Court orders under s. 231(4) of the *FLA* that a police officer apprehend the child(ren) (child name(s)) and take the child(ren) to (name).
N8	Police Search	For the purpose of locating and apprehending a child in accordance with this order, under s. 231(6) of the *FLA* a police officer may enter and search any place he or she has reasonable and probable grounds for believing the child to be.
	VARIATION, SUSPENSION, TERMINATION ss. 47, 60, 152, 167, 186, 187, 215, Rule 20(4)	
O1	Variation	The Order of the Honourable Judge (name), made (date), is changed as follows: _____.
O2	Without Notice Order Changed	The Order of the Honourable Judge _____, made (date) in the absence of (name) is changed as follows: _____.
O3	Without Notice Order Suspended	The Order of the Honourable Judge _____, made (date) in the absence of (name) is suspended until (date OR circumstance).
O4	Without Notice Order Terminated	The Order of the Honourable Judge _____, made (date) in the absence of (name) is terminated.
	PARENTAGE s. 33(2)	
P1	DNA Test	Under s. 33(2) of the *FLA* the parties and the child will have tissue and/or blood samples taken by a qualified person for the purpose of conducting parentage tests.
P2	DNA Test and Costs	Under s. 33(2) of the *FLA* the parties and the child will have tissue and/or blood samples taken by a qualified person for the purpose of conducting parentage tests, with the costs to be _____.
	s. 211 REPORT	
Q1	Full Report by Family Justice Counsellor	A Family Justice Counsellor will prepare a report to assess (*state issue(s) as specifically as possible*).
Q2	Full Report Named	(preparer's name) will prepare a report to assess (issue(s)).

	Preparer	
Q3	Full Report Named Preparer and Costs	(preparer's name) will prepare a report to assess (issue(s)), with the cost to be _____ .
Q4	VOC Report by Family Justice Counsellor	A Family Justice Counsellor will report the views of the child(ren) about _____ .
Q5	VOC Report Named Preparer	(preparer's name) will report the views of the child(ren) about _____ .
Q6	VOC Report Named Preparer and Costs	(preparer's name) will report the views of the child(ren) about _____ with the cost to be _____ .
	RULE 5	
R1	Dispense with Rule 5	Under Rule 5(8) of the Provincial Court (Family) Rules, the requirement for (name) to meet with a Family Justice Counsellor is dispensed with.
R2	Defer Rule 5	Under Rule 5(8) of the Provincial Court (Family) Rules, the requirement for (name) to meet with a Family Justice Counsellor is deferred until (date).
R3	Comply with Rule 5	(name or the parties) comply with Rule 5 by (meeting with FJC or attending PAS or both) by (date).
	SERVICE Rule 9	
S1	Service Order Only	The Applicant will have the respondent served with a copy of this Order by (date) and file an Affidavit of Service in the Provincial Court Registry by (date).
S2	Service Order and Documents	The Applicant will have the respondent served with a copy of this Order and (documents) by (date) and file an Affidavit of Service in the Provincial Court Registry by (date).
S3	Sub Service	Under Rule 9 of the Provincial Court (Family) Rules, (name 1) may serve (name 2) with (document type) by (service method) and such service will be deemed sufficient service on (name 2) effective on the date of service.
S4	Service by Peace Officer	A copy of this order will be served on (name) by a (peace officer/ or/ Sheriff/or/member of the Royal Canadian Mounted Police) by (date) and that (peace officer/ or/ Sheriff/or/member of the Royal Canadian Mounted Police) will provide proof of service to the Provincial Court Registry at (location), British Columbia by (date).
	TRANSFER FILE Rule 19	
T1	Transfer File For All Purposes	Under Rule 19 of the Provincial Court (Family) Rules, File No. ____ be transferred to the Provincial Court Registry at (location), British Columbia, for all purposes.
T2	Transfer File Single Purpose	Under Rule 19 of the Provincial Court (Family) Rules, File No. ____ be transferred to the Provincial Court Registry at (location), British Columbia, for the purpose of hearing the application filed (filing date).
	DISPENSE WITH SIGNATURE	
U1	Dispense with Signature	The requirement to obtain (name)'s signature approving the form of this Order is dispensed with.

Protection Orders s. 183

(MUST GO ON A SEPARATE ORDER: s. 183(5))

There are important differences between **Protection Orders** made under Part 9 (ss. 182 to 191) when a Court determines family violence is likely to occur and **Conduct Orders** made under Part 10 Division 5 (ss. 222 to 228) or **non-removal orders** made under s. 64, in circumstances that do not involve family violence. Protection Orders are sent to the Protection Order Registry by Court Services and they are enforced under the *Criminal Code*. Conduct Orders are enforced under the *Family Law Act*. It is particularly important to use precise wording and statute sections in Protection and Conduct Orders to make it clear which type of order is being made.

V1	No Contact	Under s. 183(3)(a) of the *Family Law Act (FLA),* (name 1) shall not have contact or communicate directly or indirectly with (name 2) except: (a) While in attendance at a settlement conference or family case conference in a court action, or a court appearance in which (name 1) is compelled by law to attend under subpoena or in which (name 1) is a party; and, (b) For communication through legal counsel in your absence.
V2	No Contact and Children	Under s. 183(3)(a) of the *Family Law Act (FLA),* (name 1) shall not have contact or communicate directly or indirectly with (name 2) or the child(ren), (child name(s)) except: (a) While in attendance at a settlement conference or family case conference in a court action, or a court appearance in which (name 1) is compelled by law to attend under subpoena or in which (name 1) is a party; and, (b) For communication through legal counsel in your absence.
V3	No Go	Under s. 183(3)(a) of the *FLA*, (name 1) shall not attend at, enter or be found within (distance) of the residence, place of employment or school of (name 2), even if he or she is an owner or has a right to possess or enter such a place.
V4	No Go and Children	Under s. 183(3)(a) of the *FLA*, (name 1) shall not attend at, enter or be found within (distance) of the residence, place of employment or school of (name 2) or the child(ren) (child name(s)), even if he or she is an owner or has a right to possess or enter such a place.
V5	No Contact Except	Under s. 183(3)(b) of the *FLA*, (name 1) shall not have contact or communicate directly or indirectly with (name 2) except for the following: _____.
V6	Weapons Prohibition	Under s.183(3)(a) of the *FLA*, (name) shall not own, possess or carry any weapons as defined by s. 2 of the *Criminal Code* of Canada, or any knives except while preparing and consuming food.
V7	Firearms Prohibition	Under s.183(3)(a) of the *FLA*, (name) shall not own, possess or carry any firearm, cross-bow, prohibited weapon, restricted weapon, imitation weapon, prohibited device, ammunition, prohibited ammunition, explosive substance, or all such things, and any related authorizations, licenses and registration certificates.
V8	Surrender Firearms	Under s.183(3)(e) of the *FLA*, (name) shall immediately attend a police station or detachment and accompany a police officer, including any RCMP officer having jurisdiction in the Province of British Columbia, to the location of any firearm, prohibited weapon, restricted weapon, imitation weapon, prohibited device, ammunition, prohibited ammunition, explosive substance or all such things and to the location of any related authorizations, licenses and registration certificates he or she possesses and surrender the said items to the police officer until further order of the Court.
V9	Remove Weapons	Under s. 183(3)(c)(iii) of the *FLA*, any police officer, including any RCMP officer having jurisdiction in the Province of British Columbia, who is provided with a copy of this Order is directed to seize from (name) any weapons as that term is defined in s. 2 of the *Criminal Code of Canada* and related documents, and hold such items seized until further order of the Court.
V10	Remove from Residence	Under s. 183(3)(c)(i) of the *FLA*, any police officer, including any RCMP officer having jurisdiction in the Province of British Columbia, who is provided with a copy of this Order is directed to remove (name and DOB) from the residence located at (address and city), British Columbia.
V11	Remove Belongings	Under s. 183(3)(c)(ii) of the *FLA*, any police officer, including any RCMP officer having jurisdiction in the Province of British Columbia, who is provided with a copy of this Order is directed to accompany (name) to attend the residence located at (address and city), British Columbia on one occasion, to supervise the removal of his or her personal belongings.
V12	Remove Belongings Children	Under s. 183(3)(c)(ii) of the *FLA*, any police officer, including any RCMP officer having jurisdiction in the Province of British Columbia, who is provided with a copy of this Order is directed to accompany (name) to attend the residence located at (address and city), British Columbia on one occasion, to supervise the removal of his or her personal belongings and personal belongings of the child(ren).
V13	Carry a Copy	Under s.183(3)(e) of the *FLA*, (name) shall carry a copy of this Order on his or her person at all times when outside his or her place of residence and produce it upon the demand of a peace officer.
V14	Expiry Date	Under s. 183(4) of the *FLA*, this Order will expire on (date) at (time).
V15	Liberty to Set Aside	(name 1) may apply to set aside this Order with (number) days' notice to (name 2).

Without Notice Protection Order Checklist:
• Have statute sections been cited or has the Court Clerk been advised whether a Conduct or Protection Order is being made? • Does each term specify whether it is the Applicant who is being protected or the children or both? • Expiry date? If no expiry date is specified, the order will expire in one year, but including an expiry date may provide greater clarity and certainty. • Does the Order contain a provision indicating that an application to change or set aside the order may be made? • Does the Order contain a provision directing service of the Notice of Motion, Application (if filed) and Order? See Service Orders S1 – S4. • In Rule 5 Registries, have the parties been reminded to comply with Rule 5 unless an Order is sought and made exempting them from doing so. See Rule 5 Orders R1 – R3. • Once a Notice of Motion has been heard, it should not be given a subsequent appearance date. The Registry will set a first appearance date on the substantive application once service and response time (and Rule 5 if applicable) have been completed. • Should a transcript of the hearing be ordered for the court file if this is not done automatically by your Registry?

Supreme Court Family Pick List

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Divorce Order		
A1	Divorce Order s. 12 of Divorce Act	Subject to s. 12 of the *Divorce Act* (Canada), the Claimant, NAME, and the Respondent, NAME, who were married at LOCATION on DATE, are divorced from each other. The divorce to take effect on the 31st day after the date of this order.

***Divorce Act*: Decision-making responsibility**		
B1	Sole decision-making responsibility	The PARTYNAME will have all of the decision-making responsibility with respect to the child(ren) under s. 16.3 of the *Divorce Act*.
B2	Equal decision-making responsibility	The PARTYNAME and the PARTYNAME will equally share the decision-making responsibility with respect to the child(ren) under s. 16.3 of the *Divorce Act*.
B3	Specified allocation of the decision-making responsibility	The PARTYNAME will have the following decision-making responsibilities for the child(ren) under s. 16.3 of the *Divorce Act*: (a) health; (b) education; (c) culture, language, religion and spirituality; (d) significant extra-curricular activities; and (e) [list any additional responsibilities].
B4	Parenting Plan s. 16.6 of DA	The PARTYNAME and the PARTYNAME will share the decision-making responsibility with respect to the child(ren) in accordance with the parenting plan submitted by the parties and attached to this order.
B5	Parenting Plan Modified s. 16.6 of DA	The PARTYNAME and the PARTYNAME will share the decision-making responsibility with respect to the child(ren) in accordance with the parenting plan submitted by the parties and attached to this order, modified as follows: [insert modifications].
B6	Day-to-day decisions	The PARTYNAME's exclusive authority to make day-to-day decisions during their parenting time under s. 16.2(2) of the *Divorce Act* is subject to the following restrictions: [list relevant orders]
B7	Inform	Each party will advise the other party of any matters of a significant nature affecting the child(ren).
B8	Consult	Each party will consult the other party about any important decisions that must be made and will try to reach agreement concerning these important issues.
B9	Joyce Model	The PARTYNAME and the PARTYNAME will share decision-making responsibility of the child(ren), pursuant to the Joyce model as follows: 1. In the event of the death of either party, the surviving party will be the only party with decision-making responsibility of the child; 2. Each party will have the obligation to advise the other party of any matters of a significant nature affecting the child;

		3. Each party will have the obligation to discuss with the other party any significant decisions that have to be made concerning the child, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare; 4. The parties will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions; 5. In the event that the parties cannot reach agreement on a significant decision despite their best efforts, the party with the majority of parenting time with the child will be entitled to make those decisions and the other party will have the right to apply for directions on any decision the party consider(s) contrary to the best interests of the child; and, 6. Each party will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers. 7. Other.

***Family Law Act:* Guardianship**		
C1	Guardianship Presumed s. 39(1) of FLA	The PARTYNAME shall be the guardian(s) of the child(ren) under s. 39(1) of the *Family Law Act*.
C2	Guardianship Presumed s. 39(3) of FLA	The Court is satisfied that the PARTYNAME(S) is/are the guardian(s) of the child(ren) under s. 39(3) of the *Family Law Act*.
C3	Guardian Appointed	The PARTYNAME(S) is/are appointed guardian(s) of the child(ren) under s. 51(1)(a) of the *Family Law Act*.
C4	Interim Guardian Appointed	The PARTYNAME(S) is/are appointed guardian(s) of the child(ren) on an interim basis until DATE.
C5	Inform Guardians	Each guardian will advise the other guardian of any matters of a significant nature affecting the child(ren).
C6	Consult Guardians	Each guardian will consult the other guardian about any important decisions that must be made and will try to reach agreement concerning these important issues.

***Family Law Act*: Parental Responsibilities**		
D1	Sole Responsibility s. 40(3)(a) of FLA	The PARTYNAME will have all of the s. 41 parental responsibilities for the child(ren), under s. 40(3)(a) of the *Family Law Act*.
D2	Equal Responsibility s. 40(2) of FLA	The guardians will share equally all of the s. 41 parental responsibilities for the child(ren) under s. 40(2) of the *Family Law Act*.
D3	Specified Usual Responsibilities s. 40(2) of FLA	The PARTYNAME will have the following s. 41 parental responsibilities for the child(ren) under s. 40(2) of the *Family Law Act*: (a) Making day to day decisions affecting the child(ren) and having day to day care, control and supervision of the child(ren); (b) Making decisions about where the child(ren) will reside; (c) Making decisions about the child(ren)'s educational, cultural, medical, religious and spiritual upbringing. (d) [list any additional responsibilities]
D4	List Statutory Responsibilities s. 40(2) of FLA	The PARTYNAME will have the following s. 41 parental responsibilities under s. 40(2) of the *Family Law Act*: Section 41 of the *Family Law Act*: (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child; (b) making decisions respecting where the child will reside; (c) making decisions respecting with whom the child will live and associate; (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location; (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity; (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child; (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child; (h) giving, refusing or withdrawing consent for the child, if consent is required;

		(i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive; (j) requesting and receiving from third parties health, education or other information respecting the child; (k) subject to any applicable provincial legislation, (i) starting, defending, compromising or settling any proceeding relating to the child, and (ii) identifying, advancing and protecting the child's legal and financial interests; (l) exercising any other responsibilities reasonably necessary to nurture the child's development.
D5	Joyce Model	The PARTYNAME and the PARTYNAME will share equally all of the s. 41 parental responsibilities for the child(ren) under s. 40(2) of the *Family Law Act*, pursuant to the Joyce model as follows: 1. In the event of the death of a guardian, the surviving guardian(s) will be the only guardian(s) of the child; 2. Each guardian will have the obligation to advise the other guardian(s) of any matters of a significant nature affecting the child; 3. Each guardian will have the obligation to discuss with the other guardians any significant decisions that have to be made concerning the child, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare; 4. The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions; 5. In the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the guardian with the majority of parenting time with the child will be entitled to make those decisions and the other guardian(s) will have the right to apply for directions on any decision the guardian(s) consider(s) contrary to the best interests of the child, under s. 49 of the *Family Law Act*; and, 6. Each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers. 7. Other.

***Divorce Act* or *Family Law Act*: Parenting Time and Ancillary Orders**		
E1	Specify Legislation (DA or FLA)	The following orders for parenting time are made under the [*Divorce Act* or *Family Law Act*].
E2	Parenting Plan s. 16.6 of DA	The PARTYNAME and the PARTYNAME will share parenting time in accordance with the parenting plan submitted by the parties and attached to this order.
E3	Parenting Plan Modified s. 16.6 of DA	The PARTYNAME and the PARTYNAME will share parenting time in accordance with the parenting plan submitted by the parties and attached to this order, modified as follows: [insert modifications]
E4	Equal Parenting Time	The PARTYNAME and the PARTYNAME will share parenting time equally as agreed between them.
E5	Reasonable Parenting Time	The PARTYNAME will have reasonable parenting time at dates and times agreed between the PARTYNAME and PARTYNAME.
E6	Liberal and Generous Parenting Time	The PARTYNAME will have liberal and generous parenting time at dates and times agreed between the PARTYNAME and PARTYNAME.
E7	Primary Residence	The PARTYNAME will have primary residence of the child[ren] and the PARTYNAME will have parenting time specified as follows.
E8	Parenting Time Every Specified Day	The PARTYNAME will have parenting time every DAYOFWEEK from STARTTIME to FINISHTIME, commencing on STARTDATE.
E9	Parenting Time Alternate Specified Days	The PARTYNAME will have parenting time on alternate DAYOFWEEK's from STARTTIME to FINISHTIME, commencing on STARTDATE.
E10	Parenting Time Every Weekend	The PARTYNAME will have parenting time every weekend from DAYOFWEEK at STARTTIME until DAYOFWEEK at FINISHTIME, commencing STARTDATE.
E11	Parenting Time Alternate Weekends	The PARTYNAME will have parenting time on alternate weekends from DAYOFWEEK at STARTTIME until DAYOFWEEK at FINISHTIME, commencing STARTDATE.
E12	Stat Holiday Parenting Time	If the day preceding or following the weekend is a statutory holiday or professional development day, the parenting time will include that extra day.
E13	Supervised Parenting Time s. 16.1(8) of DA	Under s. 16.1(8) of the *Divorce Act*, the PARTYNAME's parenting time will be supervised by NAME or another person agreed between the PARTYNAME and PARTYNAME.
E14	Supervised Parenting Time s. 45(3) of FLA	Under s. 45(3) of the *Family Law Act*, the PARTYNAME's parenting time will be supervised by NAME or another person agreed between the guardians.
E15	Parenting Time In Presence	The PARTYNAME's parenting time will take place in the presence of NAME or another person agreed between the PARTYNAME and PARTYNAME.
E16	Christmas Parenting Time	The PARTYNAME will have the following parenting time on Christmas Eve and Christmas Day: [insert schedule].

E16 (b)	Alternate Years Christmas Parenting Time	The PARTYNAME will have the following parenting time during the Christmas season: [insert schedule]. In the following year, the schedule will be reversed and the parties will alternate parenting time on Christmas season in each subsequent year.
E17	Winter Holidays Parenting Time	The PARTYNAME will have the following parenting time during the winter school holidays: [insert schedule].
E17 (b)	Alternate Years Winter Holidays Parenting Time	The PARTYNAME will have the following parenting time during the winter school holidays: [insert schedule]. In the following year, the schedule will be reversed and the parties will alternate parenting time in subsequent winter school holidays.
E18	Spring Break Parenting Time	The PARTYNAME will have the following parenting time during the spring school break: [insert schedule].
E18 (b)	Spring Break Parenting Time	The PARTYNAME will have the following parenting time during the spring school break: [insert schedule]. In the following year, the schedule will be reversed and the parties will alternate spring break parenting times in each subsequent year.
E19	Summer Parenting Time	The PARTYNAME will have the following parenting time with the child(ren) during the child(ren)'s summer holidays: [insert schedule].
E19 (b)	Summer Parenting Time	By [insert date] the parties will exchange their proposed summer holiday schedule for the coming year.
E19 (c)	Default Summer Parenting Time	The PARTYNAME and PARTYNAME will each have parenting time for [period] each summer at dates and times agreed between them, but if they are unable to agree, then the PARTYNAME will have the children for [specified period].
E20	Parent's birthday	Despite the regular parenting schedule, the PARTYNAME will have parenting time with the child(ren) from STARTTIME to FINISHTIME on their birthday.
E21	Mother's Day and Father's Day	Despite the regular parenting schedule, the PARTYNAME will have parenting time with the child(ren) on Mother's Day from STARTTIME to FINISHTIME and the PARTYNAME will have parenting time with the child(ren) on Father's Day from STARTTIME to FINISHTIME.
E22	Child's birthday	The parent who is exercising parenting time on the day of the child(ren)'s birthday will celebrate the child's birthday with the child.
E23 (a)	Parenting Time Transport	The PARTYNAME will drop off the child(ren) at the beginning of the PARTYNAME's parenting time at LOCATION and the PARTYNAME will return the child(ren) at the end of their parenting time at LOCATION.
E23 (b)	Parenting Time Transport	The PARTYNAME will pick up and the PARTYNAME will drop off the child(ren) at the beginning and ending of the PARTYNAME's parenting time at LOCATION at TIME.
E24	Exchange	The child(ren) will be exchanged at LOCATION.

E25	Phone/Electronic Communication	The PARTYNAME will have reasonable telephone and/or electronic communication with the child(ren) while they are in the care of the PARTYNAME.
E26	Specified Phone/Electronic Communication	The PARTYNAME will have reasonable telephone and/or electronic communication with the child(ren) between STARTTIME and ENDTIME on DAYSOFWEEK. The PARTYNAME will initiate the communication via [method of communication such as Skype or Face Time].
E27	Non-removal of child	The parties shall not remove the child(ren) from [specified geographic area] without the written consent of either party or without a court order authorizing the removal.

***Divorce Act* or *Family Law Act*: Contact**		
F1	Specify Legislation (DA or FLA)	The following orders for contact are made under the [*Divorce Act* or *Family Law Act*].
F2	Parenting Plan s. 16.6 of DA	CONTACTPERSON will have contact with the child(ren) in accordance with the parenting plan submitted by the parties and attached to this order.
F3	Parenting Plan Modified s. 16.6 of DA	CONTACTPERSON will have contact with the child(ren) in accordance with the parenting plan submitted by the parties and attached to this order, modified as follows: [insert modifications].
F4	Reasonable Contact	CONTACTPERSON will have reasonable contact with the child(ren) at dates and times agreed between CONTACTPERSON and the PARTYNAME(S).
F5	Liberal and Generous Contact	CONTACTPERSON will have liberal and generous contact with the child(ren) at dates and times agreed between CONTACTPERSON and the PARTYNAME(S).
F6	Contact Every Specified Day	CONTACTPERSON will have contact with the child(ren) every DAYOFWEEK from STARTTIME to FINISHTIME, commencing STARTDATE.
F7	Contact Alternate Specified Days	CONTACTPERSON will have contact with the child(ren) on alternate DAYOFWEEK from STARTTIME to FINISHTIME, commencing STARTDATE.
F8	Contact Every Weekend	CONTACTPERSON will have contact with the child(ren) every weekend from DAYOFWEEK at STARTTIME until DAYOFWEEK at FINISHTIME, commencing STARTDATE.
F9	Contact Alternate Weekends	CONTACTPERSON will have contact with the child(ren) on alternate weekends from DAYOFWEEK at STARTTIME until DAYOFWEEK at FINISHTIME, commencing STARTDATE.
F10	Stat Holiday Contact	If the day preceding or following the weekend is a statutory holiday or professional development day, the contact time will include that extra day.
F11	Supervised Contact s. 16.5(7) of DA	Under s. 16.5(7) of the *Divorce Act*, CONTACTPERSON's contact will be supervised by NAME or another person agreed between CONTACTPERSON and the PARTYNAME(S).
F12	Supervised Contact s. 59(3) of FLA	Under s. 59(3) of the *Family Law Act*, CONTACTPERSON's contact will be supervised by NAME or another person agreed between CONTACTPERSON and the PARTYNAME(S).
F13	Contact in Presence	CONTACTPERSON's contact will take place in the presence of NAME or another person agreed between CONTACTPERSON and the PARTYNAME(S).
F14	Christmas Contact	CONTACTPERSON will have the following contact with the child(ren) during the Christmas school holidays: [insert schedule].
F15	Winter Holidays Contact	CONTACTPERSON will have the following contact with the child(ren) during the winter school holidays: [insert schedule].
F16	Spring Break Contact	CONTACTPERSON will have the following contact with the child(ren) during the spring school break: [insert schedule].

F17	Summer Contact	CONTACTPERSON will have the following contact with the child(ren) during the children's summer holidays: [insert schedule]
F18 (a)	Contact Transport	PARTYNAME will drop off the child(ren) at the beginning of CONTACTPERSON's contact at LOCATION and CONTACTPERSON will return the child(ren) at the end of their contact at LOCATION.
F18 (b)	Contact Transport	CONTACTPERSON will pick up and drop off the child(ren) at the beginning and ending of CONTACTPERSON's contact at LOCATION at TIME.
F19	Exchange	The child(ren) will be exchanged at LOCATION.
F20	Phone/Electronic Communication	CONTACTPERSON will have reasonable telephone and/or electronic communication with the child(ren) while they are in the care of the PARTYNAME(S).
F21	Specified Phone/Electronic Communication	CONTACTPERSON will have reasonable telephone and/or electronic communication with the child(ren) between STARTTIME and ENDTIME on DAYSOFWEEK. CONTACTPERSON will initiate the communication via [method of communication such as Skype or Face Time].
F22	Non-removal of child	The CONTACTPERSON shall not remove the child(ren) from [specified geographic area] without the written consent of the PARTYNAME(S) or without a court order authorizing the removal.

Conduct - Communication, Alcohol & Drugs		
G1	One Party Communication Restriction	Under s. 225 of the *Family Law Act,* the PARTYNAME will have no communication with the PARTYNAME except [describe means and/or circumstances of permitted communication].
G2	Mutual Communication Restriction	Under s. 225 of the *Family Law Act*, the parties will communicate with each other only [describe means and/or circumstances of permitted communication].
G3	Children's Interests Conduct	The parties will: (a) put the best interests of the child(ren) before their own interests; (b) encourage the child(ren) to have a good relationship with the other parent and speak to the child(ren) about the other parent and that parent's partner in a positive and respectful manner; and (c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the child(ren).
G4	Speech to Children Conduct	The parties will not: (a) question the child(ren) about the other parent or time spent with the other parent beyond simple conversational questions; (b) discuss with the child(ren) any inappropriate adult, court or legal matters; or (c) blame, criticize or disparage the other parent to the child(ren).
G5	Family Speech Conduct	The parties will encourage their respective families to refrain from any negative comments about the other parent and their extended family, and from discussions in front of the child(ren) concerning family issues or litigation.
G6	No Alcohol/Drugs	[PARTYNAME or CONTACTPERSON] will not consume or possess any alcohol or controlled substances within the meaning of Section 2 of the *Controlled Drugs and Substances Act*, except as prescribed by a licensed physician, during contact or parenting time and for [duration] hours before having contact or parenting time.
G7	Drug Test	[PARTYNAME or CONTACTPERSON] will provide a valid sample of their urine or hair follicle for testing to [name of testing facility approved by the Court] or another testing facility approved by the Court. [PARTYNAME or CONTACTPERSON] must ensure the sample is collected under supervision by [insert name of testing facility] or another testing facility approved by the

		court on a chain of custody basis, ensuring their identity as the donor and the integrity of the sample. The sample will be tested for the presence of [specify what is to be tested]. The testing of the sample must occur at an accredited forensic laboratory. A positive test must be subject to confirmatory testing. The cost of any such tests will be paid by [insert order].
G8 (a)	Drug test schedule and costs	[PARTYNAME or CONTACTPERSON] will provide urine or hair follicle test results obtained in compliance with this order [insert schedule for tests]. The cost of any such tests will be paid by [insert order].
G8 (b)	Drug test schedule and costs	[PARTYNAME or CONTACTPERSON] will undergo random urine or hair follicle tests obtained in compliance with this order at [name of testing facility approved by the Court] or another testing facility approved by the Court and will authorize release of the test results to the PARTYNAME. The cost of any such tests will be paid by [insert order].

Child Support		
H1	Income Finding	The PARTYNAME is found to be a resident of British Columbia and is found to have a gross annual income of $ AMOUNT.
H2	Imputed Income	The PARTYNAME is found to be a resident of British Columbia and is imputed to have a gross annual income of $ AMOUNT.
H3	Child Support Payments (Specify DA or FLA)	The PARTYNAME will pay to the PARTYNAME the sum of $ AMOUNT per month for the support of [name(s) and birthdate(s) of the child(ren)], commencing on STARTDATE and continuing on the [1st, 15th, 31,st etc.] day of each and every month thereafter, for as long as the child(ren) is/are eligible for support under the [*Divorce Act* or *Family Law Act*] or until further agreement of the parties or Court order.
H4	Child Support Payments by Both Parties Without Set Off (Specify DA or FLA)	The PARTYNAME will pay to the PARTYNAME the sum of $ AMOUNT per month for the support of [name(s) and birthdate(s) of the child(ren)], commencing on STARTDATE and continuing on the [1st, 15th, 31,st etc.] day of each and every month. The PARTYNAME will pay to the PARTYNAME the sum of $ AMOUNT per month for the support of [name(s) and birthdate(s) of the child(ren)], commencing on STARTDATE and continuing on the [1st, 15th, 31,st etc.] day of each and every month. These payments will continue for as long as the child(ren) is/are eligible for support under the [*Divorce Act* or *Family Law Act*] or until further agreement of the parties or Court order.
H5	Child Support Payments by Both Parties With Set Off (Specify DA or FLA)	The PARTYNAME will pay to the PARTYNAME the sum of $ AMOUNT per month for the support of [name(s) and birthdate(s) of the child(ren)]. The PARTYNAME will pay to the PARTYNAME the sum of $ AMOUNT per month for the support of [name(s) and birthdate(s) of the child(ren)]. To satisfy each party's obligations to pay child support, the PARTYNAME will pay to the PARTYNAME the net sum of $ AMOUNT per month, commencing on STARTDATE and continuing on the [1st, 15th, 31,st etc.] day of each and every month. These payments will continue for as long as the child(ren) is/are eligible for support under the [*Divorce Act* or *Family Law Act*] or until further agreement of the parties or Court order.
H6	Extraordinary Expenses	The PARTYNAME will pay to the PARTYNAME the sum of $ AMOUNT per month commencing on STARTDATE and continuing on the [1st, 15th, 31,st etc.] day of each month thereafter for the child(ren)'s special or extraordinary expenses.
H7	Proportionate Shares	The PARTYNAME will pay to the PARTYNAME their proportional share for the child(ren)'s special or extraordinary expenses. The parties respective proportional shares are the PARTYNAME [share amount]% and the

		PARTYNAME [share amount]%. The following expenses will be special or extraordinary expenses [insert list/include such other expenses as agreed to by the parties].
H8	Reimbursement	The party incurring a special or extraordinary expense shall provide the other party with a receipt for reimbursement.
H9	List of expenses	The parties agree that the following expenses shall be considered special or extraordinary expenses for the child(ren): [list of expenses].
H10	Other expenses	No other expenses will be considered special or extraordinary unless agreed to by the parties in advance or by further Court order.
H11	Annual Financial Disclosure	For as long as the child(ren) is/are eligible to receive child support, the parties will exchange: (a) copies of their respective income tax returns for the previous year, including all attachments, not later than DATE each year; and (b) copies of any Notice of Assessment or Reassessment provided to them by Canada Revenue Agency, immediately upon receipt.
H12	Review	The parties shall conduct a review of child support and the children's special or extraordinary expenses on an [annual or biennial] basis and payments shall be adjusted as necessary by DATE of [every or every other] year.

Spousal Support		
I1	Guideline Income	For the purposes of calculating support payments under the Spousal Support Advisory Guidelines, the PARTYNAME's income is set at $ AMOUNT a year for YEAROFINCOME.
I2	Spousal Support Until Termination (Specify DA or FLA)	Pursuant to the [*Divorce Act* or *Family Law Act*], the PARTYNAME will pay to the PARTYNAME for their support the sum of $ AMOUNT per month, commencing on STARTDATE and continuing on the [1st, 15th, 31st etc.] day of each and every month thereafter until ENDDATE, at which time spousal support will be terminated.
I3	Spousal Support Until Review or Further Order (Specify DA or FLA)	Pursuant to the [*Divorce Act* or *Family Law Act*], the PARTYNAME will pay to the PARTYNAME for their support the sum of $ [amount] per month, commencing on STARTDATE and continuing on the [1st, 15th, 31,st etc.] day of each and every month thereafter until [end date or event], at which time spousal support will be reviewed for quantum and/or entitlement [or any other specified reason for review]. [or until further order of the court].
I4	Varying Support	The parties may vary the amount of spousal support by agreement or seek to do so by Court order.

Arrears		
J1	Arrears Quantum Only	The arrears owing from the PARTYNAME to the PARTYNAME as of DATE are $ AMOUNT, including principal and interest.
J2	Arrears Quantum with Default Fees	The arrears owing from the PARTYNAME to the PARTYNAME as of DATE are $ AMOUNT, including principal and interest and default fees.
J3	Arrears Payment	The PARTYNAME will pay to the PARTYNAME a minimum of $ AMOUNT per month towards the arrears of support, in addition to regular monthly support payments, commencing on STARTDATE and continuing on the [1st, 15th, 31,st etc.] day of each month thereafter until the arrears are paid in full or until further agreement of the parties or Court Order.

Financial Disclosure		
K1	Form F8 Financial Disclosure	The PARTYNAME will complete, file with the Registry of this Court, and deliver to the PARTYNAME a sworn Financial Statement in Form F8 of the *Supreme Court Family Rules*, including all attachments listed on page 2 of that Form by DATE.
K2	Penalty s. 213(2)(d) of FLA	The PARTYNAME will pay $ AMOUNT [not to exceed $5,000] to the PARTYNAME if they fail to file financial information in accordance with this Order. This award is in addition to and not in place of any other remedy under Section 213(2)(d) of the *Family Law Act*.

Variation, Suspension, Termination		
L1	Variation	The Order of Judge/Master NAME, made DATE, is changed as follows: [variation order].
L2	Without Notice Order Changed	The Order of Judge/Master NAME, made DATE, in the absence of the PARTYNAME is changed as follows: [variation order].
L3	Without Notice Order Suspended	The Order of Judge/Master NAME, made DATE, in the absence of the PARTYNAME is suspended until [date OR circumstance].
L4	Without Notice Order Terminated	The Order of Judge/Master NAME, made DATE, in the absence of the PARTYNAME is terminated.

Parentage		
M1	DNA Test s. 33(2) of FLA	The parties and the child will have tissue and/or blood samples taken by a qualified person for the purpose of conducting parentage tests under s. 33(2) of the *Family Law Act*.
M2	DNA Test and Costs s. 33(2) of FLA	The parties and the child will have tissue and/or blood samples taken by a qualified person for the purpose of conducting parentage tests, with the costs to be [insert order] under s.33(2) of the *Family Law Act*.

Section 211 Reports, Views of the Child ("VOC") Reports, and Hear The Child ("HTC") Reports		
N1	Full Report by Family Justice Counsellor	A Family Justice Counsellor will prepare a report to assess [state issue(s) as specifically as possible such as parenting time, contact, guardianship, parental responsibilities, or other].
N2	Full Report Appointment of Assessor	ASSESSORNAME, or, in the event ASSESSORNAME is unable or unwilling to accept the appointment, ALTERNATIVEASSESSORNAME, (the "Assessor") is appointed to prepare a written report concerning the arrangements for the parenting of, or contact with, [name(s) and birthdate(s) of the child(ren) who are the subject(s) of the assessment].
N3	Full Report issues to be assessed	Pursuant to section 211(1) of the *Family Law Act*, the Assessor will assess and prepare a report concerning (check all that apply):
N3-A	Needs of the children	The needs of the child(ren) [insert name(s) of child(ren)];
N3-B	Views of the children	the views of the child(ren); and
N3-C	Ability and willingness	the ability and willingness of PARTYNAME(S) to satisfy the needs of the child(ren).
N3-D	Particular regard	In preparing the s. 211 report the Assessor is to have particular regard to: [state issue(s) as specifically as possible such as parenting time, contact, guardianship, parental responsibilities, or other].
N4	Full report further specific issues to be included	In addition to any other issues that the Assessor identifies, the Assessor must address in the report the following specific issues and allegations, and their impact, regarding (check all that apply):
N4-A	Family violence	family violence;
N4-B	Resisting or refusing parenting time	A child or children resisting or refusing parenting time or contact with a party;
N4-C	Relocation of the children	The relocation of the child(ren) in light of the factors identified at i. Sections 46 or 69 of the *Family Law Act* or ii. Section 16.92(1) of the *Divorce Act;*
N4-D	Substance abuse	Substance abuse;
N4-E	Mental health	Other mental health concerns;
N4-F	Other	[identify other specific issues or questions to be assessed].
N5	Communications	Except when meeting with the Assessor as requested or otherwise directed by the Assessor, all communications between a party or their lawyer and the Assessor must be in writing and be copied to the other party or their lawyer.
N6	Costs of full report	Costs of the s. 211 report are to be paid for by PARTYNAME.
N7	Determining Assessor	The parties are to exchange the names of [insert number] proposed assessors and are to agree on one name from their proposed lists. If the parties are unable to agree, they may apply for a court order appointing an assessor.

N8	VOC Report by Family Justice Counsellor s. 211 of FLA	A Family Justice Counsellor will prepare a report respecting the views of the child(ren) [name(s) and birthdate(s) of child(ren)] about [insert order].
N9	VOC Report Named Assessor s. 202 of FLA	ASSESSORNAME will prepare a report to assess the views of the child(ren) [name(s) and birthdate(s) of child(ren)] about [insert order] .
N10	VOC Report Named Assessor and Costs s. 202 of FLA	ASSESSORNAME will prepare a report to assess the views of the child(ren) [name(s) and birthdate(s) of child(ren)] about [insert order] with the cost to be [insert order] .
N11	HTC Report by Named Preparer under s. 202 of FLA	PREPARERNAME will prepare a non-evaluative Hear The Child report for [name(s) and birthdate(s) of child(ren)] about [insert question[s] to be addressed].
N12	HTC Report by Named Preparer and Costs s. 202 of FLA	PREPARERNAME will prepare a non-evaluative Hear The Child report for [name(s) and birthdate(s) of child(ren)] about [insert question[s] to be addressed] with the cost to be [insert order].
N13	Due date	ASSESSOR/PREPARERNAME will make their best efforts to complete the report by DUEDATE. If circumstances arise such that the ASSESSOR/PREPARERNAME will not be able to complete the report by the expected completion date, the ASSESSOR/PREPARERNAME will forthwith advise the parties.
N14	Completed report	The ASSESSOR/PREPARERNAME will give a copy of the completed report to each party and give a copy of the completed report to the court.

Service		
O1	Service Order Only	The Applicant will personally serve the Respondent with a copy of this Order by DATE and file an Affidavit of Service in the Supreme Court Registry by DATE.
O2	Service Order and Documents	The Applicant will personally serve the Respondent with a copy of this Order and [documents] by DATE and file an Affidavit of Service in the Supreme Court Registry by DATE.
O3	Sub Service	The PARTYNAME may serve the PARTYNAME with [document type] by [service method] and such service will be deemed sufficient service on the PARTYNAME effective on the date of service.
O4	Service by Peace Officer	A copy of this Order will be served on the PARTYNAME by a peace officer by DATE and the peace officer will provide proof of service to the Supreme Court Registry at LOCATION, British Columbia by DATE.

Transfer File		
P1	Transfer File For All Purposes	File No. ____ be transferred to the Supreme Court Registry at LOCATION, British Columbia, for all purposes.
P2	Transfer File Single Purpose	File No. ____ be transferred to the Supreme Court Registry at LOCATION, British Columbia, for the purpose of hearing the application filed on [filing date].
P3	Consolidate File	Consolidate Provincial Court [Registry] proceedings No. _____ with these proceedings.

Dispense with Signature		
Q1	Dispense with Signature	The requirement to obtain the PARTYNAME's signature approving the form of this Order is dispensed with.
Q2	Dispense with Signature if no Response to Draft	The PARTYNAME will prepare a draft of this order for review by the PARTYNAME. The PARTYNAME will have 7 days in which to provide comments on the draft. If no comments are received, the PARTYNAME may submit the order without the signature of the PARTYNAME.

Family Property and Assets		
R1	Family Property	Parties agree that the following property is family property: [list property].
R2	Excluded Property	Parties agree that the following property is excluded family property: [insert excluded property list] belongs to the PARTYNAME [insert excluded property list] belongs to the PARTYNAME.
R3	Interim Distribution of Family Property	The PARTYNAME is entitled to an interim distribution of family property in the amount of [insert amount] from [insert institution and account number] to provide money to fund: (a) family dispute resolution (b) all or part of a proceeding under the *Family Law Act* (c) obtaining information of evidence in support of family dispute resolution or an application.
R4	Exclusive Occupancy of Family Home	The PARTYNAME is to have exclusive occupancy of the family residence located at ADDRESS commencing on DATE: (a) until the property is sold (b) until trial (c) until child(ren)'s is/are no longer a child(ren) of the marriage as defined by the *Family Law Act* or *Divorce Act* (d) until (date specified).
R5	Storage of Personal Property at Family Home	The PARTYNAME is to have use of the following personal property stored at the family residence to exclusion of NAME: [list property]
R6	Right To Apply to Postpone sale	The PARTYNAME has the right to apply for: (a) partition and sale (b) sale of (c) encumbrance of to be postponed until DATE or SPECIFIEDEVENT
R7	Attendance to Remove Personal Property	The PARTYNAME may attend at the family residence located at ADDRESS to remove all of their personal property.
R8	Attendance to Remove Specified Personal Property	The PARTYNAME may attend at the family residence located at ADDRESS to remove the following items from their personal property: [list items].
R9	Unequal Division of Family Property	The PARTYNAME shall be entitled to an unequal division of the following family property: [list property]

R10	Owner of Property	The PARTYNAME is the owner of the following property: [list property].
R11	Right of Possession	The PARTYNAME has a right of possession to the following property: [list property].
R12	Transfer / Vested Title	Title to the following property shall be transferred to OR vested in the PARTYNAME and/or child(ren): [list property].
R13	Property Held in Trust	The PARTYNAME holds the following property in trust for the PARTYNAME and/or child(ren): [list property].
R14	Compensation	The PARTYNAME shall pay compensation in the amount of $ [insert amount] to the PARTYNAME for the following property: [list property] that was (a) disposed of (b) transferred or (c) converted or exchanged into another form.
R15	Compensation For Dividing Property	The PARTYNAME shall pay compensation in the amount of $ AMOUNT to the PARTYNAME for the purpose of dividing property.
R16	Sale of Family Home	The family residence located at ADDRESS is to be listed for sale with REALTORNAME.
R17	Joint Conduct of Sale	The PARTYNAME and PARTYNAME are to have joint conduct of sale.
R18	Sole Conduct of Sale	The PARTYNAME will have sole conduct of sale.
R19	Proceeds of Sale of Family Home	The proceeds of the sale of the family residence to be used as follows: (a) pay mortgage [name of institution or institutions] (b) pay other encumbrances registered against the title [list] (c) pay real estate commission (d) usual closing adjustments (e) other.
R20	Net Proceeds of Sale Distributed Equally	The net proceeds of the sale of the family residence to be distributed equally between the PARTYNAME and PARTYNAME as follows: $ [insert amount] to the PARTYNAME $ [insert amount] to the PARTYNAME.
R21	Net Proceeds of Sale Held in Trust	The net proceeds of the sale of the family residence are to be held in trust in the PARTYNAME's trust account until further agreement or Court Order.

Property Protection		
S1	Restraining Order for Personal Property	The PARTYNAME and/or the PARTYNAME is/are prohibited from disposing of, transferring, converting or exchanging into another form any property at issue in this proceeding including: (a) bank accounts (b) investment accounts (c) RRSPs (d) specified property and/or any exceptions.
S2	Restraining Order for Transferring Corporate Shares	The PARTYNAME and/or the PARTYNAME is/are prohibited from disposing of, or transferring shares in [name of corporation] until agreement between the parties or a Court Order.
S3	Restraining Order for Voting Corporate Shares	The PARTYNAME and/or the PARTYNAME is/are prohibited from voting shares in [name of corporation] for purposes of: (a) paying out shareholder loans (b) disposing of company assets (c) issuing shares (d) other without agreement of the parties or a Court Order.

Family Debt		
T1	Equal Division of Family Debt	Parties agree that the following debts are family debts and each will be equally responsible for them: [list name(s) of institution(s) and/or creditor(s)]
T2	Sole Responsibility of Family Debt	Parties agree that the PARTYNAME will be solely responsible for the following family debts: [list name(s) of institution(s) and/or creditor(s)]

Pension		
U1	Provide Security for Performance	The PARTYNAME to provide security for performance of the following obligations: [list obligations].
U2	Pension Not Divisible	The PARTYNAME's pension benefits administered by [insert name] are not divisible.
U3	Division of Pension	The PARTYNAME is entitled to [insert percentage]% share or division of the PARTYNAME's pension administered by [insert name].
U4	File Division Application with Plan	The PARTYNAME will file the necessary application with the pension plan's administrator to give effect to the division.
U5	Pay Compensation for Loss Share	PARTYNAME shall pay compensation to PARTYNAME for the loss of PARTYNAME's proportionate share under a supplemental pension plan.

Passports/ Travel		
V1	Surrender Passport	The PARTYNAME shall surrender their passport to the Registry for safekeeping until further order of the Court.
V2	Surrender Passport to counsel	The PARTYNAME shall surrender their passport to COUNSEL for the PARTYNAME for safekeeping until further order of the Court.
V3	Surrender Passport to party	The PARTYNAME shall surrender the child[ren]'s passport to the PARTYNAME for the purposes of travel to LOCATION from DATE to DATE.
V4	Dispense with consent for passport application	The requirement to obtain the PARTYNAME's consent for the PARTYNAME to apply for a passport for the child[ren] is dispensed with.
V5	Require signature on passport application	The PARTYNAME shall sign the passport application(s) for the child[ren] and provide the signed application(s) to the PARTYNAME within TIMEFRAME.
V6	Specific permission to travel	The PARTYNAME is permitted to travel to LOCATION with the child(ren) from DATE to DATE. In advance of the travel, the PARTYNAME is to provide the PARTYNAME with a travel itinerary, contact addresses, telephone numbers and evidence of reasonable travel medical/health insurance coverage obtained for the child(ren) for the duration of the trip.
V7	Ongoing permission to travel	The PARTYNAME is permitted to travel to LOCATION with the child(ren) without the consent of the PARTYNAME [insert terms of order]. In advance of the travel, the PARTYNAME is to provide the PARTYNAME with a travel itinerary, contact addresses, telephone numbers and evidence of reasonable travel medical/health insurance coverage obtained for the child(ren) for the duration of the trip.
V8	Written authorization for travel	Each party will sign a general written authorization for the other party to travel with the child[ren]. In advance of any travel, the PARTYNAME is to provide the PARTYNAME with a travel itinerary, contact addresses, telephone numbers and evidence of reasonable travel medical/health insurance coverage obtained for the child(ren) for the duration of the trip.
V9	Dispense with consent to travel	The requirement to obtain the PARTYNAME's consent for the PARTYNAME to travel with the child[ren] during their parenting time is dispensed with. In advance of any travel, the PARTYNAME is to provide the PARTYNAME with a travel itinerary, contact addresses, telephone numbers and evidence of reasonable travel medical/health insurance coverage obtained for the child(ren) for the duration of the trip.
V10	Specified Phone/Electronic Communication during travel	The PARTYNAME will have reasonable telephone and/or electronic communication with the child(ren) between STARTTIME and ENDTIME on DAYSOFWEEK. The PARTYNAME will initiate the communication via [method of communication such as Skype or Face Time] during the duration of the trip.

Affidavit - General

FORM 45
Provincial Court Family Rules
Rules 171 and 172

Registry location:	New Westminster
Court File Number:	22222

I, Maureen Ann Smith, stay at home mom, of 123 Broad Street, Big City, BC, ,

SWEAR OR AFFIRM THAT:

I know or believe the following facts to be true. If these facts are based on information from others, I believe that information to be true.

1. I am making this affidavit in support of an application about enforcement of the October 4, 2022 order of the Hon J McJudgeyface, and an application for a protection order.
2. On October 4, 2022 the Hon. J. McJudgeyface made orders respecting conduct, specifically regarding communication (mutual communication restriction to email unless to facilitate parenting exchanges which may be by text, or in the case of an emergency by phon, child's best interests speech, and speech to children orders) and that during parenting time exchanges Mr. Singh will not exit his vehicle and the parties will not speak to one another unless necessary for the purpose of exchanging the child.
3. Just 3 days after on October 7, 2022 I drove to the Tim Horton's located at 111 Park Boulevard, Big City, BC. at 4:00 p.m. for the scheduled parenting time exchange. At 4:15 p.m. when Mr. Singh had still not arrived, I texted Mr. Singh to ask him how much longer he was going to be. He responded: " We are at home. If you want him come get him". [See attached and marked as **Exhibit A** a true copy of a screenshot of the parties' text message exchange of October 7, 2022 between 4:15 p.m. and 4:17 p.m.]
4. I then drove to Mr. Singh's house in Town, B.C., an hour and 15 minutes away arriving at approximately 5:30 p.m. Mr. Singh answered the front door and yelled behind him that "the raggedy broke-a** b**** showed up after all. Get your bag".
5. Jake came to the front door and I could see he was crying and upset. Mr. Singh let out a continuous stream of insults and profanities directed at me while Jake was between us putting his shoes on. I recall Mr. Singh stating the following during this episode:
   (a) that "mommy is selfish";
   (b) that he wishes Jake could stay at his house full time; and
   (c) that he will "show the judge" that "mommy is neglecting you" among other insults.
6. I asked Mr. Singh to stop, and he did not. I removed Jake from the situation as soon as possible. In the car ride home, I reassured Jake that both myself and Mr. Singh love him, and that we would both continue to see him and be his parents.

7. When I got home I saw that Mr. Singh had sent me a further text at 5:45 p.m. that read: "You see how upset you make Jake? This is all your fault. Selfish B****. Just go away and let us be a happy family in peace. Welfare bum. Loser!" [See attached and marked as **Exhibit B** a true copy of a screenshot of Mr. Singh's text message of October 7, 2022 at 5:45 p.m.].

8. On October 8, 2022, I received a text message from Mr. Singh with the single word: "B****". [See attached and marked as **Exhibit C** a true copy of a screenshot of Mr. Singh's text message of October 8, 2022].

9. On October 10, 2022, I received a notification that my Instagram handle was tagged in a post authored by Mr. Singh under his instagram handle @AngadSingh, in which he states: "I've been listening to the revolutionary Andrew Tate and was reminded of my ex, @MaureenSmith. Trashy h*** demanding they be treated like queens but can't be bothered to go to the gym or get a job." [See attached and marked as **Exhibit D** a true copy of a screenshot of Mr. Singh's Instagram post of October 10, 2022.]

10. On October 14 2022 at the parenting exchange, Mr. Singh stayed in his vehicle. However, he blasted an offensive song through his speaker, "B****** ain't S***" by the artists Dr. Dre and Snoop Dog. Mr. Singh yelled over his speaker that this was written about me, and was my "anthem". Not only was this deeply embarrassing for me, but also incredibly upsetting to Jake.

11. Also on October 14, 2022 I noticed a sudden influx of emails in my inbox. I received a dozen emails from pornographic websites that my email address had been subscribed to. I did not subscribe myself to these websites. The day following and each day since, I have received upwards of 15 to 20 emails each day from various pornographic websites that my email has been subscribed to. As fast as I can unsubscribe, I am subscribed to as many more. I suspected that Mr. Singh was responsible for this. We still follow each other on social media, so I logged into facebook and went to Mr. Singh's profile page. On a post dated October 14, 2022 made at 2:36 a.m., Mr. Singh wrote: "I'm basically an evil genius coz I signed up the ex for every gross subscription I could find. B**** gonna B bombarded by ****…lolz". [See attached and marked as **Exhibit E** a true copy of the screenshot of Mr. Singh Facebook post made on October 14, 2022 at 2:36 a.m.]

12. On October 15, 2022 I received 27 phone calls all from blocked numbers in quick succession. The first couple of times I answered the phone. The person or people calling were male, made a variety of lewd, profanity-laced comments, and hung up the phone. These calls have been continuous from October 15, 2022 to now. I receive anywhere from 10 to 20 or more calls like this per day. In two of these calls the caller threatened to come to my house and assault me and one of them told me they knew where I lived. [See attached and marked as **Exhibit F** a true copy of my incoming call log from October 22, 2022 to today's date.]

13. From October 15, 2022 onwards, I could not sleep in my house and had to rent a hotel room. I continue to stay at the hotel today, as I am too frightened to go home. This has been catastrophically obstructive to my life and as has had a serious impact on my mental health. I am constantly looking over my shoulder, worried about being followed, and I have developed anxiety that has prompted me to seek medical help.

14. Not only that, but as a recipient of a disability pension, I am on an incredibly tight budget at the best of times.

15. I have spent $1000 on hotel rooms to date, and counting, and I spent a further $100 to change my phone number. [See attached and marked as **Exhibit G** a true copy of the receipt from Big City Hotel for my stay beginning October 15, 2022 to today's date. See attached and marked as **Exhibit H** a true copy of the receipt from Phone Co. Ltd. in respect of the fee to change my phone number].

16. On October 17, 2022 I received a text message from a mutual friend of Mr. Singh and I alerting me to a post on the website blastyourex.com. I understand blastyourex.com is a website for people to post humiliating and harassing material about about their ex partners.

17. The linked post was dated October 15, 2022 and was made by an anonymous poster. It included a picture of myself and Jake and was captioned: “this is what a loser looks like! The welfare queen herself, Maureen Smith. She lives at 123 Broad Street, Big City, BC. Cell: 555-5555. Email: 12345@email.com. Give her hell, boys! Also pictured – my beautiful son, Jake. At least he looks like me and not this stupid h**." [See attached and marked as **Exhibit I** a true copy of a screenshot of the blastyourex.com post of October 15, 2022.]

18. On October 16, 2022, October 17, and October 18, 2022 I received photo text messages of male genitalia from 3 unique phone numbers all previously unknown to me. **I do not include these as evidence. They are available at the court's request.**

19. I believe that Mr. Singh made the October 15, 2022 blastyourex.com post. The poster indicated that they are the child's father. Further, there is no one else in my life that has the motivation to harass and humiliate me in this way.

20. On October 19, 2022 I made a police report to the RCMP and my complaint against Mr. Singh is being investigated by Cst. PopoMcCopFace, RCMP File #22-22222.

SWORN/AFFIRMED BEFORE ME
at _____, Province of
on _____

_____
A commissioner for taking affidavits for British Columbia

_____
Signature
Maureen Ann Smith

Affidavit - General

FORM 45
Provincial Court Family Rules
Rules 171 and 172

Registry location:	New Westminster
Court File Number:	22222

I, Maureen Ann Smith, stay at home mom, of 123 Broad Street, Big City, BC,

SWEAR OR AFFIRM THAT:

I know or believe the following facts to be true. If these facts are based on information from others, I believe that information to be true.

1. I am making this affidavit support of an application for conduct orders pursuant to section 225 and 227 of the *Family Law Act.*
2. Mr. Singh and I are married but separated as of December 1, 2021. Mr. Singh and I have interim orders for shared parenting time and responsibilities of our son, Jake, 8 years old. We share parenting time on a week on, week off schedule, and share parenting responsibilities equally.
3. After the court order, Mr. Singh and I arranged between ourselves to meet on Fridays in the parking lot of the Time Horton's at 111 Park Boulevard, Big City, BC. at 4:00 p.m. to hand off Jake for the week. This was working relatively well until recently.
4. Mr. Singh's behaviour has become unbearably hostile towards me. Mr. Singh calls me names, and speaks about me disparagingly both to and in front of our child. This behaviour is not in Jake's best interests and is frustrating our co-parenting relationship.
5. On or about Thursday September 14, 2022 Mr. Singh called me about the upcoming parenting exchange. In this conversation, he told me that Raya was moving in with him. I was surprised and I told Mr. Singh that this made me feel uncomfortable because introducing a new love interest to Jake so soon after our separation will confuse him and may affect his emotional health. Mr. Singh told me it wasn't my business anyways and that I was a "jealous bitch".
6. On September 23, 2022 I met Mr. Singh at the Tim Horton's to pick up Jake for my parenting time. Jake was very quiet on the ride home and when I asked him how his week was, he got upset and cried. Jake said that Mr. Singh told him Raya was his new mommy now and that he wasn't going to see me anymore "after court". Jake asked me if I was not his mommy anymore and said he didn't want a new mommy.
7. I understood from this conversation with Jake that Mr. Singh had told Jake he was going to apply to the court for sole parenting time or similar and further that Raya was replacing me as Jake's mother.
8. On September 30, 2022 during the next parenting exchange, Mr. Singh exited his car and came storming over to where Jake and I stood waiting for him. Mr. Singh demeanour was hostile. His

fists were clenched and he had an angry look on his face. When Mr. Singh spoke, the tone of his voice was harsh and in a raised tone. He told me he was no longer going to be driving into Big City for parenting exchanges and if I want to see Jake, I have to pick him up and drop off at Mr. Singh's house in Town, BC. Jake squeezed my hand tighter and clung to my midriff when Mr. Singh spoke and I took this behaviour to mean that Jake was scared by the way Mr. Singh was conducting himself.

9. I told Mr. Singh that could discuss it later - and not in front of Jake - but reminded him that we chose this location because it was roughly mid-way between our homes. Mr. Singh called me a "selfish bitch" for wanting him drive to Big Town. Again, all of this in front of Jake. I did not retaliate, not wanting Mr. Singh to escalate further and particularly not in front of our child.

10. I need conduct orders to restrain Mr. Singh from communicating with me other than by email, to restrain him from speaking to Jake about court matters, and compel him to speak to and in front of Jake and me with the best interests of our child in mind. I lastly need a court order restraining Mr. Singh from exiting his vehicle and speaking to me during parenting exchanges.

SWORN/AFFIRMED BEFORE ME
at _____, Province of
on _____

_____
A commissioner for taking affidavits for British Columbia

_____
Signature
Maureen Ann Smith

Application About a Protection Order

FORM 12
Provincial Court Family Rules
Rules 67, 68 and 172

Registry location:	New Westminster
Court File Number:	22222

1. My name is Maureen Ann Smith. My date of birth is Oct 1 1990.

   My contact information and address for service of court documents by the other party and the court are:

Lawyer *(if applicable)*:		
Address: 123 Broad Street		
City: Big City	Province: BC	Postal code:
Email: 12345@email.com		Telephone: (604) 555-5555

2. The person I want protection from, or who had made an application for protection from me, is the other party. An application is usually made with notice to the other party. To give notice, they must be served with the application and supporting documents before the date set for the court appearance. An Application About a Protection Order can also be made without notice to the other party.

   [X] I am applying with notice to the other party

   [ ] I want to apply without notice to the other party because:

3. The other party's name is Kuldip Singh. Their date of birth is May 15 1986

   Their contact information, as I know it, is:

Lawyer *(if applicable)*:		
Address: 333 1st Ave		
City: Town	Province: BC	Postal code:
Email: 54321@email.com		Telephone: (778) 555-5555

4. I am applying for the following order:

   [X] protection order *(see Schedule 1)*

   [ ] order to change an existing protection order *(see Schedule 2)*

   [ ] order to terminate an existing protection order *(see Schedule 3)*

For registry use only - if applicable

This application will be made to the court at New Westminster Registry, Law Courts, Begbie Square, 651 Carnarvon Street, New Westminster, B.C. V3M 1C9

on _____ **at** _____ **a.m./p.m.**

You must attend the court appearance *[method of attendance]* _____, **unless otherwise allowed by the court.** [ ] See attached for details

NOTE TO THE OTHER PARTY: If you do not attend court on the date and time scheduled for the court appearance, the court may make an order in your absence. You may also choose to file a written response in reply to the application in Form 19 Written Response to Application.

Schedule 1 – Affidavit for Protection Order
This is Schedule 1 to the Application about a Protection Order

I, Maureen Ann Smith, stay at home mom of 123 Broad Street, Big City, BC,

SWEAR OR AFFIRM THAT:

1. I am making this affidavit in support of an application for a protection order.
2. I am applying for a protection order for the following person(s) to be protected:
   - [X] me
   - [ ] the following child(ren) I am parent or guardian to:

Child's full legal name	Child's date of birth *(mmm/dd/yyyy)*	Other party's relationship to child	Child is currently living with
Jake Smith-Singh	Aug 5 2014	father	

   - [ ] the following adult family member(s) sharing the residence with a protected person:

Full name	Date of birth *(mmm/dd/yyyy)*	Relationship to the protected person(s)

   - [ ] other:
     Name: Date of birth

The person(s) identified in the section above is/are referred to as the protected party/parties. The other party is the person they need protection from.

ABOUT THE PROTECTION ORDER

3. I do not want the other party to be able to attend at, enter or be found at the following place(s):
   - [X] residence
   - [X] school
   - [X] place of employment
   - [X] child care facility
   - [X] other: any other location that I frequent or am found at.
4. The protected party may need to communicate with the other party for the following reason(s):
   - [ ] consensual dispute resolution
   - [X] parenting arrangements
   - [X] ongoing court action
   - [X] other: child support payments
5. I have concerns the other party would cause harm with or threaten to use guns, explosives or another kind of firearm
   - [X] Yes [ ] No

6. I believe the other party owns or has access to guns, explosives or another kind of firearm
   ☐ Yes ☒ No

7. I have concerns the other party would cause harm with or threaten to use a weapon that is not a gun or explosive
   ☒ Yes ☐ No

8. I believe the other party owns a weapon that is not a gun or explosive
   ☒ Yes ☐ No

9. The protected party currently shares a residence with the other party
   ☐ Yes ☒ No

10. I believe police assistance may be required for the following purpose(s):
    - ☐ to remove the other party from the shared residence
    - ☐ to supervise the removal of the protected party's personal belongings from the shared residence
    - ☐ to supervise the removal of the other party's personal belongings from the shared residence
    - ☒ to supervise the removal of the child(ren)'s personal belongings from a residence
    - ☒ other: to supervise the exchange of the child.

YOUR STORY

Relationship between parties

11. The protected party and the other party are:

    The applicant Ms. Smith is the separated spouse of the respondent Mr. Singh.

12. The protected party is or has been spouses, or lives or has lived together in a marriage-like relationship, with the other party.

    Specify which protected adult if there is more than one

    ☒ Yes ☐ No

    Date of marriage

    Date on which the parties began to live together in a marriage-like relationship:

    Are the protected party and the other party currently separated

    ☒ Yes ☐ No ☐ Unknown

    If yes, the parties separated on

Children

13. [X] The protected party and the other party are a parent, step-parent or guardian only to the child(ren), if any, identified in paragraph 2 of this affidavit.

    [ ] The protected party and the other party are a parent, step-parent or guardian to the following child(ren) who is/are not identified in paragraph 2 of this affidavit:

Child's full name	Child's date of birth *(mmm/dd/yyyy)*	Protected party's relationship to child	Other party's relationship to child	Child is currently living with

14. There are existing written agreements or court orders about the children concerning parenting arrangements, child support, contact with a child, or guardianship [X] Yes [ ] No

About my family

15. I would like to share the following information with the court about the cultural, linguistic, religious and spiritual upbringing and heritage of my family, including, if the child is an Indigenous child, the child's Indigenous identity:

Other information

16. I have concerns about the mental health of the protected party and/or the other party

    [X] Yes [ ] No

    See my supporting affidavit.

17. Are there circumstances that may increase the risk of family violence

    [X] Yes [ ] No

    1. Significant financial power imbalance: Ms. Smith is disabled and receives a disability pension, while Mr. Singh works in computer science and makes approximately $120,000 annually. Mr. Singh's resources, networking capacity and access to wealth and privilege put Ms. Smith at a relative disadvantage.
    2. Threats, stalking and harassment: Mr. Singh has engaged in a campaign of threats and harassment online against Ms. Smith and has intentionally caused others to stalk and harass Ms. Smith as part of these activities.
    3. Relationship status: Mr. Singh and Ms. Smith separated in December 2021 and Ms. Smith instigated the breakup which has in part fuelled Mr. Singh's fixation on punishing Ms. Smith.
    4. Controlling behaviour: Mr. Singh's activities in harassing, disparaging, and soliciting harassment and stalking against Ms. Smith are inherently controlling and intentioned to terrify Ms. Smith and psychologically, emotionally and mentally damage Ms. Smith.

18. There is an existing court order, agreement or plan protecting one of the parties or the child(ren), or restraining contact between the parties, including a protection order, an order, agreement or plan involving child protection services, or a peace bond, restraining order, bail condition or other criminal order

☒ Yes ☐ No

19. Has the other party ever failed to obey a court order ☒ Yes ☐ No ☐ Unknown

Mr. Singh has continuously breached the October 4, 2022 order of the Hon J. McJudgeyface from the date of the order to now. See my supporting affidavit.

20. I have concerns the other party may not obey a court order ☒ Yes ☐ No

Mr. Singh has a history of disobeying court orders, particularly those regarding his conduct. See my supporting affidavit.

21. I have reported my safety concerns to the police ☐ Yes ☒ No

22. I have reported my safety concerns to a social worker (Ministry of Children and Family Development) ☐ Yes ☒ No

23. Is there any family violence you fear is likely to happen that you have not already described in this affidavit? ☐ Yes ☐ No

Ms. Smith's fear is that Mr. Singh will continue to spread Ms. Smith's personal information publicly online and solicit harassment and violence against her and/or that it will go beyond the point that Mr. Singh can undo the damage he has already done from his online harassment campaign against her.

Ms. Smith further fears that Mr. Singh's harassment and disparaging commentary to Ms. Smith and to and in front of the child Jake will continue and cause more emotional, psychological and mental damane to both Ms. Smith and the child Jake.

24. Do you have any concerns for the safety of the protected party/parties that you have not already described in this affidavit ☐ Yes ☒ No

25. Describe any recent incidents of family violence against the protected party/parties and any child(ren). Include:

- how the other party made the protected party and/or the child(ren) feel unsafe *(describe examples of the other party's behaviour that made you afraid)*
- a description of the incident(s) *(write as much detail as possible)*
- who was involved *(include the police if they were involved at any time)*
- who witnessed it
- any exposure the child or children have had to violence or abuse
- any injuries or trauma from the incident
- any doctor's notes, police reports or photos *(you must refer to them here as exhibits and make copies of them for the court)*

1. See Ms. Smith's supporting affidavit.
2. Mr. Singh has solicited strangers to sexually harass Ms. Smith and psychologically torment

her by putting her private information online including her address and phone number and encouraging people to contact her. Ms. Smith is receiving ongoing daily threats to her safety via text message and phone call, some of which are sexual and violent in nature. This places not Ms. Smith at risk but also her child.

3. Mr. Singh also published disparaging content about Ms. Smith on his social media pages, is verbally abusive towards her during parenting exchanges and over text and including in front of the parties' child.
4. Mr. Singh subscribed Ms. Smith's personal email address to many multiple pornographic websites and she receive dozens of offensive, sexually explicit emails a day as a result.
5. Mr. Singh continuously breaches the October 4, 2022 Order of Hon J McJudgeyface, speaking to the child about court matters, making disparaging comments about Ms. Smith to and in front of the child, and directly to Ms. Smith.
6. It is for these reasons, and those described in the supporting affidavit, that Ms. Smith seeks the following protection orders:
   (a) Under s. 183(3)(a) of the *FLA,* Mr. Singh will not have contact or communicate directly or indirectly with Ms. Smith except:
      i. While in attendance at a settlement conference or family case conference in a court action, or a court appearance in which Mr. Singh is compelled by law to attend under subpoena or in which Mr. Singh is a party;
      ii. For communication through legal counsel in your absence;
      iii. For making e-transfers of court ordered child support payments;
      iv. For the exchange of the child during scheduled parenting time exchanges.
   (b) Under s. 183(3)(a) of the *FLA,* Mr. Singh will not follow Ms. Smith, and Mr. Singh will not attend at, near, enter or be found within 100 meters of a place regularly attended by Ms. Smith including the residence, property, business school or place of employment of Ms. Smith even if Mr. Singh owns the place or has a right to possess the place.
   (c) Under s. 183(3)(e) of the *FLA* Mr. Singh remove, un-publish, delete, or otherwise destroy all social media and online posts related to Ms. Smith by not more than one business day following the date of the order.
   (d) Under s 183(3)(e) of the *FLA,* Mr. Singh will not directly or indirectly publish, post or share with any person information or documents relating to Ms. Smith or about these court proceedings except:
      i. his legal counsel;
      ii. legal counsel for Ms. Smith;
      iii. a person authorized in writing by Ms. Smith;
      iv. a person authorized by this court.

SWORN/AFFIRMED BEFORE ME

at _____, Province of
on _____

A commissioner for taking affidavits for British Columbia

Signature
Maureen Ann Smith

Application About Enforcement

FORM 29
Provincial Court Family Rules
Rules 135 and 136

Registry location:	New Westminster
Court File Number:	22222
FMEP Number:	

1. My name is Maureen Ann Smith. My date of birth is Oct 1 1990.

   My contact information and address for service of court documents are:

Lawyer *(if applicable)*:		
Address: 123 Broad Street		
City: Big City	Province: BC	Postal code:
Email: 12345@email.com		Telephone: (604) 555-5555

2.

   [X] This application is about enforcement under Rule 135. I understand I must give notice of this application to each other party. To give notice, they must be served with the application and supporting documents at least 7 days before the date set for the court appearance unless the court allows the application to be made without notice or with less than 7 days' notice.

   [ ] This application is to set aside the registration of a foreign support order under the *Interjurisdictional Support Orders Act*. I understand I must give notice of this application to the designated authority. To give notice, the designated authority must be served with the application and supporting documents by registered mail at least 30 days before the application is to be heard by the court.

3. The other party is Kuldip Singh. Their date of birth is May 15 1986.

   Their contact information, as I know it, is:

Lawyer *(if applicable)*:		
Address: 333 1st Ave		
City: Town	Province: BC	Postal code:
Email: 54321@email.com		Telephone: (778) 555-5555

For registry use only - if applicable

This application will be made to the court at New Westminster Registry, Law Courts, Begbie Square, 651 Carnarvon Street, New Westminster, B.C. V3M 1C9

on _____ **at** _____ **a.m./p.m.**

You must attend the court appearance *[method of attendance]* ....., **unless otherwise allowed by the court.** [ ] See attached for details

NOTE TO THE OTHER PARTY: If you do not attend court on the date and time scheduled for the court appearance, the court may make an order in your absence. You may also choose to file a written response in reply to the application in Form 19 Written Response to Application.

ABOUT THE ORDER

4. I am applying for an order:

   [X] to enforce the order or filed written agreement made on October 4, 2022

- ☐ to enforce, change or set aside the filed determination of a parenting coordinator dated
- ☒ to have reasonable and necessarily incurred expenses set under the following sections of the *Family Law Act*:
  - ☐ section 61 *[denial of parenting time or contact]*
  - ☐ section 63 *[failure to exercise parenting time or contact]*
  - ☐ section 212 *[orders respecting disclosure]*
  - ☐ section 213 *[enforcing orders respecting disclosure]*
  - ☒ section 228 *[enforcing orders respecting conduct]*
  - ☐ section 230 *[enforcing orders generally]*
- ☐ to determine whether arrears are owing under the support order or agreement dated made under the *Family Law Act*, and if so, the amount of arrears (unpaid support)
- ☐ to set aside the registration of a foreign order under section 19(3) of the *Interjurisdictional Support Orders Act*

5. ☒ I am attaching a copy of the order, written agreement or determination this application is about.

6. The details of the order I am applying for are as follows:
   1. Pursuant to FLA s 228(1)(c)(I), an order that Mr. Singh pay to Ms. Smith $1100 on or before November 5, 2022, being expenses reasonably and necessarily incurred as a result of Mr. Singh's non-compliance with the Order of the Honourable Judge McJudgeyface made October 4, 2022.
   2. Pursuant to FLA s 228(1)(c)(ii), an order that Mr. Singh pay to Ms. Smith $5000 on or before November 5, 2022 for the benefit of Ms. Smith whose interests were affected by Mr. Singh's non-compliance with the Order of the Honourable Judge McJudgeyface made October 4, 2022.

7. The facts on which this application is based are as follows:
    1. On October 4, 2022 the Hon. J. McJudgeyface made orders respecting conduct, specifically regarding communication (mutual communication restriction to email unless to facilitate parenting exchanges which may be by text, or in the case of an emergency by phon, child's best interests speech, and speech to children orders) and that during parenting time exchanges Mr. Singh will not exit his vehicle and the parties will not speak to one another unless necessary for the purpose of exchanging the child.
    2. On October 7, 2022 Mr. Singh did not show up to the scheduled parenting time exchange and instead directed Ms. Smith to drive to his house if she wanted to exercise her parenting time. Once there, Mr. Singh subjected Ms. Smith to a barrage of insults in front of the child Jake including comments about these court proceedings.
    3. On October 7, 2022 and October 8, 2022 Mr. Singh sent disparaging text messages to Ms. Smith in violation of the October 4, 2022 Order.
    4. On October 10, 2022 Mr. Singh tagged Ms. Smith in an Instagram post using disparaging and profane words describing Ms. Smith in violation of the October 4, 2022 Order.
    5. On October 14, 2022 Mr. Singh made a scene at the parenting exchange by blasting offensive, sexist music and called it Ms. Smith's anthem, in violation of the October 4, 2022 order.
    6. On October 14, 2022 Mr. Singh made a disparaging post about Ms. Smith on Facebook, and also indicated that he had subscribed Ms. Smith's email to receive pornographic content. Ms. Smith continues to receive pornographic emails on a daily ongoing basis.
    7. On October 15, 2022 Mr. Singh posted Ms. Smith's name, address, phone number and email address to a website dedicated to harassing ex-spouses. Ms. Smith knows that Mr. Singh made this post because the post includes a photo of Jake, who the poster identified as his child. Ms. Smith has received hundred of phone calls and texts, many of which are threatening and sexual in nature. Ms. Smith has received threats of assault. She has also received unsolicited nude photos of male genitalia via text message.
    8. Ms. Smith has had to move temporarily out of her residence and into a hotel room for her safety. She has also changed her phone number. These expenses are currently at $1100 and are anticipated to continue to increase as her need to continue to stay in a hotel remains to ensure her and the child's safety.

Application for Case Management Order

Registry location:	New Westminster
Court File Number:	22222

FORM 10
Provincial Court Family Rules
Rules 54, 55, 64, 83, and 159

1. My name is Maureen Ann Smith. My date of birth is Oct 1 1990.
   My contact information and address for service of court documents are:

Lawyer *(if applicable)*:		
Address: 123 Broad Street		
City: Big City	Province: BC	Postal code:
Email: 12345@email.com		Telephone: (604) 555-5555

2. [X] I understand I must give notice of this application to each other party, including any other person who may be directly affected by the order. To give notice, they must be served with the application and supporting documents at least 7 days before the date of the court appearance unless the court allows the application to be made without notice or with less than 7 days' notice.

3. The other party is Kuldip Singh.

4. The following other person(s) who may be directly affected by the order is/are:

5. [ ] Each party, including any person directly affected by the order, has consented to the case management order and:
   - [ ] a **draft Consent Order** in Form 18 signed by each party, and any other person directly affected by the order, or their lawyer, is submitted with this application and supporting documents for review without attending before the court
   - [ ] a court appearance is requested

6. I have contacted each other party to discuss available dates and times for the court appearance [ ] Yes [X] No
   If yes, have they have agreed to a date and time for the court appearance? [ ] *Yes* [ ] *No*

For registry use only - if applicable

This application will be made to the court at New Westminster Registry, Law Courts, Begbie Square, 651 Carnarvon Street, New Westminster, B.C. V3M 1C9

on _____ **at** _____ **a.m./p.m.**

You must attend the court appearance *[method of attendance]* ....., **unless otherwise allowed by the court.** [ ] See attached for details

NOTE TO PARTIES: If you do not attend court on the date and time scheduled for the court appearance, the court may make an order in your absence. You may also choose to file a written response in reply to the application in Form 19 Written Response to Application.

7. I am filing this form in the court registry:

Select only one of the options below

- [X] where my existing case with the same party/parties is located
- [ ] closest to where the child lives most of the time, because my case involves a child-related issue
- [ ] closest to where I live because my case does not involve a child-related issue
- [ ] permitted by court order

8. I am applying for the following case management order(s):

- [ ] transferring the court file to another registry for all purposes or specific purposes
- [ ] relating to the management of a court record, file or document, including access to a court file
- [ ] correcting or amending a filed document, including the correction of a name or date of birth
- [ ] setting a specified period for the filing and exchanging of information or evidence, including a financial statement in Form 4 [*Financial Statement*]
- [ ] specifying or requiring information that must be disclosed by a person who is not a party to the case
- [ ] requiring that a parentage test be taken under section 33 [*parentage tests*] of the *Family Law Act*
- [ ] requiring access to information in accordance with section 242 [*orders respecting searchable information*] of the *Family Law Act*
- [ ] recognizing an extraprovincial order other than a support order
- [ ] waiving or modifying any requirement related to service or giving notice to a person, including allowing an alternative method for the service of a document
- [ ] waiving or modifying any other requirement under these rules, including a time limit set under these rules or a time limit set by an order or direction, even after the time limit has expired
- [ ] allowing a person to attend a court appearance using a different method of attendance
- [ ] adjourning a court appearance
- [X] respecting the conduct of a party or management of a case
- [ ] relating to a report under section 211 [*orders respecting reports*] of the *Family Law Act*, including requiring that a person who prepared the report attend a trial as a witness
- [ ] adding or removing a party to the case, including leave to intervene under section 204(2) *[intervention by Attorney General or other person]* of the *Family Law Act*
- [ ] respecting the appointment of a lawyer to represent
  i) the interests of a child or,
  ii) a party
- [ ] settling or correcting the terms of an order made under the rules
- [ ] cancelling a subpoena
- [ ] changing, suspending or cancelling an order made in my absence

9. The details of the order(s) I am applying for are as follows:
   1. An order pursuant to *FLA* s. 225, that Kuldip Singh will have no communication with Maureen Smith except by email unless in the case of an emergency Kuldip Singh may communicate with Maureen Smith by telephone.
   2. An order pursuant to *FLA* s. 225, that the parties will
      (a) put the best interests of the Child before their own interests;
      (b) encourage the Child to have a good relationship with the other parent and speak to the Child about the other parent and that parent's partner in a positive and respectful manner; and
      (c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the Child.
   3. An order pursuant to *FLA* s. 225 that the parties will not
      (a) question the Child about the other parent or time spent with the other parent beyond simple conversational questions;
      (b) (b) discuss with the Child any inappropriate adult, court or legal matters; or
      (c) blame, criticize or disparage the other parent to the Child.
   4. An order pursuant to *FLA* s 227 (c) that the parties will not communicate with one another during parenting exchanges, that Mr. Singh will stay in his vehicle during the exchanges, and the scheduled parenting time exchanges will continue to occur at the parking lot of the Tim Horton's located at 111 Park Boulevard, Big City, BC.

10. ☐ I am not a party to the case
    ☐ I am a party to the case and the case does not involve a child related issue
    ☒ I am a party to the case and the case involves a child-related issue about the following child or children:

Child's full name	Child's date of birth *(mmm/dd/yyyy)*
Jake Smith-Singh	Aug 5 2014

11. The facts on which this application is based are as follows:
    1. Please see my sworn affidavit in support of and filed contemporaneously with this application.
    2. Per the January 7, 2022 order of this court, the Parties have shared parenting time and parenting responsibilities of the child, Jake, who is 8 years old.
    3. Ms. Smith asks the court for conduct orders about communication to address the ongoing and escalating behaviours of Mr. Singh including:
        (a) Mr. Singh speaks about Ms. Smith disparagingly to Jake and in front of Jake, calling Ms. Smith such things as "trashy" and a bad mom, ;
        (b) Mr. Singh talks to the child Jake about court matters, such as telling Jake that Mr. Singh is going to get court orders that Jake will no longer see Ms. Smith;
        (c) Mr. Singh speaks disparagingly to Ms. Smith, for example calling her a "bitch"; and
        (d) Mr. Singh makes a scene at parenting time exchanges speaking disparagingly to Ms. Smith in front of Jake, and acts in a physically intimidating manner at parenting time exchanges.

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Professional Responsibility and Scope of Service for Family Law Advocates

Veenu Saini; Leila Hartford

An important session for new family law advocates about professional responsibility, file management and scope of service.

FILE MANAGEMENT
and Professional Responsibility

Presented by **Odette Dempsey-Caputo**

THE LAW FOUNDATION OF BRITISH COLUMBIA

Foundation

Objectives

Someone should be able to pick up your file and have a good understanding what is going on.

Helps you organize the file and ensure that you work effeciently.

To get you to Document, Document, Document.

CONFLICT CHECK

1. WHAT IS A CONFLICT CHECK?
2. WHEN DO YOU DO A CONFLICT CHECK?
3. WHO ARE YOU CHECKING?

Conflict

Conflict of Interest:
You have a duty of undivided loyalty to your client.

Conflict check:
A conflict check is completed to confirm the client does not have a conflict with another client's interest.

Keep a list:
Keep a list of your clients and of other advocates and lawyers at your organization. The intake form will help you with this.

Types of Conflict:
A conflict can be with another client, a current client, with you personally or someone else in your organization or with your organization.

IF THERE IS A CONFLICT

STOP: DO NOT allow your client to tell you anything more.

SILENCE: DO NOT tell your client what the conflict is.
This can be a breach of confidentiality to your other client.

SEND: A closing letter to the client who you have the conflict with and close the file immediately.

You should also document the communication you had with the client.

Conflict

Lu Is Laan

Lu Is Laan has been living with Klarck Centt for two and half years. She moved out last week. She had to leave her dog Kryptonight behind as she had to stay at a friends house and couldn't take him.

Lu Is Laan

Lu Is Laan has been living with Klarck Centt for two and half years. She moved out last week. She had to leave her dog Kryptonight behind as she had to stay at a friends house and couldn't take him.

When?

Who?

CONFLICT SCENARIOS

Scenario 1: Advocate A and B work for Pics Sell Family Centre. Advocate A is acting for Lu Is Laane Advocate B is acting for Klarck Centt.

Scenario 2: Advocate A is acting for Lu Is in her Family matter. Lu Is's Dad Rex contacts Advocate B at Pics Sell about human rights complaint he has.

Scenario 3: Isabelle is married to Sy Lent and they have a child together. Isabelle wants to separate from Sy Lent. Sy Lent and Isabelle come to advocate A and say they want help with a separation agreement.

Scenario 4: Isabelle and Lau De come to Advocate A for help with a matter with MCFD and their three children as Lau De has a drug problem.

Now What?

Liability Waiver

- You can have the client sign this form to acknowledge the risks in their participation in the program.
- It can help to reduce the risk of the legal liability of the organization.
- DOES NOT include negligence.

Confidentiality Waiver

- This waiver allows you to discuss the client's case with someone outside your organization.
- We will discuss this issue more in the Professional Responsibility section.

Consent Forms

- These forms advise another organization that the client is agreeing that they can share their information about the client with you.
- The organization may require you to sign their specific consent form.

Gather information!!!

Collect information so you can determine how to meet your client's needs.

Limitation Periods

You will want to determine the limitation period right away.

A limitation period is the time in which you have to start a legal process or you will not be able to proceed with the claim. The date is the end of that period.

You find them in legislation and policies.

You MUST inform your client of them.

If you are unsure talk to your supervising lawyer.

Note: The average limitation periodis 2 years.

Do you need to close the file?

- Conflict
- Deadline/limitation too close
- Difficult client
- Outside your approved matters/scope
- Good idea to send letter explaining why

LEVEL OF SERVICE

REFERRAL INFORMATION

Less than 30 min

Legal and non legal services

Have a list ready

Always good to include a referral in a conflict file

SUMMARY ADVICE

Less than 2 hours

Should be given in writing

If given verbally, follow up with writing

You **MUST** include limitation dates

FULL REPRESENTATION

Takes more than 2 hours

Often involves litigation or document drafting

Client signs a Retainer Agreement (include a scope of work letter)

You **MUST** include limitation dates

Lu Is Laan

Lu Is Laan has been living with Klarck Centt for two and half years. She moved out last week. She had to leave her dog Kryptonight behind as she had to stay at a friends house and couldn't take him.

What level for Lu Is Laan?

Is there a limitation date?

Full Representation

Open the File

Retainer Agreement- an agreement between you and the client about your services.

Scope of Work- a letter that explains what you will do for the client and the process ex. HRT or RTB.

RETAINER AGREEMENTS

- Always have the client sign a retainer agreement (two copies: client and you)
- It should set out exactly what you are helping them with.
- Each separate issue should be its own file and retainer agreement.
- Include: confidentiality, disbursements, file ownership, how to terminate the relationship.
- Should be signed by both of you.

SCOPE OF WORK LETTER

- It's a good idea to include a scope of work letter
- It should set out:
  - what the client told you
  - what information/documents you still need
  - what the process is for their issue
  - what their options are
  - what the risks and benefits of the options are
  - how you can help them
  - any limitation dates

Document Dates

Limitation

- Put in your calendar
- Have reminders
  - one month
  - one week
  - one day

Hearing Dates

Document Disclosure dates

Other dates

Follow up dates

- You should have a reminder or a system in place to regularly look at a file.

COMMUNICATION WITH CLIENTS

Telephone

Whenever you communicate with a client you should document it.

Good idea to follow up with an email or letter.

E-mail

Put emails, notes, and other communication with the client or other parties in the file.

Meetings

Include in the notes:

- the date
- what was said, who said it
- what you advised
- what needs to be done and by who

PHYSICAL FILE

- DOCUMENTS in chronological order (its common to have the most recent on the top)
- Date all notes.
- Stored in a locked area that is not easily accessible.
- Number or organized by name
- Open and closed files should be kept separately.
- Keep notes of ALL conversations you have with clients in the file.

DATABASE

- All summary advice and full representation files should be in the database.
- Upload Documents (scan if needed).
- Enter all limitation dates, hearing dates and relevant deadlines.
- Keep notes of ALL communications.

When to withdraw?

- Conflict
- No communication
- Lack of capacity
- No trust
- Lies to you
- Client asks you to lie
- Unreasonable

CLOSING THE FILE

Common Reasons to close a file are:

- you have completed your scope of work
- the client decides to end the relationship with you
- you have decided to end the relationship
- a conflict arose

SEND a letter saying you have done so.

Return all original documents and confirm in the letter you have done so

Do up a closing memo

DO NOT destroy your file even if your client says they want you to.

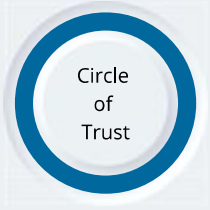
What do you Keep?

- Your notes
- Your forms (intake, confidentiality waivers et c., copies to client)
- Your work sheets
- Original retainer agreement (copies to client)
- Communication from the client to you (copies to client)
- Communication from you to the client and/or third parties (copies to client)
- Other documents you and your supervising lawyer deem necessary.

- Must be kept in safe secure location
- Have a retention and destruction plan
- Use closing checklist

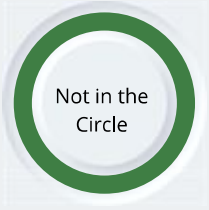
Confidentiality

YOU HAVE A DUTY OF CONFIDENTIALITY TO YOUR CLIENT!!!!!!



Program colleagues
Supervising lawyer
Law Foundation

You will need a consent form for anyone outside the circle.



You should not even confirm they are a client without your client's permission

Other service providers
Client's relatives
Some people in your organization
Your family

Explain confidentiality to your client?

- Immediately
- What it is
- Who is in the circle (you can include this in the retainer)
- Exceptions

Exceptions

Child Protection	Court Order	Harm
You MUST report child abuse. S.14(2) of the CFCSA	Advocates do not have the same protection as lawyers.	If your client is going to hurt themselves or someone else.

If you are in doubt talk to your supervising lawyer

Scenarios

Fact Pattern #1

You have an excellent working relationship with the receptionist at your office. In casual conversations in the office, you have heard a little bit about her sister Mulan's separation from her husband Li Shang. The sister's husband is on the same curling team as your husband. By all accounts, their separation is cordial. The receptionist approaches you at the end of a day and asks if you will help the couple prepare a simple Separation Agreement. The receptionist assures you there are no issues in dispute and they can both come to see you and provide joint instructions. You know the couple is in a tight spot financially, as the husband has been laid off from his job in the military for some time. They cannot afford a lawyer. There are no other resources they could use closer than a two hour drive away.

Do you help them? If so, how? What should your concerns be?

Fact Pattern #2

You help your client Chrissy and her daughter Juna move into transition housing for women and children fleeing abuse. One day, a worker from Chrissy's transition house calls you to "problem-solve" about an issue that has arisen between Chrissy and another resident. She says that Chrissy has given her permission to talk to you about this.

What do you do?

Fact Pattern #3

Beth Boland comes into your office for an intake meeting. You do a conflicts check and there does not appear to be a conflict. You also explain your duty of confidentiality.
Beth starts talking about her Family Law problems and her dealings with MCFD. Beth is worried that MCFD will learn about her addiction to OxyContin.

What should you do immediately?

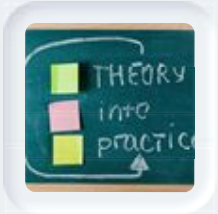
What do you reiterate about the scope of your duty of confidentiality? Do you have an obligation to report this information to MCFD?

Fact Pattern #4

Your old client Ellen is back to see you, several years after you represented her in her Family Law case (you are now an old hat at Family Law, mentoring newer advocates).

Ellen comes to your office with her new spouse, Portia. They tell you that:
- Portia has a three year old grandson, Charlie, who is in foster care.
- Ellen and Portia want Charlie to live with them and they hope to eventually adopt him.
- Charlie's mother and MCFD are supportive of this plan.
- MCFD has advised Ellen and Portia to apply for guardianship of Charlie under the FLA
- Ellen and Portia would like you to assist both of them with their guardianship applications.

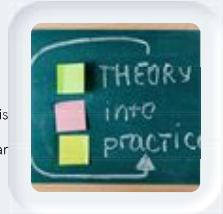
What steps should you take regarding conflicts?



Fact Pattern #5

Your client Jennifer has you helping her with a Financial Statement.
Jennifer has learned from reviewing Brad's Financial Statement that Brad and his mother are joint holders of a large investment account. Brad and his mother have written affidavits stating that that the money belongs to Brad's mother and Brad's name is on the account so he can help his mother manage it. Jennifer is very suspicious of this explanation. You input Brad's mother's name into the Law Foundation database and realize that a year ago, you assisted Brad's mother in a Family Law dispute with her ex-husband (Brad's stepfather).

What do you do?



Thank you!

Contact us if there are any questions.

Website
https://kamloopsefry.com

Phone
250-374-2119

Email
Odette@kamloopsefry.com

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Property Division

Samantha Davis; Rosanna Adams

Information about at how to identify issues of unequal division of property, excluded property, interim distirbution of property, and resoruces to refer clients to for legal advice on property issues.

Property Law Issues

Law Foundation Provincial Advocates Conference

Rise Women's Legal Centre
Samantha Davis and Rosanna Adams

1

DISCLAIMER

This presentation does not include legal advice.

If you or someone you care about requires legal advice, please consult with a lawyer.

2

Agenda

- Property 101
- Who can do what?
  - Advocates Scope of Service and Practical Tips
  - Lawyer role and limitations
- Special Issues
  - Section 91, CPL, LSPA
- Questions!

3

Property 101
Rules, Paths, Results, Goals

- **Rules**: *Family Law Act*, *Supreme Court Family Rules*, other legislation that governs tax, businesses, property
- **Paths**: Supreme Court, Mediation, Arbitration, Waiting
- **Results**: Court Order, Written Agreement, Status Quo
- **Goals**: Property division in line with the *Family Law Act*
  - A Client may also want: to ensure they keep a specific asset, avoid conflict or ensure financial security

4

Property 101
What does the FLA do

Family Law Act property and pension division applies to both married and common-law spouses.

Three general categories of actions:

1. Financial Disclosure
2. Ensure that property and debt can be preserved/fairly used until a division occurs
3. Divide family property and debt through an order or agreement

5

Property 101
Defining Family Property

- **Family Property**: Property acquitted during the relationship and any increase in equity of previously acquired property/excluded property
  - Family property does not need to be held in both parties names
- **Family Debt**: Debt acquired in either party's name during the relationship or after the relationship if incurred to maintain family property. [*FLA* s 86]
- **Excluded Property**: Property not typically subject to division as it is not family property.
  - This includes property acquired before the relationship, inheritances, gifts, see *FLA* s 85 for full list
  - Increase in value of excluded property during the relationship is family property
- **Valuing Property**: A property's value is "fair market value" on the date of either an agreement or final order dividing the property [*FLA* s 87]

6

Property 101
Details of division

- Starting point in the Family Law Act is that upon separation, each party is **equally entitled to family property and equally responsible family debt regardless of their use or contribution** [*FLA* s 81]
  - Presumption for equal division of family property and debt
  - Unequal division is possible but the party asking for unequal division must show that equal division would be "**substantially unfair**"*[FLA* s 95*]*
  - Excluded Property is not typically divided [*FLA* s 96]
- Property division may occur through orders that:
  - Declare/Transfer ownership/responsibility of specific assets or debts
  - An "Equalization Payment" is made between parties
  - Require an asset is sold and divide the proceeds of sale amongst the parties

7

Property 101:
Supreme Court Family Procedure

You must look at the rules as there are **many more** steps and potential paths. For example if there is already a written agreement you would take a different approach.

Supreme Court Family Rules are generally much more party driven, have more deadlines, and more paperwork then Provincial Court Family Rules.

Agreements can be made at any point, mediation can be accessed at any point.

Typical Procedure Overview:

1. Initiating documents
   - P1 Files and Serves a Notice of Family Claim P2 Files and Serves a Counterclaim, Response,
   - P1 may file a response to Counterclaim
2. Disclosure and Interim/Procedural issues
   - Financial Statements
   - List of Documents
   - Attend a JCC
   - Notice of Applications
3. Trial and a decision
4. Enforcing the decision

8

Property 101
Financial Disclosure

Financial disclosure can happen without court intervention but the court process creates rules about disclosure.

Key tools

- Financial Statement
- List of Documents
- Requests for Disclosure
  - *FLA* s. 212 allows the court to make orders for disclosure
  - *FLA*s. 213 allows the court to make orders enforcing disclosure

9

Property 101
Limitation periods

- Court proceedings for the division of property and debt must be started within two years of the date of separation for non-married spouses, and two years after the date of divorce or annulment for married spouses.

→ **Client should get legal advice on limitation periods and the impact of delay on their case.**

10

Property 101:
Complicated Financial Issues

Few cases are straightforward, here are some common issues:

- Excluded property comingled with family property
  - I.e. using an inheritance to buy a house
- Self Employed Persons/Corporations
- More then two parties
  - Assets co-owned with extended family or friends
  - An incomplete previous separation
- Pensions
- Significant financial imbalance between spouses
- Property in Multiple Jurisdictions

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Who can do what

Law Foundation Advocates Scope of Service
Sam's expanded role and referrals
Lawyers and limitations

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Who can do what: Law Foundation Advocates

- Fill out court forms and applications
- Court registry advocacy
- Support clients through mediation
- Refer clients to other supports and organizations
- Assist clients with preparing for and participating in summary advice appointments
- Support clients with implementing legal advice
- Supporting clients working with Legal Aid lawyers
- Legal aid applications, change of counsel forms, and eligibility reviews
- Supporting clients in court appearances and hearings

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Who can do what: Sam's role

- Separation agreements
- Supporting clients with implementing legal advice on property division
- Property division up to $1 million (other advocates generally have a limit of $20, 000)

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Who can do what: Property Law Referrals

- **Rise Women's Legal Centre**: Virtual Legal Clinic Advocate and Summary Advice Services
- **Access Pro Bono**: Virtual Family Mediation Project, Lawyer Referral Service, Roster Program, Summary Advice Program
- **Legal Aid**: Lawyers, LawLINE, Online resources
- **Unbundled Legal Services**

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Who can do what: Law Foundation Advocates

Applying to Legal Aid BC for property division: Limited representation contracts

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Who can do what: Legal Aid Support

Now that the client (hopefully) has Legal Aid, we can help clients make the most of their very limited hours

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Who can do what: LFA Options

Collecting documents for property division:

- Bank accounts: joint and personal
- Debts: joint and personal
- 3 most recent years of Tax Returns and Notice of Assessments – helping client find resources to assist with filing taxes if they haven't yet
- Preparing a financial statement (Form F8 in BCSC) with a client, even if they aren't going to court
- Collecting addresses and PID numbers for properties
- Determining market values of property (vehicles, homes)
- Listing all assets (RRSPs, TFSAs, etc)
- Determine if there is excluded property and evidence for the exclusion
- Assets and debts at the time of cohabitation and separation

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Who can do what: LFA Options

Supporting your client in court for property:

- Providing a script (that is reviewed by a lawyer!!!!)
- Providing a brief that lists and highlights important dates and numbers as well as explanations (that is reviewed by a lawyer!!!!!)

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Who can do what: Advocates

What happens when a client's goals for property division do not align with the *Family Law Act*?

What happens when a client doesn't want to seek disclosure?

What happens when a client wants to sign away their entitlements?

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Who Can do What: Lawyers

- Lawyers *can* give legal advice on property issues, but there are many circumstances were your client will not be able to access property advice from lawyers.
- Common limits:
  - Summary Advice lawyers are often hesitant to give advice or limited to general information
  - Insurance limits on programs
  - Legal Aid certificate coverage

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Who can do what: Other professionals

- Financial advisors, accountants
- Banks, mortgage brokers
- Business appraisers, property appraisers
- Pension plan administrators

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Protection Assets

Certificate of Pending Litigation, Land Spouse Protection Act Entries, Section 89 orders, Section 91 orders

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Certificate of Pending Litigation

- Used to protect real property by giving notice to any prospective buyer or lending institution that the property is subject to a family law claim.
- Can only be used if the party has filed a Notice of Family Claim claiming an interest in the property and pleading a certificate of pending litigation
- Must file a Form 33 with the Supreme Court and a Form 17C with the Land Title Office

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Land (Spouse Protection) Act Entry

- An entry filed against a home that prevents the sale or transfer without the written consent of the other spouse
- An LSPA entry can only be entered against a "Homestead"
  - Defined in *Land (Spouse Protection) Act* section 1
  - Property must only be registered in one spouses name
  - Spouses must have lived in the property as their residence within one year immediately proceeding the application for an entry.
- Unlike a CPL, an LSPA entry can be made before the parties have separated and before a Notice of Family Claim has been filed.
- Notice of the entry is not automatically provided to the owner spouse, but if they searched the title they would see the entry

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Section 91 Orders

- Section 91 orders are financial restraining orders which
  - Can apply to any property the applicant claims an interest in
  - Can 'freeze' an asset or can prohibit the other party from disposing of, transferring, converting, or exchanging into another form the property
  - Can be made without notice

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More Information

- For more information on LSPA, Certificate of Pending Litigation and section 91 Orders please see "Orders for Preserving Property in Family Law Cases" presented by Patrick Grayer
  - 2021 Virtual Provincial Training Conference for Legal Advocates – Material Package
  - https://legalaid.bc.ca//sites/default/files/2022-01/2022-01-07-2021-Virtual-PTC-Materials.pdf

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Section 89 Orders

- Interim Distribution of Property is an advance on family property to:
  - hire a family lawyer,
  - participate in family dispute resolution,
  - to obtain information and evidence required for family dispute resolution or court
- This purpose of these orders is to level the playing field when one spouse controls the majority of the wealth/assets
- Process: Notice of Application
- Test: Must show that the advance is required to challenge the other spouse's position and that the advance will not jeopardize the other spouse's position at trial [*McKenny v McKenny*, 2015 BCSC 1345]

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THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Tips and Tricks for Family Law Advocates in Provincial Court

Sarah Callander; Trudy Wale; Samantha Davis; Rosanna Adams

A wealth of information from advocates, lawyers and others helping clients with actions in Provincial Court

Tips and Tricks in Provincial Court:
Helping Self-Represented Litigants Navigate the Family Law System

By Samantha Davis, Rosanna Adams, Sarah Callander, and Trudy Wale

1

INTRODUCTIONS

Samantha Davis - Virtual Legal Advocate at Rise Women's Legal Centre

Rosanna Adams - Summary Advice Lawyer at Rise Women's Legal Centre

Sarah Callander - Family Law Advocate at Campbell River Advocacy Centre

Trudy Wale - Family Law Advocate at Port Alberni Friendship Society

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DISCLAIMER

This presentation does not include legal advice.

If you, your client or someone you care about requires legal advice, please consult with a lawyer.

3

PRESENTATION OUTLINE

LEGAL ADVICE BEFORE PROVINCIAL COURT
- Solicitor-client privilege
- Before summary advice
- During summary advice

PROVINCIAL COURT FORMS AND REGISTRY TIPS
- Form 11
- Requisition for online proceeding
- Authorization on a court file

SUPPORTING CLIENTS IN COURT
- Practical tips
- Document preparation
- Scripts

SUPPORTING CLIENTS AFTER COURT
- Determining next steps
- Court summary sheets

4

PRACTICAL APPROACHES

Support workers/advocates are obligated to:
- Not give legal advice
- Stay in our lane
- Remain alive to client needs
- Ensure our work is reviewed by a lawyer
- Support client autonomy

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LEGAL ADVICE

Solicitor-Client Privilege

- Confidentiality vs Privilege
- **Solicitor-Client Privilege**: A specific type of class privilege that protects the communications between a lawyer and client.
  - Applies to summary advice
  - Only the client can waive privilege
  - Some exceptions
- **Rise's position**: Generally, an advocate being present at a summary advice appointment does not create a waiver of solicitor-client privilege if the advocate is present to facilitate or assist in the giving/receiving of legal advice. BUT there are risks to be discussed.

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LEGAL ADVICE

Preparing for Summary Advice

- Help clients identify their legal issues in advance
- Have client prepare questions for lawyer before appointment
- Provide your notes to lawyer in advance
- Prepare client for what they can expect from summary advice
- Define the scope of the legal system

7

LEGAL ADVICE

Info for Summary Advice

A summary advice lawyer may appreciate a cheat sheet of key information. Consider preparing a one page document that includes:

- Dates of cohab, marriage, separation, and divorce
- Brief key event timeline (employment, family violence incidents)
- Values of assets and debts
- Income information
- Information on children: date of birth, name, basic parenting schedule

→ This document may be valuable for court appearances

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LEGAL ADVICE

During Summary Advice Appointments

- Help client focus on legal issues
- Translate complex legal jargon where possible
- Request a 'Summary Advice Memo'
- Confirm next steps clear next steps

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Provincial Court Forms and Registry Tips

Beyond Provincial Court Rules

Practise Directives

- Are available on the Provincial Court Website: https://www.provincialcourt.bc.ca/about-the-court/practice-directions
- FAM 10 Electronic signatures
- FAM 11 Default Method of Attendance
- NP 11 Support Persons
- NP 21 Remote Attendance Guide

Information contained in Provincial Court Forms

- Front material (process)
- Page by Page prompts

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Provincial Court Forms and Registry Tips

Registry Relations

Reality is that there are different practises across different registries. Some is based on the rules and some is simply local practise.

Important to have a good relationship with registry and authorization to access client's file.

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Provincial Court Forms and Registry Tips

General Forms tip

- Minimize the length of the form the client has
  - see *Application about A Family Law Matter* Form that has many schedules
- Forms can come in PDF, word, or online forms
- Use the 'Standard Wording of Family Law Orders' (Pick List)
- Uncommon forms
  - Form 39 Request for Scheduling
  - Form 19 Written response to Application
  - Form 17 Application for a Family Law Matter Consent Order
- Referral: Amici Curiae (AC) Friends of Court

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Provincial Court Forms and Registry Tips

Form 10

Application for Case Management Order

Examples of these orders include:

- Transferring file to another registry
- Setting or changing filing timelines for evidence or forms
- Conduct Orders (attending counselling, paying utilities, etc)
- To change, suspend or cancel an order made when a party was absent
- Adding or removing a party

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Provincial Court Forms and Registry Tips

Form 11

Application for Case Management Order Without Notice or Attendance

Examples of these orders include:

- Attending a conference or hearing in a different way than scheduled by the court (for example, requesting to attend in person if the registry has set up a videoconference) (Schedule 1)
- Shortening or waiving service requirements (Schedule 2)
- Waiving or modifying anything under the rules (Schedule 3)
- Recognizing an order made outside BC (other than a support order) (Schedule 5)

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Provincial Court Forms and Registry Tips

Form 52

Fax Filing Cover Page

(Use this form as a cover page when filing Provincial Court documents by fax.)

Provincial Court Family Rules, Rule 194

(1) A clerk may accept for filing any document, other than a certified copy of an order, that has been transmitted to the registry by fax

(2) A clerk may refuse to accept a document for filing that is transmitted by fax for any of the following reasons:

(a) the document is not accompanied by a fax cover sheet in Form 52 (*Fax Filing Cover Page – Provincial Court Family*);

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Provincial Court Forms and Registry Tips

Form 45 Affidavit

Affidavits can be used in many scenarios, including:

- Provide information before a Family Management Conference
- To support a subject specific Applications
- To support a Written Response (Form 19)

Judge's have said that a brief affidavit before Family Management Conference can be helpful BUT very important to get legal advice on whether an affidavit is needed and a legal review before it is filed.

Example: Your client is very anxious about court, they want a child support order at the Family Management Conference but the opposing party has not filed a financial statement.

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BREAK

17

Supporting Clients in Court

BEFORE COURT

Self-Represented Litigants are allowed to request a support person to sit with them in court.

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Supporting Clients in Court

BEFORE COURT

If you and a client need to attend virtually, you can fill out a requisition for an online proceeding.

Form 11, with schedule 1 attached

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Supporting Clients in Court

IN COURT

Before court:

Prepare a summary document for a client (like a brief) with important dates, key information about the file, court proceeding history, examples of family violence, what the client is asking for in court that day, reminders

Help clients draft a **script** to read out – even just to introduce themselves to the judge

Safety plan in advance – contacting the sheriff

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Supporting Clients in Court

IN COURT

EXAMPLE SCRIPTS:

"Good afternoon,

My name is Lisa and I am the Respondent in this family law matter. I am unrepresented and have my legal advocate with me as a support person. Her name is Samantha Davis and she works for Rise Women's Legal Centre. I have brought an application about parenting time and child support."

"Good afternoon,

My name is Samantha Davis and I am a legal advocate at Rise Women's Legal Centre. I am here as a support person for Lisa, which is allowed under Practice Direction NP11"

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Supporting Clients in Court

IN COURT

During court:

- Summarize the points to make
- Take notes during hearing
- Text or exchange notes during hearing
- Providing reminders to clients
- Ask for breaks

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Supporting Clients in Court

IN COURT

Be alive to court harassment

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AFTER COURT

After court, we can offer emotional support, clarification, reminders etc.

Assist client in gathering clerks notes (court summary sheet) for every appearance.

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DISCUSSION

Do you have any tips or tricks to share?

Have you run into any challenges supporting self-represented litigants in court?

What has helped make this process easier for your clients?

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THE END

Thank you!

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THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Practices for Handling 12-month Rent Claims

Michelle Beda

Information from TRAC staff about best practices for handling 12-month rent claims.

tenants.bc.ca | rentingitright.ca

12-Months' Rent Compensation Claims

LAST REVIEWED BY MICHELLE BEDA ON Oct 01, 2022

1

FOUNDATION OF CLAIM

- *Residential Tenancy Act* and *Residential Tenancy Regulation*.
- **A Section 49 "Landlord Use" Notice to End Tenancy must have been served;** OR
- The tenant must be under a **fixed term lease with a Section 41 Vacate Clause**

RTA s 49:

49 (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

…

2

FOUNDATION OF CLAIM

- ***RTA s 49***

49 (5) A landlord may end a tenancy in respect of a rental unit if

(a) the landlord enters into an agreement in good faith to sell the rental unit,

(b) all the conditions on which the sale depends have been satisfied, and

(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;

(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

3

FOUNDATION OF CLAIM

- ***RTA s 49***

49 (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) [Repealed 2021-1-13.]

(c) convert the residential property to strata lots under the Strata Property Act;

(d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

(f)convert the rental unit to a non-residential use.

4

FOUNDATION OF CLAIM

- ***RTA* s 49**

49 (7) **A notice under this section must comply with section 52** ***[form and content of notice to end tenancy]*** and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

- A tenancy which ends by way of a MUTUAL AGREEMENT or by informal verbal or written notice requesting that the tenant move, because the landlord /family wants to move in, will NOT QUALIFY to ground a 12 months' rent compensation claim

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MUTUAL AGREEMENT

BRITISH COLUMBIA

Mutual Agreement to End a Tenancy
#RTB-8

NOTE: This form is NOT a Notice to End Tenancy. Neither a Landlord nor a Tenant is under any obligation to sign this form. By signing this form, both parties understand and agree the tenancy will end with no further obligation between landlord(s) or tenant(s). If you are the tenant, this may include foregoing any compensation you may be due if you were served a Notice to End Tenancy. If you have questions about tenant or landlord rights and responsibilities under the Residential Tenancy Act or the Manufactured Home Part Tenancy Act, contact the Residential Tenancy Branch using the information provided at the bottom of this form before you sign.

This is a Mutual Agreement between the Landlord and Tenant

Landlord Information: (Use last name field to enter a business name if applicable)

First and middle name(s): | Last name(s):

Landlord's Address:

signed copy within 21 DAYS

6

FOUNDATION OF CLAIM

- ***RTA***
- Regulation: NEW LEGISLATIVE CHANGE – vacate clause now can ground a 12 month claim

How a tenancy ends
44 (1) A tenancy ends only if one or more of the following applies:
…
(b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

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FOUNDATION OF CLAIM

- ***RTA*** s 51 (2)

Tenant's compensation: section 49 notice
51 (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord or purchaser, as applicable, does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

8

FOUNDATION OF CLAIM

- ***RTA*** NEW s 51.1 (2)

Tenant's compensation: requirement to vacate
51.1 (1)Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a)steps have not been taken, within a reasonable period after the date the tenancy ended, to satisfy the prescribed circumstance, or

(b)the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended

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POLICY GUIDELINE 30:
Fixed Term Tenancies

B. VACATE CLAUSES

A vacate clause is a clause that a landlord can include in a fixed term tenancy agreement requiring a tenant to vacate the rental unit at the end of the fixed term. It can only be included in a fixed term tenancy in the following circumstances:

- the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term, or
- the tenancy agreement is a sublease agreement.

For example, an owner can rent out their vacation property under a fixed term tenancy with a vacate clause if they or their close family member intend in good faith to occupy the property at the end of the fixed term. The landlord or close family member must occupy the rental unit for at least 6 months. Occupancy can be part time, e.g., weekends only. Failing to occupy the rental unit for at least 6 months may result in the landlord being ordered to pay compensation to the tenant equal to 12 months' rent. See Policy Guideline 50: Compensation for Ending a Tenancy for more information

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POLICY GUIDELINE 50:
Compensation for Ending A Tenancy

C. ADDITIONAL COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE OR FOR RENOVATIONS AND REPAIRS

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).

A tenant may apply for an order for compensation under section 51.4(4) of the RTA if the landlord obtained an order to end the tenancy for renovations and repairs under section 49.2 of the RTA, and the landlord did not:

- accomplish the renovations and repairs within a reasonable period after the effective date of the order ending the tenancy.

The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under sections 49 or 49.2 of the RTA or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant

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POLICY GUIDELINE 50:
Compensation for Ending A Tenancy

- **"Reasonable Period"**
- **"Accomplishing the Purpose"**
- **"Using the Unit"**

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POLICY GUIDELINE 2a:

Ending a Tenancy for Occupancy by Landlord, Purchaser…

- **"Occupying the Unit"**
- **"Vacant Possession"**
- **"Reclaiming a rental unit as living space"**

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POLICY GUIDELINE 2a:

C. OCCUPYING THE RENTAL UNIT

Section 49 gives reasons for which a landlord can end a tenancy. This includes an intent to occupy the rental unit or to use it for a non-residential purpose (see Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use). Since there is a separate provision under section 49 to end a tenancy for non-residential use, the implication is that "occupy" means "to occupy for a residential purpose." (See for example: *Schuld v. Niu*, 2019 BCSC 949) The result is that a landlord can end a tenancy sections 49(3), (4) or (5) if they or their close family member, or a purchaser or their close family member, intend in good faith to use the rental unit as living accommodation or as part of their living space.

Vacant possession

Other definitions of "occupy" such as "to hold and keep for use" (for example, to hold in vacant possession) are inconsistent with the intent of section 49, and in the context of section 51(2) which – except in extenuating circumstances – requires a landlord who has ended a tenancy to occupy a rental unit to use it for that purpose (**see Section E**). Since vacant possession is the absence of any use at all, the landlord would fail to meet this obligation. The result is that section 49 does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

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POLICY GUIDELINE 2b:

Ending a Tenancy to Demolish, Renovate, Convert…

- **"Right of first Refusal"**

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POLICY GUIDELINE 2b:

Ending a Tenancy to Demolish, Renovate, Convert…

- In residential properties containing five or more rental units, tenants being evicted due to renovations or repairs have a "RIGHT OF FIRST REFUSAL" to return to their unit once the renovations or repairs have been completed.
- Tenant must provide RTB form, "Exercising Right of First Refusal"
- At least 45 days before the completion of the renovations or repairs, landlord must inform the tenant of the date their renovated unit will be available and provide them with a new tenancy agreement for that effective date

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BURDEN OF PROOF

Section 49 notices

"The onus is on the landlord to prove that they accomplished the purpose for ending the tenancy under **sections 49 or 49.2 of the RTA** or that they used the rental unit for its stated purpose under sections 49(6)(c) to (f) for at least six months. If this is not established, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under sections 51(3) and 51.4(5) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances."

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BURDEN OF PROOF

Section 41 "Vacate Clauses"

"Unlike sections 51(2) and 51.4, **the onus is on the tenant** to prove on a balance of probabilities that the landlord or close family member has failed to meet the obligations set out above. If the tenant establishes this, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under section 51.1(2) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances. The onus is on the landlord to establish there are extenuating circumstances."

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THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

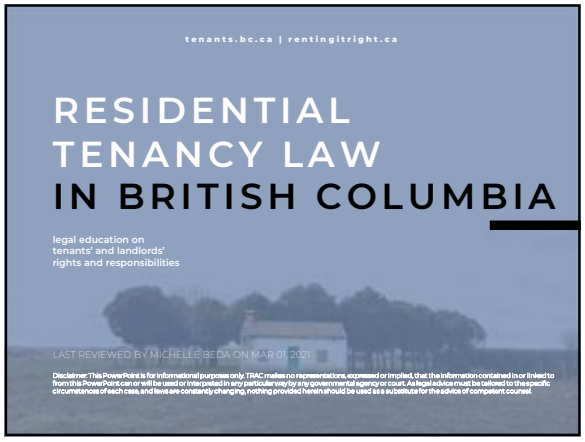
Legal Aid BC

Discussion of Residential Tenancy Fact Patterns

Michelle Beda; Rob Patterson; Zuzana Modrovic

A session for new advocates to work with experts in the field on sample fact patterns on residential tenancy issues.

Additional Resource: https://wiki.clicklaw.bc.ca/index.php/Tenant_Survival_Guide


tenants.bc.ca | rentingitright.ca
RESIDENTIAL TENANCY LAW IN BRITISH COLUMBIA
legal education on tenants' and landlords' rights and responsibilities
LAST REVIEWED BY MICHELLE BEDA ON MAR 01, 2021
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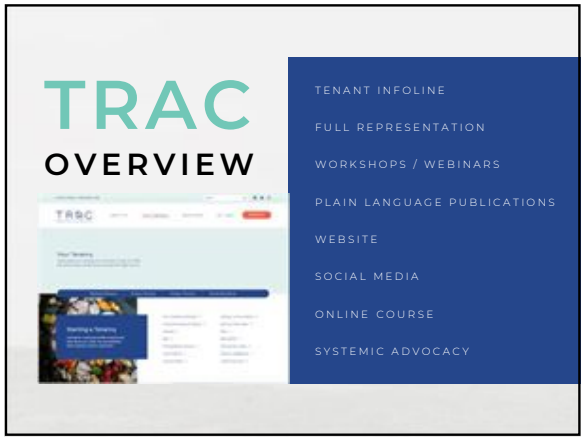
1


TRAC
strengthens the legal protection of residential tenants across BC by providing
Information, education, and advocacy
on residential tenancy matters.

2


TRAC
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PLAIN LANGUAGE PUBLICATIONS
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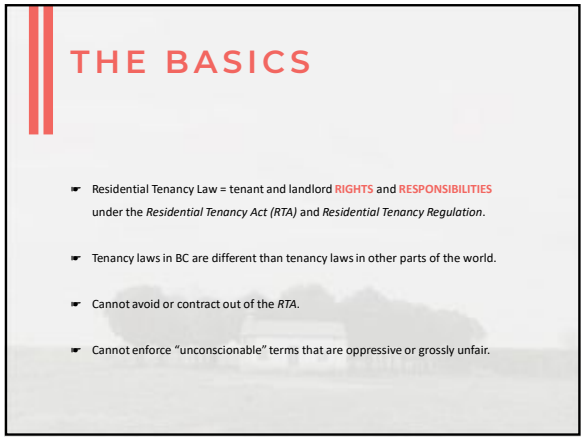
ONLINE COURSE
SYSTEMIC ADVOCACY

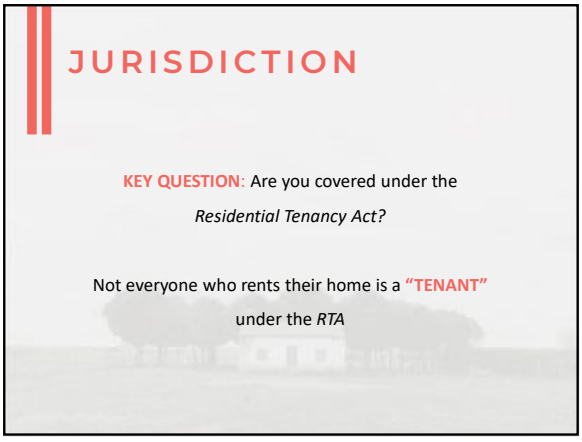
3


CONTENT OUTLINE
Residential Tenancy Act
Tenancy Agreements
Personal Information
Roommates
Deposits and Fees
Condition Inspections
Quiet Enjoyment
Repairs and Maintenance
Services and Facilities
Rent Increases
Serving Documents
Notices to End Tenancy
Dispute Resolution
Applying for a Hearing
Preparing for a Hearing
During the Hearing
After the Hearing

4


THE BASICS
Residential Tenancy Law = tenant and landlord RIGHTS and RESPONSIBILITIES under the Residential Tenancy Act (RTA) and Residential Tenancy Regulation.
Tenancy laws in BC are different than tenancy laws in other parts of the world.
Cannot avoid or contract out of the RTA.
Cannot enforce "unconscionable" terms that are oppressive or grossly unfair.

5


JURISDICTION
KEY QUESTION: Are you covered under the Residential Tenancy Act?
Not everyone who rents their home is a "TENANT" under the RTA

6

JURISDICTION

You are NOT a "tenant" under the *RTA* if you:

- Share a kitchen or bathroom with the OWNER of the property (e.g. home stay program)
- Rent from another tenant with whom you live as their "OCCUPANT/ROOMMATE"
- Live in:
  - co-operative housing
  - student housing provided by your school
  - vacation or travel accommodation
  - emergency shelter or transitional housing
  - housing based health facility that provides hospitality support services and personal health care
  - living accommodation made available in the course of providing rehabilitative or therapeutic treatment or services
- Civil Resolution Tribunal handles *non-RTA* rental disputes

7

RESIDENTIAL TENANCY BRANCH (RTB)

Department of provincial government in charge of residential tenancy law

- Phone assistance
- Website
- Official Forms
- Arbitration
- Compliance and Enforcement

Only one RTB office in BC, located in Burnaby

- 400-5021 Kingsway
- **COVID:** In-person services not currently available

Service BC Centres across the province act as extensions of the RTB

servicebc.gov.bc.ca

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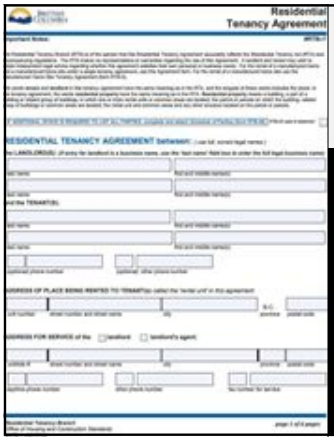
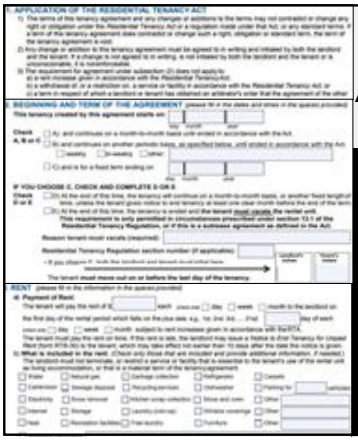


TENANCY AGREEMENTS

- A legal **CONTRACT** between a tenant and landlord.
- **VERBAL** tenancies are still covered under the *Residential Tenancy Act*.
- TRAC strongly recommends having a **WRITTEN** agreement.

9



TENANCY AGREEMENTS

- **Month-to-month or fixed term?**
  - "Vacate clauses" are illegal
- **Key landlord contact information:**
  - Legal name
  - Phone number
  - Address for service
- **Landlord must give tenant a signed copy within 21 DAYS**

10

DISCLOSURE OF PERSONAL INFORMATION

The Office of the Information and Privacy Commissioner of BC has developed a helpful guidance document

www.oipc.bc.ca/guidance-documents/2332

11

ROOMMATES

CO-TENANTS	TENANTS SHARING COMMON SPACE	"OCCUPANTS / ROOMMATES"
SAME tenancy agreement JOINTLY responsible	DIFFERENT tenancy agreements INDIVIDUALLY responsible	**NOT** covered under the *Residential Tenancy Act*

12

DEPOSITS AND FEES

- **Security Deposit**: ½ month's rent
- **Pet Damage Deposit**: ½ month's rent, if pets are allowed
- **Application fees are illegal**
- **No guest fees – even for OVERNIGHT visitors**
  - **COVID:** landlords can reasonably restrict or schedule the use of common or shared areas – such as gyms, recreation rooms, and elevators – for tenants and guests.
- **Non-refundable fees:**
  - replacement or additional keys
  - move-in or move-out fees charged by a strata corporation to the landlord
  - $25 for late payment of rent or the return of a tenant's cheque by a financial institution, if those terms are included in the tenancy agreement

13

CONDITION INSPECTION REPORT

Tenants and landlords should complete both MOVE-IN and MOVE-OUT condition inspection reports.

Consequences for not completing the report?

14

QUIET ENJOYMENT

- Freedom from UNREASONABLE disturbances.
- For example:
  - Smoke
  - Noise
  - Intimidation / harassment

15

QUIET ENJOYMENT

- Freedom from illegal landlord entry.
- At least 24 HOURS – but not more than 30 days – written notice:
  - Date
  - Time (8am – 9pm)
  - Reasonable reason
- **COVID-19:** RTB Guidelines for accessing units

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QUIET ENJOYMENT

- EXCEPTION: Landlord emergency entry.
  - Necessary to protect life or property (e.g. flood, fire, water leak, etc.)

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GUEST RESTRICTIONS

- The landlord must not unreasonably restrict access to the property by the tenants' guests.
- The landlord also cannot charge or add an extra fee for having guests.
- Blanket policies that restricts the right of tenants are not generally allowed
  - This includes rules such as:
    - Guests can only come during daytime (9am to 10pm)
    - Guests must present government ID upon entry
    - Tenant can only have guests for 14 days a year
- EXCEPTION: The landlord can place restrictions on a tenant, as a result of the actions of his guest.

18

ELEVATORS

REPAIRS:
LANDLORD RESPONSIBILITY

Landlords are generally responsible for making repairs to the tenant's rental unit to ensure compliance with health, housing and safety standards required by law

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REPAIRS:
LANDLORD RESPONSIBILITY

- RTB Policy Guideline #1 – Responsibility for Residential Premises
- Municipal Standards of Maintenance Bylaws

HEAT

20

PLUMBING

REPAIRS:
TENANT RESPONSIBILITY

- Tenants must maintain reasonable health, cleanliness, and sanitary standards
- If you, your guests, or your pets damage something, you are responsible for that damage.
  - This does not include reasonable "**WEAR AND TEAR**"
- Do **NOT** withhold rent – apply for dispute resolution.

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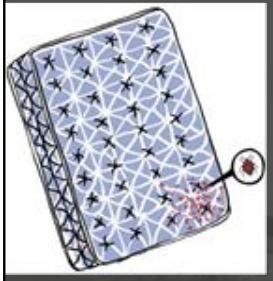

REPAIRS:
TENANT RESPONSIBILITY

- When something needs to be repaired, notify your landlord in writing **IMMEDIATELY.**
  - TRAC Template Letters (tenants.bc.ca/resources/template-letters)
- If you delay and the problem gets worse, you could be held responsible.

BED BUGS

22

FLOODS

REPAIRS:
EMERGENCIES

- Emergency repairs = **URGENT** and **NECESSARY** for health or safety of people or property:
  - major leaks in pipes or roof
  - damaged or blocked water or sewer pipes or plumbing fixtures
  - primary heating system
  - damaged or defective locks
  - electrical systems

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REPAIRS:
EMERGENCIES

- If landlord's emergency contact cannot be reached after two tries, and a reasonable amount of time has passed, the tenant can:
  - **PAY FOR THE REPAIRS** and get money back from landlord (be reasonable and keep receipts)

  OR
  - **APPLY** for dispute resolution to ask for an emergency repair order

DEFFECTIVE LOCKS

24

Essential Services

A landlord must **NOT** terminate a service or facility that is essential (necessary, indispensable, or fundamental) to the tenant's use of the rental unit

- Examples: heat, hot water, elevator in multi-storey apartment

Landlords are ALLOWED to terminate or restrict non-essential services and facilities as long as they provide 30 DAYS' written notice in the approved form (e.g. RTB form) and reduce rent by an equivalent amount

- Examples: cable, internet, parking, storage

Non-Essential Services

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COMMON AREAS

- COVID UPDATE: Landlords can set restrictions on shared spaces to ensure physical distancing
  - Elevators
  - Shared laundry rooms
  - Gyms
  - Recreation rooms
- Tenants are not entitled to a rent reduction for restricted access to common areas.
- Landlord cannot restrict guests from accessing a tenant's rental unit.

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RENT INCREASES

- Landlords can raise rent once every 12 MONTHS
  - Check TRAC website or RTB website for annual allowable percentage
  - 2021: 1.4%
- 3 MONTHS' written notice on an "approved" form
- COVID-19: The province has extended the rent increase freeze until July 10, 2021.
- Exceptions:
  - Non-profit housing where rents are related to income
  - Term in agreement allowing for increased rent for additional occupants
  - RTB order

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SERVING DOCUMENTS

- Rules determine when documents are legally considered received by another party:
  - on the SAME day if given or served personally
  - on the THIRD day after faxing it, attaching it to a door, leaving it in a mailbox or mail slot, or sending by email to an address provided for service of documents
  - on the FIFTH day after mailing it
- These rules apply unless there is a "rebuttable presumption".
- When you receive a document, consider it received that SAME day to be safe.

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EMAIL, TEXT, SOCIAL MEDIA

- For forms/notices that need to be served in writing in accordance with the *RTA*, HARDCOPY documents should be used, unless the party has provided an email address for service of documents.
  - Example: a landlord should not attach an eviction notice to an email unless the tenant has provided an email address (form RTB-51 Address for Service)
  - Example: a tenant should not send their notice to move out through social media
- For general correspondence, email, texts and social media MAY be okay, if it can be proved that the other person received it.

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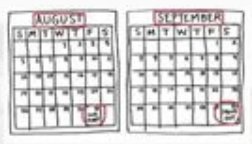
MOVING OUT:
MONTH-TO-MONTH TENANCIES

- One FULL month written notice.
- Give notice at the END of the month:
  - Leave extra days to ensure notice is received on time.
- Tenancies end at 1pm on last day



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MOVING OUT:
FIXED TERM TENANCIES

- If you end your fixed term tenancy early – also known as "**BREAKING YOUR LEASE**" – you may owe your landlord money
  - loss of rental income
  - liquidated damages
- If your landlord wants money for lost rental income, they have a duty to **MITIGATE**
  - show the rental unit to prospective tenants
  - advertise at a reasonable rent
  - accept a reasonable tenant

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LEGALLY ENDING
A FIXED TERM TENANCY

- Mutual Agreement to End Tenancy
- Assignment / Sublet
  - 6 months remaining?
- Breach of "Material Term"
- Family violence / long term care
  - Third party verifier

32

RETURNING DEPOSITS

- Tenant gives forwarding address in writing within **ONE YEAR** of the end of the tenancy.
- Landlord has **15 DAYS** to:
  - return deposit to tenant,
  - obtain tenant's written permission to keep some or all of the deposit, or
  - apply to RTB for permission to keep some or all of the deposit.
- If landlord does not do one of those three things, tenant can apply to the RTB for **DOUBLE** the deposit.

33

EVICTION

- A landlord can give a tenant an eviction notice (also known as a **NOTICE TO END TENANCY**) when they want the tenant to move out.
- There are four main types of evictions.

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EVICTION
10 DAY NOTICE FOR NON-PAYMENT OF RENT

- You can receive a 10 Day Eviction Notice if you are only one day late, or a few dollars short.
- If you are late paying rent and receive a 10 Day Eviction Notice, you have **5 DAYS** to pay up in order to cancel the eviction.

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COVID: EVICTION
NON-PAYMENT OF RENT

- Ban on evictions for non-payment of rent was lifted **AUGUST 18TH 2020**
- For most tenants, this means full rent was due on September 1st
- However if any "**AFFECTED RENT**" is owing (from **MARCH 18th, TO AUGUST 17th, 2020,**) a landlord must give a rent repayment plan before evicting
  - Starts on the date the repayment plan is given by the landlord to the tenant and ends on **JULY 10, 2021**
  - The payment of the overdue rent must be in equal instalments
  - Each instalment must be paid on the same date that rent is normally due
  - The date the first instalment is due must be at least 30 days after the date the repayment plan is given by the landlord to the tenant
- Example: Landlord gave rent repayment plan on September 1st, effective 30 days later on October 1st
- Rent repayment plans must be hand delivered, sent by registered mail, or served in a way that has been approved by an arbitrator

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EVICTION

ONE MONTH NOTICE FOR CAUSE

- violate another tenant's right to quiet enjoyment
- damage something and do not help repair it
- assign, sublet, or add an occupant/roommate without permission
- repeatedly pay rent late
- fail to comply with a "material term" and ignore the landlord's written warning
- engage in illegal activity that negatively affects the building, landlord, or other occupants
- receive a government order telling you to move out (e.g. illegal suite)

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POLL QUESTION

Q: If a tenant receives a One Month Notice for Cause today, March 19th, what is the effective date of the notice?

a) April 16th (30 days later)
b) April 17th (One month later)
c) April 30th
d) None of the above

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ILLEGAL SUITES

- Illegal suites are covered by the *Residential Tenancy Act*
- If an illegal suite is discovered by your City, it may be shut down
- If your City orders you to move out, your landlord is required to give you a One Month Eviction Notice but **NO COMPENSATION**

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EVICTION

TWO MONTH NOTICE FOR LANDLORD'S USE OF PROPERTY

You may get this notice if your landlord or their close family decide to move into your place, or if the new purchaser (or close family) of your landlord's property intends to move in after your landlord sells.

- "**CLOSE FAMILY**":
  - Landlord's spouse
  - Parents or children of the landlord or the landlord's spouse

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EVICTION:

FOUR MONTH NOTICE FOR LANDLORD'S USE OF PROPERTY

You may get this notice if your landlord wants to:

- demolish your rental unit
- make **EXTENSIVE** renovations that require you to **MOVE OUT** for an extended period of time
- convert the property into non-residential use

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EVICTION

FOUR MONTH NOTICE FOR LANDLORD'S USE OF PROPERTY

Questions to consider:

- Have **PERMITS** been obtained?
- How extensive are the renovations?
- How long will the unit be vacant?
- How much of the unit will be affected?

Common law allows a tenant to accommodate some renovations to avoid eviction and continue their tenancy.

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EVICTION

TWO AND FOUR MONTH NOTICES FOR LANDLORD'S USE OF PROPERTY

- If a tenant receives a Two or Four Month Eviction Notice, they get compensated for **ONE MONTH** of rent.
  - Example: they can live there free for the last month.
- If a tenant wants to move before the two months are up, they can provide **10 DAYS'** notice in writing and still be compensated for the last month.
- If you have evidence that the landlord never followed through with what they said they would do on the Two or Four Month Eviction Notice, you can apply for **12 MONTHS OF RENT** as compensation.

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EVICTION

RIGHT OF FIRST REFUSAL

- In residential properties containing five or more rental units, tenants being evicted due to renovations or repairs have a "**RIGHT OF FIRST REFUSAL**" to return to their unit once the renovations or repairs have been completed.
- Tenant must provide RTB form, "Exercising Right of First Refusal"
- At least 45 days before the completion of the renovations or repairs, landlord must inform the tenant of the date their renovated unit will be available and provide them with a new tenancy agreement for that effective date
  - **NO LIMIT ON NEW RENT!**
- If a landlord does not follow the right of first refusal rules, they could end up owing **12 MONTHS OF RENT** as compensation.
- Some municipalities require developers to comply with Tenant Relocation bylaws which provide further protection or compensation to tenants.

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POLL QUESTION

Q: What happens when a tenant's rental unit is sold to a new owner?

a) The tenant is evicted with no compensation
b) The tenant is evicted but given one month's compensation
c) The tenant and new owner must sign a new tenancy agreement
d) The new owner becomes the tenant's landlord

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SELLING A TENANTED PROPERTY

- A landlord cannot issue an eviction notice simply because they have put a rental property up for sale.
- When a tenant's rental unit is sold, the existing tenancy agreement **TRANSFERS** to the new owner.
- The seller can issue an eviction notice on behalf of the purchaser if the purchaser, or a "close family" of the purchaser, plans to move in, **AND** all conditions of the sale have been satisfied.

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DISPUTING AN EVICTION NOTICE

If a tenant does not think they deserve to be evicted, they can challenge the eviction notice at dispute resolution.

10 Day Notice = **5 DAYS** to dispute
1 Month Notice = **10 DAYS** to dispute
2 Month Notice = **15 DAYS** to dispute
4 Month Notice = **30 DAYS** to dispute

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POLL QUESTION

Q: What does a landlord have to obtain in order to physically remove a tenant?

a) Order of Possession
b) Writ of Possession
c) Court Bailiff
d) All of the above

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CHALLENGING / ENFORCING A RTB DECISION

- **RTB Review**
  - Circumstances beyond individual's control
  - New and relevant evidence
  - Fraud
- **Judicial Review through BC Supreme Court**
  - TRAC Housing Law Clinic
  - Community Legal Assistance Society (CLAS)
- **Monetary order enforcement at Small Claims Court**
  - TRAC Housing Law Clinic

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KEY TENANT RESPONSIBILITIES

- Pay rent in full and on time
- Keep the rental unit reasonably clean
- Notify the landlord of any repairs immediately
- Pay for any damage caused beyond normal "wear and tear"
- Don't unreasonably disturb others
- Don't do anything illegal and dangerous

50

KEY LANDLORD RESPONSIBILITIES

- Provide a copy of the tenancy agreement
- Provide opportunities to complete both move-in and move-out Condition Inspection Reports
- Provide a receipt for rent paid in cash
- Return deposits on time
- Make repairs to ensure that the rental unit complies with health, housing, and safety standards required by law
- Provide quiet enjoyment to tenants

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FINAL THOUGHTS

If you want to tell your landlord to stop breaking the law, ask them in **WRITING**.

tenants.bc.ca/resources/template-letters

Always remember to think about gathering **EVIDENCE**.

Take photographs, get witnesses, keep receipts, etc.

If you are unsure about something, **ASK** for help!

TRAC is open from Monday-Friday

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Dispute Resolution Best Practices

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DISPUTE RESOLUTION

Similar to court, but almost always done over the **PHONE**

ARBITRATOR (similar to Judge) makes a legally-binding decision

$100 FEE – but you may be repaid if you win your hearing. If you are a low-income applicant, the fee may be waived entirely

You need **EVIDENCE**, not simply allegations, to be successful
Examples: photographs, receipts, witnesses, letters, and affidavits

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What is Dispute Resolution?

- Arbitrators are NOT bound by previous RTB decisions
- They ARE bound by relevant court decisions
- The standard of proof is balance of probabilities
- The onus is usually on the applicant to prove their case, generally

55

Assessing the Case

- Why has the client come to you and what do they want to achieve?
  - Are their goals realistic?
  - Likelihood of success?
- Does the RTB have jurisdiction? Are there other options that you and the client should explore?
  - Has the client attempted to resolve the problem with their landlord?
  - Negotiation?
  - Do they understand all options, and possible outcomes?
- Is a hearing already set? Is the tenant the applicant or respondent?
  - Have they properly served / been served the appropriate documents?

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Assessing Your Abilities

- Are you the right person to take on the case?
  - Are you familiar with the RTB's Rules of Procedure, and the Residential Tenancy Act?
- Can you meet the RTB's deadlines?
- Knowing when to say no

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Applying for a Hearing

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How to File for Dispute Resolution

- Review deadlines!
- In person: at a RTB office or Service BC Centre
- Online: www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/apply-online
- $100 filing fee
  - Low income applicants can apply for a fee waiver
  - Can recover from landlord if tenant is successful at hearing
- Obtain correct legal name and address of respondent(s)
  - May need to do a land title search
- Where a client wants to make more than one claim, an Arbitrator will generally only hear them together if the claims are related
  - Unrelated claims are usually "severed"

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Notifying the Other Parties

- RTB schedules hearing date, provides applicant a hearing package that contains:
  - Notice of Hearing with the date, time, and method of hearing
  - Hearing information sheet
- Applicant must serve this on all other parties within 3 days of receiving it, either in person or by registered mail.

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Preparing for a Hearing

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Important Deadlines- Evidence

- Applicant evidence must be received by the RTB and the respondent at least **14 days** before date of hearing
- Respondent evidence must be received by the RTB and applicant at least **7 days** before date of hearing
- Cross-Application and supporting evidence must be received by the RTB and applicant at least **7 days** before date of hearing.
- The calculation for number of days does not include either:
  - the day the evidence is received, or
  - the hearing date

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Important Deadlines- Other

- Amendments to an application must be received by the RTB and the respondent at least **14 days** before date of hearing
- Requests to adjourn the hearing if both parties agree, must be received by the RTB at least **3 days** before the hearing. The request must be in writing and signed by both parties.
  - If other party does not agree, you can request an adjournment at the hearing.

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Serving Evidence

- Review! Deadline is for the day the other party *receives* the evidence. Evidence must be served in one of the following ways, and each method has a different timeline for when it is deemed to be received:
  - In person= same day
  - Leaving in mail slot, posting on door, fax, e-mail (only with authorization) = 3 days later
  - Mail (regular or registered)= 5 days later

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Evidence Submission Example

March 2015

Sun.	Mon.	Tue.	Wed.	Thu.	Fri.	Sat.
1	2	3	4	5	6 APPLICANT'S EVIDENCE MUST BE MAILED	7
8 APPLICANT'S EVIDENCE MUST BE FAXED, POSTED ON DOOR, ETC	9	10	11 APPLICANT'S EVIDENCE MUST BE RECEIVED BY RESPONDENT AND RTB	12	13 RESPONDENT'S EVIDENCE MUST BE MAILED	14
15 RESPONDENT'S EVIDENCE MUST BE FAXED, POSTED ON DOOR, ETC.	16	17	18 RESPONDENT'S EVIDENCE MUST BE RECEIVED BY APPLICANT AND RTB	19	20	21
22	23	24	25	26 RTB HEARING DATE 11:00 AM	27	28
29	30	31				

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Types of Evidence

- The Rules of Evidence do not apply in general – up to each arbitrator to decide what they will accept.
- Good evidence is:
  - Relevant, Reliable, Authentic, Complete, Legible
- Consider: what is the simplest and most convincing way to prove my case?
- It can be helpful to create a table lining up the factual points that need to be proven in one column, and the evidence to prove those points in the other column.

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Types of Evidence

- Evidence could be **documents:**
  - Tenancy Agreement
  - Condition Inspection Reports
  - Pictures
  - Copies of Emails and Text Messages
  - Letters
  - Receipts
  - etc.

- Or **testimony**.
  - Sworn, real-time testimony is generally best, as the witness is available for cross examination
  - If your client or a witness cannot attend the hearing, he/she can write a signed and dated statement, or swear an affidavit that the facts they are alleging are true
  - Consider becoming a commissioner for taking affidavits

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Digital Evidence

- Digital evidence may be submitted for a dispute resolution hearing:
  - Photographs
  - Video recordings
  - Audio recordings
- Evidence must be a fair and accurate representation of the events depicted on it. For example, evidence may not be accepted if:
  - Video quality is poor
  - Parts of an audio recording are missing
  - Source is not credible

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Accepted Devices for Digital Evidence

- Acceptable devices for the file copy are:
  - USB Device / Memory Stick
  - Compact Disk (CD)
  - Digital Video Disk (DVD)
- Must also submit the Digital Evidence Details form
- You need to confirm that other party can access the digital evidence. Confirm this with them as soon as possible.

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Organizing Evidence

- Evidence must be organized, clear, and legible. All parties need an identical copy.

1. Cover page- List RTB file number, hearing date, names of tenants and landlord
2. Table of contents (all pages numbered)
3. Written submission?
   - Introduction/Issue (s)
   - Facts/background
   - Law
   - Argument
   - Requested remedy/Conclusion
   - Your signature

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Submitting Evidence to the RTB

It is not at all clear how best to upload your submissions. Based on the difficulties arbitrators seem to have at hearings I do the following:

1. Combine all the evidence into 1 PDF file called "Tenant Evidence" or similar which is less than 10 MB, and add page numbers.
2. If the PDF is too big, compress, or break into 2 or more files eg "Tenant Evidence p 1-40" and "Tenant Evidence p 41-90"
3. Make a Submissions PDF which includes an Index of Evidence
4. Upload them all into one "Issue"
5. Upload a proof of service PDF as well.

71

Client Preparation

- Consider going over the following with your clients:
  - The start time of the hearing
  - How to call in to the hearing
  - The general dispute resolution process
  - All testimony you will ask your client to give
  - How to address the arbitrator
  - Important to act in a professional and a respectful manner, no matter what the issue.
  - Important not to interrupt the other party or arbitrator.
  - The Arbitrator has full control over the proceedings- don't make promises you may no be able to keep.

72

Client Preparation

- Consider going over the following with your clients:
  - The start time of the hearing
  - How to call in to the hearing
  - The general dispute resolution process
  - All testimony you will ask your client to give
  - How to address the arbitrator
  - Importance of behaving respectfully, no matter the provocation.
  - Importance of not interrupting the other party or arbitrator.
  - The Arbitrator has full control over the proceedings- don't make promises you may no be able to keep.

73

Witnesses Preparation

- Consider going over the following with your witnesses:
  - All questions you will ask and what they might be cross examined on.
  - Tell the truth and don't exaggerate
  - Listen carefully to the questions and take your time before answering
  - If you don't know, say so, don't guess
  - If you don't remember, say so, don't guess
  - If you don't understand the question, say so
  - Answer the question directly, then give an explanation if you need to
  - Stay on topic
  - Do not engage in personal attacks
  - Exclusion of witnesses

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Self Preparation

It's important for you to prepare, too!

- Write down direct-examination questions that you expect to ask your client and your own witnesses.
  - Refer to evidence where appropriate
- Write down cross-examination questions that you think you will ask the landlord and/or their witnesses.
  - Refer to evidence where appropriate
- Write out a closing argument loosely. Expect that the contents of this will change drastically depending on the testimony that comes out during the hearing.
  - Important to refer to evidence here

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Procedural Requests

- Well before a hearing, think about any procedural requests you may have.
  - Do you need an adjournment?
  - Do you need to ask the Arbitrator to accept documents that were filed late? Or object to an opposing party's late evidence?
  - Does your client need a translator?
  - Does your client need special accommodation due to a disability?
    - It is rare, but possible to get an in-person hearing.

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During the Hearing

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Typical Structure of a Hearing

1) Introduction, procedural issues, swearing in.
2) Applicant presents evidence
3) Respondent challenges applicant's evidence
4) Respondent presents evidence
5) Applicant challenges respondent's evidence
6) Applicant makes final argument / closing statement
7) Respondent makes final argument / closing statement

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At the Start of the Hearing

- Have a pen/paper or computer ready so you can take notes.
- Have all of your submitted documents in front of you
- Introduce yourself and explain you are acting as an advocate/ agent for your client
  - RTB Policy Guideline #26 - Advocates, Agents and Assistants

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At the Start of the Hearing

- Be prepared to ask for any procedural requests you may have
  - For example, evidence issues or adjourning the hearing
- Write down the names of everyone attending
- Check that the Arbitrator and other party have received your evidence – be prepared with your proofs of service to detail how and when the evidence was served

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Landlord's Testimony

- Take notes on what the landlord is saying- write down anything you want to question them on or bring up during your presentation. Don't interrupt. One exception: If the landlord is presenting evidence that your client never received.
- You can ask questions of the landlord and their witnesses, so can the arbitrator.
- 2 goals of cross-examination:
  1. Identifying problems with their evidence:
     - Gaps or inconsistencies, incorrect or exaggerated, not supported by the documentary evidence
  2. Attacking credibility when there is a reason to believe that the person is
     - Being dishonest, has a lack of knowledge, or simply mistaken

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Your Client/ Witness Testimony

- Direct examination of your client/witnesses:
  - Ask questions to get them to provide the needed testimony
  - Point them to documentary evidence and present it through their testimony
  - Testimony should be first-hand, not hearsay
  - Don't ask leading questions, but do ask follow up questions if you don't elicit the evidence you need
- Both the landlord and arbitrator will have opportunity to ask your client/witnesses questions after you are finished.

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Closing Statement

- Usually, this is when you present documentary evidence and explain your legal arguments.
- Be as concise as possible, explain the structure of your presentation to the arbitrator
  - Ie. "I will be making the following three points…"
- Reference the law, policy guidelines, case law, etc.
- Refer back to testimony.
- Refer to documentary evidence. Before explaining each piece of evidence, tell the arbitrator what page it is on and pause to allow them to locate it.
- Explain what the evidence demonstrates and why it is relevant– don't assume the arbitrator knows this.

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At the End of the Hearing

- Thank the arbitrator for conducting the hearing
- Decision generally provided within 30 days of hearing date
- Arbitrators' decisions are legally binding and enforceable

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After the Hearing

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RTB Review

- There are only 3 reasons for the Residential Tenancy Branch to review a decision or order:

1. person was unable to attend the hearing due to circumstances that could not have been anticipated and were **beyond their control**.
2. person has **new and relevant evidence** that was not available at the time of the original hearing
3. person has evidence that the decision was obtained by **fraud**

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RTB Review- Timelines

Timeline for RTB review depends on the issue:

- **2 Days:**
  - Notice to End Tenancy for non-payment
  - Early end to tenancy
  - Order of Possession
  - Landlord withholding consent to sublet or assign unit
- **5 Days:**
  - Notice to End Tenancy for any reason other than non-payment
  - Repairs and Maintenance
  - Terminating or restricting services or facilities
- **15 Days:**
  - Any other matter

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Judicial Review

- If you believe your client was denied natural justice / procedural fairness, or that their decision is patently unreasonable, you can seek a Judicial Review through Supreme Court.
- The Residential Tenancy Branch is considered an "expert" tribunal – the test for Judicial Review is very high.
- A Supreme Court judge will usually order a re-hearing at the RTB if the Judicial Review is successful.

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Improving Your Knowledge

- For more information on Dispute Resolution:
  - RTB Rules of Procedure (www.gov.bc.ca/landlordtenant)
  - TRAC Website (www.tenants.bc.ca) "Dispute Resolution" Tab

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CONTACT TRAC

tenants.bc.ca

rentingitright.ca

(604) 255-0546
1 (800) 665-1185

@tracbc

@trac_bc

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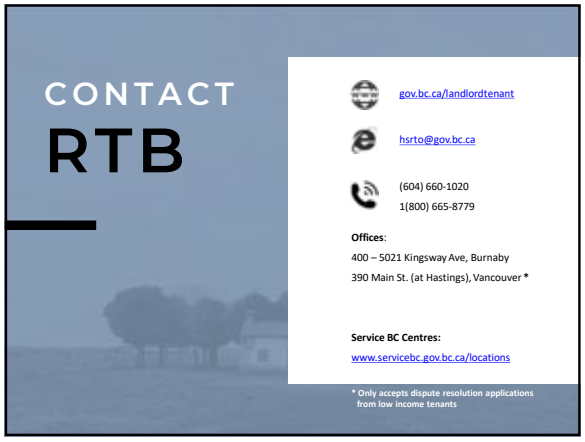
CONTACT
RTB
gov.bc.ca/landlordtenant
hsrto@gov.bc.ca
(604) 660-1020
1(800) 665-8779
Offices:
400 – 5021 Kingsway Ave, Burnaby
390 Main St. (at Hastings), Vancouver *
Service BC Centres:
www.servicebc.gov.bc.ca/locations
* Only accepts dispute resolution applications from low income tenants

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Feedback?
For tenants –
surveymonkey.com/r/ZLXQPYP
For advocates –
surveymonkey.com/r/Z7G7TNB

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PLE - Advocates' Fact Patterns

Pattern 1 - Roommates

Background/Facts

- Your client has received a verbal eviction notice from their "roommate".
- Client rents a separate bedroom in a house that their roommate rents directly from the owner; the house includes kitchen and bathroom that are shared between client, roommate, and others who rent rooms from the roommate.
- Roommate has a bedroom in the house, but spends almost no time in the house; your client thinks sleeps there less than once a month.
- There is a written agreement between client and roommate that says that the parties agree that they are roommates, and that the Residential Tenancy Act does not apply.
- The roommate has said they will move the client's belongings out by the end of the month if they do not move them on their own.

Questions

1) Is the client covered by the Residential Tenancy Act?
2) What can the client do through the Residential Tenancy Branch?
3) What other solutions can you come up with to help the client in the short term? What can they do to prevent their belongings being moved?
4) If the client has an RTB hearing and finds out the RTB does not have jurisdiction, what can they do if they are locked out without reasonable notice?

Pattern 2 - Making Claims against a Landlord

Background / Facts

- Your client has lived in their unit for several years; unit is a two storey house
- Downstairs of Unit was flooded in December last year
- Your client has verbally asked their landlord to fix water damage and remediate mold several times since then, but the landlord hasn't acted
- Client emailed landlord to follow up mid January, didn't get a response
- Client has not been able to use the downstairs portion of unit at all since the flood
- Client is particularly annoyed because last March the landlord raised the rent by 10% and your client did not object at that time, as she thought her relationship with the landlord was good and she didn't want to rock the boat
- Your client has come to you asking for advice about what dispute resolution claims she can make against the landlord and whether she should do anything before she files.

Questions

1) What claims can this tenant make at dispute resolution?
2) Should the tenant do anything prior to filing any of those claims?
3) If you think the tenant needs to write a letter, what should it say?

Pattern 3 - Eviction for Cause

Background/Facts

- Long-term tenancy; your client lives in a basement suite where landlord lives in house upstairs
- Client has had dispute with upstairs landlords over noise for last three months: sound from above carries through the floor, client has complained in writing; landlord complains back in writing that client is making too much noise as well
- An unexpected plumbing issue in basement suite on May 3rd causes minor flooding in the downstairs kitchen and bathroom; client moves belongings out of the rooms to allow landlord and their plumber in to fix the pipes; landlord takes photos of unit with many items stacked in boxes; client put all things away after the work was finished
- Landlord serves a 1 Month Notice to End Tenancy on May 7th in person. On the notice, the boxes are ticked for “interfered with the right of another occupant/landlord” and “put property at significant risk”. There is no evidence attached to the Notice, but details section notes “noise complaints from tenants” and “hoarding”
- The client has provided you with the 1 Month Notice, as well as the following:
- Copies of the noise complaint letters sent and received from the landlord
- Text messages to and from the landlord showing that they had a falling out just before the noise complaints started
- A recording of the landlord and their spouse having a conversation upstairs about how they could evict the tenant
- Photos of their suite after they had put their belongings back in place
- A recording of a conversation the client had with the landlord where the landlord tells them that they don’t care that the client has tidied up the mess, they just want to evict them

Questions

1) What is the deadline for filing for Dispute Resolution?
2) As an applicant, the client must file their evidence first. What evidence should they think about submitting?

Pattern 4 - Demoviction

Background/Facts

- 25 tenants live in a 2 storey Vancouver walk-up that has recently been purchased by a property development company
- The developer informs all tenants that the plan is to demolish the whole building
- The developer hires an agent, a consultant who professes to be a ‘landlord/tenant mediation specialist,’ to assist with the process of emptying the building
- Over the course of 3 months the agent engages in some aggressive tactics to push some tenants out of the building, 15 of 25 accept buyouts and leave.
- The 10 remaining tenants are given 4 month eviction notices on the appropriate RTB form. They are served in person on May 1st, 2021 and indicate an effective date of August 31st, 2021.
- The notices state that the landlord has obtained all necessary permits but no permits are attached
- After the notices are served the consultant continues to try to pressure the tenants into taking buyouts by calling each of them daily as well as knocking on their doors in the evenings every few days
- The tenants do not want to move

Questions

1) If the 10 tenants want to dispute the notice, what is their deadline to file for Dispute Resolution?
2) What do they need to do if they want to file as a group?
3) If the tenants do not file for Dispute Resolution, when will they have to move out?
4) How can they find out what permits have been obtained for the property?
5) If the permits are in place, what kinds of arguments could the tenants make at dispute resolution?
6) What, if anything, can they do to prevent the consultant from pressuring them to accept buyouts?
7) One of the 15 tenants who accepted a buyout offer now regrets it and wants to move back into the building and fight the renoviction along with the tenants who stayed. He says he was pressured into taking the deal by the consultant and so the agreement should be invalid. What, if anything, can he do?

Pattern 5 - Illegal Eviction

Background/Facts

- A tenant is informed verbally by her landlord that she must move out by the end of the following month.
- The tenant tells the landlord that a verbal eviction notice is not valid, so the landlord writes her an email stating that she is required to move by the end of the following month

Questions

1) What should the tenant do?.

Pattern 6 - Bad Faith Eviction

Background/Facts

- Your client's landlord issues a One Month Notice to End Tenancy on December 24th. The landlord then issues a 2 Month Notice to End Tenancy on December 25th, and tells your client that he won't enforce the first Notice.
- The client files on their own for Dispute Resolution to dispute the second Notice on January 7th, but learns from the Branch that the LL has filed to enforce the first, One Month Notice. The hearings have been joined together to be heard on January 28th
- The 2 Month Notice states that the LL will be moving his father-in-law into the suite; the client believes the LL is not married, but does not have any proof.

Questions

1) What evidence should the client think about gathering before the hearing?
2) What arguments can the client advance at the scheduled hearing in support of:
    a) Cancelling the 2 Month Notice to End Tenancy?
    b) Stopping the landlord from enforcing the One Month Notice to End Tenancy?
3) After the hearing, but before a decision from the Arbitrator, the Landlord files for a Direct Request to enforce a 10 Day Notice to End Tenancy that your client was never served. The landlord claims he served the Notice in person on February 2nd. What is the process for fighting this Notice if the landlord is successful at getting an Order of Possession through a Direct Request?

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES TRAINING CONFERENCE

Legal Aid BC

Residential Tenancy Update

Rob Patterson; Zuzana Modrovic

An overview of recent case law and discussion of procedural issues.

Additional Resource: https://wiki.clicklaw.bc.ca/index.php/Tenant_Survival_Guide

Housing Law Update, 2022

Recent Developments in Residential Tenancy Law

Robert Patterson & Zuzana Modrovic, TRAC

Changes to the *Residential Tenancy Act* and *Regulation*

Vacate Clause Misuse Penalty - effective July 11, 2022

Residential Tenancy Act

Tenant's compensation: requirement to vacate

51.1 (1) Subject to subsection (2) of this section, if a fixed term tenancy agreement includes, in a circumstance prescribed under section 97 (2) (a.1), a requirement that the tenant vacate the rental unit at the end of the term, the landlord must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the date the tenancy ended, to satisfy the prescribed circumstance, or

(b) the rental unit is not used in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

(2) The director may excuse the landlord from paying the tenant the amount required under subsection (1) if, in the director's opinion, extenuating circumstances prevented the landlord from

(a) satisfying, within a reasonable period after the date the tenancy ended, the prescribed circumstance, or

(b) using the rental unit in a way that satisfies the prescribed circumstance for at least the period of time prescribed under section 97 (2) (a.2), beginning within a reasonable period after the date the tenancy ended.

Rent Increase for 2023

Residential Tenancy Regulation

Rent increase — 2023

22.1 (1) Despite section 22, this section applies to a rent increase with an effective date on or after January 1, 2023 and before January 1, 2024.

(2) The definition in section 22 (1) applies to this section.

(3) For the purposes of section 43 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2023 and before January 1, 2024, a landlord may impose a rent increase that is no greater than 2%.

…

(6) This section is repealed on January 1, 2024.

Changes to the *MHPTA* and *Regulation*

Rent Increase for 2023

Manufactured Home Park Tenancy Regulation

Rent increase — 2023

32.1 (1) Despite section 32, this section applies to a rent increase with an effective date on or after January 1, 2023 and before January 1, 2024.

(2) The definitions in section 32 (1) apply to this section.

(3) For the purposes of section 36 (1) (a) of the Act, in relation to a rent increase with an effective date on or after January 1, 2023 and before January 1, 2024, a landlord may impose a rent increase that is no greater than 2% plus the proportional amount.

…

(6) This section is repealed on January 1, 2024.

Changes to RTB Policy Guidelines

B. SEQUENCE OF EVENTS

The following sequence of events must be followed in amending an application for dispute resolution:

1. the applicant completes an Amendment to an Application for Dispute Resolution (form RTB-42);
2. the applicant submits this form and a copy of all supporting evidence on the Dispute Access site or to the Residential Tenancy Branch directly or through a Service BC office to allow service upon each other party as soon as possible, and in any event to each other party not less than 14 days before the date of the hearing;

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RESIDENTIAL TENANCY POLICY GUIDELINE

Page 24-1

24. Review consideration of a decision or order

Apr-22

A party must not submit a copy of a recording with an application for review consideration. Arbitrators will not listen to a recording when making a decision on an application for a review consideration, except where it would result in a breach of the principles of natural justice not to listen to it.

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RESIDENTIAL TENANCY POLICY GUIDELINE

Page 1 of 3

25. Requests for Clarification or Correction of Orders and Decisions

Apr-22

A party must not submit a copy of a recording with an application for clarification or correction. Arbitrators will not listen to a recording when making a decision on an application for a clarification or correction, except where it would result in a breach of the principles of natural justice not to listen to it.

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30. Fixed Term Tenancies

For example, an owner can rent out their vacation property under a fixed term tenancy with a vacate clause if they or their close family member intend in good faith to occupy the property at the end of the fixed term. The landlord or close family member must occupy the rental unit for at least 6 months. Occupancy can be part time, e.g., weekends only. Failing to occupy the rental unit for at least 6 months may result in the landlord being ordered to pay compensation to the tenant equal to 12 months' rent. See Policy Guideline 50: Compensation for Ending a Tenancy for more information

BRITISH COLUMBIA

RESIDENTIAL TENANCY POLICY GUIDELINE

Sep-22

37: RENT INCREASES

This policy guideline is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This policy guideline may be revised and new guidelines issued from time to time.

3. *2023 Annual Rent Increase*

For residential tenancies, the maximum allowable annual rent increase for rent increases with an effective date in 2023 is 2%, not the "inflation rate."

For manufactured home park tenancies, the maximum allowable annual rent increase for rent increases with an effective date in 2023 is 2% plus the proportional amount, not the "inflation rate."

For annual rent increases with an effective date on or after January 1, 2024, the maximum allowable annual rent increase will be the "inflation rate," not the set percentage of 2%.

Notice of a rent increase with an effective date in 2023 must be given according to the process set out in A.3. If a landlord has given a notice of rent increase before September 9, 2022, but it is not effective until on or after January 1, 2023, and the rent increase is for an amount calculated as set out in B.1 or B.2, then the landlord must give a second notice. The second notice must be given before the effective date of the rent increase in the original notice and with the amount of the rent increase calculated as 2% (plus a proportional amount for manufactured home park tenancies). The landlord is not required to serve the second notice with three full months' notice before the effective date.

BRITISH COLUMBIA

RESIDENTIAL TENANCY POLICY GUIDELINE

41 Administrative Penalty

May 2022

This policy guideline is intended to help people who file a complaint for investigation and those who may be subject to an investigation or administrative penalty proceeding understand the process and issues that are likely to be relevant. It may inform what information or evidence is likely to be relevant. The guideline also sets out the criteria ordinarily used to determine the amount of an administrative penalty. This policy guideline may be revised and updated from time to time.

A. PURPOSE OF THIS GUIDELINE

The purpose of this policy guideline is to set out the policy framework and assessment criteria ordinarily used by the director in deciding whether to impose an administrative monetary penalty ("administrative penalty"), and, if an administrative penalty is imposed, to determine the amount of the penalty. The director also generally keeps this policy and criteria in mind when deciding whether to initiate an investigation and investigators are aware of this policy when conducting an investigation.

43. Naming Parties

A. LEGISLATIVE FRAMEWORK

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation)[1] require a tenancy agreement to include the correct legal names of the landlord(s) and tenant(s). Other documents, such as condition inspection reports and Notices to End Tenancy, also require correct legal names to be used.

The Legislation[2] also requires Applications for Dispute Resolution to include the full particulars of the dispute that is subject to the dispute resolution proceedings.

Parties who are named as applicant(s) and respondent(s) on an Application for Dispute Resolution must be correctly named.

B. INDIVIDUALS AS PARTIES

To enforce Residential Tenancy Branch orders, the applicant must use the correct legal name of an individual respondent. In most instances, the applicant should be able to rely on the name a respondent has provided on a document requiring a legal name.

The individual's full legal name should be used on the Application for Dispute Resolution. Individual names that include initials or titles may not be enforceable.

For example, the Application for Dispute Resolution should name "John William Smith" or "John Smith," not "John W. Smith" or "Dr. Smith."

When an individual uses an alias, it is best to include the full legal name as well as the alias. For example, the Application for Dispute Resolution should name "Mei Chung also known as (AKA) May Chung."

It is up to the applicant to ensure that a party is properly named so that any order granted is enforceable. The director may be unaware that a party is not properly named and may issue the order using the name set out in the application. Where an individual is not properly named, the director may dismiss the Application for Dispute Resolution with leave to reapply unless the other party is present. In that circumstance, the directo may amend the Application for Dispute Resolution.

C. BUSINESSES AS PARTIES

To enforce Residential Tenancy Branch orders, the applicant must use the correct legal name of a respondent who is a limited liability company, corporation, or partnership.

If the party is a registered corporation or a limited liability company, then the full legal name of the corporation or company should be used on the Application for Dispute Resolution, including designations like Incorporated, Inc., Limited, Ltd., Corporation or Corp. (or the French language equivalents).

A sole proprietorship or a business that is not a registered corporation or limited liability company is not considered a legal person. Because of this, these types of businesses should not be listed on their own as a respondent. When a party is doing business as a particular named entity, the Application for Dispute Resolution can name just the proprietor, or it can name the proprietor and the business name used, for example: "John Smith DBA (or doing business as) Garden Apartments," or "John Smith COBA (or carrying on business as) Garden Apartments."

An Application for Dispute Resolution that names a partnership will be enforceable against the partnership. If an applicant is also seeking an order against the individual partners on the basis of the *Partnership Act*, the individual partners should be named, and each served with a copy of the Application for Dispute Resolution.

It is up to the applicant to ensure that a party is properly named so that any order granted is enforceable. The director may be unaware that a party is not properly named and may issue the order using the name set out in the application. Where a business is not properly named, for example, "Garden Apartments" instead of "Garden Apartments Ltd.," the director may dismiss the Application for Dispute Resolution with leave to reapply unless the other party is present. In that circumstance, the director may amend the Application for Dispute Resolution.

D. NAMING AN ESTATE OF A PERSON WHO HAS DIED

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate should be named. If the deceased is a respondent to an Application for Dispute Resolution, the personal representative should be served.

The personal representative may be the person named as executor in the deceased's will or the person who has been approved by the court to administer the estate by way of an estate grant.[3]

An estate can be named as follows: "John Smith as Personal Representative of the Estate of Mary Jones, Deceased."

If a personal representative has not yet been approved or an applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be used on the application with an indication that they are deceased (for example, "John Doe, deceased"). At the hearing, the director may amend the Application for Dispute Resolution to reflect the personal representative who is acting for the estate.

E. CORRECTING A DECISION OR ORDER WHERE A PARTY IS NAMED INCORRECTLY

Applicants are responsible for ensuring their Application for Dispute Resolution names the parties using their correct legal names. If parties are incorrectly named, any orders issued through the dispute resolution process may not be enforceable. The Provincial Court has found it does not have the authority to amend an order of the Residential Tenancy Branch to correct the name of a person.[4] The Provincial Court's only role in a residential tenancy matter is to enforce orders as they were made.

Under the Legislation[5], the director may deal with an obvious error in a decision or order by issuing a correction. However, the director must not correct an error unless it is just and reasonable to do so in all the circumstances.

An obvious error could include a decision or order that uses the incorrect legal name of a landlord or tenant, as the director would not have intended to make a decision or order that is unenforceable.

If an applicant relies on the name a respondent provided in a document requiring a legal name, and the name provided by the respondent was incorrect, the director may correct the decision or order to reflect the correct legal name. The director may also refer the party who provided an incorrect legal name to the Residential Tenancy Branch's Compliance and Enforcement Unit for an investigation into the party's contravention of the Legislation and to consider possible administrative monetary penalties.[6]

When an applicant incorrectly names a party and could have avoided the mistake by exercising due diligence, the director is less likely to issue a correction as it may not be just and reasonable in the circumstances. For example, the director may decide not to correct an order that is unenforceable because the applicant named a party as "Dave Johnson" on the Application for Dispute Resolution but the legal name on the tenancy agreement was "David Johnston." In this situation, the applicant could have avoided the error by confirming the party's legal name from the tenancy agreement and there may be prejudice to the respondent if the name is changed after the fact. If both the applicant and the respondent request the correction to a name, it is likely it will be made.

If a correction is not issued, the applicant can file a new application for dispute resolution, assuming they are still within the time limits for making an application. The matter will not be barred on the basis of *res judicata*. *Res judicata* means "a matter decided." It is a legal doctrine that prevents a person from litigating a matter a second time. One of the requirements is that the parties to both proceedings must be the same. This requirement would not be met where a correction is not issued because the parties are legally not the same.

For example, if an applicant named the respondent as "Dave Johnson" and they were issued an order that was not enforceable because "David Johnston" is the respondent's legal name, the applicant can file a new application for dispute resolution naming the respondent by their legal name. "Dave Johnson" and "David Johnston" are not legally the same party. In this context, "Dave Johnson" is not even a proper party to the dispute resolution matter. Therefore, a new application using the correct legal name would not be barred on the basis of *res judicata*.

However, there is the possibility the director may find such an application to be an abuse of the dispute resolution process, depending on the circumstances. This doctrine can be applied when a person seeks to re-litigate a matter even if all of the requirements for *res judicata* are not met. There are no specific legal requirements before a claim can be found to be an abuse of process. It is not necessary for an applicant to be acting maliciously or in bad faith before their claim can be dismissed. The onus is on the respondent to establish that the director should exercise their discretion to dismiss a claim on this basis.

D. REQUEST FOR A SPECIFIC HEARING FORMAT

Rule 6.4 (A party may request that the hearing be held in a specific format) of the Rules of Procedure allows a party to request that a hearing be held in a format other than the one routinely set by the director.

An applicant must complete and submit a Request for Alternate Hearing Format (RTB-36) request in writing to the Residential Tenancy Branch directly or through a Service BC office with supporting documentation within three days of the notice of hearing being made available by the Residential Tenancy Branch. A respondent must complete and submit a Request for Alternate Hearing Format (RTB-36) with supporting documentation within three days of receiving the notice of hearing or being deemed to have received the notice of hearing.

Requests for Alternate Hearing format and supporting documentation may be submitted after the notice of hearing has been made available but must also include an explanation of why the request is being submitted late. If the request is granted, this may result in having to reschedule the hearing to a later date than the originally scheduled hearing date.

Obtaining a recording of a dispute resolution hearing

The RTB teleconference system will record audio for all dispute resolution hearings. Under the Rules of Procedure, persons are prohibited from making their own recordings and doing so may result in administrative monetary penalties being imposed.

The RTB's recordings will become a part of the dispute resolution file. Recordings may be used for quality assurance and training purposes.

Parties (or their authorized representatives) may request access to a recording of their proceedings by submitting a Request for a Recording Hearing form to the RTB. Due to practical and operational limitations, unless there are extraordinary circumstances, a party may only request a recording 20 days after the arbitrator concludes the dispute resolution hearing. The fact that a party intends to apply for review consideration, clarification, correction is not considered an extraordinary circumstance.

A person who is given access to a recording must not alter, copy, distribute, or publish the recording unless authorized in writing by the director of the RTB.

A person given access to a recording must comply with any order made by the director of the RTB relating to the use of the recording. Failure to comply with an order may result in administrative monetary penalties being imposed.

49 Tenant's Direct Request – Deposits

May 2022

A. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	New	New guideline in effect	2020-01-18
Table	am	Amended to include email to an address provided by the tenant for service as a method of service	2021-09-17
All	am	Revised for clarity	2022-05-10

F. VACATE CLAUSES

Under section 13.1(2) of the Residential Tenancy Regulation, the circumstances in which a landlord may include a requirement that the tenant vacate a rental unit at the end of a fixed term tenancy agreement are that the landlord is an individual who, or whose close family member, will occupy the rental unit at the end of the term.

A tenant may apply for an order for compensation under section 51.1 of the RTA if the landlord included a vacate clause in a fixed term tenancy agreement and at the end of the fixed term, that landlord or their close family member:

- Have not taken steps to occupy the rental unit with a reasonable period after the tenancy ended, or
- Did not occupy the rental unit for at least 6 months' duration beginning within a reasonable period after the date the tenancy ended (the 6 month period is set by section 13.1(3) of the Residential Tenancy Regulation).

See Part C above for guidance on how "reasonable period" is interpreted.

Unlike sections 51(2) and 51.4, the onus is on the tenant to prove on a balance of probabilities that the landlord or close family member has failed to meet the obligations set out above. If the tenant establishes this, the amount of compensation is 12 times the monthly rent that the tenant was required to pay before the tenancy ended.

Under section 51.1(2) of the RTA, a landlord may only be excused from these requirements in extenuating circumstances. The onus is on the landlord to establish there are extenuating circumstances.

BRITISH COLUMBIA

50. Compensation for Ending a Tenancy

Transition

Section 51.1 was brought into force by Regulation on July 11, 2022. In general, a law does not apply to previous circumstances unless required by the legislation. However, amendments can apply to ongoing circumstances.

Section 51.1 can apply in circumstances where a fixed term tenancy agreement was entered into before section 51.1 was brought into force, but the fixed term tenancy agreement has not yet ended. The director may consider the change to the legislation during the period of the fixed term tenancy agreement when assessing whether there are extenuating circumstances to excuse a landlord.

Section 51.1 would not apply in circumstances where the fixed term tenancy agreement already ended. However, in circumstances where section 51.1 does not apply because the fixed term tenancy agreement already ended, it may still be possible for a tenant to bring an application against a landlord seeking compensation for damage or loss if the landlord or their close family member failed to occupy the rental unit at the end of the fixed term tenancy.

For more information, see Policy Guideline 16: Compensation for Damage or Loss

G. EXTENUATING CIRCUMSTANCES

The director may excuse a landlord from paying additional compensation if there were extenuating circumstances that prevented the landlord from accomplishing the stated purpose for ending a tenancy within a reasonable period after the tenancy ended, from using the rental unit for the stated purpose for at least 6 months, or from complying with the right of first refusal requirement.

These are circumstances where it would be unreasonable and unjust for a landlord to pay compensation, typically because of matters that could not be anticipated or were outside a reasonable owner's control. Some examples are:

- A landlord entered into a fixed term tenancy agreement before section 51.1 and amendments to the Residential Tenancy Regulation came into force and, at the time they entered into the fixed term tenancy agreement, they had only intended to occupy the rental unit for 3 months and they do occupy it for this period of time.

The following are probably not extenuating circumstances:

- A landlord entered into a fixed term tenancy agreement before section 51.1 came into force and they never intended, in good faith, to occupy the rental unit because they did not believe there would be financial consequences for doing so.

54. Ending a tenancy: Orders of Possession

This policy guideline is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This policy guideline may be revised, and new guidelines issued from time to time.

This policy guideline clarifies circumstances respecting an arbitrator exercising their discretion in determining the effective date of an order of possession.

B. DETERMINING THE EFFECTIVE DATE OF AN ORDER OF POSSESSION

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received[1]. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

BRITISH COLUMBIA

54. Ending a tenancy: Orders of Possession

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.
    - e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
    - e.g., If the tenant provides evidence of a disability or a chronic health condition.

An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

Caselaw Update

McLintock v. British Columbia Housing Commission, 2021 BCSC 1972

Facts:

McLintock received a valid notice of entry for the LL to come in and do renovations on March 29.

However, he believed it was not authorized, so changed his locks and put a “no entry” sign on the door.

The LL served a letter on April 3 saying that McLintock had until April 5 to talk to the LL, or they would issue 1 Month Notice for Cause.

McLintock did not get back to the LL before the 5th, but changed the locks back by the 5th.

LL issued the 1 Month Notice, checking the boxes for “significant risk” and “breach of material term” that hasn’t been corrected within a “reasonable time”.

LL issues a new notice of entry for May; again McLintock changes locks and posts no entry sign, LL issues a warning the next day, and McLintock changes the locks back the day after that.

At hearing, the Arbitrator upheld the 1 Month Notice on the basis that McLintock breached a material term of the agreement by not providing access and not correcting the issue within a reasonable time.

McLintock v. British Columbia Housing Commission, 2021 BCSC 1972

The Court held that it was patently unreasonable for the Arbitrator to uphold the Notice.

[54] Granted, the Arbitrator noted that Mr. McLintock did not respond within the two-day deadline. However, that fact begs the question of whether that two-day time frame was reasonable. The Arbitrator was obliged to address the specific criterion mandated by s. 47(1)(h)(ii) of whether Mr. McLintock corrected the situation within a reasonable time, but he did not. By failing to do so, his Decision must be found to be patently unreasonable: *Aarti* at para 26.

[55] Applying the provision in s. 47(1)(h)(ii) requires more than noting that a deadline for curative action that was imposed by a landlord was not adhered to by the tenant… s. 47(1)(h)(ii) required the Arbitrator to assess whether the time dictated by the Landlord was reasonable, given all the circumstances before him, including Mr. McLintock's specific circumstances including, for example, his advanced age, his disability, and his status as a long-term resident. →

Surely, a consideration of Mr. McLintock's disability and what efforts were made at accommodation is necessarily required in assessing whether the two-day deadline imposed by the Landlord was reasonable. I would also note that the record before the Arbitrator confirmed that the renovation work involved moving furniture. In any event, these are examples of what might have informed the question of a "reasonable" time frame to correct the material breach.

[56] Additionally, when construing the meaning of a "reasonable time" under s. 47(1)(h)(ii), arbitrators must have in mind the remedial nature of the *RTA*: see *Interpretation Act*, R.S.B.C. 1996, c. 238 at s. 8. Courts in this province have, on a number of occasions, confirmed that one of the main purposes of the *RTA* is the protection of tenants. [...] Simply put, in discerning what constitutes a reasonable amount of time for a tenant to correct an alleged breach of a material term, arbitrators must also bear this protective purpose in mind.

Ryan v. Mole Hill Community Housing 2022 BCCA 200

Facts:

Ryan rented in subsidized housing. His tenancy and subsidy agreement set his rental contribution at $551/month and the subsidy contribution at $646/month for a total rent of $

Mole Hill purported to terminate his subsidy on the basis of a change in his household composition and served a 2 Month Notice for not qualifying for the unit, but also demanded that he pay the full “economic rent” of $1530/month plus utilities.

Ryan paid the full rent under protest, disputed the Notice and won, and then filed to recover the extra rent he paid.

The Arbitrator dismissed his claim. The Arbitrator noted that the evidence only showed the $551/mth rent and $646/mth subsidy, but concluded, without further explanation, that he had not made out his claim.

“On the issue of a finding regarding the tenant’s current rent rate, I find that I do not have jurisdiction for this matter. The landlord operates under the guidance of BC Housing and tenant rent contributions are determined in keeping with their guidelines. This portion of the tenant’s application is dismissed.”

Ryan v. Mole Hill Community Housing 2022 BCCA 200

Ryan applied for judicial review and was not successful, but appealed to the BCCA and won.

BCCA: “The arbitrator and the chambers judge failed to consider both the content of the material that was presented at the hearing, and the lack of material. They concluded that the rent now payable was $1,530 when there was no evidence supporting that conclusion.”

[41] The dispute before the arbitrator was in relation to the Tenancy Agreement. Rather than considering the terms of the contract, the arbitrator concluded that because Mole Hill operates under a “Provincial Housing Program”, and Mr. Ryan signed the subsidy application, there was no overpayment.

“The arbitrator was asked to interpret the Tenancy Agreement and the application for rent subsidy to determine Mr. Ryan’s rent… in my view, the chambers judge incorrectly applied the standard of review. The original arbitrator and the reviewing arbitrator misunderstood the issue before them. The arbitrator was not being asked to set the rent for Mr. Ryan—that is indeed the decision of Mole Hill, in conjunction with BC Housing. He was being asked to interpret the Tenancy Agreement to determine what the rent is under the agreement, not in the future.”

Ratio: Arbitrators have jurisdiction to interpret tenancy agreements and their terms, even if that includes terms about subsidies or rent amounts that are excluded from rent increase provisions of the RTA

LaBrie v. Liu, 2021 BCSC 2486

LaBrie was a long term tenant that Liu had attempted to evict five times in 18 months already.

LaBrie sent a rent payment by e-transfer to Liu on March 1, which is when it was due, but Liu only deposited it on March 10. LaBrie believed she sent the full amount, but Liu said that it was one dollar short.

Liu served a 10 Day Notice to End Tenancy for Non-Payment of Rent on March 8, stating that LaBrie owed the full rent.

In the hearing, Liu said that LaBrie had repeatedly paid one dollar less than she owed.

LaBrie did not know that Liu was arguing that she was $1 short until the hearing, as she did not get his evidence (was in and out of the hospital in the months preceding the hearing and missed her mail). She did not serve any documentary material about payment of rent, but testified in the hearing that she sent the full payment on March 1, and testified about Liu's previous attempts to evict her.

The Arbitrator based his decision on the evidence of the deposit nine days after the rent was due for one dollar less than the full amount and Ms. LaBrie's failure to deliver any documentary evidence, and upheld the notice.

LaBrie v. Liu, 2021 BCSC 2486

The Court overturned the decision and sent it back for a new hearing because the Arbitrator had unfairly reversed the burden of proof.

"[32] The arbitrator did not provide an adequate reason for rejecting or disregarding Ms. LaBrie's *viva voce* evidence. The only reason he provided was the lack of documentary evidence to support it. Because that amounts to a reversal of the burden of proof, it is not an adequate reason.

[33] [...] This hearing was about eviction of a vulnerable person. The *Residential Tenancy Act* seeks to protect tenants from arbitrary evictions, as evidenced by provisions that require thresholds of tenant misconduct that is significant or unreasonable to support eviction: *Residential Tenancy Act*, s. 47(1)(d)(i) and s. 49.2 (1)(b). →

At the hearing, the central allegation, and the only one on which the arbitrator upheld the eviction, was that the rent was one dollar short. The arbitrator found that Ms. LaBrie withheld the one dollar without any evidence of that. He rejected or disregarded her evidence that she paid the full amount without providing an adequate reason for rejecting or disregarding it."

The Court also held that the Arbitrator needed to have considered whether the doctrine of equitable estoppel applied, because LaBrie had said that Liu never told her about being $1 short before, and had accepted all those previous payments without complaint. Even though she did not use the specific words "equitable estoppel", the Court held the Arbitrator had to consider whether it applied.

The Court also held that an Arbitrator has the discretion to find that rent was fully paid even if there was a shortfall: here, the Arbitrator needed to ask why the rent was $1 short, and then, once they had established that, had the discretion to make a decision about whether rent was fully paid in spite of the shortfall

Senft v. Society for Christian Care of the Elderly, 2021 BCSC 1074

JR of RTB decision upholding eviction for cause

Facts:

- TT with health issues that made cleaning difficult lost his regular cleaning assistance/services due to the pandemic
- Rental Unit accumulated considerable waste as a result
- The TT attempted to re-start cleaning service but there was a backlog, and LL served an eviction for cause before a cleaner could attend
- TT disputed
- Cleaners attended and cleaned the unit between the time the NTE was served and the hearing
- Arbitrator found that what matters was whether the LL had cause at the time the NTE was served, not what the TT did afterwards, and upheld the NTE on the grounds that the TT seriously jeopardized health, safety or lawful right and put the property at risk

Held: Decisions set aside and remitted back to RTB

- Arbitrator erred by not considering the TT's conduct after the eviction notice was served

- In the context of the protective purpose of the RTA, post-notice conduct is relevant

- "The evidence that the petitioner cleaned the rental unit was relevant to the consideration of whether the eviction was necessary and justified. By refusing to consider it, I find that the arbiter failed to engage in a purposive analysis of s. 47 under the RTA."

Cyrenne v. YWCA Metro Vancouver, 2021 BCSC 2406

Facts:

- TT is a single mom with authistic son in multi-unit building
- LL received numerous noise complaints related to TT's son yelling, swearing, moving furniture, and banging; TT responded to complaints by admitting that her son sometimes had meltdowns but many of the complaints were overblown or the noise came from somewhere else
- LL served an eviction notice for cause, and the TT disputed it
- Just before the hearing, the TT was involved in a family law dispute that affected her ability to serve evidence on time, and LL objected to the inclusion of some of the evidence because they did not have time to respond
- At the hearing the TT asked for an adjournment in order to remedy the problem, which was denied without canvassing the parties on relative prejudice and with no reason given
- The arbitrator did not say whether or not he would include the evidence during the hearing, so the TT did not know whether she could refer to it
- The arbitrator denied the TT's request to cross examine the LL's witness and cut her off before she was finished presenting her evidence and submissions because the hearing ran out of time
- The arbitrator upheld the NTE
- In the decision the arbitrator states that he did not consider the evidence the LL objected to, and this was when the TT first learned the evidence would not be admitted
- The decision referred mainly to the landlord's evidence and submissions

Cyrenne v. YWCA Metro Vancouver, 2021 BCSC 2406

Held: Decision quashed and remitted to the RTB - there was a denial of procedural fairness because the TT was denied her right to be heard

- “First of all, the petitioner’s adjournment application was not judicially considered. No properly reviewable grounds for dismissing it were articulated in the arbitrator’s decision. The petitioner’s undisputed rendition of the arbitrator’s informal reasons for refusing it indicate to me that the substance of her request was ignored, the arbitrator made no attempt to balance justice against convenience in considering it, and therefore the decision was arbitrary and unsustainable.”
- “Secondly, the arbitrator failed in his duty of fairness by refusing to give the petitioner a reasonable opportunity to answer the respondent’s case or present her own. Quite simply, some hearings, especially those with higher stakes, take longer than others to conduct fairly. In my respectful view, this was one dispute that deserved more time and attention than the arbitrator was prepared to give it.”
- “I note, in this connection, that the arbitrator’s decision makes only glancing reference to the petitioner or her evidence. Instead, it focuses primarily on whether the respondent’s evidence amounts to lawful cause for terminating the tenancy. This lopsided treatment of the evidence reflects upon the faulty procedure adopted by the arbitrator by which, essentially, the respondent seems to have received a fuller and more attentive audience than the petitioner.”
- “The principle that individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard. A decision maker’s reasons, in turn, should demonstrate that they have actually listened to the parties: Vavilov at para. 127. The arbitrator’s reasons in the present case comprise no such demonstration, but stand as confirmation, instead, that to a significant extent the hearing was unbalanced and one-sided.”

Connors v. MacLean, 2022 BCSC 1460

Facts:

- Eviction for cause under MHPTA, TT disputed
- TT did not attend the hearing
- Arbitrator upheld the eviction notice
- The TT applied for review on the basis that she could not attend the hearing for reasons beyond her control, 5 days after she received the decision
- Reviewing arbitrator made a finding of fact that the original decision concerned an NTE for cause, but dismissed the review consideration application because they found that it was filed outside of the 2 day time limit

Held: review decision quashed for inadequate reasons and BCSC substituted their own decision

- While an application for review relating to an order for possession under s. 48 does attract a two-day time period to review, the Review Consideration Decision does not link the making of an order for possession to the reason to apply a two-day notice. Instead, the reasons given should have led to the conclusion a five-day time limit applied, and that the petitioner had filed her application for review within time.
- “I regard the timely resolution of this matter to be desirable and find that the Review Arbitrator has made a finding of fact as to the characterization of the nature of the petitioner’s review that mandates a five-day time limit. There is therefore “only one decision to be made”, which is to find the petitioner filed her review application”

And a few others

Hollyburn Properties v. Staehli, 2022 BCSC 28

- An arbitrator's reasons need to justify the amount awarded (maybe especially if the award is more than was asked for)
- Not being granted a procedural right may not be a breach of procedural fairness if a party does not ask for it

Dennison v. Stankovic, 2022 BCSC 1274

- A reminder that a party has to exhaust the statutory review process before applying for JR (where the statutory review process can be used to address the issues)

Multani v. Brown, (unreported)

- Submissions are not evidence! (aka don't testify on behalf of your clients)

Gordon v. Guang Xin Development Ltd., 2022 BCSC 1544

- Where a purchaser fails to use a rental property for the purpose stated on a s. 49(5) eviction notice and the tenants make a claim under s. 51(2), the arbitrator needs to consider whether the landlord is liable under that section, not just the purchaser

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *McLintock v. British Columbia Housing Commission,* 2021 BCSC 1972

Date: 20211008
Docket: S197362
Registry: Vancouver

Between:

Christopher McLintock

Petitioner

And:

British Columbia Housing Management Commission

Respondent

Before: The Honourable Madam Justice Morellato

Reasons for Judgment
In Chambers

The Petitioner, acting on his own behalf:	C. McLintock
Counsel for the Respondent:	A.S. Cochrane
Place and Dates of Hearing:	Vancouver, B.C. November 27, 2019 February 4-5, 2021
Further Written Submissions Received:	February 19, 2021 February 26, 2021
Place and Date of Judgment:	Vancouver, B.C. October 8, 2021

I. INTRODUCTION

[1] In this judicial review petition, Mr. McLintock seeks to set aside the decision of an arbitrator of the Residential Tenancy Branch ("RTB") dated May 27, 2019 ("Decision"). The Decision confirmed a notice to end tenancy for cause ("April 8 Notice") that was issued by the respondent, British Columbia House Management Commission ("BC Housing Commission" or "Landlord"). Although the Decision granted an order of possession, the Landlord agreed not to enforce the order until this judicial review was decided on its merits.

[2] Mr. McLintock, who is 66 years old and on disability income assistance, has lived in his rented apartment since November 1, 2012. He is self-represented.

[3] Mr. McLintock sets out a number of grounds in support of his petition, all of which need not be repeated here, although I have considered each. Essentially, Mr. McLintock alleges that the arbitrator misconstrued or misapprehended the facts and law, and made patently unreasonable errors by:

(a) failing to properly apply s. 47(1)(h)(ii) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78, as amended [*RTA*];

(b) failing to consider that Mr. McLintock was unavailable and needed the entry into his apartment to be rescheduled to another time;

(c) failing to consider that the Landlords' initial application to the RTB, for an order to enter his apartment, effectively stayed the enforcement of the March 21, 2019 notice of entry until that issue was determined by the RTB, making the subsequent notices of entry and the subsequent attempts to enter Mr. McLintock's apartment moot, pending the outcome of the hearing before the RTB;

(d) failing to consider the fact that, after the BC Housing Commission received its May 15, 2019 order requiring Mr. McLintock to comply with any of its notices of entry, the Landlord did not exercise its rights to enter his apartment but instead "opted to evict the Petitioner altogether"; and

(e) concluding that that Mr. McLintock's refusal to allow entry into his apartment on March 29, 2019 was sufficient to constitute a material breach of the tenancy agreement, thereby "negating the purpose" of the May 15, 2019 order, granting the Landlord the right to enter the apartment.

II. FACTS

[4] The BC Housing Commission is not a market landlord. It is a provincial Crown agency that develops, manages and delivers a wide range of subsidized housing in British Columbia.

[5] As part of its mandate, the BC Housing Commission acts as a landlord with respect to certain buildings owned by the Provincial Rental Housing Corporation through the Province of British Columbia. The building in which Mr. McLintock resides is one such building.

[6] Mr. McLintock's rent is $368 per month, which is paid by the provincial government directly to the BC Housing Commission as the landlord.

[7] This matter arises in the context of a full building envelope remediation project, made necessary by water ingress into the apartment building where Mr. McLintock lives. Exterior walls, windows and patio doors were being replaced, and items within the rental units such as heaters and kitchen and bathroom fans were also being replaced at the time of the proceedings before the RTB.

[8] On March 21, 2019, the BC Housing Commission issued a notice of entry, requesting access to Mr. McLintock's apartment on the following dates: March 29, 2019 and April 1-4, 2019. The purpose of these entries was to conduct interior renovations.

[9] On or about March 29, 2019, Mr. McLintock put a note on his door advising "no-entry – need to reschedule". Mr. McLintock also changed the locks on his door to prevent what he believed would be an unauthorized entry. That day, March 29, 2019, the BC Housing Commission also posted an eviction notice ("March 29 Notice") on Mr. McLintock's door. The March 29 Notice alleged the following cause: "Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: … jeopardize a lawful right or interest of another occupant or the landlord."

[10] On April 3, 2019, a representative of the BC Housing Commission hand delivered a letter, dated April 2, 2019 ("April 3 Letter"), to Mr. McLintock informing him that the Landlord considered his refusal to allow entry on March 29 to be a material breach of his tenancy agreement and that "consequently, a One Month Notice to End Tenancy for Cause" was served. This is in spite of the fact that breach of a material term of the tenancy agreement was not cited as the grounds for eviction on the March 29 Notice.

[11] The April 3, 2019 letter also stated, among other things:

> Chris, this is the second occurrence where you have refused entry to the Landlord, despite receiving legal notice of entry. Should you not contact me before noon, Friday, April 5th to negotiate a time of entry for the interior renovations, BC Housing will make application for another Order of Entry and an Order of Possession.

[12] The reference to the "second occurrence" refers to a previous proceeding before the RTB between the parties on October 1, 2018, which was settled at a hearing. The parties agreed that the Landlord's workers or agents would enter Mr. McClintock's home on a certain date between certain hours.

[13] Mr. McLintock did not contact the BC Housing Commission within the two-day time frame stipulated in its April 3 Letter. However, on April 4, 2019, Mr. McLintock complied with the BC Housing Commission's request and he changed the locks to his apartment, back to the original locks for his unit.

[14] On April 8, 2019, the BC Housing Commission realized that an error had been made on its March 29 Notice. It therefore posted a new eviction notice on Mr. McLintock's door on April 8 at approximately 2:15 PM. The first ground for eviction asserted in the April 8 Notice stated:

> Tenant or a person permitted on the property by the tenant has … seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The second ground was as follows:

> Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

[15] On that same day, April 8, 2019, the BC Housing Commission also applied to the RTB requesting an order for entry into Mr. McLintock's apartment.

[16] Also, on April 8, 2019, two further notices of entry were posted on Mr. McLintock's door by the BC Housing Commission, for entry on April 24-26, May 3, and May 6-9, 2019.

[17] On April 10, 2019, Mr. McLintock applied to the RTB to cancel the April 8 Notice to evict him.

[18] On April 24, 2019, a note was posted on Mr. McLintock's door which stated "NO ENTRY this will have to be rescheduled."

[19] On or about May 1, 2019, Mr. McLintock once again changed the locks on his apartment door, as he believed entry by the Landlord was unauthorized and he did not want the Landlord to enter. On May 2, 2019, the BC Housing Commission sent a letter to Mr. McLintock advising that he was required to change his locks back to the Landlord's original locks by May 3, 2019. Mr. McLintock complied with this request and changed the locks to his apartment back to the original locks.

[20] On May 15, 2019, at a telephone hearing ("First Hearing"), the arbitrator ("First Arbitrator") adjudicated the Landlord's application for an order of entry, filed on April 8, 2019. The First Arbitrator considered the validity of the following notices of entry: 1) the March 21, 2019 notice of entry, which referred to entry dates on March 29 and April 1-4, 2019, from 8 a.m. to 5 p.m.; and 2) the notice of entry that was posted on April 8, 2019 for entry dates from April 24-26, 2019, from 8 a.m. to 5 p.m. The First Arbitrator concluded that: 1) Mr. McLintock breached s. 31(3) of the *RTA* by changing the locks without authorization; and 2) Mr. McLintock breached the *RTA* by refusing entry to the Landlord after receiving notices that met the requirements of s. 29(1) of the *RTA*. This First Arbitrator ordered Mr. McLintock to

comply with any notices of entry issued by the Landlord for the purpose of making repairs. This decision was not judicially reviewed.

[21] On May 24, 2019, the arbitrator whose Decision is now under review ("Arbitrator"), conducted a telephone hearing of Mr. McLintock's application to cancel the April 8 Notice to evict him. On May 27, 2019, the Arbitrator issued his Decision, dismissing Mr. McLintock's application.

[22] At some juncture in time, Mr. McClintock allowed entry into his apartment and the renovations were completed. However, it is not clear on the record before me when these renovations actually occurred.

[23] Although the RTB granted an order of possession to the BC Housing Commission on May 27, 2019, and the order of possession required Mr. McLintock to deliver full and peaceable vacant possession of the rental unit on May 31, 2019, the BC Housing Commission offered to extend his move-out date to June 30, 2019. As noted earlier in these reasons, the BC Housing Commission has since agreed not to enforce its order of possession until this judicial review is determined on its merits.

A. The Decision

[24] The Arbitrator addressed the following issues at the May 24,2019 hearing:

(a) Are the notices to enter posted by the Landlord valid?

(b) Is the tenant entitled to cancellation of the April 8 Notice pursuant to s. 49 of the *RTA*?

(c) Is the tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to s. 70 of the *RTA*?

(d) Is the tenant entitled to an order requiring the Landlord to comply with the *RTA*, regulations or tenancy agreement pursuant to s. 62 of the *RTA*?

(e) If the tenant's application is dismissed and the April 8 Notice to evict is upheld, is the Landlord entitled to an order of possession, pursuant to s. 55 of the *RTA*?

[25] The Arbitrator concluded that: the question of whether the notices to enter were valid was *res judiciata*, having been decided in the affirmative by the First Arbitrator in the May 15, 2019 decision; Mr. McLintock's application to cancel the April 8 Notice to evict, along with his request to suspend or set conditions on the Landlord's right to enter his apartment, should be dismissed; Mr. McLintock's application for an order requiring the Landlord to comply with the terms of the *RTA* pursuant to s. 62 of the *RTA* was also dismissed. As a result, the Arbitrator granted an order of possession.

[26] The Decision sets out in considerable detail the renovation work that was required to be done in the various units, including that of Mr. McLintock, and the various days where entry was required.

[27] In addition, the Arbitrator reviewed the facts surrounding the various notices of entry and the April 8 Notice to evict, although he did not reference the March 29 Notice to evict, which was posted the same day as the Landlord's first attempt to enter Mr. McLintock's apartment.

[28] The Decision also outlines the evidence of the building manager that on March 29, 2019 he went to Mr. McLintock's door several times, knocked loudly, but there was no answer. The Arbitrator refers to the April 3 Letter and states, at page 3:

> The landlord hand delivered a letter to the tenant on April 3, 2019 stating that the tenant's refusal to allow entry for repairs was a breach of a material term of the tenancy agreement and the landlord would seek an end of this tenancy if the tenant did not contact the landlord to reschedule by April 5, 2019. The landlord testified that the tenant did not respond to the letter.

[29] The Arbitrator considered the facts up to April 8, 2019 that led the BC Housing Commission to issue its April 8 Notice to evict Mr. McLintock. He also considered subsequent events, including:

a) Mr. McLintock sent an email on April 23, 2019 to the Landlord asking for all repairs in his apartment unit to be completed in a four-day period rather than a series of multiple entries;

b) Mr. McLintock's refusal to permit access to his apartment on April 24, 2019 for repairs (although this fact did not relate to either the March 29, 2019 or the April 8, 2019 notices to evict);

c) Mr. McLintock's evidence that he had construction experience and was of the view that entry on multiple days from 8 am to 5 pm was excessive;

d) The Landlord's evidence that the scheduled entries on multiple days were stated to be necessary by the contractors retained by the Landlord.

[30] As noted earlier, on the question of whether the Notices to Enter were valid, the Arbitrator concluded the doctrine of *res judicata* barred him from re-weighing the evidence and rendering another decision. In addressing the question of whether the Landlord's April 8 Notice to evict ought to be cancelled, the Arbitrator reasoned as follows, at page 6:

> The tenant [Mr. McLintock] has also requested an order for the cancellation of the landlord's One Month Notice [April 8 Notice to evict]. Section 47(1) [*RTA*] states that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> …
>
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
>
> (iii) put the landlord's property at significant risk;
>
> …
>
> (h) the tenant
>
> (i) has failed to comply with a material term, and
>
> (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

[31] The Arbitrator began his analysis on the issue by addressing the Landlord's contention that the tenant breached a material term of the tenancy agreement in

violation of s. 47(1)(h). He focused on the importance of the term to the overall scheme of the agreement "as opposed to the consequences of the breach." He also noted that it fell upon the Landlord to present evidence and argument supporting the proposition that the term was a material term. He also reviewed the RTB Policy Guideline 8, relating to material and unconscionable terms, and concluded, at page 7:

> In this matter, I find that the term of the tenancy agreement permitting the landlord access into the rental unit is a material term of the tenancy agreement. I find that this is a critical term of the tenancy agreement that goes to the root of the agreement. If the landlord was unable to access the rental unit to make necessary repairs the entire building could be jeopardized. Accordingly, I find the term in the tenancy agreement [that] permitted the landlord access is a material term of the tenancy agreement.

[32] The Arbitrator found that Mr. McLintock violated the tenancy agreement by failing to provide access to the rental unit on March 29, 2019. He reasoned, at pages 7-8, that the Landlord "provided proper written notice of the request for entry for the repairs" and that the Landlord "gave the notice in proper time before the entry and the reason for the entry was reasonable" but that Mr. McLintock "refused to comply with the request for entry for repairs", adding that "the previous arbitrator has determined that the [notices of entry] were properly issued."

[33] He then reasoned:

> I find that the landlord provided a written warning letter on April 3, 2019 advising the tenant that the landlord considered this a breach of a material term and that the landlord would seek an end to the tenancy if the tenant did not make other arrangements by April 5, 2019.
>
> As such, I find that the landlord has adequately advised the tenant that there is a problem; that the landlord believes that the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter; that the deadline be reasonable; and that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> Accordingly, I find that the landlord has provided sufficient evidence to establish that a valid basis exists to end this tenancy for breach of a material term. As such, the tenant's application to cancel the One Month [Notice to End] Tenancy is denied.
>
> Based on the testimony of the landlord, and the documents provided, I find that the [April 8 Notice] complies with the form and content provisions of section 52 of the *[RTA],* which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving notice, (b) give

> the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form. Accordingly, I grant the landlord's application for an order of possession pursuant to section 55 of the *[RTA].* The landlord is granted an order of possession effective May 31, 2019 at 1:00 p.m.
>
> Since this tenancy is ending, I dismiss the tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit as no longer disclosing a dispute that may be determined under the *[RTA]*.

B. Procedural Delays

[34] The conclusion of this matter has been delayed by a number of factors relating, for example, to the following circumstances: the unavailability of judges on one occasion; an adjournment on another date to permit Mr. McLintock additional time to prepare for the judicial review; Mr. McLintock's personal family obligations; the parties not completing their submissions on a date set for hearing; another continuance made necessary by the court's closure during the height of the COVID-19 pandemic; Mr. McLintock's attempts to seek legal advice; and Mr. McLintock's requests for additional time in the fall of 2020 to prepare application materials relating to the disclosure of further documents, which disclosure was provided.

[35] In an attempt to bring closure to this matter, the Court scheduled the conclusion of this judicial review on February 5 and 6, 2021. Mr. McLintock did not appear at the February 5 and 6 hearings. He insisted on an in-person hearing but was uncomfortable appearing due to the COVID-19 pandemic. He was given the opportunity to appear by telephone or by MS Teams video-conference but declined. Mr. McLintock was also granted the opportunity to make further submissions in writing after the February 5 and 6 hearing, and the BC Housing Commission was provided with an opportunity to reply; both parties did so, making brief additional comments.

III. ANALYSIS

A. Legislative Framework

[36] The relevant legislative provisions are set out below.

[37] Section 29 of the *RTA* provides, in part:

> **Landlord's right to enter rental unit restricted**
>
> 29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees; …

[38] Section 31(3) of the *RTA* provides:

> (3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

[39] Section 47 of the *RTA* provides, in part, as follows:

> **Landlord's notice: cause**
>
> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> …
>
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
>
> (iii) put the landlord's property at significant risk;
>
> (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
>
> (i) has caused or is likely to cause damage to the landlord's property,
>
> (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

…

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so,

…

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

[40] Section 52 of the *RTA* provides:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and

(e) when given by a landlord, be in the approved form.

[41] Section 58 of the *RTA* provides, in part:

Determining Disputes

58 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

(a) rights, obligations and prohibitions under this Act;

(b) rights and obligations under the terms of a tenancy agreement that

(i) are required or prohibited under this Act, or

(ii) relate to

(A) the tenant's use, occupation or maintenance of the rental unit …

[42] Section 62 of the *RTA* provides, in part:

> **Director's authority respecting dispute resolution proceedings**
>
> 62 (1) Subject to section 58, the director has authority to determine
>
> (a) disputes in relation to which the director has accepted an application for dispute resolution, and
>
> (b) any matters related to that dispute that arise under this Act or a tenancy agreement.
>
> (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.
>
> (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies …

[43] Section 70 of the *RTA* provides:

> **Director's orders: landlord's right to enter rental unit**
>
> 70 (1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 *[landlord's right to enter rental unit restricted]*.
>
> (2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may
>
> (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
>
> (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

[44] Section 84.1 of the *RTA* is a privative clause that provides that the director has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding or in a review.

[45] Pursuant to R. 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant disputes a notice to end the tenancy, the burden is on the landlord to prove the reason for which he or she wishes to end the tenancy.

B. Standard of Review

[46] It is well established law that patent unreasonableness is the standard of review for findings of fact, findings of law, and exercises of discretion by an RTB arbitrator: see s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45; s. 84.1 of the *RTA*; *Gichuru v. Palmar Properties Inc*., 2011 BCSC 827 at paras. 27-34; *Hawk v. Nazareth*, 2012 BCSC 211 at para. 8; *Marshall v. Pohl*, 2019 BCSC 406 at paras. 19-20; *Aarti Investments Ltd. v. Baumann,* 2019 BCCA 165 at paras. 14-16 [*Aarti*].

[47] In *Hawk* and *Marshall*, the Court addresses the substance of patent unreasonableness within the context of judicial reviews of RTB decisions. Both rely on the reasons of Justice Saunders in *Manz v. Sundher*, 2009 BCCA 92. In *Manz,* the Court explains the application of the standard of patent unreasonableness, as it relates to the review of evidence and factual issues, by cautioning the reviewing court against re-weighing the evidence, or drawing different factual inferences from the record than those made by the administrative decision-maker:

> [39] The standard of review was that of patently unreasonable. When applied to findings of fact or law the *Administrative Tribunals Act* does not define that term. (Section 58(2)(a) refers to a finding of fact or law or an exercise of discretion, but s. 58(3) is said to apply only to discretionary decisions). Accordingly, the well understood meaning of that phrase in relation to factual matters applies, is as described in [*Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80]*:*
>
> > [37] As the chambers judge noted, a decision is not patently unreasonable because the evidence is insufficient. It is not for the court on judicial review, or for this Court on appeal, to second guess the conclusions drawn from the evidence considered by the Appeal Division and substitute different findings of fact or inferences drawn from those facts. A court on review or appeal cannot reweigh the evidence. Only if there is no evidence to support the findings, or the decision is "openly, clearly, evidently unreasonable", can it be said to be patently unreasonable. That is not the case here.
>
> [Emphasis added]

[48] In *Gichuru,* at para. 33, Justice Pearlman underscores that the petitioner bears the onus of showing that the findings of fact, law or the exercise of discretion are patently unreasonable. Further, Justice Pearlman reinforces the type of reasons which will be found patently unreasonable:

> [34] A decision is patently unreasonable where it is not merely unsupported by reasons that are capable of withstanding a probing examination, but is openly, evidently and clearly irrational: *Ford v. Lavender Co-operative Housing Association,* 2011 BCCA 114. When reviewing a decision for patent unreasonableness, it is not open to the court to second guess conclusions drawn from the evidence considered by the decision-maker, or to substitute different findings of fact or inferences. A decision can only be said to be patently unreasonable where there is no evidence to support the findings, or the decision is openly, clearly, and evidently unreasonable: *Manz*, at para. 39 citing *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80.

[49] Nevertheless, administrative decisions are not above and beyond reproach. A decision of the RTB may be found patently unreasonable if it does not address the criteria established by the *RTA* when determining whether a landlord has met its statutorily prescribed burden before securing an eviction: see, for example, *Allman v. Amacon Property Management Services Inc.*, 2006 BCSC 725, varied on other grounds 2007 BCCA 141.

[50] In *Allman*, Justice Slade reviewed the former s. 49(6), which provided that landlords could terminate a tenancy where they have "all the necessary permits and approvals required by law, and [intend] in good faith, to . . . renovate or repair the rental unit in a manner which requires the rental unit to be vacant." The landlord wanted to carry out extensive plumbing renovations. The arbitrator upheld the notice of eviction; he found that "a landlord is entitled to carry out renovations in a timely and cost-effective manner, and that this would most easily be achieved if the suites are vacant." However, the statute mandated consideration of whether the proposed renovations *required* vacancy, not whether they could be carried out *more efficiently* if the units were vacant. Justice Slade reasoned as follows:

> [27] The respondent submits that, given the nature and extent of the renovations to each rental unit, the decision of the arbitrator was not patently unreasonable. In the circumstances, I cannot give effect to this argument. The arbitrator did not consider whether the renovations to each rental unit required vacant possession. The court's role on this judicial review is to

> determine whether, on an application of the appropriate standard of review, the arbitrator's decision will be set aside. The court is not able to determine, *de novo*, whether vacant possession is required.
>
> [28] I find that the decision of the arbitrator was patently unreasonable as based on irrelevant considerations.

[51] The holding in *Allman* was summarized in the following way by Willcock J.A. in *Aarti*, at para. 26: "In my opinion, *Allman* is authority for the simple proposition an RTB decision is patently unreasonable if it does not address the criteria established in the *RTA* when determining whether a landlord may evict a tenant to do repairs or renovate." I find that the proposition, as articulated by Willcock J.A., applies equally to decisions that fail to consider the statutory criteria prescribed by the *RTA,* when determining whether a landlord may evict a tenant for breach of a material term of a tenancy agreement.

C. Discussion: Was the Decision patently unreasonable?

[52] Having carefully considered the matter, including the deference that must be shown specialized administrative decision-makers such as the Arbitrator in this case, as well as the high threshold circumscribing court intervention as set by the standard of patent unreasonableness, I must nevertheless conclude that the Decision is patently unreasonable. I agree with Mr. McLintock that while the Arbitrator considered s. 47(1)(h)(i), dealing with the breach of a material term of the tenancy agreement, he failed to independently assess and apply s. 47(1)(h)(ii) of the *RTA* which addresses the question of whether Mr. McLintock cured the breach within a reasonable time, as required by the enabling legislation. In not doing so, I find the Decision is rendered "openly, clearly and evidently unreasonable": *Manz* at paras. 37-39.

[53] The Arbitrator considered whether the form of April 8 Notice met the statutory notice requirements; he considered whether there was a material breach of the tenancy agreement; he considered the contents of the April 3 Letter which indicated the Landlord wished to be reasonable by giving Mr. McLintock two days "to negotiate a time of entry for the interior renovations." However, the Arbitrator did not apply s. 47(1)(h)(ii) of the *RTA*, which mandates an independent inquiry and assessment

of the question of whether Mr. McLintock corrected the situation (i.e. his refusal to allow the Landlord to enter his unit) within a reasonable time after the Landlord gave written notice that a material term of the tenancy agreement had been breached.

[54] Granted, the Arbitrator noted that Mr. McLintock did not respond within the two-day deadline. However, that fact begs the question of whether that two-day time frame was reasonable. The Arbitrator was obliged to address the specific criterion mandated by s. 47(1)(h)(ii) of whether Mr. McLintock corrected the situation within a reasonable time, but he did not. By failing to do so, his Decision must be found to be patently unreasonable: *Aarti* at para 26.

[55] Applying the provision in s. 47(1)(h)(ii) requires more than noting that a deadline for curative action that was imposed by a landlord was not adhered to by the tenant; again, this statutory criterion must be applied and assessed objectively and independently by the arbitrator in light of all the circumstances before him or her. That is, s. 47(1)(h)(ii) required the Arbitrator to assess whether the time dictated by the Landlord was reasonable, given all the circumstances before him, including Mr. McLintock's specific circumstances including, for example, his advanced age, his disability, and his status as a long-term resident. Surely, a consideration of Mr. McLintock's disability and what efforts were made at accommodation is necessarily required in assessing whether the two-day deadline imposed by the Landlord was reasonable. I would also note that the record before the Arbitrator confirmed that the renovation work involved moving furniture. In any event, these are examples of what might have informed the question of a "reasonable" time frame to correct the material breach.

[56] Additionally, when construing the meaning of a "reasonable time" under s. 47(1)(h)(ii), arbitrators must have in mind the remedial nature of the *RTA*: see *Interpretation Act*, R.S.B.C. 1996, c. 238 at s. 8. Courts in this province have, on a number of occasions, confirmed that one of the main purposes of the *RTA* is the protection of tenants: *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 27 at para. 11; *Henricks v. Hebert*, 1998 CanLII 1909 No. at

para. 55, [1998] B.C.J. No. 2745 (S.C.); *Blouin v. Stamp*, 2021 BCSC 411 at para. 32. In *Berry and Kloet*, Williamson J. expanded on this notion:

> [11] I start from the accepted rules of statutory interpretation. I conclude that the *Act* is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the *Act*, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the *Act* seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group . . .
>
> [Citations omitted]

Simply put, in discerning what constitutes a reasonable amount of time for a tenant to correct an alleged breach of a material term, arbitrators must also bear this protective purpose in mind.

[57] I would add that the March 29 Notice to evict was issued and posted on Mr. McLintock's door on March 29, 2019, the same day that the first entry was scheduled under the March 21, 2019 notice of entry. Simply put, the March 29 Notice was issued on the same day of the apparent material breach of the tenancy agreement (i.e., refusing entry and changing the locks). Although breach of a material term was not cited as the specific cause for eviction under s. 47 in the March 29 Notice, the Landlord nevertheless referred to this breach as the justification for its March 29 Notice to evict in its April 3 Letter: "As you are aware your refusal to permit this legal entry is a Material Breach of your Tenancy Agreement and consequently a One Month Notice to End Tenancy for Cause was served." Mr. A prerequisite for serving a valid notice of eviction for cause based on breach of a material term of a tenancy agreement is that the tenant be given advance notice that the landlord considers their conduct to be a material breach in writing. As between the March 29 Notice and the April 3 Letter, the proper order of operations (i.e, notice of material breach and then its correction) were reversed.

[58] Also, by the time the Arbitrator considered the question of whether the April 8 Notice should be cancelled, the First Arbitrator had already affirmed, on May 15, 2019, that the Landlord was entitled to enter Mr. McLintock's apartment and had made an order for entry. While I appreciate that the Landlord was entitled to pursue

two alternate remedies, entry and eviction, its actions beg the question of why it proceeded with its eviction proceedings in regard to a disabled and senior long-term tenant when it could have entered and completed the renovations before the second arbitration. Mr. McClintock had changed his locks back to the original locks by that time. Again, issue was not addressed.

[59] In regard to the issue of whether Mr. McLintock corrected the situation within a reasonable time, I note that he in fact allowed the Landlord to enter his apartment to make the necessary renovations some time ago. However, the circumstances surrounding that resolution are not before this Court. Nevertheless, the fact that the parties agreed on a time to complete the renovations raises the serious question of what purpose would be served by evicting a disabled senior at this time.

[60] In light of my conclusion that the Decision is patently unreasonable, I need not address the other grounds of judicial review advanced by Mr. McLintock.

D. The Appropriate Remedy

[61] As I have concluded the Arbitrator's Decision is patently unreasonable. I find that it should be set aside.

[62] The relief available in the circumstances before me is set out in the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 at ss. 2, 5 and 7. Sections 5 and 7 are of particular importance in this case:

> **Powers to direct tribunal to reconsider**
>
> 5 (1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application relates.
>
> (2) In giving a direction under subsection (1), the court must
>
> (a) advise the tribunal of its reasons, and
>
> (b) give it any directions that the court thinks appropriate for the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.
>
> …

> **Power to set aside decision**
>
> 7 If an applicant is entitled to a declaration that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may set aside the decision instead of making a declaration.

[63] In *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49, our Court of Appeal considered the permissive language of s. 5 of the *Judicial Review Procedure Act* and nonetheless concluded at para. 51 that:

> … the general rule is that where a party succeeds on judicial review, the appropriate disposition is to order a rehearing or reconsideration before the administrative decision-maker, unless exceptional circumstances indicate the court should make the decision the legislation has assigned to the administrative body…

[64] In the case before me, I see no exceptional circumstance which would justify making a decision which the enabling legislation assigned a specialized tribunal to make. The Arbitrator is best equipped to reconsider the circumstances before it and to complete the adjudication process in light of my Reasons for Judgment.

[65] While I have concluded that the Arbitrator's Decision is patently unreasonable, and it should therefore be set aside, the guiding authorities are clear that I ought not usurp the function of the RTB. Accordingly, the matter will be remitted back to the RTB to engage in an objective and independent application of s. 47(1)(h)(ii) to discern whether Mr. McLintock corrected the situation within a reasonable time after the landlord gave written notice, by considering all the relevant circumstances including Mr. McLintock's specific circumstances as a senior with a disability.

E. Disposition

[66] The Arbitrator's Decision is patently unreasonable and is set aside. This matter will be remitted back to the RTB for reconsideration in accordance with these Reasons for Judgment.

"MORELLATO J."

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *McLintock v. British Columbia Housing Commission,* 2021 BCSC 1972

Date: 20211008
Docket: S197362
Registry: Vancouver

Between:

Christopher McLintock

Petitioner

And:

British Columbia Housing Management Commission

Respondent

Before: The Honourable Madam Justice Morellato

Reasons for Judgment
In Chambers

The Petitioner, acting on his own behalf:	C. McLintock
Counsel for the Respondent:	A.S. Cochrane
Place and Dates of Hearing:	Vancouver, B.C. November 27, 2019 February 4-5, 2021
Further Written Submissions Received:	February 19, 2021 February 26, 2021
Place and Date of Judgment:	Vancouver, B.C. October 8, 2021

I. INTRODUCTION

[1] In this judicial review petition, Mr. McLintock seeks to set aside the decision of an arbitrator of the Residential Tenancy Branch ("RTB") dated May 27, 2019 ("Decision"). The Decision confirmed a notice to end tenancy for cause ("April 8 Notice") that was issued by the respondent, British Columbia House Management Commission ("BC Housing Commission" or "Landlord"). Although the Decision granted an order of possession, the Landlord agreed not to enforce the order until this judicial review was decided on its merits.

[2] Mr. McLintock, who is 66 years old and on disability income assistance, has lived in his rented apartment since November 1, 2012. He is self-represented.

[3] Mr. McLintock sets out a number of grounds in support of his petition, all of which need not be repeated here, although I have considered each. Essentially, Mr. McLintock alleges that the arbitrator misconstrued or misapprehended the facts and law, and made patently unreasonable errors by:

(a) failing to properly apply s. 47(1)(h)(ii) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78, as amended [*RTA*];

(b) failing to consider that Mr. McLintock was unavailable and needed the entry into his apartment to be rescheduled to another time;

(c) failing to consider that the Landlords' initial application to the RTB, for an order to enter his apartment, effectively stayed the enforcement of the March 21, 2019 notice of entry until that issue was determined by the RTB, making the subsequent notices of entry and the subsequent attempts to enter Mr. McLintock's apartment moot, pending the outcome of the hearing before the RTB;

(d) failing to consider the fact that, after the BC Housing Commission received its May 15, 2019 order requiring Mr. McLintock to comply with any of its notices of entry, the Landlord did not exercise its rights to enter his apartment but instead "opted to evict the Petitioner altogether"; and

(e) concluding that that Mr. McLintock's refusal to allow entry into his apartment on March 29, 2019 was sufficient to constitute a material breach of the tenancy agreement, thereby "negating the purpose" of the May 15, 2019 order, granting the Landlord the right to enter the apartment.

II. FACTS

[4] The BC Housing Commission is not a market landlord. It is a provincial Crown agency that develops, manages and delivers a wide range of subsidized housing in British Columbia.

[5] As part of its mandate, the BC Housing Commission acts as a landlord with respect to certain buildings owned by the Provincial Rental Housing Corporation through the Province of British Columbia. The building in which Mr. McLintock resides is one such building.

[6] Mr. McLintock's rent is $368 per month, which is paid by the provincial government directly to the BC Housing Commission as the landlord.

[7] This matter arises in the context of a full building envelope remediation project, made necessary by water ingress into the apartment building where Mr. McLintock lives. Exterior walls, windows and patio doors were being replaced, and items within the rental units such as heaters and kitchen and bathroom fans were also being replaced at the time of the proceedings before the RTB.

[8] On March 21, 2019, the BC Housing Commission issued a notice of entry, requesting access to Mr. McLintock's apartment on the following dates: March 29, 2019 and April 1-4, 2019. The purpose of these entries was to conduct interior renovations.

[9] On or about March 29, 2019, Mr. McLintock put a note on his door advising "no-entry – need to reschedule". Mr. McLintock also changed the locks on his door to prevent what he believed would be an unauthorized entry. That day, March 29, 2019, the BC Housing Commission also posted an eviction notice ("March 29 Notice") on Mr. McLintock's door. The March 29 Notice alleged the following cause: "Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to: … jeopardize a lawful right or interest of another occupant or the landlord."

[10] On April 3, 2019, a representative of the BC Housing Commission hand delivered a letter, dated April 2, 2019 ("April 3 Letter"), to Mr. McLintock informing him that the Landlord considered his refusal to allow entry on March 29 to be a material breach of his tenancy agreement and that "consequently, a One Month Notice to End Tenancy for Cause" was served. This is in spite of the fact that breach of a material term of the tenancy agreement was not cited as the grounds for eviction on the March 29 Notice.

[11] The April 3, 2019 letter also stated, among other things:

> Chris, this is the second occurrence where you have refused entry to the Landlord, despite receiving legal notice of entry. Should you not contact me before noon, Friday, April 5th to negotiate a time of entry for the interior renovations, BC Housing will make application for another Order of Entry and an Order of Possession.

[12] The reference to the "second occurrence" refers to a previous proceeding before the RTB between the parties on October 1, 2018, which was settled at a hearing. The parties agreed that the Landlord's workers or agents would enter Mr. McClintock's home on a certain date between certain hours.

[13] Mr. McLintock did not contact the BC Housing Commission within the two-day time frame stipulated in its April 3 Letter. However, on April 4, 2019, Mr. McLintock complied with the BC Housing Commission's request and he changed the locks to his apartment, back to the original locks for his unit.

[14] On April 8, 2019, the BC Housing Commission realized that an error had been made on its March 29 Notice. It therefore posted a new eviction notice on Mr. McLintock's door on April 8 at approximately 2:15 PM. The first ground for eviction asserted in the April 8 Notice stated:

> Tenant or a person permitted on the property by the tenant has … seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The second ground was as follows:

> Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

[15] On that same day, April 8, 2019, the BC Housing Commission also applied to the RTB requesting an order for entry into Mr. McLintock's apartment.

[16] Also, on April 8, 2019, two further notices of entry were posted on Mr. McLintock's door by the BC Housing Commission, for entry on April 24-26, May 3, and May 6-9, 2019.

[17] On April 10, 2019, Mr. McLintock applied to the RTB to cancel the April 8 Notice to evict him.

[18] On April 24, 2019, a note was posted on Mr. McLintock's door which stated "NO ENTRY this will have to be rescheduled."

[19] On or about May 1, 2019, Mr. McLintock once again changed the locks on his apartment door, as he believed entry by the Landlord was unauthorized and he did not want the Landlord to enter. On May 2, 2019, the BC Housing Commission sent a letter to Mr. McLintock advising that he was required to change his locks back to the Landlord's original locks by May 3, 2019. Mr. McLintock complied with this request and changed the locks to his apartment back to the original locks.

[20] On May 15, 2019, at a telephone hearing ("First Hearing"), the arbitrator ("First Arbitrator") adjudicated the Landlord's application for an order of entry, filed on April 8, 2019. The First Arbitrator considered the validity of the following notices of entry: 1) the March 21, 2019 notice of entry, which referred to entry dates on March 29 and April 1-4, 2019, from 8 a.m. to 5 p.m.; and 2) the notice of entry that was posted on April 8, 2019 for entry dates from April 24-26, 2019, from 8 a.m. to 5 p.m. The First Arbitrator concluded that: 1) Mr. McLintock breached s. 31(3) of the *RTA* by changing the locks without authorization; and 2) Mr. McLintock breached the *RTA* by refusing entry to the Landlord after receiving notices that met the requirements of s. 29(1) of the *RTA*. This First Arbitrator ordered Mr. McLintock to

comply with any notices of entry issued by the Landlord for the purpose of making repairs. This decision was not judicially reviewed.

[21] On May 24, 2019, the arbitrator whose Decision is now under review ("Arbitrator"), conducted a telephone hearing of Mr. McLintock's application to cancel the April 8 Notice to evict him. On May 27, 2019, the Arbitrator issued his Decision, dismissing Mr. McLintock's application.

[22] At some juncture in time, Mr. McClintock allowed entry into his apartment and the renovations were completed. However, it is not clear on the record before me when these renovations actually occurred.

[23] Although the RTB granted an order of possession to the BC Housing Commission on May 27, 2019, and the order of possession required Mr. McLintock to deliver full and peaceable vacant possession of the rental unit on May 31, 2019, the BC Housing Commission offered to extend his move-out date to June 30, 2019. As noted earlier in these reasons, the BC Housing Commission has since agreed not to enforce its order of possession until this judicial review is determined on its merits.

A. The Decision

[24] The Arbitrator addressed the following issues at the May 24,2019 hearing:

(a) Are the notices to enter posted by the Landlord valid?

(b) Is the tenant entitled to cancellation of the April 8 Notice pursuant to s. 49 of the *RTA*?

(c) Is the tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to s. 70 of the *RTA*?

(d) Is the tenant entitled to an order requiring the Landlord to comply with the *RTA*, regulations or tenancy agreement pursuant to s. 62 of the *RTA*?

(e) If the tenant's application is dismissed and the April 8 Notice to evict is upheld, is the Landlord entitled to an order of possession, pursuant to s. 55 of the *RTA*?

[25] The Arbitrator concluded that: the question of whether the notices to enter were valid was *res judiciata*, having been decided in the affirmative by the First Arbitrator in the May 15, 2019 decision; Mr. McLintock's application to cancel the April 8 Notice to evict, along with his request to suspend or set conditions on the Landlord's right to enter his apartment, should be dismissed; Mr. McLintock's application for an order requiring the Landlord to comply with the terms of the *RTA* pursuant to s. 62 of the *RTA* was also dismissed. As a result, the Arbitrator granted an order of possession.

[26] The Decision sets out in considerable detail the renovation work that was required to be done in the various units, including that of Mr. McLintock, and the various days where entry was required.

[27] In addition, the Arbitrator reviewed the facts surrounding the various notices of entry and the April 8 Notice to evict, although he did not reference the March 29 Notice to evict, which was posted the same day as the Landlord's first attempt to enter Mr. McLintock's apartment.

[28] The Decision also outlines the evidence of the building manager that on March 29, 2019 he went to Mr. McLintock's door several times, knocked loudly, but there was no answer. The Arbitrator refers to the April 3 Letter and states, at page 3:

> The landlord hand delivered a letter to the tenant on April 3, 2019 stating that the tenant's refusal to allow entry for repairs was a breach of a material term of the tenancy agreement and the landlord would seek an end of this tenancy if the tenant did not contact the landlord to reschedule by April 5, 2019. The landlord testified that the tenant did not respond to the letter.

[29] The Arbitrator considered the facts up to April 8, 2019 that led the BC Housing Commission to issue its April 8 Notice to evict Mr. McLintock. He also considered subsequent events, including:

a) Mr. McLintock sent an email on April 23, 2019 to the Landlord asking for all repairs in his apartment unit to be completed in a four-day period rather than a series of multiple entries;

b) Mr. McLintock's refusal to permit access to his apartment on April 24, 2019 for repairs (although this fact did not relate to either the March 29, 2019 or the April 8, 2019 notices to evict);

c) Mr. McLintock's evidence that he had construction experience and was of the view that entry on multiple days from 8 am to 5 pm was excessive;

d) The Landlord's evidence that the scheduled entries on multiple days were stated to be necessary by the contractors retained by the Landlord.

[30] As noted earlier, on the question of whether the Notices to Enter were valid, the Arbitrator concluded the doctrine of *res judicata* barred him from re-weighing the evidence and rendering another decision. In addressing the question of whether the Landlord's April 8 Notice to evict ought to be cancelled, the Arbitrator reasoned as follows, at page 6:

> The tenant [Mr. McLintock] has also requested an order for the cancellation of the landlord's One Month Notice [April 8 Notice to evict]. Section 47(1) [*RTA*] states that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> …
>
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
>
> (iii) put the landlord's property at significant risk;
>
> …
>
> (h) the tenant
>
> (i) has failed to comply with a material term, and
>
> (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

[31] The Arbitrator began his analysis on the issue by addressing the Landlord's contention that the tenant breached a material term of the tenancy agreement in

violation of s. 47(1)(h). He focused on the importance of the term to the overall scheme of the agreement "as opposed to the consequences of the breach." He also noted that it fell upon the Landlord to present evidence and argument supporting the proposition that the term was a material term. He also reviewed the RTB Policy Guideline 8, relating to material and unconscionable terms, and concluded, at page 7:

> In this matter, I find that the term of the tenancy agreement permitting the landlord access into the rental unit is a material term of the tenancy agreement. I find that this is a critical term of the tenancy agreement that goes to the root of the agreement. If the landlord was unable to access the rental unit to make necessary repairs the entire building could be jeopardized. Accordingly, I find the term in the tenancy agreement [that] permitted the landlord access is a material term of the tenancy agreement.

[32] The Arbitrator found that Mr. McLintock violated the tenancy agreement by failing to provide access to the rental unit on March 29, 2019. He reasoned, at pages 7-8, that the Landlord "provided proper written notice of the request for entry for the repairs" and that the Landlord "gave the notice in proper time before the entry and the reason for the entry was reasonable" but that Mr. McLintock "refused to comply with the request for entry for repairs", adding that "the previous arbitrator has determined that the [notices of entry] were properly issued."

[33] He then reasoned:

> I find that the landlord provided a written warning letter on April 3, 2019 advising the tenant that the landlord considered this a breach of a material term and that the landlord would seek an end to the tenancy if the tenant did not make other arrangements by April 5, 2019.
>
> As such, I find that the landlord has adequately advised the tenant that there is a problem; that the landlord believes that the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter; that the deadline be reasonable; and that if the problem is not fixed by the deadline, the party will end the tenancy.
>
> Accordingly, I find that the landlord has provided sufficient evidence to establish that a valid basis exists to end this tenancy for breach of a material term. As such, the tenant's application to cancel the One Month [Notice to End] Tenancy is denied.
>
> Based on the testimony of the landlord, and the documents provided, I find that the [April 8 Notice] complies with the form and content provisions of section 52 of the *[RTA],* which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving notice, (b) give

> the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form. Accordingly, I grant the landlord's application for an order of possession pursuant to section 55 of the *[RTA].* The landlord is granted an order of possession effective May 31, 2019 at 1:00 p.m.
>
> Since this tenancy is ending, I dismiss the tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit as no longer disclosing a dispute that may be determined under the *[RTA]*.

B. Procedural Delays

[34] The conclusion of this matter has been delayed by a number of factors relating, for example, to the following circumstances: the unavailability of judges on one occasion; an adjournment on another date to permit Mr. McLintock additional time to prepare for the judicial review; Mr. McLintock's personal family obligations; the parties not completing their submissions on a date set for hearing; another continuance made necessary by the court's closure during the height of the COVID-19 pandemic; Mr. McLintock's attempts to seek legal advice; and Mr. McLintock's requests for additional time in the fall of 2020 to prepare application materials relating to the disclosure of further documents, which disclosure was provided.

[35] In an attempt to bring closure to this matter, the Court scheduled the conclusion of this judicial review on February 5 and 6, 2021. Mr. McLintock did not appear at the February 5 and 6 hearings. He insisted on an in-person hearing but was uncomfortable appearing due to the COVID-19 pandemic. He was given the opportunity to appear by telephone or by MS Teams video-conference but declined. Mr. McLintock was also granted the opportunity to make further submissions in writing after the February 5 and 6 hearing, and the BC Housing Commission was provided with an opportunity to reply; both parties did so, making brief additional comments.

III. ANALYSIS

A. Legislative Framework

[36] The relevant legislative provisions are set out below.

[37] Section 29 of the *RTA* provides, in part:

> **Landlord's right to enter rental unit restricted**
>
> 29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees; …

[38] Section 31(3) of the *RTA* provides:

> (3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

[39] Section 47 of the *RTA* provides, in part, as follows:

> **Landlord's notice: cause**
>
> 47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> …
>
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
>
> (iii) put the landlord's property at significant risk;
>
> (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
>
> (i) has caused or is likely to cause damage to the landlord's property,
>
> (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

…

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so,

…

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

[40] Section 52 of the *RTA* provides:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and

(e) when given by a landlord, be in the approved form.

[41] Section 58 of the *RTA* provides, in part:

Determining Disputes

58 (1) Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

(a) rights, obligations and prohibitions under this Act;

(b) rights and obligations under the terms of a tenancy agreement that

(i) are required or prohibited under this Act, or

(ii) relate to

(A) the tenant's use, occupation or maintenance of the rental unit …

[42] Section 62 of the *RTA* provides, in part:

> **Director's authority respecting dispute resolution proceedings**
>
> 62 (1) Subject to section 58, the director has authority to determine
>
> (a) disputes in relation to which the director has accepted an application for dispute resolution, and
>
> (b) any matters related to that dispute that arise under this Act or a tenancy agreement.
>
> (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.
>
> (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies …

[43] Section 70 of the *RTA* provides:

> **Director's orders: landlord's right to enter rental unit**
>
> 70 (1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 *[landlord's right to enter rental unit restricted]*.
>
> (2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may
>
> (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
>
> (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

[44] Section 84.1 of the *RTA* is a privative clause that provides that the director has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding or in a review.

[45] Pursuant to R. 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant disputes a notice to end the tenancy, the burden is on the landlord to prove the reason for which he or she wishes to end the tenancy.

B. Standard of Review

[46] It is well established law that patent unreasonableness is the standard of review for findings of fact, findings of law, and exercises of discretion by an RTB arbitrator: see s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45; s. 84.1 of the *RTA*; *Gichuru v. Palmar Properties Inc*., 2011 BCSC 827 at paras. 27-34; *Hawk v. Nazareth*, 2012 BCSC 211 at para. 8; *Marshall v. Pohl*, 2019 BCSC 406 at paras. 19-20; *Aarti Investments Ltd. v. Baumann,* 2019 BCCA 165 at paras. 14-16 [*Aarti*].

[47] In *Hawk* and *Marshall*, the Court addresses the substance of patent unreasonableness within the context of judicial reviews of RTB decisions. Both rely on the reasons of Justice Saunders in *Manz v. Sundher*, 2009 BCCA 92. In *Manz,* the Court explains the application of the standard of patent unreasonableness, as it relates to the review of evidence and factual issues, by cautioning the reviewing court against re-weighing the evidence, or drawing different factual inferences from the record than those made by the administrative decision-maker:

> [39] The standard of review was that of patently unreasonable. When applied to findings of fact or law the *Administrative Tribunals Act* does not define that term. (Section 58(2)(a) refers to a finding of fact or law or an exercise of discretion, but s. 58(3) is said to apply only to discretionary decisions). Accordingly, the well understood meaning of that phrase in relation to factual matters applies, is as described in [*Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80]*:*
>
> > [37] As the chambers judge noted, a decision is not patently unreasonable because the evidence is insufficient. It is not for the court on judicial review, or for this Court on appeal, to second guess the conclusions drawn from the evidence considered by the Appeal Division and substitute different findings of fact or inferences drawn from those facts. A court on review or appeal cannot reweigh the evidence. Only if there is no evidence to support the findings, or the decision is "openly, clearly, evidently unreasonable", can it be said to be patently unreasonable. That is not the case here.
>
> [Emphasis added]

[48] In *Gichuru,* at para. 33, Justice Pearlman underscores that the petitioner bears the onus of showing that the findings of fact, law or the exercise of discretion are patently unreasonable. Further, Justice Pearlman reinforces the type of reasons which will be found patently unreasonable:

> [34] A decision is patently unreasonable where it is not merely unsupported by reasons that are capable of withstanding a probing examination, but is openly, evidently and clearly irrational: *Ford v. Lavender Co-operative Housing Association,* 2011 BCCA 114. When reviewing a decision for patent unreasonableness, it is not open to the court to second guess conclusions drawn from the evidence considered by the decision-maker, or to substitute different findings of fact or inferences. A decision can only be said to be patently unreasonable where there is no evidence to support the findings, or the decision is openly, clearly, and evidently unreasonable: *Manz*, at para. 39 citing *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80.

[49] Nevertheless, administrative decisions are not above and beyond reproach. A decision of the RTB may be found patently unreasonable if it does not address the criteria established by the *RTA* when determining whether a landlord has met its statutorily prescribed burden before securing an eviction: see, for example, *Allman v. Amacon Property Management Services Inc.*, 2006 BCSC 725, varied on other grounds 2007 BCCA 141.

[50] In *Allman*, Justice Slade reviewed the former s. 49(6), which provided that landlords could terminate a tenancy where they have "all the necessary permits and approvals required by law, and [intend] in good faith, to . . . renovate or repair the rental unit in a manner which requires the rental unit to be vacant." The landlord wanted to carry out extensive plumbing renovations. The arbitrator upheld the notice of eviction; he found that "a landlord is entitled to carry out renovations in a timely and cost-effective manner, and that this would most easily be achieved if the suites are vacant." However, the statute mandated consideration of whether the proposed renovations *required* vacancy, not whether they could be carried out *more efficiently* if the units were vacant. Justice Slade reasoned as follows:

> [27] The respondent submits that, given the nature and extent of the renovations to each rental unit, the decision of the arbitrator was not patently unreasonable. In the circumstances, I cannot give effect to this argument. The arbitrator did not consider whether the renovations to each rental unit required vacant possession. The court's role on this judicial review is to

> determine whether, on an application of the appropriate standard of review, the arbitrator's decision will be set aside. The court is not able to determine, *de novo*, whether vacant possession is required.
>
> [28] I find that the decision of the arbitrator was patently unreasonable as based on irrelevant considerations.

[51] The holding in *Allman* was summarized in the following way by Willcock J.A. in *Aarti*, at para. 26: "In my opinion, *Allman* is authority for the simple proposition an RTB decision is patently unreasonable if it does not address the criteria established in the *RTA* when determining whether a landlord may evict a tenant to do repairs or renovate." I find that the proposition, as articulated by Willcock J.A., applies equally to decisions that fail to consider the statutory criteria prescribed by the *RTA,* when determining whether a landlord may evict a tenant for breach of a material term of a tenancy agreement.

C. Discussion: Was the Decision patently unreasonable?

[52] Having carefully considered the matter, including the deference that must be shown specialized administrative decision-makers such as the Arbitrator in this case, as well as the high threshold circumscribing court intervention as set by the standard of patent unreasonableness, I must nevertheless conclude that the Decision is patently unreasonable. I agree with Mr. McLintock that while the Arbitrator considered s. 47(1)(h)(i), dealing with the breach of a material term of the tenancy agreement, he failed to independently assess and apply s. 47(1)(h)(ii) of the *RTA* which addresses the question of whether Mr. McLintock cured the breach within a reasonable time, as required by the enabling legislation. In not doing so, I find the Decision is rendered "openly, clearly and evidently unreasonable": *Manz* at paras. 37-39.

[53] The Arbitrator considered whether the form of April 8 Notice met the statutory notice requirements; he considered whether there was a material breach of the tenancy agreement; he considered the contents of the April 3 Letter which indicated the Landlord wished to be reasonable by giving Mr. McLintock two days "to negotiate a time of entry for the interior renovations." However, the Arbitrator did not apply s. 47(1)(h)(ii) of the *RTA*, which mandates an independent inquiry and assessment

of the question of whether Mr. McLintock corrected the situation (i.e. his refusal to allow the Landlord to enter his unit) within a reasonable time after the Landlord gave written notice that a material term of the tenancy agreement had been breached.

[54] Granted, the Arbitrator noted that Mr. McLintock did not respond within the two-day deadline. However, that fact begs the question of whether that two-day time frame was reasonable. The Arbitrator was obliged to address the specific criterion mandated by s. 47(1)(h)(ii) of whether Mr. McLintock corrected the situation within a reasonable time, but he did not. By failing to do so, his Decision must be found to be patently unreasonable: *Aarti* at para 26.

[55] Applying the provision in s. 47(1)(h)(ii) requires more than noting that a deadline for curative action that was imposed by a landlord was not adhered to by the tenant; again, this statutory criterion must be applied and assessed objectively and independently by the arbitrator in light of all the circumstances before him or her. That is, s. 47(1)(h)(ii) required the Arbitrator to assess whether the time dictated by the Landlord was reasonable, given all the circumstances before him, including Mr. McLintock's specific circumstances including, for example, his advanced age, his disability, and his status as a long-term resident. Surely, a consideration of Mr. McLintock's disability and what efforts were made at accommodation is necessarily required in assessing whether the two-day deadline imposed by the Landlord was reasonable. I would also note that the record before the Arbitrator confirmed that the renovation work involved moving furniture. In any event, these are examples of what might have informed the question of a "reasonable" time frame to correct the material breach.

[56] Additionally, when construing the meaning of a "reasonable time" under s. 47(1)(h)(ii), arbitrators must have in mind the remedial nature of the *RTA*: see *Interpretation Act*, R.S.B.C. 1996, c. 238 at s. 8. Courts in this province have, on a number of occasions, confirmed that one of the main purposes of the *RTA* is the protection of tenants: *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 27 at para. 11; *Henricks v. Hebert*, 1998 CanLII 1909 No. at

para. 55, [1998] B.C.J. No. 2745 (S.C.); *Blouin v. Stamp*, 2021 BCSC 411 at para. 32. In *Berry and Kloet*, Williamson J. expanded on this notion:

> [11] I start from the accepted rules of statutory interpretation. I conclude that the *Act* is a statute which seeks to confer a benefit or protection upon tenants. Were it not for the *Act*, tenants would have only the benefit of notice of termination provided by the common law. In other words, while the *Act* seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group . . .
>
> [Citations omitted]

Simply put, in discerning what constitutes a reasonable amount of time for a tenant to correct an alleged breach of a material term, arbitrators must also bear this protective purpose in mind.

[57] I would add that the March 29 Notice to evict was issued and posted on Mr. McLintock's door on March 29, 2019, the same day that the first entry was scheduled under the March 21, 2019 notice of entry. Simply put, the March 29 Notice was issued on the same day of the apparent material breach of the tenancy agreement (i.e., refusing entry and changing the locks). Although breach of a material term was not cited as the specific cause for eviction under s. 47 in the March 29 Notice, the Landlord nevertheless referred to this breach as the justification for its March 29 Notice to evict in its April 3 Letter: "As you are aware your refusal to permit this legal entry is a Material Breach of your Tenancy Agreement and consequently a One Month Notice to End Tenancy for Cause was served." Mr. A prerequisite for serving a valid notice of eviction for cause based on breach of a material term of a tenancy agreement is that the tenant be given advance notice that the landlord considers their conduct to be a material breach in writing. As between the March 29 Notice and the April 3 Letter, the proper order of operations (i.e, notice of material breach and then its correction) were reversed.

[58] Also, by the time the Arbitrator considered the question of whether the April 8 Notice should be cancelled, the First Arbitrator had already affirmed, on May 15, 2019, that the Landlord was entitled to enter Mr. McLintock's apartment and had made an order for entry. While I appreciate that the Landlord was entitled to pursue

two alternate remedies, entry and eviction, its actions beg the question of why it proceeded with its eviction proceedings in regard to a disabled and senior long-term tenant when it could have entered and completed the renovations before the second arbitration. Mr. McClintock had changed his locks back to the original locks by that time. Again, issue was not addressed.

[59] In regard to the issue of whether Mr. McLintock corrected the situation within a reasonable time, I note that he in fact allowed the Landlord to enter his apartment to make the necessary renovations some time ago. However, the circumstances surrounding that resolution are not before this Court. Nevertheless, the fact that the parties agreed on a time to complete the renovations raises the serious question of what purpose would be served by evicting a disabled senior at this time.

[60] In light of my conclusion that the Decision is patently unreasonable, I need not address the other grounds of judicial review advanced by Mr. McLintock.

D. The Appropriate Remedy

[61] As I have concluded the Arbitrator's Decision is patently unreasonable. I find that it should be set aside.

[62] The relief available in the circumstances before me is set out in the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 at ss. 2, 5 and 7. Sections 5 and 7 are of particular importance in this case:

> **Powers to direct tribunal to reconsider**
>
> 5 (1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application relates.
>
> (2) In giving a direction under subsection (1), the court must
>
> (a) advise the tribunal of its reasons, and
>
> (b) give it any directions that the court thinks appropriate for the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.
>
> …

> **Power to set aside decision**
>
> 7 If an applicant is entitled to a declaration that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may set aside the decision instead of making a declaration.

[63] In *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49, our Court of Appeal considered the permissive language of s. 5 of the *Judicial Review Procedure Act* and nonetheless concluded at para. 51 that:

> … the general rule is that where a party succeeds on judicial review, the appropriate disposition is to order a rehearing or reconsideration before the administrative decision-maker, unless exceptional circumstances indicate the court should make the decision the legislation has assigned to the administrative body…

[64] In the case before me, I see no exceptional circumstance which would justify making a decision which the enabling legislation assigned a specialized tribunal to make. The Arbitrator is best equipped to reconsider the circumstances before it and to complete the adjudication process in light of my Reasons for Judgment.

[65] While I have concluded that the Arbitrator's Decision is patently unreasonable, and it should therefore be set aside, the guiding authorities are clear that I ought not usurp the function of the RTB. Accordingly, the matter will be remitted back to the RTB to engage in an objective and independent application of s. 47(1)(h)(ii) to discern whether Mr. McLintock corrected the situation within a reasonable time after the landlord gave written notice, by considering all the relevant circumstances including Mr. McLintock's specific circumstances as a senior with a disability.

E. Disposition

[66] The Arbitrator's Decision is patently unreasonable and is set aside. This matter will be remitted back to the RTB for reconsideration in accordance with these Reasons for Judgment.

"MORELLATO J."

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Ryan v. Mole Hill Community Housing Society,* 2022 BCCA 200

Date: 20220608
Docket: CA47627

Between:

Phillip James Ryan

Appellant
(Petitioner)

And

Mole Hill Community Housing Society

Respondent
(Respondent)

Before: The Honourable Madam Justice Bennett
The Honourable Madam Justice Stromberg-Stein
The Honourable Madam Justice Fisher

On appeal from: An order of the Supreme Court of British Columbia, dated June 25, 2021 (*Ryan v. Mole Hill Community Housing Society*, 2021 BCSC 1668, Vancouver Docket S209128).

Counsel for the Appellant:	J.G. Blair K. Love
Counsel for the Respondent:	S.A. Douglas
Place and Date of Hearing:	Vancouver, British Columbia February 4, 2022
Place and Date of Judgment:	Vancouver, British Columbia June 8, 2022

Written Reasons by:
The Honourable Madam Justice Bennett

Concurred in by:
The Honourable Madam Justice Stromberg-Stein
The Honourable Madam Justice Fisher

Summary:

Appeal from dismissal of an application for judicial review of a decision of an arbitrator of the Residential Tenancy Branch. Held: Appeal allowed, matter remitted to arbitrator for reconsideration. The appellant, a tenant of a subsidized unit operated by the respondent, signed a tenancy agreement and an application for rent subsidy. His rent was raised from $510 to $1,530 on the basis that he no longer qualified for the subsidy. Although the tenancy agreement allowed for the rental amount to be adjusted in accordance with the respondent's operating agreement with BC Housing, the operating agreement was not put into evidence. The application for rent subsidy was not incorporated into the tenancy agreement because its terms were filled out after the appellant signed it, such that there was no meeting of the minds. It was patently unreasonable for the arbitrator to conclude that the rent increase was permissible and that he did not have jurisdiction to determine the rent payable under the tenancy agreement.

Reasons for Judgment of the Honourable Madam Justice Bennett:

Background

[1] Phillip Ryan is a tenant of a unit in a complex operated by the respondent, Mole Hill Community Housing Society ("Mole Hill"). The complex comprises 170 units in a mixed-income model, with the rent of some of the units being subsidized and geared to income while other units are low-end-market rate.

[2] On December 28, 2017, Mole Hill offered Mr. Ryan a unit, with his tenancy to begin on February 1, 2018. The offer letter advised that the rent for the unit would be assessed based on Mr. Ryan's income, once he provided Mole Hill with documentation in compliance with the guidelines of the British Columbia Housing Management Commission ("BC Housing").

[3] Mr. Ryan signed his lease agreement with Mole Hill on January 26, 2018 (the "Tenancy Agreement"). At the time, he was eligible for a rent subsidy and paid $551 in rent per month, consisting of $510 in rent and $41 in utilities.

[4] Two years later, on January 24, 2020, Mole Hill gave notice to Mr. Ryan that his monthly rent had been raised to $1,530 plus $55 in utilities, effective February 1, 2020, on the basis that he no longer qualified for the rent subsidy.

[5] Although Mr. Ryan paid the increased rent for February 2020 and March 2020, he applied to the Residential Tenancy Branch ("RTB") to recover the overpayment in his rent. Unsuccessful before the RTB, Mr. Ryan sought judicial review of the arbitrator's decision. In reasons indexed at 2021 BCSC 1668, the chambers judge dismissed his application for judicial review, leading to this appeal.

[6] For the reasons that follow, I would allow the appeal and refer the matter back to the RTB.

Facts

[7] Mr. Ryan's unit, as mentioned, was subsidized. When he signed his lease agreement, he also filled out an application for rent subsidy from BC Housing. According to that application, Mr. Ryan's primary source of income was income assistance, and both he and his daughter were listed as occupants of the unit. Although Mr. Ryan acknowledges that he signed that application, he argues that it did not form part of the Tenancy Agreement.

[8] While Mr. Ryan lived in the unit, he was engaged in ongoing divorce proceedings with his former spouse. In January 2019, following a 14-day trial, final orders were made in those family law proceedings. Among other matters, the judge made orders respecting the division of Mr. Ryan and his former spouse's parenting time and parental responsibilities with respect to their only daughter.

[9] As a result of those orders, Mole Hill adopted the position that Mr. Ryan's household composition had changed. Mole Hill relied on BC Housing's Program Guide, which counts a child as a permanent member of the household if they live in the unit at least 40 percent of the time.

[10] On January 17, 2020, Mole Hill apparently sent a letter to Mr. Ryan advising that its position was that Mr. Ryan breached the Tenancy Agreement by failing to provide documents confirming his household composition, which it alleged was also a requirement of the subsidy agreement between Mr. Ryan and BC Housing. This letter was not included in the materials on appeal.

[11] As mentioned, on January 24, 2020, Mole Hill provided Mr. Ryan with a notice of rent increase. Referencing its January 17, 2020 letter, Mole Hill opined that Mr. Ryan had still not provided the required information on his household composition since he had redacted portions of the copy of the January 2019 parenting time order. The letter stated further that "even the most generous consideration of the information which is visible confirms that [Mr. Ryan's] time with [his daughter] does not meet the threshold to qualify for subsidy". The letter concluded that Mole Hill wanted a "more complete copy" of the parenting time arrangement and that if Mr. Ryan could "demonstrate that this assessment is incorrect then [he] will qualify for subsidy once more".

[12] On January 30, 2020, Mr. Ryan brought an application in the Supreme Court of British Columbia, seeking an immediate injunction preventing Mole Hill from increasing his rent. Mole Hill disputed the court's jurisdiction, and this application was dismissed on February 7, 2020.

[13] On February 11, 2020, Mole Hill served Mr. Ryan a ten-day notice to end tenancy for unpaid rent or utilities. As a result, Mr. Ryan paid Mole Hill the $1,020 difference between his previous and new rent on February 13, 2020.

[14] On February 24, 2020, Mr. Ryan applied for dispute resolution with the RTB, seeking a monetary order for $1,020. On June 16, 2020, he amended his monetary claim to $2,040, as he again paid the disputed rent amount in March 2020.

[15] However, Mr. Ryan paid only his original rent amount in April 2020, May 2020, and June 2020. As a result, Mole Hill issued a notice of rent arrears in the amount of $3,060 for those three months on June 5, 2020.

[16] As outlined below, the RTB's decision was issued on July 7, 2020. Two days later, on July 9, 2020, Mole Hill served Mr. Ryan with a two-month notice to end his tenancy because he did not qualify for the subsidized rental unit. This notice was not included in the materials on appeal, but according to the arbitrator's decision (discussed below), Mole Hill's position again was that Mr. Ryan no longer qualified

for his subsidized two-bedroom unit because his household composition changed following his reduced parenting time with his daughter.

Procedural History

[17] There were two applications for dispute resolution before the RTB: Mr. Ryan's application for the monetary order for the overpayment of his rent and Mr. Ryan's application to cancel Mole Hill's two month notice to end his tenancy. Both applications resulted in subsequent decisions following applications for review consideration. For the sake of clarity, while the two proceedings overlapped in time, I will summarize the decisions on the monetary order first, then turn to the issue of the notice to end tenancy.

[18] The parties attended the first hearing on July 6, 2020 by conference call. The following day, on July 7, 2020, the arbitrator dismissed Mr. Ryan's application for a monetary order for the overpayment of his rent. After setting out the parties' positions, the arbitrator held:

> Section 67 of the [*Residential Tenancy Act*, S.B.C. 2002, c. 78] establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.
>
> I accept the affirmed evidence of both parties and find on a balance of probabilities that the tenant has failed to establish a claim for compensation of $2,040.00 for an overpayment of rent. A review of the signed tenancy agreement does provide for a rent of $510.00, however, I find that the tenant entered into a signed tenancy agreement with the landlord which is a landlord which operates under the Provincial Housing Program. The tenant also completed and signed a BC Housing Application for Rent Subsidy on the same date of January 26, 2018. In this document it is clear that the tenancy involves a rent subsidy. Calculations provided in part iv of that document show that the economic rent was $1,156.00; tenant's total rent contribution was $551.00 and that there was a rent subsidy of $646.00. On this basis, I find that the tenant has failed to provide sufficient evidence that there was an overpayment of rent. The tenant's monetary claim is dismissed.
>
> On the issue of a finding regarding the tenant's current rent rate, I find that I do not have jurisdiction for this matter. The landlord operates under the

> guidance of BC Housing and tenant rent contributions are determined in keeping with their guidelines. This portion of the tenant's application is dismissed.

[19] On July 20, 2020, Mr. Ryan submitted a request for correction, alleging a number of obvious and inadvertent errors. The same day, he applied for review consideration, taking the position that Mole Hill had obtained the decision by fraud. He argued that the application for rent subsidy that was before the arbitrator was not the document that he signed, as the portion of the form setting out his and BC Housing's respective contributions to the rent was filled in by Mole Hill afterwards.

[20] On July 21, 2020, the arbitrator issued his decision on the request for correction. He corrected the obvious errors, which misstated the amount of the security deposit and the parties' positions. However, he declined to correct the "inadvertent" errors of failing to consider all the evidence, finding that he did not have jurisdiction to determine Mr. Ryan's current rent and failing to consider Mr. Ryan's testimony that he was unaware of the amount of the subsidy when he signed the subsidy agreement. The arbitrator found that those amounted to attempts to reargue the application, provide new evidence and change the original decision.

[21] On August 20, 2020, a different arbitrator confirmed the original decision and dismissed Mr. Ryan's application for a review consideration on the basis of fraud. The arbitrator reasoned:

> In this case, a copy of a signed rent subsidy application dated January 2, 2018, was submitted as evidence at the original hearing along with a signed tenancy agreement dated January 26, 2018. The tenant indicates that this rent subsidy application was not a copy I [*sic*] signed. The tenant did not provide a copy of the document that they said to have signed for my consideration. Therefore, I cannot determine fraud.
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> I have read the further submission of the tenant; however, the tenant has not provided any evidence of fraud. The tenant has submitted a blank copy of Application for rent subsidy for 2020, this does not support fraud. This was simply a document printed off a website.
>
> The tenant further provides a letter which was dated December 28, 2017. This letter simply stated that the tenants rent will be assessed based on your income. This again does not prove the decision was obtained by fraud. This supports that rent is based on income, under subsidy program which the rent

> is determined by BC housing and the amount of rent is not for our consideration.
>
> Based on the above, I find the tenant has failed to prove the decision was obtained on fraud. The Arbitrator heard evidence from both parties and made a decision based on the evidence present. Therefore, I dismiss the tenant's application for review consideration.

[22] I turn now to the notice to end tenancy, which I review in less detail as it is not at issue on this judicial review. As mentioned, the notice was issued by Mole Hill on July 9, 2020, two days after the first decision on the alleged overpayment of rent. The hearing before the arbitrator was on August 28, 2020, and the first decision was issued on August 31, 2020. The relevant portion is the arbitrator's finding that Mole Hill had failed to prove, on a balance of probabilities, that Mr. Ryan's daughter resided in the unit less than 40 percent of the time:

> In order to accept the landlord's conclusion that the tenant's child resides in the rental unit less than 40% of the time, I would need to disregard the additional correspondence between the parties, the tenant's testimony and the portion of the court order stating that the parties are at liberty to agree to other parenting time arrangements in writing. I find that I am not satisfied that the landlord has established the basis for their issuance of the 1 Month Notice [*sic*] on the basis of a single court order issued over a year ago. It is reasonable that a court order pertaining to parental time would be modified by the parties as the child's needs changes over time. I find that this would be especially so for a young child whose needs and circumstances change rapidly.
>
> While I accept that the tenant has provided the landlord with limited information and documentation regarding their household composition, I find that what information has been submitted does not sufficiently support the conclusion that the tenant no longer qualifies for the rental unit. I find that the portion of the court order of January 2019 dealing with regular parenting time does not outweigh the correspondence from the tenant explaining their present parenting arrangements, the correspondence from the family doctor and Canada Revenue Agency and the testimony of the tenant. Viewed in its entirety I find that the landlord has not met their evidentiary burden to establish that there is a basis for the tenancy to end.

[23] On September 8, 2020, Mole Hill applied for a review consideration, both on the basis that there was new and relevant evidence and because it alleged that the original decision was obtained by fraud. The arbitrator rejected the new evidence, as Mole Hill was aware of it during the original hearing, but found that fraud was established based on the testimony of Mr. Ryan's ex-wife. On December 20, 2020,

the arbitrator clarified the decision to say that rather than fraud being established, it was capable of being established if Mole Hill's evidence was accepted as credible.

[24] The review hearing was held on February 16, 2021, and the decision was issued on February 18, 2021. The arbitrator confirmed the original decision and found there was no fraud "but merely a case of laypeople using different terminology to describe the same situation". The arbitrator concluded:

> I do not find the submission of the Tenant at the original hearing that they maintain parenting time of 40% to be false information or a deliberate attempt to obfuscate. If the Tenant's statements were that their child was staying overnight with them on dates that they were not, that would certainly be a falsehood but that was not the submission of the tenant at the original hearing. I find that the Tenant has provided a cogent explanation of the factual basis for their statements and their calculation of parenting time.
>
> Based on the totality of the evidence before me, I am unable to find that the information submitted by the Tenant at the original hearing was false such that it would give rise to a basis for a review. I find that the information submitted by the Tenant at the original hearing is not contradicted by the affidavit evidence now submitted by the Landlord. Where there are discrepancies I find these to not be false information provided for the intention of misleading the Tribunal but a sincere difference in the interpretation and characterization of the same underlying facts.

The Decision Below

[25] Concurrent to the RTB proceedings with respect to the notice to end tenancy, Mr. Ryan applied for judicial review of the overpayment decisions. On September 4, 2020, he filed a petition seeking to set aside the decisions of the RTB and obtain an order for $2,040. He argued that the original decision was patently unreasonable for wrongfully declining jurisdiction over the question of his current rent amount, being internally inconsistent on the issue of jurisdiction, not being reasonably supported by the evidence, and being based on an incoherent chain of analysis. He submitted that the decision was inconsistent with the finding that Mole Hill had not proved, on a balance of probabilities, that Mr. Ryan's daughter did not reside with him for sufficient time for him to qualify for the subsidy.

[26] On October 2, 2020, Mole Hill filed its response. It took the position that it was plain and obvious that there was no reasonable cause of action, as Mr. Ryan could

not establish that the decisions were patently unreasonable. It argued further that special costs should be ordered, as it alleged that Mr. Ryan sought judicial review only to avoid paying the increased rent.

[27] The chambers judge dismissed the application for judicial review with the following reasons:

> [13] With respect to the overpayment issue, Mr. Ryan and Mole Hill both advanced possible interpretations of the relevant clauses of the tenancy agreement. The arbitrator preferred Mole Hill's interpretation and gave intelligible and transparent reasons for doing so based on the evidence before the tribunal. The conclusion followed logically from the analysis. The Decision was not patently unreasonable in this respect.
>
> [14] With respect to the second issue, the arbitrator's reasoning is sparse. The petitioner argues, with some force, that it is logically inconsistent for a decision maker to say they have the power to decide whether there has been an overpayment of rent, which implicitly entails a determination of what the rent was, and also to say that they have no power to determine the "tenant's current rent rate." However, as [*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65] and many other cases have directed, a review in court must treat the Decision as a whole and must refrain from holding administrative tribunals to judicial standards of reasoning.
>
> [15] Applying this approach, I do not understand the arbitrator to be questioning their jurisdiction to determine the rental rate for the purposes of a past overpayment which they had just exercised. Rather, I read the arbitrator as saying that the RTB does not have jurisdiction to determine a rental rate going forward because of the variation provisions in the tenancy agreement that reference BC Housing guidelines. An RTB arbitrator does not have jurisdiction to establish a rental rate that would preclude or supersede operation of these provisions. I note that s. 2 of the Residential Tenancy Regulation exempts from the rental increase restrictions in the Act any rental units whose rent is related to a tenant's income.
>
> [16] I find that the Decision was not patently unreasonable in this respect. In conclusion, the petition is dismissed. That concludes my reasons.

Issues

[28] On appeal, Mr. Ryan argues that the decision of the RTB was patently unreasonable in three ways:

a) By finding that there was no overpayment of rent when neither the evidence nor any interpretation of the Tenancy Agreement could support the increased rent;

b) By providing unintelligible and internally inconsistent reasons that failed to adequately explain the basis for the decision; and

c) By finding that the RTB had no jurisdiction to interpret the rent payable under the Tenancy Agreement.

Standard of review

[29] Pursuant to ss. 5.1 and 84.1 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*], the RTB is governed by the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*]:

> 5.1 Sections 1, 44, 46.3, 48, 56 to 58 and 61 of the *Administrative Tribunals Act* apply to the director as if the director were a tribunal and to dispute resolution proceedings under Division 1 of Part 5, reviews under Division 2 of Part 5 and the imposition and review of administrative penalties under Part 5.1.
>
> …
>
> 84.1(1) The director has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in a dispute resolution proceeding or in a review under Division 2 of this Part and to make any order permitted to be made.
>
> (2) A decision or order of the director on a matter in respect of which the director has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

[30] Section 84.1 of the *RTA* is a privative clause within the meaning of s. 58(1) of the *ATA*, such that the standards of review under ss. 58(2) and (3) apply:

> 58(2) In a judicial review proceeding relating to expert tribunals under subsection (1)
>
> > (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
> >
> > (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
> >
> > (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.

> (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
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> (a) is exercised arbitrarily or in bad faith,
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> (b) is exercised for an improper purpose,
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> (c) is based entirely or predominantly on irrelevant factors, or
>
> (d) fails to take statutory requirements into account.
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> [Emphasis added.]

[31] The parties do not dispute that the standard of review is patent unreasonableness, and the RTB is considered an expert tribunal. A patently unreasonable decision is sometimes described as "clearly irrational", or "evidently not in accordance with reason": e.g., *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52; *Beach Place Ventures Ltd. v. (British Columbia) Employment Standards Tribunal*, 2022 BCCA 147 at paras. 15–17.

[32] The test on appellate review of a judicial review decision is set out in *Dr. Q. v College of Physicians and Surgeons of BC*, 2003 SCC 19 at 43:

> The Court of Appeal stated that "[t]he standard that we must apply in assessing the judgment of Madam Justice Koenigsberg is whether in her re-weighing of the evidence she was clearly wrong" (para. 25). This is not the appropriate test at the secondary appellate level. The role of the Court of Appeal was to determine whether the reviewing judge had chosen and applied the correct standard of review, and in the event she had not, to assess the administrative body's decision in light of the correct standard of review, reasonableness. At this stage in the analysis, the Court of Appeal is dealing with appellate review of a subordinate court, not judicial review of an administrative decision. As such, the normal rules of appellate review of lower courts as articulated in *Housen*, *supra*, apply. The question of the right standard to select and apply is one of law and, therefore, must be answered correctly by a reviewing judge. The Court of Appeal erred by affording deference where none was due.

[33] There is no dispute that the chambers judge chose the correct standard of review: patent unreasonableness.

[34] Having chosen the correct standard of review, the issue is whether she applied it correctly. Again, no deference is owed, as this Court will effectively step into the shoes of the lower court and focus on the administrative decision under

review: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para. 46.

[35] In my view, the judge did not correctly apply the standard of review, and I would remit the matter to the RTB. The reasons, while transparent, were not intelligible. The arbitrator and the chambers judge failed to consider both the content of the material that was presented at the hearing, and the lack of material. They concluded that the rent now payable was $1,530 when there was no evidence supporting that conclusion. A conclusion based on no evidence is a patently unreasonable decision: e.g., *Metro Vancouver (Regional District) v. Belcarra South Preservation Society*, 2021 BCCA 121 at paras. 45–60.

[36] The evidence before the arbitrator (and reviewing arbitrator) consisted of the Tenancy Agreement, which set out Mr. Ryan's rent as $510.00 and a utility charge of $41.00:

> 3. Rent
>
> a. The Rent for the Rental Unit is $ 510.00 per month.
>
> The Rent will be adjusted from time to time in accordance with our Operating Agreement with BC Housing.
>
> Utility charge is $ 41.00 per month. This charge may be adjusted from time to time.
>
> [Emphasis added.]

Despite the reference to the rent being adjusted from time to time in accordance with Mole Hill's Operating Agreement with BC Housing, the Operating Agreement was not in evidence before the RTB and did not form any part of the record before the chambers judge or this Court.

[37] The Tenancy Agreement also had the following paragraph in relation to rent:

> 18. Rent
>
> a. The Rent for the Renal Unit is $ 551.00 a month. The Tenant is responsible for the full Rent as stated above or the Tenant Rent Contribution (30% of gross income) if eligible for a Rent Subsidy.
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> b. If the Tenant is eligible to receive a Rent Subsidy the Tenant agrees;

i. To complete and sign a declaration stating the number of occupants in the Rental Unit, their names, birth dates, gross incomes and assets on the form provided by the Landlord at least once in every twelve (12) month period and from time to time as required by the Landlord.

ii. To provide proof of income and assets with such declaration and;

iii. That the declaration and information will form part of this Tenancy Agreement.

[38] As mentioned, Mr. Ryan also had to complete the application for rent subsidy from BC Housing, but he says he had to sign it before the numbers for the calculation of the subsidy were filled out. That form included the following provisions:

3. By itself this Application/agreement does not constitute a tenancy agreement or other right to occupy, but it may be attached to and/or be part of a tenancy agreement or other right to occupy.
4. The applicant:
   - Agrees to promptly provide or cause to be provided such information and documentation as is requested by the landlord/BC Housing to determine the applicable Tenant Rent Contribution, or for audit purposes.
   - Consents to the landlord or BC Housing verifying personal information, as defined in the *Freedom of Information and Protection of Privacy Act* [R.S.B.C. 1996, c. 165], which consent is required by that Act to enable the landlord/BC Housing to carry out its audit function.
   - Agrees that if they fail to disclose or misrepresent any information requested by the landlord/BC Housing to allow the landlord/BC Housing to determine the applicable Tenant Rent Contribution or for audit purposes, such failure or misrepresentation will allow the landlord to end the applicants right to occupy the premises and will allow the landlord/BC Housing to recover from the applicant in contract or otherwise all moneys paid to the applicant by the landlord/BC Housing as a result of the misrepresentation or failure to disclose information as requested. This remedy is not exclusive and may be exercised by the landlord/BC Housing in addition to any other remedies available to the landlord/BC housing in law or equity.

…

[39] That form also set out the economic rent at $1,156.00, the rent and utilities payable by Mr. Ryan at $551.00 and the amount of his subsidy at $646.00. Nowhere in that document does the figure of $1,530 (plus utilities) appear. The only reference

to this amount is contained in Mole Hill's submission to the RTB that explains the rent increase on the basis of Mr. Ryan's unit being re-designated as a Low-End-Market (LEM) suite where a subsidized tenant no longer qualifies for subsidy.

[40] Tenancy agreements are contracts. As this Court recently discussed in *Belmont Properties v. Swan*, 2021 BCCA 265:

> [28] There is no doubt that a residential tenancy agreement is a contract. In this case, provided the addendum complies with the *RTA*, its meaning is subject to common law principles of contractual interpretation. I agree with the chambers judge that the appropriate first step for the arbitrator was to attempt to interpret the addendum.
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> [29] In *Cannacord Genuity Corp. v. Reservoir Minerals Inc.*, 2019 BCCA 278, Justice Groberman succinctly summarized the basic principles of contractual interpretation as follows:
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> > [19] The basic process for contractual interpretation was outlined by the Supreme Court of Canada in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53:
> >
> > > [47] … The overriding concern is to determine "the intent of the parties and the scope of their understanding". To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning….
> >
> > > [48] The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement.…
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> > > …
> >
> > > [57] While the surrounding circumstances will be considered in interpreting the terms of a contract, they must never be allowed to overwhelm the words of that agreement. The goal of examining such evidence is to deepen a decision-maker's understanding of the mutual and objective intentions of the parties as expressed in the words of the contract. The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract. While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement.
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> > > [Citations omitted.]

[41] The dispute before the arbitrator was in relation to the Tenancy Agreement. Rather than considering the terms of the contract, the arbitrator concluded that because Mole Hill operates under a “Provincial Housing Program”, and Mr. Ryan signed the subsidy application, there was no overpayment.

[42] Mr. Ryan signed a Tenancy Agreement that set his rent at $510 per month, plus utilities. The subsidy agreement, which was signed in blank by Mr. Ryan, contained the figure for economic rent of the apartment, which was $1,156 per month. The figure for rent now demanded by Mole Hill is $1,530 per month, which does not appear in any of the agreements that were signed by Mr. Ryan. While the Tenancy Agreement allowed for the rent to be adjusted in accordance with the Operating Agreement with BC Housing, that Operating Agreement was never put into evidence.

[43] The only document that refers to the “economic rent” is the application for rent subsidy, which Mr. Ryan was required to sign before the document was filled in. There is no acknowledgement, perhaps by way of initials, that he agreed to the economic rent figure in the subsidy application, or that he was even aware of it. Therefore, despite the wording on the subsidy application allowing it to be attached or otherwise a part of a tenancy agreement, that application could not be part of this Tenancy Agreement because there was no meeting of the minds on the evidence.

[44] The documents provided to the arbitrator do not support a conclusion that Mr. Ryan agreed to pay $1,530 per month if he was no longer eligible for the rent subsidy. (I note parenthetically, that the issue of whether he remained eligible for the subsidy was not before us, and as outlined above, it has been resolved in his favour in the other proceedings before the RTB.)

[45] The arbitrator failed to interpret the contract. When the contract is considered, there is no evidence supporting the arbitrator’s conclusion, leading to a patently unreasonable decision. I would give effect to this ground of appeal.

Arbitrator's reasons

[46] In my view, this ground is subsumed by the first ground, and I do not need to address it.

Jurisdiction

[47] The arbitrator was asked to interpret the Tenancy Agreement and the application for rent subsidy to determine Mr. Ryan's rent. The arbitrator said:

> On the issue of a finding regarding the tenant's current rent rate, I find that I do not have jurisdiction for this matter. The landlord operates under the guidance of BC Housing and tenant rent contributions are determined in keeping with their guidelines. This portion of the tenant's application is dismissed.

[48] Again, in my view, the chambers judge incorrectly applied the standard of review. The original arbitrator and the reviewing arbitrator misunderstood the issue before them. The arbitrator was not being asked to set the rent for Mr. Ryan—that is indeed the decision of Mole Hill, in conjunction with BC Housing. He was being asked to interpret the Tenancy Agreement to determine what the rent is under the agreement, not in the future.

[49] Therefore, his decision that he did not have jurisdiction to consider that question was patently unreasonable. He did not address the question he was asked to address, and that he had jurisdiction to decide. I would also give effect to this ground of appeal.

Conclusion

[50] In my view, the chambers judge erred in the application of the standard of review. This Court does not owe her deference. I am of the opinion that the

arbitrator's decision on both issues was patently unreasonable, and I would refer the matter back to the arbitrator for reconsideration.

"The Honourable Madam Justice Bennett"

I AGREE:

"The Honourable Madam Justice Stromberg-Stein"

I AGREE:

"The Honourable Madam Justice Fisher"

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *LaBrie v. Liu,*
2021 BCSC 2486

Date: 20211222
Docket: S216210
Registry: Vancouver

Between:

Pamela LaBrie

Petitioner

And

Chee Tho (aka Frank) Frank Liu

Respondent

Before: The Honourable Madam Justice Matthews

Reasons for Judgment

Counsel for the petitioner:	D. Sabelli
Counsel for the respondent:	C. Chevalier
Place and Date of Hearing:	New Westminster, B.C. October 6, 2021
Place and Date of Judgment:	Vancouver, B.C. December 22, 2021

Overview

[1] A Residential Tenancy Branch arbitrator confirmed a notice to end tenancy issued by the respondent Frank Liu to the applicant, Pamela LaBrie, after Ms. LaBrie attempted to pay her rent on time and in the full amount through an electronic transfer. Due to unexplained events between the transmission of the electronic transfer and Mr. Liu's deposit of it, he deposited it nine days later and one dollar short.

[2] Ms. LaBrie seeks an order overturning the decision of the arbitrator, made pursuant to the *Residential Tenancy Act*, S.B.C. 2002, c.78, on the basis that the hearing was procedurally unfair and the decision was patently unreasonable. She asserts that the arbitrator reversed the burden of proof by basing his decision on her lack of documentary evidence that she paid the rent in full and on time instead of requiring Mr. Liu to prove that. She also asserts that the decision was patently unreasonable because Mr. Liu had accepted payment of rent that was one dollar short on each of the four previous months and had thereby acquiesced to the shortfall, but the arbitrator did not consider the doctrine of equitable estoppel. Ms. LaBrie also argues that the arbitrator unfairly dismissed her claim for monetary compensation with regard to Mr. Liu's repeated attempts to evict her and her daughter. Ms. LaBrie asserts that the arbitrator rushed her during the hearing, preventing her from fully presenting her claim for monetary compensation.

[3] Mr. Liu does not challenge that he received all but one dollar of the payment at a time that would render his notice to end the tenancy ineffective had the payment been made in the full amount. He submits that he proved that Ms. LaBrie did not pay the full amount of her rent and that he was entitled to the order he received. He submits that Ms. LaBrie had notice that the rent he received was a dollar short by the time the Residential Tenancy Branch hearing commenced, but did not bring documentation to prove that she had paid the full amount.

[4] Ms. LaBrie sought to review the original arbitrator's determination and submit documentary evidence that she paid the full amount by electronic transfer on the

date the rent was due but unbeknownst to her a one dollar service charge was levied (she does not know whether it was by her bank or Mr. Liu's bank). The review arbitrator did not permit her to lead the evidence because it was evidence available to her at the time of the original hearing and dismissed the review.

[5] The issues are:

a) whether the hearing before the arbitrator was procedurally unfair because:

   i. the arbitrator reversed the burden of proof; and

   ii. Ms. LaBrie was rushed by the arbitrator during the hearing; and/or

b) whether the decision of the arbitrator was patently unreasonable because:

   i. the arbitrator reversed the burden of proof;

   ii. the arbitrator failed to consider equitable estoppel; and/or

   iii. the arbitrator failed to exercise discretion to consider whether it was reasonable to end the tenancy for unpaid rent.

c) if the decision was patently unreasonable or fails for want of procedural fairness, whether the appropriate remedy is to set aside the orders and substitute an order cancelling the notice of end of tenancy or remit the matter to the Residential Tenancy Branch, staying the order of possession until the determination; and

d) if I dismiss the petition, whether I should grant Ms. LaBrie a two-month extension of the order of possession in order for her to find new accommodation.

[6] For the reasons that follow, I have concluded that the arbitrator reversed the burden of proof and failed to consider equitable estoppel. As a result, Ms. LaBrie did not receive a fair hearing and the decision was patently unreasonable. I remit the

matter to the Residential Tenancy Branch for redetermination and stay the order of possession until the matter has been determined.

Procedural Fairness

Legal Principles

[7] Section 58(2)(a) of the *Administrative Tribunals Act,* S.B.C. 2004, c. 45 provides that findings of fact or law, or exercises of discretion by directors or dispute resolution officers in respect of matters within their exclusive jurisdiction, are reviewable on a standard of patent unreasonableness. Section 58(2)(b) of the *Administrative Tribunals Act* requires that questions concerning an application of common law rules of natural justice and procedural fairness must be decided by consideration of whether, in all of the circumstances, dispute resolution officers acted fairly. See also *Gichuru v. Palmar Properties Inc.,* 2011 BCSC 827 at paras. 30-31.

[8] Procedural fairness requires that a party to an administrative proceeding has the right to be heard, the right to know the case they are required to meet, and the right to a hearing before an impartial decision maker: *McDonald v. Creekside Campgrounds and RV Park*, 2020 BCSC 2095 at para. 28. The content of **procedural fairness** goes to the manner in which the decision-maker went about making the decision: *Therrien (Re)*, 2001 SCC 35, [2001] 2 S.C.R. 3 at para. 82; and *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539 at para. 102.

[9] A decision that was reached in an unfair process cannot stand: *Ndachena v. Nguyen*, 2018 BCSC 1468 at para. 55, citing *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 S.C.R. 817. In *Ndachena* Justice Sewell set out a non-exhaustive list relevant to determining the content of the duty of fairness:

1) the nature of the decision being made and process followed in making it;
2) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates;

3) the importance of the decision to the individual or individuals affected;

4) the legitimate expectations of the person challenging the decision; and

5) the choices of procedure made by the agency itself.

Whether the Arbitrator Reversed the Burden of Proof

[10] A landlord is permitted to end a residential tenancy for certain statutorily specified reasons, one of which is non-payment of rent: s. 46(1) of the *Residential Tenancy Act*. The landlord may end the tenancy by giving notice that it has ended on any day that rent is unpaid after it is due. If the tenant responds by paying the overdue rent within five days, the notice has no effect.

[11] The tenant is permitted to dispute a notice to end tenancy with the Residential Tenancy Branch. The landlord bears the burden to prove that it has the right to end the tenancy under the *Residential Tenancy Act.* The tenant, who is the applicant, must submit his or her evidence no less than 14 days prior to the hearing. The landlord is required to provide its documentary evidence no less than 7 days prior to the hearing.

[12] Accordingly, under the *Residential Tenancy Act*, the party with the burden of proof provides its documentary evidence after the party who does not have the burden of proof.

[13] This case arose in March 2021, when Ms. LaBrie was required to pay $1,508.00 in monthly rent on the first of each month and $829.00 on repayment plan for unpaid rent during the COVID-19 state of emergency pursuant to the *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation*, for a total of $2,337.00. Ms. LaBrie asserts she paid that amount by electronic transfer on March 1, 2021. Mr. Liu asserts that she paid it late such that he did not deposit it until March 10, 2021 and it was one dollar short.

[14] By the time of the hearing before the arbitrator, there was no dispute that Mr. Liu had received all but one dollar of the rent in a time which would render his notice to end the tenancy ineffective.

[15] However, at the time she received the notice to end tenancy, Ms. LaBrie could not have had a clear understanding of what was in dispute. The notice, dated March 8, 2021, stated that Ms. LaBrie had failed to pay rent in the amount of $2,337.00. It was therefore logical that Ms. LaBrie concluded that Mr. Liu was asserting that she had not paid her rent at all.

[16] Ms. LaBrie filed her notice of dispute on March 11, 2021, asserting that she had paid the rent by electronic transfer on March 1, 2021. In her notice, she asserted that Mr. Liu had served her five eviction notices in an 18-month period and she found the process of responding to them arduous, stressful and unreasonable. She referred to a “history of unlawful eviction notices”. She sought compensation based on bad faith service of eviction notices directed towards herself as a legally blind single parent and her ten year old daughter.

[17] As noted, Ms. LaBrie was required to deliver her documentary evidence before Mr. Liu was required to do so. She did not submit any documentary evidence with her dispute notice other than the notice to end tenancy with which she had been served and the proof of service of it. However, in her notice to dispute she set out what became her *viva voce* evidence that she paid the rent on March 1, 2021 by electronic transfer.

[18] On May 22, 2021, Mr. Liu sent Ms. LaBrie his material by registered mail, which is an authorized service method. In it, Mr. Liu appended an email he sent on March 6, 2021 in which he threatened to evict Ms. LaBrie if the rent was not paid by March 7, 2021. He also appended a bank statement showing that he deposited $2,336.00 on March 10, 2021 and bank statements of previous months showing rent in the same amount (one dollar short) deposited to his bank account on dates after the rent was due. He stated that she consistently paid one dollar less per month than

what she owed. He did not state when he received notice of the March 2021 electronic transfer (as opposed to when he deposited it).

[19] At the hearing, Ms. LaBrie asserted that she had not received Mr. Liu's material or the registered mail slip because she had been in and out of the hospital in the months prior to the hearing. The arbitrator found that she did not have the material because she had not picked up her mail.

[20] It cannot be disputed that Ms. LaBrie did not know the nature of Mr. Liu's complaint at the time she prepared her material for submissions (which, as noted, she had to do before Mr. Liu delivered his). Given the context that she asserts, i.e. that it was a fairly regular occurrence for Mr. Liu to issue notices to end Ms. LaBrie's tenancy, it appears that she approached this notice as just another of many and simply asserted that she had paid the rent on time but did not support it with documentary evidence.

[21] However, those circumstances do not explain her assertion that she still did not know the true nature of the complaint by the time of the hearing. That appears to be because she did not pick up her mail.

[22] This becomes significant because at the hearing, the arbitrator heard her evidence that she paid the rent in the full amount on time. He stated that he did not find it persuasive because it was unaccompanied by documents supporting it. He accepted Mr. Liu's documentary evidence that he deposited an amount that was short one dollar on March 10, 2021. He also accepted that Ms. LaBrie had made several payments in a row that were one dollar short.

[23] While Ms. LaBrie argued that she did not have Mr. Liu's materials before the hearing and that affected its fairness because she was not prepared to lead evidence on the one dollar short issue, the focus of her submissions on procedural fairness is that regardless of why she did not lead evidence, the arbitrator used her lack of evidence to find that she had not paid the full amount of rent on time, instead of considering whether Mr. Liu had discharged his burden of proof in that regard. Ms.

LaBrie's assertion that she did not know about the one dollar short issue until the hearing is an explanation as to why she took the approach to what evidence she led and did not lead at the hearing.

[24] In asserting want of procedural fairness, Ms. LaBrie relies on *Ndachena*, in which Justice Sewell found a breach of procedural fairness when an arbitrator made reference to documents of estimates and photographs submitted to him that were not in the record and which the petitioners asserted were not provided to them prior to the hearing.

[25] In this case, the arbitrator does not refer to any evidence about when Mr. Liu received the electronic transfer. Accordingly, there is no evidence referred to by the arbitrator that is contrary to Ms. LaBrie's *viva voce* evidence that she sent the electronic transfer on time in the full amount. There is no record of evidence that Mr. Liu led to discharge his burden of proof that she paid less than the full amount of rent and paid it late.

[26] The arbitrator based his decision on the evidence of the deposit nine days after the rent was due for one dollar less than the full amount and Ms. LaBrie's failure to deliver any documentary evidence. The key passages of the arbitrator's reasons are at pages 4-5:

> I accept the undisputed evidence of the parties that the monthly rent of this tenancy is $1,508.00 and that the tenant is obligated to pay $829.00 pursuant to a valid repayment plan. I am satisfied that the landlord's evidence by way of their monthly banking statements that the tenant paid an amount of $2,336.00, one dollar less than the required amount of $2,337.00, on March 10, 2021.
>
> While the tenant submit that they paid the full amount required on March 1, 2021, I find little documentary evidence in support of their testimony. If the tenant initiated an electronic fund transfer on the first of the month as they claimed for the amount it would be reasonable to expect that the tenant could provide some documentary materials of banking statements to support their claim. None was provided. I find the tenant's submissions, unsupported by any evidence, to not be particularly persuasive.
>
> Based on the totality of the evidence I am satisfied that the landlord has met their evidentiary onus on a balance of probabilities to demonstrate that the tenant failed to pay the full amount of rent and repayment on March 1, 2021. I

> further accept that the tenant did not pay the arrear in full within 5 days of service of the 10 Day Notice, paying only a portion but withholding $1.00.

[27] The arbitrator's choice of language is telling. In addition to not referring to any evidence as to the timing of the receipt of the electronic transfer, thus demonstrating that he was not considering Mr. Liu's burden of proof, he refers to Ms. LaBrie as failing to provide documentary evidence to "support their claim". On this issue, she did not have a claim in the sense of being required to prove anything.

[28] I conclude that the arbitrator reversed the burden of proof. He did not require Mr. Liu to prove that Ms. LaBrie had not paid the full amount on time. He accepted proof of a deposit of an electronic transfer, which is not proof of the date the transfer was sent or received. He accepted the amount of the deposit as proof of the amount that Ms. LaBrie transferred without receiving evidence from Mr. Liu as to the amount he was notified was electronically transferred to him or whether any bank had levied a service charge to explain the difference. That evidence does not amount to evidence that Ms. LaBrie did not pay the full amount.

[29] Ms. LaBrie attempted to counter Mr. Liu's evidence of the date and amount of deposit with her *viva voce* evidence that she electronically transferred the full amount on March 1, 2021. While Ms. LaBrie's evidence may have been enhanced by the documentary evidence she did not bring at the first hearing, the arbitrator did have her *viva voce* evidence, but did not take it into account. There was no evidence led by Mr. Liu that was contrary to Ms. LaBrie's evidence.

[30] It is apparent from his statement that Ms. Labrie's submissions were not supported by any evidence and not particularly persuasive, the arbitrator disregarded or rejected Ms. LaBrie's *viva voce* evidence that she sent an electronic transfer in the full amount on March 1, 2021.

[31] In *Djakovic v. British Columbia (Workers Compensation Appeal Tribunal*), 2010 BCSC 1279 at para. 63, the court held a decision procedurally unfair where the decision-maker found there was no evidence when there was evidence in the record on the point. The decision to reject relevant evidence can impact the fairness of a

proceeding: *Crest Group Holdings Ltd. v. British Columbia (Attorney General),* 2014 BCSC 1651 at para. 38, citing *Université du Québec à Trois-Rivières v. Larocque,* [1993] 1 S.C.R. 471 (S.C.C.) at para. 46.

[32] The arbitrator did not provide an adequate reason for rejecting or disregarding Ms. LaBrie's *viva voce* evidence. The only reason he provided was the lack of documentary evidence to support it. Because that amounts to a reversal of the burden of proof, it is not an adequate reason.

[33] Returning to the *Ndachena* factors and the contextual approach to procedural fairness, I observe as follows. This hearing was about eviction of a vulnerable person. The *Residential Tenancy Act* seeks to protect tenants from arbitrary evictions, as evidenced by provisions that require thresholds of tenant misconduct that is significant or unreasonable to support eviction: *Residential Tenancy Act*, s. 47(1)(d)(i) and s. 49.2 (1)(b). At the hearing, the central allegation, and the only one on which the arbitrator upheld the eviction, was that the rent was one dollar short. The arbitrator found that Ms. LaBrie withheld the one dollar without any evidence of that. He rejected or disregarded her evidence that she paid the full amount without providing an adequate reason for rejecting or disregarding it.

[34] The facts of this case cry out for the answer to the question: why was the amount deposited by Mr. Liu a dollar short? The arbitrator did not consider that. In fact, despite no evidence on this point, he concluded that Ms. LaBrie made the payment after the notice of tenancy was issued and withheld a dollar.

[35] The result was that she was evicted over non-payment of one dollar of rent.

[36] I conclude that the decision was reached in a procedurally unfair manner and cannot stand.

[37] Given this conclusion, I need not consider the further arguments. However, as I will discuss further, I am of the view that I should remit the matter for redetermination. The other issues may be relevant to a redetermination of the matter, so I will address them.

Whether the Arbitrator Rushed Ms. LaBrie in a Manner that was Procedurally Unfair

[38] This assertion relates to Ms. LaBrie's application wherein she sought compensation for repeated eviction notices. On this judicial review, she argues that the arbitrator acted unfairly by dismissing her application on the basis of the unpaid rent, without the opportunity to be fully heard on this issue.

[39] In her affidavit on this judicial review, she deposed that she felt rushed and did not feel she had the opportunity to present her claim for compensation and damages. She did not depose why she felt that way, and in particular, whether the arbitrator said or did anything that made her conclude she could not fully present this aspect of her application.

[40] I conclude there is no evidence that supports a finding of procedural unfairness. However, given that I have ordered a redetermination, Ms. LaBrie's claim for compensation may also be redetermined. It is apparent from the arbitrator's introductory comments that he did not fully understand the basis for this aspect of Ms. LaBrie's application. If she chooses to pursue it, she should take into account that the arbitrator did not understand her claim based on her written application materials.

Patent Unreasonableness

Legal Principles

[41] The standard of review of an arbitrator's decision under the *Residential Tenancy Act* is patent unreasonableness: ss. 5.1 and 84.1 of the *Residential Tenancy Act* and s. 58 of the *Administrative Tribunals Act.* Questions of fact, law and discretion are only open to review if such decisions are patently unreasonable: *Metro Vancouver (Regional District) v. Belcarra South Preservation Society*, 2020 BCSC 662 at para. 27; *Campbell v. McInnes*, 2017 BCSC 1134 at para. 8. In reviewing the decision of a statutory decision maker, a court must engage in a "reasons first" approach: *Metro Vancouver* at para. 26.

[42] Even though patent unreasonableness is no longer a common law standard of review, the common law definition continues to have relevance where it is a legislated standard of review. The common law definition may be used to inform an analysis under the *Administrative Tribunals Act*: *Casavant v. British Columbia (Labour Relations Board)*, 2020 BCCA 159, at paras. 23 to 24, leave to appeal ref'd *BC Government and Service Employees' Union (BCGEU) v. Bryce J. Casavant*, 2021 CarswellBC 120 (S.C.C.)).

[43] A decision is patently unreasonable if it is "openly, evidently, and clearly irrational": *Gichuru* at para. 34, citing *Ford v. Lavender Co-operative Housing Association*, 2011 BCCA 114*.* A decision is also patently unreasonable if it is "unreasonable on its face, unsupported by evidence, or vitiated by failure to consider the proper factors or apply the appropriate procedures": *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para. 41*.*

[44] In *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, 2004 SCC 23 at para. 18, the Supreme Court of Canada explained that a patently unreasonable decision is one that almost borders on the absurd. See also: *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28.

[45] The standard of patent unreasonableness also applies to the consideration of the adequacy of reasons. A court conducting a judicial review must consider both the outcome and the reasons provided for it: *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 at para. 83; *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387 at para. 74*.* The latter inquiry is an assessment of the "justification, transparency and intelligibility" of the decision-making process: *Ashurwin Holdings Ltd. v. British Columbia*, 2012 BCSC 1408 at paras. 18 to 21; *Pacific Newspaper Group Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2014 BCCA 496 at para. 41, citing *Dunsmuir v. New Brunswic*k, 2008 SCC 9 at para. 47.

[46] If a court concludes that the reasons for a decision are patently unreasonable, the court must also consider whether the decision is patently unreasonable: *Guevera v. Louie*, 2020 BCSC 380 at para. 79, citing *Kovach v. British Columbia (Workers Compensation Board)*, [1998] B.C.J. No. 1245, dissenting reasons of Justice Donald adopted by the Supreme Court of Canada; [2000] 1 S.C.R. 55.

Whether the Arbitrator's Reversal of the Burden of Proof was Patently Unreasonable

[47] Reversal of the burden of proof can be both procedurally unfair and result in a decision that is patently unreasonable: *Gogol v. Workers Compensation Appeal Tribunal*, 2008 BCSC 489 at paras. 22-24.

[48] In *Guevara*, Justice Sewell concluded that an arbitrator who heard evidence that the tenant always e-transferred rent payments on the first of the month and evidence that the landlord received them some days later, misapprehended the evidence when he concluded that they were e-transferred late and failed to explain how he reconciled the evidence. These findings, together with other issues such as not adequately setting out the legal test for acquiescence on receiving late rent payments and not explaining why he rejected the tenant's evidence on a point, in combination, led him to conclude that the decision was patently unreasonable.

[49] The arbitrator in this case upheld an eviction based on rent that was one dollar short, without evidence that the amount electronically transferred was one dollar short, and without any inquiry or evidence as to why. The reversal of the burden of proof amounts to reasoning that was patently unreasonable.

[50] In addition, and as addressed above, the arbitrator's reasons do not provide insight as to why he did not consider or why he rejected Ms. LaBrie's *viva voce* evidence (other than the lack of documentary evidence to support it). As that evidence was the only direct evidence on the key issue of when and in what amount she paid the rent, it was patently unreasonable for the arbitrator to fail to consider it or reject it without explaining why it was not probative in the absence of documentary evidence: *Metro Vancouver* at para. 26; *Hawk v. Nazareth*, 2012

BCSC 211 cited in *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232 at para. 33; *Andree v. Bentley*, 2011 BCSC 641 at para. 24.

[51] I conclude that the reversal of the burden of proof was patently unreasonable.

Whether Failure to Consider Equitable Estoppel was Patently Unreasonable

[52] Ms. LaBrie asserts that, accepting Mr. Liu's contention that she had paid rent that was one dollar short from December 2020 through March 2021, the arbitrator should have considered equitable estoppel.

[53] Ms. LaBrie deposed that when she became aware, at the hearing before the arbitrator, that the one dollar shortfall was the real issue, she testified that Mr. Liu had never raised the previous shortfalls with her. She argues that although she did not use the words "equitable estoppel", she raised equitable estoppel in substance. She takes the position that the arbitrator's failure to address it was patently unreasonable.

[54] In *Guevara*, Justice Sewell considered a case in which the landlord had, over a period of years, occasionally acquiesced to late rent payments. He held the landlord could not rely on late payments made and received without complaint to count toward the requisite minimum three late payments to justify termination based on the principle of equitable estoppel. The tenant did not raise the equitable estoppel argument using those precise words, but the facts of matter raised it in substance. Justice Sewell concluded it was patently unreasonable to have not addressed it.

[55] I reach the same conclusion.

[56] During submissions before me, substantial time was devoted to whether Ms. LaBrie could have succeeded on an equitable estoppel argument, taking into account arguments about detrimental reliance and unclean hands.

[57] Given my conclusion that the arbitrator ought to have considered equitable estoppel, and my conclusion, discussed further below, to remit the matter for

redetermination, I will not address the remaining equitable estoppel issues. That would simply be pre-determining a matter that is being remitted for decision.

Whether the Arbitrator's Failure to Exercise Discretion to Decline to End the Tenancy Over One Dollar of Unpaid Rent was Patently Unreasonable

[58] Ms. LaBrie argues that the arbitrator had discretion, under s. 64(2) of the *Residential Tenancy Act,* to relieve her of eviction. She submits that even if Mr. Liu's position that she paid the rent on March 10, 2021 is accepted, it was paid on time to render the eviction notice ineffective, leaving the only shortcoming the one dollar difference between the amount due and the amount owing. She asserts that the arbitrator's failure to even inquire as to the reason the rent was one dollar short was a failure to exercise discretion under s. 64(2).

[59] Mr. Liu argues that under s. 55(1) of the *Residential Tenancy Act*, once the arbitrator determined the rent had not been paid in full, he no longer had discretion and had to uphold the notice to end tenancy.

[60] Section 55(1) provides:

> **Order of possession for the landlord**
>
> **55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
>
> (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
>
> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[61] Section 62 (4)(a) provides:

> **Director's authority respecting dispute resolution proceedings**
>
> **62** …
>
> (4) The director may dismiss all or part of an application for dispute resolution if
>
> (a) there are no reasonable grounds for the application or part,
>
> (b) the application or part does not disclose a dispute that may be determined under this Part, or

> (c) the application or part is frivolous or an abuse of the dispute resolution process.

[62] Ms. LaBrie did not provide any authority that s. 62(4)(a) gives the arbitrator the discretion to allow a tenant's application disputing a notice to end tenancy despite a finding that a portion of rent remains unpaid. The section appears to give an arbitrator discretion to dismiss an application in certain circumstances. It does not expressly grant discretion to allow an application in circumstances where the landlord has proved unpaid rent.

[63] Ms. LaBrie also argues common law principles providing arbitrators wide discretion. The discretion must be exercised in accordance with the "rationale and purview of the statutory scheme under which is adopted": *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5 at paras. 15 and 25 to 28, cited with approval by the Supreme Court of Canada in *Vavilov*.

[64] In my view, there is an argument that an arbitrator has the discretion to find that rent is not unpaid despite a shortfall. For example, in this case, if the arbitrator had inquired into the reason why Mr. Liu's deposit was a dollar less than what Ms. LaBrie electronically transferred, and found that Ms. LaBrie had no knowledge that he would receive less than what she transferred, he would have the discretion to find that a portion of the rent was not unpaid.

[65] In such circumstances, s. 55(1) of the *Residential Tenancy Act* would not operate to preclude the discretion. That provision provides that an arbitrator must issue an order of possession if the arbitrator dismisses the tenant's application or upholds the landlord's notice to end tenancy. If the arbitrator exercised a discretion to find that an explained one dollar shortfall did not amount to unpaid rent, the arbitrator would allow the tenant's application and not uphold the notice to end tenancy.

[66] The exercise of the discretion requires a determination of why the dollar was deducted. There was none in this case. As I have already stated, the question as to why was begging to be asked. The failure was the failure to make that inquiry.

Whether, had the inquiry been made, it was then patently unreasonable to not exercise the discretion, cannot be determined.

[67] I have already addressed the consequences of failing to address the failure to make the inquiry in my determination there was a reversal of the burden of proof that was procedurally unfair and patently unreasonable.

[68] In these circumstances, it is appropriate to observe that that the arbitrator should have inquired as to why there was a dollar shortfall about which Ms. LaBrie testified she knew nothing and then considered whether to exercise the discretion.

Conclusion on Patent Unreasonableness

[69] Reasons that are patently unreasonable may not determine the outcome on judicial review if the decision is not patently unreasonable: *Guevara* at para. 79. As noted above, a patently unreasonable decision is one where the result is obviously and apparently absurd.

[70] On this issue, I take into account that Ms. LaBrie attempted to go before a review arbitrator with an electronic transfer receipt showing that she sent the electronic transfer on the day rent was due in the full amount. Although the review arbitrator's decision is not under judicial review, it is permissible for a court on judicial review to take evidence not on the record at the hearing under review into account when considering patent unreasonableness to determine if the arbitrator misapprehended the evidence: *Guevara* at para. 72. In *Guevara*, the issue was whether the arbitrator misapprehended the evidence that the date an e-transfer was processed or received is evidence that it was sent on that date. Those are similar to the factual circumstances that gave rise to the arbitrator reversing the burden of proof in this case.

[71] I also consider it appropriate to take this evidence into account because the very reason Ms. LaBrie sought to lead the evidence on review was because the arbitrator had wrongly put her to the burden of proof.

[72] The arbitrator upheld an eviction based on rent that was one dollar short, without evidence that the amount electronically transferred was one dollar short. A disabled woman and her ten year old daughter were required to vacate their home because of an unexplained difference between the rent that Ms. LaBrie testified she electronically transferred and what Mr. Liu deposited into his bank account. The reversal of the burden of proof resulted in an absurd outcome. The unreasonableness in the outcome is patent.

Remedy

[73] Ms. LaBrie asks the Court to set aside the decision of the arbitrator and substitute its own decision to cancel the eviction notice. Ms. LaBrie argues that if the matter is remitted to the arbitrator or another dispute resolution officer, it is highly likely that another arbitrator will make the same decision.

[74] Section s. 5(1) of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 provides for a court to remit a decision to the original decision-maker as follows:

> 5(1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application relates.

[75] In *Vavilov* at para. 142, the Supreme Court of Canada said that as a general rule, courts should respect the legislature's intention to have the matters determined by an administrative tribunal established for that purpose. The Court explained that the exception would be where remitting a matter will "stymie the timely and effective resolution of matters in a manner that no legislature could have intended" because, for example, "a particular outcome is inevitable".

[76] There is no inevitable outcome in this case if the matter is heard *de novo*. The evidence will unfold without any hang over from the incorrect reversal of the burden of proof. Ms. LaBrie will know what case she has to meet. I reject the bald suggestion that the arbitrator or another dispute resolution officer will simply reach

the same result, especially with the benefit of these reasons. The effective resolution will not be stymied if Ms. LaBrie is given a stay of the order of possession until the matter is resolved.

[77] I allow the application for judicial review. I remit the whole of the matter to the Residential Tenancy Branch for reconsideration and redetermination. I stay the order of possession until the matter is resolved.

"Matthews J."

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Senft v. Society For Christian Care of the Elderly*,
2022 BCSC 744

Date:20220506
Docket: S218575
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*,
R.S.B.C. 1996, c. 241

Between:

Brian Senft

Petitioner

And

Society for Christian Care of the Elderly

Respondent

Before: The Honourable Madam Justice Wilkinson

On judicial review from: An order of the Residential Tenancy Branch, dated August 19, 2021 (File Nos. 910038074 and 910038410).

Reasons for Judgment

Counsel for the Petitioner: (via videoconference)	D. Sabelli
Counsel for the Respondent: (via videoconference)	D. Moonje
No other appearances	
Place and Date of Hearing:	Vancouver, B.C. April 4, 2022
Place and Date of Judgment:	Vancouver, B.C. May 6, 2022

[1] Mr. Senft brings a petition for judicial review of a decision of the Residential Tenancy Branch (the "RTB") made August 19, 2021 (the "Decision") upholding a notice to end Mr. Senft's tenancy of his rental unit.

[2] The petitioner seeks an order setting aside the Decision, and remitting the matter back to the RTB for reconsideration.

[3] The respondent is the petitioner's landlord (also known as the "landlord").

[4] The director of the RTB filed a response to petition but did not appear at the hearing.

[5] For the reasons that follow, I grant the petition.

Background

[6] The petitioner has been a tenant of the respondent since February 2011. His rental unit is a bachelor suite in a 15-story building. The appliances, fixtures, and cabinets in the rental unit are 50 years old. The flooring is fairly new.

[7] Shawn MacMillan is the respondent's agent and attended the RTB hearing on the respondent's behalf.

[8] Stephano Muzzati runs an eviction services company. The respondent hired Mr. Muzzati to assist with evicting the petitioner. Mr. Muzzati appeared at the RTB hearing as the respondent's first witness.

[9] On May 4, 2021, the respondent served Mr. Senft with a notice to end tenancy for cause with an effective date originally as of May 31, 2021, which was crossed out and rewritten as June 30, 2021 (the "Notice"), for the reasons that the tenant or a person permitted on the respondent's property by the tenant has:

a) "seriously jeopardized the health or safety or lawful right of another occupant or the landlord";

b) "put the landlords' property at significant risk"; and

c) not repaired damage to the rental unit or other residential property, as required under section 32(3) of the *Residential Tenancy Act*, within a reasonable time.

[10] Due to his poor health, the petitioner has difficulties with housekeeping and receives assistance from others, including neighbours and private cleaning services.

[11] During the pandemic, these cleaning services stopped.

[12] In February 2021, the petitioner assisted a friend with a diesel engine and soiled the bathroom with mechanic grime. The petitioner intended to clean up the mechanic grime in the bathroom but became ill with COVID-19 in March 2021.

[13] He isolated in his rental unit. He was sick for the months of March and much of April. During this time, he ordered in food and was unable to clean his rental unit.

[14] On April 13, 2021, the respondent conducted a general inspection of Mr. Senft's rental unit. The rental unit was unclean and in need of repairs. The respondent took photos of the rental unit at that time. The photos show extensive waste in the living room, kitchen and bathroom. Witnesses described it as including bio waste and food containers.

[15] At the end of April 2021, the petitioner had recovered from COVID-19. He contacted a cleaning service and signed up as a client, but they had a back-log of a few weeks. Cleaning services resumed in July 2021. The petitioner also arranged to have his carpets cleaned.

[16] On May 4, 2021, before the cleaner made their first visit to the rental unit, Mr. Muzzati attended the petitioner's rental unit to serve the petitioner with the Notice. The petitioner allowed Mr. Muzzati access to the rental unit. Mr. Muzzati found the rental unit to be in the same condition as in the respondent 's photographs of April 13, 2021. He also testified that it smelled of rotten food and there was litter all over the place. He recommended to the respondent that a restoration company attend to provide a report on what work needed to be done to remediate the rental unit. After

receiving the Notice, the petitioner applied to the RTB for an order cancelling the Notice. A hearing date was set for July 23, 2021.

[17] On or around July 8, 2021, the respondent hired a restoration company to prepare a report about the repairs needed in the rental unit. The restoration company attempted to enter the petitioner's rental unit. The petitioner denied the restoration company entry on the basis that he had already applied to dispute the Notice and the RTB hearing was pending.

[18] On July 8, 2021, the restoration company made their report based on the photographs taken by the respondent on April 13, 2021. The restoration report:

> recommended replacing cabinets, flooring, countertops, and appliances;
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> found a possible clogged sink, unsanitary garbage in the bathroom, as well as dirt, mold and mildew;
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> recommended asbestos testing, a plumber to assess possible repairs needed with the bathroom sink and bathtub, drywall may need to be remediated for mold and pest control may be needed due to signs of bug secretions on walls; and
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> recommended biohazard cleaning and removal of waste.

[19] On July 9, 2021, the cleaner made one of two visits to the petitioner’s rental unit to clean. The petitioner took photographs of his rental unit after this cleaning to provide as evidence for his upcoming RTB hearing. In the Decision, the arbitrator found the photos show that the rental unit is reasonably clean.

The Decision

[20] On July 23, 2021, the RTB hearing commenced, but was adjourned to allow the respondent time to properly serve the petitioner with his evidence. On August 11, 2021, the petitioner, respondent and two witnesses for the respondent attended the RTB hearing by way of teleconference. On August 19, 2021, the arbitrator issued the Decision.

[21] The arbitrator determined that the Notice should not be upheld with respect to whether the petitioner failed to complete required repairs of damage to the rental unit as required under s. 32(2) of the *RTA*. The arbitrator found, on p. 5 of the Decision:

> I have also reviewed all of the evidentiary material, including the restoration report provided by the landlord. The landlord's witness testified that the report was based solely on photographs because the tenant denied entry. I have also reviewed the photographs which show extreme conditions. However, the report also contains recommendations and assumptions, particularly about mold, insects, and plumbing. I also consider the undisputed testimony of the tenant that the cabinets and everything other than flooring is 50 years old. Further, if asbestos removal is required, I don't see that as repairs required by the tenant, nor am I satisfied that there are any repairs that the tenant ought to have completed, other than cleaning. Therefore, I find that the landlord has failed to establish that the tenant has not required repairs of damage to the unit.

[22] However, the arbitrator upheld the Notice on the basis that the petitioner seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk, and granted the respondent an order of possession. The arbitrator found, on p. 6 of the Decision:

> I have also reviewed the photographs provided by the tenant which show that the rental unit is reasonably clean, along with a receipt for Molly Maid services dated July 9, 2021.
>
> It is not for me to make a finding that the tenant will maintain the rental unit in the future, but whether or not the landlord had cause to issue the notice to end the tenancy at the time of its issuance.
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> It's very evident that the rental unit requires remediation, however how much is not known. I accept the testimony of the tenant that he was ill and unable to deal with the situation, but that does not explain the used tissue or paper towels or any of the numerous items in the bathroom, or the testimony of the landlord's first witness that he didn't want to stand there to breathe in the air. He also testified that the bathroom was really bad, including floors and walls, and that the unit smelled of old or rotten food. Considering the photographs and other evidence of the parties, I find that the landlord had cause to issue the Notice, being that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. The tenant's application for an order cancelling the Notice is dismissed.

[23] The petitioner sought an internal review of the Decision based on new evidence. That application was denied.

[24] The petitioner filed a petition for judicial review of the Decision on the grounds that it is patently unreasonable because:

a) The reasons are inadequate;

b) The arbitrator made findings not supported by the evidence; and

c) The arbitrator failed to interpret s. 47 of the *RTA* in a manner consistent with the text, context, and purpose of the *RTA*.

The Standard of Review is Patent Unreasonableness

[25] The role of the court on judicial review is to ensure that a statutory decision-maker or tribunal acted within the authority bestowed upon it by the Legislature: *Dunsmuir v. New Brunswick (Board of Management),* 2008 SCC 9 at para. 28. The role of the court on judicial review is not to hear new evidence or argument or to decide or re-decide the case; it is simply to ensure that the tribunal (1) acted within its jurisdiction by deciding what it was directed to decide by its constituent legislation; and (2) did not lose jurisdiction by failing to provide a fair hearing or by rendering a decision outside the degree of deference owed by the reviewing court: *Actton Transport Ltd. v. British Columbia (Director of Employment Standards),* 2010 BCCA 272 at paras. 19-23; *Powell v. British Columbia (Residential Tenancy Branch)*, 2015 BCSC 2046 at paras. 49- 51.

[26] For decisions of the RTB, the standard of review is patent unreasonableness pursuant to s. 5.1 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*] and s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*] . The *RTA*'s privative clause is found at s. 84.1. Section 58(3) of the *ATA* defines "patently unreasonable" with respect to a discretionary decision, does not define patent unreasonableness as it relates to a finding of fact or law. The Court in *Yee v. Montie* 2016 BCCA 256 at paras. 20-22 explains what will constitute a patently unreasonable decision:

> [20]…To my mind the issue under review -- whether the landlord returned the security deposit to the tenants in compliance with the Act -- is a question of mixed law and fact.
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> [21] The ATA does not define patent unreasonableness as the term applies to questions of fact or law. In *Manz v. Sundher*, 2009 BCCA 92 at para. 39, Saunders J.A. adopted the meaning of the phrase in relation to factual matters from *Speckling v. British Columbia (Workers' Compensation Board*), 2005 BCCA 80:
>
> > [37] As the chambers judge noted, a decision is not patently unreasonable because the evidence is insufficient. It is not for the

> court on judicial review, or for this Court on appeal, to second guess the conclusions drawn from the evidence considered by the Appeal Division and substitute different findings of fact or inferences drawn from those facts. A court on review or appeal cannot reweigh the evidence. Only if there is no evidence to support the findings, or the decision is "openly, clearly, evidently unreasonable", can it be said to be patently unreasonable. That is not the case here.

[27] The Supreme Court of Canada has stated that a patently unreasonable decision is one where “the result borders on the absurd”: *Voice Construction Ltd. v. Construction and General Workers’ Union, Local 92*, 2004 SCC 23 at para. 18.

The Statutory Scheme

[28] The relevant provisions of the *RTA* are:

> Landlord's notice: cause
>
> 47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
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> …
>
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
>
> (iii) put the landlord's property at significant risk;
>
> (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain), within a reasonable time;"

Are the reasons in the Decision inadequate?

[29] The petitioner submits the arbitrator erred by failing to identify or particularize the harm the petitioner caused to the landlord, another occupant, or the landlord’s property, or provide any analysis explaining how the unclean rental unit met the statutory criteria for ending the tenancy in accordance with s. 47(1)(d) of the *RTA*.

[30] However, the Decision does set out a consideration of the parties’ testimonial and photographic evidence, a weighing of it, and a roadmap to how the arbitrator reached his conclusion that the petitioner’s maintenance of the rental unit caused harm or significant risk under s. 47 of the *RTA*. The arbitrator “grappled with the

substantive live issues" within the context of a summary and somewhat informal process: *Ashurwin Holdings ltd. v. British Columbia*, 2012 BCSC 1408, at paras. 22-25.

[31] The reasons allow the parties to know why the Decision was reached.

[32] The reasons are adequate in the circumstances.

Did the arbitrator make findings not supported by the evidence?

[33] The petitioner submits that the arbitrator did not make any findings that the petitioner's rental unit's lack of cleanliness seriously affected any other occupants or the respondent, let alone jeopardized their health or safety. He submits that this is because no evidence shows that the respondent's property was at significant risk.

[34] However, as I found above, the arbitrator did make a finding that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the respondent and put the landlord's property at significant risk. This was based on his consideration of the photographic and testimonial evidence of the extreme odour and significant amount of biowaste and grease, in the kitchen, bathroom and living room, affecting the carpets, floors, cupboards, sinks and bathtub.

[35] There was clearly evidence before the arbitrator to support a conclusion as to whether the extent of the waste and odour in the rental unit seriously jeopardised the health or safety of others or put the landlord's property at risk. It is not for this Court to engage in a reweighing of the evidence.

Did the arbitrator fail to interpret s. 47 of the *RTA* in a manner consistent with the text, context, and purpose of the *RTA*?

[36] In *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65, the Supreme Court of Canada confirmed that tribunals must demonstrate an understanding of the proper approach to statutory interpretation:

> [121] The administrative decision maker's task is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue. It cannot adopt an

> interpretation it knows to be inferior -- albeit plausible -- merely because the interpretation in question appears to be available and is expedient. The decision maker's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome.
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> [122] It can happen that an administrative decision maker, in interpreting a statutory provision, fails entirely to consider a pertinent aspect of its text, context or purpose. Where such an omission is a minor aspect of the interpretive context, it is not likely to undermine the decision as a whole. It is well established that decision makers are not required "to explicitly address all possible shades of meaning" of a given provision: Construction Labour Relations v. Driver Iron Inc., 2012 SCC 65, [2012] 3 S.C.R. 405, at para. 3. Just like judges, administrative decision makers may find it unnecessary to dwell on each and every signal of statutory intent in their reasons. In many cases, it may be necessary to touch upon only the most salient aspects of the text, context or purpose. If, however, it is clear that the administrative decision maker may well, had it considered a key element of a statutory provision's text, context or purpose, have arrived at a different result, its failure to consider that element would be indefensible, and unreasonable in the circumstances. Like other aspects of reasonableness review, omissions are not stand-alone grounds for judicial intervention: the key question is whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker.

[37] Citing the above passage from *Vavilov*, this Court in *Guevara v. Louie*, 2020 BCSC 380 at paras. 54-55, applied this principle in an *RTA* s. 47 notice dispute, and set out that s. 47 requires a finding of “serious misconduct” which affected or could affect the landlord or other occupant:

> [54]… At a minimum, the Arbitrator was required to consider the context and purpose of s. 47 and adopt an interpretation consistent with those factors.
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> [55] Section 47 sets out a number of grounds on which a landlord may rely upon to terminate a tenancy. A review of all of the grounds on which a tenancy may be terminated under s. 47 makes it apparent that the tenant must have engaged in serious misconduct that seriously affected the landlord or the other tenants of the building in which the premises are located, failed to comply with a condition precedent to the rental agreement coming into effect (s. 47(1)(a)) or have taken an unreasonable amount of time to comply with a material term of the tenancy agreement.

[38] The Decision contains no discussion of the context and purpose of s. 47 of the *RTA*. Several decisions of this Court confirm that RTB arbitrators must keep the protective purpose of the *RTA* in mind when construing the meaning of a provision of the *RTA*: *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator),* 2007 BCSC 257 at paras. 11,27; *McLintock v. British Columbia Housing*

Commission, 2021 BCSC 1972 at paras. 56-57; *Labrie v. Liu*, 2021 BCSC 2486 at para. 33; *Blaouin v. Stamp*, 2021 BCSC 411 at para. 60.

[39] The arbitrator failed to consider post-Notice conduct of the petitioner. The arbitrator found that the evidence of the current state of the rental unit, and its cleanliness after the petitioner's retention of cleaners, was irrelevant. However, as this Court found in *McLintock* at paras. 58-59, post-notice conduct is relevant when deciding whether an end to tenancy was justified or necessary in the context of the protective purposes of the RTA.

[40] The evidence that the petitioner cleaned the rental unit was relevant to the consideration of whether the eviction was necessary and justified. By refusing to consider it, I find that the arbiter failed to engage in a purposive analysis of s. 47 under the RTA. For example, the arbitrator found that the rental unit was reasonably clean by August 2021. If that was the case, how could the petitioner's conduct have placed other occupants or the landlord's interests at risk? This is not something the arbitrator considered.

[41] Accordingly, the arbitrator's failure to apply the proper approach to statutory interpretation undermined the Decision as a whole. This renders the Decision patently unreasonable.

Conclusion

[42] The petition is granted. The Decision and related order of possession are set aside and the matter is remitted back to the RTB for redetermination, in accordance with these reasons.

Costs

[43] The petitioner will have one set of costs from the respondent as he was successful on the petition.

"Wilkinson J."

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cyrenne v. YWCA Metro Vancouver,* 2021 BCSC 2406

Date: 20211209
Docket: 215225
Registry: Vancouver

Between:

Juanita Cyrenne

Petitioner

And

YWCA Metro Vancouver

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraphs 11 and 25 on December 16, 2021.

Before: The Honourable Mr. Justice Baird

On judicial review from: An order of the Residential Tenancy Branch, dated April 27, 2021 (*YMCA Metro Vancouver v. [tenant name suppressed to protect privacy]*, File No. 310028409).

Reasons for Judgment

Counsel for the Petitioner:	Z. Modrovicova R. Patterson
Counsel for the Respondent:	H. Delaney
Place and Date of Hearing:	Vancouver, B.C. October 22, 2021
Place and Date of Judgment:	Vancouver, B.C. December 9, 2021

INTRODUCTION

[1] The petitioner, Juanita Cyrenne, is a single mother on a disability pension living with her 13-year-old special needs son in a residential tenancy called Pacific Spirit Terrace at 7001 Kerr Street, Vancouver, BC. It is a 16-unit building owned and operated by the respondent YWCA Metro Vancouver, part of whose charitable mission is to provide safe and affordable housing for disadvantaged single women and their dependent children.

[2] The parties entered into a month-to-month tenancy agreement dated December 30, 2019. The petitioner has lived in unit 602 of the building since early January 2020. On January 21, 2021, the respondent served the petitioner with a One Month Notice to End Tenancy (the "Notice") in the usual form under s. 24 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 (the "*Act*"). The grounds for the Notice were:

- The [petitioner] has significantly interfered with or unreasonably disturbed another occupant;
- The [petitioner] has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

[3] Briefly stated, the respondent received repeated complaints from the petitioner's next-door and downstairs neighbours concerning unacceptable noise emanating from the petitioner's unit at various hours of the day, including late at night and in the early morning when the complainants were trying to sleep. Most of the complaints focussed on noise created by the petitioner's son yelling and swearing, moving furniture about, hitting walls and stomping on the floor. The petitioner's son has autism spectrum disorder and, by the petitioner's own admission, he is prone to episodic "meltdowns".

[4] The respondent promptly investigated and addressed each complaint. It issued no less than eight detailed warning letters to the petitioner between April 24, 2020 and January 15, 2021 advising her of the particulars of the complaints, demanding that the disturbances stop, and warning of consequences if they did

not. The tone of the correspondence was firm but consistently sympathetic. It was recognised that much of the problem was attributable to the petitioner's son and to some extent out of her control. The petitioner's responses were usually to the effect that she was doing her best to control her son and limit the mischief, but now and again she also protested that her disgruntled neighbours were overly-sensitive, that the noise complained of was from normal everyday living and to be expected, or that it came from sources outside of her dwelling unit and was not her responsibility.

[5] Along the way, the respondent suggested that a workable solution would be to arrange equivalent alternative accommodation for the petitioner at another of its properties. Because the noise complaints were primarily that the petitioner's son yelled and thumped and stomped on the walls and floors, the respondent thought that the best idea would be to transfer them to a dwelling unit on a ground floor with non-residential or no neighbouring tenants. The respondent had such units available in a couple of its buildings elsewhere in Greater Vancouver. The petitioner refused these accommodations because, she said, they would involve removing herself and her son from community and other supports near their present address.

[6] In the end, as the months wore on and the situation failed to improve, the respondent reluctantly concluded the petitioner was unable or unwilling to satisfactorily address and resolve what it considered to be a legitimate and pressing noise problem created by her tenancy. The respondent took the view that this was negatively affecting the health and well-being of other residents of the building, and sympathy for the petitioner came to be outweighed by its basic responsibility to protect her neighbours' reasonable expectation of peace and quiet at home.

DISPUTE OF NOTICE TO END TENANCY

[7] A final letter was sent to the petitioner attaching the Notice. The petitioner disputed the Notice, and a hearing of the matter was scheduled before a Residential Tenancy Branch arbitrator ("the RTB" or "the arbitrator") on April 26, 2021 ("the RTB Hearing"). The petitioner's dispute was dismissed in a decision issued on April 27, 2021 ("the arbitrator's decision"). Pursuant to s. 55 of the *Act* the arbitrator granted

the respondent an Order of Possession effective on May 31, 2021. On May 7, 2021 an RTB internal review of this decision on the limited grounds set out in s. 79 of the *Act* was dismissed. Subsequently this court entered a stay of the Order of Possession pending the petitioner's application for judicial review of the arbitrator's decision.

[8] The task of reviewing the arbitrator's decision has fallen to me. I have now read the entire record in detail. I have learned from it that the petitioner is herself autistic, suffers from chronic health problems, and is living with significant physical limitations caused by injuries sustained in a March 2020 motor vehicle accident. She is unable to work and is getting by on modest government assistance payments. In the run-up to the RTB Hearing she was much preoccupied by a protracted and heated Provincial Court dispute with her former spouse over the primary residence and parenting of their son. The impression created by the totality of evidence is that the petitioner's life is stressful, anxiety-ridden and difficult.

THE RTB HEARING

[9] The petitioner has deposed on this judicial review application that, due to these various stressors and deficits, she was unable to serve the respondent with the documentary evidence that she wanted to rely on at the RTB Hearing within the 14 days permitted by the RTB procedural rules. She served her first, and main, batch of documents on April 16, 2021, and a second, and smaller, batch on April 19, 2021. The hearing, as I have said, was on April 26, 2021.

[10] The respondent did not object to late service of the first batch of documents, but objected to the admission into evidence of the second batch on grounds that there had been inadequate time to properly consider the evidence and respond. The petitioner asked the presiding arbitrator for an adjournment of the hearing to cure this problem, and told him that her failure to comply with RTB procedures was due, in part, to the significant recent upheaval in her personal life caused by her family law case.

[11] The arbitrator denied the adjournment for reasons not addressed in his written decision. There is no record of the proceedings, which took place over the telephone. The petitioner has deposed in evidence before me, and the respondent has not disputed, that the arbitrator summarily dismissed the adjournment request because, he said, to grant it would result in a delay of the hearing. This is true of any adjournment, of course, and the usual question is whether a delay is necessary to do justice in the case even though it may be inconvenient. No submissions about substantive prejudice were solicited or considered.

[12] Thereafter, the respondent, as the party seeking termination of the tenancy, was called upon to present its case for eviction. In her second affidavit filed on judicial review the petitioner explained the progress of the hearing as follows at paras. 27-31:

> 27) During the hearing, my Landlord's representative presented their evidence about complaints they had received. After my Landlord's representative had completed presenting their evidence, I was permitted to present some evidence. I was able to address the noise complaints raised by the Landlord's representative in a general way, by describing the steps I have taken to minimize any sound transfer from my unit and worked with a behavioural consultant to help my son manage his meltdowns, which he had not had any of since August 2020, and that he does not bang on the walls or stomp. I said that I told the Landlord about my son's meltdowns before the Landlord offered me my Rental Unit.
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> 28) I said that the complaints about noise were about regular household sounds and were exaggerated, and that one of the tenants who complained about me was very sensitive to noise.
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> 29) Before I had a chance to respond specifically to all of the individual complaints against me, [the arbitrator] interrupted me and told me that we had run out of time for the hearing and I would have to stop my testimony. I attempted to continue testifying and presented for another minute or so, but [the arbitrator] interrupted me again, told me that there was no more time for me to provide my evidence. He then gave one of the Landlord's witnesses the opportunity to testify.
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> 30) After the witness presented her evidence, the Arbitrator said we had no time for more witnesses. He said that it must be upsetting to me because "time did not allow" for me to finish my testimony, and said that he would look over his notes from the hearing and would send a decision by email. I spoke up and tried to ask the Arbitrator for the chance to cross-examine the witness. I was able to say "Mr. [arbitrator]", but the Arbitrator cut me off, and said the hearing was over. I was very concerned because my Landlord spent at least twice as much time as I did in the hearing presenting their case, including

> time spent answering the Arbitrator's questions and presenting their witness's testimony.
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> 31) If I had been allowed to present the rest of my case, I would have testified about each of the specific allegations about noise, and explained why the noises complained about were not coming from my unit or, when they were, that they were within the range of normal household noise. I would have gone through my evidence in more detail, as I only was given the opportunity to present a summary of what I wanted to say. I would have referred to the April 15, 2021 email I received from the Landlord where they admit that the banging noises complained about by my neighbours could be coming from the elevator or could be caused by something else entirely. I would have gone into more detail about the text messages that I exchanged with a neighbour who lived in the unit directly next to mine and who had complained about noise. I would have referred to a message she sent to me in November 2020 that said that she had not been bothered by any noise from my unit for a long time. I would have referred in detail to all of the messages I exchanged with this neighbour that showed I was responsive to her concerns about noise, that I was not the cause of many of the noises which they complained about, and that they were highly sensitive to normal household noise. I would have referred to text messages with the same neighbour where we agreed that there was little to no noise insulation in the building which led to normal household noise transferring easily between units.

[13] It would seem, in other words, that the petitioner's case was given short shrift. I would note, as well, that no ruling was made at the hearing concerning the admissibility of the petitioner's second batch of documents. The arbitrator left this question in abeyance, and according to the petitioner, she devoted much of the limited time that she was permitted to speak on factual issues to which those documents were supposed to relate. It was only on reading the arbitrator's decision, filed the following day, that the petitioner learned that the second batch of documents had been excluded from consideration, and realised that as a result her abbreviated presentation at the hearing had been rendered more or less pointless.

[14] There is no dispute that it is the arbitrator's decision and not the review decision pursuant to s. 79 of the *Act* that is properly the subject of this judicial review. The remedy sought by the petitioner is an order that the arbitrator's decision upholding the respondent's Notice be set aside, and that the dispute be remitted to the RTB for a new hearing.

REVIEW

[15] The principles of natural justice and procedural fairness apply to the RTB. In the words of the Supreme Court of Canada in *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at para. 14 “there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual.” In the context of a judicial review, moreover, the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 explicitly states in s. 58(2)(b): “questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.”

[16] The nature and extent of procedural fairness required across a wide variety of statutory boards, tribunals and other administrative decision-making processes is “eminently variable, inherently flexible and context-specific”: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 77. Amongst the factors to consider are: (1) the nature of the decision being made and the process required to be followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made the by administrative decision maker itself (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paras. 23-27).

[17] The decisions that RTB arbitrators are called upon to make often touch upon matters of fundamental importance. The nature of the *Act* is predominantly to protect tenants. Whether or not to ratify a landlord’s notice to terminate a tenancy, especially in personal circumstances such as those of the present petitioner, is a matter that requires a high degree of care and deliberation. Although RTB hearings are intended to be as expeditious and uncomplicated as possible, nevertheless the *Act* and the rules established for its practical application constitute a recognisably judicial process with court-like procedural safeguards. These include advance notice of pleadings and evidence, the discretion to compel documentary disclosure, the option

to hear non-party witnesses, to administer oaths, to issue summonses, to adjourn proceedings if necessary, and so on.

[18] Given the gravity of the decision to be made and the stakes involved for both parties in this case, an elevated level of procedural fairness was required in hearing the matter. In my view, the RTB arbitrator failed to deliver it in at least two ways. First of all, the petitioner's adjournment application was not judicially considered. No properly reviewable grounds for dismissing it were articulated in the arbitrator's decision. The petitioner's undisputed rendition of the arbitrator's informal reasons for refusing it indicate to me that the substance of her request was ignored, the arbitrator made no attempt to balance justice against convenience in considering it, and therefore the decision was arbitrary and unsustainable.

[19] Secondly, the arbitrator failed in his duty of fairness by refusing to give the petitioner a reasonable opportunity to answer the respondent's case or present her own. Quite simply, some hearings, especially those with higher stakes, take longer than others to conduct fairly. In my respectful view, this was one dispute that deserved more time and attention than the arbitrator was prepared to give it. It was not, let it be emphasised, a proceeding in which assertive steps were required to control the parties' behaviour or prevent abusive conduct. The petitioner was going about the business, merely, of presenting her case in equable terms that she hoped would receive the same latitude and courtesy accorded to the respondent.

[20] Instead of such a balanced and fair hearing, the petitioner was not permitted to respond fully to the evidence adduced against her, was refused the opportunity to question a witness called by the respondent, and was cut off in the middle of her submissions. The proceedings were arbitrarily stopped on the basis of a 90-minute time-limit unilaterally declared by the arbitrator. In the result, a decision ratifying the notice to evict the petitioner and her son from their home was speedily made without properly hearing and considering the petitioner's side of the story.

[21] I note, in this connection, that the arbitrator's decision makes only glancing reference to the petitioner or her evidence. Instead, it focusses

primarily on whether the respondent's evidence amounts to lawful cause for terminating the tenancy. This lopsided treatment of the evidence reflects upon the faulty procedure adopted by the arbitrator by which, essentially, the respondent seems to have received a fuller and more attentive audience than the petitioner.

[22] The principle that individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard. A decision maker's reasons, in turn, should demonstrate that they have actually listened to the parties: *Vavilov* at para. 127. The arbitrator's reasons in the present case comprise no such demonstration, but stand as confirmation, instead, that to a significant extent the hearing was unbalanced and one-sided.

[23] I have not forgotten, either, that the petitioner claims to have spent a good deal of her already truncated presentation addressing evidence that the arbitrator subsequently declined to consider or admit in evidence. Her inadmissibly limited right to be heard was thereby further diminished.

[24] I have concluded that, taken altogether, these various factors contributed to a breach of the duty of fairness owed to the petitioner which rendered the arbitrator's decision void: *Neustadter v. British Columbia (Ministry of Public Safety and Solicitor General*, 2004 BCSC 381, especially at para. 18.

DISPOSITION

[25] In summary, there were flaws in the conduct of the RTB Hearing which rendered it unfair to the petitioner. The result cannot stand, even if the outcome of a new and more expansive hearing may be the same. It is the integrity and soundness of the RTB dispute settlement process that matter here. Justice must not only be done, of course, but must be seen to be done.

[26] It seems that the petitioner's problems are far from over. I was told that the respondent has issued her a second Notice covering additional grounds for eviction alleged to have arisen after the first Notice. An RTB hearing of the second Notice is

imminent. It was suggested to me in passing that, if a new hearing of the present dispute were ordered, then in the interests of economy it would be just and convenient if the hearing of both Notices occurred simultaneously.

[27] This would seem to be sensible, but I will leave matters of joinder and scheduling to the agreement of the parties and the discretion of the RTB. I would also respectfully suggest, on the basis of all the evidence, that it may be in the petitioner's best interests, rather than pursuing the dispute, to reconsider the respondent's eminently reasonable and practical offers of an alternative tenancy.

[28] In the meantime, for the foregoing reasons, I have concluded that the arbitrator's order of April 27, 2021 under s. 55 of the *Act* confirming the respondent's January 21, 2021 Notice to Terminate the petitioner's tenancy is void and must be set aside. The dispute is hereby remitted to the RTB for a new hearing before a different arbitrator.

[29] Costs may be spoken to if necessary. I should stress that nothing in this ruling is intended as criticism of the respondent, which has handled every aspect of the instant dispute with forbearance and tact. The petitioner has been successful but the respondent is blameless. In all of the circumstances I would be inclined to make no order as to costs.

"Baird J."

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Connors vs. Maclean,*
2022 BCSC 1460

Date: 20220823
Docket: 18623
Registry: Quesnel

Between:

Marina Dorothy Connors

Petitioner

And

John Kevin Maclean and Catherine Eileen Stavast

Respondents

Before: The Honourable Mr. Justice Stephens

On judicial review from: a decision and order of a delegate of the director of the Residential Tenancy Branch dated March 2, 2022 and of a Review Reconsideration Decision a delegate of the director dated March 16, 2022 in File No 910052161

Reasons for Judgment

Representative for the Petitioner:	M. Connors on her own behalf, together with N. Connors
Counsel for Respondents appearing by video conference:	M. Drouillard S. Xu
Place and Date of Hearing:	Quesnel, B.C. July 18, 2022
Place and Date of Judgment:	Quesnel, B.C. August 23, 2022

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[1] The petitioner Marina Dorothy Connors applies for judicial review of a Residential Tenancy Branch ("RTB") decision. The decision upheld her landlords' one month notice to end her tenancy on rental premises in a manufactured home park and granted the respondent landlords an order of possession of the premises property pursuant to the *Manufactured Home Park Tenancy Act*, S.B.C. 2002, c.77 (the "Act").

[2] The substance of the decision which the petitioner seeks to review actually concerns two related administrative law decisions: a dispute resolution decision dated March 2, 2022 of an RTB arbitrator (the "Arbitrator") upholding a notice to end tenancy and granting an order for possession (the "Dispute Resolution Decision"); and a subsequent review (the "Review Consideration Decision") dated March 16, 2022 by a RTB arbitrator (the "Review Arbitrator") finding that the petitioner's application for review of the Dispute Resolution Decision was not filed within the statutorily-required timeline and dismissing her application for review consideration.

[3] The petition is opposed by the respondent landlords. The director of the RTB filed an application response but took no position on the relief sought in the petition.

[4] For the reasons which follow I find that the Review Arbitrator at the internal review stage erred by finding that that petitioner had filed her review application out of time and consequently dismissing her review application. Instead, I find the petitioner did file her review within time, and quash the Review Consideration Decision and remit the petitioner's applications to review the Dispute Resolution Decision back to the director of the RTB for consideration on their merits. I express no view as to the petitioner's challenge to the Dispute Resolution Decision, which will be the subject of the petitioner's review application before the RTB pursuant to my order.

Background

[5] The tenant petitioner lives on the premises of a manufactured home park on Durrell Road which she rents from the respondent landlords Catherine Eileen Stavast and John Kevin Maclean.

Landlords' Notice to End Tenancy for Cause

[6] On October 8, 2021 the landlords issued the petitioner tenant a one month notice to end tenancy for cause (the "Notice to End Tenancy for Cause" or the "Notice"), requiring that she move out of the premises by January 10, 2021 (which I take to mean January 10 2022). The Notice did not allege that the petitioner had failed to pay her rent, but gave other grounds. The Notice was therefore issued pursuant to s. 40 of the Act.

Initial Decision and Order for Possession

[7] The tenant petitioner filed an application for dispute resolution, challenging the Notice to End Tenancy for Cause pursuant to s. 51 of the Act. A dispute resolution hearing of her application was held before the Arbitrator on February 28, 2022 but the petitioner did not attend. The petitioner would later contend, in her subsequent review application to the RTB, that she was unable to attend the February 28, 2022 hearing because of circumstances that could not be anticipated and were beyond her control

[8] The Arbitrator proceeded with the February 28, 2022 dispute resolution hearing in the petitioner's absence. The Arbitrator heard from the landlords, who were affirmed and testified that they had not been served with the Notice of Dispute Resolution Proceeding Package by the petitioner tenant and had only learned of the hearing by contacting the RTB.

[9] The Arbitrator's Dispute Resolution Decision dated March 2, 2022, found that:

> (a) the tenants did not serve the landlords as required by RTB Rule of Procedure 3.1 and did not attend the hearing, and accordingly dismissed the tenants' application for dispute resolution, without leave to reapply;

(b) the landlords' Notice to End Tenancy complied with the form and content requirements of s. 45 of the Act; and

(c) on the basis of the landlords' unchallenged evidence, made an order for possession pursuant to s. 48(1) of the Act (the "Order for Possession"). Section 48(1) of the Act provides:

> **48** (1)If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if
>
> (a) the landlord's notice to end tenancy complies with section 45, and
>
> (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.
>
> [Emphasis added.]

[10] As s. 48(1)(b) makes clear, the Arbitrator's statutory authority pursuant to s.48(1) of the Act to issue the Order for Possession flowed from the Arbitrator's predicate finding in the Dispute Resolution Decision dismissing the tenant's application to cancel the respondent landlords' Notice to End Tenancy for Cause.

[11] In the result, the substantive decision at first instance is the Dispute Resolution Decision, and a formal s. 48(1) order for possession was issued concurrently pursuant to that decision.

[12] In addition, it is plain on the face of the Dispute Resolution Decision that it related to both (1) a notice to end a tenancy for cause pursuant to s.40 (being a reason in a notice other than for non-payment of rent which is addressed separately in s. 39 of the Act); as well as (2) to an order for possession to the landlord under s. 48 of the Act. This duality is reflected in the "Re:" line of the Order for Possession, referring to "An application pursuant to sections 40 [notice to end tenancy for cause] and 48 [order of possession]" of the Act. The dual statutory characterization of the Dispute Resolution Decision is relevant to the petitioner's internal review rights before the RTB, which I will return to below.

Petitioner's Application for Review Reconsideration

[13] The petitioner applied to the director of the RTB for a review of the Dispute Resolution Decision and order of possession pursuant to s. 72 of the Act. She filed a review application on March 8, 2022 and another review application on March 10, 2022 (one referencing the Dispute Resolution Decision, the other the Order for Possession). Counsel for the respondent landlords submitted that the petitioner did not file a review application on March 8, 2022 since it was rejected by RTB, but contrary to this submission, the Review Arbitrator explicitly found the petitioner filed a review request on March 8, 2022 and March 10, 2022.

[14] One of the petitioner's applications for review asserted that she was not able to attend the initial hearing due to circumstances that could not be anticipated and were beyond her control (see s. 72(2)(a) of the Act). She listed as grounds for her application, among other things, that her cell service dropped while waiting for the conference call, that she is a 73-year old woman who is mostly home bound with health issues, and that she didn't fully understand what was happening. She also says she received the order for possession from the landlords on March 7, 2022.

[15] There are tight timelines for a tenant to apply under the Act to review a decision made by the director (or delegate) of the RTB. Many decisions of the RTB attract either a two-day or five-day time limit to apply for review.

[16] Section 73 provides that a two-day limit applies to a decision or order that relates to an order for possession to a landlord, but a five-day limit applies to a decision or order that relates to notice to end a tenancy agreement other than for non-payment of rent:

> **73** A party must make an application for review of a decision or order of the director within whichever of the following periods applies:
>
> (a) within 2 days after a copy of the decision or order is received by the party, if the decision or order relates to
>
> (i) the withholding of consent, contrary to section 28 (2) *[assignment and subletting]*, by a landlord to an assignment or subletting,
>
> (ii) a notice to end a tenancy under section 39 *[landlord's notice: non-payment of rent]*, or

> (iii) an order of possession under section 47 *[order of possession for the tenant]*, 48 *[order of possession for the landlord]*, 49 *[application for order ending tenancy early]* or 49.1 *[order of possession: tenancy frustrated]*;
>
> (b) within 5 days after a copy of the decision or order is received by the party, if the decision or order relates to
>
> (i) repairs or maintenance under section 26 *[obligations to repair and maintain]*,
>
> (ii) services or facilities under section 21 *[terminating or restricting services or facilities]*, or
>
> (iii) a notice to end a tenancy agreement other than under section 39 *[landlord's notice: non-payment of rent]*;
>
> (c) within 15 days after a copy of the decision or order is received by the party, for a matter not referred to in paragraph (a) or (b).
>
> [Emphasis added.]

[17] The Dispute Resolution Decision concerned both a decision or order that related to notice to end a tenancy agreement other than for non-payment of rent—a notice for cause pursuant to s.40—which has a five-day time limit to review; and also related to an order for possession to a landlord pursuant to s. 48(1), which has a two-day time limit. The provision provides that the petitioner's application for review had to have been filed "within whichever of the" two "periods applies": s. 73(1).

Review Consideration Decision

[18] In the Review Consideration Decision, the Review Arbitrator stated that the petitioner had applied for review consideration of the Dispute Resolution Decision on March 8 and March 10, 2022, and that the petitioner tenant requested review on two grounds, one of which was that she was unable to attend the original hearing because of circumstances that could not be anticipated and that were beyond her control.

[19] With respect to the petitioner's time limit to apply for review, the Review Arbitrator paraphrased s. 73 of the Act. The Arbitrator's summary of s.73 included, among other things, that the two-day time limit applied to a decision or order that "relates to… an order of possession for a landlord or tenant … or a landlord's notice

to end tenancy for non-payment of rent"; and that the five-day time limit applied if the decision or order "relates to a notice to end tenancy for any other reason".

[20] The Review Arbitrator found that the two-day limit applied, providing this reasoning:

> From the decision of March 2, 2022, the issues before the original arbitrator involved an application to cancel a One Month Notice to End the Tenancy for Cause dated October 15, 2021. As such, I find the original decision allowed the applicant for review 2 days to file their Application for Review Consideration.
>
> The applicant for review received the March 2, 2022 decision and/or order on March 3, 2022 and filed their Applications for Review Consideration with the Residential Tenancy Branch on March 8, 2022 and March 10, 2022.
>
> I find that these Applications for Review Consideration w[ere] not filed within the required timelines. As such I dismiss the Applications for Review Consideration.

[21] I observe that the Review Arbitrator referred to the March 2, 2022 "decision" (or "original decision") which was sought to be reviewed, in the singular. That is, even though strictly speaking on March 2, 2022 the Arbitrator had made a Dispute Resolution Decision and also a formal Order for Possession, the Review Arbitrator treated the two as one decision relating to an application to cancel a One Month Notice to End the Tenancy for Cause. This characterization made eminently good sense, since the making the Order for Possession merely followed from the Dispute Resolution Decision in which the Arbitrator decided to dismiss the Notice to End Tenancy for Cause and make an Order for Possession. As such, at core the decision at issue for the for RTB's review was the Dispute Resolution Decision.

[22] The Review Arbitrator found the petitioner tenant had received the March 2, 2022 decision and/or order on March 3, 2022 and filed the review applications on March 8 and March 10, 2022. The Review Arbitrator found this was beyond the required two-day "timelines", and accordingly dismissed the Application for Review Consideration, and confirmed the March 2, 2022 "decision and order(s)".

[23] On April 19, 2022, this Court ordered a stay of the enforcement of the order for possession pending the hearing of the petitioner's petition for judicial review on its merits or further order of this Court.

Implications for Petitioner of a Two-Day vs Five-Day Time Limit for Review

[24] Assuming a two-day time limit, if the petitioner tenant in fact received the Dispute Resolution Decision and Order for Possession on Thursday March 3, 2022, and as found by the Review Arbitrator filed her first review application on Tuesday March 8, 2022, she was not late by much. The Review Arbitrator did not specify her filing due date. However, if weekend days are not counted, her due date was Monday March 7, 2022 and she was late filing by one day (see s. 25.5 of the *Interpretation Act*, R.S.B.C. 1996, c. 238). If she was required to file her review application on Saturday March 5, 2022 she was late by only three days.

[25] But counting from a March 3, 2022 receipt date to a March 8, 2022 filing date, the petitioner tenant did file an application for review of the decision within five days.

Discussion and Analysis

Position of the respondent landlords

[26] The respondent landlords submit that no reviewable error has been committed in either of the decisions below and the petition should be dismissed with costs awarded against the petitioner.

[27] The respondents submit that the dispute resolution Arbitrator and the Review Arbitrator applied the scheme correctly, not in a patently unreasonable manner, and that the Review Arbitrator on review had no choice but to dismiss the petitioner's review application since that is what the Act required.

[28] The respondents submit that in respect of the Dispute Resolution Decision, the Arbitrator proceeded in the petitioner's absence in accordance with the RTB rules of practice and procedure. The respondents submit that the statutory scheme affords a form of potential remedy for a tenant who has had an adverse decision made against her after she fails to attend an arbitration hearing: the ability to seek

an internal review of that decision if her unavailability was not anticipated or beyond her control.

[29] Thus, the respondents contend, if there was any alleged unfairness in the initial arbitration hearing proceeding in her absence, her remedy was to apply for an internal review within the RTB pursuant to s. 72. Unfortunately, the respondents say, the petitioner filed her review application too late.

[30] Being out of time to file her review application, and the petitioner not having applied to extend the time limit for review, the respondents contend that the Review Arbitrator did not act in a patently unreasonable manner by dismissing her review application. While the respondents acknowledge that the "stakes for the Petitioner are understandably high", the dismissal of her review application, depriving her an ability to attempt to persuade a review arbitrator that the Dispute Resolution Decision and Order for Possession were made in error, is the precise result which the legislation demands.

[31] For the reasons which follow I disagree with the respondents' position.

Applicable Law on this Judicial Review

[32] The Review Consideration Decision is subject to review on a patent unreasonableness standard: Act, s. 5.1 and 77.1; *Administrative Tribunals Act,* S.B.C. 2004, c. 45 [*ATA*], s. 58. The patently unreasonable standard is at the high end of the deference spectrum. It has been described to apply to administrative decisions which are "openly, clearly, evidently unreasonable", "clearly irrational" or "evidently not in accordance with reason": *Yee v. Montie*, 2016 BCCA 256 at paras. 21-22; or a decision where the result borders on the absurd: *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, 2004 SCC 23 at para. 18.

[33] On an application for judicial review, a reviewing court must focus on the reasons given by the tribunal: see generally *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 82-87 [*Vavilov*]. The reasons shed light on the rationale for a decision. The focus of a court on judicial review must be

on the decision actually made by the decision-maker, including both the decision and the outcome: paras. 81-83.

[34] In addition, where "the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes", and "if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention": *Vavilov* at paras. 133-135.

[35] While these principles in *Vavilov* were articulated by the Supreme Court of Canada in the context of discussing the application of the reasonableness standard of review, I find they also apply to the patent unreasonableness standard under the *ATA*.

Application of Relevant Principles

[36] The initial decision relates to a notice to end tenancy for cause pursuant to s. 40 of the Act, which is a notice other than for non-payment of rent under s. 39. Being a review application related to a notice other than for non-payment of rent under s. 39, the time period in s. 73(b)(iii) is engaged: a five-day time limit. Under a five-day time-limit, assuming the receipt date of March 3, 2022 and first filing date March 8, 2022 as found by the Arbitrator, the petitioner filed her review application with the RTB within the five-day time limit. Indeed, in the only decision of this Court of which I am aware where an analogous issue has arisen, the five-day (not two-day) review limit was applied: *Sharma v. Director, Residential Tenancy Office* (August 4, 2009), Vancouver No. S093652 (B.C.S.C.) at paras. 9,15-16 (decided under the *Residential Tenancy Act,* S.B.C. 2002, c. 78); see also Allan Wotherspoon, *Annotated British Columbia Residential Tenancy Act* (Toronto: Thomson Reuters, 2021) at pp. 1-252 to 1-253 and 2-226 to 2-227.

[37] In the Review Consideration Decision, the Review Arbitrator's reason for finding a two-day limit applied was that the Dispute Resolution Decision involved an application to cancel a one month notice for cause. But a decision relating to an

application to cancel a one month notice for cause leads to the application of a five-day time limit under s.73(b)(iii), not a two-day limit under s.73(a)(iii).

[38] While an application for review relating to an order for possession under s. 48 does attract a two-day time period to review, the Review Consideration Decision does not link the making of an order for possession to the reason to apply a two-day notice. Instead, the reasons given should have led to the conclusion a five-day time limit applied, and that the petitioner had filed her application for review within time. As mentioned however, the Review Arbitrator found the two-day limit applied and the petitioner was out of time.

[39] In summary: the petitioner's review application potentially engaged two different time periods for review, but the Review Consideration Decision did not provide reasons why the shorter two-day period applied instead of the five-day period, which the tenant complied with. The Review Consideration Decision did not give reasons why the two-day limit should override the five-day time limit. Instead, the Arbitrator simply applied the shorter, two-day time limit, as opposed to the five-day limit, to the prejudice of the petitioner, without giving reasons other than characterizing the decision on review in a manner which would instead lead to the conclusion a five-day limit would be applicable.

[40] The respondents stated in their written submissions that the two-day time limit was applicable based on Section B. of the Residential Tenancy Policy Guideline No. 24 entitled "Review Consideration of Decision or Order". However, that policy document does not mandate a two-day time period for review applications similar to the petitioner's. The relevant portion of the policy in the record before me referred to by the respondents simply refers to time limits for review in general, and cites s. 73 of the Act.

[41] Ending the tenancy of this 73-year old petitioner, and depriving her of an opportunity to internally review an arbitrator's dispute resolution decision which was made at a hearing where she did not attend for reasons she asserts were beyond

her control, all on the basis she was one day (or three days) late filing her application for review, is a severe result. If this result is demanded by the Act, it requires reasons with some justification in accordance with the facts and the law. None were given here.

[42] I find that the reasons in the Review Decision for applying a two-day limit were clearly irrational, and evidently not in accordance with reason, and therefore patently unreasonable.

What is the Appropriate Remedy?

[43] Upon finding a statutory decision to be patently unreasonable, the usual remedy on judicial review is to set aside all or part of the decision and accompanying order (if any) with a direction remitting the matter to the tribunal for rehearing pursuant to s. 5 of the *Judicial Review Procedure Act,* R.S.B.C. 1996 c. 241: *Vavilov* at para. 139. The court's remedial discretion must be guided by "the recognition by the reviewing court that the legislature has entrusted the matter to the administrative decision maker, and not to the court, to decide": *Vavilov* at para. 140.

[44] Only in exceptional or rare circumstances should the court make the decision the legislation has assigned to the administrative body: *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 at paras. 50-52; *Allman v. Amacon Property Management Services Inc.,* 2007 BCCA 302 at paras. 8-11. In *Allman*, the court concluded that the arbitrator had made a finding of fact which meant, as a matter of law, that there was "only one decision to be made", and accordingly upheld a chambers judge's decision that notices to terminate could not be upheld: paras. 15-16.

[45] Subsequently, in *Vavilov*, the Supreme Court of Canada addressed the matter of a court's remedial discretion on judicial review. The majority of the court said this:

> [142] However, while courts should, as a general rule, respect the legislature's intention to entrust the matter to the administrative decision maker, there are limited scenarios in which remitting the matter would stymie the timely and effective resolution of matters in a manner that no legislature

> could have intended: *D'Errico v. Canada (Attorney General)*, 2014 FCA 95, 459 N.R. 167, at paras. 18-19. An intention that the administrative decision maker decide the matter at first instance cannot give rise to an endless merry-go-round of judicial reviews and subsequent reconsiderations. Declining to remit a matter to the decision maker may be appropriate where it becomes evident to the court, in the course of its review, that a particular outcome is inevitable and that remitting the case would therefore serve no useful purpose: see *Mobil Oil Canada Ltd. v. Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 S.C.R. 202, at pp. 228-30; *Renaud v. Quebec (Commission des affaires sociales)*, [1999] 3 S.C.R. 855; *Groia v. Law Society of Upper Canada*, 2018 SCC 27, [2018] 1 S.C.R. 772, at para. 161; *Sharif v. Canada (Attorney General)*, 2018 FCA 205, 50 C.R. (7th) 1, at paras. 53-54; *Maple Lodge Farms Ltd. v. Canadian Food Inspection Agency*, 2017 FCA 45, 411 D.L.R. (4th) 175, at paras. 51-56 and 84; *Gehl v. Canada (Attorney General)*, 2017 ONCA 319, 138 O.R. (3d) 52, at paras. 54 and 88. Elements like concern for delay, fairness to the parties, urgency of providing a resolution to the dispute, the nature of the particular regulatory regime, whether the administrative decision maker had a genuine opportunity to weigh in on the issue in question, costs to the parties, and the efficient use of public resources may also influence the exercise of a court's discretion to remit a matter, just as they may influence the exercise of its discretion to quash a decision that is flawed: see *MiningWatch Canada v. Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 S.C.R. 6, at paras. 45-51; *Alberta Teachers*, at para. 55.
>
> [Emphasis added.]

[46] I have considered the principles above in the context of the circumstances of this case. The notice to end tenancy to which this matter relates was issued on October 8, 2021, and the Dispute Resolution Decision is dated March 2, 2022. I find that it is the intent of the legislation that tenancy disputes under the Act be heard and resolved expeditiously. In addition, the Review Arbitrator found that the petitioner applied to review on March 8, 2022 and she received the decision on March 3, 2022. Furthermore, the Review Arbitrator found that "the issues before the original arbitrator involved an application to cancel a One Month Notice to End the Tenancy for Cause". The Act required that such an application attracts a five-day time limit to apply for review, pursuant to s. 73(b)(iii) of the Act.

[47] I regard the timely resolution of this matter to be desirable and find that the Review Arbitrator has made a finding of fact as to the characterization of the nature of the petitioner's review that mandates a five-day time limit. There is therefore "only one decision to be made", which is to find the petitioner filed her review application

in time. In such circumstances, this is one of those exceptional cases where I should exercise my discretion and order that the petitioner filed her review application within time, and remit her review application back to the director of the RTB for consideration of her review on its merits.

[48] In doing so, I add that I express no view on the merits of the petitioner's challenge to the initial Dispute Resolution Decision which I have remitted to the RTB for further consideration. I note I have been referred to *Bedwell Bay Construction v. Ball*, 2022 BCSC 559 (which followed *Yellow Cab Company Ltd. v. Passenger Transportation Board,* 2014 BCCA 329 at para. 44) where this Court expressed the view that where a RTB review makes no decision on the merits of a review of an arbitration decision, it is the original arbitration decision which is the proper subject of judicial review before the court. Here, I have found that the RTB erred in finding the petitioners' review application was filed out of time and that the RTB had jurisdiction to review the petitioner's applications on their merits but failed to do so. I find this case to be distinguishable from *Bedwell Bay* and *Yellow Cab*, and consider it to be appropriate, in deference to the RTB's internal review role under the Act, to remit the petitioner's review application from the Dispute Resolution Decision back to the RTB as I have done for reconsideration on its merits, and not engage in a judicial review analysis of the Dispute Resolution Decision at this juncture before the internal RTB review procedure under the Act has been exhausted.

Conclusion and Order Granted

[49] I order that the Review Consideration Decision, which dismissed the petitioner's applications for review consideration of the Dispute Resolution Decision and Order for Possession, be quashed and set aside.

[50] I order that the petitioner's application for review of the Dispute Resolution Decision and related Order for Possession was filed within time pursuant to s. 73 of the Act.

[51] I further order and direct pursuant to s. 5 of the *Judicial Review Procedure Act* that the review applications shall be remitted to the director of the RTB or a delegate, for consideration of the petitioner's applications for review on their merits pursuant to s. 75 of the Act.

[52] I order that the stay of enforcement of the Order for Possession made by this Court on April 19, 2022 shall remain in effect until the disposition of the review before the RTB is completed.

[53] Costs of this petition shall be payable to the petitioner by the respondents John Kevin Maclean and Catherine Eileen Stavast on Scale B. No costs shall be payable to or by the respondent director of the RTB.

"Stephens J."

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hollyburn Properties Limited v. Staehli*, 2022 BCSC 28

Date: 20220111
Docket: S209822
Registry: Vancouver

Between:

Hollyburn Properties Limited

Petitioner

And

Maria Janina Staehli and Sylwia Sakowska

Respondents

Before: The Honourable Mr. Justice Brongers

On judicial review from: An order of the Residential Tenancy Branch, dated August 6, 2020 (RTB File No. 310008303).

Reasons for Judgment

Counsel for the Petitioner, via videoconference:	Stephen A. Mellows
Counsel for the Respondents, via videoconference:	Maryanna Dinh
Place and Date of Hearing:	Vancouver, B.C. October 1, 2021
Place and Date of Judgment:	Vancouver, B.C. January 11, 2022

INTRODUCTION

[1] This is a judicial review of a decision of a Residential Tenancy Branch arbitrator (the "Arbitrator"). The Petitioner is the landlord, Hollyburn Properties Limited ("Hollyburn"). The Respondents are the tenant, Maria Janina Staehli ("Ms. Staehli") and her daughter, Sylwia Sakowska ("Ms. Sakowska"). The Arbitrator ordered Hollyburn to pay $6,494.76 in compensation after finding that there had been a denial of the tenant's right to quiet enjoyment because of disruptive repair work performed in the parking garage situated close to her apartment unit.

[2] Hollyburn submits that the Arbitrator's decision is patently unreasonable, on essentially two grounds. First, the Arbitrator's reasons suggest a belief that both Ms. Staehli and Ms. Sakowska were co-tenants, when in fact the sole tenant was Ms. Staehli. Second, while Ms. Staehli had only sought compensation from Hollyburn equal to 30% of the monthly rent payable, the Arbitrator granted a 75% rent reduction without clearly explaining why. Hollyburn also raises a third ground in support of its petition by arguing that the Arbitrator denied it procedural fairness at the hearing.

[3] The Respondents disagree. They say that the Arbitrator was aware that Ms. Staehli was the only tenant, notwithstanding how the reasons for decision were drafted. As for the quantum of the award, the Respondents argue that it was within the range of acceptable outcomes. Accordingly, the Respondents submit that the Arbitrator's decision was not patently unreasonable. Furthermore, they say that the procedural fairness afforded to Hollyburn was adequate.

[4] Having reviewed the Arbitrator's reasons and the petition record, I find that the Arbitrator's decision is patently unreasonable and must be set aside. In particular, the Arbitrator's reasons do not adequately explain her surprising conclusion that a 75% rent reduction is warranted when the tenant's quiet enjoyment was only disturbed for approximately one-third of each weekday, and the tenant herself had only asked for a 30% rent reduction. This petition will therefore be allowed.

BACKGROUND

Ms. Staehli's Claim Against Hollyburn

[5] Ms. Staehli has been leasing an apartment unit in a Vancouver building owned by Hollyburn called "Seaside Plaza" since August 2013. She is the sole tenant. The unit is located on the third floor of the building, in close proximity to the parking garage. As of August 4, 2020, Ms. Staehli was paying Hollyburn a monthly rent of $1,705.27 under their tenancy agreement.

[6] Ms. Sakowska is Ms. Staehli's adult daughter. They do not live together, although Ms. Sakowska occasionally stays overnight in Ms. Staehli's apartment. Ms. Sakowska has an enduring power of attorney in respect of Ms. Staehli, and is both her legal and financial guardian, and primary caregiver. Since Ms. Staehli's first language is Polish and she has a limited understanding of English, Ms. Sakowska often acts as her mother's translator and interpreter as well.

[7] In March 2020, Hollyburn began repair work on the Seaside Plaza parking garage. That work included jackhammering and the use of other noisy machinery. It was scheduled for weekdays from 8:30 a.m. to 5 p.m., but quiet times were arranged to attempt to reduce the extent to which the residents of Seaside Plaza would be disturbed by the repairs.

[8] On April 27, 2020, Ms. Staehli wrote to Hollyburn to complain about the impact of the repair work on her enjoyment of her apartment. Ms. Staehli also asked Hollyburn to compensate her by means of a rent reduction of 30% for each month the repair work persists, retroactive to March 2, 2020. Ms. Staehli's letter, which was prepared with Ms. Sakowska's assistance, stated the following:

> In summary, I would like some recognition for having to go through these inconveniences, as well as for the frequent and ongoing interferences and disturbances. I am entitled to a habitable apartment. I cannot stay in my car 8 hours a day, 5 days a week for 3-5 months at end just to avoid extreme noise and drilling! Due to the dysfunctionality and inhabitability of my apartment, due to all the inconveniences related to the breach of quiet enjoyment caused by the parkade restorations, and due to my worsening health caused by the parkade restorations, I am asking you to allow me an humble and reasonable

> rent reduction of 30% for each month of ongoing restoration, and for each month going back to March 2nd, 2020, when this restoration first started.

[9] A representative of Hollyburn, property manager Cindy Anderson ("Ms. Anderson"), responded to Ms. Staehli's request on April 30, 2020. While Hollyburn did not agree to a rent reduction, it did offer Ms. Staehli temporary use of alternate accommodations, as well as noise cancelling headphones. On May 30, 2020, Ms. Staehli rejected Hollyburn's offer and reiterated her request for a 30% rent reduction. Hollyburn did not respond further.

[10] Ms. Staehli then commenced a Dispute Resolution Proceeding under the *Residential Tenancy Act,* S.B.C. 2002, c. 78 ("*RTA*") against Hollyburn before the Residential Tenancy Branch ("RTB") on June 18, 2020. The Notice of Dispute Resolution ("Notice") indicates that it was filed by "Tenant (Individual Person): Maria Janina Staehli" and "Tenant (Advocate or Assistant): Sylwia Sakowska". The Notice also set out three claims that were being advanced: (1) an order for compensation in the amount of $2,246; (2) an order requiring Hollyburn to comply with the *RTA*; and (3) a reimbursement of the RTB filing fee. Furthermore, the Notice stated the following:

> Landlord breached the Residential Tenancy Act and the tenancy agreement on material terms by severely disturbing my right to quiet enjoyment and causing nuisance. Parking restoration underneath and adjacent to my unit, was to take between 90-120 days. It involves the demolition and restoration of the concrete and waterproofing membrane which have me directly exposed to noise, toxic dust, chemicals, no privacy etc. The solutions provided by the landlord were unreasonable. I'd like 30% in rent reduction.

[11] Another document was filed with the RTB titled "Monetary Order Worksheet". It explained the proposed calculation for the compensation being sought in this way:

> As mentioned in my primary letter. I would like to receive the reimbursement compensation for rent reduction(s) going back to March 2nd, and/or, a lump sum in the form of reimbursement of 30% of my rent for the months I have been affected, and for which I have already paid full rent. Therefore this would be $2246 in total where $2046 in reimbursement for rent reduction for the 4 affected months by the restoration where my unit has been uninhabitable and unusable for 1/3 of the day every day, plus $200 compensation for restricted access to parking for all of the 4 months. If however this restoration project and its nuisance and inconveniences will

> continue into July and beyond, I would also like to be compensated for these additional months as well.

[12] A hearing of Ms. Staehli's proceeding was initially scheduled to take place before Arbitrator S. Green on July 17, 2020. Ms. Staehli requested an adjournment on the basis that Ms. Sakowska intended to interpret for her mother but could not do so because of illness. The Arbitrator granted the adjournment. A hearing of Ms. Staehli's proceeding ultimately took place on August 4, 2020. It was attended by Ms. Staehli, Ms. Sakowska, and three Hollyburn representatives: Ms. Anderson, Kim Hollett and Allan Wasel.

The Arbitrator's Decision and Reconsideration

[13] Arbitrator Green's decision was issued on August 6, 2020. The reasons for decision can be summarized as follows.

[14] After setting out the background and evidence, the Arbitrator noted the applicable law as set out in the *RTA,* notably ss. 7(1), 28 and 67. Section 28 of the *RTA* (wrongly cited by the Arbitrator as "section 22") provides that a tenant is entitled to quiet enjoyment of leased premises, which includes freedom from unreasonable disturbance. Section 7(1) of the *RTA* provides that if the landlord does not comply with the *RTA*, the regulations, or their tenancy agreement, it must compensate the tenant for the resulting damage or loss. Section 67 of the *RTA* (wrongly cited by the Arbitrator as "section 60") bestows upon the Arbitrator the authority to determine an appropriate amount of compensation. The Arbitrator also noted that the burden of proof to establish an entitlement to compensation lies upon the tenant.

[15] Following the Arbitrator's assessment that "the tenants" appeared to be more credible than the landlord's representatives, the Arbitrator made the following broad findings:

(a) the tenants have met their burden of proof to establish on a balance of probabilities: (1) the existence of damages; (2) the landlord's

causation; (3) the quantum of the damages; and (4) adequate mitigation;

(b) the landlord was indifferent, unresponsive, and unreasonably dismissive of the tenants' complaints;

(c) the landlord's offers of accommodation did not offer a reasonable solution to the tenants' circumstances;

(d) the landlord failed to balance its right and duty to repair the building with the tenants' right to quiet enjoyment; and

(e) the tenants were denied their right to quiet enjoyment from March 2020 to July 2020.

[16] With respect to the quantum of compensation, the Arbitrator awarded 75% of the rent paid from March 2020 to July 2020, a total of $6,394.76. In addition, the Arbitrator ordered the landlord to reimburse the $100.00 RTB filing fee. Accordingly, the total award amounted to $6,494.76. The key paragraphs in the Arbitrator's reasons that provide her rationale for this award are the following:

> As stated above, I find that the landlord ignored obligations to the tenants to provide quiet enjoyment. I find the offer of an alternative place to stay was not seriously intended, as indicative of the inclusion of an office that the tenants could go to during the day. I find the situation was serious, the loss of quiet enjoyment extensive during most working hours, and that the tenants were unable to use or enjoy their unit as described by them.
>
> I find the tenants were able to live in the unit during this period but were significantly deprived of their right to live peacefully by the landlord's failure to act or to respond adequately. I find that, while the source and extent of the disturbances varied from time to time, the tenant was consistently denied full quiet enjoyment for this period during the working day.
>
> I have considered the history of this matter, the parties' testimony and evidence, the Act and the Guidelines. I find the tenants have met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment from March 2020 to July 2020, a period of 5 months, for the disturbance caused by construction. I find the actions and failure to act of the landlord amounted to egregious failure to protect the tenants' quiet enjoyment.
>
> In view of the circumstances, I find it is reasonable that the tenant should receive compensation in the amount of 75% of the rent paid for this period which I find is $6,394.76.

> The tenants are also entitled to reimbursement of the filing fee of $100.00 for a total monetary aware [sic] of $6,494.76.

[17] Upon receipt of the Arbitrator's decision, Hollyburn immediately filed a request for a correction pursuant to s. 78 of the *RTA.* In its request, Hollyburn argued that the tenant's claim was for a 30% rent reduction in respect of a four-month period. Since the Arbitrator awarded a 75% rent reduction over a five-month period, Hollyburn alleged that "both the rate and the time frame used in the Decision calculation have been made in error as neither were claimed by the tenant."

[18] On August 11, 2020, the Arbitrator dismissed Hollyburn's application for a correction. The Arbitrator denied that the monetary order was made in error, and found that Hollyburn's application amounted to an improper attempt to reargue the matter in the hope of obtaining a reduction of the award. The Arbitrator wrote:

> I find this request for correction is an attempt to reargue the matter. I provided the parties with a comprehensive 11-page decision which sets out the law as well as my interpretation and application to the current situation and which followed a lengthy hearing. The decision is based on conflicting evidence and competing viewpoints. Findings of facts were made after consideration of the evidence and determination of the weight, credibility and content of substantial testimony of the parties. The amount of the monetary order is not either a "typing error" or an "obvious error" as claimed by the landlord in this application.
>
> The landlord is seeking to reduce the amount of the award through the route of an application for correction which is outside the ambit of such an application.
>
> I therefore conclude the original decision stands. I find no reason to issue a correction.

Hollyburn's Petition

[19] On September 30, 2020, Hollyburn filed the present petition with the Court. The petition has been brought under the *Judicial Review Procedure Act,* R.S.B.C. 1996, c. 241 ("*JRPA*"). Hollyburn asks that the Arbitrator's decision be set aside and a direction issued that this matter be returned to the RTB for a re-hearing before a different arbitrator. The petition names Ms. Staehli and Ms. Sakowska as respondents. It was also served on the Director of the RTB and the Attorney General of British Columbia (collectively referenced as the "Province").

[20] The Respondents Ms. Staehli and Ms. Sakowska filed their response to petition on November 12, 2020, requesting that Hollyburn's petition be dismissed. The Province filed a response to petition taking no position on the outcome of this proceeding, although it does contain submissions on the law that applies to judicial reviews of residential tenancy proceedings.

[21] The petition was heard in chambers on October 1, 2021. Hollyburn and the Respondents were represented by counsel. The Province did not appear.

ISSUES

[22] This petition raises the following issues:

(a) what standard of review applies to the Arbitrator's decision?

(b) by reference to the applicable standard of review, does the Arbitrator's decision warrant being set aside because it is substantively deficient?

(c) does the Arbitrator's decision warrant being set aside because of a denial of procedural fairness?

(d) if the answer to (b) or (c) is yes, what remedy should be granted?

ANALYSIS

Standard of Review

[23] A comprehensive consideration of the standard of review that applies to decisions rendered by RTB arbitrators pursuant to the *RTA* can be found in the Court's recent decision in *Kong v. Lee,* 2021 BCSC 606, at paras. 54-66.

[24] In this judgment, Madam Justice MacDonald explained first that the standard is prescribed by provincial legislation. Accordingly, the presumption that the standard is reasonableness established by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 does not apply. That legislation is s. 58 of the *Administrative Tribunals Act,* S.B.C. 2004, c. 45 ("*ATA*"), which applies by operation of ss. 5.1 and 84.1 of the *RTA*. Section 58(2) of the *ATA*

provides that findings of fact and law made within a tribunal's exclusive jurisdiction and protected by a privative clause can only be set aside if they are patently unreasonable. Therefore, the standard of patent unreasonableness applies to all substantive aspects of the Arbitrator's decision.

[25] As the *ATA* does not define patent unreasonableness as it applies to a tribunal's factual or legal findings, however, guidance regarding its meaning must be sought from the case law. In *Kong* at paras. 58-65, Madam Justice MacDonald set out a number of jurisprudential holdings which provide content to the notion of patent unreasonableness, including:

(a) as expert tribunals are entitled to significant deference, the standard is an onerous one and their decisions can only be quashed if there is no rational or tenable line of analysis supporting them (*Victoria Times Colonist v. Communications, Energy and Paperworkers,* 2008 BCSC 109 at para. 65; aff'd 2009 BCCA 229);

(b) a decision is patently unreasonable if it is openly, evidently, and clearly irrational, or unreasonable on its face, unsupported by evidence, or vitiated by failure to consider the proper factors or apply the appropriate procedures (*Gichuru v. Palmar Properties Inc.,* 2001 BCSC 827 at para. 34, citing *Lavender Co-Operative Housing Association v. Ford,* 2011 BCCA 114);

(c) a patently unreasonable decision is one that almost borders on the absurd (*Voice Construction Ltd. v. Construction & General Workers' Union, Local 92,* 2004 SCC 23 at para. 18 and *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal),* 2018 SCC 22 at para. 28);

(d) it is a possible that a great deal of reading and thinking will be required before the problem in a patently unreasonable decision is apparent, but once its defect is identified, it can be explained simply and easily, leaving

no real possibility of doubting that the decision is defective (*Yee v. Montie,* 2016 BCCA 256 at para. 22);

(e) the standard of patent unreasonableness also applies to the consideration of adequacy of reasons, which involves an assessment of the justification, transparency and intelligibility of the decision-making process (*Vavilov*); and

(f) under the *RTA* regime, the overriding test for adequacy of reasons is whether a reviewing court is able to understand how and why the decision was made (*Ganitano v. Yeung,* 2016 BCSC 2227 at para. 24).

[26] In sum, the standard of review that applies to the substance of the Arbitrator's decision in the case at bar is patent unreasonableness. It is an onerous standard, and her decision will not be set aside unless the Arbitrator's reasons are so defective that it is not possible for the reviewing court to understand why the Arbitrator concluded as she did.

[27] With respect to procedural fairness, the *ATA* provides at s. 58(2)(b) that the standard of review is whether, in all of the circumstances, the tribunal acted fairly. The factors that inform the content of a tribunal's duty to provide procedural fairness are contextual and include: (1) the nature of the decision being made and the process followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the affected individuals; (4) the legitimate expectations of the person challenging the decision; and (5) the choice of procedure made by the administrative decision-maker: *Vavilov* at para. 77.

Is the Arbitrator's Decision Patently Unreasonable?

[28] As noted earlier, Hollyburn's challenge to the substantive merits of the Arbitrator's decision is founded upon two alleged defects contained within its reasons: (1) the inconsistent use of the terms "tenant" and "tenants" to identify the party seeking relief*;* and (2) the lack of a clear explanation for awarding

compensation in an amount significantly greater than what had been sought. These two grounds will be addressed in turn.

Identity of the Party Seeking Relief Under the RTA

[29] There is no dispute that the Arbitrator referred to the party that instituted the underlying *RTA* dispute resolution proceeding as both the "tenants" and as the "tenant", although the plural form of this noun appears considerably more often in her reasons than does the singular form. The issue is whether such drafting constitutes a reviewable error that warrants the setting aside of the Arbitrator's decision.

[30] In my view, it does not. Both Hollyburn and the Respondents agree that Ms. Staehli is the sole tenant and that her daughter Ms. Sakowska was her "advocate" who assisted her with the RTB proceedings. This demarcation of their respective roles was also set out in the Notice where Ms. Staehli was styled as the "Tenant (Individual Person)" and Ms. Sakowska was styled as the "Tenant (Advocate or Assistant)".

[31] Furthermore, Ms. Staehli's claim under the *RTA* was made exclusively on the basis that her right to quiet enjoyment of the apartment pursuant to s. 28 of the *RTA* and her tenancy agreement with Hollyburn had been infringed. There was never any suggestion that Ms. Sakowska would also have an independent claim for compensation in respect of this infringement, and such an issue was not raised before the Arbitrator. Most importantly, the Arbitrator's reasons contain no statements, either express or implied, demonstrating conclusively that the Arbitrator felt she was adjudicating a claim advanced by two co-tenants who were seeking a collective damage award.

[32] In other words, while I acknowledge that it is curious that the Arbitrator's reasons often refer to "tenants" in the plural, I do not agree with Hollyburn that this reflects a material error that rises to the level of patent unreasonableness. In particular, it does not demonstrate that the Arbitrator believed that Hollyburn was

also legally obligated under the *RTA* to compensate Ms. Sakowska directly as a tenant, as Hollyburn argues. Furthermore, Hollyburn's suggestion that the Arbitrator's use of the plural "tenants" may be indicative of an intent to award additional compensation because the rights of two individuals were infringed is also without merit. It is belied by the fact that the Arbitrator simply applied a fixed percentage of 75% of the monthly rent payable under the tenancy agreement as the basis for her calculation.

[33] Furthermore, the Supreme Court of Canada in *Vavilov* at para. 91 cautioned reviewing courts to bear in mind that written reasons given by administrative bodies must not be assessed against a standard of perfection. As noted by counsel for the Respondents in her written submissions, the RTB is less formal than the courts, and arbitrators are expected to render their decisions within shorter periods of time. As counsel aptly stated, this can sometimes result in arbitrators' reasons being "less refined than preferred".

[34] In sum, I find that the Arbitrator's inconsistent use of the shorthands "tenant" and "tenants" to refer to Ms. Staehli as the party who commenced the underlying *RTA* dispute resolution proceeding is a clerical error that reflects hurried editing, and is not a substantive defect. This ground for seeking judicial review of the Arbitrator's decision is therefore dismissed.

Quantum of Compensation Awarded

[35] On the other hand, the extent to which the Arbitrator purported to explain why she awarded the sum of money that she did in this proceeding is more troubling.

[36] Consideration of this issue must begin with a review of the relief that was sought by Ms. Staehli. Commendably, the Respondents prepared a detailed Notice as well as a "Monetary Order Worksheet" which clearly indicate both the amount of compensation sought for Ms. Staehli and the basis for its calculation. Specifically, they submitted that her right to quiet enjoyment was disrupted for 8 hours every weekday during the daytime, representing approximately 30% of the time Ms. Staehli occupies the apartment unit. Accordingly, a 30% rent reduction per

month during the repair period was requested. As Ms. Staehli's monthly rent was $1,705.27, the Respondents submitted that a 30% rent reduction amounted to $511.50 per month.

[37] In her reasons for decision, the Arbitrator made no mention of the quantum of compensation Ms. Staehli was seeking, either in terms of the specific amount or the rent reduction percentage. The Arbitrator also did not mention Ms. Staehli's position that this compensation should be calculated to reflect the denial of quiet enjoyment for one-third of each workday for the duration of the repair period. The Arbitrator did, however, agree with Ms. Staehli that the deprivation of her quiet enjoyment took place during "most working hours" during "the working day", as follows:

> I find the situation was serious, the loss of quiet enjoyment extensive during most working hours, and that the tenants were unable to use or enjoy their unit as described by them.
>
> …
>
> I find that, while the source and extent of the disturbances varied from time to time, the tenant was consistently denied full quiet enjoyment for this period during the working day. [emphasis added, not in original]

[38] This finding notwithstanding, the Arbitrator then proceeded to award a rent reduction of 75% for the period during which the repairs took place. Yet no actual rationale was provided for setting the rent reduction at this particular percentage.

[39] Instead, the Arbitrator only indicated that: "[i]n view of the circumstances, I find that it is reasonable that the tenant should receive compensation in the amount of 75% of the rent paid for this period which I find is $6,394.76." While "the circumstances" are described generally by the Arbitrator in her earlier factual findings, she does not address why it would be appropriate to award compensation which reflects a deprivation of quiet enjoyment over a duration that is 2.5 times longer than what the Arbitrator found Ms. Staehli to have experienced.

[40] Furthermore, the Arbitrator's use of the adjective "egregious" to broadly characterize the landlord's "failure to protect the tenant's quiet enjoyment" suggests that perhaps the Arbitrator wanted to impose punitive damages on Hollyburn.

However, such an intention is not stated in the reasons. Of course, if it had been, this would have constituted a clear error of law since punitive damages are not available in an *RTA* proceeding: *Gates v. Sahota,* 2018 BCCA 375 at para. 60.

[41] In any event, the lack of any discernable explanation for the magnitude of the rent reduction awarded to Ms. Staehli renders the Arbitrator's decision patently unreasonable. I am unable to understand how and why the Arbitrator made this particular award, and whether it is within the range of what is acceptable given the evidence presented and the applicable legal framework.

[42] The situation here is somewhat similar to the one addressed by the Court in *Martin v. Barnett,* 2015 BCSC 426, where a judicial review brought in respect of an RTB decision was allowed because the tribunal granted a 25% rent reduction as requested by a tenant without explaining why such a percentage reduction was appropriate. Madam Justice Burke held as follows:

> [46] I conclude the reasons given by [the RTB] failed to meet the basic adequacy requirements necessary to allow the parties and the reviewing court to know why the decision was reached and whether it was within the reach of acceptable outcomes. The basis of the finding the renovations were to such an extent to justify the 25% rent abatement was not set out and ultimately not adequate.
>
> [47] Essentially, the evidence and submissions are cited and a conclusion reached without any analysis.
>
> …
>
> [50] In these circumstances, it is not possible to test the reasonableness of that conclusion. This runs afoul of the test set out in [*Laverdure v. First United Church Social Housing Society,* 2014 BCSC 2232] that there must be sufficient reasons and analysis to allow others, including a reviewing court to understand how and why the adjudicator reached that decision.

[43] Arguably, the need to provide sufficient reasons and analysis is even greater in the case at bar than it was in *Martin* given that the 75% rent reduction awarded by the Arbitrator was so much greater than what Ms. Staehli had sought and hoped to receive. While I do not mean to suggest that such a large rent reduction for a breach of the right to quiet enjoyment is necessarily impermissible, any RTB award must be

supported by a justification that is coherent, rational, and logical in order to pass muster when subject to judicial review.

[44] Accordingly, I accept that this second ground for Hollyburn's petition is well founded, and I conclude that the Arbitrator's decision is patently unreasonable.

Did the Arbitrator Deny Procedural Fairness to Hollyburn?

[45] Hollyburn also submits that the Arbitrator failed to ensure that the hearing was procedurally fair, for three reasons: (1) Ms. Sakowska was permitted to give evidence on behalf of her mother, Ms. Staehli; (2) Ms. Sakowska was allowed to provide translation for Ms. Staehli in circumstances where obvious bias existed and accuracy was not safeguarded; and (3) Hollyburn's representatives were denied the right to cross-examine the Respondents.

[46] While I am mindful that a relatively high degree of procedural fairness must be provided by the RTB (*Ganitano v. Metro Housing Corporation,* 2009 BCSC 787 at paras. 37- 40; *Fok v. British Columbia (Residential Tenancy Dispute Resolution Officer),* 2010 BCSC 1613 at paras. 55-58), I am not satisfied that Hollyburn has met its burden to demonstrate that there was a denial of procedural fairness in this case. In particular, the affidavit evidence tendered does not substantiate any of Hollyburn's three allegations that the Arbitrator acted unfairly in all of the circumstances.

[47] First, it cannot reasonably be argued that allowing Ms. Sakowska to testify and provide evidence which Hollyburn now says ought to have been tendered by Ms. Staehli instead constitutes a denial of procedural fairness. At best, this is a criticism of the Arbitrator's factual findings on the ground that they were supported solely by the hearsay testimony of Ms. Sakowska. While such an objection might conceivably have provided a basis to attempt to impugn the Arbitrator's substantive decision, Hollyburn has not done so in this petition and I am unable to assess whether it is well-founded based on the record before me. In any event, this is not a valid procedural fairness argument, and it must be rejected.

[48] Hollyburn's second procedural fairness argument is also unfounded. As this Court held in *Suri v. Vahra,* 2019 BCSC 675, allowing a relative to assist a party to an RTB proceeding whose understanding of English is limited by providing interpretation and making submissions is not a denial of procedural fairness. However, there can be a denial of procedural fairness if the relative's role crosses over to interpreting the party's testimony to the RTB. In the case at bar, however, the affidavit evidence tendered does not show that Ms. Staehli testified in Polish which was then translated into English by Ms. Sakowska for the benefit of the Arbitrator. Indeed, Hollyburn representative Ms. Anderson deposed in her own affidavit sworn September 30, 2020 that "I do not recall any translation being conducted by Ms. Sakowska", and that "at no time did the Arbitrator ask to hear evidence directly from Ms. Staehli." This argument must therefore be rejected as well.

[49] Finally, Hollyburn submits that "the Arbitrator should have allowed Hollyburn to cross-examine the respondents or ask questions of the respondents on their evidence". However, neither of the two affidavits Ms. Anderson tendered in this proceeding demonstrate that she or her colleagues who were representing Hollyburn expressly asked the Arbitrator for an opportunity to conduct a cross-examination and that their request was denied. Ms. Anderson simply alleges that she was not "given an opportunity to ask any questions of Ms. Staehli", and that the Arbitrator told the parties "not to speak unless told to do so".

[50] Concerns about denials of procedural fairness should generally be raised at the earliest possible opportunity in the forum where they arise so that the decision-maker has an opportunity to address them (Blake S., *Administrative Law in Canada,* 6th ed., (Toronto: LexisNexis Canada, 2017, at 9.64), referenced in *R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission),* 2021 BCCA 67 at para. 72). If they are not, the party may be precluded from raising them on judicial review. This principle was clearly expressed by the Federal Court of Appeal in *Hennessey v. Canada,* 2016 FCA 180 at para. 21:

> A party must object when it is aware of a procedural problem in the first-instance forum. It must give the first-instance decision-maker a chance to address the matter before any harm is done, to try to repair any harm or to

> explain itself. A party, knowing of a procedural problem at first instance, cannot stay still in the weeds and then, once the matter is in the appellate court, pounce.

[51] Given that Hollyburn's representatives did not even attempt to ask the Arbitrator if they could cross-examine the Respondents, I do not accept that there was a denial of procedural fairness in this regard. This argument is also rejected.

[52] In sum, I am not persuaded that the hearing before the Arbitrator was procedurally unfair. Accordingly, this ground for seeking judicial review of the Arbitrator's decision is dismissed.

Conclusion and Remedy

[53] As I have concluded that the Arbitrator's August 6, 2020 decision is patently unreasonable, I will exercise my authority pursuant to s. 7 of the *JRPA* to set the decision aside. Pursuant to s. 5 of the *JRPA,* I will also direct that Ms. Staehli's dispute resolution proceeding 310008303 be remitted to the RTB for a re-hearing before a new arbitrator.

[54] While the Respondents had requested that if a re-hearing is ordered that it be limited to the question of quantum alone, I decline to do so. The new arbitrator should be free to fairly adjudicate this proceeding afresh, and should not be constrained by any of the findings that were made by the Arbitrator at the original hearing.

DISPOSITION

[55] For the reasons set out above, the petition is allowed and the Arbitrator's August 6, 2020 decision is set aside. Ms. Staehli's application for dispute resolution bearing file number 310008303 is to be reconsidered by the Director of the RTB or a delegate other than the Arbitrator.

[56] In light of the outcome of this petition, Hollyburn ordinarily would be entitled to a costs award. In my discretion, however, I have concluded that such an award would not be appropriate in this case, for two reasons. First, the Respondents are

not to blame for the Arbitrator's patently unreasonable decision to inexplicably grant them an award in an amount significantly greater than what they had sought. Second, the Respondents' opposition to this petition was well-founded in respect of the other two of the three grounds raised by Hollyburn in its petition. Accordingly, the parties shall each bear their own costs of this proceeding.

Brongers J.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Dennison v. Stankovic,*
2022 BCSC 1274

Date: 20220727
Docket: S243806
Registry: New Westminster

In the matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Cory Dennison and Britany Holmes

Petitioners

And

Dragan Stankovic

Respondent

Before: The Honourable Justice Norell

Reasons for Judgment

The Petitioner, appearing in person on his own behalf and as representative for the Petitioner B. Holmes:	C. Dennison
The Respondent, appearing in person:	D. Stankovic
Place and Date of Hearing:	New Westminster, B.C. June 28, 2022
Place and Date of Judgment:	New Westminster, B.C. July 27, 2022

Introduction

[1] The petitioner tenants, Mr. Cory Dennison and Ms. Britany Holmes ("Tenants"), seek judicial review pursuant to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*] of a decision ("Decision") of an arbitrator made under the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*].

[2] In the Decision, the arbitrator granted the landlord, Mr. Dragan Stankovic ("Landlord"), an order of possession and an order requiring the Tenants to pay $784 of unpaid rent and the $100 filing fee. The Decision was made *ex parte*, without a participatory hearing, through a Direct Request Proceeding ("DR Proceeding") which was based on an undisputed 10 Day Notice to End Tenancy ("10 Day Notice").

[3] The parties are self-represented. Mr. Dennison attended at the hearing personally and on behalf of his spouse Ms. Holmes. The Tenants state that they did not receive the 10 Day Notice, and when they finally did receive it, they could not do anything because the DR Proceeding is an *ex parte* proceeding. Had they received the 10 Day Notice, they would have contested it because: (a) the rented premises suffered a flood for at least four days at the end of February 2022 which resulted in them being without any water for that period of time; and (b) as a result of this, the Tenants reached an agreement with the Landlord that they did not have to pay the full amount of rent for the month of March 2022. The Landlord states that he served the Tenants by posting the 10 Day Notice on their door, and denies any agreement to reduce rent. The Landlord states he complied with all *RTA* requirements and the Tenants did not avail themselves of procedures under the *RTA* to dispute the 10 Day Notice or review the Decision.

Standard of Review

[4] Pursuant to s. 5.1 of the *RTA*, s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004 c. 45 applies to a judicial review of an arbitrator's decision. The relevant portions of s. 58 state:

> (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be

> an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
>
> (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
>
> …
>
> (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly…

[5] The *RTA* has a privative clause. As the issue of service of the Day 10 Notice is a matter of procedural fairness, the standard of review is therefore whether in all the circumstances, the tribunal acted fairly.

Legal framework

[6] Pursuant to s. 46 of the *RTA*, a landlord may end a tenancy if rent is unpaid after it is due by serving a 10 Day Notice. Within five days of service of a 10 Day Notice, a tenant may either: pay the overdue rent, in which case the 10 Day Notice has no effect; or, may dispute the notice by making an application for dispute resolution ("Dispute Notice"). If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice, and must vacate the rental unit by that date.

[7] A tenant who receives a 10 Day Notice may apply to the director to extend the time to file a Dispute Notice: s. 66 of the *RTA*.

[8] The Residential Tenancy Branch ("RTB") may make decisions and orders based on written submissions only and without a hearing, in limited circumstances: s. 74 of the *RTA*. This is the DR Proceeding pursuant to which the Landlord in this case obtained the Decision. This process is only available if a tenant does not pay all outstanding rent and utilities or does not dispute the 10 Day Notice, within five days of being served. The DR Proceeding is an *ex parte* proceeding, but the arbitrator retains the discretion to refer the matter to a participatory hearing, for example when there is a concern about whether service has taken place.

[9] There are several permissible methods of service of the 10 Day Notice, but the one in issue in this petition is provided by s. 88(g) of the *RTA* which permits

attaching a copy to a door or other conspicuous place where the person resides. Service in this manner is deemed to be effective three days later: s. 90(c) of the *RTA*.

[10] Once a landlord files the required documents and evidence for a DR Proceeding, the RTB issues a Notice of Dispute Resolution Proceeding Package ("DR Package"), and the landlord is required to serve the tenant with the DR Package within three days: s. 59(3) of the *RTA*. In this case, as a monetary order was being requested, the package had to be served by leaving a copy with the Tenants or by registered mail: s. 89 of the *RTA*.

[11] Once a decision or order of an arbitrator is given, a party may apply to the director for a review of that decision or order: s. 79 of the *RTA.* The decision or order may be reviewed only on one or more of the following grounds:

> (a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
>
> (b) a party has new and relevant evidence that was not available at the time of the original hearing;
>
> (c) a party has evidence that the director's decision or order was obtained by fraud.

[12] A party seeking a review of a decision concerning a 10 Day Notice or an order of possession, must apply for the review within two days after a copy of the decision order is received by that party: s. 80(a)(ii) and (iii) of the *RTA.*

[13] A party may apply for an extension of time to file a review: s. 66 of the *RTA*.

Decision

[14] The arbitrator issued the Decision on April 1, 2022. The following is the pertinent evidence before and reasoning of the arbitrator.

[15] On March 1, 2022, the Tenants paid $840 toward the monthly rent of $1624. A receipt states "Partial rent payment for March 2022".

[16] With respect to service of the 10 Day Notice, the arbitrator stated:

> A copy of Proof of Service Notice to End Tenancy document which indicates the 10 Day Notice was served on the Tenants by attaching a copy to the Tenants' door or other conspicuous place on March 2, 2022, which service was witnessed by DP.

[17] With respect to service of the DR Package, the arbitrator stated:

> The Landlord submitted signed Proof of Service Notice of Direct Request Proceeding which declares that they served each of the Tenants with a Notice of Dispute Resolution Proceeding and supporting document in person on March 14, 2022, which service was witnessed by SM. I find these [documents] were served on and received by the Tenants on March 14, 2022.

[18] I note here that there is no proof of service of the DR Package on Mr. Dennison in the RTB file that was produced to the court at this hearing, but Mr. Dennison filed an affidavit in which he admitted to receiving the DR Package, although he states it was on March 16, 2022.

[19] Under the analysis section of the Decision the arbitrator concluded:

> I have reviewed all documentary evidence and I find that the Tenants were obligated to pay monthly rent in the amount of $1,624.00.
>
> In accordance with section 88 and 90 of the Act, I find that the Tenants are deemed to have received the 10 Day Notice on March 5, 2022, three days after it was attached to the Tenants' door or other conspicuous place.
>
> I find the 10 Day Notice complies with the form and content requirements of section 52 of the Act.
>
> I accept the evidence before me that the Tenants failed to pay the rent owed in full and did not dispute the 10 Day Notice within five days after receipt in accordance with section 46(4) of the Act.
>
> Based on the foregoing, I find the Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on March 5, 2022, the corrected date of the 10 Day Notice, and must vacate the rental unit.

[20] Thereafter, the arbitrator made the order of possession and the monetary award of $784 plus the $100 filing fee.

Petition

[21] Pursuant to a previous order of this court, the RTB produced its record of the proceedings in this matter.

[22] On a judicial review, usually only the record before the tribunal is considered, but there are circumstances where a court may need and admit other evidence. One of those circumstances is evidence of procedures followed to assess procedural fairness: *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387.

[23] For this hearing, the parties had filed a binder that contained material that was not in the record before the arbitrator, and much of which is not admissible on this petition. This included: portions of affidavits filed on the eight applications which were brought between the filing of the petition and the hearing of this judicial review which concerned a stay of proceedings and setting this matter for hearing; statements, excerpts of proceedings, and affidavits which concern disputes that other tenants have had with the Landlord; and portions of affidavits of the parties that concern other events after the Decision.

[24] The facts which are relevant to the procedural fairness issue and the steps the Tenants did or did not take upon notice are:

a) The Tenants deny they received the 10 Day Notice. The Landlord states he served the 10 Day Notice;

b) The Tenants say that had they received the 10 Day Notice, they would have disputed it because they had an oral agreement with the Landlord for reduced rent for the month of March 2022. Pursuant to this alleged agreement, on March 1, 2022, the Tenants paid only $840 toward the $1,624 monthly rent. The Landlord denies any such agreement;

c) On March 14, 2022, Ms. Holmes was served with the DR Package. Mr. Dennison admits receiving the DR Package on March 16, 2022;

d) Upon receipt of the DR Package, the Tenants did not make an application pursuant to s. 66 of the *RTA* to extend the time to file a Dispute Notice;

e) On March 18, 2022, the Tenants paid the remaining $784 rent for the month of March. The Landlord issued a receipt stating “Use and Occupation Only”; and

f) Following receipt of the Decision, the Tenants did not seek a review of the Decision pursuant to s. 79 of the *RTA*, nor did the Tenants file an application seeking an extension of time to seek a review.

Analysis

[25] The Tenants state that they did not receive the 10 Day Notice, and submit that when they received the DR Package, they could not present their case because the DR Proceeding is an *ex parte* proceeding.

[26] At the hearing of this petition Mr. Dennison made vague submissions that he thinks Ms. Holmes had tried to contact the RTB or dispute the DR Proceeding once they received the DR Package. He also stated that on April 3, 2022 (a Sunday), after they received the Decision, he contacted the RTB who gave him “misinformation” and he understood that because he and Ms. Holmes had paid rent on April 1, 2022, the order of possession was “discontinued” and “null and void”. On April 20, 2022, the bailiff attended to execute the order of possession, and that is when he and Ms. Holmes filed this petition. None of this submission, other than the events of April 20, 2022 are in an affidavit, and I therefore cannot rely upon it, but I will refer to it again below.

[27] The Landlord denies the above, and filed an affidavit that in summary states that he made it clear to the Tenants after he served the Decision that he was not discontinuing the RTB proceedings and would execute the order of possession. He refers to the receipt for the money paid on April 1, 2022, which states it was for “use and occupation”.

[28] The Tenants could have applied under s. 66 for a time extension to dispute the 10 Day Notice. The Residential Tenancy Policy Guideline on Direct Request Proceedings states the following:

> The director may adjourn the proceeding and reconvene it as a participatory hearing when the director has questions about the evidence that are best answered through oral testimony. The director may also adjourn the proceeding and reconvene it as a participatory hearing if the director accepts a Tenant's Application for Dispute Resolution seeking more time to cancel the notice to end tenancy for unpaid rent and/or utilities once the direct request process has begun.

[29] More importantly, as a general principle, a party must exhaust statutory review procedures before bringing an application for judicial review: *Martin v. Barnett,* 2015 BCSC 426 at para. 17; *Routkovskaia v. FPI Fireplace Products International Ltd*., 2012 BCCA 141 at para. 24; *Wang v. Hou*, 2019 BCSC 353 at para. 50; *Hudon v. Stevenson*, 2012 BCSC 253 at para 74; *Holojuch v. Residential Tenancy Branch*, 2020 BCSC 2217 at para. 14 [*Holojuch*]; *Yellow Cab Co. v. British Columbia (Passenger Transportation Board)*, 2014 BCCA 329 at para. 39 [*Yellow Cab*]; *Guevara v. Louie*, 2020 BCSC 380 at para. 40; *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3 at para. 38; *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561 at 588; and *Archibald v. Averbukh*, 2014 BCSC 1793 at para. 11. Applications for judicial review that are brought before exhausting internal review procedures may be dismissed: *Holojuch* at para. 14.

[30] If a party's grounds for review of an RTB decision fall within one of the three grounds for review in s. 79(2) of the *RTA*, generally that party must pursue an internal RTB review before he or she can bring an application for judicial review. However, if the basis for seeking review does not fall within one of the grounds listed in s. 79(2), the RTB director cannot review the decision and the party may bring a judicial review application. As Justice Groberman explained in *Yellow Cab* at para. 39:

> 39 There is a general principle that a party must exhaust statutory administrative review procedures before bringing a judicial review application: *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3 (S.C.C.); *Harelkin v. University of Regina*, [1979] 2 S.C.R. 561 (S.C.C.). For that reason, where an alleged error comes within a tribunal's statutory power of reconsideration, a court may refuse to entertain judicial review if the party has not made an attempt to take advantage of the reconsideration provision. Of course, where the power of reconsideration is not wide enough to encompass the alleged error, reconsideration cannot be considered an adequate

> alternative remedy to judicial review, and the existence of the limited power of reconsideration will not be an impediment to judicial review.
>
> [Emphasis added.]

[31] In this case, once the Tenants received the Decision, they did not seek an internal review under s. 79 of the *RTA.* The Decision in the RTB file attached a document entitled “Now that you have your decision…” and states that information on how and when to apply for the review of a decision can be obtained online, with the link provided. Underneath this it states in bold: “Please Note: Legislated deadlines apply”.

[32] Even were I to accept the assertions of Mr. Dennison regarding a conversation he had with the RTB after receipt of the Decision, and disregarded the Landlord’s evidence of the conversations he had with the Tenants advising that he was proceeding with the order of possession, the Tenants certainly knew by the time the bailiffs attended on April 20, 2022 that the Landlord was intent on proceeding. The Tenants thereafter did not seek an extension to file a review after they certainly were aware the Landlord was proceeding.

[33] In my view, the Tenants could have sought review pursuant to s. 79(2)(a) which states: “a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control”. The Tenants would have had an argument that because they were not served with the 10 Day Notice, the DR Proceeding was not available to the Landlord. Had they been served, they would have filed a Dispute Notice. Because the Landlord was able to proceed by DR Proceeding, the RTB did not receive any information from the Tenants which might have indicated to the RTB that a participatory hearing would be required, such as evidence concerning the alleged oral agreement between the parties that the full rent was not required for March.

[34] Whether that argument or a request for an extension to file a review would have been successful is a matter for the RTB. However, in my view, the procedure under s. 79(2) was available to the Tenants and they should have exhausted that

review procedure prior to seeking judicial review. The Tenants did not identify any other ground of review that would be outside the ambit of s. 79.

[35] This was the process that was followed in *Hughes v. Pavlovic*, 2011 BCSC 990 and *Pavlovic v. Hughes*, 2012 BCSC 79, where the tenant had challenged decisions following a DR Proceeding on the basis that he had not received notice of the proceedings. The tenant applied for review under s. 79, but his review was dismissed. The tenant then applied, successfully on both occasions, for judicial review of the review decisions.

Orders

[36] For the above reasons, the petition is dismissed. There is nothing in the evidence before the arbitrator which would have alerted him to a potential issue regarding service of the 10 Day Notice. The Tenants did not exhaust the procedures available to them under the *RTA* and as such this is not an appropriate case for judicial review.

[37] The Landlord is awarded his costs of this petition at Scale B.

"Norell J."

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20220222
Docket: S239193
Registry: New Westminster

Between:

Kavel Singh Multani

Petitioner

And

Crystal Brown and Robert Bolduc

Respondents

Before: The Honourable Justice Tammen

On Judicial Review from: The Residential Tenancy Branch decision of Arbitrator Adrian Denegar dated May 7, 2021

Oral Reasons for Judgment

In Chambers

(Hearing proceeded via MS Teams)

Counsel for Petitioner:	P. Sekhon
Counsel for Respondents:	R. Patterson
Place and Date of Hearing:	New Westminster, B.C. January 28, 2022
Place and Date of Judgment:	New Westminster, B.C. February 22, 2022

[1] **THE COURT:** The petitioner, Kavel Multani, seeks judicial review of a decision of an arbitrator of the Residential Tenancy Branch (RTB) awarding the respondents $22,183.36, an amount equalling 12 months rent, pursuant to s. 51(2) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 (the "*Act*").

[2] The respondents were long time tenants of a home at 5852 184 Street, Surrey, BC, (the "Home") having lived there since 2013. On January 4, 2020, the petitioner entered into a contract of purchase and sale with the owner of the Home, with a completion date of April 1, 2020. The petitioner then caused to be delivered to the respondents a two-month notice to end tenancy pursuant to s. 49 of the *Act*. The petitioner executed a notice to seller for vacant possession on January 22, 2020, which triggered the landlord's delivery of the notice to end tenancy to the respondents on January 24, 2020. The reason for the termination of the tenancy was an intention on the part of the petitioner to occupy the home post-purchase.

[3] The respondents were required to vacate the Home by the end of March 2020, but they did so on February 29, 2020. The respondents learned some months later that the petitioner had not moved into the Home and commenced the proceedings currently under review.

[4] Section 51 is the operative provision of the *Act* in these circumstances. It addresses potential compensation to a tenant who vacates premises because of a notice given pursuant to s. 49. Subsection 51(2) sets the amount of compensation at the equivalent of 12 months rent payable by either the landlord or purchaser who asked the landlord to give the notice. There is an onus on the responding party to establish that the purpose stated in the notice for ending the tenancy was accomplished within a reasonable time after notice was given and that the rental unit was used for that purpose for at least six months.

[5] Section 51(3) permits the director to excuse a landlord or purchaser from paying the tenant on a showing of extenuating circumstances. It reads:

> (3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the

> amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as applicable, from
>
> (a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, and
>
> (b) using the rental unit, except in respect of the purpose specified in section 49 (6) (a), for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

[6] The initial theory of the respondent was that the proposed sale was a sham orchestrated by the landlord to end their tenancy. That theory proved to be ill-founded and devoid of merit. Nonetheless, the petitioner and the landlord were both respondents to the RTB dispute and both attended the hearing by telephone. That hearing occurred on May 3, 2021, and a written decision was delivered on May 7, 2021.

[7] The petitioner advances two grounds for relief:

a) there was a breach of the requirement for procedural fairness in the manner in which the hearing was conducted; and

b) the decision is patently unreasonable.

[8] The petitioner was represented by counsel at the hearing. Counsel raised some preliminary legal objections which were dealt with by the arbitrator and form no part of this petition. Both the petition respondents and the landlord presented evidence and made submissions. The petitioner called no evidence, but his counsel made extensive submissions.

[9] The basic facts are straightforward. The sale did not complete on April 1, 2020, and thus the petitioner never took possession of the Home and did not move into it. The landlord provided evidence about the reason for the noncompletion, specifically the failure of the petitioner to do so. That reason related to inability to secure mortgage financing. The landlord testified about a request for an extension, which she declined to grant, and filed a letter from her conveyancing notary

acknowledging the extension request and confirming that she was ready, willing and able to complete on April 1, 2020.

[10] The petitioner's position has always been that he could not complete because he required his spouse to be a co-borrower on the mortgage, and she was unable to execute documents. According to the petitioner, his spouse travelled to India just prior to the first wave of the global pandemic and was unable to return to Canada as planned because all flights from India were cancelled. The petitioner has sworn and filed an affidavit in these proceedings which sets out those facts. However, as noted, the petitioner did not give evidence at the hearing below, nor did he file any documentary evidence. Rather, he relied solely on submissions of counsel to advance his explanation for the failure to complete.

[11] The arbitrator found that the tenants/respondents had proved noncompliance with s. 52(2). No issue was taken with that finding. Likewise, no issue was taken with the finding that because the landlord issued the notice to end the tenancy at the request of the purchaser, it was the latter who was potentially liable to compensate the tenants/respondents.

[12] The crux of the arbitrator's ultimate decision and the sole issue in these proceedings is the existence or not of extenuating circumstances pursuant to s. 51(3) so as to exempt the petitioner from liability. The arbitrator found because the petitioner had filed no documentary evidence and provided no *viva voce* testimony, there was no evidence at all of extenuating circumstances and such was fatal to the petitioner's case. The arbitrator noted that submissions of counsel are not evidence.

[13] The petitioner says that the approach of the arbitrator was significantly unfair to him, necessitating a new hearing. The petitioner makes the following points in support of that overarching submission:

a) The petitioner was not given an opportunity to be heard. If the adjudicator was of the view that submissions could not be considered as evidence, the arbitrator should have put the petitioner and his

counsel on notice so they could reconsider their decision to call no evidence.

b) The legislative scheme and rules of procedure are sufficiently informal that submissions may be considered as evidence or as a substitute for evidence.

c) It was fundamentally unfair for the arbitrator to refuse to consider evidence presented on behalf of the petitioner in the form of submissions of counsel in reaching a decision.

[14] The petitioner submits, and I accept, that issues of procedural fairness should be reviewed on a standard of correctness: *Mission Institution v. Khela*, 2014 SCC 24, at para. 79.

[15] Nonetheless, the petitioner has failed to demonstrate any error in the approach taken by the arbitrator, nor any denial of procedural fairness. The arbitrator gave each of the parties, including the petitioner, an opportunity to present their case, including calling evidence and making submissions. Prior to the hearing, each of the parties was able to electronically file any documentary material on which they sought to rely. The petitioner chose not to file any documents and chose not to testify. There was nothing unfair in the arbitrator failing to advise counsel of the obvious, namely that submissions are not evidence. If the petitioner had been unrepresented at the hearing, there might be some duty on the arbitrator to clarify any potential misunderstanding in that regard, but not when counsel is present.

[16] The definition of evidence in the RTB rules of procedure, in addition to documentary and audiovisual evidence, specifically refers to "oral statements of the parties or witnesses given under oath or affirmation." Neither the petitioner nor his counsel could have been under any misapprehension about this fundamental issue.

[17] I also disagree that the rules of procedure of the RTB are so relaxed that anything can qualify as evidence. Section 75 of the *Act* states:

> 75. The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be
>
> (a) necessary and appropriate, and
>
> (b) relevant to the dispute resolution proceeding.

[18] Although the heading states that the rules of evidence do not apply, the import of the section is to significantly relax those rules and give an arbitrator a broad discretion to consider all relevant evidence. Obvious examples would be hearsay, and evidence that might not comply with the *B.C. Evidence Act*, R.S.B.C. 1996, c. 124. However, the section does not transform submissions of counsel into evidence. That fundamental distinction is of central importance.

[19] The petitioner says the arbitrator fell into error by relying on case authority for the basic premise, namely that submissions of counsel are not evidence. I disagree. That premise is so axiomatic that no case authority is required. Evidence and submissions are fundamentally different. The former is the mosaic from which courts and all tribunals find facts. The latter is argument, intended to persuade tribunals which facts should be found from the evidence and what legal conclusions flow from those facts. Lay litigants occasionally need to be reminded of the distinction. Counsel do not. There was no duty on the arbitrator in this case to put counsel on notice that his submissions could not be considered as evidence. Counsel is presumed to know that.

[20] It follows from the foregoing that I am not persuaded there was any breach of the duty of procedural fairness at the hearing of May 3, 2021.

[21] That leaves for consideration whether the decision was patently unreasonable. Clearly it was not. The arbitrator gave extensive reasons for his conclusions and considered all the evidence presented. The petitioner submits that the letter relied on by the landlord concerning noncompletion of the sale should have satisfied the arbitrator that there existed extenuating circumstances. In my view, the arbitrator correctly noted the letter merely spoke to the fact of noncompletion on April 1, 2020, and shed no real light on the reasons for that. It was some evidence that

tended to support the landlord's position that she was not the party who could not complete.

[22] The arbitrator, based on the landlord's evidence, correctly found that the petitioner was the party who did not complete on the closing date. The arbitrator said, "It appears that the purchaser reneged on the contract." I would have chosen different language, but the fundamental finding is certainly correct. The petitioner was the party who was not ready, willing and able to complete the purchase on April 1, 2020. The onus thus clearly shifted to the petitioner to provide evidence of extenuating circumstances.

[23] The arbitrator's conclusion that there was no evidence of extenuating circumstances was in all the circumstances reasonable.

[24] The petition is dismissed.

[25] The respondents sought their costs of this hearing. They have been wholly successful and I award them costs at Scale B for the entire petition proceedings.

[26] That concludes my reasons.

“Tammen J.”

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gordon v. Guang Xin Development Ltd.,* 2022 BCSC 1544

Date: 20220831
Docket: S223590
Registry: Vancouver

Between:

Peter Gordon and Teresa Daniels

Petitioners

And

Guang Xin Development Ltd. No. BC0883333 and Nick Fedele

Respondents

On judicial review from: An order of the Residential Tenancy Branch, dated March 21, 2022

Before: The Honourable Madam Justice E. McDonald

Oral Reasons for Judgment

Counsel for the Petitioners:	Z. Modrovicova R. Patterson
The Respondent Nick Fedele, appearing in person:	N. Fedele
Place and Date of Hearing:	Vancouver, B.C. August 30, 2022
Place and Date of Judgment:	Vancouver, B.C. August 31, 2022

Introduction

[1] The petitioners seek an order setting aside the March 21, 2022 Decision of the Residential Tenancy Branch ("RTB") under RTB file no. 310051108 (the "Decision") and remitting the matter back for a new hearing.

[2] Although he did not file any responding materials, Mr. Fedele attended the hearing and by consent, he was permitted to make submissions regarding the relief sought. Although Mr. Fedele was concerned about the additional time and expense associated with potentially remitting the matter back for a new hearing, and while he agreed with the outcome of the Decision, he provided no substantive legal reasons for denying the petitioners' application.

[3] The Director of the RTB and the other respondents also filed responses and affidavits, which I have reviewed and considered. However, none of the respondents, except for Mr. Fedele, appeared at the hearing.

[4] The question raised on this application is whether the Decision to dismiss the petitioners' application is patently unreasonable. For the reasons that follow, I have concluded that the Decision is patently unreasonable.

Background

[5] For approximately eight years the petitioners were tenants of Mr. Fedele. Eventually, Mr. Fedele decided to sell the home where the petitioners rented accommodation.

[6] On May 31, 2021, Mr. Fedele served the petitioners with a 2 Month Notice to End Tenancy for Landlord's Use (the "Notice"). The reason specified in the Notice was that "all conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit".

[7] In fact, there was no written request to the landlord. After the petitioners moved out of the home, they discovered that the home was advertised for rent by the purchasers at a higher rent than the petitioners had been paying.

[8] Upon discovering that the home was being offered for rent contrary to the Notice, the petitioners brought an application under the *Residential Tenancy Act*, S.B.C. 2002, c. 78, as amended [*Act*] seeking a monetary order for compensation for money owed under the *Act*.

[9] A hearing of the petitioners' application was held on March 10, 2022 and the Decision was made on March 21, 2022. In the Decision, the arbitrator set out these central findings:

a) It was undisputed that the purchasers re-rented the home instead of occupying it (Decision, p. 4);

b) The purchasers did not ask the landlord in writing to serve the tenants with the Notice in order to occupy the home (Decision, p. 4);

c) The landlord served the Notice before receiving a written request from the purchasers and such written request was never received (Decision, p. 4);

d) The tenants moved out and suffered a "great loss"; however, their loss was not associated with any contravention of the *Act* by the purchasers (Decision, p. 4);

e) The losses claimed by the tenants were not the "result of the intentional actions of any of the respondents" (Decision, p. 5); and

f) The purchasers did not contravene the *Act* as they had never provided the landlord with a written request to end the tenancy pursuant to s. 49 of the *Act* (Decision, p. 5).

[10] Since the error alleged by the petitioners is that the Decision is patently unreasonable, I find that this alleged error is beyond the scope of the statutory

review power set out in s. 79(2) of the *Act*. Therefore, I agree that the Decision is amenable to judicial review pursuant to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241.

[11] I further agree that in respect of issues of fact and law in the Decision, the appropriate standard of review is patent unreasonableness. Section 58(2)(a) of the *Act* sets out that a discretionary decision is patently unreasonable if the discretion is exercised, for example, arbitrarily or by failing to take statutory requirements into account.

[12] In *Gichuru v. Palmar Properties Inc.,* 2011 BCSC 827 at para. 34 the court stated that a finding is patently unreasonable if it is "openly, evidently and clearly unreasonable". A decision that is unreasonable on its face is patently unreasonable: *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at 41. The review is founded on and must focus on, the written reasons for the Decision: *Team Transport Services Ltd. v. Unifor*, 2020 BCSC 91 at para. 18.

[13] The petitioners submit that the Decision is patently unreasonable on three grounds. I will deal with each ground individually.

Ground 1: Failure to apply requirements of the *Act*

[14] The petitioners assert that the Decision is patently unreasonable because it fails to consider the requirements of s. 49(5) and 51(2) of the *Act*, specifically as those requirements relate to whether the landlord owes compensation to the petitioners.

[15] Subsection 49(5) of the *Act* describes the circumstances under which a landlord may end a tenancy. The circumstances include when the landlord enters into a contract of purchase and sale for the rental unit and the purchasers ask the landlord, in writing, to give notice to end the tenancy on specified grounds, which do mention the purchaser's good faith intentions.

[16] The current wording of s. 51(2) of the *Act* sets out the circumstances under which the landlord or purchaser may be liable to pay additional compensation to the tenant. It states that the landlord or purchaser must pay the compensation if the landlord or purchaser fails to establish that the stated purpose of ending the tenancy was accomplished and the rental unit was used for the stated purpose. The *Act* also states that the obligation to pay compensation may be excused under s. 51(3) if the director's opinion is that "extenuating circumstances" prevented the landlord or purchaser from complying with subsection (2).

[17] The arbitrator's reasons for concluding that the purchasers do not owe compensation under s. 51(2) of the *Act*, is set out at p. 4 of the Decision:

> Although the landlords may have had good intentions by serving the tenants with a 2 Month Notice as soon as possible, I find that the landlords had done so before receiving the required written request from the purchasers, which was never received by the landlords or the tenants. Due to the unfortunate circumstances, the tenants had decided to move out instead of disputing the 2 Month Notice, and suffered a considerable loss in having done so. Although I am sympathetic towards the fact that the tenants suffered a great loss, I am not satisfied that their losses are associated with any contravention of the *Act* by the purchasers of the property. Accordingly, the tenants' claim for compensation under s. 51(2) of the *Act* is dismissed without leave to reapply.
>
> [Emphasis added]

[18] While the petitioners concede that they are not entitled to seek compensation under both ss. 51(2) and s. 7 of the *Act*, they allege that the Decision is also patently unreasonable in relation to the s. 7 analysis. In considering whether compensation is owed under s. 7, the arbitrator concludes as follows in the Decision (at p. 5):

> In consideration of the evidence before me, I find that the tenants had moved out after being served with the 2 Month Notice by their landlords. As noted above, I am not satisfied that the purchasers had provided the landlords with a written request to do so. I find that perhaps out of a misunderstanding of the process and requirements the landlords had prematurely served the tenants with the 2 Month Notice, which the tenants did not dispute. As noted above, I do not find that the losses claimed were the result of the intentional actions of any of the respondents. I do not find the purchasers had contravened the Act as they had never provided the landlords with a written request to end the tenancy pursuant to section 49 of the Act. I accept the testimony of the landlords that they had felt bad about ending the tenancy, but did so in order to comply with the Act rather than contravene it.

> Accordingly, I dismiss the remainder of the tenants' claim for compensation without leave to reapply.
>
> [Emphasis added]

[19] I conclude that the Decision is patently unreasonable because it arbitrarily, and without taking the statutory requirements under s. 7 and s. 51(2) or (3) into account, concludes that the claim for compensation against the landlord is dismissed.

Ground 2: Inadequacy of reasons

[20] The petitioners allege that the reasons for the Decision are inadequate in respect of dismissing the claim under s. 51(2) of the *Act* as it related to Mr. Fedele, the landlord.

[21] While reasons do not need to address every issue raised and every item of evidence adduced, the arbitrator's reasons must address the central issues and contain sufficient detail and clarity to allow the parties and the court to know why the decision was reached: *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232 at para. 37.

[22] The Decision finds that the purpose of the Notice was not carried out and the Notice was issued without the landlord having received a written request from the purchaser. In short, the arbitrator accepts that the *Act* was contravened.

[23] However, the Decision is patently unreasonable because it is devoid of any detail or clarity with respect to the conclusion that no compensation is owed to the petitioners under ss. 7, 51(2) and (3). There is nothing set out which allows the court or the parties to understand the reasoning on the central issue.

Ground 3: Absurdity and inconsistency with the statutory scheme

[24] Finally, the petitioners assert that the Decision is patently unreasonable in respect of the conclusion that the petitioners' losses did not result from the respondents' intentional actions.

[25] Neither the test for damages - which the petitioners concede is correctly stated by the arbitrator - nor ss. 7 and 51(2) of the *Act* - requires a tenant claiming compensation to establish that their loss is the result of “intentional actions” by the landlord or purchasers.

[26] In addition, I am unable to tell, due to the inadequacy of the reasons, whether the arbitrator formed the opinion that lack of intention is capable of providing an extenuating circumstance within the meaning of s. 51(3) preventing the landlord or purchaser from complying with the statutory requirements.

[27] Therefore, when the arbitrator finds that the absence of “intentional actions” justifies the dismissal of the petitioners’ claim, I agree that it leads to an absurdity and it is patently unreasonable.

Disposition

[28] The application for judicial review is allowed.

[29] The March 21, 2022 Decision is set aside and the matter is remitted back to the RTB for a re-hearing on the merits.

[30] Costs were not sought against any of the other respondents, including Mr. Fedele, as long he offered no strenuous or substantive objection to the matter being remitted back for a re-hearing. In my view, Mr. Fedele did not strenuously object to the relief sought.

[31] Therefore, there will be no order as to costs.

“E. McDonald J.”

TENANT'S SUBMISSIONS

The proportionate approach to s.47 eviction in the British Columbia RTA

INTRODUCTION

[1] The Landlord served a notice to end the Tenant's tenancy pursuant to s.47 of the *Residential Tenancy Act*[1] (RTA). The Landlord's notice identified one or more issues that have arisen in the tenancy.

[2] The Tenant applies to dispute the Landlord's notice. The Tenant submits that the Residential Tenancy Branch (RTB) should not uphold the notice. Grounds for ending the tenancy are not made out, because eviction is not necessary to resolve the issues identified in the Landlord's notice.

[3] Instead of upholding the Landlord's notice, the Tenant asks that the RTB either dismiss the application, or make a conditional order permitting the tenancy to continue provided that the issues are resolved.

[4] These written submissions argue that the RTB should not order eviction in circumstances where the issues raised in a landlord's notice can be resolved such that the tenancy can reasonably continue.

[1] SBC 2002, c 78.

FACTS

[5] The Tenant will adduce evidence to establish the following facts:

- The reasons the issues in the Landlord's notice arose;
- The steps the Tenant has taken to resolve the issues;
- That the issues have been resolved and have not recurred, or that the Tenant will take further steps to resolve the issues;
- The reasons the RTB can be confident the issues will not recur; and
- The impacts that eviction would have on the Tenant and their family.

[6] After hearing the evidence, the Tenant will ask the RTB to find, on a balance of probabilities, that the issues have been or will be resolved such that the tenancy can reasonably continue.

ARGUMENT

Overview

[7] The RTB has the authority to determine the appropriate solution to tenancy issues and to do what is fair in the circumstances. Eviction is only one of several remedies available under the RTA.

[8] The RTB should only order eviction if it is necessary because other remedies will not be effective, and justified as a proportionate remedy to the issues raised.

[9] In the present case, eviction is not necessary or justified, either because the issues raised in the Landlord's notice have already been resolved, or because another remedy would be sufficient to resolve the issues.

Eviction should only be ordered if it is necessary and justified

[10] The RTA is remedial legislation, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.[2] The primary purpose of the RTA is to confer a benefit or protection upon tenants.[3]

[2] *Interpretation Act*, R.S.B.C. 1996, c. 238, s.8.
[3] *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257 (CanLII) at para 11.

[11] In keeping with the RTA's protective purpose, eviction under a s.47 notice requires a finding of "serious misconduct."[4] In determining whether the requirements of s.47 have been met, the RTB must bear the RTA's purposes in mind.[5]

[12] The purpose of s.47, in particular, is to ensure that landlords are able to manage their properties and resolve tenant conduct issues.

[13] In *McLintock v. British Columbia Housing Commission*, a tenant had prevented a landlord from carrying out necessary repairs by repeatedly refusing entry to his unit. The RTB ordered him to permit entry, but also upheld a notice to end his tenancy. On appeal, the Supreme Court of British Columbia held:

> While I appreciate that the Landlord was entitled to pursue two alternate remedies, entry and eviction, its actions beg the question of why it proceeded with its eviction proceedings in regard to a disabled and senior long-term tenant when it could have entered and completed the renovations before the second arbitration. Mr. McClintock had changed his locks back to the original locks by that time. Again, issue was not addressed.
>
> […]The fact that the parties agreed on a time to complete the renovations raises the serious question of <u>what purpose would be served by evicting</u> a disabled senior at this time [emphasis added].[6]

[14] Hence the Court concluded that the purpose of s.47 in that case was to enable the landlord to enter the unit and complete renovations. Eviction would not have served that purpose. The Court held that the RTB's failure to consider whether eviction was necessary was patently unreasonable, and allowed the appeal.

[15] The Court reached a similar conclusion regarding a different eviction provision in *Berry and Kloet v. British Columbia*:

> The purpose of s. 49(6) is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able carry out renovations. Therefore, where it is possible to carry out renovations without ending the tenancy, there is no need to apply s. 49(6).[7]

[16] The Court explicitly rejected the notion that eviction was a purpose of s.49(6). Eviction was only to be ordered if it was necessary to achieve the purpose of carrying out renovations. The same reasoning is applicable to s.47.

[17] In *Guevara v. Louie*, the RTB ordered the eviction of a tenant because of minor issues regarding late rent payments. The Court found the decision to be patently unreasonable,

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[4] *Guevara v. Louie*, 2020 BCSC 380 [*Guevara*] at paras 54-55, affirmed in *Senft v Society For Christian Care of the Elderly*, 2022 BCSC 744 [*Senft*] at para 37.
[5] *McLintock v. British Columbia Housing Commission*, 2021 BCSC 1972 at para 56; *Senft*, *supra* note 2 at para 38.
[6] *Supra* note 5 at paras 58-59.
[7] *Supra* note 3 at para 22.

in part because of "the draconian remedy granted by the Arbitrator."[8] The Arbitrator ought to have considered whether another remedy could have achieved the purpose of resolving the late payment issue, before resorting to eviction.

[18] In *Senft v Society For Christian Care of the Elderly*,[9] the Court considered and affirmed its prior decisions, and developed an overarching principle for determining whether eviction should be ordered under s.47: an eviction must be "necessary and justified."

[19] The tenant in *Senft* had left extensive waste, including rotting food and litter, in his living room, kitchen, and bathroom. The RTB found that his conduct had jeopardized other occupants' or the landlord's health, safety, or lawful rights, and put the landlord's property at risk, contrary to s.47, and ended the tenancy. On appeal, the Supreme Court of British Columbia upheld the RTB's findings that the waste had seriously jeopardized health and safety and put the landlord's property at risk.[10] However, despite the *prima facie* contraventions of s.47, the Court found that the RTB had erred by failing to consider whether eviction was "necessary or justified" in the context of the protective purposes of the RTA.[11]

[20] The Court's analysis makes clear that the purpose of s.47 was to ensure that the unit was cleaned, not to give the landlord a means for evicting the tenant:

> The evidence that the petitioner cleaned the rental unit was relevant to the consideration of whether the eviction was necessary and justified. By refusing to consider it, I find that the arbiter failed to engage in a purposive analysis of s. 47 under the RTA. For example, the arbitrator found that the rental unit was reasonably clean by August 2021. If that was the case, how could the petitioner's conduct have placed other occupants or the landlord's interests at risk? This is not something the arbitrator considered.[12]

[21] The approach mandated by the Court is a proportionate approach to eviction decisions. To determine whether the grounds for eviction under s.47 have been made out, the RTB must consider not only whether a landlord has proved a contravention, but also whether eviction would be necessary or justified in the circumstances. If the RTB does not find that eviction would be necessary or justified, then the issue complained of is not "serious misconduct," the landlord's notice is invalid, and the RTB must grant the tenant's application to dispute the notice.

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[8] *Supra* note 4 at para 81.
[9] *Supra* note 4.
[10] *Ibid* at para 35.
[11] *Ibid* at paras 39-40.
[12] *Ibid* at para 40.

Eviction is only necessary if other remedies would not resolve the issue

[22] Before ordering eviction, the RTB must first conclude that eviction is "necessary" in order to resolve the issues raised in a landlord's notice. Often, eviction will not be the only available solution. In some cases, a tenant will have already resolved an issue by the time the matter is heard. In others, they may be in the process of resolving the issue. In such cases, it is appropriate for the RTB to issue a conditional order permitting the tenancy to continue provided that the issue does not recur.

[23] The RTB's authority to make a conditional order comes from s.62(3), which provides that "The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement." s.47(1)(l) further provides for eviction if a tenant fails to comply with the RTB's order. These provisions give the RTB the option of refusing to uphold a notice to end a tenancy, and instead ordering a tenant to comply, with eviction as a consequence of any further non-compliance.[13]

[24] In deciding whether eviction is necessary or whether another remedy will be sufficient to resolve the issues, the RTB should bear in mind that the Court considers eviction to be a "draconian" remedy of last resort.[14]

[25] It must also be noted that the purpose of s.47 is not to punish a tenant for misconduct. Where a party's conduct is blameworthy, they can be prosecuted in a separate proceeding under s.95. The purpose of s.47 is remedial, not punitive. The overarching question must be whether the tenant's conduct can be resolved, not whether the conduct merits censure.

[26] The question of whether an eviction is "necessary" is a question of fact which must be decided on the evidence. If the RTB finds that eviction is the only reasonable way to resolve the issues in a landlord's notice, then it may order eviction. However, if the RTB finds, on a balance of probabilities, that another remedy is likely to be effective, then eviction will not be necessary and the notice should not be upheld.

Eviction is only justified if it is reasonable in light of the contravention

[27] In addition to being "necessary," the Court in *Senft* held that an eviction must be "justified." The Oxford English Dictionary defines "justify" as "prove something to be right

[13] The RTB would also have the option of issuing an interim order for compliance, and reconvening at a future date to determine whether the tenancy should be ended. This was done in *Douglas v. Anavets Senior Citizens' Housing Society*, 2003 BCCA 182 (CanLII), under previous legislation which did not have an equivalent to the current s.47(1)(l). That option is still available to the RTB, in addition to the option of a conditional order under ss.62(3) and 47(1)(l).

[14] *Guevara supra* note 4 at para 81.

or reasonable" or "be a good reason for a decision or action."[15] Eviction should not be ordered unless the issues in a landlord's notice are a good reason to deprive a tenant of their home.

[28] For example, in *LaBrie v Liu*,[16] the Court overturned an eviction where a tenant's rent payment was short by $1.00. Surely, this was a case where the rent arrears were not a good reason to end the tenancy even though they constituted a *prima facie* contravention of the RTA.

The proportionate approach is consistent with other Canadian jurisdictions

[29] As set out above, the Supreme Court of British Columbia has adopted a proportionate approach to eviction. Eviction should only be ordered if it is necessary because there is no other reasonable way to resolve the issues raised by a landlord, and if those issues are good reasons to evict a tenant.

[30] The Court's approach is consistent with the approaches taken in other Canadian jurisdictions.

[31] In Ontario, Saskatchewan, and Quebec, the legislation explicitly grants residential tenancies tribunals the discretion to choose remedies other than eviction:

> Ontario: 83(1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement, (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse…[17]
>
> Saskatchewan: 70(6) After holding a hearing pursuant to this section, a hearing officer may make any order the hearing officer considers just and equitable in the circumstances…[18]
>
> Quebec: 1973 Where either of the parties applies for the resiliation of the lease, the court may grant it immediately or order the debtor to perform his obligations within the period it determines, except where payment of the rent is over three weeks late…[19]

[15] *Paperback Oxford English Dictionary, Seventh Edition*, Oxford University Press, 2012.
[16] 2021 BCSC 2486.
[17] *Residential Tenancies Act, 2006*, SO 2006, c 17.
[18] *Residential Tenancies Act, 2006*, SS 2006, c R-22.0001. Confirmed to grant discretion regarding remedy in *Williams v Elite Property Management Ltd.*, 2021 SKQB 46 (CanLII) and the cases cited therein.
[19] *Civil Code of Québec*, CQLR c CCQ-1991. Confirmed to apply to conduct evictions as well as arrears evictions in *Sylvania Construction v. Boretsky*, 2011 QCCQ 7008 (CanLII).

[32] In Alberta and New Brunswick, the legislation does not confer explicit discretion, but the courts have nonetheless found, like the British Columbia court, that eviction is not a mandatory remedy.[20]

[33] In most other Canadian jurisdictions, the courts do not appear to have ruled on the question of whether eviction is a mandatory remedy. In Nova Scotia, the court has explicitly left the question open.[21] However, the reasoning of the Alberta, New Brunswick, and British Columbia courts would be applicable in most of the other Canadian jurisdictions.

[34] Prince Edward Island appears to be the only jurisdiction in which eviction has been held to be a mandatory remedy.[22] The finding was made by the Island Regulatory and Appeals Commission, an appellate tribunal, and the question has not been considered by the Prince Edward Island courts.

[35] In sum, the proportionate approach to eviction is the normal approach in Canada. It has been adopted explicitly by the legislatures in three provinces, and by the courts in three others including British Columbia. It remains an open question in other Canadian jurisdictions except Prince Edward Island.

[36] Prior to the Supreme Court of British Columbia's decision in *Senft*, the RTB did not follow a proportionate approach to eviction. Any breach of a tenant's obligations, however minor, resulted in eviction. British Columbia had the highest eviction rate in Canada by a wide margin. A staggering 10.6% of British Columbia renter households were evicted between 2013 and 2018. Prince Edward Island had the second-highest eviction rate, at 6.8%. In the other provinces and territories, between 3.7% and 6.6% of renter households were evicted in the same time period.[23]

[37] In *Senft*, the Court affirmed that the previous approach cannot continue. In line with other Canadian jurisdictions, the RTB is empowered to preserve tenancies in cases where eviction is not necessary or justified.

The proportionate approach is consistent with other areas of law

[38] The termination of a tenancy is comparable in some respects to the termination of an employment contract. Both relationships are contractual relationships regulated by statute to protect security of tenure and rectify unequal bargaining power. Just as

[20] *Nethervue Park v. MacKinnon et al.*, 2013 NBQB 15; *Haldor Ltd v Ross*, 2022 NBQB 14; *615247 Alberta Ltd. v. Wimperis*, 2007 ABQB 55; *Gosine v. Hepas*, 2008 ABQB 321.
[21] *Cragg v Southwest Properties Ltd,* 2012 NSSC 298.
[22] Order LR14-10, Island Regulatory and Appeals Commission, Prince Edward Island (2014).
[23] Xuereb *et al.*, "Understanding Evictions in Canada through the Canadian Housing Survey," The University of British Columbia Balanced Supply of Housing Research Excellence Cluster, September, 2021.

termination of a tenancy requires "serious misconduct," termination of a labour contract requires "just cause."

[39] Where a unionized employee has engaged in misconduct, termination is not an automatic remedy. If an employer imposes termination, an arbitration board must decide whether the termination is excessive. "Arbitrators may exercise the remedial authority to substitute a new penalty, properly tailored to the circumstances of the case, perhaps even utilizing some measures that would not be open to the employer at first instance."[24]

[40] In the same way, where a landlord gives a notice to end a tenancy under the RTA, as set out above the RTB must determine whether eviction would be excessive and, if so, may substitute a different solution that may not have been available to the landlord at first instance, such as a conditional order.

[41] The proportionate approach permits courts and tribunals to fairly balance parties' competing interests and obtain just results in the circumstances of each case.

The proportionate approach is consistent with the *Canadian Charter of Rights and Freedoms*

[42] Section 7 of the *Canadian Charter of Rights and Freedoms* provides as follows:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.[25]

[43] In at least some cases, an eviction will deprive a tenant of security of the person. For example, if a tenant has nowhere else to go, eviction will expose them to the risks and harms associated with homelessness. If they will lose the ability to house their family, eviction will expose them to loss of custody of their children.[26] A deprivation of security of the person will infringe s.7 unless it is in accordance with the principles of fundamental justice.

[44] Proportionality is one of the principles of fundamental justice.[27] An eviction will infringe s.7 if it deprives a tenant of security of the person to an extent that is grossly disproportionate to the purpose of the eviction.

[45] The Supreme Court of British Columbia's approach allows the RTB to ensure that eviction is only ordered in cases where its impact on a tenant is proportionate to the purpose of the eviction. If the RTA were to require eviction as a mandatory remedy for any contravention,

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[24] *William Scott & Co. v. C.F.A.W., Local P-162*, 1976 CarswellBC 518, [1976] 2 W.L.A.C. 585, [1976] B.C.L.R.B.D. No. 98, [1977] 1 Can. L.R.B.R. 1 at para 13.
[25] The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11.
[26] *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 SCR 46 established that the loss of custody of a child infringes a parent's security of the person.
[27] E.g. *Canada (Attorney General) v. Bedford*, 2013 SCC 72 (CanLII), [2013] 3 SCR 1101.

without regard for the impact on the tenant, the legislation would offend s.7 and would be vulnerable to constitutional challenge.

The proportionate approach is consistent with Canada's international obligations

[46] Canada is a party to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)[28], a binding treaty which provides that everyone has the right to an adequate standard of living, including adequate housing. The ICESCR provides that eviction may only be carried out after assessing its proportionality. In particular, eviction must be carried out as a last resort and there must be no less onerous means of achieving the objective of the eviction.[29]

[47] In interpreting Canadian legislation, the courts presume that the legislature intends to act in compliance with Canada's international obligations:

> It is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law. The presumption of conformity is based on the rule of judicial policy that, as a matter of law, courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations, unless the wording of the statute clearly compels that result.[30]

[48] The Supreme Court of British Columbia's approach in *Senft* ensures Canada's compliance with its treaty obligations by allowing the RTB to order eviction only as a last resort. If the RTA were to require eviction as a mandatory remedy for any contravention, the result would be evictions which violated international law.

CONCLUSION

[49] The Landlord has served a Notice to End the Tenancy which raises issues regarding the Tenant's conduct. The RTA confers on the RTB the authority to determine the best way to resolve those issues.

[50] The RTB should only resort to eviction if it is necessary and justified.

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[28] UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.
[29] *Lopez Alban et al. v. Spain*, E/C.12/66/D/37/2018 (2019); *Rosario Gomez-Limon Pardo v. Spain*, E/C.12/67/D/52/2018 (2020); *El Goumari and Tidli v. Spain*, E/C.12/69/D/85/2018 (2021); *El Ayoubi and El Azouan Azouz v. Spain*, E/C.12/69/D/54/2018 (2021); *Soraya Moreno Romero v. Spain*, E/C.12/69/D/48/2018 (2021); *Lorne Joseph Walters v. Belgium*, E/C.12/70/D/61/2018.
[30] *R v. Hape*, 2007 SCC 26 at para 53.

[51] In the present case, the evidence will show that eviction is not necessary. If any issues remain, a conditional order will be sufficient to resolve them. The Tenant recognizes the cause of the issues and has taken steps to resolve them and ensure that they will not recur.

[52] The evidence will also show that eviction is not justified. Eviction would have a significant impact on the Tenant, which would be disproportionate to the objectives of the eviction. A conditional order would be a proportionate remedy.

[53] This case is an opportunity for the RTB to solve problems, achieve a fair and just result, and avoid an unnecessary eviction.

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

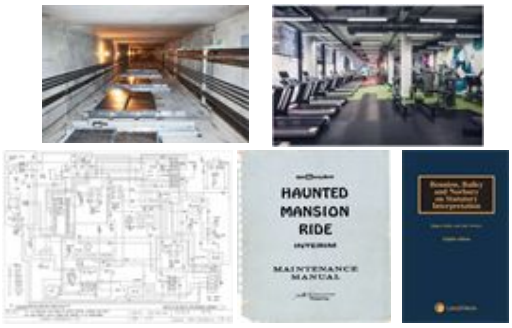
Legal Aid BC

Responding to Rent Increases for Capital Expenditure

Lasse Hvitved

Information from staff very familiar with the issues arising in cases in which a landlord increases rent to cover capital expenditures about what to watch out for and how to help clients dealing with such cases.

Responding to ARI-C



1

THE BASICS OF ARI-C

- Put into effect in July 2021.
- Allows for a maximum increase of 3% rent increase each year for 3 years.
- The rent increase is not removed or taken back to its prior amount once the cost of the improvements have been paid off.
- The amount claimed for must be spread on every unit and divided by 120 (representing 10 years)
- Requires that the landlord has either improved, repaired, or maintained the property in some way.

2

When do you enter the process?

Preliminary hearing → Interim decision → Main hearing

3

Assessing the chance of meaningful success

- What is the type of work the landlord has done?
- How organized are the tenants and are there any long-term tenants?
- What is the impact on the individual tenant?
- What is the landlord claiming for vs the maximum rent increase the tenants can face?
- Do you have capacity?

4

The preliminary hearing

- Intended to be about case management
- Written or oral going forward?
- Most likely your only chance to communicate with the arbitrator prior to the hearing, including requesting a summons for evidence.
- Tenants will be asked/pressured to select a representative for them. (If you are the only advocate, you might be pressured to)
- If your tenant does not show up, that tenant might be cut off from making oral submissions at the main hearing.

5

Request for evidence

Request for evidence

<Date of letter>

<Landlords address for service>

Dear, <Name of landlord>

My name is <insert names>, and I am a tenant residing at <rental building address> in relation to the Residential Tenancy Branch matter under file number <insert file number>, which has a preliminary hearing set <Date of and time of hearing>. I write to you to officially requesting that you submit into the evidence the following documents:

1) The make and model of the heating boiler that was replaced;
2) The date that the previous heating boiler was originally installed;
3) Any and all manuals for maintenance included with the replaced heating boiler;
4) A maintenance record of all repairs and maintenance done on the replaced heating boiler; and,
5) Any and all complaints received from tenants in relation to inadequate heating in the period the replaced heating boiler was in use.

This information is necessary for the tenants because it is relevant to the test under section 23.1 of the *Residential Tenancy Regulation*, as it is relevant to the question of whether or not the landlords have lived up to their repair and maintenance obligations.

This request is made under section 5.3 of the RTB Rules of Procedure.

Best regards,

Lasse Hviteed (he/him)

6

Landlord's burden of proof

- Landlords have the primary burden of proof for the following things:
- The price of capital expenditures.
- That the repair, maintenance or installation was done.
- That it was a major system or component.
- That the replacement, repair and installation fulfills the necessary requirements.
- That the capital expenditures were incurred within 18 months of the date of which the landlord makes the application.
- That the capital expenditures will not be incurred again for at least 5 years

7

Landlord's burden of proof continued

- Photographs or video taken before the repair or replacement was done;
- Copies of permits obtained;
- Copies of relevant laws/bylaws/construction standards;
- Expert reports regarding:
  - A)The useful life of the prior system or component,
  - B)The expected lifespan of the installed, repaired or replaced system or component, and
  - C) The reason the installation, repair or replacement was needed;
- Maintenance records for the system being repaired or replaced;
- Documents showing the date the prior system or component was purchased and installed;
- Manufacturer's documents relating to the prior system's or component's useful life expectancy
- Policy guideline 40

8

Landlord's maintenance

- What are the standards of maintenance?
- Is the lack of maintenance connected to the failure of the system?
- Read the landlord's expert testimony carefully
- Get the manufacturers manual, if possible, don't rely solely on the landlord
- Lot of gray areas, yet to be worked out by the courts.

9

Tenant's burden of proof

- That landlord's inadequate maintenance or repair is the reason that the capital expenditures are required.
- That the landlord has been paid or is entitled to be paid from another source for part or all of the capital expenditures.
- Difficult for tenants to obtain the necessary evidence.
- Consider if any tenant knows an expert witness.

10

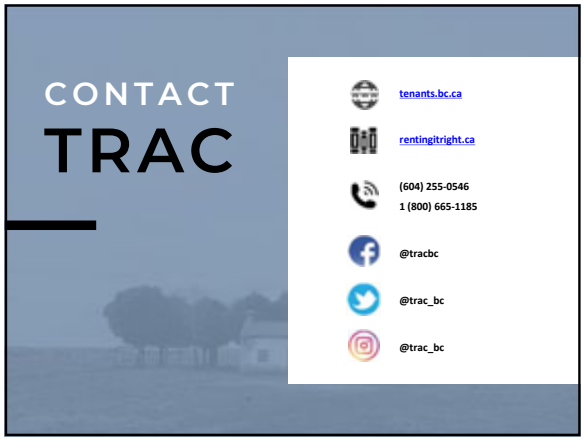
Major system or component

- Very wide definition in the policy guideline 37.
- Individual problems in a tenant's unit not included.
- Cosmetic upgrades not allowed by themselves.
- Essential services vs integral to Major system
- Lot of gray areas, yet to be worked out by the courts.

11

Questions?

12


CONTACT
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Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ARI-C

Introduction

The Landlord applies for an additional rent increase for capital expenditures pursuant to the *Residential Tenancy Act* (the "*Act*") and s. 23.1 of the Regulations.

A.W., L.C., and A.A. appeared as agents for the Landlord. Three of the named respondent tenants were present, J.S., G.G., and F.S.. D.S. identified himself as an occupant for C.T., who he says is a tenant at the building though is not named in the application.

J.S. was represented by L.H. has her advocate. L.H. was joined by A.H. as his assistant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord's agent L.C. advised having served the notice for the participatory hearing on the respondent tenants in early June 2022. The tenants who were present raised no issue with respect to service of the notice for the participatory hearing. Based on the affirmed testimony of L.C., I find that the respondent tenants were served with the notice for the participatory hearing in accordance with the *Act*. As mentioned in my interim reasons, I found that the Landlord's initial evidence had been served on the respondent tenants, with the Landlord having provided proof of service indicating its service in April 2022.

The advocate advised that J.S.'s response evidence was served on the Landlord, which the Landlord's agents acknowledge receiving without objection. Based on its acknowledged receipt without objection, I find that the Tenant J.S.'s response evidence was served on the Landlord in accordance with the *Act*.

Preliminary Issue – Additional Evidence from the Landlord

The Landlord served an additional evidence package, with the Landlord providing proof of service indicating service occurred in early October 2022. In my interim reasons, I revised the service deadline for the parties, specifically the Landlord's service deadline was altered to 30 days prior to the hearing, rather than the 14-day deadline imposed on applicants by Rule 3.14 of the Rules of Procedure. Similarly, the respondent tenants were asked to serve their evidence 14-days prior to the hearing rather than the 7-day deadline imposed by Rule 3.15 of the Rules of Procedure. As I made clear in my interim reasons, this was done because of the number of respondent tenants and an interest in ensuring everyone, Landlord and tenants alike, had sufficient time to review the documentary evidence.

Despite my directions, the Landlord did not follow the revised service timelines. Similarly, I asked the Landlord to provide written submissions summarizing its position in advance of the participatory hearing. The Landlord failed to do so. I need not make findings on with respect to the written submissions as the Landlord's failure to provide them are largely to its own detriment insofar as the written submissions could have organized its evidence and submissions in support of its position.

Returning to the service of the additional evidence, A.W. advised at the hearing that they followed the 14-day deadline as per the evidence reminder email provided by the Residential Tenancy Branch. I have taken a preliminary view of the additional evidence, all of which appears to have been dated from 2018 to 2020, so the evidence could hardly be considered as coming into existence past the deadline, opening the application of Rule 3.17 of the Rules of Procedure for late evidence.

I wish to make clear that the email respecting the evidence submission deadline was automated and does not supersede the clear directions I provided in the interim reasons. I cannot stress enough that the revision of the service deadlines as set out in the interim reasons was not done capriciously. I did so to ensure everyone had an opportunity to review and respond to evidence in an orderly fashion, including the Landlord. There are 128 named respondents. Had they all responded with written

submissions and evidence in compliance with Rule 3.15, so 7 days prior to the hearing, the Landlord may have found itself pressed to review and organize itself in advance of the hearing given such a volume of documents.

All this is to say that I find that the Landlord has failed to serve its additional evidence in compliance with the 30-day deadline I imposed in my interim reasons. As it was not served in compliance with the time limit imposed, I find that it would be procedurally unfair to include it into the record on the basis that its late service undermined the respondent tenants' ability to review and respond in compliance with the altered 14-day deadline. Accordingly, the second evidence package is not included and shall not be considered by me.

Issues to be Decided

1) Is the Landlord entitled to impose an additional rent increase for capital expenditures?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

A.W. testified that residential property in question has 103 residential units, which includes a caretaker suite, and that the Landlord has not applied for an additional rent increase for a capital expenditure with respect to the property in question. I am further advised that the property was built sometime in the 1960s and was purchased by the Landlord in approximately 2009.

I was further advised by A.W. that the residential property has a parkade which the Landlord undertook restoration work and resurfacing. The Landlord's application breaks the project into the following components:

- Engineering/Architect $54,435.57
- Hazardous Material Removal $6,431.25
- Electrical $5,200.92
- Parkade Restoration $202.238.48

The Landlord's evidence comprises invoices and other documents with respect to the various companies involved in undertaking the work, including engineers and subcontractors. The Landlord's evidence does not contain page numbers nor is there a summary table for the invoices.

A.W. testified that the engineering company named in the invoices conducted regular inspections of the parkade on behalf of the Landlord. I am told that the engineers came to the property in or about November 2018 to conduct an inspection upon reports of water entering the parkade. A.W. testified that the engineers reported that the concrete had delaminated such that repairs were necessary. The Landlord's evidence does not include a copy of the engineering report.

The Landlord's application indicates the project completed on December 6, 2021. However, the Landlord's agents did not advise on the completion date at the hearing and the Landlord's invoices show the most recent invoice is dated to January 29, 2021. A.W. argued that the project was completed within 18 months of the application and that I should base that determination based on the date the last invoice was paid. It was argued that I should view the project as one whole rather view the individual components as such an interpretation would preclude longer, more extensive projects, from falling within the 18-month window imposed by s. 23.1 of the Regulations. Citing s. 23.1(2) of the Rules of Procedure, A.W. argued that multiple applications for the same project ought to be avoided.

I am advised by L.H., the advocate for J.S., that she requested documents from the Landlord in March 2022 with respect to the parkade and received none. L.H. further advised that he asked the Landlord for a series of documents from the Landlord and was provided none. I was directed to a letter in the J.S.'s evidence dated September 9, 2022 in which the request was made, which appears to have been sent to the Landlord on September 12, 2022. I was further directed to the response from the Landlord's agent in the form of an email dated September 15, 2022, also in J.S.'s evidence, in which the document request was denied.

At the outset of the hearing, I enquired whether L.H. would be seeking a summons for the documents. L.H. advised that he was not doing so and was prepared to proceed with the hearing. I was asked by L.H. to draw adverse inferences due to the Landlord's failure to disclose documents he submits are relevant to the present matter.

A.W. argued that the document request amounted to a “fishing expedition” and that if J.S., or her advocate, felt that they were relevant, they could have requested a summons for the documents pursuant to Rule 5.3 of the Rules of Procedure. A.W. argued I ought not draw any adverse inferences.

L.H., the advocate for J.S., advanced three arguments: first, that the parkade is not a major system or component falling within the definitions within s. 21.1 of the Regulations; second, that the Landlord has failed to discharge its evidentiary burden under s. 23.1; and third, the Landlord failed to adequately maintain and repair the parkade.

Both L.H. and A.W. directed me to Policy Guideline #37, which provides guidance with respect to rent increases generally, and the application of s. 23.1 of the Regulations specifically. In it, it provides the following guidance with respect to the type of projects that may be considered eligible capital expenditures, stating the following:

> Major systems and major components are typically things that are essential to support or enclose a building, protect its physical integrity, or support a critical function of the residential property. Examples of major systems or major components include, but are not limited to, the foundation; load bearing elements such as walls, beams and columns; the roof; siding; entry doors; windows; primary flooring in common areas; pavement in parking facilities; electrical wiring; heating systems; plumbing and sanitary systems; security systems, including things like cameras or gates to prevent unauthorized entry; and elevators.

A.W., referring to Policy Guideline #37, submitted that the parkade is an eligible capital expenditure.

L.H., citing *Jozipovic v. British Columbia (Workers’ Compensation Board)*, 2021 BCCA 174, argued that Policy Guideline #37 is inconsistent with the ordinary interpretation of the *Act* and ought not be followed. L.H. further argued that I am not bound by the Policy Guidelines in any event.

L.H. directed me to a copy of the parking agreement in J.S.’s evidence, which was submitted is the standard form the Landlord uses with respect to the parkade. A.W. confirmed that the agreement provided by J.S. is the standard form used by the Landlord. In the parking agreement, L.H. highlighted clause 11, which is reproduced below:

11. The Licensee acknowledges and agrees that the License granted herein does not constitute a service or facility provided to the Licensee pursuant to s. 8 of the Residential Tenancy Act and that any rights granted to the Licensee herein are independent and separate from any rights arising out of the tenancy and are not part of the landlord tenant relationship. The Licensee agrees not to take any arbitration proceedings under the Residential Tenancy Act against the Licensor in regards to any matter, which is the subject of this Agreement. The Licensee agrees that if any such proceedings are taken, he will save harmless and indemnify the Licensor for the cost and expense of dealing with any such proceeding, including legal fees.

L.H. submitted that parking is outside the confines of the tenancy by virtue of the parking agreement used by the Landlord and further submitted that the parkade is structurally adjacent to the residential property. A.W. and A.A. contested that the parkade was structurally separate from the building, indicating that the bike locker and boiler room was only accessible through the parkade.

It was further submitted by L.H. that the residential property does not have enough parking stalls for all the occupant tenants. It was argued by L.H. that a rent increase imposed by s. 23.1 of the Regulations is permanent yet parking, as a service or facility, is a non-essential service or facility and can be terminated under s. 27 of the *Act*.

L.H. further argued that the parkade cannot be considered integral to the building as it is an adjacent structure and that a parking lot resurfacing should not be included in Policy Guideline #37 as such an interpretation runs contrary to the *Act*. J.S.'s written submissions argue that it is "contradictory for the Landlord to claim that parking can be said to be so removed from the tenancy that it is not even provided as a service or facility under the RTA, but then argue in this proceeding that it is a major system or component or integral to the tenancy in any way."

I was directed by L.H. to *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257, who cited it for the proposition that when interpreting the *Act* and Regulations I should resolve any ambiguity in favour of the tenants. It was argued that in this instance ambiguity in s. 23.1 of the Regulations should be interpreted in the tenants' favour.

A.W. argues that L.H. is misconstruing s. 23.1 of the Regulations and that clause 11 of the parking agreement is not relevant to the analysis. He further argued that rent increases for capital expenditures do not consider whether an individual tenant benefits from the project so long as it is considered a major component or system.

As an additional argument, L.H. argued that the Landlord has failed to provide sufficient evidence to discharge its evidentiary burden under s. 23.1 of the Regulations in any event. L.H. argued no permits were provided, no copies of relevant bylaws, no expert reports, nor any evidence indicating that the work was necessary in any way or that it would not reoccur within the next 5 years. L.H. argued that the Landlord's invoices were not clear and lacked critical information. Further, the Landlord's failure to provide the requested disclosure precluded the tenants from obtaining expert evidence themselves.

A.W. directed me to Policy Guideline #40 respecting the useful life of building elements, which indicates parking lot elements are in excess of 5 years. L.H. argued it was illogical to refer to Policy Guideline #40 with respect to this as the building was constructed in the 1960s, which would put the parkade well past its useful life as per Policy Guideline #40. In any event, L.H. argued that no maintenance records were provided nor any records to indicate when the parking lot was last repaired.

L.H. further asked that due to the non-disclosure of relevant documents pertaining to the parkade's maintenance, I should draw an adverse inference against the Landlord. L.H. argued that the present application is not for a chipped faucet, and that the residential property is a multi-million-dollar property in which the Landlord would have likely undertaken some due diligence when it was purchased in the form of building inspections. L.H. argued that if the parkade was in poor condition when the property was purchased, the Landlord could have negotiated a lower price for the property and is now seeking to download the cost of the repairs on the tenants. It was argued that this application amounted to a double dip, in the that the Landlord got a cheaper price on the property and now seeks to recoup the cost of the repairs from the tenants.

Both G.G. and F.S. testified that they are relatively new tenants and that they moved into their respective rental units after the restoration was undertaken. F.S. argued that she would have expected the Landlord to impose the increased rent when her tenancy began in September 2021. G.G. and D.S. argued that Landlord is shifting the capital expense onto the tenants while capturing the capital gain in the increased value of the property following the repairs.

Analysis

The Landlord seeks authorization to impose an additional rent increase for a capital expenditure. Sections 21.1, 23.1, and 23.2 of the Regulation set out the framework for

determining if a landlord is entitled to impose an additional rent increase for capital expenditures.

Landlords seeking an additional rent increase under s. 23.1 of the Regulations must prove, on a balance of probabilities, the following:

- The landlord has not successfully applied for an additional rent increase against the tenants within 18 months of their application.
- The capital expenditure was incurred for the repair, replacement, or installation of a major component or major system for the property.
- The capital expenditure was incurred for one of the following reasons:
    - to comply with the health, safety, and housing standards required by law in accordance with the landlord's obligation to repair the property under s. 32(1) of the *Act*;
    - the major component or system has failed, is malfunctioning or inoperative, or is close to the end of its useful life; or
    - the major component or system achieves one or more of either reducing greenhouse gas emissions and/or improves security at the residential property.
- The capital expenditures were incurred in the 18-month period preceding the date on which the landlord has applied for the increase.
- The capital expenditures are not expected to be incurred again for at least 5 years.

Tenants may defeat a landlord's application for additional rent increases for capital expenditures if they can prove on a balance of probabilities that:

- the repairs or replacements were required because of inadequate repair or maintenance on the part of the landlord; or
- the landlord has been paid, or is entitled to be paid, from another source.

Once the threshold question has been met, the Landlord must also demonstrate how may dwelling units are present in the residential property and the total cost of the capital expenditures are incurred.

Section 21.1(1) of the Act contains the following definitions:

"**dwelling unit**" means the following:

a. living accommodation that is not rented and not intended to be rented;
b. a rental unit;

[…]

"major component", in relation to a residential property, means

a. a component of the residential property that is integral to the residential property, or
b. a significant component of a major system;

"major system", in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral

a. to the residential property, or
b. to providing services to the tenants and occupants of the residential property;

"**specified dwelling unit**" means

a. a dwelling unit that is a building, or is located in a building, in which an installation was made, or repairs or a replacement was carried out, for which eligible capital expenditures were incurred, or
b. a dwelling unit that is affected by an installation made, or repairs or a replacement carried out, in or on a residential property in which the dwelling unit is located, for which eligible capital expenditures were incurred.

I am asked to draw an adverse inference by the advocate due to the Landlord's failure to disclose certain documents upon request. Though I agree with the advocate that much of what they requested was relevant, I do not agree that I should draw an adverse inference under the circumstances.

Rule 5.3 of the Rules of Procedure, which sets out the application process for a summons, states the following:

5.3 Application for a summons

On the written request of a party or on an arbitrator's own initiative, the arbitrator may issue a summons requiring a person to attend a dispute resolution proceeding or produce evidence. A summons is only issued in cases where the evidence is necessary, appropriate and relevant. A summons will not be issued if a witness agrees to attend or agrees to provide the requested evidence.

A request to issue a summons must be submitted, in writing, to the Residential Tenancy Branch directly or through a Service BC Office, and must:

- state the name and address of the witness;
- provide the reason the witness is required to attend and give evidence;

- describe efforts made to have the witness attend the hearing;
- describe the documents or other things, if any, which are required for the hearing; and
- provide the reason why such documents or other things are relevant.

In this instance, I enquired whether the advocate, on J.S.'s behalf, wished to make an application to produce the documents at the outset of the hearing. The advocate declined to do so. As mentioned above, I agree that much of what was requested, on its face, is relevant. In an ideal world, the Landlord would have complied with the request voluntarily. However, they were under no obligation to do so. Further, the Rules of Procedure do not impose a positive obligation on participants to list all documents in their possession that are relevant to the dispute in the same way the Supreme Court Civil and Family Rules do. Rule 5.3 of the Rules of Procedure, informed by s. 76 of the *Act*, very much puts the ball in the court of the party seeking the disclosure to make an application for the production of documents by establishing relevance.

J.S., through her advocate, declined to make the request for the documents despite my direct inquiry at the outset of the hearing if they wanted to do so. As no summons for evidence was requested, none was provided. I cannot say the Landlord refused to produce documents contrary to the summons as no summons was ever issued. Accordingly, I do not draw an adverse inference in the present circumstance.

Review of the documentary evidence provided by the Landlord shows a series of invoices, documents that appear to be internal accounting documents, some letters from WorkSafe BC, certificates of payment, and statutory declarations of progress payments. As mentioned in the evidence section above, the Landlord's evidence is not numbered, nor particularly well organized, despite Rule 3.7 requiring parties to do so.

Section 23.1(4)(a) of the Regulations require the capital expenditure be incurred for a specific purpose. In this instance, the relevant portions that could conceivably be relevant are ss. 23.1(4)(a)(i) and 23.1(4)(a)(ii), which I reproduce below:

> (4) Subject to subsection (5), the director must grant an application under this section for that portion of the capital expenditures in respect of which the landlord establishes all of the following:
>
> (a) the capital expenditures were incurred for one of the following:

(i) the installation, repair or replacement of a major system or major component in order to maintain the residential property, of which the major system is a part or the major component is a component, in a state of repair that complies with the health, safety and housing standards required by law in accordance with section 32 (1) (a) *[landlord and tenant obligations to repair and maintain]* of the Act;

(ii) the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;

I have been provided with no documentary evidence by the Landlord that would enable me to make a finding that the restoration was necessary as defined by s. 23.1(4)(a) of the Regulations. The Landlord's agent advises that they were told that the concrete had delaminated and that there was water ingress, though no documents were provided evidencing these findings by the engineers.

I have no opinion letter from the engineers. Nor do I have a report from the engineer inspectors pertaining to the state of the parkade in November 2018, nor do I have their recommendations. I have no inspection records with respect to the parkade despite the Landlord's agent advising the engineering firm conducted inspections of the building on behalf of the Landlord. I have not been referred to any law or code that the restoration was intended to comply. I have not been provided with evidence on the age of the parkade nor when it was last maintained other than the testimony that the building itself was constructed sometime in the 1960s.

I am asked to refer to Policy Guideline #40 respecting the useful life of building elements. I am not persuaded that I should do so under the circumstances as it would essentially discharge the Landlord from providing any evidence on why the restoration was undertaken, which is a critical component of s. 23.1 of the Regulations. Nor do I believe I could rely upon Policy Guideline #40 to make a finding that the useful life of the parkade has since passed as I have been provided no evidence to indicate when the parkade was last repaired or restored.

All I have are invoices and internal accounting documents, which only demonstrate that work was done, it was done between certain dates, and that it cost a certain amount. I am asked to infer from that and the submission without documentary evidence that the concrete had delaminated and there was water ingress that the work was incurred for

an approved purpose. That is wholly insufficient to discharge their burden of proving each element under s. 23.1 of the Regulations, particularly with respect to the necessity of the work as defined under s. 23.1(4)(a).

I find that the Landlord has failed to adduce sufficient evidence to demonstrate that the parkade restoration was required to comply with the health, safety and housing standards required by law or that the parkade had failed, malfunctioned, was inoperative, or was close to the end of its useful life.

As the Landlord has failed to discharge their evidentiary burden with respect to this aspect, I dismiss the Landlord's application for an additional rent increase for the parkade without leave to reapply. Given this, I need not consider the other arguments raised by the advocate pertaining to whether the parkade is a major component or system of the building.

Conclusion

The Landlord's application for an additional rent increase for the capital expenditure related to the parkade is dismissed without leave to reapply.

I order the Landlord to serve the respondent tenants with a copy of this decision in accordance with section 88 of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

[redacted]

[redacted]

Residential Tenancy Branch

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Subsidized housing:

rent increases, and contracts

Jonathan Blair

SUBSIDIZED HOUSING

Rent Increases and Contracts

1

Rent Control Exemption – s. 2 of Regulations

2 Rental units operated by the following are exempt from the requirements of sections 34 (2), 41, 42 and 43 of the Act [assignment and subletting, rent increases] if the rent of the units is related to the tenant's income:

(a)the British Columbia Housing Management Commission;

(b)the Canada Mortgage and Housing Corporation;

(c)the City of Vancouver;

(d)the City of Vancouver Public Housing Corporation;

(e)Metro Vancouver Housing Corporation;

(f)the Capital Region Housing Corporation;

(g)any housing society or non-profit municipal housing corporation that has an agreement regarding the operation of residential property with the following:

(i)the government of British Columbia;

(ii)the British Columbia Housing Management Commission;

(iii)the Canada Mortgage and Housing Corporation;

(iv)a municipality;

(v)a regional district;

(h)any housing society or non-profit municipal housing corporation that previously had an agreement regarding the operation of residential property with a person or body listed in paragraph (g), if the agreement expired and was not renewed.

2

Ryan v. Mole Hill Community Housing Society, 2022 BCCA 200

Background

- The client lived in subsidized housing. The housing society had an operating agreement with BC Housing.
- At the beginning of the tenancy the client signed a tenancy agreement as well as an application for a subsidy.
- The agreement stated that the rent was $510/month plus utilities. The subsidy application stated that the "economic rent" was $1156 and the subsidy is $646.
- The client and the housing society had a dispute about the number of occupants living in the unit, and client's eligibility for the subsidy.
- The housing society determined that the client was no longer eligible for a subsidy and informed the client by letter that they are increasing his rent to $1530 + utilities (which they called market rent).
- The client paid the new amount and filed an RTB application for compensation for overpayment of rent.

3

RTB Decision

- On the issue overpayment, the RTB arbitrator found:

> "I accept the affirmed evidence of both parties and find on a balance of probabilities that the tenant has failed to establish a claim for compensation of $2,040.00 for an overpayment of rent. A review of the signed tenancy agreement does provide for a rent of $510.00, however, I find that the tenant entered into a signed tenancy agreement with the landlord which is a landlord which operates under the Provincial Housing Program. The tenant also completed and signed a BC Housing Application for Rent Subsidy on the same date of January 26, 2018. In this document it is clear that the tenancy involves a rent subsidy. Calculations provided in part iv of that document show that the economic rent was $1,156.00; tenant's total rent contribution was $551.00 and that there was a rent subsidy of $646.00. On this basis, I find that the tenant has failed to provide sufficient evidence that there was an overpayment of rent. The tenant's monetary claim is dismissed.
>
> On the issue of a finding regarding the tenant's current rent rate, I find that I do not have jurisdiction for this matter. The landlord operates under the guidance of BC Housing and tenant rent contributions are determined in keeping with their guidelines. This portion of the tenant's application is dismissed."

4

Judicial Review

On judicial review, the judge upheld the arbitrator's decision, stating:

> [13] With respect to the overpayment issue, Mr. Ryan and Mole Hill both advanced possible interpretations of the relevant clauses of the tenancy agreement. The arbitrator preferred Mole Hill's interpretation and gave intelligible and transparent reasons for doing so based on the evidence before the tribunal. The conclusion followed logically from the analysis. The Decision was not patently unreasonable in this respect.
>
> [14] With respect to the second issue, the arbitrator's reasoning is sparse. The petitioner argues, with some force, that it is logically inconsistent for a decision maker to say they have the power to decide whether there has been an overpayment of rent, which implicitly entails a determination of what the rent was, and also to say that they have no power to determine the "tenant's current rent rate." However, as [Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65] and many other cases have directed, a review in court must treat the Decision as a whole and must refrain from holding administrative tribunals to judicial standards of reasoning.
>
> [15] Applying this approach, I do not understand the arbitrator to be questioning their jurisdiction to determine the rental rate for the purposes of a past overpayment which they had just exercised. Rather, I read the arbitrator as saying that the RTB does not have jurisdiction to determine a rental rate going forward because of the variation provisions in the tenancy agreement that reference BC Housing guidelines. An RTB arbitrator does not have jurisdiction to establish a rental rate that would preclude or supersede operation of these provisions. I note that s. 2 of the Residential Tenancy Regulation exempts from the rental increase restrictions in the Act any rental units whose rent is related to a tenant's income.

Ryan v Mole Hill Community Housing Society, 2021 BCSC 1668

5

Court of Appeal

- The Court of Appeal overturned the BCSC decision, finding:
  - Tenancy Agreements are contracts, the dispute before the RTB was about the terms of the tenancy agreement, and
  - The evidence did not support that the client agreed in the tenancy agreement to pay $1530 if he was not eligible for the subsidy.
  - The the arbitrator failed to interpret the contract.
  - The RTB does have jurisdiction to determine what the rent is under the tenancy agreement, and it was patently unreasonable for him to find otherwise.
- The RTB decision was set aside and the matter remitted back to RTB for a new hearing.

6

Moral of the story

- Though the rent control provisions of the RTA do not apply to subsidized housing, the landlord still cannot raise rent in an arbitrary manner.
- The issue is one of contractual interpretation and the RTB has jurisdiction to determine what the terms of the tenancy state about rent.

7

QUESTIONS?

8

Contractual Interpretation

(1) When interpreting a contract, the court aims to determine the intentions of the parties in accordance with the language used in the written document and presumes that the parties have intended what they have said.

(2) The court construes the contract as a whole, in a manner that gives meaning to all of its terms, and avoids an interpretation that would render one or more of its terms ineffective.

(3) In interpreting the contract, the court may have regard to the objective evidence of the "factual matrix" or context underlying the negotiation of the contract, but not the subjective evidence of the intention of the parties.

(4) The court should interpret the contract so as to accord with sound commercial principles and good business sense, and avoid commercial absurdity.

(5) If the court finds that the contract is ambiguous, it may then resort to extrinsic evidence to clear up the ambiguity.

(6) While the factual matrix can be used to clarify the intention of the parties, it cannot be used to contradict that intention or create an ambiguity where one did not previously exist.

Belmont Properties v. Swan, 2021 BCCA 265 at para. 29

9

Contract interpretation: Section 6 of the RTA

6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

(2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

(3) A term of a tenancy agreement is not enforceable if

(a) the term is inconsistent with this Act or the regulations,

(b) the term is unconscionable, or

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

10

If there is unresolvable ambiguity in a term

- Section 6(3)(c) of the *RTA*: a term of the tenancy agreement is unenforceable if "the term is not expressed in a manner that clearly communicates the rights and obligations under it".
- *Contra Proferentem* (a principle of last resort): When an ambiguity exists with respect to a contractual term, and cannot be resolved through standard principles of contract interpretation, the ambiguity should be resolved against the party that drew up the agreement.

Miller v. Convergys CMG Canada Limited Partnership, 2014 BCCA 311 at para. 15

11

Example

- A tenancy agreement has a term that states:

  "Any other person[s] taking up residency with tenant[s] at a later date must be approved by management in writing. Such person[s] will then be included on the tenancy agreement. This will increase the rental payment by twenty-five [$25.00] per month. Any other person[s] is/are guests, and may stay with the tenant(s) for a period of up to two [2] weeks during the calendar year. Any longer period of stay must be permitted in writing by management, only."
- The tenant's mother lived with the tenant for two days a week to help due to the tenant's disability. The tenant did not have approval for this set up. The landlord issues a NTE for a breach of a material term of the tenancy agreement.
- You are representing the client at the hearing, how would you proceed?

12

Belmont Properties v. Swan, 2021 BCCA 265

- This fact pattern went all the way to the court of appeal.
- Arbitrator found the term was vague and therefore not material, cancelled NTE
- Judge on JR found Arbitrator failed to do necessary contractual interpretation before making their finding and this was patently unreasonable; sent back to RTB for a new hearing. Tenant appealed.
- Court of appeal dismissed tenants appeal, agreeing with JR decision. Arbitrator needed to do contractual interpretation first to determine meaning of clause, then determine if the term was material.
- Note: no one raised s. 6(3)(c) at RTB hearing so court of appeal refused to consider it.

13

Court of Appeal's Guidance (paras. 33 – 44):

- Two parts to the clause, arbitrator must first determine whether the tenant's mother was "residing" there.
- If so, is that first part of the term material – analysis based on "objective and contextual examination of the intentions of Ms. Swan and her original landlord at the time they entered the tenancy agreement."
- If it is material, NTE is upheld. If mother not residing or first part is not material, then must turn to second part.
- Meaning of this part is in dispute: "The arbitrator will have to undertake an interpretive analysis of the second part of the addendum in accordance with the principles outlined above. As noted, this must be a contextual and objective exercise to discern the "true intentions" of Ms. Swan and the original landlord at the time the contract was formed. The arbitrator may not consider the subjective intentions of the parties to the tenancy agreement. Further, the arbitrator may consider extrinsic evidence only in the case of genuine ambiguity."
- If term is still unclear after analysis, then s. 6(3)(c) applies.
- If there is a meaning, and it favours tenant, then done. If it favours landlord, then is it material?

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QUESTIONS?

15

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

TAPS Vacancy Control Project and SRO Work in Vancouver

Emily Rogers; Tristan Markle; Hannah Mang-Wooley

VACANCY CONTROL IN BC

Hannah Mang-Wooley (TAPS), Emily Rogers (TAPS),
Tristan Markle (SRO Collaborative Society)

1

Presentation Overview:

- What is vacancy control?
- Myth busting: addressing common misconceptions about vacancy control
- The fight for vacancy control in SRO's
- The fight for vacancy control province-wide
- Discussion:
  - *How can advocates advance vacancy control in your communities?*
  - *How can we work together to advance vacancy control provincially?*

2

WHAT IS VACANCY CONTROL

3

What is vacancy control?

- Current BC law (section 42 and 43 of the *Residential Tenancy Act*) only legislates rent increases during the same tenancy
- Vacancy control would legislate rent increases in between rental contracts (i.e. when the unit is vacant)

4

Why do we need vacancy control?

- Protect existing tenants
- Preserve affordable rentals
- Address power differential between tenants and landlords

5

Jurisdictional scan

6

MYTH BUSTING

7

Myth #1: Without the ability to increase rents when a unit becomes vacant, landlords will not invest adequately in maintenance of rental housing.

- S. 32 of the Residential Tenancy Act requires landlords to repair and maintain their property.
- Landlords have no incentive to properly maintain their housing in the current housing climate. It is in their interest for tenants to regularly move out if they live in poor conditions.
- Landlords can apply to the RTB for an additional rent increase for eligible capital expenditures.

8

Myth #2: More onerous rent control will create a disincentive for construction of new rental housing, making the housing crisis worse.

- Studies have shown that there is no correlation between rent control legislation and the rate of new rental housing construction in British Columbia.
- Other factors such as general economic trends, interest rates, taxation policies, land costs and the attractiveness of other forms of investment more directly shape the decisions of investors.
- This arguments speaks to the heart of why we need to reconceptualize housing as a human right rather than a commodity.

9

Myth #3: Landlords will demolish rental housing if rent controls are tightened.

- The decision to maintain or demolish rental housing is driven by factors other than rent controls, including land values and zoning.
- Many municipalities have introduced restrictions on the demolition of rental housing.
- Municipalities can also zone land as "*residential rental tenure zoning*" to prevent land from being used for anything other than rental housing.

10

Myth #4: Landlords will convert rental units to condos if rent controls are tightened.

- Municipalities can regulate strata property conversions.
- Many municipalities prohibit strata conversions unless rental-housing vacancy rates in the community exceed a certain threshold (e.g. 4% vacancy rate).
- This means that strata conversions are only allowed if there is sufficient rental housing in those communities.

11

Myth #5: It is not fair to landlords to limit rent increases when units become vacant.

- Weak regulations surrounding the landlord-tenant relationship amplify rather than narrow the socio-economic divide in our society.
- It is in everyone's best interest to ensure that low-income people and working people have access to safe, affordable housing.
- Vacancy control is one way we can help balance the scales: landlords can achieve a return on their investment while avoiding mega-profits at the expense of tenants who have considerably less economic power.

12

VACANCY CONTROL IN SRO'S

13

What is an SRO?

- Single ten-by-ten foot rooms without a private bathroom or kitchen. Tenants on each floor share one bathroom, which are often out of order and poorly maintained
- Housing of last resort before homelessness
- The largest survey of SRO tenants, conducted in 2008, found that 72% of tenants reported experiencing at least one episode of homelessness in the previous 12 months.
- The SRO-C's 2019 Habitability Study surveyed 255 SRO tenants and found:
  - *1/3rd of tenants are Indigenous*
  - *97% of respondents had seen mice, rats, bedbugs, or cockroaches in their unit*
  - *75% lost access to heat, water or electricity*
  - *85% lived in buildings in need of repairs*

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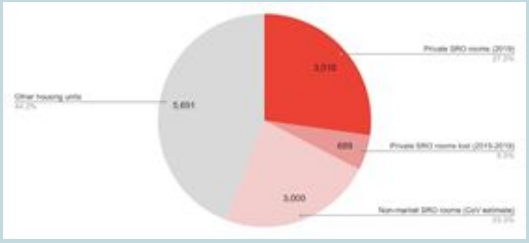
SROs are substantial portion of housing stock in the DTES



Rates of change for SRO and Non-market housing units in the DTES. Source: City of Vancouver.

15

Why Vacancy Control is Important

Avg rent in privately owned SROs compared to the shelter component of income assistance, 1998 to 2019. Source: City of Vancouver.

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City of Vancouver Council Decision

- Dec 12 2019: Original motion by Jean Swanson, "Slowing the loss of the last low income SROs in Vancouver", passed unanimously
- Jan 15 2020: Housing Minister Selina Robinson's response
- New Wesminster 'renovictions' bylaw: Passed Feb 2019, upheld at Supreme Court of BC on Feb 11 2020 (and upheld at Appeals Court on Apr 30 2021)
- Sept 2020: City Report on SROs recommends developing municipal VC bylaw
- Dec 2021: City passed Vacancy Control Bylaw, 10 – 1 vote; budget allocation 6 – 5 vote

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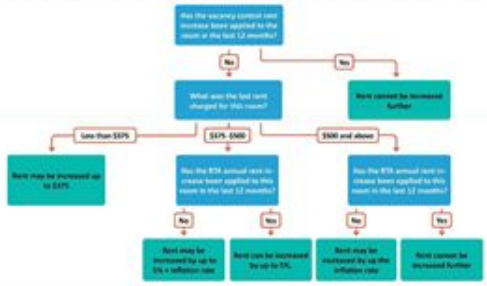
How Much can Rent Increase Between Tenancies?



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Court challenge

- City passed Vacancy Control Bylaw in Dec 2021
- Two landlords filed "petitions" with the BC Supreme Court, the City, and the AG
- The AG did not respond, wrote the City saying that he'd prefer the Province do VC, but didn't suggest the City can't do it
- The hearing took place over three days in Apr 2022. Landlord arguments:
  - *City's business license power: Council may make by-laws "for regulating every person required to be licensed under this Part, except to the extent that he is subject to regulation by some other statute"*
  - *RTA is "exhaustive or extensive" when it comes to regulation of rent increases.*
  - *"The dominant purpose of the Bylaw Amendments is not to regulate businesses, but rather to regulate rent and to control the use of property"*
- Decision in favour of landlords published on Aug 3 2022

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Current status

- Landlords are jacking the rent and changing tenant profiles
  - *E.g. Lucky Lodge: rents increasing from ~$500/month to $1,800/month. Tenants being offered buyout packages of up to $15,000*
- City is appealing the BCSC decision at the BCCA, must submit documents by Nov 25 2022
- There are community intervenors
  - *Did City Council act "unreasonably" in enacting the Bylaw?*
- BC Government has signalled that, if necessary, changes can be made to the Vancouver Charter

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VACANCY CONTROL IN BC

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Rental Housing Task Force Report

- The provincial government's 2018 Rental Housing Task Force consulted tenants and landlords on a variety of issues
- The resulting report recommended against vacancy control, citing the belief that it would decrease investment in new rental housing.
- The Provincial Government continues to use this report as justification for refusing to examine vacancy control as a policy option, despite the fact that the housing crisis has only deepened since 2018.

22

Municipal efforts

- Municipalities in BC (except Vancouver) are governed by the *"Community Charter"*, which gives local governments the authority to regulate to protect renters.
- In 2019, New Westminster implemented bylaws to protect renters from renovictions. These bylaws implemented a form of limited vacancy control.
  - This was challenged in court, but New Westminster was successful.
- Also in 2019, Burnaby adopted a policy which required 1-to-1 replacement of demolished rental housing and implemented vacancy control for the replacement units.
  - Burnaby removed the vacancy control provision in 2020.
- The Association of Vancouver Island Coastal Communities (AVICC) voted to "Explore Vacancy control" as a policy option for Vancouver Island municipalities this year.
- This same motion was debated at the Union of BC Municipalities - it was defeated by only 7 votes.

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DISCUSSION

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Discussion questions

- What do you think we should do to increase pressure for vacancy control in BC?
- What role do you see advocates playing in the campaign for vacancy control?
- How can we ethically translate our client's stories and experiences into impetus for action?

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THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Elder Law Issues:

An Overview and Discussion

Nighat Afsar; Krista James; Marie-Noël Campbell

A session to look at important issues that affect older clients. The first part of the session will explain the law related to admission to long-term care, including rights under the ***Health Care Consent and Care Facility Adminission Act****, and options for advance planning decision making. The second part of the session will work through scenarios of common challenges confronted by advocates helping seniors: how to best handle property tax debt; guidelines for cashing in RRSPs to pay for health care; and, understanding situations in which clients lose benefits for which they previously qualified.*

CANADIAN CENTRE FOR ELDER LAW
BRITISH COLUMBIA LAW INSTITUTE

October 25, 2022

Admission to Long-Term Care Law: Consent & Capacity Rights in BC

Krista James

Today's presentation

1. Capacity and decision-making
2. Long-term care admission law
3. Other rights in long-term care

Disclaimers

. I cannot give legal advice today

. Please be mindful of people's confidentiality when you ask questions

About the CCEL

The CCEL conducts research, and develops **reports and educational tools** about legal and policy issues related to aging.

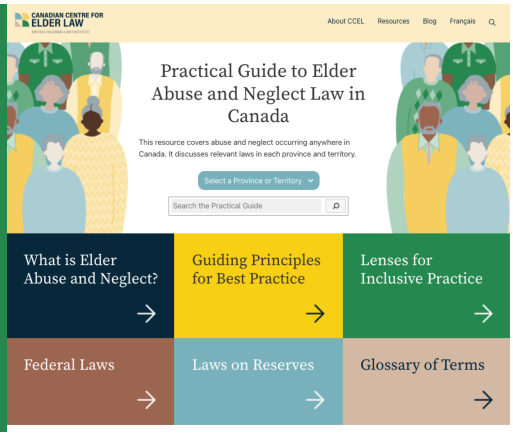
The CCEL is part of the BC Law Institute, BC's non-profit independent law reform agency

www.bcli.org/ccel

Our work = Law reform + Consultation + Research + Legal education

Current CCEL areas of research

Health care decision-making rights & dementia	Consent to participate in research	Criminal court witnesses with capacity issues	Oversight of health care assistant practice



www.ccelderlaw.ca

Part 1

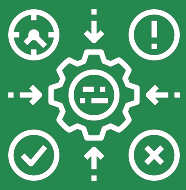
Capacity & decision-making

What is consent?

Informed, timely, voluntary agreement by a person who has capacity to make that decision

What is capacity?

Capacity is the ability to understand relevant information and apply it to your situation.



Capacity is decision or domain specific

Consider: What information does the person need to be able to understand?

A person with capacity is entitled to make their own decision.

Always consider….capacity for what?

Different decisions require different standards of capacity

All adults are presumed capable regardless of age or disability

Capacity is not assessed.
Incapability / incapacity is assessed.

Capacity basics

- Capacity can vary
- Consent must be ongoing
- Capacity is linked to personal supports

What capacity is not about:

- communication
- risk
- vulnerability
- best interests

Part 2
Long-term care admission

Long-term care law & policy

Community Care and Assisted Living Act

Residential Care Regulation

Health Care (Consent) and Care Facility (Admission) Act (Part 3)

Ministry of Health, Practice Guidelines
2 page Guide

Who makes your health care decisions?

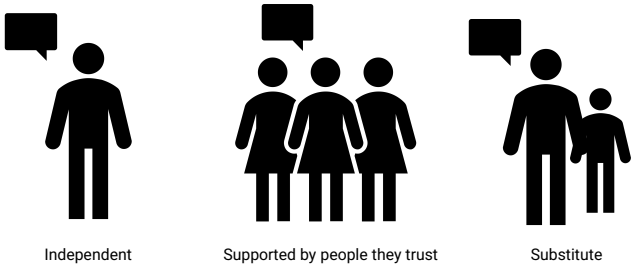
1. **YOU** make your health care decision if you have capacity for THAT decision

2. You can appoint a **substitute decision-maker.** = Advance care planning

3. Someone can go to court to appoint a **guardian** for you. = rare & expensive

4. Health care provider chooses a **temporary substitute decision-maker**

Types of decision-making



Independent | Supported by people they trust | Substitute

2019 care facility admission framework

- Defines care facility
- Sets out informed consent rights
- Defines capacity to consent to admission
- States who can provide substitute consent to admission
- Sets out when emergency admission without consent is possible
- Provides a legal framework for incapability assessment

What is a care facility?

Provisions apply to:

1. Care facilities licensed under the *Community Care and Assisted Living Act*
2. Private hospitals (licensed under the *Hospital Act*)
3. Certain types of facilities of extended care facilities under the *Hospital Act)*

3 ways an adult can be admitted

3 ways an adult can be admitted:

1. The capable adult consents;
2. Substitute decision-maker consents—if the adult is incapable of making an admission decision; or
3. The adult is admitted on an emergency basis without prior consent

Emergency admission framework

1. Adult is incapable of consenting AND
   Immediate admission is necessary to:
   - preserve the adult's life,
   - prevent serious physical / mental harm to adult, OR
   - prevent serious physical harm to any person OR
2. Emergency protection—*Adult Guardianship Act,* s 59)

Consent rights

Some provisions parallel the consent provisions:

1. Accommodation of communicate needs
2. Consent must be voluntary
3. Right to information
4. Decision-making with support
5. Oral, in writing, or inferred from conduct

Incapability assessment if….

1. On ADMISSION—if the director of the care facility cannot get informed consent from the adult

2. For CONTINUED RESIDENCE
   - the adult wants to leave the facility,
   - has no personal guardian, AND
   - capacity is in doubt

Who assess incapability?

- Physician
- Registered nurse
- Nurse practitioner
- Social worker
- Occupational therapist
- Psychologist

Capacity to consent or decline a long-term care proposal:

Understand information relevant to the care facility proposal, including information related to:

- Care
- Services
- When they can leave the facility

Substitute consent to admission

- Legal substitute decision-maker
- Spouse
- Adult child
- Other family members
- The Public Guardian and Trustee

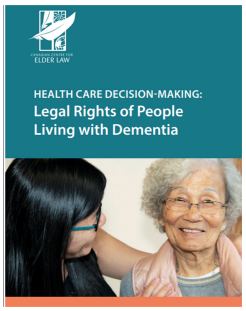
Duties of a substitute decision-maker for care facility admission

1. to consult with the adult
2. to consider their best interests
   - What are their current and pre-expressed wishes, values, beliefs?
   - Would they benefit from admission?
   - Are their less restrictive appropriate options?

Videos

3 animated videos:

- Who Makes Your Health Care Decisions?
- Getting Support with Health Care Decisions
- Protecting Your Decision-Making Rights



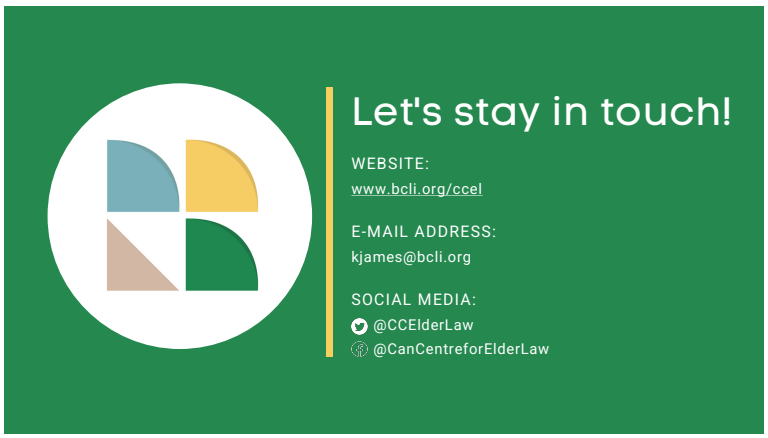
Rights Booklet

Plain language 12-page booklet

Available in 4 languages:

- English
- French
- Chinese
- Punjabi

Downloadable at:
https://www.bcli.org/project/health-care-decision-making-legal-rights-of-people-living-with-dementia


Let's stay in touch!
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www.bcli.org/ccel
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kjames@bcli.org
SOCIAL MEDIA:
@CCElderLaw
@CanCentreforElderLaw

Federal Pensions

How the Federal Pensions interact/overlap with each other

Law Foundation/Legal Services Society
Provincial Legal Advocates Training Conference
October 25, 2022

Presented by
Marie Noel Campbell, Executive Director
Nighat Afsar, Legal Advocate

1281 W Georgia St #502
Vancouver, BC. V6E 3J7

SAIL: 604-688-1927 or 1-866-437-1940 (toll free)
Email: info@seniorsfirstbc.ca

seniors first BC

1

1

Introduction to Seniors First BC

- Charitable, non-profit society that provides information and support to older adults across BC who are dealing with issues affecting their well-being.

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2

2

SAIL | Victim Services | Legal Services | Education and Outreach

Overview of Programs

- Seniors Abuse and Information Line (**SAIL**)
- Victim Services
- Legal Services
- Public Education and Outreach

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3

3

SAIL | Victim Services | Legal Services | Education and Outreach

Seniors Abuse and Information Line (SAIL)

A safe place for older adults and those who care about them to talk to someone about situations of abuse and mistreatment.

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4

SAIL | Victim Services | Legal Services | Education and Outreach

Seniors Abuse and Information Line (SAIL)

- **604-437-1940** or **1-866-437-1940** (toll free)
  - Available 8am to 8pm weekdays and 10am to 5:30pm weekends, excluding holidays
- **Language Interpretation**
  - Available Monday-Friday, 9am to 4pm

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5

5

Victim Services

Provides the following supports to **adults aged 50+** who have been victims of abuse, family and/or sexual violence:

- Safety planning
- Liaison with justice system personnel
- Assistance with CVAP Applications
- Information and referrals E.g. criminal justice system

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6

SAIL | Victim Services | Legal Services | Education and Outreach

Legal Services

Assist **older adults age 55+** who have **low-income** with select legal issues:


Legal information and referrals


Summary advice


Drafting of legal documents


Full representation

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SAIL | Victim Services | Legal Services | Education and Outreach

Legal Services

Some of the legal issues we assist with:


Housing (Residential tenancy, assisted living, long term care)

Debt


Gov. benefits (Federal e.g. OAS/GIS Provincial e.g. SAFER)


Financial exploitation


Family law ✕


Guardianship / Incapacity


Age discrimination


Wills, POA


Other elder abuse


Criminal law ✕

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SAIL | Victim Services | Legal Services | Education and Outreach

Community Legal Clinics

- Every 1st Tuesday, 10 AM-12 PM: Surrey
- Every 1st Wednesday, 10 AM-12 PM: Vancouver West End
- Every 2nd Tuesday, 10 AM-1 PM: Burnaby (near Metrotown)
- Every 3rd Tuesday, 2 PM-4 PM: New Westminster
- Every 4th Tuesday, 10 AM-1 PM: Burnaby (near Brentwood)
- Every 4th Thursday, 10 AM-12 PM: Richmond

Phone 604-336-5653 to book an appointment

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SAIL | Victim Services | Legal Services | Education and Outreach

Advance Planning Clinics

- SFBC staff can assist eligible older adults in the Lower Mainland with their Advance Planning documents.
  - **Call SAIL or 604-336-5653 to discuss Lower Mainland options.**
- Outside of the Lower Mainland:
  - **Prince George**: In partnership with the ***Prince George Council of Seniors*** the second and third Wednesday of every month
  - **Nanaimo**: In partnership with *the* ***Nanaimo Family Life Association***, the first and fourth Friday of the month (starting in November 2022)
    - **Call 1-833-512-0665 (toll free) to book an appointment**

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SAIL | Victim Services | Legal Services | Education and Outreach

Legal Services Eligibility Criteria

- Age: 55+
- Income ceiling (gross): $40K for individual
  - + $10K per additional household member

And, for Advance Planning Clinics only:

- Assets (net): $150,000 max

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SAIL | Victim Services | Legal Services | Education and Outreach

Public Education and Outreach


Workshops

- General public
- Service providers


Publications

- "When I'm 64" booklets
- "Understanding and Responding to Elder Abuse"
- "Legal Issues in Residential Care: An Advocate's Manual"


Website

www.SeniorsFirstBC.ca

- Information/resources on elder law and issues affecting older adults
- Promotional materials

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SAIL | Victim Services | Legal Services | Education and Outreach

Access our services via SAIL

Seniors Abuse and Information Line

604-437-1940
or toll-free **1-866-437-1940**

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Presentation Outline

1. Canada Pension Plan (CPP) and related benefits
2. Old Age Security and claw back
3. Income affecting the Guaranteed Income Supplement
4. Allowance and income test
5. Property Tax Deferment

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Canada Pension Plan (CPP) Retirement Pension and Eligibility

- The Canada Pension Plan retirement pension provides a monthly benefit to those Canadians who have valid contributions into Canada Pension Plan.
- The amount of CPP dependents on earnings and valid CPP contributions.
- Valid contributions can be either from work the contributor did in Canada, or as the result of receiving credits from a former spouse or former common-law partner at the end of the relationship.
- Contributor may qualify to receive both a CPP retirement pension and a pension from the other country. Canada has international social security agreements with a number of countries.

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International Security Agreement and CPP Retirement Pension

- If a contributor has worked in another country which has a social security agreement with Canada, then the pension credits from the partner country could help the contributor to get combined benefits to meet the minimum eligibility requirements under CPP legislation.
- (International Security Agreement applies to CPP retirement pension, CCP Disability, and also for the Old Age Security).

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CPP Retirement Pension Amount

Currently, the maximum amount of CPP is $1253.59, and the average monthly amount paid to someone 65 is $727.61.

- The amount of retirement pension depends on:
  - How much has been contributed; and
  - How long the contributions were made into CPP plan.
- Contributions determine the benefits for contributor and also to the family.
- Anyone 18 -70 earning more than $3,500 has to contribute to CPP.
- The contribution rate is 9.9% which is split half and half between employer and employee.

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Age Affecting the Amount of CPP Retirement Pension

- The standard age is 65, however the contributor may choose to get pension as early as at age 60.
- If the contributor wants to take CPP retirement pension at age 60, there will be 36% reduction in the amount which he/she could receive at age 65. The amount of pension is reduced at the rate of 0.6% each month before 65th birthday.
- If contributor wants to take CPP retirement pension after age 65, the monthly amount will increase 0.7% for each month after age 65 which means the retirement pension at age 70 will be 42% more than the one if receiving at age 65.

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What Happens with CPP Amount if Contributor Dies

- If the contributor dies after turning 70 and never applied for CPP benefits, then the estate can submit an application within one year of the contributor's death and Service Canada can pay up to 12 months of the contributor's retirement benefits to the estate of the deceased contributor.
- If the deceased contributor has made valid contributions to CPP and dies either while receiving CPP or prior to receiving CPP, the spouse or common law partner can apply for a CPP Survivor's Pension or Allowance for Survivors and the Children Benefits if children are under age 18.

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Canada Pension Plan and related benefits

A contributor's family members could qualify for other CPP benefits

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Survivor's Pension

- The Survivor's Pension is paid to the person who, at the time of the CPP recipient's death, was legally married or in a common law relationship (having lived one year in a conjugal relationship) with the deceased CPP Contributor.
- If the contributor has a separated spouse and was cohabiting with a common-law partner then it will be the common-law partner who could qualify for Survivor's Pension.
- Only one Survivor's Pension will be paid if the CPP Contributor was widowed more than once.

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Elements to determine Survivor's Pension

Depends on:

- the total contribution of deceased contributor;
- the age of the contributor at the time of his death; and
- the contribution at the time of contributor's death.

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How other benefits could affect the amount of Survivor's Pension

- Surviving spouse will get 60% of Survivor's Pension if surviving spouse is not receiving his/her own CPP retirement pension.
- If the surviving spouse is receiving his/her own CPP retirement pension or CPPD then the Survivor's Pension will be combined with that payment as a single payment.

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Combining the amount of Survivor's Pension with other benefits

CCP Recipient:

- The combined amount of Survivor's Pension could be equivalent to the maximum amount of Canada Pension Plan.

(current maximum amount of maximum CPP retirement is $1253.59).

CPPD Recipient:

- The combined amount of Survivor's Pension could be equivalent to the maximum amount of CPPD.

(current maximum amount of CPPD is $1457.45).

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Survivor's Pension, by age

- Age 65 or more, the surviving spouse will get 60% if the surviving spouse is not receiving his/her own CPP. (CPP maximum amount in 2022 is 1,253.59 so Survivor's Pension would be $746.25).
- Age 45 to 64,. The survivor's pension on its own would be 37.5% of the total calculated retirement pension of the deceased contributor, plus a flat-rate benefit, with the flat rate being $197 for 2022.
  - 37.5% of $1,253.59 + $197=$667
- Under age 45, 1/120 for each month the spouse or common-law partner is under age 45 and is not disabled and not raising a dependent child.
- Under age 35, typically not paid until the surviving spouse has reached the age of 65 except if:
  - the surviving spouse is disabled; or
  - the surviving spouse is raising a dependent child.

The total amount of Survivor's Pension is adjusted based on the survivor's age and the other benefits received.

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Allowance for Survivor

Allowance is paid to the surviving spouse when:

- Spouse or common-law partner has died and since their death, the Surviving spouse has not remarried or entered into a common-law relationship;
- Surviving spouse is between 60 and 64 years old;
- Surviving spouse is either Canadian Citizen or a legal resident;
- Surviving spouse resided in Canada for at least 10 years since age 18; and
- Surviving spouse annual income is less than $27,984.

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Scenario

- Mary is age 62, living on a low income and her spouse has passed away.
- Mary has not remarried or entered into a common-law relationship since the death of her spouse.
- As she is a Canadian citizen and has lived in Canada for more than 10 years since the age of 18, Sonia who works for a senior organization determines that Mary may be eligible for the Allowance for the Survivor.

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Amount of Old Age Security

Amount of OAS is determined on the residence, age, legal status and residence history:

- Full OAS is paid to the recipient if the recipient lived in Canada for at least 20 years since turning 18.
- If the recipient has lived or worked in a country with which Canada has a social security agreement, the recipient may still qualify to receive the partial OAS pension, even if the recipient has not lived in Canada for at least 10 years.
- If the recipient has only lived in Canada for past 10 years at age 65, the recipient will qualify for 1/10 as a partial OAS.
- The recipients of partial OAS will only be paid outside Canada for the month the recipient left and for six months after that and then OAS will stop.
- If the recipient does not inform Service Canada about his/her absence for more than six months, Service Canada wills stop further payments and will ask to return the OAS received for the period.

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Some Scenarios

- Omar was born and has lived in Canada all his life. When he turns 65 he can receive a full OAS pension.
- Doris was born in Portugal and has lived in Canada for a total of eight years.
  - Her time in Portugal can be counted to meet the 10-year residence requirements for the OAS pension. At 65, she will receive a partial pension.
- Doris was born in Portugal and has lived in Canada for 8 years. Due to Canada's agreement with Portugal, she can use two years of her time spent in Portugal to meet the 10 year minimum residence requirement for the OAS pension. As a result, Doris receives 8/40ths of a full OAS pension.
- Sonia works for an organization that assists seniors. Sonia knows that Omar and Doris are both eligible for the OAS pension.

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Claw back of OAS

- The government claws back OAS if a recipient's net income exceeds the threshold $79,845 (for the year 2021).
- The amount of the claw back is equal to a recipient's OAS payments or 15% of the amount by which the recipient's net income exceeds the threshold, whichever is less.

Example:

- The threshold for 2022 is $81,761.
- If your income in 2022 was $96,000, then your repayment would be 15% of the difference between $96,000 and $81,761:
  - $96,000 - $81,761 = $14,239
  - $14,239 x 0.15 = $2,136

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Living Outside Canada

For recipients of Canada Pension and Old Age Security who live outside of Canada, a nonresident tax is withheld from CPP and Old Age Security. The tax rate is 25% unless exempted by a tax treaty between Canada and the other country of residence. The non-resident tax will be deducted from benefit payments.

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Guaranteed Income Supplement

The Guaranteed Income Supplement (GIS) provides a monthly non-taxable benefit to Old Age Security pension recipients who have a low income and are living in Canada.

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Amount of Guaranteed Income Supplement

Situation	Maximum monthly payment amount	annual income must be
A single, widowed, or divorced pensioner	**$1,023.88**	**Less than $20,784**
When spouse/common-law partner receives the full OAS pension	$616.31	Less than $27,456
When spouse/common-law partner receives the Allowance	$616.31	Less than $38,448
when spouse/common-law partner does not receive an OAS pension or Allowance	$1,023.88	Less than $49,824

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Income Affecting GIS

The income from these sources will affect GIS

- Canada Pension Retirement Pension
- Superannuation
- Rental Income
- RRSP cashed during the year receiving GIS
- Capitals Gains and taxable Savings
- Spousal Support
- Workmen Compensation Benefits
- Employment Insurance
- Returning to work (exemption could apply up to $6000 on earned income)

The income from these sources will not affect GIS

- War Veterans Allowance
- Death Benefits
- Inheritance
- GST credits
- Welfare Payments
- Registered Disability Saving Plan
- Child Tax Benefits
- Lottery Winning

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Scenario

- Maggie is applying for OAS.
- Maggie lives in Canada and has little to no other income.
- Sonia works for an organization which helps seniors and Sonia thinks that Maggie may be eligible for the Guaranteed Income Supplement.
- Sonia reminds Maggie that once she starts receiving GIS, if Maggie leaves the country for more than six months, Maggie's GIS payment will stop.
- In addition, to ensure that Maggie's payment of the GIS is renewed every year, Maggie must also file her taxes on time.

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Contact Service Canada for instatement/reinstatement of GIS

- Lost job, causing loss of earned income.
- Lost income due to illness, and client not returning to work.
- Spent more than six months outside Canada and has now returned to Canada.

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GIS and Sponsored Immigrants

Sponsored immigrants who have resided in Canada less than 10 years after age 18 are not eligible to receive an OAS income-tested benefit (i.e. GIS, the Allowance or the Allowance for the Survivor) during the sponsorship period unless the sponsor:

- suffers personal bankruptcy;
- is imprisoned for more than six months;
- is convicted of abusing the sponsored immigrant; or
- dies.

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Allowance

- The Allowance is a benefit available to low-income seniors aged 60 to 64 and, who are the spouse or common-law partner of a Guaranteed Income Supplement recipient.
- Recipients of the Allowance must be Canadian citizens or Permanent Residents and must have lived in Canada for at least 10 years the time they qualify and not be under an immigration sponsorship agreement.
- Allowance payments will stop when the recipient of Allowance turns 65.
- Allowance is paid when recipient proves his/her Canadian residence.

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Scenario

- John is 60 years old and married to Maggie.
- Maggie is 65 years old and receives both the OAS pension and the Guaranteed Income Supplement.
- John has legal status in Canada and has lived in Canada for more than 10 years since the age of 18.
- Sonia who works for a senior organization determines that John may be eligible for the Allowance.
- Sonia reminds John that once he is in receipt of the Allowance, if he or Maggie leaves Canada for more than six months, John's Allowance payment and Maggie's Guaranteed Income Supplement payment will be stopped.
- Sonia also explains that the Allowance will no longer be paid once John turns 65 years old and becomes eligible for the OAS/GIS.

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Involuntary Separation-Amount of GIS and Allowance

If one spouse or common-law partner is moving to long term care and they are no longer living together as a couple, then the partner not moving into long term care needs to submit the involuntary separation form with Service Canada to receive a higher rate of GIS or the Allowance.

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Property Tax Deferment

- The owner must have lived in British Columbia at least one year immediately prior to applying.
- The owner must be at least 55 during that calendar year (only one spouse must be 55 or older).
- a surviving spouse of any age, or a person with a disability are also eligible to apply for Property Tax Deferment.
- The owner must have maintained a minimum 25 percent equity of the current B.C. Assessment value of home, after deducting all outstanding mortgages, lines of credit and other charges.

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Property Tax Deferment

- Property defined is either:
  - an area of land with house or modular home on it, or
  - a manufactured home and the area of land on which the manufactured is located is owned by the same person.

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Property Tax Deferment - Scenario

- Maggie is 65, the B.C. Assessment value on Maggie's home value per BC Assessment is $1 million and Maggie's taxes are $7,000 per year.
- Maggie wants to stay in her home until age 80, when Maggie want to downsize.
- If Maggie deferred taxes throughout, which is 15 years period.
- $7,000 x 15 years = $105,000.
- If we assume one percent interest on deferment, it would equate to $8,400 in interest.
- Maggie total owing to local government would be $113,400.

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Advantages and Disadvantages of Property Tax Deferment

Advantages

- an increase in household cash flow.
- lifting pressure off mortgage payments.
- freeing up finances to do home repairs.
- low interest rate that is not compounded.

Disadvantages

- It is a lien on property.
- the minimum 25 percent equity requirement related to B.C. Assessment.
- a possible limit on the options when it is a time to renew or refinance the mortgage.

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Instances of non-eligibility for Property Tax Deferment

- When current year property taxes have already been paid in full.
- Debt owing from the previous taxation year, such as unpaid property taxes, penalties, utility fees, unclaimed home owner grant (if eligible) or interest.
- Duplicate Indefeasible Title on property title.
- Second residence like a cottage, summer home or rental home.
- Property taxes for the residence paid to a First Nation or property is leased from a First Nation, Municipality, or the Crown
- Manufactured homes without a current year fire insurance policy.
- Manufactured homes with no land value from BC Assessment.
- Property title is entirely in the name of the executor, or an administrator of the deceased owner's estate.
- Property title is entirely in trust.
- Property leased from the Crown or Municipality.
- Property title is entirely in the name of a corporation.
- Float home or a home on stilts that doesn't have a property title registered with Land Title Office.

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Thank you! Any questions?

Seniors Abuse and Information Line:

604-437-1940 or **1-866-437-1940** (toll free)

Facebook @seniorsfirstbcceas
LinkedIn @Seniors First BC
Instagram @seniorsfirstbc
Twitter @seniorsfrstbc

1281 W Georgia St #502 Vancouver, BC V6E 3J7
SAIL: 604-688-1927 or 1-866-437-1940 (toll free)
Email: info@seniorsfirstbc.ca

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THE LAW FOUNDATION OF BRITISH COLUMBIA

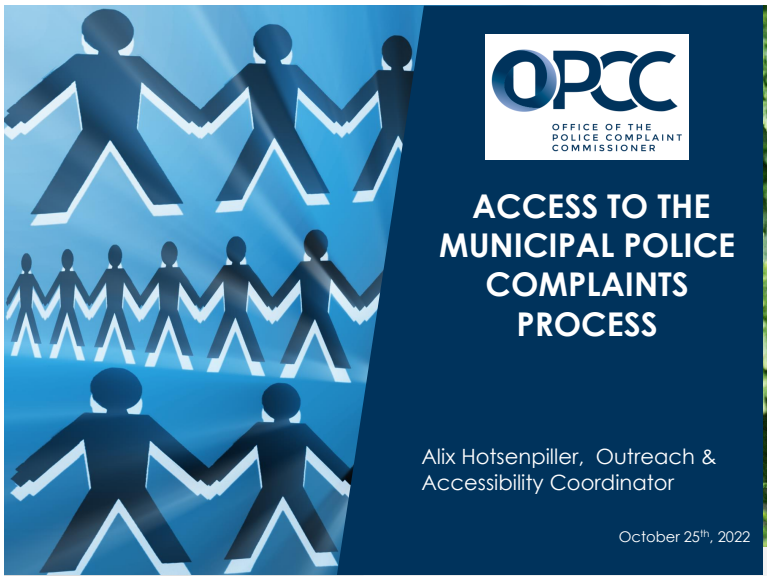
2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Helping Clients with Police Complaints (Municipal and RCMP)

Doug King; Alix Hotsenpiller, Guest Speaker, Office of the Police Complaint Commissioner; Anahita Mittal

This session will cover complaints relating to municipal police departments and the RCMP, and will focus on how legal advocates may be able to assist clients through the complaints process. The session will also look critically at the complaints system and discuss potential reforms to the complaints system

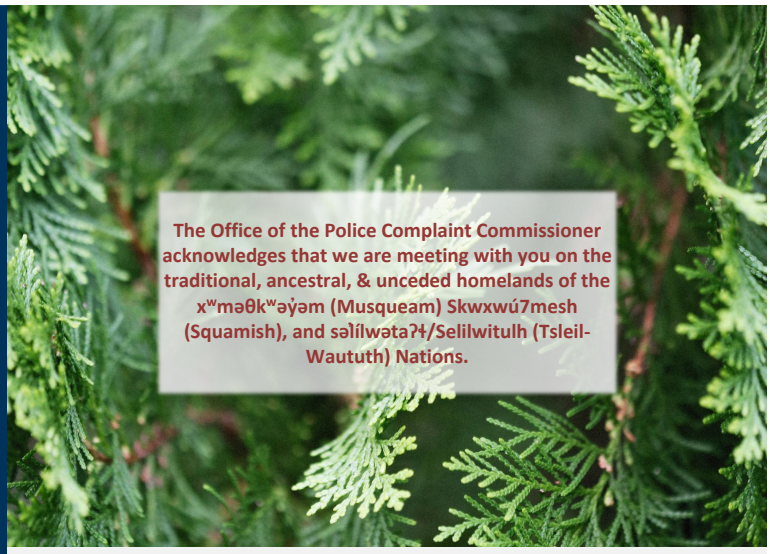


OPCC
OFFICE OF THE POLICE COMPLAINT COMMISSIONER

ACCESS TO THE MUNICIPAL POLICE COMPLAINTS PROCESS

Alix Hotsenpiller, Outreach & Accessibility Coordinator

October 25th, 2022



The Office of the Police Complaint Commissioner acknowledges that we are meeting with you on the traditional, ancestral, & unceded homelands of the xʷməθkʷəy̓əm (Musqueam) Skwxwú7mesh (Squamish), and səl̓ílwətaʔɬ/Selilwitulh (Tsleil-Waututh) Nations.

OUTLINE

- OPCC Background: Mandate, Public Inquiries, Reports, and current context
- *Jurisdiction and other Civilian Agencies*
- *Police Act: Misconduct, Alternative Dispute Resolution, Adjudications, Service and Policy Complaints*
- Outreach, Accessibility & Community Based Assistance

OFFICE OF THE POLICE COMPLAINT COMMISSIONER (OPCC)

- The OPCC is a civilian, independent office of the Legislature established under the *Police Act.*
- Oversees and monitors complaints and investigations involving municipal police in BC and is responsible for the administration of discipline and proceedings under the Act.
- Provides recommendations to police boards on matters of policies and procedures, and to the Ministry of Public Safety and Solicitor General to examine training or other programs to prevent recurrence of issues revealed by the complaint process.

PUBLIC INQUIRIES AND REPORTS

Inquiries:

- Commission of Inquiry into Policing in BC - "Closing the Gap" by the Honourable Wally Oppal, Q.C. (Final report, 1994) *Led to the creation of the OPCC*
- Davies Commission Inquiry into the death of Frank Paul – "Alone and Cold: Criminal Justice Branch Response", (Final Report, May 2011)
- Braidwood Inquiry into the death of Robert Dziekanski (2010)
- National Inquiry: Missing and Murdered Indigenous Women and Girls, Chief Commissioner Marian Buller (2019)

Reports:

- Honourable Josiah Wood's report on review of the police complaint process in British Columbia (February, 2007)
  - Led to sweeping changes to the Police Act in 2010 which broadened and strengthened the oversight powers of the OPCC.
- Special Committee to Review the Police Complaint Process Report (November, 2019)
  - Total of 38 recommendations made to the Legislative Assembly.

SPECIAL COMMITTEE TO REVIEW THE POLICE COMPLAINT PROCESS (2019)

- In November 2019, the Special Committee made 38 recommendations for change to the Police Complaint Process for the OPCC and provincial government to consider.
- Many of these recommendations highlighted areas for improvement including (but not limited to):
  - Prioritize accessibility and develop outreach programs and materials including support for those with mental health issues.
  - Increase resources for community advocacy organizations to provide assistance to complainants including language interpretation.
  - Examine relationships with Indigenous communities and the police.
  - Continue to Promote Alternate Dispute Resolution of complaints.

SPECIAL COMMITTEE RECOMMENDATIONS – OPCC COMMUNICATIONS AND OUTREACH

- Increase engagement and outreach activities to inform and educate British Columbians about the police complaint process, with a particular focus on agencies that serve Indigenous people living in urban areas, settlement service organizations, and organizations that serve vulnerable communities. (#29)
- Offer translated copies of the police complaint process form, brochures, and other communication materials in the major languages that newcomers speak. (#30)
- Examine ways to make the police complaint process more accessible for those from Indigenous and newcomer communities. (#31)
- Update the police complaint form to include plain language and clearly delineate information that is voluntary. (#32)
- Update the list on the OPCC website of support groups that provide language-specific and culturally-appropriate assistance to newcomers who wish to initiate a police complaint. (#33)
- Provide communication materials wherever the police complaint form is available, including online and at police stations, outlining the various supports offered through community organizations. (#34)

SPECIAL COMMITTEE ON REFORMING THE POLICE ACT RECOMMENDATIONS - 2022

On December 9, 2020, the Legislative Assembly appointed the Special Committee on Reforming the Police Act to examine, inquire into, and make recommendations to the Legislative Assembly on:

- Reforms related to the modernization and sustainability of policing under the *Police Act* (R.S.B.C. 1996, c.367);
- The role of police with respect to complex social issues including mental health and wellness, addictions and harm reduction;
- The scope of systemic racism within BC's police agencies; and
- Whether there are measures necessary to ensure a modernized *Police Act* is consistent with the United Nations Declaration on the Rights of Indigenous Peoples (2007).

Committee work and final report: https://www.leg.bc.ca/parliamentary-business/committees/42ndparliament-2ndsession-rpa
https://www.leg.bc.ca/content/CommitteeDocuments/42nd-parliament/3rd-session/rpa/SC-RPA-Report_42-3_2022-04-28.pdf

JURISDICTION OF THE OPCC

*As of August 1, 2016, Special Municipal Constables fall under the jurisdiction of the *Police Act*.

Do not have jurisdiction over Special Provincial Constables (e.g., Conservation Officers)

VANCOUVER ISLAND

- Oak Bay
- Central Saanich
- Saanich
- Victoria

MAINLAND

- Abbotsford
- Delta
- Nelson
- New Westminster
- CFSEU – BC/OCABC
- Port Moody
- Metro Transit Police
- Stl'atl'imx Tribal Police
- Vancouver
- West Vancouver
- Surrey

OTHER CIVILIAN AGENCIES

- There are two other agencies in British Columbia responsible for either investigating police involved incidents or providing civilian oversight of police complaint investigations.
  - Civilian Review and Complaints Commission for the RCMP (CRCC)
  - Independent Investigations Office (IIO)

STATUTORY SCHEME: PART 11 OF THE POLICE ACT

- Sets out the procedures related to "Misconduct, Complaints, Investigations, Discipline and Proceedings."
- Four Divisions:
  - Division 3 Public trust matters
  - Division 4 Informal Resolution and Mediation
  - Division 5 Service or Policy Complaints
  - Division 6 Internal Discipline (no public trust issues)

OPCC SUPPORT AGENCY ASSISTANCE

- The Police Complaint Commissioner is required to "inform, advise and assist" all parties including complainants [*Police Act* s. 177(2)(j)(i)]. ***Support Agency assistance can facilitate broader access to the complaint process for diverse members of the public.***
- Section 80(2)(d) of the Act requires designated individuals to "provide the complainant with a copy of the police complaint commissioner's list, established under section 177(2)(k), of support group and neutral dispute resolution service providers and agencies"
- Providing support can include:
  - Assisting with complaint descriptions, attending in-person or telephone meetings with Professional Standards Section Officers, providing disability expertise, specialized knowledge, interpretation, and cultural/ trauma support through *Police Act* investigations and complaint resolution.

MISCONDUCT

- Misconduct is defined pursuant to section 77 of the *Act*
  - Conduct that constitutes a **public trust offence** pursuant to s. 77(2)
  - Conduct that constitutes **an offence under section 86** *(offence to harass, coerce or intimidate anyone questioning or reporting police conduct or making complaint*) or **section 106** *(offence to hinder, delay, obstruct or interfere with investigating officer)*
  - Conduct that constitutes a **disciplinary breach of public trust** pursuant to s. 77(3)

TYPES OF MISCONDUCT – S. 77(3)

- Abuse of Authority
- Accessory to Misconduct
- Corrupt Practice
- Damage to Police Property
- Damage to Property of Others
- Deceit
- Discourtesy
- Discreditable Conduct (on or off duty)
- Improper Disclosure of Information
- Improper Off-Duty Conduct
- Improper Use & Care of Firearm
- Misuse of Intoxicants
- Neglect of Duty

ACCESS TO THE MUNICIPAL POLICE COMPLAINTS PROCESS PRESENTATION – OPCC Role and Mandate

ALTERNATIVE DISPUTE RESOLUTION

- Benefits of Complaint Resolution and Mediation
  - Enhance public trust
  - Better understanding, greater satisfaction
  - More effective and efficient than traditional investigation process
  - Educational opportunity
  - Confidential

"Continue to promote ADR as a form of resolving complaints"

"Partner with Indigenous organizations to inform discipline authorities and investigating officers about the benefits of ADR and restorative or transformative justice programs.

Special Committee to Review the Police Complaints Process (November, 2019)

ACCESS TO THE MUNICIPAL POLICE COMPLAINTS PROCESS PRESENTATION – OPCC Role and Mandate

ADJUDICATIONS

- Overlaying the investigative and disciplinarily process is an adjudicative function that employs retired members of the judiciary.
- "Retired judges" perform several adjudicative functions acting as a check and balance on the decisions made by senior police officers.
- The Commissioner can appoint a retired judge at various points along the complaints process:
  - Section 117 Reviews
  - Review on the Records
  - Public Hearings
- Complainants can make requests to the Commissioner in the exercise of this discretion.

ACCESS TO THE MUNICIPAL POLICE COMPLAINTS PROCESS PRESENTATION – OPCC Role and Mandate

PREVENTION OF MISCONDUCT – S. 177(4)

- Recommendations to police boards to examine and reconsider any policies or procedures that may have been a factor in conduct that is the subject of a complaint or investigation.
- Recommendations to the Director of Police Services or Minister to undertake a review, study or audit to assist police departments in developing training or other programs to assist in preventing the recurrence of any problems revealed by the complaint process.
- Recommendations to the Director of Police Services to exercise one or more of the Director's functions (e.g., a study) in relation to a service or policy complaint under Division 5 of the Act.

ACCESS TO THE MUNICIPAL POLICE COMPLAINTS PROCESS PRESENTATION – OPCC Role and Mandate

CONTACT INFORMATION:

Alix Hotsenpiller She/Hers
Outreach and Accessibility Coordinator |
Office of the Police Complaint Commissioner
Direct: 250-356-7912 I Toll Free: 1877-999-8707

For further information about the complaints process or the OPCC, please visit our website:

www.opcc.bc.ca

OPCC
OFFICE OF THE POLICE COMPLAINT COMMISSIONER

ACCESS TO THE MUNICIPAL POLICE COMPLAINTS PROCESS PRESENTATION – OPCC Role and Mandate

Police Complaints

RCMP and looking to the future

Douglas King
Together Against Poverty Society
Legal Advocate Training Conference
October 25, 2022

TOGETHER AGAINST POVERTY SOCIETY

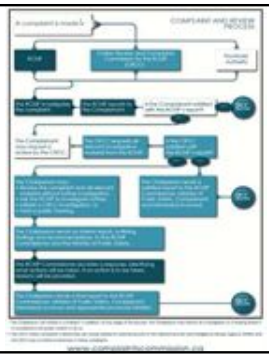
1

Legal Structure of the RCMP

- Modern RCMP created and given authority through the RCMP Act
  - Transcends Provincial Boundaries – Even International
  - Provinces enter into contracts for policing services
  - Appoints Commissioner:

- Also creates the RCMP Code of Conduct and the "Civilian Review and Complaints Commission"

2



3

Code of Conduct v. Police Act Offence

❖Some notable differences:

- RCMP Code does not specifically mention wrongful arrest or detention
- Does not specifically include damage to property or deceit
- All under the nebulous definition of "discreditable conduct"

4

Use of Force and Credibility

5

How advocates can help..

Who decides the facts when they are in dispute? How can this be challenged? How can an advocate help?

- Advocate can help an individual with the facts of their case, focusing on the things that matter.
- Ground submissions in available policies or guidelines, if an action is against an internal policy how can it be reasonable?
- Be present for interview with investigating officer
- Can both help with initial complaint or with the request for review from CRCC.

6

Body Cameras

- Can sometimes provide impartial account of the facts but still given from officer's perspective.
- Who controls information? 30 second delays and where files are stored.

7

Reforming the Police Act

The Province conducted the "Special Committee on Reforming the Police Act" and in April, 2022 published its Report.

- Calls for a provincial police force with local boards
- More training
- Collect and report race-based demographic data
- Establish single, independent, civilian-led oversight agency for complaints

8

Local or Provincial???

Pros and Cons

9

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Student Loans

Sheena Van Egmond; Alison Ward; Janine Kocurek

Many advocates have clients who have problems repaying BC student loans and integrated BC/Canada student loans.

With experienced speakers on StudentAid BC from both the Ministry of Finance and the Ministry of Advanced Education and Skills Training, this workshop will

- *Provide a thorough overview of what debt management options are available for clients struggling to manage their BC student loans and integrated BC/Canada student loans;*
- *Explain how best to help clients access those debt management options; and*
- *Provide up-to-date information about current eligibility criteria for new student loans, BC Access Grants, and other financial supports, for clients wanting to pursue further studies*

BRITISH COLUMBIA | StudentAidBC

Provincial Training Conference for Legal Advocates, BC Conference
October 27, 2022

Presentation Road Map

Overview

- **StudentAid BC Overview**
- **Grants, Bursaries and Loan Forgiveness Programs**
- **Financial Snapshot**
- **WorkBC – In Demand Occupations in BC**

2

About StudentAid BC

- We help eligible students with the cost of their post-secondary education through loans, grants, and other student financial assistance programs.
- It's an integrated federal and provincial student loan program. Full-time loan funding is split, with approximately 60% provided by Canada and 40% by B.C. We offer a single application process for student loans and grants.
- StudentAid BC funding is intended to supplement other financial resources available to students (e.g., through work income, scholarships, bursaries, and family support)
- We also offer programs for borrowers who need help repaying their loans. The federal and provincial governments offer programs that can help borrowers repay their Canada-B.C. integrated student loans.

  We have information on our website that help guide students through:
  - Planning for their career, education and finances;
  - Exploring funding options including grants and scholarships;
  - Maintaining their loan; and
  - Repayment and debt management.

Grants, Bursaries and Loan Forgiveness Programs

- A range of financial supports help students overcome access and affordability barriers – including loans, non-repayable grants, loan forgiveness and repayment assistance;
- The majority of student financial supports are administered through SABC, however there are several programs where the administration is supported by financial aid offices at institutions, such as:
  - Learning Disability Assessment Bursary;
  - Assistance Program for Students with Disabilities;
  - Student Society Emergency Assistance Fund
- Provincial student financial assistance includes loan forgiveness and targeted grant programs, such as:
  - The B.C. Access Grant;
  - Up-front grants for students with permanent disabilities, or persistent or prolonged disabilities;
  - Tuition waiver for youth transitioning out of government care;
  - Grants for adults seeking to upgrade their education; and
  - Loan forgiveness for health and child services professions in underserved communities

BRITISH COLUMBIA | StudentAidBC

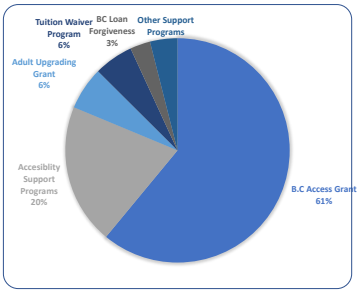
B.C. Access Grant (BCAG) for full-time students	This program provides upfront, non-repayable financial assistance to low and middle-income students enrolled in full-time studies at a BC public post-secondary institution. You must be enrolled in an undergraduate degree, diploma, or certificate program. There is also a Part-time studies BCAG, as well as one available for students with hearing impairments.
Accessibility Support Programs	B.C. Access Grant for Student with Disabilities. (BCAG-D) B.C. Assistance Program for Students with Disabilities (APSD) B.C. Access Grant for Deaf Students (BCAG-DS) B.C. Supplemental Bursary for Students with Disabilities (SBSD)
Adult Upgrading Grants	This program helps adults demonstrating financial need who are enrolled in skills upgrading, education and training courses

BRITISH COLUMBIA | StudentAidBC

Tuition Waiver Program	Supports B.C. students who are former youth in care by providing tuition and mandatory fee waivers while attending an eligible B.C. post-secondary institution. These students may also be eligible for the Youth Educational Assistance Fund for Former Youth in Care (YEAF Grant)
Pacific Leaders B.C. Loan Forgiveness	This program forgives outstanding B.C. student loan debt at a rate of one third per year. Graduates that work for the B.C. Public Service for three years will have their B.C. student loan paid off in full.
B.C. Loan Forgiveness Program	Recent graduates in select in-demand occupations can have their B.C. student loans forgiven by agreeing to work at publicly-funded facilities in underserved communities in B.C., or working with children in occupations where there is an identified shortage in B.C. Province of British Columbia will forgive the outstanding B.C. portion of your Canada-B.C. integrated student loan debt at a rate of up to a maximum of 20% per year for up to five years

Financial Snapshot (Fiscal 2021-22)

In 2021/22, more than **70,000 students** received just over **$900 million** in federal and provincial student financial assistance.



B.C. Access Grant - $35.5M

Accessibility Support Programs - $11.8M

Adult Upgrading Grant - $3.6M

Tuition Waiver Program - $3.3M

BC Loan Forgiveness - $1.7M

Other Student Support Programs - $2.5M

StudentAidBC

WorkBC High Opportunity Occupations

- Discover occupations in B.C. that are expected to offer the best opportunities over the next 10 years.
- High opportunity occupations are those that are expected to experience higher demand and offer higher pay compared to other occupations.
- The *British Columbia Labour Market Outlook: 2021 Edition* provides a list of high opportunity occupations for B.C. and for the seven economic regions. This includes top in-demand trades (e.g. Cooks; Auto Service Technicians; Construction Trades; Millwrights; Bakers, etc.), to Nurses, Doctors, and Early Childhood Educators.

Visit: www.workbc.ca for more information

Provincial Training Conference for Legal Advocates

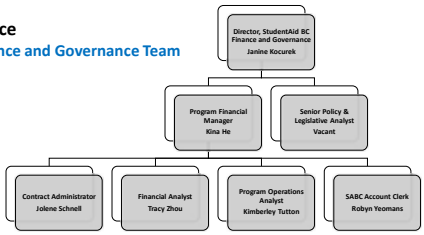
October 27, 2022

BRITISH COLUMBIA StudentAidBC

1

Ministry of Finance

StudentAid BC Finance and Governance Team



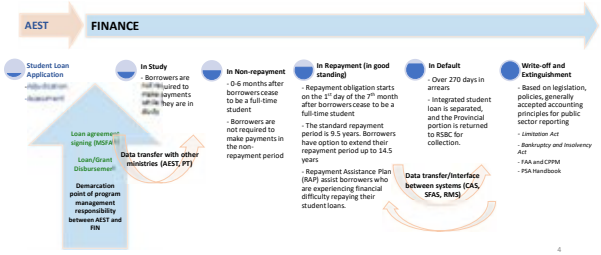
2

Who we work with...Our Stakeholders

- Canada Student Financial Assistance Program (CSFA); we're an integrated province
- National Student Loans Service Centre (NSLSC); loans in good standing
- Receivables Management Office - Revenue Services of British Columbia (RSBC); defaulted loan collection
- Ministry of Advanced Education and Skills Training (AEST):
  - StudentAid BC – Service Delivery;
  - StudentAid BC – Policy and Stakeholder Relations and Governance;
  - StudentAid BC – Direct Programs & Planning.
- Office of the Chief Actuary of Canada; allowances
- Provincial Treasury of BC; transfer $
- Post-Secondary Institutions/Financial Aid Officers; delivery partners

3

What we do...Student Loan Disbursement and Repayment Oversight



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What we do....Repayment Assistance Plan Administration

What is the Repayment Assistance Plan (RAP)?

- Temporary relief for borrowers having trouble making their student loan payments.
- Allows borrowers to pay back what they can reasonably afford.
- Support is based on family size and family income per the 'RAP Threshold' table for both below meaning...

  ...If the family income falls below a certain amount, applicants are eligible to make either no payments or a more affordable payment given their circumstance for that 6-month period.

Family Size	BC's RAP Thresholds	New Federal RAP Thresholds starting November 1, 2022
1	$25,000	$40,000
2	$39,052	$48,884
3	$50,457	$57,432
4	$59,552	$66,312
5+	$67,825	$74,136

Application Process – it's easy...on-line, proof of current income is required, good for 6 months and then repeat...

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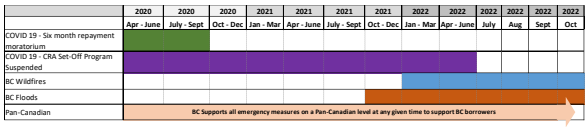
What other relief we've provided...Repayment Support Measures in Extraordinary Circumstances



Support Provided:

- Expedited and easier access to the Repayment Assistance Plan (RAP) when calling the NSLSC.
- Priority call list status when self-identified from affected region.
- NSLSC agents provide personalized help with RAP applications over the phone.
- Proof of income accepted via verbal attestation (vs documentation).
- RAP applications could be back-dated up to 6 months.
- Delinquency calls to borrowers were stopped for those who self-identified from an impacted region.

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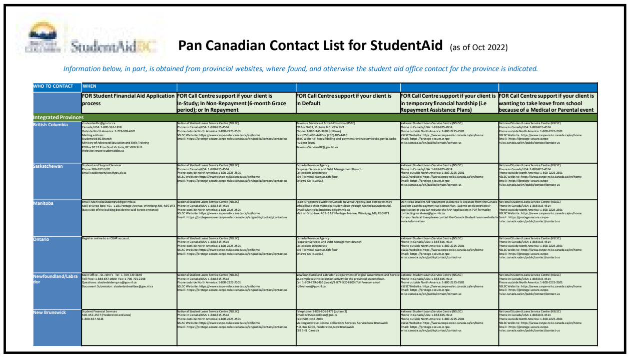

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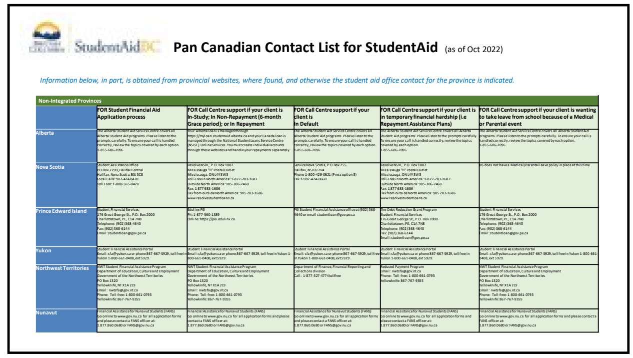

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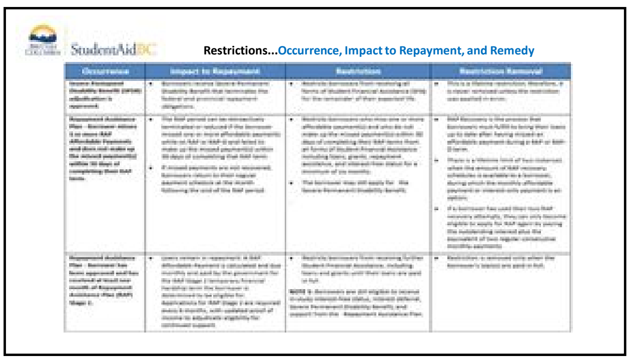

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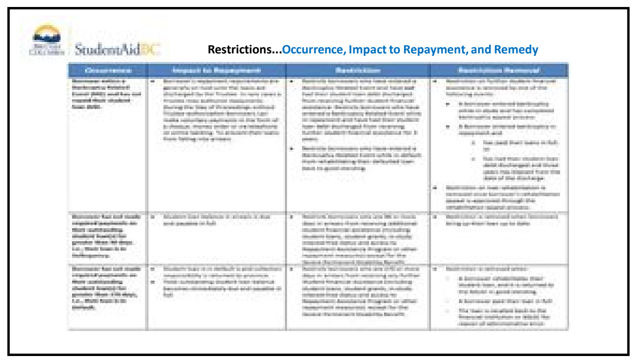

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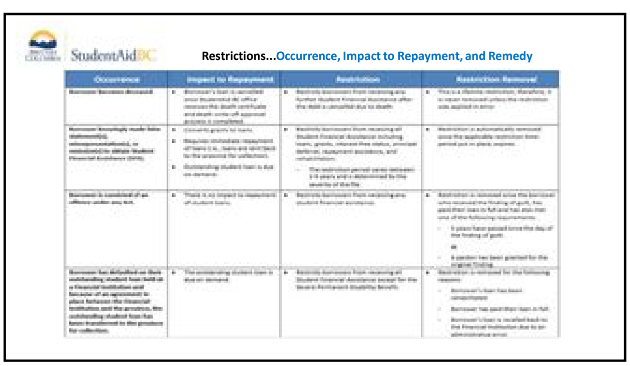

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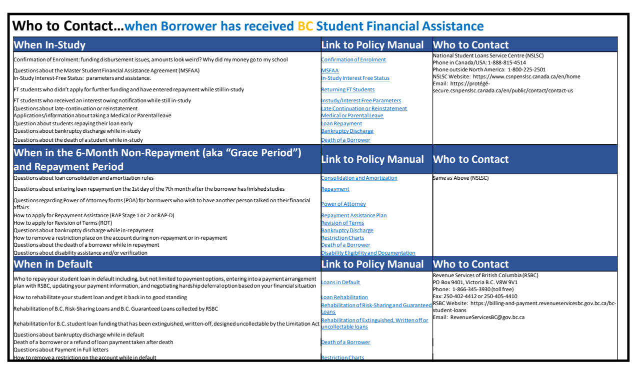

Who to Contact...when Borrower has received BC Student Financial Assistance

When In-Study	Link to Policy Manual	Who to Contact
Confirmation of Enrolment: funding disbursement issues, amounts look weird? Why did my money go to my school	Confirmation of Enrolment	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-225-2501 NSLSC Website: https://www.csnpenslsc.canada.ca/en/home Email: https://protégé-secure.csnpenslsc.canada.ca/en/public/contact/contact-us
Questions about the Master Student Financial Assistance Agreement (MSFAA)	MSFAA	
In-Study Interest-Free Status: parameters and assistance.	In-Study Interest Free Status	
FT students who didn't apply for further funding and have entered repayment while still in-study	Returning FT Students	
FT students who received an interest owing notification while still in-study	Instudy/Interest Free Parameters	
Questions about late-continuation or reinstatement	Late Continuation or Reinstatement	
Applications/information about taking a Medical or Parental leave	Medical or Parental Leave	
Question about students repaying their loan early	Loan Repayment	
Questions about bankruptcy discharge while in-study	Bankruptcy Discharge	
Questions about the death of a student while in-study	Death of a Borrower	
When in the 6-Month Non-Repayment (aka "Grace Period") and Repayment Period	**Link to Policy Manual**	**Who to Contact**
Questions about loan consolidation and amortization rules	Consolidation and Amortization	Same as Above (NSLSC)
Questions about entering loan repayment on the 1st day of the 7th month after the borrower has finished studies	Repayment	
Questions regarding Power of Attorney forms (POA) for borrowers who wish to have another person talked on their financial affairs	Power of Attorney	
How to apply for Repayment Assistance (RAP Stage 1 or 2 or RAP-D)	Repayment Assistance Plan	
How to apply for Revision of Terms (ROT)	Revision of Terms	
Questions about bankruptcy discharge while in-repayment	Bankruptcy Discharge	
How to remove a restriction place on the account during non-repayment or in-repayment	Restriction Charts	
Questions about the death of a borrower while in repayment	Death of a Borrower	
Questions about disability assistance and/or verification	Disability Eligibility and Documentation	
When in Default	**Link to Policy Manual**	**Who to Contact**
Who to repay your student loan in default including, but not limited to payment options, entering into a payment arrangement plan with RSBC, updating your payment information, and negotiating hardship deferral option based on your financial situation	Loans in Default	Revenue Services of British Columbia (RSBC) PO Box 9401, Victoria B.C. V8W 9V1 Phone: 1-866-345-3930 (toll free) Fax: 250-402-4412 or 250-405-4410 RSBC Website: https://billing-and-payment.revenueservicesbc.gov.bc.ca/bc-student-loans Email: RevenueServicesBC@gov.bc.ca
How to rehabilitate your student loan and get it back in to good standing	Loan Rehabilitation	
Rehabilitation of B.C. Risk-Sharing Loans and B.C. Guaranteed Loans collected by RSBC	Rehabilitation of Risk-Sharing and Guaranteed Loans	
Rehabilitation for B.C. student loan funding that has been extinguished, written-off, designed uncollectable by the Limitation Act	Rehabilitation of Extinguished, Written off or uncollectable loans	
Questions about bankruptcy discharge while in default		
Death of a borrower or a refund of loan payment taken after death	Death of a Borrower	
Questions about Payment in Full letters		
How to remove a restriction on the account while in default	Restriction Charts	

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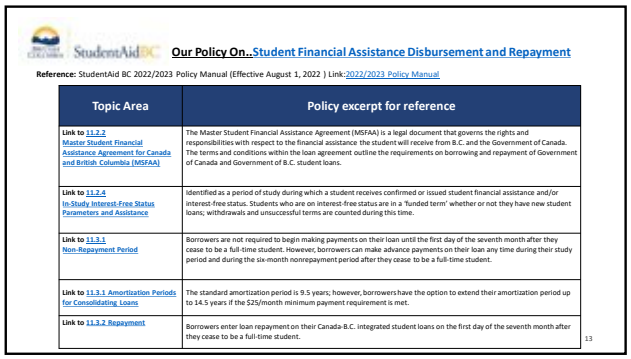

Our Policy On…Student Financial Assistance Disbursement and Repayment

Reference: StudentAid BC 2022/2023 Policy Manual (Effective August 1, 2022) Link:2022/2023 Policy Manual

Topic Area	Policy excerpt for reference
Link to 11.2.2 Master Student Financial Assistance Agreement for Canada and British Columbia (MSFAA)	The Master Student Financial Assistance Agreement (MSFAA) is a legal document that governs the rights and responsibilities with respect to the financial assistance the student will receive from B.C. and the Government of Canada. The terms and conditions within the loan agreement outline the requirements on borrowing and repayment of Government of Canada and Government of B.C. student loans.
Link to 11.2.4 In-Study Interest-Free Status Parameters and Assistance	Identified as a period of study during which a student receives confirmed or issued student financial assistance and/or interest-free status. Students who are on interest-free status are in a 'funded term' whether or not they have new student loans; withdrawals and unsuccessful terms are counted during this time.
Link to 11.3.1 Non-Repayment Period	Borrowers are not required to begin making payments on their loan until the first day of the seventh month after they cease to be a full-time student. However, borrowers can make advance payments on their loan any time during their study period and during the six-month nonrepayment period after they cease to be a full-time student.
Link to 11.3.1 Amortization Periods for Consolidating Loans	The standard amortization period is 9.5 years; however, borrowers have the option to extend their amortization period up to 14.5 years if the $25/month minimum payment requirement is met.
Link to 11.3.2 Repayment	Borrowers enter loan repayment on their Canada-B.C. integrated student loans on the first day of the seventh month after they cease to be a full-time student.

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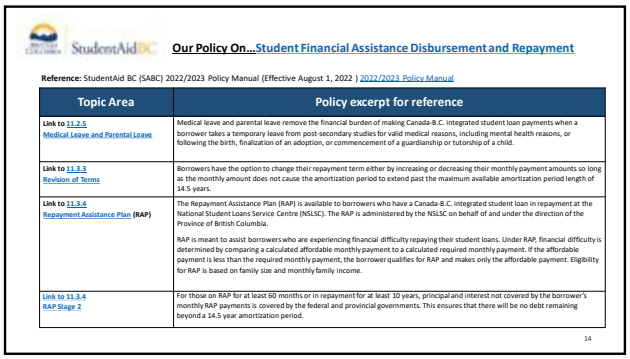

Our Policy On…Student Financial Assistance Disbursement and Repayment

Reference: StudentAid BC (SABC) 2022/2023 Policy Manual (Effective August 1, 2022) 2022/2023 Policy Manual

Topic Area	Policy excerpt for reference
Link to 11.2.5 Medical Leave and Parental Leave	Medical leave and parental leave remove the financial burden of making Canada-B.C. integrated student loan payments when a borrower takes a temporary leave from post-secondary studies for valid medical reasons, including mental health reasons, or following the birth, finalization of an adoption, or commencement of a guardianship or tutorship of a child.
Link to 11.3.3 Revision of Terms	Borrowers have the option to change their repayment term either by increasing or decreasing their monthly payment amounts so long as the monthly amount does not cause the amortization period to extend past the maximum available amortization period length of 14.5 years.
Link to 11.3.4 Repayment Assistance Plan **(RAP)**	The Repayment Assistance Plan (RAP) is available to borrowers who have a Canada-B.C. integrated student loan in repayment at the National Student Loans Service Centre (NSLSC). The RAP is administered by the NSLSC on behalf of and under the direction of the Province of British Columbia. RAP is meant to assist borrowers who are experiencing financial difficulty repaying their student loans. Under RAP, financial difficulty is determined by comparing a calculated affordable monthly payment to a calculated required monthly payment. If the affordable payment is less than the required monthly payment, the borrower qualifies for RAP and makes only the affordable payment. Eligibility for RAP is based on family size and monthly family income.
Link to 11.3.4 RAP Stage 2	For those on RAP for at least 60 months or in repayment for at least 10 years, principal and interest not covered by the borrower's monthly RAP payments is covered by the federal and provincial governments. This ensures that there will be no debt remaining beyond a 14.5 year amortization period.

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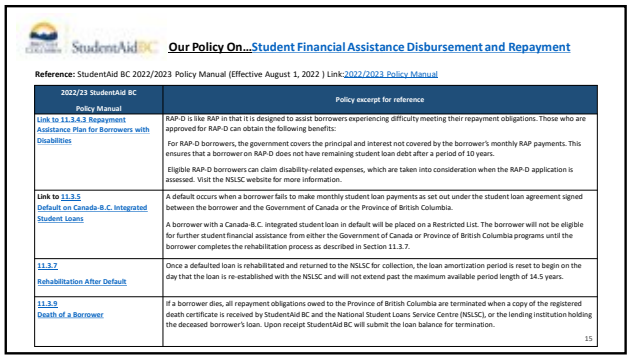

Our Policy On…Student Financial Assistance Disbursement and Repayment

Reference: StudentAid BC 2022/2023 Policy Manual (Effective August 1, 2022) Link:2022/2023 Policy Manual

2022/23 StudentAid BC Policy Manual	Policy excerpt for reference
Link to 11.3.4.3 Repayment Assistance Plan for Borrowers with Disabilities	RAP-D is like RAP in that it is designed to assist borrowers experiencing difficulty meeting their repayment obligations. Those who are approved for RAP-D can obtain the following benefits: For RAP-D borrowers, the government covers the principal and interest not covered by the borrower's monthly RAP payments. This ensures that a borrower on RAP-D does not have remaining student loan debt after a period of 10 years. Eligible RAP-D borrowers can claim disability-related expenses, which are taken into consideration when the RAP-D application is assessed. Visit the NSLSC website for more information.
Link to 11.3.5 Default on Canada-B.C. Integrated Student Loans	A default occurs when a borrower fails to make monthly student loan payments as set out under the student loan agreement signed between the borrower and the Government of Canada or the Province of British Columbia. A borrower with a Canada-B.C. integrated student loan in default will be placed on a Restricted List. The borrower will not be eligible for further student financial assistance from either the Government of Canada or Province of British Columbia programs until the borrower completes the rehabilitation process as described in Section 11.3.7.
11.3.7 Rehabilitation After Default	Once a defaulted loan is rehabilitated and returned to the NSLSC for collection, the loan amortization period is reset to begin on the day that the loan is re-established with the NSLSC and will not extend past the maximum available period length of 14.5 years.
11.3.9 Death of a Borrower	If a borrower dies, all repayment obligations owed to the Province of British Columbia are terminated when a copy of the registered death certificate is received by StudentAid BC and the National Student Loans Service Centre (NSLSC), or the lending institution holding the deceased borrower's loan. Upon receipt StudentAid BC will submit the loan balance for termination.

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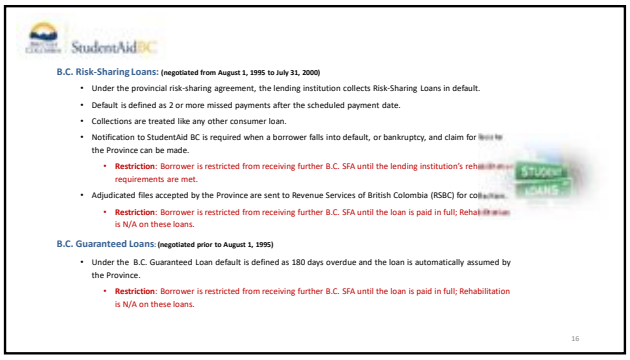

B.C. Risk-Sharing Loans: **(negotiated from August 1, 1995 to July 31, 2000)**

- Under the provincial risk-sharing agreement, the lending institution collects Risk-Sharing Loans in default.
- Default is defined as 2 or more missed payments after the scheduled payment date.
- Collections are treated like any other consumer loan.
- Notification to StudentAid BC is required when a borrower falls into default, or bankruptcy, and claim for [illegible] the Province can be made.
  - **Restriction**: Borrower is restricted from receiving further B.C. SFA until the lending institution's rehabilitation requirements are met.
- Adjudicated files accepted by the Province are sent to Revenue Services of British Columbia (RSBC) for collection.
  - **Restriction**: Borrower is restricted from receiving further B.C. SFA until the loan is paid in full; Rehabilitation is N/A on these loans.

B.C. Guaranteed Loans: **(negotiated prior to August 1, 1995)**

- Under the B.C. Guaranteed Loan default is defined as 180 days overdue and the loan is automatically assumed by the Province.
  - **Restriction**: Borrower is restricted from receiving further B.C. SFA until the loan is paid in full; Rehabilitation is N/A on these loans.

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WHO TO CONTACT	WHEN				
	FOR Student Financial Aid Application process	**FOR Call Centre support if your client is In-Study; In Non-Repayment (6-month Grace period); or In Repayment**	**FOR Call Centre support if your client is In Default**	**FOR Call Centre support if your client is in temporary financial hardship (i.e Repayment Assistance Plans)**	**FOR Call Centre support if your client is wanting to take leave from school because of a Medical or Parental event**
Integrated Provinces					
British Columbia	studentaidbc@gov.bc.ca Canada/USA: 1-800-561-1818 Outside North America: 1-778-309-4621 Mailing address: StudentAid BC Branch Ministry of Advanced Education and Skills Training PO Box 9157 Prov Govt Victoria, BC V8W 9H2 Website: www.studentaidbc.ca	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us	Revenue Services of British Columbia (RSBC) PO Box 9401, Victoria B.C. V8W 9V1 Phone: 1-866-345-3930 (toll free) Fax: (250) 405-4412 or (250) 405-4410 RSBC Website: https://billing-and-payment.revenueservicesbc.gov.bc.ca/bc-student-loans RevenueServicesBC@gov.bc.ca	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us
Saskatchewan	Student and Support Services Phone 306-787-5620 Email studentservices@gov.sk.ca	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us	Canada Revenue Agency Taxpayer Services and Debt Management Branch Collections Directorate 395 Terminal Avenue, 6th floor Ottawa ON K1A 0L5	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us
Manitoba	Email: ManitobaStudentAid@gov.mb.ca Mail or Drop-box: 401 - 1181 Portage Avenue, Winnipeg, MB, R3G 0T3 (East side of the building beside the Wall Street entrance)	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-	Loan is registered with the Canada Revenue Agency but borrowers may rehabilitate their Manitoba student loan through Manitoba Student Aid. Email: ManitobaStudentAid@gov.mb.ca Mail or Drop-box: 401 - 1181	Manitoba Student Aid repayment assistance is separate from the Canada Student Loan Repayment Assistance Plan. Submit an electronic RAP application or you can request the RAP Application in PDF format by contacting msaloans@gov.mb.ca For your federal loan please contact	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-

		secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us	Portage Avenue, Winnipeg, MB, R3G 0T3	the Canada Student Loans website for more information.	secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us
Ontario	Register online to an OSAP account.	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us	Canada Revenue Agency Taxpayer Services and Debt Management Branch Collections Directorate 395 Terminal Avenue, 6th floor Ottawa ON K1A 0L5	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us
Newfoundland/ Labrador	Main Office – St. John's Tel: 1-709-729-5849 Toll Free: 1-888-657-0800 Fax: 1-709-729-2298 Questions: studentaidenquiry@gov.nl.ca Document Submission: studentaidmailbox@gov.nl.ca	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us	Newfoundland and Labrador's Department of Digital Government and Service NL completes the collection activity for the provincial student loan. Call 1-709-729-6465 (Local)/1-877-520-8800 (Toll Free) or email collections@gov.nl.ca.	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us
New Brunswick	Student Financial Services 506-453-2577 (Fredericton and area) 1-800-667-5626	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us	Telephone: 1-855-806-2472 (option 2) Email: NBStudentloan@gnb.ca Fax: (506) 444-2054 Mailing Address: Central Collections Services, Service New Brunswick P.O. Box 6000, Fredericton, New Brunswick E3B 5H1 Canada	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us	National Student Loans Service Centre (NSLSC) Phone in Canada/USA: 1-888-815-4514 Phone outside North America: 1-800-2225-2501 NSLSC Website: https://www.csnpe-nslsc.canada.ca/en/home Email: https://protege-secure.csnpe-nslsc.canada.ca/en/public/contact/contact-us

Non-Integrated Provinces					
	FOR Student Financial Aid Application process	**FOR Call Centre support if your client is In-Study; In Non-Repayment (6-month Grace period); or In Repayment**	**FOR Call Centre support if your client is In Default**	**FOR Call Centre support if your client is in temporary financial hardship (i.e Repayment Assistance Plans)**	**FOR Call Centre support if your client is wanting to take leave from school because of a Medical or Parental event**
Alberta	The Alberta Student Aid Service Centre covers all Alberta Student Aid programs. Please listen to the prompts carefully. To ensure your call is handled correctly, review the topics covered by each option. 1-855-606-2096	Your Alberta loan is managed through https://myloan.studentaid.alberta.ca and your Canada loan is managed through the National Student Loans Service Centre (NSLSC) Online Services. You must create individual accounts through these websites and handle your repayments separately.	The Alberta Student Aid Service Centre covers all Alberta Student Aid programs. Please listen to the prompts carefully. To ensure your call is handled correctly, review the topics covered by each option. 1-855-606-2096	The Alberta Student Aid Service Centre covers all Alberta Student Aid programs. Please listen to the prompts carefully. To ensure your call is handled correctly, review the topics covered by each option. 1-855-606-2096	The Alberta Student Aid Service Centre covers all Alberta Student Aid programs. Please listen to the prompts carefully. To ensure your call is handled correctly, review the topics covered by each option. 1-855-606-2096
Nova Scotia	Student Assistance Office PO Box 2290, Halifax Central Halifax, Nova Scotia, B3J 3C8 Local Calls: 902-424-8420 Toll Free: 1-800-565-8420	Resolve NSDL, P.O. Box 1007 Mississauga "B" Postal Outlet Mississauga, ON L4Y 3W3 Toll-Free in North America: 1-877-283-1687 Outside North America: 905-306-2460 Fax: 1 877 683-1686 Fax from outside North America: 905 283-1686 www.resolvestudentloans.ca	Service Nova Scotia, P.O.Box 755 Halifax, NS B3J 2V4 Phone 1-800-429-0621 (Press option 3) Fax 1-902-424-0660	Resolve NSDL, P.O. Box 1007 Mississauga "B" Postal Outlet Mississauga, ON L4Y 3W3 Toll-Free in North America: 1-877-283-1687 Outside North America: 905-306-2460 Fax: 1 877 683-1686 Fax from outside North America: 905 283-1686 www.resolvestudentloans.ca	NS does not have a Medical/Parental leave policy in place at this time.
Prince Edward Island	Student Financial Services 176 Great George St., P.O. Box 2000 Charlottetown, PE, C1A 7N8 Telephone: (902) 368-4640 Fax: (902) 368-6144 Email: studentloan@gov.pe.ca	Edulinx PEI Ph: 1-877-560-1389 Online: https://pei.edulinx.ca	PEI Student Financial Assistance office at (902) 368-4640 or email studentloan@gov.pe.ca	The Debt Reduction Grant Program Student Financial Services 176 Great George St., P.O. Box 2000 Charlottetown, PE, C1A 7N8 Telephone: (902) 368-4640 Fax: (902) 368-6144 Email: studentloan@gov.pe.ca	Student Financial Services 176 Great George St., P.O. Box 2000 Charlottetown, PE, C1A 7N8 Telephone: (902) 368-4640 Fax: (902) 368-6144 Email: studentloan@gov.pe.ca
Yukon	Student Financial Assistance Portal Email: sfa@yukon.ca or phone	Student Financial Assistance Portal Email: sfa@yukon.ca or phone 867-667-5929, toll free in Yukon 1-800-661-0408, ext 5929.	Student Financial Assistance Portal Email: sfa@yukon.ca or phone	Student Financial Assistance Portal Email: sfa@yukon.ca or phone	Student Financial Assistance Portal Email: sfa@yukon.ca or phone 867-667-5929, toll free in Yukon 1-800-661-0408, ext 5929.

	867-667-5929, toll free in Yukon 1-800-661-0408, ext 5929.		867-667-5929, toll free in Yukon 1-800-661-0408, ext 5929.	867-667-5929, toll free in Yukon 1-800-661-0408, ext 5929.	
Northwest Territories	NWT Student Financial Assistance Program Department of Education, Culture and Employment Government of the Northwest Territories PO Box 1320 Yellowknife, NT X1A 2L9 Email: nwtsfa@gov.nt.ca Phone: Toll-free: 1-800-661-0793 Yellowknife: 867-767-9355	NWT Student Financial Assistance Program Department of Education, Culture and Employment Government of the Northwest Territories PO Box 1320 Yellowknife, NT X1A 2L9 Email: nwtsfa@gov.nt.ca Phone: Toll-free: 1-800-661-0793 Yellowknife: 867-767-9355	Department of Finance, Financial Reporting and Collections division Call: 1-877-527-4774 tollfree	Reduced Payment Program Email: nwtsfa@gov.nt.ca Phone: Toll-free: 1-800-661-0793 Yellowknife: 867-767-9355	NWT Student Financial Assistance Program Department of Education, Culture and Employment Government of the Northwest Territories PO Box 1320 Yellowknife, NT X1A 2L9 Email: nwtsfa@gov.nt.ca Phone: Toll-free: 1-800-661-0793 Yellowknife: 867-767-9355
Nunavut	Financial Assistance for Nunavut Students (FANS) Go online to www.gov.nu.ca for all application forms and please contact a FANS officer at: 1.877.860.0680 or FANS@gov.nu.ca	Financial Assistance for Nunavut Students (FANS) Go online to www.gov.nu.ca for all application forms and please contact a FANS officer at: 1.877.860.0680 or FANS@gov.nu.ca	Financial Assistance for Nunavut Students (FANS) Go online to www.gov.nu.ca for all application forms and please contact a FANS officer at: 1.877.860.0680 or FANS@gov.nu.ca	Financial Assistance for Nunavut Students (FANS) Go online to www.gov.nu.ca for all application forms and please contact a FANS officer at: 1.877.860.0680 or FANS@gov.nu.ca	Financial Assistance for Nunavut Students (FANS) Go online to www.gov.nu.ca for all application forms and please contact a FANS officer at: 1.877.860.0680 or FANS@gov.nu.ca

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
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Legal Aid BC

Update on Indigenous Class Actions

Gloria Cardinal

We will focus on the Sixties Scoop class action, the Federal Indian Day School class action, and Aftercare. The Sixties Scoop application process closed in August 2019, but it is only now being finalized. The Federal Indian Day School class action is still an open class action, as the extended deadline goes to January 13, 2023. We will explain the Extension request form, and talk about how it's important to focus on mental health, both for clients and for clinicians who are working on these claims. Lastly, when the file is closed there is still plenty of work to do for our clients. We call it Aftercare and we will discuss what that looks like from the perspective of the ICLC.

Update on Indigenous Class actions

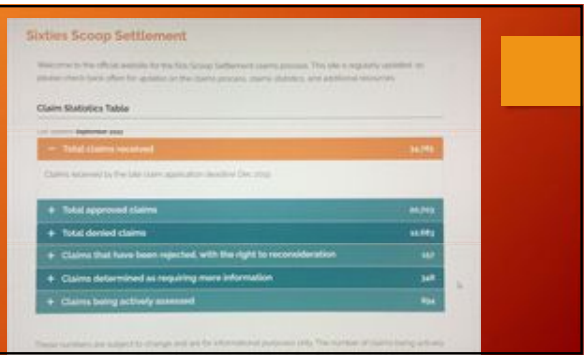
- Sixties Scoop
- Federal Indian Day School Class Action

1

Sixties Scoop Class action

- The settlement provides a payment to any registered Indian or person eligible to be registered or Inuit person
  - who was adopted or
  - made a permanent ward and
  - was placed in the care of non-Indigenous foster or adoptive parents in Canada
  - between January 1, 1951 and December 31, 1991.

2



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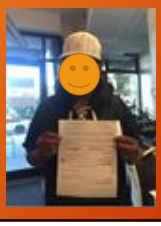
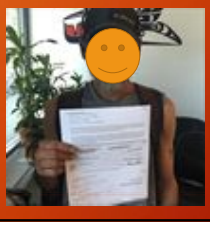
Sixties Scoop Class action





- First payment was $21,000, in June 2021
- Final payout was issued in August 2022 for $4000.
- Total payout was $25,000

4

Indian Day Schools in Canada

Federal Indian Day School Class Action Settlement (FIDSCAS)

Indigenous Community Legal Clinic- Peter A. Allard School of Law

Indian Day School in Hay River

5

Presenters: Gloria & Russell

6

History of Indian Day Schools

- In **1920** there were **247** Indian Day schools in Canada with a total enrollment of 7,477 students. The Government of **Canada** established and operated 699 Indian Day Schools over the years.
- Total student numbers between 1920 and 2000 was close to 200,000 First Nations, Inuit, Metis and non-status **Indian** children.
- Certain abuses were committed against these students and harms were suffered by these students attending Indian Day Schools.
  - "You were always hit with something: straps, pieces of wood, rulers, yardsticks, chalk thrown at you, erasers thrown at you, you were pushed around," said Dennis Diabo, Kahnawake.
    https://www.cbc.ca/news/indigenous/kahnawake-indian-day-schools-1.5127502

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"We weren't allowed to speak Haida, not even mention a word in Haida," Wilson said. "We weren't allowed to draw. We weren't allowed to sing and dance. We weren't allowed to talk about anything about Haida culture."
And if they disobeyed, Wilson said that they were "whipped across the face" and sometimes "whipped across the back". "This was happening throughout my kindergarten, Grade 1, 2, and 3," he recalled"
Andy Wilson, Haida Nation

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Federal Indian Day School Class Action Settlement (FIDSCAS)—Timeline

2009 - Gary McLean

May 2016

November 2018

January 13, 2020 Application process begins for IDS Survivor Class Members

Old Aiyansh on the Nass River, 1950s, Anglican Church

9

July 13, 2022

- Was the last day to apply for IDS
- Little information as to the extention
- New dead line of January 13, 2023

INDIAN DAY SCHOOLS CLASS ACTION SETTLEMENT
REQUEST FOR DEADLINE EXTENSION FORM – DUE BY JANUARY 13, 2023

This is not a Claim Form.

This form is for making a request to extend the Claims Deadline.

This Form, as well as your Claim Form, must be submitted by January 13, 2023, 11:59 PM PST.

10

Barriers surrounding IDS claims

- Complicated
- 5 levels of harm much of which was unclear
- Memory of a child
- Complex language

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Barriers continued

- Very little information was given when calling Deloitte.
- Compensated using money
- Schools not listed on schedule K

12

Silver lining of Day School applications

- Telling their stories
- Dealing with trauma
- Feelings of empowerment
- At what cost?

13

January 13, 2023 Extension

- Completed by January 13, 2023, 11:59 PM PST
- Submitted before or together with claim form
- SIN # and other identifying information
- addresss

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Extension criteria

You must check off (✓) the situation that most applies to you:

Person Under Disability | Undue Hardship | Exceptional Circumstances

Step 2: Please describe why you were not able to submit your claim during the Claims Period. If you require additional space, please attach pages. (e.g. filing an estate claim and did not receive representative documents in a timely manner.)

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Letter of Administration

- Individuals applying for a deceased relative need to be testamentary documentation
- Many individuals passed without a will
- Long and convoluted process
- High demand with little resources.

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Submission Process: the Last page!

- Here on the last page we have a checklist
  - Make sure you have all the listed documents and all the appropriate pages filled out
- There are 3 ways to send your claim form
  - By Mail : PO BOX 1775, Toronto, ON, Canada, M5C 0A2
  - By Fax: 416-366-1102
  - By Email: indiandayschools@deloitte.ca

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Time Estimates

- What we have learned from the applications sent in
- Can take 2-3 months
- You will receive a payment letter to confirm a claim has been approved.
- Client receives a cheque for the amount

Level 1

- Can take up to 12 months for the review process to be complete
- These claims may also sent to the Government of Canada for a second look.

Level 2 - 5

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Mental Health of Advocates

- Central to the claims process
- Watch for burnout

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Call the Wellness Help Line: 1-855-242-3310

Other resources

Link from the Indiandayschools.com site created by Gowlings:Indian Day Schools Class Action Settlement form:

Watch on Youtube

https://www.youtube.com/watch?v=9Y0Ty_LttfU&feature=emb_title

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Aftercare: what is it?

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Updating contact information

On the application form it is critical for the administrators of the Class Action to have current and up to date contact information for that client.

This is where much time is spent. We have clients who drop by with new phone numbers, addresses, email addresses, etc.

Immediately we email or fax the new contact information to the Class action administrators.

In order for communication to happen about their claim form, it is very important that contact info is accurate and up to date.

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Answering the clients questions about the process

Many questions are asked about the process of the Class Action

1. When will they make a decision;
2. Can you help me phone the administrator to ask about my claim form;
3. I haven't received any mail for quite some time, could we call Collectiva?
4. Have you heard anything about the process, and about my application?

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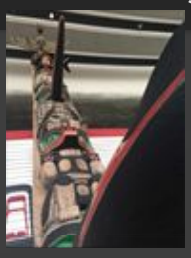
Communicating with Administrators…



…of the Class Action

1. Are you counsel for the client?
2. A client comes in saying that "deloitte" or "collectiva" is questioning their application and all documents. We forward the original email, proving the date, and proving what documents were originally submitted.

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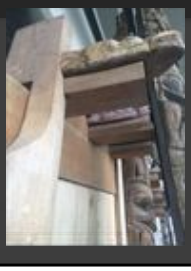
Additional document requests

For Sixties Scoop
1. Supplemental Claim Form;
2. Reason for Late Application submission;
3. Supporting Witness;

For Indian Day School Class Action
1. Witness Statements;
2. Sworn Declaration – done over again
3. Representation Part 7 filled out;
4. School records to attach, ATIP requests;

25

Mental Health Services



Finding Mental Health resources for our clients and for ourselves.
Burnout from extensive trauma work
- Clients whose stories include physical, emotional, verbal, and sexual abuse;
- This is a very real concern in our office;
- Level 5 harms are very difficult to document, and we encouraged our clients to tell the complete story.

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Any questions…

Thank you for being part of our discussion today. We welcome any question, and if we don't have the answer immediately we will get back to you.
cardinal@allard.ubc.ca
nesbitt@allard.ubc.ca

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Legal Aid BC

Benefit Interactions

Kevin Love; Alison Ward

What happens when your client receives (or wants to apply for) more than one kind of income support benefit? Can applying for one benefit jeopardize their eligibility for another? Can they keep both benefits, or is one deducted from the other, and when? We will look at the interaction of different benefits including:

- *employment Insurance (including sickness and regular benefits);*
- *welfare (including disability benefits);*
- *Canada pension plan (retirement and disability);*
- *workers compensation benefits; and*
- *Old age security (including GIS)*

BENEFIT INTERACTIONS

Kevin Love and Alison Ward, lawyers
Community Legal Assistance Society
October 27, 2022

What We Will Do

- Look at how the most common benefits interact.
- Look at how to maximize what goes into your clients' pocket and how to avoid problems.

So Many Different Benefits! List of Short-Forms

- Income Assistance (IA) and Hardship Assistance (HA)
  - benefits for Persons with Persistent Multiple Barriers to employment (PPMB)
- Disability Assistance (DA) for Persons with Disability (PWD) and Hardship Assistance (HA)
- Canada Pension Plan (CPP) and Canada Pension Plan Disability (CPPD)
- Disability Tax Credit (DTC)
- Old Age Security (OAS) / Guaranteed Income Supplement (GIS)
- Employment Insurance (EI)
- Workers' Compensation Board (WCB)
- Canada Child Benefit (CCB)
- Private short-term disability (STD) insurance, and long-term disability (LTD) insurance

No Universal Definition of "Disability" For Benefits and Pensions

- PWD:
  - Severe mental or physical impairment
  - Severity assessed based on restriction of ability to perform daily living activities
  - At least 2 years
- PPMB:
  - Health condition that has continued, or occurred frequently, for at least one year and is likely to continue for at least 2 more years, and
  - that is a barrier that seriously impedes the person's ability to search for, accept or continue in employment.
  - person must also face another circumstance that seriously impedes their ability to search for, accept or continue in employment (e.g. homelessness, less than grade 12 education, needing English language training, etc.)
- CPP-D:
  - Severe and prolonged
  - Severity assessed based on long term employability. Is person incapable regularly of pursuing any substantially gainful occupation?
  - Prolonged means long continued or indefinite duration

No Universal Definition of "Disability" For Benefits and Pensions

- EI sickness:
  - Unable to work (or have regular weekly wages have decreased by more than 40%) because of injury, illness, or quarantine
  - Focus is short term, must last at least 7 days
- LTD or STD contract
  - No one standard definition of disability
  - Each individual contract contains its own definition of what constitutes "disability"
- WCB
  - Only covers work related injury and disability
  - Must (usually) be disabled from earning full wages, but DO NOT need to be totally unable to work
  - No minimum duration of injury or disability

Clients on Income or Disability Assistance

- Ministry (MSDPR) generally sees itself as payor of last resort. Most other (but not all) benefits deducted.

MSDPR Treatment income from other types of benefits

OTHER BENEFIT	TREATMENT
EI pregnancy, parental, compassionate care for critically ill child	• Exempt as income & an asset for all forms of welfare(IA, DA, HA)
EI regular or sickness:	• Unearned income, deducted dollar for dollar
Canada Pension Plan (disability, retirement and early retirement)	• Unearned income, deducted dollar for dollar • Lump sums (retro) are income in month received, **unless** assigned to MSDPR via Consent to Deduction and Payment form
Canada Pension Plan (orphan's benefits, disabled contributor's child benefit	• Exempt income for all forms of welfare (akin to child support)

MSDPR Treatment income from other types of benefits

OTHER BENEFIT	TREATMENT
Child support	• Fully exempt as income and asset for all forms of welfare benefits
Spousal support	• Unearned income and non-exempt asset • Deducted dollar for dollar from IA, HA, PPMB and PWD • If a large lump sum (either retro paid in a large amount, or a large amount paid by separation agreement or court order), lump sum only income in month received. • Can argue the lump sum is exempt as income up to the family unit's asset exemption level

MSDPR Treatment income from other types of benefits

OTHER BENEFIT	TREATMENT
WCB temporary disability (wage loss) Ss 191 and 192, Workers Compensation Act	• If on **IA:** Unearned Income, deducted dollar for dollar • If on **DA:** Qualifying income, exempt up to AEE

WCB permanent disability (pension)	• Unearned income, deducted dollar for dollar from IA and DA
	• Lump sums (commuted pension) only income in month received
	  • *may* be able to argue the lump sum is exempt as income up to the family unit's asset exemption level
	  • See next slide for more on commutation of WCB permanent disability awards

Commutation of permanent WCB disability awards

- WCB criteria for commutation:

must show that show that the payment of a lump sum will improve your chances of a secure income over the long-term

Examples given by Worksafe:
- help pay for education that will improve chances for employment
- help with running a business.
- allow to person to buy a home or pay off a mortgage
- pay off debts that you incurred before your injury (but not new debts)

Idea – would WCB commute an award to allow an injured worker to retain full PWD benefits as a long term, secure income? Not yet tested, that we know of.

- Argument: A monthly *permanent* disability award from WCB will be deducted dollar for dollar from welfare benefits.
- But if the award is commuted into a lump sum, the lump sum will be income in the month received, but then can be exempted (e.g. put in a disability trust, used to buy an exempt asset, or may be under asset exemption level), and the person would receive full PWD benefits each month.

Bruce

- Bruce has the PWD designation and is collecting disability assistance. He supplements his income working in a fast food restaurant.
- Bruce was laid off last week and wants to know his options. He's worried about money because his wife normally works part time, but she is pregnant and due next week, so she recently stopped working too.
- What questions would you ask Bruce?

Bruce

- Bruce tells you he has had a PWD designation since 2016. He has been working for Johnstown consistently for about two years. He doesn't work much, roughly 9 hours a week, he currently earns $15.65 an hour.
- What would you tell Bruce?

PWD and CPP-D

- Definition of "disability" not the same: CPP-D requires severe and prolonged disability, meaning incapable regularly of pursuing any substantially gainful occupation.
- CPP D is a contributory scheme. Must have made enough CPP contributions through work, recently enough to onset of disability (MQP)
- Monthly CPP-D is deducted dollar for dollar from IA, DA, and HA.
- Obligation to apply for CPP-D (to pursue income that can make someone at least partly independent of welfare). MSDPR screens for recipients who might qualify for CPP-D benefits and can require them to apply.
- MSDPR can force a recipient of IA, DA or HA to sign a Consent to Deduction and Payment form (s 9, EA Regulation; s 7, EAPD Regulation).

PWD and CPP-D Practice Points 1. Medical Services Only eligibility

- Generally best for client to apply for PWD designation and get DA before applying for CPP-D.
- If you receive the PWD designation and then apply successfully for CPP-D, you keep "**medical services only**" status with MSDPR even if your CPP-D rate is higher than PWD rate.
- "medical services only" status gives access to most (but not all) Schedule C health benefits (e.g. including medical equipment, medical supplies, dental, optical, medical transportation, physio/chiro etc. MSO does not include diet supplements, monthly nutritional supplement, natal supplements, etc)
- One caution: Max CPP-D retro is 15 months. If you delay CPP-D application date to apply for PWD/DA first, the person may lose out on some months of retro CPP-D benefits.
- If client is already getting CPP-D, and wants to apply for PWD, there is a very simple two-page form to apply for PWD. But if the person applies for CPP-D first and their CPP-D rate is above the PWD rate, client will not be eligible for anything from MSDPR (including medical services only).

PWD and CPP-D Practice Points 2. Retro CPPD lump sum and DA

- Should apply for CPP-D *proactively* once on DA.
- If client applies for CPP-D on their own initiative, client keeps any retro CPP-D, except that retro CPP-D is considered unearned income in the month received.
- If client does not apply on their own initiative, MSDPR may ask the client to apply for CPP-D and require a client to sign a "Consent to Deduction and Payment" form.
- Once signed, the form means any retro CPP benefits for period when client was on PWD are paid to MSDPR (not the client).

Rosalita

- Rosalita was diagnosed with a very serious, long-term illness. She has been off work for a while now. She kept hoping things would get better, but now she's not so sure. She has no income and needs financial help going forward.
- What questions would you ask Rosalita?

Rosalita

- Rosalita tells you she went off work because of the illness in January 2020. She tried going back to work in February of 2021, but that only lasted about a week before her doctors told her to stop.
- Before getting sick, she had worked for 20 years earning about $55 000 per year. She has $7 000 left in the bank. She is worried about her future. She is 50, single and has no kids to help her.
- What would you tell Rosalita?

I'm on CPP D – how does EI affect CPP D benefits?

- CPP-D is not deducted from EI (or vice versa).
- CPP-D eligibility does not require the recipient to do absolutely no work. You can have the capacity to do *some* work and remain eligible for CPP-D.
- However, the current requirement in most of BC for 700 insurable hours of employment to qualify for regular EI, paid at minimum wage, would reflect income of over $10,000, which is enough to may cause Service Canada to review CPP file to see if the person remains "disabled": i.e. are they still incapable of regularly pursing a substantially gainful occupation?
- Regular EI requires past work history and a future job search.
- Could put CPP-D at risk by admitting ability to work if qualify for regular EI.

CPP-D and earned income: Potential Problems

- While on CPP-D, must tell CPP if you are earning **more than$6, 400 gross (for 2022) –** this amount goes up slightly each year as it is indexed to inflation. Earnings under $6400 gross for 2022 should not affect ongoing eligibility for CPP-D.
- In 2022, if someone on CPPD earns **between $6,400 and $17,610.06 gross** (which is maximum amount of CPP D pension), then CPP may review the person's case, to asses whether, with work at that level, they are still incapable of regularly pursuing any substantially gainful occupation.
- If CPP determines you are regularly capable of earning at least $17,610.06 gross (for 2022) you will be cut off CPP-D.
- Important to let Service Canada know when someone starts working if on CPP-D, and also to regularly report earned income to CPP, and especially to tell CPP if/when the person first earns over the $6400 gross/year threshold.

Wendy

- Wendy has been on CPP-D since a car crash in which she sustained serious head, knee, and back injuries. To earn a little extra money she sometimes pet-sits for people while they are out of town. People drop off their dogs at her house and pay her in cash.
- She stopped doing this during the pandemic in 2020 but resumed this part time work in January 2022. She never told anyone she does this or filed a tax return.
- What questions would you ask Wendy?

Wendy

- Wendy says she figures since January 2022 she has taken care of one dog about three days per week. Part of the job includes taking the dogs for a walk and to the vet if needed. She charges $50 per dog per day.
- What would you tell Wendy?

CPP-D and Disability Assistance Potential problems – earned income

PWD and earned income

- A single person with the PWD designation receiving disability assistance in BC, have an annual earnings exemption of **up to $15 000**;
- This is net income (most at source deductions allowed);
- Earnings must be reported to MSDPR, but earnings of $15 000 or less per year will not be deducted from DA.

CPPD and earned income

- In 2022, earnings **between $6,400 and $17,610.06 gross** may trigger CPP to reassess eligibility for CPPD (i.e. with work at that level, is the person still incapable of regularly pursuing any substantially gainful occupation).

Problem: someone on DA and CPPD utilizing their Ministry earnings exemption *may* be re-assessed by CPP and found ineligible for CPPD.

- CPP makes decisions slowly. CPP most often finds someone ineligible for CPPD retroactively (e.g. since 12 months ago) and CPP will assess an overpayment (e.g. past 12 months of CPPD).
- If this happens, CPP asks the person to to pay back those CPPD benefits.
- Because the person is also on PWD, in fact the CPPD benefits would have been deducted dollar for dollar from DA (i.e. CPPD benefit essentially went to MSDPR, not the person, but the person is still asked by CPPD to repay the assessed overpayment).

CPP-D and WCB

- WCB only for work-related injury, disease, or disability.
- Fact that client is totally disabled for CPP-D purposes does not necessarily mean that all disability is due to work.
- WCB deducts 50% of CPP-D benefits paid with respect to work component of injury.
- Example: If WCB finds client 30% disabled from work accident, WCB will deduct an amount equal to 15% of CPP-D benefits.

Benefits For People 65 and Older Overview

- Federal income supports:
  - CPP retirement benefits, OAS, GIS.
- Provincial income supports:
  - BC Seniors supplement.
  - sometimes IA and DA, depending on income level from federal and other supports.
- Many other programs for housing, health care: e.g. Shelter Aid for Elderly Renters (SAFER) – housing subsidy for private market housing where the person is 65 or older, and does not receive monthly welfare benefits

Federal Benefits for People 65 and Over CPP retirement benefits

- **CPP Retirement**: Based on **contributions** made during adult work life in Canada.
- If someone has also worked in another country that Canada has a social security agreement with, must contact CPP to discuss – the agreements coordinate the social security benefits of the two countries (in Canada, OAS and CPP)
- Early retirement CPP can start at 60:
  - The earlier early CPP retirement is taken, the lower the CPP ER & retirement rate is
  - CPP rate is reduced. by 7.2% for each year by which the application is "early"
  - If CPP early retirement is started at age 60, the person's CPP rate (early and at 65) will be 36% less than it would be if the person waited to apply at age 65.
- Regular CPP retirement can be started between ages of 65 and 70
  - The longer you wait, the higher the regular CPP retirement pension rate is.
  - Retirement pension goes up by 7.2% per year if you start it after age 65 (e.g. if start at 70, it is 36% higher than if you start it at age 65)

Federal Benefits for People 65 and Over Old Age Security (OAS) benefits

OAS: - Based on **years of residency** in Canada – must meet minimum requirements
- must be a legal resident or citizen when apply(citizenship, permanent resident status or temporary resident's permit).

- Partial OAS: minimum 10 years residency in Canada
  - If less than 10 years residency, may still qualify if worked in a country that Canada has a "social security agreement" with
- Full OAS: 40 years residency in Canada after age 18, and have legal status as above.
- Until July 2022, seniors of all ages were eligible for the same OAS rates
- In July 2022, OAS rates were raised 10% for seniors aged 75 and over
- Current max OAS:
  - if aged 65-74: $685.50
  - If aged 75 and over: $754.05
- OAS can be clawed back through the tax system, but that starts only once net income is above $81, 761 (for 2022)

Federal Benefits for People 65 and Over Guaranteed Income Supplement

- **GIS:** If someone receives OAS and has a low enough income, they will also qualify for a Guaranteed Income Supplement (GIS)
- In 2022, for a single person (including divorced or widowed people), income must be below $20,208 to qualify for the GIS
  - "income" here roughly equivalent to net income from your income tax return, except that OAS benefits are not included as income when determining if someone financially qualifies for GIS
- If someone qualifies for GIS benefits, they have an earnings exemption of $5,000 , total, for employment income and/or net self-employment income, minus CPP and EI contributions:
- If someone on GIS earns over $5,000/year, 50% of the next $10,000 of employment or self-employment income is also exempt.

Benefits for People 65 and Older GIS : changes in income

- Service Canada can sometimes use an estimate of the current year's income to calculate a GIS rate instead of using prior year's tax return (e.g. 2021 tax return used to calculate GIS July 2022 to June 2023)
- This can happen when a person's regularly recurring income has been reduced or stopped since taxes were filed
  - This includes loss or reduction of pension income and income from any employment or any business.
  - Change in marital status (e.g. separation) also relevant
- Contact Service Canada and request a form to estimate current year's income

Federal Benefits for People 65 and Older: Can Pensioners Qualify For EI?

- Yes, if adequate work hours or earnings
- CPP retirement **is** deducted from EI if qualifying hours were worked before the CPP retirement pension started.
- CPP retirement is **NOT** deducted from EI if qualifying hours were worked after pension started and while pension was paid.

Federal Benefits for People 65 and Older: EI and Possible GIS Reduction

- EI is taxable income and may reduce future GIS payments.
- GIS payment cycle starts in July and is based on income in previous calendar year.
  - For single people (2022) GIS payable if net income (excluding OAS) is below $20,784 per year.
  - For couples where both on full OAS, if net income (excluding OAS) up to $27,456 per year
  - Other than the earnings exemption we reviewed, each $2 of income generally reduces GIS by $1.
- EI payments from year 2022 may impact GIS payments starting in July 2023 (to June 2024)

Sonny

- Sonny is now retired. However, to supplement his income and to stay busy he still covers the odd shift at a small grocery store when one of the usual staff is away. Last week the store own told Sonny that she is closing for good so there won't be any more work for him.
- He says he likes to keep busy so will be looking for some other work to do, but in the meantime he's worried it will be hard to get by without his pay cheque.

- What questions would you ask Sonny?

Sonny

- Sonny says he turned 65 and started getting CPP retirement and OAS in June 2021. He started working at the grocery store after that, in September. Since then he figures he's covered 2 shifts a week (8 hours each). He earns $16 an hour.
- What would you tell Sonny?

Jaspreet

- Jaspreet is 67 and gets a small CPP pension, OAS and some GIS benefits. With inflation, she is having trouble making ends meet. She started to work in a small grocery store where she knows the owner.

- She is worried that working could affect her other benefits.

- What questions would you ask Jaspreet?

Jaspreet

Jaspreet tells you she works one 6 hour shift a week, and earns $15.65 per hour.

She says that even with her employment income, she is having trouble paying rent on her apartment. She is single and lives there by herself.

What can you tell Jaspreet?

Benefits for People 65 and Older Provincial Benefits: Welfare

- no maximum age criteria for welfare
- someone 65 and over who is not eligible for other income above IA or DA rates can receive IA/DA if meet other standard eligibility conditions
- Common examples include:
  - someone 65 or over who is not eligible for OAS as they have not met the minimum 10 year residency requirement for partial OAS
  - Someone 65 or over on OAS/GIS but supporting a spouse and/or dependent children who do not themselves receive any benefits and have very low incomes.
  - Families of two or more that include someone on Old Age Security (OAS) are entitled to a maximum shelter allowance for the family size, regardless of their actual shelter costs

Benefits for People 65 and Older Provincial Benefits – Seniors Supplement

- Seniors who receive OAS and GIS also may qualify for a monthly "senior's supplement" from the provincial government. People receiving the federal Allowance (60 to 64, spouse receives OAS and GIS) may also qualify for the senior's supplement.
  - Senior's supplement maximum rate is $99.30 per single senior and $220.50 for senior couples. How much someone actually receives will depend on their specific OAS and GIS rates.

Benefits for People 65 and Older
Provincial Senior's Supplement

- Supposed to be automatic, don't need to apply. Service Canada shares information with MSDPR. Senior's supplement supposed to start the month after someone is found eligible for the GIS or the Allowance.
- If anything interrupts GIS eligibility, it will also interrupt Senior's supplement eligibility
  - e.g. taxes filed after April 30;
  - income in a taxation year that puts someone over the GIS income limit (e.g. cashing RRSPs, increased employment income, receiving EI benefits)
  - If restore GIS eligibility (e.g. by asking for estimate of current year's income to be used instead of tax year) should also restore senior's supplement eligibility
- If errors, can receive up to 12 months of retroactive senior's supplement.

QUESTIONS?

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Cyrenne v. YWCA Metro Vancouver,* 2021 BCSC 2406

Date: 20211209
Docket: 215225
Registry: Vancouver

Between:

Juanita Cyrenne

Petitioner

And

YWCA Metro Vancouver

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraphs 11 and 25 on December 16, 2021.

Before: The Honourable Mr. Justice Baird

On judicial review from: An order of the Residential Tenancy Branch, dated April 27, 2021 (*YMCA Metro Vancouver v. [tenant name suppressed to protect privacy]*, File No. 310028409).

Reasons for Judgment

Counsel for the Petitioner:	Z. Modrovicova R. Patterson
Counsel for the Respondent:	H. Delaney
Place and Date of Hearing:	Vancouver, B.C. October 22, 2021
Place and Date of Judgment:	Vancouver, B.C. December 9, 2021

INTRODUCTION

[1] The petitioner, Juanita Cyrenne, is a single mother on a disability pension living with her 13-year-old special needs son in a residential tenancy called Pacific Spirit Terrace at 7001 Kerr Street, Vancouver, BC. It is a 16-unit building owned and operated by the respondent YWCA Metro Vancouver, part of whose charitable mission is to provide safe and affordable housing for disadvantaged single women and their dependent children.

[2] The parties entered into a month-to-month tenancy agreement dated December 30, 2019. The petitioner has lived in unit 602 of the building since early January 2020. On January 21, 2021, the respondent served the petitioner with a One Month Notice to End Tenancy (the "Notice") in the usual form under s. 24 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 (the "*Act*"). The grounds for the Notice were:

- The [petitioner] has significantly interfered with or unreasonably disturbed another occupant;
- The [petitioner] has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

[3] Briefly stated, the respondent received repeated complaints from the petitioner's next-door and downstairs neighbours concerning unacceptable noise emanating from the petitioner's unit at various hours of the day, including late at night and in the early morning when the complainants were trying to sleep. Most of the complaints focussed on noise created by the petitioner's son yelling and swearing, moving furniture about, hitting walls and stomping on the floor. The petitioner's son has autism spectrum disorder and, by the petitioner's own admission, he is prone to episodic "meltdowns".

[4] The respondent promptly investigated and addressed each complaint. It issued no less than eight detailed warning letters to the petitioner between April 24, 2020 and January 15, 2021 advising her of the particulars of the complaints, demanding that the disturbances stop, and warning of consequences if they did

not. The tone of the correspondence was firm but consistently sympathetic. It was recognised that much of the problem was attributable to the petitioner's son and to some extent out of her control. The petitioner's responses were usually to the effect that she was doing her best to control her son and limit the mischief, but now and again she also protested that her disgruntled neighbours were overly-sensitive, that the noise complained of was from normal everyday living and to be expected, or that it came from sources outside of her dwelling unit and was not her responsibility.

[5] Along the way, the respondent suggested that a workable solution would be to arrange equivalent alternative accommodation for the petitioner at another of its properties. Because the noise complaints were primarily that the petitioner's son yelled and thumped and stomped on the walls and floors, the respondent thought that the best idea would be to transfer them to a dwelling unit on a ground floor with non-residential or no neighbouring tenants. The respondent had such units available in a couple of its buildings elsewhere in Greater Vancouver. The petitioner refused these accommodations because, she said, they would involve removing herself and her son from community and other supports near their present address.

[6] In the end, as the months wore on and the situation failed to improve, the respondent reluctantly concluded the petitioner was unable or unwilling to satisfactorily address and resolve what it considered to be a legitimate and pressing noise problem created by her tenancy. The respondent took the view that this was negatively affecting the health and well-being of other residents of the building, and sympathy for the petitioner came to be outweighed by its basic responsibility to protect her neighbours' reasonable expectation of peace and quiet at home.

DISPUTE OF NOTICE TO END TENANCY

[7] A final letter was sent to the petitioner attaching the Notice. The petitioner disputed the Notice, and a hearing of the matter was scheduled before a Residential Tenancy Branch arbitrator ("the RTB" or "the arbitrator") on April 26, 2021 ("the RTB Hearing"). The petitioner's dispute was dismissed in a decision issued on April 27, 2021 ("the arbitrator's decision"). Pursuant to s. 55 of the *Act* the arbitrator granted

the respondent an Order of Possession effective on May 31, 2021. On May 7, 2021 an RTB internal review of this decision on the limited grounds set out in s. 79 of the *Act* was dismissed. Subsequently this court entered a stay of the Order of Possession pending the petitioner's application for judicial review of the arbitrator's decision.

[8] The task of reviewing the arbitrator's decision has fallen to me. I have now read the entire record in detail. I have learned from it that the petitioner is herself autistic, suffers from chronic health problems, and is living with significant physical limitations caused by injuries sustained in a March 2020 motor vehicle accident. She is unable to work and is getting by on modest government assistance payments. In the run-up to the RTB Hearing she was much preoccupied by a protracted and heated Provincial Court dispute with her former spouse over the primary residence and parenting of their son. The impression created by the totality of evidence is that the petitioner's life is stressful, anxiety-ridden and difficult.

THE RTB HEARING

[9] The petitioner has deposed on this judicial review application that, due to these various stressors and deficits, she was unable to serve the respondent with the documentary evidence that she wanted to rely on at the RTB Hearing within the 14 days permitted by the RTB procedural rules. She served her first, and main, batch of documents on April 16, 2021, and a second, and smaller, batch on April 19, 2021. The hearing, as I have said, was on April 26, 2021.

[10] The respondent did not object to late service of the first batch of documents, but objected to the admission into evidence of the second batch on grounds that there had been inadequate time to properly consider the evidence and respond. The petitioner asked the presiding arbitrator for an adjournment of the hearing to cure this problem, and told him that her failure to comply with RTB procedures was due, in part, to the significant recent upheaval in her personal life caused by her family law case.

[11] The arbitrator denied the adjournment for reasons not addressed in his written decision. There is no record of the proceedings, which took place over the telephone. The petitioner has deposed in evidence before me, and the respondent has not disputed, that the arbitrator summarily dismissed the adjournment request because, he said, to grant it would result in a delay of the hearing. This is true of any adjournment, of course, and the usual question is whether a delay is necessary to do justice in the case even though it may be inconvenient. No submissions about substantive prejudice were solicited or considered.

[12] Thereafter, the respondent, as the party seeking termination of the tenancy, was called upon to present its case for eviction. In her second affidavit filed on judicial review the petitioner explained the progress of the hearing as follows at paras. 27-31:

> 27) During the hearing, my Landlord's representative presented their evidence about complaints they had received. After my Landlord's representative had completed presenting their evidence, I was permitted to present some evidence. I was able to address the noise complaints raised by the Landlord's representative in a general way, by describing the steps I have taken to minimize any sound transfer from my unit and worked with a behavioural consultant to help my son manage his meltdowns, which he had not had any of since August 2020, and that he does not bang on the walls or stomp. I said that I told the Landlord about my son's meltdowns before the Landlord offered me my Rental Unit.
>
> 28) I said that the complaints about noise were about regular household sounds and were exaggerated, and that one of the tenants who complained about me was very sensitive to noise.
>
> 29) Before I had a chance to respond specifically to all of the individual complaints against me, [the arbitrator] interrupted me and told me that we had run out of time for the hearing and I would have to stop my testimony. I attempted to continue testifying and presented for another minute or so, but [the arbitrator] interrupted me again, told me that there was no more time for me to provide my evidence. He then gave one of the Landlord's witnesses the opportunity to testify.
>
> 30) After the witness presented her evidence, the Arbitrator said we had no time for more witnesses. He said that it must be upsetting to me because "time did not allow" for me to finish my testimony, and said that he would look over his notes from the hearing and would send a decision by email. I spoke up and tried to ask the Arbitrator for the chance to cross-examine the witness. I was able to say "Mr. [arbitrator]", but the Arbitrator cut me off, and said the hearing was over. I was very concerned because my Landlord spent at least twice as much time as I did in the hearing presenting their case, including

> time spent answering the Arbitrator's questions and presenting their witness's testimony.
>
> 31) If I had been allowed to present the rest of my case, I would have testified about each of the specific allegations about noise, and explained why the noises complained about were not coming from my unit or, when they were, that they were within the range of normal household noise. I would have gone through my evidence in more detail, as I only was given the opportunity to present a summary of what I wanted to say. I would have referred to the April 15, 2021 email I received from the Landlord where they admit that the banging noises complained about by my neighbours could be coming from the elevator or could be caused by something else entirely. I would have gone into more detail about the text messages that I exchanged with a neighbour who lived in the unit directly next to mine and who had complained about noise. I would have referred to a message she sent to me in November 2020 that said that she had not been bothered by any noise from my unit for a long time. I would have referred in detail to all of the messages I exchanged with this neighbour that showed I was responsive to her concerns about noise, that I was not the cause of many of the noises which they complained about, and that they were highly sensitive to normal household noise. I would have referred to text messages with the same neighbour where we agreed that there was little to no noise insulation in the building which led to normal household noise transferring easily between units.

[13] It would seem, in other words, that the petitioner's case was given short shrift. I would note, as well, that no ruling was made at the hearing concerning the admissibility of the petitioner's second batch of documents. The arbitrator left this question in abeyance, and according to the petitioner, she devoted much of the limited time that she was permitted to speak on factual issues to which those documents were supposed to relate. It was only on reading the arbitrator's decision, filed the following day, that the petitioner learned that the second batch of documents had been excluded from consideration, and realised that as a result her abbreviated presentation at the hearing had been rendered more or less pointless.

[14] There is no dispute that it is the arbitrator's decision and not the review decision pursuant to s. 79 of the *Act* that is properly the subject of this judicial review. The remedy sought by the petitioner is an order that the arbitrator's decision upholding the respondent's Notice be set aside, and that the dispute be remitted to the RTB for a new hearing.

REVIEW

[15] The principles of natural justice and procedural fairness apply to the RTB. In the words of the Supreme Court of Canada in *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at para. 14 “there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual.” In the context of a judicial review, moreover, the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 explicitly states in s. 58(2)(b): “questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly.”

[16] The nature and extent of procedural fairness required across a wide variety of statutory boards, tribunals and other administrative decision-making processes is “eminently variable, inherently flexible and context-specific”: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 77. Amongst the factors to consider are: (1) the nature of the decision being made and the process required to be followed in making it; (2) the nature of the statutory scheme; (3) the importance of the decision to the individuals affected; (4) the legitimate expectations of the person challenging the decision; and (5) the choices of procedure made the by administrative decision maker itself (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paras. 23-27).

[17] The decisions that RTB arbitrators are called upon to make often touch upon matters of fundamental importance. The nature of the *Act* is predominantly to protect tenants. Whether or not to ratify a landlord’s notice to terminate a tenancy, especially in personal circumstances such as those of the present petitioner, is a matter that requires a high degree of care and deliberation. Although RTB hearings are intended to be as expeditious and uncomplicated as possible, nevertheless the *Act* and the rules established for its practical application constitute a recognisably judicial process with court-like procedural safeguards. These include advance notice of pleadings and evidence, the discretion to compel documentary disclosure, the option

to hear non-party witnesses, to administer oaths, to issue summonses, to adjourn proceedings if necessary, and so on.

[18] Given the gravity of the decision to be made and the stakes involved for both parties in this case, an elevated level of procedural fairness was required in hearing the matter. In my view, the RTB arbitrator failed to deliver it in at least two ways. First of all, the petitioner's adjournment application was not judicially considered. No properly reviewable grounds for dismissing it were articulated in the arbitrator's decision. The petitioner's undisputed rendition of the arbitrator's informal reasons for refusing it indicate to me that the substance of her request was ignored, the arbitrator made no attempt to balance justice against convenience in considering it, and therefore the decision was arbitrary and unsustainable.

[19] Secondly, the arbitrator failed in his duty of fairness by refusing to give the petitioner a reasonable opportunity to answer the respondent's case or present her own. Quite simply, some hearings, especially those with higher stakes, take longer than others to conduct fairly. In my respectful view, this was one dispute that deserved more time and attention than the arbitrator was prepared to give it. It was not, let it be emphasised, a proceeding in which assertive steps were required to control the parties' behaviour or prevent abusive conduct. The petitioner was going about the business, merely, of presenting her case in equable terms that she hoped would receive the same latitude and courtesy accorded to the respondent.

[20] Instead of such a balanced and fair hearing, the petitioner was not permitted to respond fully to the evidence adduced against her, was refused the opportunity to question a witness called by the respondent, and was cut off in the middle of her submissions. The proceedings were arbitrarily stopped on the basis of a 90-minute time-limit unilaterally declared by the arbitrator. In the result, a decision ratifying the notice to evict the petitioner and her son from their home was speedily made without properly hearing and considering the petitioner's side of the story.

[21] I note, in this connection, that the arbitrator's decision makes only glancing reference to the petitioner or her evidence. Instead, it focusses

primarily on whether the respondent's evidence amounts to lawful cause for terminating the tenancy. This lopsided treatment of the evidence reflects upon the faulty procedure adopted by the arbitrator by which, essentially, the respondent seems to have received a fuller and more attentive audience than the petitioner.

[22] The principle that individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard. A decision maker's reasons, in turn, should demonstrate that they have actually listened to the parties: *Vavilov* at para. 127. The arbitrator's reasons in the present case comprise no such demonstration, but stand as confirmation, instead, that to a significant extent the hearing was unbalanced and one-sided.

[23] I have not forgotten, either, that the petitioner claims to have spent a good deal of her already truncated presentation addressing evidence that the arbitrator subsequently declined to consider or admit in evidence. Her inadmissibly limited right to be heard was thereby further diminished.

[24] I have concluded that, taken altogether, these various factors contributed to a breach of the duty of fairness owed to the petitioner which rendered the arbitrator's decision void: *Neustadter v. British Columbia (Ministry of Public Safety and Solicitor General*, 2004 BCSC 381, especially at para. 18.

DISPOSITION

[25] In summary, there were flaws in the conduct of the RTB Hearing which rendered it unfair to the petitioner. The result cannot stand, even if the outcome of a new and more expansive hearing may be the same. It is the integrity and soundness of the RTB dispute settlement process that matter here. Justice must not only be done, of course, but must be seen to be done.

[26] It seems that the petitioner's problems are far from over. I was told that the respondent has issued her a second Notice covering additional grounds for eviction alleged to have arisen after the first Notice. An RTB hearing of the second Notice is

imminent. It was suggested to me in passing that, if a new hearing of the present dispute were ordered, then in the interests of economy it would be just and convenient if the hearing of both Notices occurred simultaneously.

[27] This would seem to be sensible, but I will leave matters of joinder and scheduling to the agreement of the parties and the discretion of the RTB. I would also respectfully suggest, on the basis of all the evidence, that it may be in the petitioner's best interests, rather than pursuing the dispute, to reconsider the respondent's eminently reasonable and practical offers of an alternative tenancy.

[28] In the meantime, for the foregoing reasons, I have concluded that the arbitrator's order of April 27, 2021 under s. 55 of the *Act* confirming the respondent's January 21, 2021 Notice to Terminate the petitioner's tenancy is void and must be set aside. The dispute is hereby remitted to the RTB for a new hearing before a different arbitrator.

[29] Costs may be spoken to if necessary. I should stress that nothing in this ruling is intended as criticism of the respondent, which has handled every aspect of the instant dispute with forbearance and tact. The petitioner has been successful but the respondent is blameless. In all of the circumstances I would be inclined to make no order as to costs.

"Baird J."

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Goodman v. Pavlovic,*
2021 BCSC 1503

Date: 20210604
Docket: S60204
Registry: Kamloops

Between:

Kate Goodman and Brent Kelm

Petitioners

And

Vito Pavlovic

Respondent

Before: The Honourable Madam Justice Donegan

On judicial review from: Decisions of Residential Tenancy Branch,
dated September 29, 2020 and May 3, 2021.

Oral Reasons for Judgment on Injunction Application

Counsel for the Petitioners appearing by teleconference:	O.L. Dempsey-Caputo
Counsel for the Respondent appearing by teleconference:	J.M. Drayton
Place and Date of .Hearing:	Kamloops, B.C. May 31, 2021
Place and Date of Judgment:	Kamloops, B.C. June 4, 2021

[1] **THE COURT:** I recognize there is some urgency to this matter, so these reasons for judgment are being delivered orally today. Should they be reduced to writing, they will be subject to editorial revisions to improve readability, and they may include additional references to case authorities, submissions or the evidence.

Introduction

[2] The petitioners, Kate Goodman and Brent Kelm, have lived in, and rented, a basement suite at 1657 Tranquille Road in Kamloops since January 2004. The respondent, Vito Pavlovic, is their landlord.

[3] On May 3, 2021, an arbitrator with the Residential Tenancy Branch (“RTB”) ordered Ms. Goodman and Mr. Kelm to deliver vacant possession and occupation of the premises to the landlord (the “Order of Possession”).

[4] On May 25, 2021, the tenants commenced this petition proceeding seeking judicial review of the two original decisions that led to the Order of Possession. Around noon that same day, as the bailiff was in the process of physically removing the tenants' items from the premises, this court granted an interim order staying the Order of Possession (the “Stay Order”).

[5] Despite being advised of the Stay Order, the bailiff continued his work. The landlord arrived, locked the door to the premises, and refused the tenants any further access. The petitioners now, with this application, seek to regain occupancy of the premises until their petition for judicial review can be heard.

[6] At the hearing of this application, the petitioners first took the position that the landlord did not actually perfect his possession of the premises on May 25, 2021, when he and his agent, the bailiff, actively thwarted the Stay Order and then left some of their possessions, including their cat, inside the premises. They argue that this means they have not actually lost possession, and the court can and should, simply grant an order extending the Stay Order until such time as the petition can be heard and decided.

[7] The petitioners also seek, as outlined in their Notice of Application, pursuant to Rule 10-4 of the *Supreme Court Civil Rules*, B.C. Reg. 168/200, a pre-trial, mandatory interim injunction compelling the landlord to grant them access to, and occupancy of, the premises until the petition can be heard and decided.

Background

[8] Mr. Pavlovic owns the building at 1657 Tranquille Road in Kamloops. Mr. Kelm has rented the basement suite there since January 5, 2004. He and Ms. Goodman pay rent to Mr. Pavlovic in the amount of $770 per month. The landlord has been trying to evict the tenants for some time.

[9] Although their difficult history extends much further back in time, I will begin with events in January of 2020.

[10] On January 9, 2020, the landlord served the tenants with a one-month notice to end tenancy for cause, pursuant to s. 47 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*]. The tenants applied for dispute resolution with the RTB to cancel the notice. The landlord applied for dispute resolution seeking an order of possession.

[11] A hearing was held on September 25, 2020. The arbitrator issued a decision on September 29, 2020, granting the tenants' application and cancelling the notice.

[12] On October 30, 2020, the landlord served the tenants with another one-month notice to end tenancy for cause under s. 47 of the *RTA*. The “cause” relied upon by the landlord was pursuant to s. 47(1)(d) of the *RTA* that the “tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.” The landlord provided details in the notice, writing:

> Over the years I have tried to talk to Brent Kelm and Kate Goodman about not smoking in their basement suite - because it has seriously jeopardized the health and air quality for the tenants living above them. Because they did not comply with any of the verbal notices - I have also given them written warning over the years. The new tenant phoned us on Oct 22/20 and again on Oct 26/20 - that the same problem is on going, with them continuing to

> smoke both tobacco and marijuana in their suite. Unfortunately because this problem still continues - I have no other choice but to give them an eviction notice.

[13] I pause here to note that the suite above the petitioners' suite is rented by Brianna Scott and her five-year-old daughter. Ms. Scott has complained about the petitioners conduct for some time. Her complaints included allegations of threats and harassment as well as complaints related to their growing and consumption of marihuana. The complaint pertaining to marihuana smoke arose when the petitioners' second-hand smoke caused her and her child to feel "high".

[14] Suffice it to say that the environment between the petitioners and the upper tenant has been hostile. It has involved police attendances.

[15] Section 47(4) of the *RTA* allows a tenant to dispute a notice, such as the one served upon them by Mr. Pavlovic on October 30, 2020, by making an application for dispute resolution within ten days after the date the tenant receives the notice. Under s. 47(5), if a tenant does not apply for dispute resolution within those ten days, the tenant is presumed to have accepted the tenancy ends on the effective day of the notice and must vacate the rental unit by that date

[16] In this case, the petitioners applied for dispute resolution of the notice within the timeframe set out in the legislation.

[17] On November 6, 2020, the petitioners submitted their application to the RTB to cancel the notice (the "First Application"). The RTB website requires an applicant to upload all necessary documents, including a copy of the notice that is the subject matter of the application. Mr. Kelm deposes that he found the RTB website document uploading mechanism very difficult to confirm that documents have in fact been uploaded, but he believed at the time that he uploaded all of the documents that were required.

[18] The hearing of the First Application was held on January 29, 2021 by telephone conference call. The arbitrator dismissed the First Application, with leave to re-apply. The arbitrator did so because the tenants had not included a copy of the

notice in their materials. The arbitrator did not hear the merits of the First Application.

[19] At the outset of the hearing, the arbitrator told the parties that neither of them had provided a copy of the notice. The tenants told the arbitrator that they thought they had submitted it with their materials. The arbitrator also advised the tenants that they had submitted their evidence late, in that they had filed it on January 19, 2021, which was less than the 14 days required under the RTB Rules of Procedure.

[20] As a result, the arbitrator dismissed the First Application with leave to re-apply. The arbitrator's reasons for doing so were fairly brief and can be repeated here. The arbitrator wrote:

> I informed both parties that I required a copy of the 1 Month Notice in order to determine whether it complies with section 52 of the *Act*. This is a requirement in order to determine whether an order of possession can be issued, pursuant to section 55 of the *Act*. The tenants had ample time to submit the 1 Month Notice prior to the hearing, as they applied on November 6, 2020, and this hearing was held on January 29, 2021.
>
> I notified the tenants that their application was dismissed with leave to reapply. I informed them that if they wanted to pursue this matter further, they could file a new application, pay a new filing fee, provide a copy of the 1 Month Notice and any evidence. The tenants confirmed their understanding of same.
>
> The landlord stated that he wanted an order of possession against the tenants. I informed him that he was at liberty to file an application for same. The landlord confirmed his understanding of same.
>
> Conclusion
>
> The tenants' application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

(the “First Decision”).

[21] The First Decision is one of the decisions sought to be reviewed by the petitioners in this proceeding.

[22] In accordance with the arbitrator’s instructions, Mr. Kelm immediately re-applied to cancel the notice that same day - January 29, 2021 (the “Second Application”). Because the notice was dated October 30, 2020, the time within which

to apply to cancel it would have expired on November 9, 2020. For this reason, Mr. Kelm included, within the Second Application, a request for more time to file the Second Application. He referred to the First Decision in which he was granted leave to re-apply.

[23] The Second Application hearing was held on April 27, 2021, again by conference call. For reasons given on May 3, 2021, this arbitrator dismissed the Second Application and granted the landlord the Order of Possession. This arbitrator did not make a decision on the merits, but rather decided the case on the basis that the tenants had filed the Second Application out of time. The arbitrator decided they were not entitled to more time and were, therefore, presumed to have accepted the tenancy having ended on the effective date of the notice, which was November 30, 2020 (the "Second Decision").

[24] The arbitrator's analysis was as follows:

> Analysis
>
> The Act s. 47(1) states that a landlord may end a tenancy if any of the certain categories apply. One of the conditions listed are those indicated by the landlord here on the One-Month Notice: "The tenant … has seriously jeopardized the health or safety or lawful right of another occupant or the landlord." On page 3 of the document, the landlord gave detail on the details of that cause.
>
> Following this, s. 47(4) states that within 10 days of receiving it, a tenant may dispute the One-Month Notice by making an application for dispute resolution.
>
> In regard to the tenants' request to file the tenants' Application after the dispute period, the *Act* provides the following:
>
> > 66(1) The director may extend a time limit established by this Act only in exceptional circumstances...
>
> In these circumstances, I find that exceptional circumstances for the tenants are not present.
>
> The tenants here re-applied to cancel the One-Month Notice issued on October 30, 2020. This was after they were granted leave to re-apply in a prior Arbitration, on January 29, 2021.

The Residential Policy Guideline 36 'Extending a Time Period' gives a statement of the policy intent of the legislation. It stipulates:

> An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

The "exceptional circumstances" as provided for by the *Act* do not include the tenants' ability to apply for arbitration to dispute the One-Month Notice beyond the effective date of that notice. Put simply, the tenants here applied for this present dispute resolution after the One-Month Notice effective end-of-tenancy date of November 30, 2020. What the tenants here present as their re-application from the prior dispute resolution does not constitute exceptional circumstances.

The landlord issued this One-Month Notice on October 30, 2020, with an effective end- of-tenancy date of November 30, 2020. The tenants here applied for dispute resolution after November 30, 2020. The *Act* s. 58(2)(b) provides that an Arbitrator with delegated authority must resolve a dispute unless the application was not made within the applicable period specified under the *Act*. As stated by the Arbitrator in the prior decision: "Leave to reapply is not an extension of any applicable limitation period." Because the time limit for the tenant's Application is not extended past the effective date, I have no jurisdiction under the *Act* to resolve the dispute.

This One-Month Notice was issued and served to the tenants on October 30, 2020. Here, the tenants failed to apply for dispute resolution within the specified time limit of 10 days after they received it. Furthermore, and as noted above I have found the tenants are not entitled to more time to dispute the One Month Notice. On this basis, I find the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date on the One-Month Notice: November 30, 2020. As such, the tenants must vacate the rental unit.

For these reasons, I dismiss the tenant's application to cancel the One-Month Notice, without leave to reapply. The tenancy is ending.

Under s. 55 of the *Act,* when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession.

I find that the One Month Notice complies with those requirements; therefore, the landlord is entitled to an order of possession.

[25] The petitioners seek to review the Second Decision in this proceeding as well.

[26] On May 5, 2021, the tenants applied for a review consideration of the Second Decision.

[27] Section 79 of the *RTA* provides limited grounds (only three) for a party to request that a decision or order be reviewed: that a party was unable to attend the original hearing for reasons that could not be anticipated and were beyond that party's control; that a party has new and relevant evidence that was not available at the time of the original hearing; and a party has evidence that the decision or order was obtained by fraud.

[28] In the present case, the first two grounds clearly did not apply, so the tenants based their request for review on the third - fraud.

[29] Unsurprisingly, the arbitrator on review found no evidence that the original decision was obtained by fraud and dismissed the review application. Because of the narrow nature of the grounds for such a review, the petitioners could not, and did not, advance the grounds that they now advance in the within proceeding. The petitioners do not seek judicial review of the reconsideration decision.

[30] On May 14, 2021, Mr. Pavlovic obtained a Writ of Possession from the court.

[31] On May 25, 2021, at approximately 8:45 a.m., a bailiff, agent for Mr. Pavlovic, arrived at the premises to evict Mr. Kelm and Ms. Goodman. The bailiff and his three-person crew began carefully removing their belongings onto the lawn in front of the premises.

[32] That same day, counsel for the tenants commenced the within proceeding, seeking judicial review of both the First and Second Decisions. Counsel also filed, that same day, an *ex parte* application for an interim stay of the Order of Possession.

[33] At approximately noon on that day, Justice Hori granted an interim order staying the Order of Possession until midnight on May 31, 2021 (the “Stay Order”).

The bailiff was still in the process of removing the tenants' possessions from the premises at the time the Stay Order was granted.

[34] At approximately 12:15 p.m., Mr. Kelm learned that the Stay Order had been granted. About a half an hour later, he learned that his counsel was at the courthouse waiting for the Stay Order to be processed. Mr. Kelm told the bailiff that the Stay Order was coming. Rather than make further inquiries or halt what he was doing, the bailiff's response was to call in additional workers. He told Mr. Kelm that if the Stay Order physically arrived on scene before all of their possessions were moved out, he would have "his guys" put their possessions back inside the premises.

[35] Three more workers arrived at the premises with another moving truck to help the bailiff move their possessions out. The workers, to Mr. Kelm's eye, were no longer gentle with their belongings and began to work more quickly. The bailiff was unconcerned about the Stay Order, telling Mr. Kelm that the landlord had to be served with the signed order or "it" (the Stay Order), "did not count".

[36] In light of all of this, Mr. Kelm believed, quite reasonably in my view, that the additional workers, the additional truck and the increased speed with which they worked, were all indications of the respondent's efforts to remove the petitioners' personal possessions from the premises before the Stay Order could be processed and served.

[37] At approximately 2:10 p.m., Mr. Kelm learned that his lawyer was driving the Stay Order to the premises. He told the bailiff. The bailiff's response was to immediately call the landlord. Mr. Pavlovic arrived at the premises minutes later.

[38] Mr. Kelm saw Mr. Pavlovic and the bailiff sign some documents and then lock the doors to the premises. They told him the "eviction had been completed". Mr. Kelm told them that they still had belongings inside the premises, including a fridge full of food and one of their cats. The bailiff told him it was "too late" and that he considered the rest of what was inside the premises to be "garbage". Mr. Kelm told

the bailiff it was not garbage, to which the bailiff replied: "You have had enough time to get your shit out of here."

[39] At approximately 2:30 p.m., Mr. Kelm's lawyer arrived at the premises with the Stay Order and handed it to Mr. Pavlovic. Mr. Pavlovic's response was that it was “too late.” He took the position that he was not required to let Mr. Kelm and Ms. Goodman back into the premises and denied them access.

[40] Mr. Kelm and Ms. Goodman have nowhere to live. They were forced to put their belongings in storage.

[41] On May 26, 2021, the court granted short leave for the present application to be heard on Monday, May 31, 2021, on notice to the respondent. I heard the application that day. At the conclusion of the hearing, I extended Justice Hori's Stay Order on a without prejudice basis until my decision could be rendered.

Analysis and Decision

[42] For reasons I will explain later, I prefer to decide this application on the basis of the relief sought in the written Notice of Application, rather than the relief sought by the petitioners as their primary position at the hearing.

[43] An interlocutory injunction is an extraordinary remedy the court may grant where it is just and convenient to do so: s. 39(3) of the *Law and Equity Act,* R.S.B.C. 1996, c. 253.

[44] Courts have broad discretion to compel or enjoin an action where it is just and equitable to do so, either unconditionally or on such terms and conditions as the court thinks just: *Tracy v. Instaloans Financial Solutions*, 2007 BCCA 481 at paras. 30-33:

> [30] I start with a brief review of the law relating to interlocutory injunctions of the usual sort. In ***B.C. (A.G.) v. Wale*** (1986), 9 B.C.L.R. (2d) 333, [1987] 2 W.W.R. 331 (C.A.), aff'd [1991] 1 S.C.R. 62, McLachlin J.A. described the traditional test in British Columbia for the granting of an interlocutory injunction as two-part: (i) is there a fair question to be tried, and (ii) does the balance of convenience favour the granting of an injunction? She then said as to a three-part test at p. 345:

> The decision in *Amer. Cyanamid Co. v. Ethicon Limited* [1975] A.C. 396, … (H.L.), may be read as suggesting a three-stage test for the granting of interlocutory injunctions rather than the two-stage test to which I have referred, the requirements being (1) a fair question to be tried, (2) irreparable harm, and (3) balance of convenience favouring the injunction. While I prefer to view the requirement of irreparable harm as integral to the assessment of the balance of convenience between the parties, the practical effect of the two approaches is the same.

[31] Madam Justice McLachlin described the essential question at p. 346:

> Having set out the usual procedure to be followed in determining whether to grant an interlocutory injunction, it is important to emphasize that the judge must not allow himself to become the prisoner of a formula. The fundamental question in each case is whether the granting of an injunction is just and equitable in all the circumstances of the case. Professor Sharp warns against the danger of insisting on slavish adherence to precise formulae in Injunctions and Specific Performance (1983), at paras. 186-89:
>
> > The terms "irreparable harm", "*status quo*", "balance of convenience" do not have a precise meaning. They are more properly seen as guides which take colour and definition in the circumstances of each case. More importantly, they ought not to be seen as separate, watertight categories. These factors relate to each other, and strength on one part of the test ought to be permitted to compensate for weakness on another. It is not clear that the *Cyanamid* approach allows for this, and the decision suggests a misleading mechanical approach. The Manitoba Court of Appeal [in *Lambair Ltd. v. Aero Trades (Western) Ltd.* (1978), 87 D.L.R. (3d) 500, leave to appeal to the S.C.C. refused October 4, 1978] has quite properly held that "it is not necessary ... to follow the consecutive steps set out in the *American Cyanamid* judgment in an inflexible way; nor is it necessary to treat the relative strength of each party's case only as a last step in the process."
> >
> > The traditional "checklist" approach permits the individual judge to analyze all the factors coherently. It does not, however, require him to do so, and the flexibility, which permits one judge to weigh and balance the risk accurately, allows another to depart from the central question and allows for uncertainty and unevenness in approach. The checklist does not specifically relate the factors to one another, and while it provides a valuable guide in coming to the proper result, it has failed to articulate clearly an appropriate overall approach.

> Treating the checklist as a "multi-requisite test" will often produce results which do not reflect the balance of risks and do not minimize the risk of non-compensable harm....
>
> The checklist of factors which the courts have developed - relative strength of the case, irreparable harm, and balance of convenience - should not be employed as a series of independent hurdles. They should be seen in the nature of evidence relative to the central issue of assessing the relative risks of harm to the parties from granting or withholding interlocutory relief.
>
> [Emphasis added.]

[32] Some months after this Court's decision in ***B.C. (A.G.) v. Wale***, the Supreme Court of Canada in ***Manitoba (Attorney General) v. Metropolitan Stores Ltd.***, [1987] 1 S.C.R. 110, 38 D.L.R. (4th) 321 used the three-part test: (i) is there a serious question to be tried, (ii) is there irreparable harm, (iii) does the balance of convenience favour the injunction? This approach was affirmed in ***RJR-MacDonald Inc. v. Canada (Attorney General)***, [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385.

[33] The articulation of the criteria set out in ***B.C. (A.G.) v. Wale*** is often followed in British Columbia; for example, ***Canadian Broadcasting Corp. v. CKPG Television Ltd.***, [1992] 3 W.W.R. 219, 64 B.C.L.R. (2d) 96 (C.A.), and was not disapproved by the Supreme Court of Canada when ***B.C. (A.G.) v. Wale*** was before it in 1991. However, the three-part test of ***Metropolitan Stores*** also has application. In all of this, the caution expressed by Professor Sharp and noted by McLachlin J.A., that there is danger in slavish adherence to precise formulation, must be remembered. This is because the criteria are only a judicial expression or explanation of the statutory authority for injunctions in s. 39(1) of the ***Law and Equity Act***, R.S.B.C. 1996, c. 253:

> 39(1) An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made.
>
> [Emphasis added.]

[45] In order to grant pre-trial mandatory injunctive relief, a court must be satisfied that:

1. the applicant has demonstrated a strong *prima facie* case that it will succeed at trial;
2. the applicant will suffer irreparable harm if the injunction is not granted; and
3. the balance of convenience favours granting the injunction.

R. v. Canadian Broadcasting Corp., 2018 SCC 5 [*CBC*].

[46] While this three-part test is the appropriate analytical framework, it is important to remember that it is not a formula to be employed as a series of independent hurdles. Rather, it should be seen in the nature of evidence relative to the central issue of assessing the relative risks of harm to the parties from granting or withholding the interlocutory relief: *B.C. (A.G.) v. Wale* (1986), 9 B.C.L.R. (2d) 333 at p. 347, [1987] 2 W.W.R. 331 (C.A.), aff'd [1991] 1 S.C.R. 62. In other words, the three considerations outlined in *CBC* are to guide the court in arriving at the most just and equitable result in the circumstances. The fundamental question in all cases is whether the grant of an injunction is just and equitable in all of the circumstances: *Marine Harvest v. Morton*, 2018 BCSC 1302 at para. 137.

1. Have the petitioners established a strong *prima facie* case that the petition will succeed?

[47] In *CBC*, the Supreme Court of Canada considered various descriptions of the meaning of what the phrase a "strong *prima facie* case" and held that:

> [17] This brings me to just what is entailed by showing a "strong prima facie case". Courts have employed various formulations, requiring the applicant to establish a “strong and clear chance of success”; a “strong and clear” or “unusually strong and clear” case; that he or she is “clearly right” or “clearly in the right”; that he or she enjoys a “high probability” or “great likelihood of success”; a “high degree of assurance” of success; a “significant prospect” of success; or “almost certain” success. Common to all these formulations is a burden on the applicant to show a case of such merit that it is very likely to succeed at trial. Meaning, that upon a preliminary review of the case, the application judge must be satisfied that there is a strong likelihood on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice.

[48] In order to make an assessment under this branch of the test, the Court in *CBC* stressed that an application judge is required to undertake an extensive review of the merits of the petitioner's case. The Court explained:

> [15] In my view, on an application for a mandatory interlocutory injunction, the appropriate criterion for assessing the strength of the applicant's case at the first stage of the *RJR - MacDonald* test is *not* whether there is a serious issue to be tried, but rather whether the applicant has shown a strong *prima*

> *facie* case. A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the *status quo*, or to otherwise "put the situation back to what it should be", which is often costly or burdensome for the defendant and which equity has long been reluctant to compel. Such an order is also (generally speaking) difficult to justify at the interlocutory stage, since restorative relief can usually be obtained at trial. Or, as Justice Sharpe (writing extrajudicially) puts it, "the risk of harm to the defendant will [rarely] be less significant than the risk to the plaintiff resulting from the court staying its hand until trial". The potentially severe consequences for a defendant which can result from a mandatory interlocutory injunction, including the effective final determination of the action in favour of the plaintiff, further demand what the Court described in *RJR - MacDonald* as "extensive review of the merits" at the interlocutory stage.

[49] The petitioners will argue at the hearing of the petition that either or both the First and the Second Decisions, ought to be set aside on the basis of procedural unfairness and/or patent unreasonableness, with the result that the Order of Possession be set aside and the matter remitted to the RTB for a determination of the dispute on the merits.

[50] On the basis of the evidence adduced by both parties in this hearing, I am satisfied the petitioners have established there is a strong likelihood on the law and the evidence presented that they will be ultimately successful in having the Order of Possession set aside and the matter remitted to the RTB for determination on the merits.

[51] The standard of review the court will have to apply at the hearing of the petition is not controversial. It is a standard that has been discussed by many recent authorities, most recently by our Court of Appeal in *Metro Vancouver (Regional District) v. Belcarra South Preservation Society*, 2021 BCCA 121. The Court wrote:

> [30] The standard of review of the Arbitrator's decision is determined by the *Administrative Tribunals Act*, S.B.C. 2004, c. 45. Arbitrators of the RTB have delegated authority to make decisions pursuant to various provisions of the *RTA* that pertain to applications for dispute resolution. Matters within an arbitrator's exclusive jurisdiction are subject to the patent unreasonableness standard of review that is set out in s. 58 of the *Administrative Tribunals Act*: *Ahmad v. Merriman*, 2019 BCCA 82 at para. 37.
>
> …
>
> [32] The parties further agree on what constitutes patent unreasonableness. That issue has been addressed several times by this

Court in the context of the *RTA* and the judicial review of an RTB decision. In *Ahmad*, the Court said:

> [37] Section 58(2)(a) of the *ATA* requires that a decision of an expert tribunal, such as the RTB, may not be interfered with unless it is patently unreasonable. The standard of patent unreasonableness requires the decision under review be accorded "curial deference, absent a finding of fact or law that is patently unreasonable": *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority,* 2016 SCC 25 at para. 29. Stated otherwise, it must be "clearly irrational" or "evidently not in accordance with reason": *Canada (Attorney General) v. Public Service Alliance of Canada*, [1993] 1 S.C.R. 941 at 963–64. A patently unreasonable decision is one that is "so flawed that no amount of curial def[er]ence can justify letting it stand": *Ryan v. Law Society (New Brunswick),* 2003 SCC 20 at paras. 52–53.

[33] In *Allman v. Amacon Property Management Services Inc.*, 2007 BCCA 141, Mr. Justice Thackray, for the majority, said:

> [24] Amacon, quite properly, relies upon the test in *Canada (Attorney-General) v. Public Service Alliance of Canada*, referred to earlier in these reasons, for the test in determining whether a decision is patently unreasonable. It emphasizes the requirement that to be so the decision must be "clearly irrational." In my opinion the arbitrator, in finding as a fact that vacant possession was not necessary, but then upholding vacancy notices that, in order to be lawful, must be based upon renovations done in a manner that "requires" vacant possession, came to a clearly irrational decision. Her finding of fact cannot be reconciled with the legislative directive.

…

[35] The parties further agree that, following *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, a reviewing court is to take a "reasons first" approach. As the majority explained:

> [84] … [W]here the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion: see *Dunsmuir*, at para. 48, quoting D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 286.

[36] Finally, the parties agree that where there is no evidence to support an arbitrator's findings, or the decision is otherwise "openly, clearly, evidently

> unreasonable", the decision will be patently unreasonable: *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80 at para. 37; *Manz v. Sundher*, 2009 BCCA 92 at para. 39; *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 S.C.R. 487 at para. 44; *British Columbia Ferry and Marine Workers' Union v. British Columbia Ferry Services Inc.*, 2013 BCCA 497 at para. 52; *Shamji v. Workers' Compensation Appeal Tribunal*, 2018 BCCA 73 at para. 39.

[52] Procedural fairness is comprised of two rights: the right to be heard and the right to an impartial hearing. The content of procedural fairness, as Justice Kent wrote in *Crest Group Holdings Ltd. v. British Columbia (Attorney General)*, 2014 BCSC 1651, goes to the manner in which the decision-maker went about making his decision: para. 36.

[53] I am satisfied the petitioners have established a strong likelihood on the law and the evidence presented that the First Decision was not procedurally fair and/or was patently unreasonable.

[54] On October 30, 2020, the landlord served the tenants with the notice to end tenancy for cause under s. 47 of the *RTA*. The landlord specifically relied on s. 47(1)(d) that the tenant (or person permitted on the property by the tenant) has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

[55] Where the landlord delivers to the tenant a notice to end tenancy for cause, s. 47 goes on to provide:

> (3) A notice under this section must comply with section 52.
>
> (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
>
> (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
>
> > (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
> >
> > (b) must vacate the rental unit by that date.

[56] There is little room to avoid the conclusive presumption in s. 47(5)(a) because s. 66 of the *RTA* gives the Director discretion to extend only certain time limits. Section 66 provides, in part:

> (1) The director may extend a time limit established by this Act only in exceptional circumstances …
>
> …
>
> (3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.
>
> [Emphasis added.]

[57] There is no question that the First Application was filed within the time limit specified in s. 47(4), so the presumption that the petitioners accepted the end of the tenancy did not apply. The RTB scheduled the hearing of the First Application on January 29, 2021, which is well beyond the effective date of the notice; the effective date of the notice being November 30, 2020.

[58] Pursuant to Rule 6.6 of the RTB Rules of Procedure, when a tenant disputes a notice to end the tenancy, the burden is on the landlord to prove the reason for which he or she wishes to end the tenancy.

[59] At the hearing of the First Application, the arbitrator dismissed the application without hearing from the parties on the merits of the application. The arbitrator dismissed the application for the sole reason that she did not have a copy of the notice, something that neither party had supplied. She indicated that she required the notice to determine if the landlord had complied with s. 52, in order to determine whether she could grant the landlord an order of possession. The arbitrator was aware the tenants thought they had uploaded the notice. Rather than briefly stand down or adjourn the hearing to obtain a copy of the notice, the adjudicator penalized the tenants by dismissing their application.

[60] In my view, the petitioners have a strong likelihood of successfully arguing that the arbitrator effectively and improperly reversed the burden of proof here,

rendering the process not only procedurally unfair, but the decision patently unreasonable.

[61] Moreover, I think the petitioners also have a strong likelihood of successfully arguing that the arbitrator's decision to dismiss the application in these circumstances, with leave to re-apply, and not specifically extending the limitation period so that they could re-apply, was also procedurally unfair and patently unreasonable.

[62] By dismissing the First Application, but granting leave to re-apply, the tenants were required to file a new application, which they did immediately. They were required to pay new filing fees and required to wait for a new hearing, all in a situation where the legislation is clear that an extension of time for filing such an application could not be granted because, on its face, the Second Application was filed outside the date of effective notice.

[63] The date of effective notice had expired long before Mr. Kelm filed the Second Application. It expired while the parties were waiting for their first hearing. It is unsurprising then that the second arbitrator dismissed the Second Application for want of jurisdiction because “exceptional circumstances” to extend a time limit under the legislation specifically exclude the tenant's ability to apply for dispute resolution beyond the effective date of the notice.

[64] Therefore, the practical effect of dismissing the tenants’ properly-filed First Application rather than adjourning it, was to forever remove the tenants' ability to have their case heard on its merits. It doomed them to a conclusive presumption that they had accepted the end of the tenancy in a situation where they had very clearly not done so. This result could not be seen to be procedurally fair or reasonable. I think the petitioners have a strong likelihood of success here.

2. Have the petitioners established irreparable harm?

[65] In *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 111 D.L.R. (4th) 385, the Court described this second factor as “deciding whether

the litigant who seeks the interlocutory injunction would, unless the injunction is granted, suffer irreparable harm". The Court explained:

> [58] At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.
>
> [59] "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision (R.L. Crain Inc. v. Hendry (1988), 48 D.L.R. (4th) 228 (Sask. Q.B.)); where one party will suffer permanent market loss or irrevocable damage to its business reputation (American Cyanamid, supra); or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined (MacMillan Bloedel Ltd. v. Mullin, [1985] 3 W.W.R. 577 (B.C.C.A.)). The fact that one party may be impecunious does not automatically determine the application in favour of the other party who will not ultimately be able to collect damages, although it may be a relevant consideration (Hubbard v. Pitt, [1976] Q.B. 142 (C.A.))

[66] In *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395, the Court held:

> [60] … there surely must be a foundation, beyond mere speculation, that irreparable harm will result. Interlocutory injunctive relief pending the trial of the issues is a significant remedy, and should be invoked only when the test in *RJR-MacDonald* is satisfied on a sound evidentiary foundation.

[67] In *Canivate Growing Systems Ltd. v. Brazier*, 2019 BCSC 899, the court held that irreparable harm refers to the nature of the harm suffered, rather than to its magnitude. It is harm that either cannot be quantified in monetary terms or cannot be cured: para. 63.

[68] In *CBC*, the Court also emphasized that the second stage of irreparable harm analysis only applies to the harm that might be suffered by the injunction applicant, the petitioners in this case, and not any harm that might be suffered by the respondent should the relief sought be granted. This factor (the harm that might be suffered by the application respondent), should the relief be granted, is more appropriately dealt with in the third part of the analysis, the balance of convenience.

[69] I am satisfied the petitioners have established irreparable harm if the requested relief is refused. The nature of the harm here is profound. Mr. Kelm and Ms. Goodman are on a limited, fixed income derived from social assistance. Ms. Goodman suffers from a permanent disability. Mr. Kelm receives assistance as a person with persistent multiple barriers. They have lived in these premises for a very modest rent (currently $770 per month) for 17 years now. As a result of their removal from the premises last week, they are homeless and have nowhere to go. They have had to put their possessions in storage. I accept the submission that finding such inexpensive and available rental accommodation in this community is not easy.

[70] I further consider that if the relief sought is not granted, by the time the petition is heard, it will be moot. The premises will have been rented to someone else and the petitioners will never have the opportunity to have their dispute heard on its merits. They will lose their home of 17 years permanently. All of this satisfies me that the petitioners have established irreparable harm here.

3. Where does the balance of convenience lie?

[71] The third factor to be applied in an application for an interlocutory injunction is the “determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction pending a decision on the merits”: *RJR - MacDonald* at para. 62.

[72] In *RJR - MacDonald*, the Court observed that many interlocutory proceedings will be determined at this stage of the analysis. The Court noted that the factors to be considered in assessing the “balance of convenience” are numerous and will vary with each case. The Court cautioned it would be unwise to attempt to list all of the various matters that may need to be taken into consideration on this factor, let alone to suggest the relative weight that should be attached to them in any given case.

[73] In *Canadian Broadcasting Corp. (CBC) v. CKPG Television*, [1992] B.C.J. No. 247, our Court of Appeal identified a number of factors that should be considered in assessing the balance of convenience at p. 102:

> … the adequacy of damages as a remedy for the applicant if the injunction is not granted, and for the respondent if an injunction is granted; the likelihood that if damages are finally awarded they will be paid; the preservation of contested property; other factors affecting whether harm from the granting or refusal of the injunction would be irreparable; which of the parties has acted to alter the balance of their relationship and so affect the status quo; the strength of the applicant's case; any factors affecting the public interest; and any other factors affecting the balance of justice and convenience.

[74] These factors, of course, are not to be regarded as any kind of “checklist”, but are rather to be considered in a unified context.

[75] I am satisfied that the balance of convenience in this case lies in favour of the petitioners. The respondent has not established that he will suffer any loss if the relief sought is granted. The petitioners will continue to pay their rent pursuant to their rental agreement if permitted to move back into the premises. I accept that the upstairs tenant and her daughter, who are not parties but whose interests I must consider here nonetheless, may potentially suffer from some of their expressed complaints should the relief be granted, but I think the petitioners' loss should the relief not be granted is much greater. The petitioners are currently homeless and have nowhere to go.

[76] I have also taken into account the conduct of the landlord and his agent, the bailiff. The bailiff should have paused his removal efforts when he learned a court order had been granted staying the Order of Possession. Instead, the bailiff sped up his efforts to evict the petitioners in an effort to thwart the order. This conduct cannot be encouraged.

[77] In the end, I am persuaded that the balance of convenience lies strongly in favour of the petitioners here and I grant the injunction sought. I conclude that it would be just and equitable to make the orders sought, as well as to stay the Order of Possession and the Writ of Possession until this petition can be heard on its merits.

[78] Given the financial circumstances of the petitioners, I am satisfied that an undertaking as to damages is not required in this case.

[79] Before outlining the terms of the orders that I make today, I will briefly address the other relief sought by the petitioners verbally at the hearing.

[80] I have preferred to decide this application on the relief articulated in the Notice of Application. Given my decision, addressing the additional relief sought orally, at the hearing is unnecessary. More importantly however, it would be unfair to decide this case on the basis of relief sought for the first time at the hearing. The petitioners argued that the landlord did not actually acquire possession under the writ and that the interim *ex parte* order of Justice Hori simply ought to be extended. This relief was not expressly sought or articulated in the Notice of Application. The landlord did not have adequate notice of it and therefore did not have a direct or full opportunity to respond to it. It would be unfair to grant any relief on that basis.

Orders

[81] In the end, I grant the following interim orders:

1. The Order of Possession made by M. Thiesen on May 3, 2021, and the Writ of Possession ordered by the court on May 14, 2021, both be stayed until the hearing of the within petition for judicial review;

2. Vito Pavlovic grant immediate access to, and occupancy of, 1657B Tranquille Road, Kamloops, B.C., to Kate Goodman and Brent Kelm; and

3. Kate Goodman and Brent Kelm be granted occupancy of 1657B Tranquille Road, Kamloops, B.C., until the hearing of the within petition for judicial review.

[SUBMISSIONS ON COSTS]

[82] THE COURT: I am persuaded that costs should be costs in the cause and I so order. Ms. Dempsey-Caputo, will you attend to drafting the orders?

[83] CNSL O. DEMPSEY-CAPUTO: Yes, My Lady, I will.

[84] THE COURT: Thank you. Thank you both. I recognize that counsel prepared your materials and made your submissions on very short notice. I do appreciate the efforts that you made.

[85] CNSL J. DRAYTON: My Lady, I wonder if I might say two things. One is you did mention that there would be an obligation to pay rent, but it's not actually in your order. Is that something you might put in your order, that this does not suspend the tenants' obligation to pay rent?

[86] THE COURT: Yes, if you think it is necessary. Ms. Dempsey-Caputo, do you have any submissions on that?

[87] CNSL O. DEMPSEY-CAPUTO: So My Lady, one of my worries is that they actually had used their rent money to pay for the storage of their belongings. I know that they tried to pay rent in May to the landlord and he kept rejecting it. My worry is that they would not have rent now for May. I don't know what their situation is for June. I'd agree that they should be paying rent. I just don't want them getting evicted with a 10-day notice or something like that because they are not able to come up with the money now that they've had to use that for -- for the storage of their belongings. But I would suspect they should be able to get the June rent, it just probably wouldn't be today.

[88] THE COURT: All right.

[89] CNSL J. DRAYTON: And that wouldn't be a problem for me, an order in that light.

[90] THE COURT: I recognize that including an order to this effect may create some problems, particularly because your clients are not there with you right now and you cannot receive instructions on this point. I will leave this issue open. If you wish to bring it back in front of me, to add an additional term in regard to the payment of rent, you can do that by way of requisition without the necessity of an application. Does that help?

[91] CNSL O. DEMPSEY-CAPUTO: Thank you, My Lady.

[92] CNSL J. DRAYTON: Leave to re -- liberty to apply for [indiscernible/ teleconference].

[93] THE COURT: Yes, counsel may adjust the wording but my goal is to not put you to the trouble of a formal application. If payment of rent is something that you think is an issue, then you are permitted to bring it to my attention by way of requisition.

[94] CNSL J. DRAYTON: Very good. My Lady, the other thing is this; based on your reasons, if I had my druthers I would say let's not wait and argue this petition for judicial review, let's just make an order that the Residential Tenancy Branch decisions are set aside and the Branch is to, you know, reconsider the application on its merits. Now, the problem, of course, is that the Deputy Attorney General needs to served, this being a judicial review and the Residential Tenancy Branch. I'm not -- I guess we can't undermine their -- or prematurely undermine their desires, whatever they are, by making such an order today, but I'm wondering if Your Ladyship would consider making such an order today by consent, that we set aside the order, etc., and just, you know, send it back to the Residential Tenancy Branch. Because at the end of the day, my client was ready and has been trying a long time to evict. He's been trying to do it on its merits and again he's being thwarted by what could conceivably easily be three or four months now while we get this thing set for a hearing that seems to be a rather perfunctory event, to tell you the truth. That would be my comment.

[95] THE COURT: Well, I wish I could do that, Mr. Drayton, but I really do not think I can. I think --

[96] CNSL J. DRAYTON: Yes.

[97] THE COURT: -- the RTB has to be involved in this proceeding. The RTB has to be served with the petition. It has to be afforded the opportunity to file a response and go through the process. It may be that with discussions with counsel for the

RTB, an agreement leading to a consent order can be reached, but my reasons here today are based upon the evidence and submissions of the parties that have been presented. The RTB may take a completely different view and a full hearing required.

[98] CNSL J. DRAYTON: Yes.

[99] THE COURT: -- of the petition. I appreciate what you are trying to accomplish and I wish I could help, but I simply cannot.

[100] CNSL J. DRAYTON: Very good, My Lady.

"S.A. Donegan J."

DONEGAN J.

Date Issued: February 1, 2022
File: 20535

Indexed as: Nnona v. Aramark Canada Ltd. and another, 2022 BCHRT 21

IN THE MATTER OF THE *HUMAN RIGHTS CODE,*
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

BETWEEN:

Francisca Nnona

COMPLAINANT

AND:

Aramark Canada Ltd. and Jennifer Bissell (aka Jennifer Watson)

RESPONDENTS

REASONS FOR DECISION
APPLICATION TO AMEND -and-
APPLICATION TO DISMISS A COMPLAINT
Section 27(1) (b), (c) and (d)(ii)

Tribunal Member:	Paul Singh
Counsel for the Complainant	Odette Dempsey-Caputo
Counsel for the Respondents:	Drew Demerse -and- Carrie Koperski

I INTRODUCTION

[1] The Complainant Francisca Nnona, who identifies as a Black woman, applied for a position with the Respondent Aramark Canada Ltd. [**Aramark**] but was not hired. As a result, she alleges discrimination on the basis of colour, ancestry and place of origin against Aramark and its hiring manager Jennifer Bissell, contrary to s.13 of the BC *Human Rights Code* [***Code***].

[2] The Respondents deny discriminating. They say they did not hire Ms. Nnona because they selected another more qualified candidate for the position and that Mr. Nnona's colour, ancestry and place of origin were not factors in their decision. They apply to dismiss Ms. Nnona's complaint without a hearing.

[3] While I do not refer to it all in my decision, I have considered all the information filed in relation to this application to dismiss. This is not a complete recitation of the parties' positions, but only those necessary to come to my decision. I make no findings of fact.

[4] For reasons that follow, the Respondents' application is allowed, in part. Ms. Nnona's complaint against Ms. Bissell is dismissed. Her complaint against Aramark will proceed to a hearing.

II BACKGROUND

[5] The background facts set out below are not in dispute.

[6] Aramark is a service provider that provides, among other things, dining and facilities services to post-secondary institutions across Canada, including at Thompson Rivers University [**TRU**] in Kamloops, BC.

[7] Jennifer Bissell is Aramark's Food Service Director at TRU. She oversees all retail and catering food operations provided by Aramark on the TRU campus, including the hiring of food services management and staff.

[8] Ms. Nnona has been employed by Aramark since January 2016 and has worked at the TRU campus during this time. From January 2016 to May 2018, she worked, at times, in the Catering Department under the direct supervision of Ms. Bissell. Since March 2018, she worked as a Team Lead at Tim Hortons at TRU (which is operated by Aramark), which is also overseen by Ms. Bissell in her role as Food Service Director.

[9] In October 2019, Aramark posted an opening for an 18-month contract for a retail manager position at TRU [**Retail Manager**] to fill the maternity leave of the permanent manager. The Retail Manager oversees several food service operations on the TRU campus and manages up to 75 employees while working closely with and reporting directly to Ms. Bissell.

[10] Ms. Nnona applied for the Retail Manager position, which she considered a promotion with greater pay from her existing position.

[11] A human resources specialist for Aramark in Toronto [**HR Specialist**] conducted an initial screening of the applications for the Retail Manager position. Ms. Nnona was short-listed for the position as were two other internal candidates [**Ms. K** and **Ms. P**], neither of whom were Black.

[12] In November 2019, the HR Specialist conducted first interviews with each of the short-listed candidates and reported back to Ms. Bissell.

[13] The day after her interview, Ms. Nnona followed up with the HR Specialist on the status of the competition. In response, the HR Specialist advised her that next steps would include Ms. Bissell contacting her to schedule an in-person interview.

[14] Later in November, Ms. Bissell offered the Retail Manager position to Ms. P without conducting a second, in-person interview with any of the short-listed candidates.

III ANALYSIS

A. Application to amend

[15] In her initial complaint, Ms. Nnona alleged discrimination by the Respondents on the protected ground of "colour". After receiving the Respondents' application to dismiss her complaint, Ms. Nnona applied to amend her complaint to include discrimination on the grounds of ancestry and place of origin.

[16] The Respondents oppose the amendment. They say they would experience prejudice if the amendment is allowed, and that Ms. Nnona has not adequately particularized the basis for the amendment.

[17] The Tribunal does not generally allow complainants to add new allegations where there is an outstanding application to dismiss and where the amendments create an unfair "moving target" for the Respondents by adding new grounds, incidents or persons to the complaint: *Pausch v. School District 34 and others*, 2008 BCHRT 154.

[18] However, in this case, the amendment does not create a "moving target" for the Respondents. The grounds of ancestry and place of origin are closely related to the ground of colour alleged in Ms. Nnona's original complaint. Additionally, the amendment relates to the same company (Aramark), same person (Ms. Bissell) and same incidents as those in the original complaint.

[19] While the Respondents allege prejudice arising from the amendment, they do not provide sufficient particulars on how or why they are prejudiced by such an amendment, which is limited in nature and does not substantively alter the crux of Ms. Nnona's complaint.

[20] In these circumstances, Ms. Nnona's application to amend is granted and the protected grounds of ancestry and place of origin are added to her complaint.

B. Dismissal application under s. 27(1)(b)

[21] The Respondents apply to dismiss Ms. Nnona's complaint under s. 27(1)(b) of the *Code*. This section allows the Tribunal to dismiss a complaint if it does not allege facts that could contravene the *Code*. The determination is made only on the basis of the facts alleged in the complaint, without reference to any alternative scenarios or explanations provided by the respondent: *Bailey v. B.C. (Min. of Attorney General) (No. 2)*, 2006 BCHRT 168 at para. 12.

[22] The requirements on a complainant to prove discrimination were affirmed by the Supreme Court of Canada in *Moore v. British Columbia*, 2012 SCC 61 [***Moore***]. The Court held that complainants must show they that have a characteristic protected from discrimination; that they have experienced an adverse impact in a protected area; and that the protected characteristic was a factor in the adverse impact. A protected characteristic need not be the sole or even the dominant cause of the adverse treatment; it need only be **one** factor: *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para. 52.

[23] If the complainant proves these elements, the burden shifts to the respondent to justify their conduct. If the conduct is justified, there is no discrimination.

[24] In cases involving a failure to hire, a nexus between a protected characteristic and the adverse impact may be inferred where a complainant shows that they have a protected characteristic, were qualified for the position, and the respondent hired someone no better qualified but who did not have the protected characteristic: *Oxley v. British Columbia Institute of Technology*, 2002 BCHRT 33 at paras. 67-73.

[25] In this case, there is no dispute that Ms. Nnona's colour, ancestry and place of origin are protected characteristics and that her failure to be promoted to Retail Manager constitutes an adverse impact. Regarding the nexus between these two factors, Ms. Nnona alleges she was qualified for the Retail Manager position, and that the Respondents hired someone no better qualified but who was not Black. These allegations, if proven, **could** lead to an inference that

Ms. Nnona's colour, ancestry, and/or place of origin was a factor in the Respondents' decision in the absence of an adequate explanation by them.

[26] In these circumstances, the Respondents' application to dismiss Ms. Nnona's complaint under s. 27(1)(b) is denied.

C. Dismissal application under s.27(1)(c)

[27] The Respondents also apply to dismiss Ms. Nnona's complaint under s. 27(1)(c) of the *Code*.

[28] Determinations under s. 27(1)(c) of the *Code* are about whether there is no reasonable prospect that the complaint will succeed: *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 [***Hill***]. This provision creates a gate-keeping function that permits the Tribunal to conduct a preliminary assessment of complaints and to exercise its discretion to remove those that do not warrant the time and expense of a hearing: *Berezoutskaia v. British Columbia (Human Rights Tribunal)*, 2006 BCCA 95 at paras. 22-26. The threshold for such a review is low and the complainant must only show that their evidence is not conjecture: *Hill* at para. 27.

[29] The Tribunal does not make findings of fact in a s. 27(1)(c) application. However, it does assess the evidence. It looks for internal and external consistency, places the evidence in context, and considers the overall relationship of the parties and all the circumstances in which the alleged acts of discrimination occurred. On this basis, the Tribunal gauges the relative strengths and weaknesses of the case and determines what aspects of the complaint do not rise above conjecture and, in light of all the material, have no reasonable prospect of success: *Ritchie v. Central Okanagan Search and Rescue Society and others*, 2016 BCHRT 110 at para. 120.

[30] To succeed under s. 27(1)(c), the burden is on a respondent to show there is no reasonable prospect of the complaint succeeding. This may be established in two ways. First, if the Tribunal determines there is no reasonable prospect that the complainant will be able to establish one or more of the *Moore* elements at a hearing, it may dismiss the complaint. In

circumstances where the respondent disputes one of these elements, the complainant must have some evidence to take the allegation out of conjecture. Second, the Tribunal may consider a defence in an application under s. 27(1)(c): *Trevena v. Citizens' Assembly on Electoral Reform and others*, 2004 BCHRT 24 at para. 67. If it is reasonably certain that a respondent will establish a defence at a hearing of the complaint, then there is no reasonable prospect that the complaint will succeed: *Purdy v. Douglas College and others*, 2016 BCHRT 117 at para. 50.

[31] In this case, and as noted earlier, there is no dispute that Ms. Nnona satisfies the first two elements of the *Moore* test: her colour, ancestry and place of origin are protected characteristics under s.13 of the *Code*, and she experienced an adverse impact by not being promoted to the Retail Manager position.

[32] Regarding the third element of a nexus between Ms. Nnona's protected characteristics and adverse impact, the Respondents do not dispute that Ms. Nnona was qualified for the Retail Manager position given that she was short-listed for the position. Rather, they say there is no nexus, and therefore no discrimination, because Ms. P was better qualified than Ms. Nnona for the position and that is why Ms. P was hired over Ms. Nnona.

[33] However, for reasons that follow, I am not satisfied that there is no reasonable prospect of Ms. Nnona proving the required nexus.

[34] First, the issue of whether Ms. P was better qualified than Ms. Nnona for the Retail Manager position is in dispute.

[35] The Respondents say that Ms. P was better qualified than Ms. Nnona for the following reasons:

a. While Ms. P and Ms. Nnona had similar retail experience, Ms. P had experience with supervising multiple catering events at one time, which was most similar to the requirement of the Retail Manager position to be able to effectively manage several locations at once;

b. Ms. P had experience managing and leading employees in two separate retail roles, and thus had a broader managerial skill set to bring to the Retail Manager position than did Ms. Nnona;

c. In her current role as a Banquet Supervisor, Ms. P at times supervised events with over 100 guests as well as numerous employees at once, which was more similar to the Retail Manager role which manages 50-75 employees; and

d. In Ms. Bissell's own experience working directly with Ms. P, Ms. P had demonstrated exceptional work ethic and professionalism, an eagerness to advance within Aramark, and strong leadership ability.

[36] Ms. Nnona, however, says she is equally qualified or better qualified than Ms. P for the Retail Manager position for the following reasons:

a. Aramark's job description for the Team Lead at Tim Hortons (Ms. Nnona's current position) was very similar to the job description for the Retail Manager position.

b. Ms. Nnona had prior experience at Loblaws working in retail and was a Lead Front Desk Agent which required her to be responsible for a hotel's staff and its guests.

c. Ms. Bissell advised Ms. Nnona that she was not hired because she did not have as much interaction with staff as Ms. P. However, Ms. Nnona disputes this assertion given what she says is her extensive prior work experience with staff and her role as Team Lead at Tim Hortons.

d. Ms. Nnona had retail experience with Aramark whereas Ms. P did not.

e. Ms. Nnona, while working at Aramark, supervised over 40 employees at times and would have to deal with customers simultaneously.

[37] In light of the parties' differing positions on the relative qualifications of Ms. P and Ms. Nnona, Ms. Nnona has taken her claim that her protected characteristics factored into the adverse impact out of the realm of conjecture. A hearing is necessary to make findings of fact regarding the parties' competing evidence on this issue.

[38] Second, Ms. Nnona alleges that since Ms. Bissell became the Food Service Director in May 2018, she has not hired or promoted any Black people to a managerial role. Ms. Nnona also provides three specific examples where Ms. Bissell allegedly failed to promote, or has constructively dismissed, someone because they were Black.

[39] The Respondents vigorously dispute these allegations and say they are simply unsubstantiated speculation.

[40] The veracity, relevance, and weight, if any, that the Tribunal may attribute to Ms. Nnona's allegations of systemic discrimination cannot be determined on the materials before me. If these allegations are admitted into evidence and proven at a hearing, they may serve to strengthen an inference of discrimination in Ms. Nnona's case. In these circumstances, Ms. Nnona has taken her allegation of discrimination out of the realm of conjecture.

[41] Third, the Respondents attempt to refute Ms. Nnona's allegation of discrimination by saying that Aramark has a diverse and multicultural workforce at TRU, and that Ms. P and the HR Specialist are both women of colour themselves, albeit not Black.

[42] However, racism can clearly operate between groups of people who are racialized in Canada, and the racial make-up of a company's workforce is not determinative of an allegation of racial discrimination: *Lado v. Hardbite Chips and others*, 2019 BCHRT 134 at para. 45. Additionally, this argument fails to recognize the historical and systemic racism that Black people have faced in Canada. The diversity of Aramark's workforce cannot, without more, justify a dismissal of Ms. Nnona's complaint without a hearing.

[43] For the reasons set out above, the Respondents' application to dismiss Ms. Nnona's complaint under s. 27(1)(c) of the *Code* is denied.

D. Dismissal under s. 27(1)(d)(ii)

[44] The Respondents also apply to dismiss Ms. Nnona's complaint against Ms. Bissell under s. 27(1)(d)(ii) of the *Code* on the basis that it would not further the purposes of the *Code*. Ms. Nnona opposes this and says her complaint should proceed to a hearing against both Aramark and Ms. Bissell.

[45] In *Daley v. British Columbia (Ministry of Health)*, 2006 BCHRT 341 [***Daley***], the Tribunal set out a non-exhaustive list of factors which it applies to determine whether a complaint against an individual respondent should proceed:

a. Whether the complainant has named the corporate or institutional employer as a respondent, and that respondent has the capacity to fulfill any remedies that the Tribunal might order.

b. Whether the institutional respondent has acknowledged the acts and omissions of the individual in question as its own, and has irrevocably acknowledged its responsibility to satisfy any remedial orders which the Tribunal might make in respect of that individual's conduct; and

c. The nature of the conduct alleged against the individual, including whether:

    i. It was within the course of their employment or whether there is any conduct alleged outside of the normal scope of their duties;

    ii. The person is alleged to have been the directing mind behind the discrimination alleged or to have had the ability to influence substantially the course of action taken; or

    iii. Whether it has a measure of individual culpability, such as an allegation of sexual harassment.

[46] On considering the *Daley* factors, and for reasons that follow, I am satisfied that proceeding with the complaint against Ms. Bissell individually would not further the purposes of the *Code*.

[47] First, although Ms. Bissell was primarily responsible for the Retail Manager hiring decision, this factor alone is not determinative of the issue and an assessment must be made in light of all the *Daley* factors: *Artuso v. CEFA Systems Inc.*, 2017 BCHRT 53 at paras. 43-44.

[48] Second, Ms. Nnona has named the corporate employer, Aramark, as a respondent, and Aramark has stated it has the capacity to fulfill any remedies that the Tribunal might order and has provided sworn evidence that it will do so should the need arise.

[49] Third, Aramark has adopted the acts and omissions of Ms. Bissell as its own and has irrevocably acknowledged responsibility to satisfy any remedial orders which the Tribunal might make in respect of Ms. Bissell's conduct, including compensation and/or requiring Ms. Bissell to complete a course in cultural sensitivity and competency, if necessary.

[50] Finally, there is no dispute that Ms. Bissell was acting in the normal course of her duties when she made the hiring decision for the Retail Manager position, which Aramark authorized her to do. There is no allegation that Ms. Bissell engaged in any significant behavior towards Ms. Nnona which was outside her normal course of duties and which would attract a measure of individual culpability, such as racialized harassment.

[51] For reasons set out above, Ms. Nnona's complaint against Ms. Bissell does not further the purposes of the *Code* and is dismissed.

IV CONCLUSION

[52] The Respondents' application to dismiss Ms. Nnona's complaint is allowed in part. Ms. Nnona's complaint against Aramark will proceed to a hearing. Her complaint against Ms. Bissell is dismissed.

[53] By allowing part of the complaint to proceed to a hearing, I am not concluding that it is likely that Ms. Nnona will succeed in her complaint; only that it has surpassed the low threshold of conjecture and requires a hearing for the Tribunal to make the necessary factual findings.

[54] I encourage the parties to take advantage of the Tribunal's mediation services to try to resolve this matter by mutual agreement.

_____

Paul Singh
Tribunal Member
Human Rights Tribunal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Swanson v. Mission Co-operative Housing Association,* 2021 BCSC 465

Date: 20210119
Docket: S2010498
Registry: Vancouver

Between:

Susan Lorraine Swanson

Appellant

And

Mission Co-operative Housing Association (St. Andrews Place)

Respondent

Before: The Honourable Mr. Justice Brundrett
(appearing by teleconference)

Correction notice: This judgment was corrected on March 24, 2021 at paragraph [29]

On appeal from: Resolution of Decision of Board of Directors of Mission Co-operative Housing Association, September 17, 2020

Oral Reasons for Judgment

In Chambers

Counsel for the Appellant appearing by teleconference:	S.M. Kearney
Counsel for the Respondent appearing by teleconference:	G.H. Dabbs
Place and Date of Hearing:	Vancouver, B.C. January 19, 2021
Place and Date of Judgment:	Vancouver, B.C. January 19, 2021

Introduction

[1] This is an appeal by Susan Swanson, a resident of the Mission Co-operative Housing Association (the “Association”), against a resolution of the Association to confirm a decision of its board of directors (the “Board”) to terminate the appellant’s membership. The respondent’s decision to terminate the appellant’s membership effectively amounts to an eviction of the appellant from the co-op housing residence in Mission, B.C. called St. Andrews Place.

[2] The appellant seeks to overturn the decision of the Association on two grounds: (1) a breach of natural justice guaranteed by s. 172(2) of the *Cooperative Association Act*, S.B.C. 1999, c. 28 [the *Act*]; and (2) the decision not being reasonably supportable by the facts. The Association opposes the orders sought and seeks an order for vacant possession of the appellant’s unit.

Background

[3] The 67-year-old appellant had long wished to live at St. Andrew’s Place. Many years ago, she applied for membership in part because her mother and father had previously lived in the same residence. After approval, she was able to finally commence living at St. Andrew’s Place on April 1, 2019.

[4] The appellant had worked until recently as a care aide at a long-term care facility in Prince George. She is now retired. She wanted to retire earlier and settle in Mission, but her job was deemed to be an essential service at the beginning of the COVID-19 pandemic and her position was extended into the late summer of 2020. This appears to have led to conflict with the Association, whose rules require full-time residency of all members.

Analysis

[5] Although the factual and legal background is more extensive, I can be brief. I am satisfied that the appeal must be allowed for several reasons.

[6] First, on August 19, 2020, the Board discussed the appellant’s situation and voted in favour of terminating her membership. While the issue of the appellant’s continued residence at the facility was raised among other issues in a July 14, 2020 letter, no notice at all was provided to the appellant of this important meeting. The appellant only found out about it later after-the-fact.

[7] I find that the failure to provide the appellant with notice of the August 19, 2020 meeting amounted to a clear violation of s. 36(1)(a) of the *Act,* which is also reflected in s. 5.4 of the Rules of the Association (the “Rules”).

[8] It is true, as the respondent points out, that the Board subsequently held another meeting on August 31, 2020. The appellant was given notice of that meeting by way of an August 20, 2020 letter, in which it was indicated she was entitled to attend a further meeting of the Board.

[9] The appellant had been working in August 2020 as an essential service worker in Prince George, and it is unclear to me precisely when the appellant received the August 20, 2020 letter.

[10] Ultimately, the appellant did attend the August 31, 2020 meeting. However, at that subsequent meeting, the August 19, 2020 decision does not appear to have been rescinded despite the obvious failure to abide by the principles of natural justice and the procedural requirements set out in the Rules.

[11] Again, at that meeting on August 31, 2020, the Board voted to terminate the appellant’s membership. The appellant was provided with a letter on the same day containing the Board’s decision and the procedure for appeal.

[12] The respondent submits that the provision of notice and an opportunity to be heard at the August 31 meeting cures any procedural defects with respect to the way the appellant was dealt with. I do not agree.

[13] The Board’s decision involved a serious issue: the potential eviction of the appellant from her home. It was a weighty matter that demanded strict compliance with procedural fairness. As the appellant points out, the Board was made up of laypeople who had not sworn an oath of impartiality. The *Act* is quite clear that before the Board embarked on hearing any consideration of the appellant’s proposed termination, it was obliged to give the appellant an opportunity to be heard. To any reasonable observer, it could appear that the Board may have already made up its mind and the writing was on the wall for the appellant’s eviction by the time of the August 31 meeting.

[14] Second, the appellant was not given a reasonable opportunity to rectify her breach within a reasonable period of time after receiving written notice from the

co-op on August 20, 2020.

[15] An opportunity to rectify the breach within a reasonable time after receiving written notice from the housing cooperative is mandated by s. 35(3)(b) of the *Act*, which is again reflected in s. 5.1 of the Rules.

[16] The respondent maintains that the appellant should have been immediately able to rectify her breach after its August 20 letter and before the August 31 meeting. The August 31 letter to the appellant reads as a final decision. The respondent agrees that by that time, the decision to terminate the appellant's membership had been made, and the opportunity for rectification was over.

[17] In the circumstances of this case, I cannot agree that the intervening period, after the appellant received the August 20 letter up until August 31, was a reasonably sufficient opportunity for rectification.

[18] The Rules must be understood in light of the ability of residents to be away for significant portions of the month without jeopardizing their full-time resident status. There was nothing in the Rules that prohibited the appellant from spending some of the time each month in Prince George. As it so happened, the appellant had to spend more time in Prince George at the time due to the illnesses of staff.

[19] During this demanding time, the appellant was in the process of attempting to extract herself from her obligations as an essential worker in Prince George when the COVID-19 pandemic was in full force. She needed a little more time. Even assuming the appellant received prompt notice of the August 20 letter, the Board should have been more understanding, in my view, of the overall situation.

[20] If the appellant had actual notice of the earlier meeting on August 19, she might have had a longer period in which to bring herself into compliance. As noted, she was not provided with that opportunity, and the result of that meeting in the form of the August 20 letter was substantially unexpected.

[21] Subsequently, by the end of September, the appellant was indeed able to fully commit to living in Mission on a permanent basis as the Rules required. In my view, requiring the appellant to rectify her breach by the end of September would have been a reasonable outcome. As it was, requiring her to rectify the breach by

the end of August, in all the circumstances, was not a reasonable time in the circumstances here.

[22] Third, I find that issues of procedural fairness fatally plague the manner in which the Board dealt with the appellant. I have already referred to the lack of any notice of the August 19 meeting.

[23] In addition, the September 9 notice sent out to members of the September 17, 2020 general meeting, at which members were to vote at large on the eviction, included a misleading reference that the appellant had not signed her homeowners' grant, contrary to s. 7.01 of the Occupancy Agreement, which is an appendage to the Rules of the Association. It is agreed that the reference to violating s. 7.01 is mistaken because that provision relates to the use of the unit as a principal residence.

[24] More importantly, however, the Association had allowed the appellant to rectify that error by paying additional housing charges, which she did. The rectification was not noted on the notice. Hence, the notice sent to the general membership painted a picture of the appellant's malfeasance as more blameworthy than it actually was.

[25] I consider other factors as well, such as the fact that the appellant had been diagnosed with chronic anxiety and depression, and that made it difficult for her to communicate. I find that this would have impacted her ability to participate in the August 31 and September 17 hearings into her continued residency, making the need for procedural protections more acute.

[26] I agree with counsel for the respondent that the respondent was not obliged to advise the appellant that she could have legal counsel at the August 31 meeting or at the general meeting of September 17. However, the failure to advise the appellant of her right in this regard does not assist the respondent in ameliorating the procedural unfairness that arises from the inadequate procedures that were followed. Given the seriousness of the occasion, the appellant's anxiety disorder, the tight timeframes, and the asymmetrical power imbalance between the Board and a member, I find that the process the Board followed was unfair to the appellant.

[27] Therefore, under s. 172(2) of the *Act*, I find that the appellant's membership was not terminated in accordance with the principles of natural justice.

[28] These findings are sufficient to deal with the appeal, and I need not go on to address the reasonableness of the decision itself.

Conclusion

[29] Accordingly, I would allow the appellant's appeal and set aside the decision of the Association confirming the decision of the Board to terminate the appellant's membership. I would also grant an order that the appellant is allowed to remain in possession and occupation of the residential unit in question.

[30] I would dismiss the respondent's application for an order of vacant possession.

[31] Subject to submissions to the contrary, I am inclined to award costs in the appellant's favour. Do counsel have any other submissions?

[32] MR. DABBS: My Lord, Mr. Dabbs here. In light of -- I understand you have not addressed the issue of whether the decision was reasonably supported by the facts. I certainly would submit that on that ground, that there is a good chance that the co-op might have succeeded, and on that basis I would submit that the -- each side bear its own costs.

[33] THE COURT: Okay, thank you. Ms. Kearney?

[34] MS. KEARNEY: I submit that costs are appropriate, given that you are allowing the appeal. It is simply not necessary for you to deal with the second ground, and for the efficiency of all, but nonetheless costs should be awarded to the appellant.

[35] THE COURT: Okay. All right, I am inclined to agree with Ms. Kearney. The appellant has been substantially successful and I did not deal with the second issue, so costs are awarded to the appellant on the usual scale.

"Brundrett J."

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Helping Clients with Welfare Overpayments

Alison Ward; Andrew Robb; Sonia Marino

A review of how to help clients who have been told by MSDPR that they have overpayments. The session will identify important issues to be aware of and strategies for handling such cases.

Welfare Overpayment Allegations:
Legal Issues

October 26, 2022

Alison Ward, Community Legal Assistance Society
Sonia Marino, First United Legal Advocacy Program
Andrew Robb, Disability Law Clinic

Common client issues

Overpayment-related files may present in your office in various ways:

1. Inquiry about voluntary disclosure: client wants to know if they should tell the Ministry about something that may effect eligibility (e.g. undisclosed income, change in marital status etc.), and how it will affect their benefits.
2. Compliance review: client received a letter from the Ministry's **Prevention and Loss Management Services** (PLMS), asking for documents by a certain date to prove they were eligible for benefits.

Common client issues (2)

3. Notification of Overpayment letter: client received a letter saying the Ministry may assess an overpayment. The letter invites the client to provide more information by a set deadline.
4. Overpayment notification/decision: client received a decision saying they owe an overpayment. The client disagrees and wants to challenge the decision. The decision is usually made by PLMS, but sometimes from other Ministry staff.
5. Assistance cut off: client has been cut off assistance or their monthly cheque is being held (signaled) or reduced due to an overpayment.

Legislation: Overpayments

Employment and Assistance Act, s 27 and

Employment and Assistance for Persons with Disabilities Act, s 18 are identical

Overpayments

27 (1)If income [or disability – EAPD s 18] assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2)The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3)

Alleged Overpayments
Reconsideration and Appeal rights

a) Reconsideration: Ministry decisions about overpayments can be reconsidered, both as to their existence and amount

- Existence: client can argue they do not owe any overpayment by showing they met the eligibility criteria for the benefits received
- Amount: client can argue the amount of overpayment is wrong, e.g. mis-calculated

b) Appeal to the EAAT: reconsideration decisions about overpayments can be appealed to the EAAT, but only as to their existence, not the amount

Compliance reviews

- Compliance reviews are conducted by PLMS to confirm past and present eligibility, pursuant to section 10 of the EA Act/EAPD Act.
- Cases selected for review at random or
  - based upon data matches (e.g. from CRA or EI)
  - fraud allegations from the public
  - Ministry staff also refer cases to PLMS in some situations where an alleged overpayment is based on client error e.g.
    - There is an alleged spousal or dependency relationship
    - There is a prior client-error overpayment on the file
- Investigations take on average 3-4 months

Administrative Fairness: Compliance reviews

- The Ministry is always required to provide its services in an administratively fair manner. This includes the compliance review process.
- Some limits on what information/verification can be requested:
  - Only information that is relevant to an eligibility issue can be requested
  - Requests cannot go back more than six years (limitation period issue)
  - People cannot be asked to produce documents that they cannot possibly obtain.
- Regs in effect at the time OP occurred may differ from current legislation.

Duty to accommodate

- BC's *Human Rights Code* applies to the Ministry at all times and prevails over Ministry practice, policy, and legislation.
- The Ministry has a legal duty to accommodate individual needs to the point of undue hardship where the need is based on a protected ground in the Code (such as disability).
- This may be relevant to overpayments and compliance reviews e.g. a person's disability might make it harder for them to understand reporting requirements or obtain requested documents.

Compliance Review policy

- The Ministry's Compliance Review policy sets out specific procedures to ensure requests for information and documents are administratively fair.
- If a client needs more time to get or submit documents, or a client needs help to do so, contact the Ministry and request it as soon as possible.
- Make pro-active accommodation requests: if the need for help or more time is related to a disability, advise PLMS and request the disability be accommodated by extending deadlines and/or having staff help obtain documents if needed.

Recent changes to sanctions

- Until December 31, 2019, the only sanction available to the Ministry if requested information was not provided as required was to cut a family unit off benefits until the info was provided.
- On January 1, 2020, the legislation was amended (see EA Regulation section 32 and EAPD Regulation section 28). Now, the Ministry may:
  - reduce a family unit's benefits by $25 per month; OR
  - declare them ineligible until they comply.
- Further, if satisfied that someone is homeless or at imminent risk of homelessness, the Ministry does not have the option to cut their benefits off.

Possible results of compliance reviews

1. No change in eligibility: client found eligible for all benefits received.
2. Administrative underpayment: client found to have received less than they were eligible for.
3. Client found to be ineligible for period under review, repayment required: Overpayments are repaid at $10/month unless client requests higher deduction.
4. Overpayment established and sanctions applied.
5. Case referred to Ministry Investigator or for criminal fraud charges under the Criminal Code or Employment and Assistance legislation.
6. Client found ineligible for assistance and Ministry file closed. If an overpayment is established, it will be collected by Revenue Services BC as a debt owed to government.

Client error or Ministry error

- Overpayments caused by Ministry error occur when a client reports all changes affecting eligibility properly, but human error or incorrect application of law or policy etc. leads to the the client receiving benefits they were not eligible for.
- Internal policy says the Ministry has discretion whether or not to collect overpayments that arose through no fault of the client, even though the EA Act and EAPD Acts treat all overpayments the same, regardless of cause. This is the Ministry's "estoppel" policy.

Estoppel Policy: Ministry error overpayments

- Estoppel policy comes from section 87 of the provincial *Financial Administration Act*
- Policy in effect only since February 1, 2019
- Where an estoppel defence applies, the overpayment cannot be collected
- Ministry policy requires staff who are establishing a Ministry error overpayment to consider whether an estoppel defence applies.
- The Ministry has an Estoppel Review Team. If an estoppel defence applies, the case is referred to a Ministry supervisor.
- Final decisions about whether an estoppel defence exists in a particular case are made by Debt Management in the provincial Financial Services Branch.

Overpayments and possible Criminal Charges

History:

From 2002 to August 1, 2015, legislation imposed an automatic lifetime ban on welfare eligibility on anyone who was convicted under the *Criminal Code* of welfare fraud

- About 185 people were convicted of criminal welfare fraud in that 13 year period. Many of them may not know the ban has been lifted.
- Other clients may think a lifetime ban still exists and this may discourage them from disclosing to the Ministry.
- The lifetime ban was eliminated in full as of August 1, 2015

Possible Criminal Charges (1)

- Fraud charges can be brought under the Criminal Code of Canada, or under the EA Act or EAPD Act.
- Guilty intent is required i.e. the accused acted knowingly and intentionally by deceit or falsehood.
- Criminal charges are relatively rare, but are serious.

Make PLMS aware of any disabilities related to non-reporting or mitigating circumstances as soon as possible, so client's lack of any criminal intent is clear.

If at any point a client has concerns about possible criminal charges (e.g. when considering a voluntary disclosure or other) refer them to a criminal lawyer for advice.

Possible Criminal Charges (2)

- The Ministry can contact Crown Counsel to recommend/request that charges be laid.
- If a client is charged with welfare fraud or a statutory offence under the welfare legislation, they should **apply for legal aid right away**
- Most criminal law lawyers are not familiar with welfare legislation. Offer them your assistance in understanding the situation.
- If a client is convicted of welfare fraud or a statutory offence, in addition to any criminal sentence (e.g. jail time and/or probation) they will have an "offence overpayment" with the Ministry

Convictions: Offence Overpayments (1)

Type of Conviction	Penalty	How long the penalty lasts
Criminal Code	$100 per month	Until what you owe is paid
Offence under the EA or EAPD Act first conviction (after August 1, 2015)	$100 per month	12 months (or until what you owe is paid, which ever is less)
Offence under the EA or EAPD Act, second conviction (after August 1, 2015)	$100 per month	24 months (if you owe less than $2400, until what you owe is paid)
Offence under the EA or EAPD Act, third conviction or more (after August 1, 2015)	$100 per month	Until what you owe has been paid

Convictions: Offence Overpayments (2)

The Ministry has a discretion not to apply the $100 minimum deduction for an offence overpayment in some circumstances, including where:

a) The Ministry is satisfied that the family unit is homeless or at risk of becoming homeless; OR
b) The Ministry is satisfied that the $100 deduction would result in danger to the health of a person in the family unit

Overpayments: Sanctions for Inaccurate/Incomplete Reporting (1)

- Where an overpayment arises from inaccurate or incomplete reporting, the Ministry "may" (i.e. has a *discretion* whether or not to) impose a sanction. See EA Act s 15., and EAPD Act s 14.1
- The possible sanction is a $25 reduction in the family unit's benefit rate.
- Duration of sanction varies:
  - 1st time: 3 months; 2nd time: 6 months; 3rd time or more: 12 months

Overpayments: Sanctions for Inaccurate/Incomplete Reporting (2)

- Sanctions policy: "*When applying sanctions, the ministry has the discretion to not apply a sanction where there are mitigating circumstances or the non-compliance is a one-time occurrence.*"
- In practice, Sanctions: Ministry staff ask, "did client fail to ensure accuracy"? Advocates ask, "did Ministry fail in its duty to consider all the circumstances"?
- If reporting problems were affected by a disability, provide evidence and request accommodation. Innocent mistake or confusion should also not lead to sanctions.
- A decision to apply a sanction can be reconsidered and appealed (independently of any decision about the overpayment).

Moving Forward Steering Committee (MFSC) PLMS Sub-Committee

- Quarterly meetings to "maintain regular, open communication between advocates and PLMS, to discuss best practice and systemic issues, to engage in collaborative problem-solving."
- Advocates can identify emerging trends or systemic factors that contribute to overpayments, and motivate the Ministry to be more pro-active in their approach, to reduce need for PLMS involvement and incidence of overpayments.

Moving Forward Steering Committee (MFSC) PLMS Sub-Committee (2)

- The Sub-Committee:
  - Provides feedback on Compliance Review policies and practice, e.g. timelines, accessibility, duty to accommodate, Covid response, cheque signaling, how sanctions are applied
  - Reflects on and recommends changes to PLMS, e.g. new role for QCS, Quality Consultations with clients, trauma and culturally informed practice for PLMS staff
  - Provide feedback on client letters, forms, pamphlets, e.g. Reconsideration and Monthly reporting brochures, file review and overpayment notification letters, Monthly Report Form (HR0081) and Consent to Disclosure + Service Authorization (HR 3189A)
- All advocates are encouraged to attend and participate. If you can't attend the meetings but wish to receive the minutes, send an email to either co-chair (Kellie Vachon, CRSQ) so they can add you to the list. But you don't need to be on the subcommittee to send questions, concerns or complaints to Sub-Committee's attention.

Fact Pattern

Walter Brown contacts your office because he is worried that he is not filling out his monthly reports properly.

During your intake interview you learn that Walter is a single man who lives alone and has the PWD designation. Walter tells you he has been working as a delivery driver for Skip the Dishes and Door Dash since February. When asked, Walter tells you that he has not been declaring his earnings as he does not have any paystubs and was confused by the monthly report. Walter does not know exactly how much he has earned but believes it is between $2,000 and $2,500 per month.

Walter also tells you that he applied for PWD due to a brain injury that left him with long term cognitive impairment.

1. **Gathering information/documentation**
2. **Providing information/advice**
3. **Advocating with the Ministry**

Thank you!

CLAS Community Legal Assistance Society

FIRST UNITED

dlc disability law clinic

BRITISH COLUMBIA

August 22, 2022

SR #: [redacted]
Case #: [redacted]

[redacted]
Vancouver, BC [redacted]

Dear [redacted]

Your file is being reviewed. These reviews ensure you are receiving the correct amount of assistance and that your information is accurate and up to date.

On **April 21 and July 5, 2022** the ministry asked you to give us information for our review of your file.

Information Needed

Our records show that you have not provided all of the information and more information is now required.

The checklist form included with this letter explains what we need to complete our review.

As part of your file review, you will need to submit the required documents with the attached File Review Checklist Form by **September 13, 2022**.

If you require additional time, please contact us at **1-866-217-1117**, or call my direct line at **778-693-2571**.

Once the documents have been submitted they will be reviewed and you may be contacted with a **request for additional information or for an interview**. Your information is collected by the ministry under the authority of Section 10 of the *Employment and Assistance for Persons with Disabilities Act.*

Your Assistance Payment

The required documents and the attached File Review Checklist Form are due by **September 13, 2022**.

The ministry will **hold** your assistance payment on **September 21, 2022** until you provide the information.

Review Outcomes

If you do not provide the information by **September 13, 2022**, the ministry may complete the review without your input. Your assistance may be stopped, reduced and/or we may determine an overpayment has occurred.

This review may result in no changes to your eligibility, an increase, decrease, or discontinuation of ongoing assistance, or a calculation of an underpayment or an overpayment. If there are no changes, your monthly assistance will remain the same.

Once the review is completed, we will:

- Advise you in writing
- Offer you an opportunity to discuss the decision
- Offer you an opportunity to request a reconsideration (appeal) of the decision (if applicable)

Questions or Help with Review Process

If you have questions or need help with any part of this process, please contact Prevention and Loss Management Services toll-free at **1-866-217-1117**, or call my direct line at **778-693-2571**. We will try to support you through the review process, including:

- Collecting required documents
- Submitting documents
- Providing additional time if necessary

For additional support you may wish to contact an advocate in your community. A list of community advocates can be found at www.povnet.org or at your local ministry office.

Sincerely,

[redacted]

Quality and Compliance Specialist
Prevention and Loss Management Services

Enclosure(s): File Review Checklist Form

Applicable legislation:

Employment and Assistance for Persons with Disabilities Act

Information and verification

10 (1) For the purposes of

(a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,

(b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,

the minister may do one or more of the following:

(e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;

(f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;

(g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

(4) If an applicant or recipient fails to comply with a direction under this section, the minister may

(a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or

(b) declare the family unit ineligible for income assistance, hardship assistance or a supplement for the prescribed period.

(4.1) The Lieutenant Governor in Council may prescribe circumstances in which subsection (4) (a) or (b) does not apply.

SR #: [redacted]

Case #: [redacted]

File Review Checklist Form

Please submit this completed form and the requested information by **September 13, 2022**. If this form is not submitted with your documents, your documents may not be processed on-time.

You can submit your documents using one of the following options:

- **Online:** Visit the My Self Serve online portal at **https://myselfserve.gov.bc.ca/**
- **By Mail:**
- **By Fax: 1-866-696-5002**
- **Drop off at your local office**

If you have questions or need help with any part of this process, please contact Prevention and Loss Management Services toll-free at **1-866-217-1117**, or call my direct line at **778-693-2571**. We will try to support you through the review process, including:

- Collecting required documents
- Submitting documents
- Providing additional time if necessary

Documents Required:

Confirmation of Current Address

This is my current address: [redacted]
Vancouver, BC[redacted]

☐ Yes

☐ No

New Address:

Confirmation of Shelter Arrangements and Expenses

If you rent, please submit document(s) confirming your **current address AND current rental amount**. You may have to submit more than one document for this.

Examples can include:

- ☐ A copy of your tenancy agreement
- ☐ Rent receipts from your landlord
- ☐ Bank statement(s) showing payments to your landlord
- ☐ Utility bills (e.g. hydro, phone) in your name for current address

OR If you own a home, please submit document(s) confirming your **current address AND current housing costs.** You may have to submit more than one document for this.
Examples can include:

- ☐ Mortgage statements
- ☐ Bank statements showing mortgage payments (may also include insurance payments)
- ☐ Property and insurance statements
- ☐ Annual property tax statement

If you also pay for utilities, in order to confirm your total shelter allowance, please submit documents indicating your utility costs (including fuel for heating or cooking, water, hydro, garbage disposal and cell or home phone).
Examples can include:

- ☐ Copy of your most recent utility bill(s)
- ☐ Bank statements showing utility payments
- ☐ Receipts for utility payments

OR if you have other housing arrangements, please attach documents comparable to examples above confirming your **current address AND housing costs**. You may have to submit more than one document for this. Please describe your other housing arrangements:

☐ I have submitted confirmation of my shelter arrangements and expenses (e.g. rental, mortgage and/or utility information) in the last 3 months and there have been no changes to these. I would like the ministry to use the information already on file. What was provided and when?

☐ My rent is currently paid directly to the landlord, there have been no changes to this, and I would like the ministry to use the information already on file.

Proof of all income
Pay verification slip missing:
2019: February, March, April, August, September, October, November, December
2020: January and February (or until end of work 2020)

Record of Employment for
2018 to current as applicable
Records of Employment can be requested from your current and previous employers or through Service Canada.

The Ministry of Social Development and Poverty Reduction operates under the authority of the *Employment and Assistance Act* and Regulations, and the *Employment and Assistance for Persons with Disabilities Act* and Regulations.

Ministry of Social Development and Poverty Reduction
4601 Canada Way
Burnaby BC, V5G 4X7
Phone: 1-866-217-1117
Fax: 1-866-696-5002
www.myselfserve.gov.bc.ca

Other

Please submit following information:

1. BMO Bank profile
2. TD Canada Trust bank profile and 90 day statement - or proof you do not hold an account there
3. Vehicle registration if you currently own a vehicle.

**if you wish to contact me with your advocate, please call my direct line.

☐ I would like my preferred method of communication to be updated to My Self Serve (check box if yes)

If you have questions or need help with any part of this process, please contact Prevention and Loss Management Services toll-free at **1-866-217-1117**, or call my direct line at **778-693-2571**. We will try to support you through the review process.

For additional support you may wish to contact an advocate in your community. A list of community advocates can be found at www.povnet.org or at your local ministry office.

BRITISH COLUMBIA

October 14, 2022

SR #: [redacted]
Case #: [redacted]

[redacted]
C/O
[redacted]
Vancouver, BC [redacted]

Dear [redacted]

Your file is being reviewed. These reviews ensure you are receiving the correct amount of assistance and that your information is accurate and up to date.

Review Process

As part of your file review, you will need to submit the required documents with the attached File Review Checklist Form by **November 7, 2022**. If you require additional time, please contact us at **1-866-217-1117**.

Once the documents in the attached File Review Checklist Form have been submitted, they will be reviewed and you may be contacted with a **request for additional information or for an interview**. Your file review and all information is collected by the ministry under the authority of Section 10 of the *Employment and Assistance for Persons with Disabilities Act.*

Review Outcomes

This review may result in no changes to your eligibility, an increase, decrease, reduction or discontinuation of ongoing assistance, or a calculation of an underpayment or an overpayment. If there are no changes, your monthly assistance will remain the same. Once the review is completed, we will:

- Advise you in writing
- Offer you an opportunity to discuss the decision
- Offer you an opportunity to request a reconsideration (appeal) of the decision (if applicable)

Questions or Help with Review Process

If you have questions or need help with any part of this process, please contact Prevention and Loss Management Services toll-free at **1-866-217-1117**. We will try to support you through the review process, including:

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Sincerely,

Quality and Compliance Specialist
Prevention and Loss Management Services

Enclosure(s): File Review Checklist Form

Employment and Assistance for Persons with Disabilities Act

Information and verification

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(a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,

(b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,

the minister may do one or more of the following:

(e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;

(f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;

(g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

(4) If an applicant or a recipient fails to comply with a direction under this section, the minister may

(a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or

(b) declare the family unit ineligible for income assistance, hardship assistance or a supplement for the prescribed period.

(4.1) The Lieutenant Governor in Council may prescribe circumstances in which subsection (4) (a) or (b) does not apply.

SR #: [redacted]
Case #: [redacted]

File Review Checklist Form

Please submit this completed form and the required documents, by **November 7, 2022**. If this form is not submitted with your documents, your documents may not be processed on-time.

You can submit your documents using one of the following options:

- **Online:** Visit the My Self Serve online portal at **https://myselfserve.gov.bc.ca/**
- **By Mail: #203-4601 Canada Way**
  Burnaby BC, V5G 4X7
- **By Fax: 1-866-696-5002**
- **Drop off at your local office**

If you have questions or need help with any part of this process, please contact Prevention and Loss Management Services toll-free at **1-866-217-1117**. We will try to support you through the review process, including:

- Collecting required documents
- Submitting documents
- Providing additional time if necessary

Documents Required:

Confirmation of Current Address

This is my current address: C/O [redacted]
Vancouver, BC [redacted]

☐ Yes
☐ No

New Address:

Confirmation of Shelter Arrangements and Expenses

If you rent, please submit document(s) confirming your **current address AND current rental amount**. You may have to submit more than one document for this.

Examples can include:

- ☐ A copy of your tenancy agreement
- ☐ Rent receipts from your landlord
- ☐ Bank statement(s) showing payments to your landlord
- ☐ Utility bills (e.g. hydro, phone) in your name for current address

OR If you own a home, please submit document(s) confirming your **current address AND current housing costs.** You may have to submit more than one document for this.
Examples can include:

- ☐ Mortgage statements
- ☐ Bank statements showing mortgage payments (may also include insurance payments)
- ☐ Property and insurance statements
- ☐ Annual property tax statement

If you also pay for utilities, in order to confirm your total shelter allowance, please submit documents indicating your utility costs (including fuel for heating or cooking, water, hydro, garbage disposal and cell or home phone).
Examples can include:

- ☐ Copy of your most recent utility bill(s)
- ☐ Bank statements showing utility payments
- ☐ Receipts for utility payments

OR if you have other housing arrangements, please attach documents comparable to examples above confirming your **current address AND housing costs**. You may have to submit more than one document for this. Please describe your other housing arrangements:

☐ I have submitted confirmation of my shelter arrangements and expenses (e.g. rental, mortgage and/or utility information) in the last 3 months and there have been no changes to these. I would like the ministry to use the information already on file. What was provided and when?:

☐ My rent is currently paid directly to the landlord, there have been no changes to this, and I would like the ministry to use the information already on file.

Bank Account Information

Do you have a bank account? ☐ Yes ☐ No

If yes, please submit the following:

- ▫ A printed confirmation of all sole or joint accounts, assets, or investments from each financial institution where you have an account:
  - o This printout can be requested from your financial institution and may be called a Customer Profile, Statement of Accounts, Bank Profile, or Account Summary
  - o The printout may include chequing or savings accounts, RRSPs, RESPs, pension funds, stocks, and any other type of asset or holdings
- ▫ A 90 day bank statement for **EACH** account appearing on the printed summary

☐ I have already submitted Statement of Accounts and corresponding bank statements in the last 30 days and would like the ministry to use this information. What was provided and when?:

☐ I would like my preferred method of communication to be updated to My Self Serve (check box if yes)

If you have questions or need help with any part of this process, please contact Prevention and Loss Management Services toll-free at **1-866-217-1117**. We will try to support you through the review process.

For additional support you may wish to contact an advocate in your community. A list of community advocates can be found at www.povnet.org or at your local ministry office.

MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION ADVOCATE CONSULTATION PROCESS

Regional: see the CRSQ list on the reverse – there are regional calls on a regular basis, where the Ministry Chair is the CRSQ for the region. All advocates are encouraged to attend!

MOVING FORWARD STEERING COMMITTEE: meets quarterly to discuss policy issues

Anita LaHue, Ministry Co-Chair Anita.LaHue@gov.bc.ca;

Tish Lakes, Advocate Co-Chair tishlakes@okadvocate.ca

Subcommittees of the Moving Forward Steering Committee – work on specific issues identified by the steering committee as requiring more attention

1. CPPD (Canada Penson Plan Disability)

   Peta Poulton, Ministry Co-Chair Peta.Poulton@gov.bc.ca ;

   Paul Lagace, Advocate Co-Chair advocate.pruac@citywest.ca

2. HEALTH BENEFITS

   Peta Poulton, Ministry Co-Chair Peta.Poulton@gov.bc.ca ;

   Caitlin Wright, Advocate Co-Chair CWright@taps.bc.ca

3. PLMS (Prevention Loss Management Services)

   Kellie Vachon, Ministry Co Chair;

   Sonia Marino, Advocate Co-Chair smarino@firstunited.ca

4. CONSENT TO DISCLOSURE FORM (response to specific need and not currently active)

   Kellie Vachon, Ministry Chair Kellie.Vachon@gov.bc.ca

MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION

COMMUNITY RELATIONS AND SERVICE QUALITY (CRSQ) MANAGER CONTACT LIST

(September 20, 2022)

Work Unit (All Provincial Issues)	Community Relations and Service Quality Manager (CRSQ)	PHONE	GEOGRAPHIC AREA (Includes Ombudsperson Investigations & MySS Apps)
INTAKE (Applications general)	Michele Lauzon Michele.Lauzon@gov.bc.ca	Mobile: 604 760-4471	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
	John Bethell John.Bethell@gov.bc.ca	Mobile: 604 512-5487	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
CRSQ ISSUES SUPPORT SDSI.IssuesSupport.CommunityRelationsandServiceQuality@gov.bc.ca	Steven Clayton Steven.Clayton@gov.bc.ca	Mobile: 604-785-2506	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
	Kellie Vachon Kellie.Vachon@gov.bc.ca ***(PLMS: Section 10 liaison)***	Mobile: 604 999-6476	Interior
	Mira Culen Mira.Culen@gov.bc.ca (A/CRSQ till January 13, 2023)	778 698-5993	Vancouver Island
Health Assistance, HEALTH SUPPLEMENTS MEDICAL TRANSPORTATION CONTACT CENTRE (Includes ACE & Bus Pass) Specialized Services*: *Employment Plans & Reconsiderations	Peta Poulton Peta.Poulton@gov.bc.ca	Mobile: 250-203-6311	Vancouver Island
SPECIALIZED SERVICES: Funeral Assistance, Special Care Facilities, Case Review Team, OAS/GIS, Seniors Supplement, etc.	Pennie Smith Pennie.Smith@gov.bc.ca (A/CRSQ till January 7, 2023)	250 734-4867 Mobile: 236 628 2193	Northern
SPECIALIZED SERVICES: Funeral Assistance, Special Care Facilities, Case Review Team, OAS/GIS, Seniors Supplement, etc.	Ian Harrower Ian.Harrower@gov.bc.ca	250 649-2624 Mobile: 250 961-5501	Northern
	Ann Evans Locker Senior Manager, Stakeholder Relations	778-974-4067 Mobile: 250 896-3323	

Please note: To streamline responsiveness, Lower Mainland, Fraser and Vancouver Coastal geographic issues are managed collectively through one mailbox: **Lower Mainland MCRSQ mailbox** (Lowermainland.MCRSQ@gov.bc.ca) to be used by Lower Mainland stakeholders and ministry staff only, as the preferred method of contact. Stakeholder queries sent to the mailbox will be responded to by the first available MCRSQ as soon as possible.

Date: 19980316
Docket: A970338
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the Matter of the ***Judicial Review Procedure Act***
R.S.B.C. 1979, c.209

and

In the Matter of Order in Council 1179/96 Made pursuant to the
B.C. Benefits (Income Assistance) Act

BETWEEN:

DAVID STOW

PETITIONER

AND:

THE ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE FRASER

David Stow, the Petitioner:	In Person
Counsel for the Respondent:	Sarah Macdonald
Place of Hearing:	Vancouver, B.C.

[1] The petitioner, David Stow, seeks an order, pursuant to the ***Judicial Review Procedure Act***[1], declaring that s.7(3) of Schedule A to the B.C. Benefits (Income Assistance) Regulations[2] is *ultra vires* the Lieutenant Governor in Council.

[2] According to the written submissions of counsel for the Attorney General, Mr. Stow also seeks an injunction against the Minister of Human Resources of the Province of British Columbia, although I cannot find in the Court file any other documentation of that.

[3] Counsel for the Attorney General did not concede but raised no objection to the standing of Mr. Stow to bring the application and did not contend that the issue was moot.

[4] It is common ground that the provisions of the ***B.C. Benefits (Income Assistance) Act*** and its regulations govern the outcome. While they did not come into force until October 1996, the situation of Mr. Stow remained extant until they did. References to legislation in this decision conform to the Revised Statutes of 1996.

THE FACTS

[1] R.S.B.C. 1996, c. 241

[2] O.I.C. 1179/96; B.C. Gazette 272/96

[5] Mr. Stow "finished school", which I take to be college or university, at the end of June 1996. He had been living for "several years" in a rented room as a month-to-month tenant in a house at 4140 West 10th Avenue, Vancouver, where the kitchen and washroom were shared. I gather there were a number of other occupants.

[6] So far as he was concerned, he was the tenant of one of the other occupants of the house, who had rented it from the owner. He did not have a written tenancy agreement with that person, nor with the property owner.

[7] When he met in August 1996 with Rose Crocker, a Financial Assistance Worker at the Kitsilano Social Services office, to put forward his application for income assistance, he had a receipt from the head tenant for the rent he had paid for July. This was not good enough for Ms. Crocker and she denied shelter benefits to Mr. Stow. She told Mr. Stow that he needed a written tenancy agreement, signed by the property owner, which listed the names of all the occupants and the amount of his rent. In taking this stance, Ms. Crocker appears to have applied either her own or the Ministry's interpretation of s. 7(3).

[8] Susan Broadfoot, Area Manager in Region A of the Ministry of Social Services, wrote a letter to Mr. Stow on 6th September 1996, which stated, in part:

> Your worker has requested you submit documentation from the landlord of the premises (as defined by the Residential Tenancy Act) in order that ministry may provide you this allowance. You have not done this.

[9] A letter of 18th September 1996, written by Rose Crocker directed to "To Whom it May Concern", stated:

> As per policy, Mr. Stow was advised to provide a current tenancy agreement, an intent to rent form or a letter from the legal landlord to confirm accommodations and determine shelter eligibility.

[10] But how to obtain any such document? Leah M.K. Bailey, Director of the Residential Tenancy Head Office of the Ministry of Attorney General, wrote to Mr. Stow on 17th October 1996. She said that, while there was a requirement for a written tenancy agreement under the ***Residential Tenancy Act***[3], that requirement only came into force on 1st July 1996. She concluded:

> Therefore, there is no requirement under the legislation that your landlord provide a written tenancy agreement for a tenancy which, as in your case, was established prior to that date.

This statement of the law was not challenged by counsel for the Attorney General.

[11] Because the line worker, Ms. Crocker, would not accept the rent receipt from the head tenant as sufficient, Mr. Stow was unable to pay his rent for West 10th Avenue and had to move to

[3] R.S.B.C. 1996, c. 406

a room in the Niagara Hotel, in downtown Vancouver. The hotel provided rent receipts which the Ministry accepted, triggering his eligibility for a shelter allowance. Mr. Stow would rather have stayed at West 10th Avenue.

ANALYSIS

[12] Section 7(3) of Schedule A of the B.C. Benefits (Income Assistance) Regulations reads as follows:

> 7.(3) If 2 or more people, none of whom is the spouse of the other, or 2 or more families
> (a) share a common dwelling, and
> (b) state and indicate by their actions that they are not sharing their income and household responsibilities as in a marriage or a commune,
> the administering authority, in order to determine the shelter costs, will divide the actual shelter costs by the number of people occupying the common dwelling.

[13] Mr. Stow did a good deal of research and presented his application with intelligence and dignity. However, his sincerity and his rightful sense of grievance does not alter the reality that he has misconceived the ramifications of what occurred. This is nothing for him to be embarrassed about, given that the law of judicial review is challenging even to those trained in the law.

[14] Section 24 of the ***B.C. Benefits (Income Assistance) Act***, authorizes the Lieutenant Governor in Council to make regulations "prescribing rules for determining the rate or

amount of income assistance." I agree with counsel for the Attorney General that s. 7(3) of these regulations falls within the authority conferred by s. 24. It may be said, as well, that the Government of British Columbia has a very legitimate interest in establishing mechanisms to ensure that public money is spent prudently.

[15] I also agree with counsel for the Attorney General that s. 11 of the ***Crown Proceeding Act***[4] is a bar to injunctive relief in this case.

[16] It must be assumed that the Lieutenant Governor in Council, in enacting s. 7(3), gave its recognition to perceived complications for line workers in assessing the situations of income assistance applicants who are sharing accommodation.

[17] However, given the industry and goodwill demonstrated by Mr. Stow, I have decided to make some observations concerning the ***Act*** and the Regulations.

[18] It may be said, first, that s. 7(3) resists easy interpretation. What is a "common dwelling"? The term is not defined, either in the ***Act*** or Regulations. On the evidence, the occupants of the West 10th Avenue house shared a kitchen and bathroom. Did that make the house a common dwelling?

[4] R.S.B.C. 1996 c. 89

Given the diversity of arrangements in marriages and communes, how could an applicant state and indicate by his or her actions that he or she is not "sharing their income and household responsibilities as in a marriage or a commune"? What if the personal spaces allotted to occupants of a common dwelling differ? For example, if one occupant of the West 10th Avenue house had an ensuite bathroom and none of the others did, leading to a higher rent for the occupant with the bathroom, how could dividing the "actual shelter costs by the number of people occupying the common dwelling" achieve a fair result?

[19] The real issue disclosed by this case is the level of documentation which the Ministry may impose on income assistance applicants. Section 8(1) of the ***Act*** requires an applicant for income assistance to supply information, to seek verification of information and to supply verification of information. My conclusion is that these obligations do not go so far as to justify the denial of benefits to an applicant who is willing to but who cannot supply the information or the verification the Ministry would like to see.

[20] Mr. Stow speculates that the purpose of s.7(3) of Schedule A "is to prevent a tenant from renting to someone who receives Income Assistance a room or part of a dwelling for more than the tenant pays to the landlord for the same part of a dwelling." In general terms, this seems acute. The Ministry would not, I think, approve of an income recipient turning a

profit on a shelter allowance. But there are practical problems. The owner of the West 10th Avenue house refused to provide documentation. One may ask, why should he or she? He or she was leasing the house to one of the occupants, whom I would characterize as the head tenant. The rent paid by the head tenant to the owner may have had no bearing on the rent charged by him or her to subtenants.

[21] Ms. Crocker refers in her letter of 18th September 1996 to the "legal landlord." This seems to mean, in her view or the view of the Ministry, the registered owner of the premises being occupied. I see no basis in the ***Act*** or Regulation for this interpretation. From the vantage of Mr. Stow, the head tenant was his landlord. I note that the definition of "landlord" in the ***Residential Tenancy Act*** includes "a lessor, sublessor, owner or other person permitting the occupation of residential premises." The expression "legal landlord", whatever it may be taken to mean within the Ministry, has no meaning in law. I conclude that the receipt from the head tenant was a receipt from Mr. Stow's landlord.

[22] As I interpret the interpret the ***Act*** and the Regulations, the Minister is entitled to employ a formula for the amount of benefits, no matter how arbitrary. On the other hand, nothing in the ***Act*** or Regulations can be interpreted to require an applicant for income assistance to produce documents which, for him or her, are impossible to produce.

[23] As I interpret s. 7(3), once an application for income assistance is made, and a legitimate receipt for rent is produced, it is the line worker's obligation to make such inquiries as are necessary to fulfill the requirements of s. 7(3).

THE DELEGATION ISSUE

[24] Mr. Stow observed that s. 48.1 of the ***Residential Tenancy Act*** provides that a landlord must not discriminate against a tenant based on a lawful source of income. He characterized the refusal of the owner of the home as just that. He also characterized the requirement by Ms. Crocker of a receipt from the owner as an impermissible delegation of power from the Ministry to the landlord.

[25] Given my interpretation of the ***Act*** and Regulations, this contention cannot succeed. It was not the owner of the property who had the power of decision, it was Ms. Crocker.

CONCLUSION

[26] The application is dismissed. In the circumstances, there will be no award of costs.

"FRASER, J."

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Discussion of Income Assistance and PWD Fact Patterns

Andrew Robb; Caitlin Wright

A session for new advocates to work with experts in the field on sample fact patterns on income assistance and PWD issues.

Income Assistance Overview

Presented by Thea McDonagh of Together Against Poverty Society (TAPS)

Presentation Overview

- *Introduction*
- *Ministry of Social Development & Poverty Reduction*
- *Application For Income Assistance*
- *Barriers To Eligibility For Income Assistance*
- *Categories & Rates of Assistance*
- *Living Arrangements & Dependency*
- *Income & Assets*
- *Supplements*
- *Appeals*

taps TOGETHER AGAINST POVERTY SOCIETY
Equity, Justice & Dignity

Tenant Advocacy
Income Assistance Advocacy
Volunteer Disability Advocacy
Employment Standards Advocacy
Litigation Project
Public Legal Education
Income Tax Preparation

Largest anti-poverty group on Vancouver Island
Individualized & Systemic Advocacy

Ministry of Social Development & Poverty Reduction (MSDPR)

Income Assistance or "Welfare"

- BC Employment and Assistance Program (BCEA)
  The BCEA program *"assists British Columbians by helping people move from income assistance to sustainable employment, and by providing income assistance to those who are unable to fully participate in the workforce."*

Legislative Authority

- Employment and Assistance Act & Regulation
- Employment and Assistance for Persons with Disabilities Act & Regulation
- MSDPR Policy & Procedures …. Remember policy is not law
- Also: Interpretation Act, BC Human Rights Code

MSDPR: Vision, Mission & Principles

- ***Employment before assistance***
- ***A work-first approach***
- ***Personal responsibility***
- ***Active participation***

The BCEA is the payor of last resort. Applicants must pursue all other sources of available income and be actively pursuing employment as a condition of continued eligibility.

MSDPR: Divisions

Service Delivery

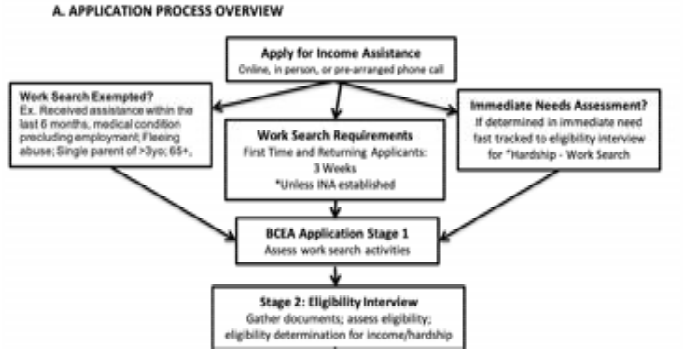
- Provincial Contact Centre
- Intake & General Supplements
- Local Office Services & Outreach
- Health and Specialized Services Branch
- Prevention and Loss Management Services
- Engagement, Partnerships & Strategic Initiatives (includes regional CRSQ Managers)

MSDPR: Contacting?

1-866-866-0800

- Ombudsperson Investigations
- ACE line - SDSI.AdvocateClientEnquiries@gov.bc.ca
- Local Supervisors, Assistant Supervisors & Outreach
- MSDPR Community Relations & Service Quality Managers
  - *Intake*
    Michele.Lauzon@gov.bc.ca 604-760-4471 (Lower Mainland)
  - *Contact Centre, Specialized Services, HAB*
    Nadia.Bouhouali@gov.bc.ca 250 507-4502 (Vancouver Island)
  - *CRSQ Issues Support*
    Kelly.Vachon@gov.bc.ca 604-999-6476 (Interior and Northern BC)
  - *Specialized Services*
    Ian.Harrower@gov.bc.ca 250-961-5501 (Interior and Northern)
  - *Senior Manager, Stakeholder Relations*
    Ann Evans Locker: 250 896-3323

Applying for Income Assistance



Applying for Assistance: Work Search Requirements

Exemptions - s. 4.1(4) of the Regulation:

- cannot legally work in Canada
- is 65 years or older
- Has a physical or mental condition precluding employment search
- is fleeing an abusive spouse or relative
- sole applicant with dependent child under 3 years old
- is applying for Medical Services Only (MSO)

Applying for Assistance: Immediate Needs Assessment

Applicants who are in immediate need of assistance may be eligible for an "Immediate Needs Assessment". Applicants are considered in immediate need if they have:

- ***An immediate need for food***
  - The availability of food banks does not negate this need
- ***An immediate shelter need***
  - Including impending eviction, utility disconnect, lack of suitable housing. Availability of shelters does not negate this need.
- ***An immediate need for urgent medical attention***
  - Including prescriptions, medical supplies, needing medical transportation

Applying for Assistance: Persons Fleeing Abuse

Exempt from:

- Work search requirement
- Employment Obligations
- Some citizenship requirements
- Eligibility decision is expedited

Requirements:

- No verification of violence necessary, disclosure sufficient
- Immediate safety needs of the client and any dependent children are met
- Not limited to physical violence

Applying for Assistance: Homeless Indicator & Application Protocol

MSDPR defines homelessness as:

- Living in public spaces or shelters for more than 30 days
- Brought to MSDPR by BC Housing Outreach

- **Same day service**
- **Homeless indicator set**
- **Employment plans**

MSDPR: Duty to Accommodate

What is the "duty"?

- Equal treatment ≠ Equity
- MSDPR "Individualized Case Management Policy"
- To the point of undue hardship

What can you do as an Advocate?

- Work together with client to identify need
- Request accommodation – specifics help
- New "accommodation alert" on client files

Barriers to Eligibility

Eligibility Criteria

- Identity Established
- Citizenship Requirements
- Resident of BC
- No Warrants
- Dependency Relationships
- No Full-time Students
- Other Income First
- Asset levels
- Employment Obligations
- Information Provided

Other Barriers

- Literacy
- Accessibility
  - Physical
  - Technological
- Capacity/Cognitive Barriers

Barriers to Eligibility: Citizenship Requirement

Requirements

- a Canadian citizen
- a permanent resident
- a protected person (Convention refugee or person in need of protection)
- in Canada on a Temporary Resident Permit
- a refugee claimant
- under a removal order that has been stayed or cannot be executed
- a dependent child

Exemption

s. 7.1 very limited exception, rarely applicable

Barriers to Eligibility: Outstanding Warrants

Requirement

- Outstanding warrant under *Immigration & Refugee Protection Act* or offence prosecuted by **indictment**
- In practice captures even minor offenses

Exceptions

- Remaining family members still eligible
- 18 or under, pregnant, or end-stage disease

Repayable Assistance if undue hardship AND dealing with warrant.

Transportation Assistance to help address warrant

Barriers to Eligibility: Employment Plans

Requirement

- all employable clients are required to comply with an EP as a condition of their eligibility
- EP requirement only waived for clients with a physical or mental condition that precludes them
- S. 29 of the Regulation provides list of recipients without employment obligations
- Decisions regarding conditions of an EP cannot be appealed but may be reconsidered
- Ministry can apply sanctions if employment obligations not met

Employment Sanction Scenario

Rosie and Tom

Barriers to Eligibility: Information Obligations

Requirement:

S. 10: Information & Verification

S. 11: Reporting Obligations

Consequence:

- Ineligibility or reduction

Section 10 "Compliance Review" How Can you Advocate?

- Duty to Accommodate
- Overpayment Calculations/Challenges

"Verification must balance the ministry obligation to verify a client's circumstances in order to assess their eligibility with a commitment to respecting the client's right to privacy and to be treated with respect and dignity"

Categories & Rates of Assistance

At a glance…

- **Hardship Assistance**
- **Regular Assistance**
- **Persons With Persistent Multiple Barriers to Employment (PPMB)**
- **Persons With Disabilities (PWD)**

Income Assistance Rates

Support Allowance

- Food
- Transportation
- Clothing
- Non-eligible Medical Expenses
- Other Expenses
  - Personal Hygiene
  - Debt Repayment

Shelter Allowance

- Rent/Mortgage
- Strata Fees
- House Insurance
- Property Tax
- Fuel
- Hydro
- Water
- Landline phone
- Garbage Disposal

Hardship Assistance

Awaiting EI Benefits

Awaiting Other Income

Assets in Excess *only for families w dependent children*

Strike/Lockout

Income in Excess *only for families w dependent children*

Immediate Need – Work Search Required

Sponsorship Undertaking Default

Identity Not Established

SIN Required

Many types of hardship are ***repayable***, meaning someone must agree in writing to repay the amount provided before hardship is issued

Regular Assistance

Employable

- EP = Employment Program or Independent Work Search
- Basic Medical & Emergency Dental
- $500 Earnings Exemption

Expected to Work – Medical Condition

- Temporary medical condition obstructs, impedes or prevents participation in employment
- EP = Mandatory activities to improve employability

All Family Units with a dependent child

- $750 Earnings Exemption

All Family Units with Disabled Child

- Unable to work more than 30hrs/wk due to child caregiving
- $900 Earnings Exemption

No Employment Obligations

- Employable, but temporary exemption from employment obligations

PPMB

Eligibility Criteria

- Health Condition
  - Lasted for > 1 year
  - Likely to continue for > 2 years
  - Seriously impedes ability to work

  PLUS
  - One additional barrier

Eligible For

- Increased assistance rate
- Schedule C Health Benefits … MSO eligible
- $900 Earnings Exemption

PWD

Eligibility Criteria

- 18+
- Minister is satisfied the condition is severe
- Medical Practitioner/Assessor's opinion
  - Duration: 2 years or more
  - Directly & significantly restricts ADLs continuously or periodically for extended periods
  - Requires assistance due to restrictions

Eligible for

- Increased Assistance rate
- Schedule C Health Benefits and MSO
- Transportation Support Allowance/bus pass
- Earnings Exemption $15,000/year

Prescribed Class – applicants enrolled in BC PharmaCare Plan P, MCFD At Home Program, CLBC, or CPP-D

Living Arrangements

Room & Board Situations

- Common areas shared with the landlord AND meals provided
- Not necessarily a good deal…

Renting

- Verification not limited to tenancy agreement or shelter form
- Should not be denied because verification provided by someone other than the landlord or registered property owner.

Homeowners

- Actual costs of repairs if pre-approved

Dependency Scenario

Arwen

Co-Habitation & Dependency

The *Act* defines as **spouses** as:

Meaning of "spouse"

1.1 (1) Two persons are spouses of each other for the purposes of this Act if

(a) they are married to each other,

(b) they declare to the minister that they are in a marriage-like relationship, or

(c) they have resided together for at least the previous 12 consecutive months and the minister is satisfied that the relationship demonstrates

(i) financial dependence or interdependence, and

(ii) social and familial interdependence

consistent with a marriage-like relationship.

Income

Earned Income

- Any money or value received from
  - Employment
  - Refunded Pension Plan Contributions
  - Rental of Rooms or Boarders

Unearned Income

- Everything else

Income Exemptions

Schedule B s. 1(a)

- Income earned by a dependent child attending F/t school
- BC Early Childhood Tax, Benefit Basic Child Tax, GST Credit, Income Tax Return
- Universal Child Care Benefit
- Redress & Criminal Injury Payments
- Rent Subsidies
- Money from RDSP
- Child Support
- CPP Orphan's benefit
- CPP Disabled contributor's child benefit

Schedule B s. 7
(unearned income)

- interest from a mortgage on/agreement for sale of previous place of residence if interest is for the amount owing on the purchase or rental of current residence
- $50 of monthly Federal Department of Veterans Affairs benefits
- criminal injury compensation award or other award, except the amount that would cause assets to exceed limit
- Maternity and parental benefits, or special benefits for parents of critically ill children paid under the *Employment Insurance Act*

Loans, Credit & Gifts

Loans

- Cash loan neither earned nor unearned income. When received is an non-exempt cash asset. If no repayment terms at time of loan then it is considered a gift.

Gifts

- Unearned income
  - **IA** – non-recurring gifts are exempt
  - **PWD** – all gifts exempt

Assets

- **Cash**
- **Equity in property**
- **Equity in investments or other financial instruments**
- **Equity in trust where recipient has control over disbursements**

Assets are only assets if they can be converted into cash. "Convert" refers to the "ability" to sell the asset. Whether it is convertible is the responsibility of MSDPR staff to decide. The onus is on the applicant/recipient to provide documentation that the asset could not be sold.

Assets

	Income Assistance		Disability Assistance	
	Single	Couple, and One or Two Parent families	*Family Unit with One PWD Designation	Family Unit with Two PWD Designations[1]
Basic Limits				
Cash/Savings	$5,000	$10,000	*$100,000	*$200,000
Vehicle	*Exempt: One vehicle used for day to day transportation needs		*Exempt: One vehicle used for day to day transportation needs	
Registered Savings and Trusts Limits				
Redeemable RRSP	Same treatment as cash/savings. Basic limits apply (see above)		Same treatment as cash/savings. Basic limits apply (see above)	
Non-Redeemable RRSP	Exempt – see Assets & Exemptions		Exempt – see Assets & Exemptions	
RESP	Exempt/No limit		Exempt/No limit	
Trusts	Trust asset limits only apply to individuals on IA if they are receiving accommodation or care in a private hospital or a special care facility		Non-Discretionary: $200,000 *contribution Discretionary: No limit	
Trust Withdraw			See Trusts	
RDSP	Not Applicable		No limit	
RDSP *Payment			RDSP disbursement is exempt even if it is converted to a non-exempt asset. It is the client's responsibility to clearly document that the funds originated directly from an RDSP.	
Self-Employment/Business Assets				
Self-Employment/ Business Asset	For both Income Assistance and Disability Assistance recipients participating in the ministry's Self-Employment Program, please see the policy Self-Employment Program for PPMB and PWD			

Exempt Assets

- Clothing, necessary household items
- One motor vehicle
- Place of residence
- Money received from mortgage on or agreement of sale of place of residence if:
  - Applied to amount owing on current place of residence
  - Used to pay rent for current place of residence
- Uncashed Life Insurance Policy (max $1,500)
- Tax refund, tax credit, child tax credit, BC Early Childhood tax
- RDSP
- Redress & Criminal Injury compensation payments

Income/Assets Scenario

Gimli

Assets: Trusts for PWD

Eligibility

- Discretionary Trusts
- Non-Discretionary Trusts
- TFSA (if governed by trust agreement)
- Temporary asset exemption available for applicants who are over the asset limit

Disbursements

- Buying a place of residence for the client,
- A contribution to a Registered Education Savings Plan,
- A contribution to an *RDSP*, or
- Disability-related costs
  - devices/medical airs
  - caregiver & other services
  - education and training
  - renovations/maintenance
  - **any other item or services that promotes independence**

Supplements - General

Crisis Supplement

- Unexpected Need
- No Resources
- Imminent Danger or Removal of Child

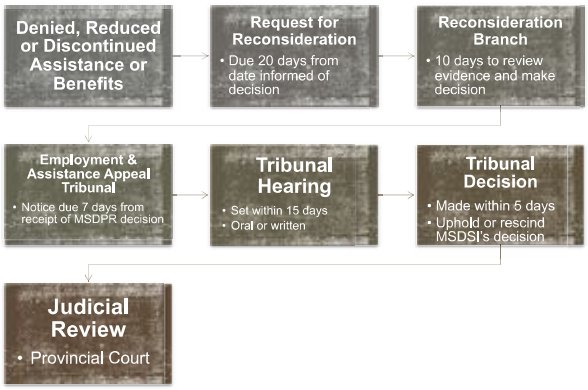
Health Supplements

- Schedule C – must meet health supplements general criteria & specific item criteria
- MSO

Moving Supplements

- Confirmed employment
- Reduced shelter costs
- Improved living circumstances
- Compelled to vacate
- Imminent threat
- Child protection hearing
- Maintenance order

Appeals



Appeals: Administrative Law

Principles of Administrative Fairness

- Fair and just decisions
- Consistency
- Timeliness
- Finality
- Accessibility
- Cost-efficiency

Principles of Natural Justice

- Impartial and independent of the results of the hearing
- Not have assisted in the original decision
- Right to present and hear the case against them
- Same information available to the parties about the case
- Right to question and reply to witnesses or evidence
- Hearing the case makes the decision on the outcome

Request for Reconsideration

Timelines

- **20 business days** from date informed of MSDPR decision
- Extension of "**10 business days**" from MSDPR adjudication deadline

What to Include

- Argument/Submission
  - Applicable Legislation, MSDPR Policy & Procedures
  - Facts/Background
  - Argument
  - Legal Considerations: Principles of Statutory Interpretation
- ALL relevant Information & Evidence

Appeal: EAAT

Timelines

- **7 business days** to file Notice of Appeal after receiving Reconsideration decision
- Hearing set within **15 business days**
- Decision made within **5 business days of Hearing**

What to Include?

Was the MSDPR's decision:

- Reasonably supported by the evidence; or
- A reasonable application of the legislation given the circumstances of the recipient/applicant
- All relevant evidence (including new evidence)

Questions?

The Persons with Disabilities (PWD) Designation

Law Foundation Legal Advocate Training Course
Wednesday, May 26, 2021

1

Overview

- What is PWD?
- Who is eligible?
- What is the advocate's role in the application process?
- What is the advocate's role in the request for reconsideration?
- The Employment and Assistance Tribunal
- Resources
- Questions

2

What is PWD?

- PWD is a provincial government benefit administered by the Ministry of Social Development and Poverty Reduction (MSDPR)
- MSDPR also administers income assistance and persons with persistent multiple barriers to employment benefits (PPMB)

Derek takes on applying for PWD!

3

How much do you get?

Unit Size	Support Rate A	Support Rate B	Support Rate C	Support Rate D	Shelter Maximum
1	*$665.42	N/A	N/A	N/A	$375.00
2	*$1,377.56	*$1,033.06	*$1,124.00	*$1,626.06	$570.00
3	*$1,471.56	*$1,947.06	*$1,124.00	*$1,720.06	$660.00
4	*$1,471.56	*$1,947.06	*$1,124.00	*$1,720.06	$700.00
5	*$1,471.56	*$1,947.06	*$1,124.00	*$1,720.06	$795.00
6	*$1,471.56	*$1,947.06	*$1,124.00	*$1,720.06	$795.00
7	*$1,471.56	*$1,947.06	*$1,124.00	*$1,720.06	$820.00

4

Additional benefits with PWD

- Monthly transportation supplement - $52 cash or bus pass
- May be eligible for additional health supplements such as a Monthly Nutritional Supplement or Diet Supplement
- PWD may also help clients qualify more easily for secondary programs such as Fuel Tax Refund Programs or travel supports for people with disabilities

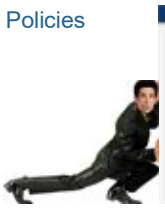
5

Annual Earnings Exemption

- Under PWD, a person can still work and earn money up to a certain amount
- Earnings exemption applies to money earned from January 1 to December 31 of any given calendar year
  - Remaining exemption does not carry over
  - Any money earned over annual exemption amount is deducted from assistance
- Current exemptions as of 2021:
  - $15,000 for a single person with PWD designation
  - $18,000 for a family with two adults where only one person has PWD designation
  - $30,000 for a family where both adults have PWD designation
- Monthly reports for income by the fifth of every month

6

Rules and Policies



https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual
OR
Search for "PWD policy manual"

7

Preliminary requirements for PWD

- Established through the Ministry's MySelfServe online Application
  - Income and asset test
  - Citizenship and residency requirements
  - Family Composition requirements
  - Age requirements

8

Who is eligible for PWD?

- Must be at least 18 years old
- Must be a BC resident who is a Canadian citizen or permanent resident
- Person has a severe mental or physical impairment that
  - In the opinion of a **medical practioner** or **nurse practitioner** is likely to continue for **at least 2 years**, *and*
  - In the opinion of a **prescribed professional**
    - **Directly** and **significantly** restricts the person's ability to perform **daily living activities** either **continuously** or **periodically** AND
    - as a result of these restrictions, the person ***needs help*** to perform those activities

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What are daily living activities?

- Daily living activities in relation to a severe physical or severe mental impairment, it means
  - Preparing own meals
  - Managing personal finances
  - Shopping for personal needs
  - Using public or personal transportation
  - Performing housework that is needed to make their residence sanitary
  - Performing self-care and personal hygiene
  - Managing personal medication
- Daily living activities in relation to a severe mental impairment includes
  - Making decisions about personal activities, care, or finances
  - Relating to, communicating, or acting with others effectively

10

Medical Eligibility

- In most cases medical eligibility for PWD will turn on whether the Ministry agrees the application establishes:
  - A severe physical or mental impairment
  - Direct and significant restrictions to daily living activities
  - That helped is needed from another person, an assistive device, or an assistance animal

11

Examples of Common Disabling Conditions

- Arthritis
- Degenerative disk disease, and other back problems
- Heart disease
- Fibromyalgia/myalgic encephalomyelitis and chronic fatigue syndrome
- Acquired brain injuries, or other acquired injuries
- Depression/anxiety
- Trauma
- Substance dependence

Unfamiliar disabling condition?

12

Prescribed Classes

- A person who is enrolled in **Plan P (palliative care)** under the Drug Plans Regulation
- A person who was determined at any time to be eligible for payments made through the Ministry of Children and Family Development's **At Home Program**
- A person who has at any time been determined by **Community Living BC** to be eligible to receive community living support, or whose family has at any time been eligible for community living support to assist them.
- A person who is considered to be disabled under the ***Canada Pension Plan***

13

The Advocate's Role

Application for PWD Designation

14

PWD Application Guiding Principles

- The application should help the Ministry adjudicator to understand the applicant's
  - Disabling conditions
  - Severity and frequency of symptoms
  - Nature of restrictions to Daily Living Activities
  - Support needs
- Strive for consistency between all sections of the application

15

Applicant's Report – Section One

- Application Information
- Description of Applicant's Disabilities
- Effect of Applicant's Disabilities on Life and Ability to Care for Self
- Signature and Consent

16

Conducting an interview with your client

- Building rapport and discussing sensitive topics
- Conducting a thorough interview and understanding your client's experience of their disabilities
- The "bad day" perspective
- Keeping the client's doctor in mind

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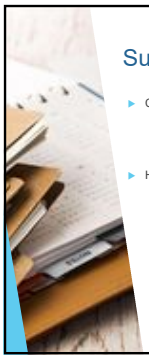

Supporting Medical Documentation

- Credibility
  - Who is the document from?
  - What is the relationship to the applicant?
  - Are they competent to speak to the information provided?
- Helpfulness
  - Is the information likely to help in determining if the applicant is eligible?
  - Is the information reasonably current?
  - Can the information provided be understood by an ordinary person?
  - Is there any possibility that the information will harm the applicant's application?

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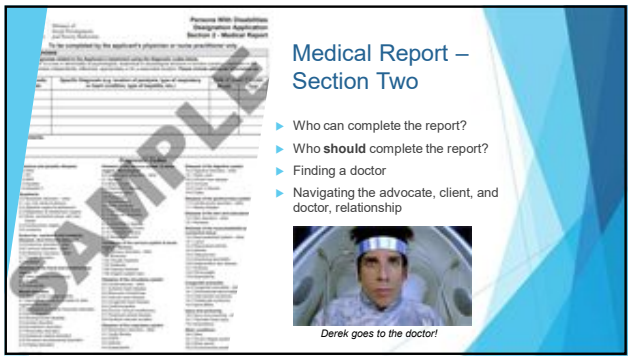

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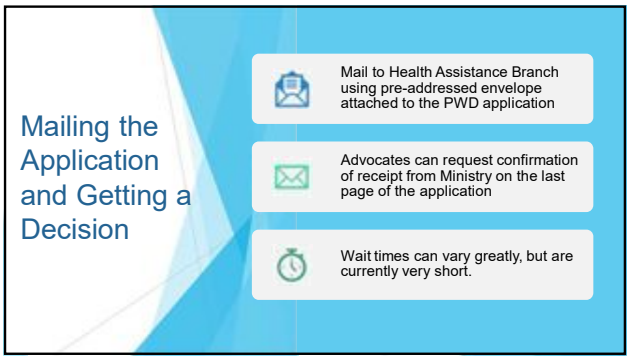

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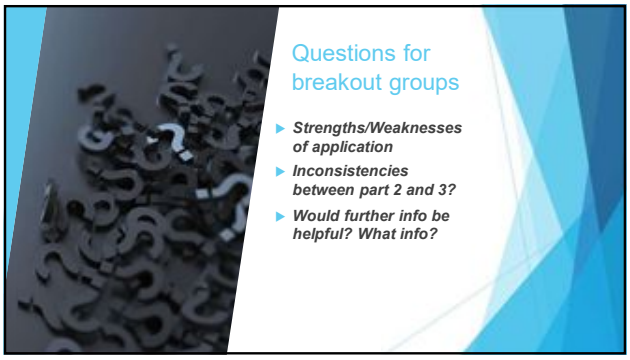

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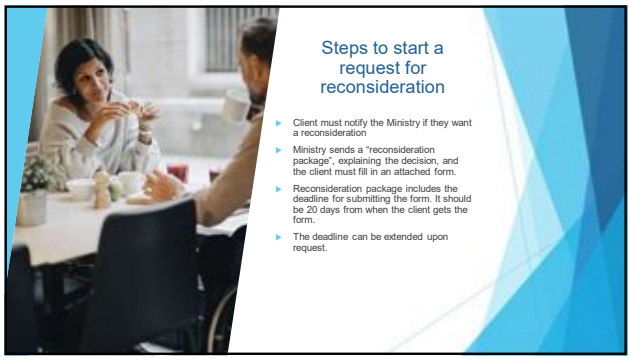

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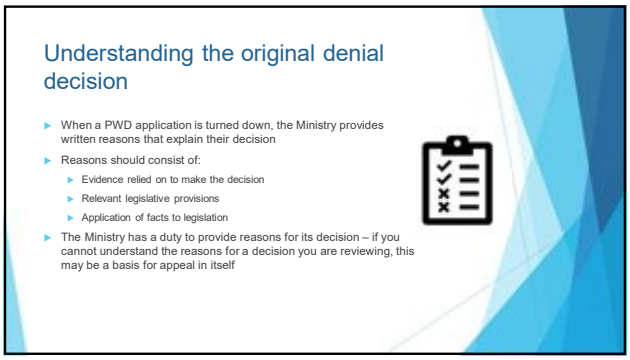

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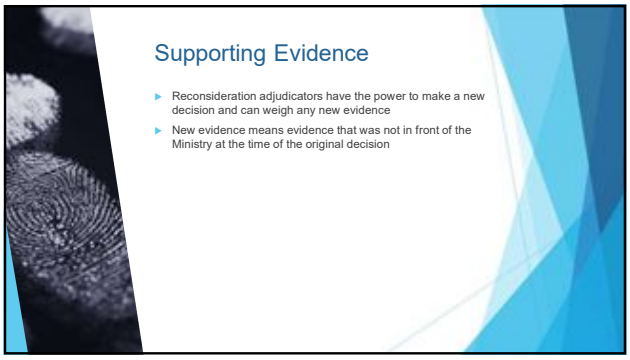

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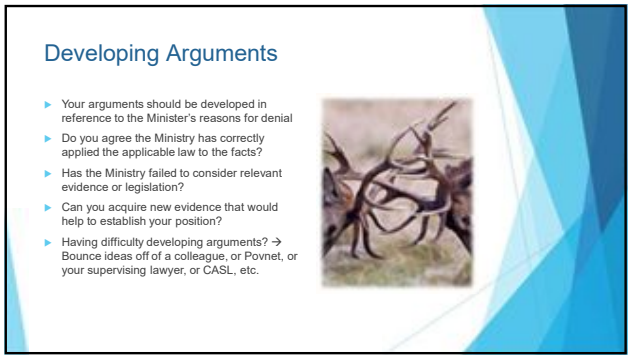

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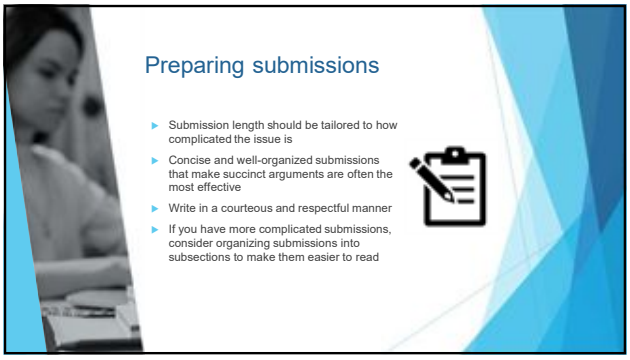

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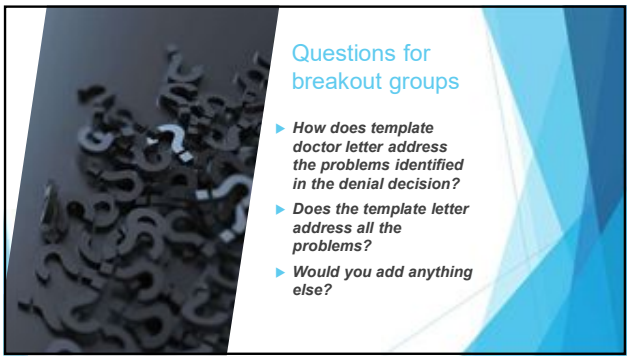

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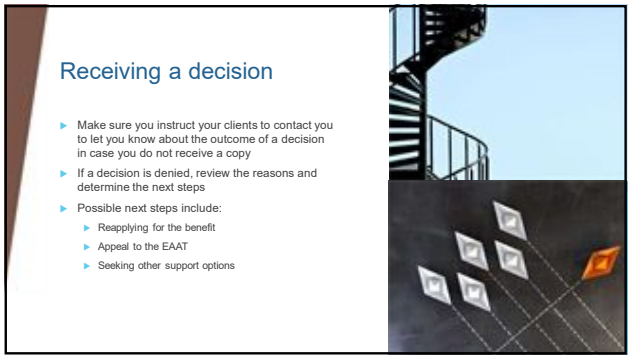

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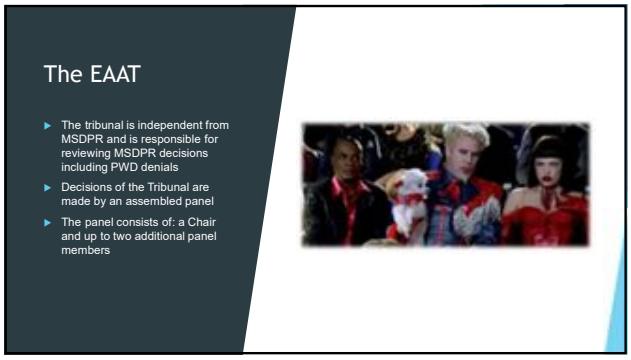

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Appeal Time Limits

- A person who has a right of appeal to the tribunal has to start the appeal in the way described by the legislation within 7 business days of the date the person receives the notice of the decision being upheld

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Reconsideration or Appeal Supplement

- The Minister may provide a supplement to a family unit that is eligible for disability assistance if the recipient in the family unit delivers a request for reconsideration under section 71 or submits an appeal form under section 84 of the Employment and Assistance Regulation in the case of a family unit that is eligible for disability assistance, resulted a discontinuation or reduction of disability assistance or a supplement
- The Minister will do this only if the recipient agrees in writing to repay the amount of supplement provided under this section

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Further resources for advocates and clients

- DABC Helpsheets: https://disabilityalliancebc.org/category/publications/help-sheets/
- MSDPR online policy manual: https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual

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Questions?

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Acronym Cheat Sheet

MSDPR Acronyms:

MSDPR	Ministry of Social Development and Poverty Reduction
IA	Income Assistance
PWD	Person with Disabilities
PPMB	Person with Persistent Multiple Barriers
R4R	Request for Reconsideration
INA	Immediate Needs Assessment
AEE	Annual Earnings Exemption
EAAT	Employment and Assistance Appeal Tribunal
EAW	Employment and Assistance Worker
CRSQ	Community Relations and Service Quality Manager
HAB	Health Assistance Branch
MSO	Medical Services Only
ADL	Activities of Daily Living

Federal Benefits:

CPP	Canada Pension Plan
CPP-D	Canada Pension Plan Disability (Federal Disability)
GIS	Guaranteed Income Supplement
OAS	Old Age Security

Assistance Classifications, Rates, and Benefits					
Classification	**Monthly Benefits (Single person)**			**Medical Benefits**	**Other**
	Shelter	Support	Total		
Employable	$375	$560	$935	Pharmacare deductible covered, diet and natal supplements, emergency dental	Earnings exemption: $500
PPMB	$375	$607.92	$982.92	Enhanced medical: (dental, optical, medical transportation, equipment & supplies)	Earnings exemption: $900
PWD	$375	$983.42	$1358.42	Enhanced medical: (dental, optical, medical transportation, equipment & supplies)	Earnings exemption: $15,000/year
Note: Shelter amount and some earnings exemptions increase with number of family members					

*Updated May 2021

828 View Street, Lekwungen Territories, Victoria, BC, Canada V8W 1K2
Tel: (250) 361-3521 Fax: (250) 361-3541 Web: www.tapsbc.ca

April 14, 2019

Dear Dr. McGonagall,

RE: Ms. Hermione Granger - DOB: 1966/07/19

We represent your patient Ms. Hermione Granger and are contacting you on her behalf. A release of information is enclosed.

You kindly completed Ms. Granger's application for the provincial Persons with Disabilities designation. Unfortunately, the Ministry determined that there was insufficient information in the application and therefore denied her application.

I have reviewed Ms. Granger's application and believe there is merit in appealing the Ministry's decision. I am contacting you for your support.

We appreciate you have a busy practice and the deadline for appealing the Ministry's decision is short. I have enclosed a sample letter that speaks to Ms. Granger's restrictions. The letter is based on an extensive interview with Ms. Granger and the information provided in her application. It is not meant to replace your medical opinion; rather it is a template for your consideration. Please make any changes you deem necessary. An electronic copy is available on request.

If you agree with the contents you may simply sign, date and return the completed letter to my attention. The deadline for Ms. Granger's appeal is short; please return your letter to my attention by **Monday, April 29th, 2019.**

Thank you for your thoughtful consideration of this request. Please do not hesitate to contact me should you have any questions or concerns.

Most Sincerely,

_____
Thea McDonagh, Legal Advocate
Together Against Poverty Society

Supported by:
The Law Foundation of British Columbia, United Way of Greater Victoria,
Province of British Columbia,
The Provincial Employees Community Services Fund,
and other generous donors.

Legal Advocacy Training Course – 2021

Persons with Disabilities Designation Overview

Created by Thea McDonagh of the Together Against Poverty Society, May 2019

Updated by Milica Palinic and Andrew Robb of Disability Alliance BC, May 2021

Contents

INCOME ASSISTANCE CLASSIFICATIONS AND BENEFITS

Classification	Monthly Benefits			MSDSI Medical Benefits	Other Advantages
	Shelter	Support	Total		
Employable	$375	$560	$915	Pharmacare, Diet and Natal Supplements, Emergency Dental, Dentures under certain circumstances	Earnings exemption: $500 per month
Person with Persistent Multiple Barriers [PPMB]	$375	$607.92	$982.92	The Above plus: Enhanced medical, dental, optical, transportation, medical equipment & supplies	Earnings exemption: $900 per month
Person with Disabilities [PWD]	$375	$983.42	$1358.42	The Above plus: annual bus pass or $52 per month in transportation subsidy Priority for subsidized housing	Earnings exemption: $15,000 per year

***Note: Shelter and support amount increases with number of family members**

***For all BC Employment and Assistance Rate Tables, go to:**
https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/bc-employment-and-assistance-rate-tables

PWD ENTITLEMENTS

A person with the PWD designation may be eligible for:

- Monthly support and shelter benefits
- Medical Services Plan and Pharmacare coverage as well as health supplements such as dental and optical coverage
- Transportation supplement ($52 per month or bus pass)
- An earnings exemption of $15,000 per year
- Asset limit of $100,000
- Some income exemptions
- Exemptions from time limits and employment obligations
- Monthly Nutritional Supplement
- Special Transportation Supplement
- Medical Equipment and devices

NOTE: For further information with regards to available supplements for PWD recipients please refer to these two websites:

Disability Alliance BC
http://disabilityalliancebc.org/hs7/

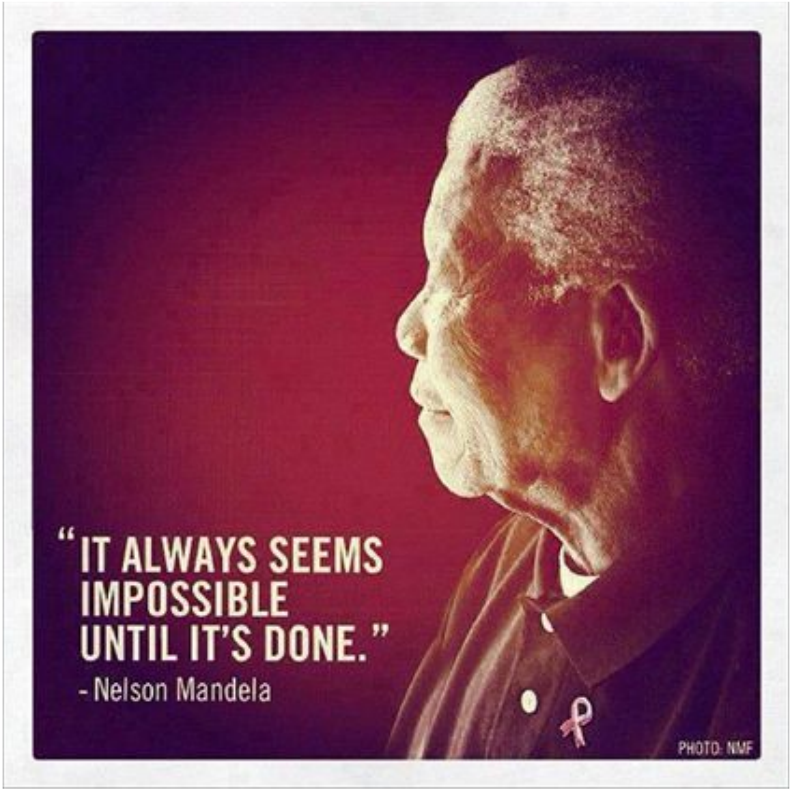
"When You're on Welfare" published by the BC Legal Services Society at
https://lss.bc.ca/publications/pub/your-welfare-rights-when-youre-welfare

INCOME ASSISTANCE LEGISLATION

- *Employment and Assistance Act & Regulation* [EA Act/Reg]
- *Employment and Assistance for Persons with Disabilities Act & Regulation* [EAPWD Act/Reg]

The above legislation is available online through the BC Employment & Assistance Policy & Procedure Manual at: https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual

To determine which act a client falls under you only need to determine whether they have received 'Persons with Disabilities' designation.



EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Persons with Disabilities

2 (1) In this section:

> **"assistive device"** means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;
>
> **"daily living activity"** has the prescribed meaning;
>
> **"prescribed professional"** has the prescribed meaning;

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

> (a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

2 (1) For the purposes of the Act and this regulation, **"**daily living activities**",**

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "prescribed professional" means a person who is

(a) authorized under an enactment to practise the profession of

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the Independent School Act, or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the School Act,

if qualifications in psychology are a condition of such employment.

ELIGIBILITY CRITERIA FOR PWD

1. Applicants must be 18 years old or older. Applicants that are under the age of 18 can apply for the designation 6 months before their 18th birthday.

2. The Minister must determine that the disability is severe in nature.

3. A physician or nurse practitioner must confirm that the impairment is likely to continue for at least two years from the date of application.

4. The applicant must be significantly restricted from performing activities of daily living either continuously or periodically for extended periods.

5. The applicant must be significantly restricted from performing activities of daily living either continuously or periodically for extended periods.

6. The applicant must require help to perform activities of daily living either from an assistive device, another person or an assistance animal.

The client MUST meet all of these criteria in order to qualify

ALTERNATIVES TO PWD

Not all clients meet the criteria necessary to obtain PWD designation. There may be other options available to your client.

1. They may be eligible for Persons with Persistent Multiple Barriers (PPMB) designation,
2. They may be eligible for an exemption from work search requirements or,
3. They may be eligible for federal disability benefits (CPP-D).

Persons with Persistent Multiple Barriers (PPMB)

The Persons with Persistent Multiple Barriers (PPMB) category provides assistance to clients who have long-term barriers to employment. PPMB clients are exempt from employment obligations. See page 3 of the manual for more information on PPMB entitlements.

PPMB applies to clients who are eligible under the *Employment and Assistance Act*. PPMB is not included in the *Employment and Assistance for Persons with Disabilities Act*. Therefore, PPMB cannot be assessed for spouses of clients with the Persons with Disabilities (PWD) designation.

PPMB Legislative Requirements

1. A person must have been in receipt of income assistance or hardship benefits for 12 of the preceding 15 months (*expected to change this summer*)

2. A medical condition, excluding addictions (*expected to change this summer*) that has been confirmed by physician and lasted for 1 year and is likely to continue for 2 or more years

3. Scores 15 or higher on the ministry Employability Screen and has a medical condition that seriously impedes the person's ability to search for, accept or continue in employment OR

4. Scores less than 15 on the Employability Screen and has a medical condition that precludes the person from searching for, accepting or continuing in employment

5. Has taken all reasonable steps, in the Ministry's opinion, to overcome employment barriers identified in the Employment Screen

Canada Pension Plan Disability Benefits

Clients who do not meet the criteria for the PWD designation may also be eligible for Canada Pension Plan Disability (CPP-D) benefits. This a federal disability benefit for clients who:

- Are under 65 years old
- Have contributed to CPP in four out of the six years before becoming disabled or, if they have contributed to CPP for 25+ years, then must have contributed to CPP in three out of the six years before becoming disabled
- Have a severe and prolonged disability
    - Severe: regularly prohibits any substantially gainful employment
    - Prolonged: long-term and of indefinite duration, or likely fatal

CPP-D is based on employability.

STEP BY STEP GUIDE TO THE APPLICATION

Obtaining the PWD Application

Applicants can request a PWD application through an Employment Assistance Worker (EAW) at the Ministry of Social Development and Poverty Reduction (MSDPR). They have to have an open file and have completed the intake process for income assistance to have their income and assets tested prior to receiving a PWD application.

Keep in Mind

If the applicant does not have a physician:

- you can search for one who is accepting new patients on the College of Physician and Surgeons of BC website: https://www.cpsbc.ca/physician_search
- some walk-in clinics post their schedule, this allows clients to build a relationship with a doctor if they are unable to obtain a family physician
- You should encourage the applicant to build a relationship with a new physician and attend at least a couple appointments BEFORE completing the PWD application.

Eligibility

1. Must be eligible for disability benefits (income and asset tested)
2. Must be at least 18 years of age
3. Medical practitioner must confirm that the impairment is likely to continue for at least two years

The next three criteria are the most frequently denied criteria:

4. The disability must be deemed severe
5. The disability must directly and significantly restrict the ability to perform daily living activities either continuously or periodically for extended periods;
6. The applicant must require help to perform daily living activities from an assistive device, another person and/or an assistance animal

PWD Applications Consist of Three Sections

Section 1: This section is for the *applicant* to complete. As an advocate you can assist the *applicant* to fill out this section.
Section 2: This section must be completed by a medical or nurse practitioner
Section 3: This section is to be completed by a Prescribed Professional (Assessor)

A Prescribed Professional can include:

- a registered psychologist
- a registered nurse or registered psychiatric nurse
- an occupational therapist
- a physical therapist
- a registered social worker
- chiropractor
- nurse practitioner
- physician (physicians can fill out Sections 2 and 3)

➢ Physicians and Assessors are compensated for filling out the PWD application. The billing information is located on page 6 of the PWD application.

Section One

PART A – Personal Information

This area is designated for the applicant's information. If the applicant does not have a fixed address, you can provide a C/O address. Notice of Approval or Denial will be sent to this address. This is especially important for clients who do not have access to My Self Serve. In the event of receiving a denial notice, the applicant will have to respond promptly; it is important that they have good access to whatever address they use.

This part also asks, "Do you need help completing this application?" If you are assisting the applicant with the application, check yes.

PART B – Disabling Condition

As an advocate you may assist your client in filling out this section of the PWD application. The courts have said that Ministry adjudicators must place *significant weight on the evidence of the applicant unless there is a legitimate reason not to do so*. However, the personal testimony of clients is not always given significant weight in the adjudication of PWD applications. By assisting your client to have a strong self-report, you are setting the stage for any future appeals that may be necessary.

In addition, a well written self-report can be helpful to your client's physician in filling out the other sections of the application. There may be important information in the self-report that your client has not shared with their physician. The self-report can be typed by the advocate and provided to the physician prior to the completion of sections 2 and 3. You may find that the client has filled out this section by themselves - it is still useful to fill out a separate self-report document.

Things to remember when helping client with section 1:

- Write in 1st person
- Be as concise as possible
- Stick to the legislative criteria
- It is not necessary to have a diagnosis. If there are no diagnoses, simply describe the symptoms
- It may be necessary to do some research into diagnoses to better understand the applicant's symptoms. Do not diagnose.
- Even when the individual receives no support, establish that a need for assistance exists

Definitions

Daily Living Activities: according to the *Employment and Assistance for Persons with Disabilities Act*, daily living activities include the following:

- preparing own meals
- managing personal finances
- shopping for personal needs
- using public or personal transportation facilities
- performing housework
- moving about indoors and outdoors
- performing hygiene and self-care
- managing personal medication

For applicants with a mental impairment or brain injury, daily living activities also include:

- making decisions about personal care, activities, or finances
- relating to, communicating with, or interacting with others effectively

Continuous Assistance: needing significant help most or all of the time for an activity.

> *For example:* An individual with a severe brain injury may require continuous help with all daily living activities, due to memory loss; inability to concentrate or perform simple tasks; feelings of agitation; difficulties with communication, and so on.

Periodic Assistance: needing significant help for an activity some of the time.

> *For example:* An individual with irritable bowel syndrome may have periods of increased symptoms for extended periods of time. During this time, the individual may not be able to leave their home and require significant help with any daily living activities

outside the home, as well as activities such as housekeeping, meal preparation, and so on, until symptoms decrease in severity.

Note: When periodic assistance is required it is important to indicate the frequency and duration that it is required for. For example: "John requires periodic assistance on average 3-4 days per week with daily shopping when his back pain is exacerbated."

Significant help may be required; however, this does not mean the applicant is actually receiving help.

PART C – Declaration and Notification

The declaration requires completion by the applicant. Any person, over the age of 18, can witness the applicant signing this page. The witness is required to provide their name, signature, and contact information (if they have address/phone).

If the applicant is unable to sign the declaration, a legal authority such as a guardian, proof of committee, or power of attorney is able to sign the page on the applicant's behalf.

Submitting the Application

It is important to have the applicant bring their completed PWD application to you before submitting it to MSDPR. This gives you the opportunity to make sure that all sections of the application are thoroughly filled out and reflect the applicant's impairments.

If the physician or assessor filled out their section incorrectly or forgot to add information, you can request that they make the changes and/or additions. Many times, changes will be made without hesitation; however, other times, the applicant may experience resistance from their health practitioner. Again, an advocate is extremely helpful in this situation. The health practitioner may require more information on PWD designation or how the applicant experiences their disability.

When the PWD application is complete and ready – go over the quick checklist on the inside back cover of the PWD application. Better to be safe than sorry!

Receiving the Decision

Although the Health Assistance Branch can take up to 3 months to adjudicate a PWD application, it has not been taking this long. If the application is denied, the applicant has the option to appeal this decision, re-apply for PWD, or accept the decision.

Applicants have the right to appeal if they are turned down for PWD and it is important to act fast if they choose this option. If the applicant wants to re-apply for PWD they can submit a new application, with added information that may increase their chances of being approved. If the applicant recognizes that the decision was valid and they have accepted the decision, Persons with Persistent Multiple Barriers (PPMB) benefits may be a possible option.

RECONSIDERATIONS AND APPEALS

There are two levels of appeal available to someone whose application for PWD has been denied.

Requesting a Reconsideration

The first level of appeal of a ministry decision is to "Request a Reconsideration" of that decision. A person requests a reconsideration by obtaining and completing a Request for Reconsideration form (HR0100). These forms are prepared by EAWs, and can be obtained at a local office or by calling the ministry's general inquiries line. The form specifies the ministry's decision, the reasons for the decision, and the applicable/relevant legislation.

Merit Assessment

A merit assessment should be conducted before proceeding with a reconsideration. Some things you may want to consider before agreeing to proceed include:

- Likelihood of success
- Advocates workload and ability to take on the file
- Client's ability to advocate for themselves

During your merit assessment you may determine that there is no or little likelihood that the reconsideration will be successful. This can be due to a number of reasons such as lack of medical evidence, an unsupportive physician or the client not meeting the legislated criteria. In this case, it may be a better for the client to reapply or pursue a different benefit.

In order to conduct a thorough merit assessment, you will need to review the denial decision summary, PWD application and any other evidence submitted with the application. A good starting point is to review whether the medical opinion accurately reflects the person's actual restrictions and need for assistance. If the individual reports information either not contained in the application or not correctly reported, contact the doctor/assessor and request an amended opinion.

Reconsideration Strategies

When submitting the reconsideration package include any new information or evidence in the case you can obtain. The ministry places significant weight on the medical evidence included in the PWD application and/or submitted at reconsideration. It is important to gather the best medical evidence available to support the client's application. Rather than focusing on lengthy legal arguments that reference case law and precedence, we have found that a strong doctor`s letter is most effective.

Once you have gathered information from the client, compared it with their application and reviewed the reasons the ministry has given for denial, you should have a clear understanding of what information needs to be submitted. Our practice at TAPS is to draft a template letter or checklist for the physician that addresses any discrepancies and contains the updated information for the doctor/assessor to adopt if they agree with the contents (See page 32-33).

It is important that a cover letter be sent with the template explaining who you are and what your role is. The cover letter should include language that explains that this is only a template and that it is not meant to replace the physician's medical opinion (See page 29).

We have found that most physicians are happy to use our template as it saves them time. Occasionally we have physician's that are not comfortable signing a letter they have not drafted themselves. In this case, we always offer an electronic copy so they can make any changes they deem necessary. We have found that a strong physician's letter is often sufficient evidence to reverse the Ministry's decision. When submitting a reconsideration with a strong physician letter we use a short form reconsideration submission (See page 34).

If additional medical evidence is not available a longer submission may be required (See pages 35-38). In these circumstances there may be an interpretation argument to be made or relevant case law that could alter the Ministry's decision.

Submitting a Request for Reconsideration

A request for reconsideration must be submitted within 20 business days from the date the person was notified of the decision. If a completed HR0100 form is not received within 20 business days, it is deemed that the person has accepted the ministry's decision.

Extensions may be provided by the ministry if a person is unable to submit the completed reconsideration form within 20 business days. The ministry must receive the extension request before the reconsideration decision has been made. A request is made by submitting the form to the Reconsideration Branch, advising that the matter is not ready for adjudication, and requesting an extension (See page 30). Typically a person is given a 10 day extension from the date the exention is requested. However, it is also possible to request that an additional 20 business days from the initial deadline, as the Reconsideration Branch has 20 days to adjudicate the file when an extension is granted.

Employment and Assistance Appeal Tribunal

If your case is unsuccessful at reconsideration, the next step is to consider an appeal of the decision. You have 7 business days from the date you received the Ministry's reconsideration decision to submit a Notice of Appeal Form to The Employment and Assistance Appeal Tribunal (EAAT).

The EAAT is the body which reviews MSDPR decisions. The EAAT panel decides whether the ministry's decision was:

- Reasonably supported by the evidence; or
- A reasonable application of the legislation given the circumstances of the recipient/applicant

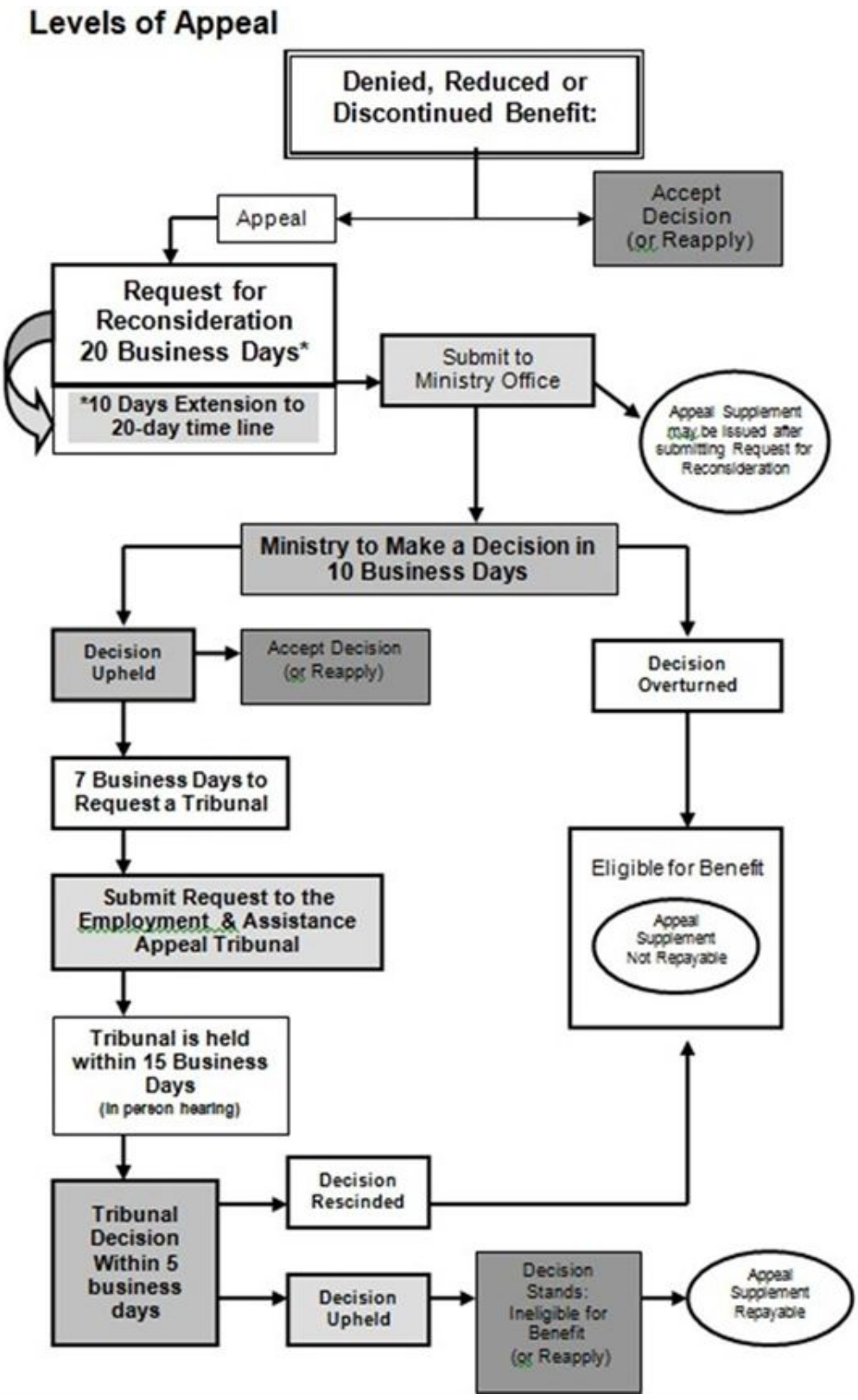
When submitting the Notice of Appeal, you have the option of indicating what form of hearing you would like: oral (in person or over phone) or in writing. The hearing will be set within 15 business days of the Tribunal receiving the Notice of Appeal.

The Panel must make a decision within 5 business days of the hearing. The Panel has 5 days to communicate the decision to the EAAT, at which point the decision is mailed to the appellant.

Under Ministry policy, when the Tribunal rescinds the ministry's reconsideration decision, the effective date of eligibility is dependent on the type of assistance applied for. Some are retroactive to the date of the Reconsideration decision, others effective the first of the month following the Reconsideration decision.

Additional Evidence at Hearing

If, since the time of the Reconsideration, you obtain or become aware of other evidence which will help your case, you may include it in your submissions. The Panel may consider evidence that was not part of the prior record as the panel thinks is reasonably required for a full and fair disclosure of all matters related to the decision under the appeal.


Levels of Appeal
Denied, Reduced or Discontinued Benefit:
Appeal
Accept Decision (or Reapply)
Request for Reconsideration 20 Business Days*
*10 Days Extension to 20-day time line
Submit to Ministry Office
Appeal Supplement may be issued after submitting Request for Reconsideration
Ministry to Make a Decision in 10 Business Days
Decision Upheld
Accept Decision (or Reapply)
Decision Overturned
7 Business Days to Request a Tribunal
Submit Request to the Employment & Assistance Appeal Tribunal
Eligible for Benefit
Appeal Supplement Not Repayable
Tribunal is held within 15 Business Days
(In person hearing)
Tribunal Decision Within 5 business days
Decision Rescinded
Decision Upheld
Decision Stands: Ineligible for Benefit (or Reapply)
Appeal Supplement Repayable

APPENDIX

SELF REPORT TEMPLATE 1

Persons with Disability Designation Application
Applicant: [redacted]

Describe your disability:

I am 50 years old and living with chronic lower back, knee and shoulder pain. I was in a motor vehicle accident when I was six years old which left me completely immobile in a body cast for over a month. I sustained a broken collarbone and leg and continued to experience pain from these injuries. At nineteen, I began to experience debilitating pain in my lower back. Throughout my twenties and thirties, I sustained multiple work-related injuries, including two serious falls. Over the last thirty years, my chronic back pain has impacted every aspect of my functioning, both physically and emotionally. At least three days per week I am unable to leave my home due to pain. I cannot fall asleep when I am in pain and experience an erratic sleep cycle. The inability to do many activities causes severe depressive episodes which manifest primarily through feelings of hopelessness, worthlessness, hostility and a desire to self-isolate.

How does your disability affect your life and your ability to take care of yourself?

Physical Functioning: There are 3-4 days per week that my back pain is so severe that I am unable to leave my house. During those periods, I am unable to do any element of physical functioning.

Walking: Even on good days, I am unable to walk even one block without experiencing sharp pain in my lower back.
Stairs: Similarly, due to the pain in my right knee, it takes me approximately 3-4 times longer than average to climb one flight of stairs.
Lifting: I cannot lift more than 5 pounds.
Carrying and holding: I am unable to carry or hold more than five pounds without assistance.
Standing: I am only able to stand for five minutes and can only do so if I am shifting my weight from foot to foot or bracing my weight on surroundings.
Sitting: I cannot stay seated for longer than thirty minutes without experiencing severe, shooting pain throughout my lower back.

Cognitive/Emotional Functioning:

Bodily functions: The disturbance to my sleeping pattern is profound. I am only able to get 4-5 hours of interrupted sleep per day. Often times I am completely unable to sleep throughout the night and as such my longest stretches of sleep are sometimes in the middle of the day. My

chronic pain and depression both affect my appetite and my ability to cook for myself and I often eat only one meal per day; an average of 2 days per week I will not eat at all.
Consciousness: Due to lack of sleep, I constantly feel drowsy and fatigued throughout the day. Physical pain severely impacts my ability to remain alert to my surroundings as I am often preoccupied with my pain symptoms.
Emotions: The depression I experience in relation to my physical pain manifests primarily as intense anger. I often feel a complete lack of control over my emotional state as well as intense feelings of hopelessness and worthlessness. Extreme levels of pain leave me agitated and on edge, making social situations incredibly difficult to navigate as I can easily lash out or become hostile. Due to both my physical state and the related emotional impairments I self-isolate approximately half of every week.
Attention/concentration: Due to my chronic pain and fatigue, I experience extreme difficulty maintaining concentration. I have a hard time staying on task or focusing on a conversation.
Memory: I find it tremendously challenging to remember new information, even if it is relevant and important for my life.
Executive functioning: My ability to plan, organize, and problem-solve are greatly impacted by my chronic pain because I am unable to focus on anything other than the pain. Additionally, it is hard to plan as the intensity of my back pain is unpredictable, so I am unable to determine what my abilities will be ahead of time. Often times I am unable to make important appointments due to being completely immobile.
Motivation: I have lost all motivation to attempt to do things I once enjoyed because most everything causes me physical pain.

Activities of Daily Living (ADLs): I am unable to complete any ADLs during the 3-4 days per week that my back pain is extreme.

Personal care:
Dressing: The twisting and bending involved in getting dressed causes me significant pain, and I am only able to change my clothes approximately 2-3 days per week.
Grooming: Activities of grooming that requires bending and twisting, such as clipping my toe nails, will leave me in excruciating pain throughout the rest of the day and as a result I avoid them until absolutely necessary.
Bathing: Bathing requires constant mindfulness and attention to my movements and as a result takes me 3-4 times longer than average. I also require a grab bar to enter and exit the shower safely.
Toileting: I must use a grab bar when getting on and off the toilet.
Transferring in/out of bed: Getting out of bed takes a long time as sudden movements will cause shooting pains throughout my back and knees. This can take anywhere from five to fifteen minutes depending on the severity of my pain in the morning.

Basic Housekeeping

Laundry: The bending and lifting required to complete my laundry greatly aggravates my back. I am only able to complete laundry an average of once per month as I am often unable to carry my laundry as far as the elevator.
Housekeeping: Any household tasks that require bending and twisting are not possible. I cannot complete tasks that require me to kneel such as washing the bathtub or wiping up a spill. At least four days per week I am completely unable to do any housekeeping tasks. I require the assistance of a neighbor with removal of garbage and recycling from my home as I am not able to carry it to and from the elevator.

Shopping: My ability to go shopping is severely limited due to my lower back pain. Walking around a store can cause me debilitating pain and I am only able to purchase 3-4 items at a time as I cannot carry more than five pounds.

Meal preparation/cooking: I rely heavily on ready-made food as cooking is often too difficult. When I am able to cook for myself, I have to sit down while I do activities such as chopping vegetables and rest multiple times throughout the cooking process. This takes approximately 6-8 times longer than average and as a result, I usually only eat one meal per day.

Transportation: I am unable to take public transit as I cannot walk to the bus stop without my back causing me severe pain, therefore I am heavily reliant on the amenities that are within one block from my home.

Social functioning:
Social decisions: When I am experiencing severe pain, I am unable to make sound social decisions. I will often act impulsively and have a tendency to become confrontational.
Developing and maintaining relationships: I constantly have to cancel plans because of my chronic pain, and often avoid making plans since the pain is so unpredictable. I feel guilty and anxious about how often I cancel plans, and find staying in contact with family, friends, and neighbours overwhelming.
Interacting with others: I find interacting with others frustrating because they are not able to understand the scope of my chronic pain and its effects on my life. When I am experiencing severe pain, I completely self-isolate in order to avoid potentially negative interactions with others.
Dealing with unexpected demands: 3-4 days per week, I am completely unable to deal with any unexpected demands as I am so consumed by my chronic pain.
Securing assistance: I experience deep shame in relation to my loss of mobility and my physical impairments, making it extremely difficult for me to ask for assistance from others. I will often attempt to complete a task multiple times before securing assistance from others.

Describe the degree of support that is needed to assist you to accomplish activities of daily living including the use of assistive devices.

I require periodic assistance 3-4 days per week with all daily activities due to increases in my pain levels. I require continuous assistance for housekeeping, shopping, preparing and cooking meals, and laundry. I require a grab-bar for showering and bathing. Additionally, I require continuous and ongoing support to manage my depression and social functioning.

The preceding information was prepared with the assistance of an advocate at Together Against Poverty Society.

Signed _____ Date _____ 2019

SELF REPORT TEMPLATE 2

Persons with Disability Designation
Applicant: [redacted]

Describe your disability:

I am a 43-year-old woman and I live with fetal alcohol spectrum disorder (FASD), borderline personality disorder and post-traumatic stress disorder (PTSD). I was born with alcohol dependency and showed significant developmental deficits at an early age. I was placed in over 26 different foster homes throughout the course of my childhood. I began showing signs of post-traumatic stress disorder around my tenth birthday, prior to which, I had experienced multiple instances of abuse. These traumatic experiences, coupled with a complete absence of a consistent caregiver throughout my childhood, has severely impacted my ability to form healthy adult relationships. My social skills are further impacted by symptoms of FASD and borderline personality disorder. I often oscillate between deep feelings of love and extreme paranoia and distrust of anyone close to me. I have difficulties identifying when I am being taken advantage of or when someone is acting with malicious intent, and as a result, I often find myself in highly abusive relationships.

As a result of being alcohol-affected, I have substantial learning disabilities and neurological impairments which impact my day to day life in a variety of ways; I am unable to follow a budget, I struggle with basic mathematics and even though I am talkative, my receptivity skills are significantly impaired. I have profound attention deficits and am often unable to pay attention to a conversation for longer than one minute. I struggle to identify social cues and often act inappropriately in social environments. I have serious memory impairments and I struggle to retain any new information, even if it is of personal importance.

In addition to my mental health diagnoses, I also live with irritable bowel syndrome (IBS) and substance use disorder. These both have profound impact on my day to day physical functioning; 3-4 days per week I experience severe abdominal pain and a complete loss of appetite.

How does your disability affect your life and your ability to take care of yourself?

<u>Physical Functioning:</u>

Walking: Between 2-3 days per week I am unable to walk more than one block without experiencing severe abdominal pain.

Lifting, Carrying and Holding: Approximately 2-3 days per week I am unable to have a bowel movement in the morning. This causes extreme restriction around my core and I am unable to bend lift or carry items weighing more than 2 pounds.
Standing: I cannot stand still for any amount of time. Due to pain, anxiety and my attention deficit, I constantly have to shift my weight from leg to leg.

Communication

I have significant challenges with both verbal and non-verbal communication. Even though I am expressive, my receptive language skills are severely impacted by FASD. I struggle to read and write basic statements and require continuous assistance with any written form of communication. I am unable to pick up on subtle non-verbal cues, which impacts my ability to interact in social settings and I often become extremely uncomfortable and self-conscious.

Cognitive/Emotional Functioning:

Bodily functions: IBS severely impacts my digestive system and I oscillate between constipation and diarrhea, both causing extreme discomfort. My IBS is best managed through a strict schedule and diet; however, because I am homeless, I am not able to regulate either my routine or my diet and as a result I consistently feel a nagging, dull pain in my abdomen due to chronic bloating and constipation. Approximately 2-4 days per week I am unable to have a bowel movement in the morning; this causes me abdominal pain that worsens throughout the day. I experience significant difficulties regulating my sleeping patterns and often only get between 3-4 hours of uninterrupted sleep per night. This is due in part to paranoid thoughts I experience about sleeping in communal shelters which keep me awake. I have a very limited appetite and I rely heavily on meal replacements as I do not have any teeth. I often go 2-3 days without eating and require constant reminders that I need to eat.

Emotions:
Anxiety: I experience unpredictable panic attacks that are linked to PTSD. Almost daily, I am triggered by social interactions and any perceived unkindness, which will cause a panic attacks. During panic attacks, I will lose control of my body and experience a tightening sensation in my chest, like I am having a heart attack. When this overwhelming sense of panic occurs, I need to stop whatever I'm doing and leave the area immediately.
Depression: As a result of PTSD and borderline personality disorder, I experience a vicious cycle of melancholy, hostility and severe paranoia. During my daily struggles with depression, I get trapped in a cycle of negative self-talk which can lead to suicidal ideation.
Trauma-Related Symptoms: I experience intrusive memories, nightmares, and flashbacks of traumatic events from throughout my past on a daily basis. These memories often make me so distressed that I feel physically pained and nauseous. These symptoms considerably exacerbate my depression and anxiety.
Impulse control, insight, and judgment: I impulsively spend money and am often unable to comprehend when those around me are being financially abusive, leading me to spend well

beyond my means. I engage in risky behaviors such as illicit drug use and having one-night stands without using protection.

Attention/concentration/memory: FASD severely impacts my attention, concentration and memory. I experience extreme difficulty following a conversation, completing a task from start to finish or maintaining concentration for longer than five minutes. I experience so many racing thoughts I easily lose my train of thought. My memory has been severely impacted and I now show signs of early-onset dementia. I experience short term memory lapses that cause me a huge amount of anxiety. I am often unable to retain any new information, even when it is of significance to me.

Executive functioning: My ability to plan, organize, and problem-solve are greatly impacted by FASD and my mental health impairments. I am easily overwhelmed by planning and organizing my daily life, and I become emotional in situations that require problem-solving. I require the continual support of a case worker with any type of complex planning or organizing.

Motivation: I often become depressed to the point that I lack any motivation to care for myself. It is a tremendous struggle to motivate myself to face the day, and as such, I am often unable to complete basic day to day tasks.

Motor activity: My anxiety and trauma-related symptoms cause me extreme tension and agitation. As such, I constantly pace back and forth as a response to the tension.

Neuropsychological problems: As a result of my FASD, I live with psychomotor impairments which slow down my thought process, my ability to communicate and movements. As a result, I experience difficulty carrying out basic self-care tasks and daily living activities. Activities requiring very little mental or physical effort can feel insurmountable.

Language: I have difficulty communicating when stressed or overwhelmed. My speech becomes rapid, stuttered, and disorganized. I cannot find any of the words I am looking for, and get so frustrated that I shut down completely. My receptive language skills are significantly impacted by FASD.

Psychotic Symptoms: I experience intense paranoia and delusional thoughts on a weekly basis. Currently, I am unable to use or own a telephone because I am convinced that I am being monitored by authorities and even the general public. When I am depressed, I experience intrusive thoughts about throwing myself into traffic.

Hostility: My anxiety and trauma-related disorder leave me feeling on edge, agitated, and hostile. I get visibly and overly agitated on a daily basis. I am quick to overreact when my anxiety is triggered. Knowing that I easily become hostile, I constantly isolate myself so I do not cause emotional pain to those around me.

Activities of Daily Living (ADLs):

All ADLs: Approximately 2-3 days per week, I am unable to complete any ADL's while I am experiencing severe anxiety, paranoia or physical pain.

Personal care:

Dressing: I experience tactile hyper-sensitivity and cannot have any tags or seams touch my skin as it causes me intense discomfort. I have to cut all the tags out of my clothing and I often wear my clothes inside out to avoid having seams touching my skin. I cannot wear any fabric that is

itchy or textured as it feels painful and I am unable to focus on anything other than the physical sensation.

Grooming/Bathing: I have intense anxiety about germs that I come into contact with and as a result my grooming and bathing routines border on obsessive. Every time I use the washroom I have to wash my hands four-five times until I feel as though I have rid myself of all germs. My anxiety is made worse by the fact that I am reliant on public washrooms – I have to hover above toilet seats and clean every surface I touch.

Toileting: IBS heavily impacts my bodily functions and causes chronic diarrhea. Because I am homeless, I am reliant on the availability of public washrooms and have limited access. At least 3-4 days per week I have to hold my bodily functions causing agonizing abdominal pain and increased anxiety as a result.

Regulating diet: I am completely unable to regulate my diet. At least 3 days per week I have little to no appetite and if I am not given any reminders I will forget to eat for 2 days at a time. I rely heavily on Ensure and other meal replacement drinks as I do not have any teeth and find most foods difficult to chew with partial dentures. I would benefit from the continuous support of a health professional in regulating my diet.

Housekeeping and Laundry: I oscillate between completely neglecting my household chores and having obsessive tendencies – approximately 2-3 days per week, when I am in severe physical pain, I am not able to complete any household chores. When I am physically able to complete chores, I do so in an obsessive manner.

Shopping: My ability to shop is impacted by both FASD and anxiety. I am often unable to make appropriate purchases and struggle to complete basic budgeting required for grocery shopping. My ability to get to the store, wait in a checkout line, and interact with the clerk are all severely limited by anxiety. A busy store can easily trigger a panic attack and if I experience any adverse interaction I often have to leave immediately.

Meal planning, food preparation, and cooking: Even though I am aware of my dietary needs I have significant challenges in meal planning accordingly. I am limited to eating only soft foods that require almost no chewing and as such, I am heavily reliant on meal replacement drinks. I require continuous support and reminders that I need to eat.

Paying bills and rent: I find attending to financial responsibilities challenging as I have difficulty focusing and making decisions. I impulsively spend beyond my means, and cannot budget or prioritize bills. I require assistance with budgeting and paying bills on time.

Social functioning:

Social decisions: My social functioning is severely impacted by my mental impairments. I lack the insight to identify when I am getting into dangerous situations. I find it challenging to make healthy and safe decisions when depressed or panicked and I often become defiant and hostile when met with those in positions of authority.

Developing and maintaining relationships: As a result of my childhood trauma I experience deep distrust of those around me and this leaves me completely unable to have healthy, stable relationships. I experience a lot of anxiety and paranoia in social situations, so even though I want

to make new friendships, I become too overwhelmed with anxiety and intrusive thoughts. I actively isolate myself on a daily basis, and cannot develop or maintain new friendships. I will go to great lengths to avoid running into people I know to the point that I will detour my route to avoid them.

Interacting with others: My immediate social networks are highly disrupted by my mental impairments. Several people have told that I can be hard to be around when I am too stressed and anxious. Additionally, I am easily triggered if I perceive that anyone is being unkind or grumpy with me, and I will break down and cry. Due to my anger and agitation related to my mental illness, I often get in conflict or lash out at those close to me. Additionally

Describe the degree of support that is needed to assist you to accomplish activities of daily living including the use of assistive devices.

I require continuous assistance with diet regulation, housekeeping, shopping, meal planning, managing finances and reading and writing. Additionally, it takes me significantly longer to bath, groom and toilet. I require ongoing one-on-one support to improve my cognitive, emotional and social functioning.

The preceding information was prepared with the assistance of an advocate at Together Against Poverty Society.

Signed _____ Date _____ 2019

COVER LETTER TO PHYSICIAN/ASSESSOR

828 View Street, Lekwungen Territories, Victoria, BC, Canada V8W 1K2
Tel: (250) 361-3521 Fax: (250) 361-3541 Web: www.tapsbc.ca

Dear Dr. Spock, December 2, 2018

I am writing to you from the Together Against Poverty Society (TAPS). TAPS assists individuals and their medical professionals as they apply for provincial disability benefits. If an applicant is successful, they will receive additional medical and financial supports.

The application is lengthy and requires detailed medical information. TAPS advocates assist applicants by completing the Self-Report section. We believe reading this report saves physician time and facilitates communication between you and your patient.

In order to be approved your patient must:

- Have a severe mental or physical impairment that,
    - is likely to continue for at least two years,
    - significantly restricts the ability to perform daily living activities,
    - the applicant requires assistance to perform those activities

Please note the application is not based on employability. Below are some definitions you may find helpful.

Assistance required: it is only necessary to establish that the need exists, not that the person is or will be receiving the assistance.

Continuous: refers to the need for significant help most or all of the time or an inability to perform an activity independently.

Periodic: refers to the need for significant help intermittently for extended periods. It is important to indicate how often the assistance is required.

Any additional narrative from the physician is important in giving the applicant the best chance of success.

Yours truly,
Jane Doe, Legal Advocate
Together Against Poverty Society

RECONSIDERATION EXTENSION REQUEST

CONFIDENTIAL FAX COVER SHEET

DATE: December 17, 2015

TO: Ministry of Social Development and Social Innovation – Reconsideration Branch

FAX #: 1-855-771-8784

FROM: Thea McDonagh – Together Against Poverty Society

PAGES: 4
(incl. cover)

RE: **Patty Patience (SIN 000-000-000)**
Extension request for SR# 1-00000000000

SPECIAL INSTRUCTIONS OR MESSAGE:

This reconsideration is not ready for adjudication. Please allow for an extension so Ms. Patience may gather additional evidence in support of her appeal. If this request is accepted Ms. Patience's new due date will be January 18, 2016. If there are any concerns with this request please contact me directly at (250) 361-3521.

Please find attached:

1. Signed Reconsideration Form
2. Release of Information

Most Sincerely,

Thea McDonagh, Legal Advocate
Together Against Poverty Society

PHYSICIAN COVER LETTER – RECONSIDERATION

April 2, 2019

Dear Dr. [redacted],

RE: Mr. [redacted]

We represent your patient Mr. [redacted] and are contacting you on his behalf. A release of information is enclosed.

You kindly completed [redacted] application for the provincial Persons with Disabilities designation. Unfortunately, the Ministry determined that there was insufficient information and therefore denied his application.

I have reviewed [redacted] application and believe there is merit in appealing the Ministry's decision. I am contacting you for your support.

We appreciate you have a busy practice and the deadline for appealing the Ministry's decision is short. I have enclosed a sample letter that speaks to [redacted] restrictions. The letter is based on an extensive interview with [redacted] and the information you provided in his application. It is not meant to replace your medical opinion; rather it is a template for your consideration. Please make any changes you deem necessary. An electronic copy is available on request.

If you agree with the contents you may simply sign, date and return the completed letter to my attention. The deadline for [redacted] appeal is short; please return your letter to my attention by **Wednesday, April 10, 2019.**

Thank you for your thoughtful consideration of this request. Please do not hesitate to contact me should you have any questions or concerns.

Most Sincerely,

Thea McDonagh, Legal Advocate
Together Against Poverty Society

PHYSICIAN TEMPLATE LETTER

April 2, 2019

Attention: Ministry of Social Development and Poverty Reduction

RE: [redacted] - DOB: [redacted]

I am writing in support of Mr. [redacted] application for Persons with Disabilities (PWD) designation. I understand that [redacted] was denied as the Ministry could not determine the level of restriction to his daily living activities or the assistance he requires.

[redacted] lives with a neurological disorder called cerebellum atrophy, an essential tremor and osteoarthritis in both knees and ankles. As indicated in his initial application, the neurological disorder impacts [redacted] equilibrium causing poor balance and the essential tremor causes uncontrollable shaking. Bending over and turning his head causes [redacted] dizziness due to his poor equilibrium. Osteoarthritis causes chronic pain and stiffness in his knees and ankles.

In regards to the level of restriction to [redacted] physical functioning:

Walking: [redacted] uses a cane for all mobility both indoors and out. Even with the use of a cane, it takes [redacted] an average of 4-5 times longer than average to ambulate.
Stairs: [redacted] uses a cane to climb stairs and requires support from another person to descend stairs due to poor balance and risk of falling.
Lifting: Bending over to pick something up off the floor impacts [redacted] balance and increases his risk of falling. He is unable to lift with two hands as he needs one hand at all times for his cane.
Carrying and holding: [redacted] is limited to carrying with one hand and only on a flat surface.
Standing: [redacted] requires a cane for support when standing.

In regards to the level of restriction to [redacted] daily living activities and the level of assistance he requires:

Personal self-care:
Dressing: [redacted] cannot bend over without falling and therefore must be seated to get dressed and put on shoes.
Bathing: [redacted] requires a grab-bar to safely enter and exit the shower as well as for stability while showering.
Toileting: [redacted] requires a grab-bar for support when getting on and off the toilet.
Feeding self: [redacted] cannot carry hot liquids due to his tremor.
Transfers: [redacted] requires a cane to transfer in and out of a chair.
Laundry: [redacted] cannot carry a laundry basket and bending over to transfer laundry causes dizziness. His mother does all his laundry for him.

Housekeeping: Any activity that requires [redacted] to bend over can take up to 10 times longer than average. He has to use a cane indoors which also makes housekeeping difficult. He lives with his mother and she does his housekeeping for him.
Shopping: [redacted] requires a cane to go to and from the store, to ambulate while there and while standing in line to pay for purchases. Shopping take significantly longer due to poor balance and slow mobility. Carrying purchases is challenging as [redacted] can only use one hand for this activity.
Meals: [redacted] uses a cane to move about in the kitchen and prepare meals. Essential tremor impacts his ability to use a knife and prepare foods.
Finances: [redacted] requires a cane to go to and from the bank and his mobility is approximately 4-5 times slower than average.
Medication: [redacted] requires a cane to fill prescriptions and his mobility is approximately 4-5 times slower than average. He regularly skips his medication due to the drowsiness it causes.
Transportation: [redacted] is unable to drive and gets rides from his mother or takes public transit. When taking the bus, he requires the bus to be lowered in order to enter and exit safely.

In summary, [redacted] uses a cane for all mobility and for all daily living activities. In addition, he requires continuous assistance with doing laundry and housekeeping, and transportation and requires grab-bars for bathing and toileting. All mobility is approximately 4-5 times slower than average.

It is my opinion that [redacted] meets the criteria for this designation due to the significant restrictions he faces in performing daily living activities and the assistance and assistive devices he requires as a result. Please do not hesitate to contact me should you have further questions.

Sincerely,

Dr. [redacted]
Phone: [redacted]

SHORT FORM RECONSIDERATION SUBMISSION

8 May 2019

Request for Reconsideration – [redacted] - SR# 1-[redacted]

Issue: Whether [redacted] qualifies for Persons with Disabilities (PWD) status pursuant to Section 2 of the *Employment and Income Assistance for Persons with Disabilities Act* (the Act).

Background: Mr. [redacted] has been diagnosed with a neurological disorder called cerebellum atrophy, an essential tremor and osteoarthritis in both knees and ankles. His doctor has confirmed that these disabilities will continue for two or more years and that they cause significant restrictions to Mr. [redacted] daily living activities such that he requires assistance.

The Ministry adjudicated Mr. [redacted] PWD application on [redacted], 2019. The Ministry found that Mr. [redacted] satisfies the criterion for age and duration but determined that there was insufficient information to establish that Mr. [redacted] has a severe impairment, significant restrictions in his ability to perform daily living activities and that he requires help as a result. Mr. [redacted] requested a reconsideration of the Ministry's decision.

Submission: Mr. [redacted] submits that he meets the requirements in Section 2 of the Act. Attached is a letter from Dr. [redacted] that elaborates on how Mr. [redacted] qualifies for PWD. The letter addresses the matters the Ministry adjudicator felt were difficult to discern and provides the details the adjudicator felt were lacking in the initial application.

Mr. [redacted] respectfully requests the Ministry read the letter along with the initial application, which together includes the necessary evidence to conclude that he qualifies for PWD designation.

Sincerely,

Thea McDonagh, Legal Advocate
Together Against Poverty Society

LONG FORM RECONSIDERATION SUBMISSION

May 7, 2019

Request for Reconsideration: [redacted]

Issue: Ms. [redacted] submits that she meets the eligibility criteria for the "Persons with Disabilities" ("PWD") designation pursuant to s. 2 of the *Employment and Assistance for Persons with Disabilities Act* (the "*Act*"). As such, she requests that the Ministry reconsider its decision to deny her the same.

Relevant Legislation:

***Employment and Assistance for Persons with Disabilities Act,* [SBC 2002] c. 41**
"Persons with disabilities"
2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

Background:

1. Ms. [redacted] submitted an application for the PWD designation in [redacted] 2018. Ms. [redacted] completed the "Section 1 – Applicant Information" with support from Together Against Poverty Society, her physician, Dr. [redacted], completed the "Section 2 – Medical Report", and "Section 3 – Assessor Report" was completed by a physician at [redacted] Medical Clinic, Dr. [redacted].

2. The Ministry adjudicated Ms. [redacted] application on [redacted], 2018. While the Ministry determined that Ms. [redacted] satisfied the criteria for age and duration of impairment, the Ministry found there was insufficient information to establish:

    - that Ms. [redacted] has a severe physical and/or mental health impairment
    - that her impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods, and
    - that as a result of those restrictions, she requires help to perform those activities

3. Ms. [redacted] subsequently requested a reconsideration of the Ministry's decision.

Submission:

4. Ms. [redacted] disagrees with several conclusions made by the adjudicator in the "Decision Summary". These are addressed below:

    a. *The physician reports the periodic use of a cane; however, the physician reports also that the applicant is able, unaided, to walk 1-2 blocks, climb 2-5 steps, lift up to 5 lbs, and sit for up to an hour.*

    Findings in this statement refer to Section 2.D "Function Skills" on page 11 of the application, which requests physicians to provide their opinion of the applicant's capacity in relation to a series of physical skills by providing a corresponding set of ranges for each skill. The section does not request additional narrative from the physician in relation to each skill.

    Ms. [redacted] submits that the above conclusions do not accurately reflect the information supplied by Dr. [redacted]. Dr. [redacted] indicated that Ms. [redacted] capacity for each of the above skills is *within* the indicated range (walking: between 1 to 2 blocks, climbing stairs: between 2 to 5, lifting: *under* 5lbs, and sitting: *less* than 1 hour), and did not specify Ms. [redacted] precise capacity in each range. Therefore, we submit that concluding that Ms. [redacted] capacity is at the top of each indicated range is not reasonably supported by the evidence.

    The finding concerning Ms. [redacted] physical functioning also fails to consider additional relevant information provided by Dr. [redacted] on page 12 of the application where she confirms that mobility inside and outside of the home is continuously restricted. Similarly, in "Section 3 – Assessor Report", Dr. [redacted] states that Ms.

[redacted] uses an assistive device walking indoors, walking outdoors, standing, and carrying and holding. Dr. [redacted] also confirms that Ms. [redacted] requires continuous assistance with lifting.

b. *The assessor/physician reports the use of a cane for walking and standing and indicates the use of a shopping cart for carrying/holding; however, it should be noted that shopping carts do not meet the definition in legislation of an assistive device…*

In "Section 2 – Medical Report", Dr. [redacted] confirms that Ms. [redacted] is limited to lifting less than 5 pounds. On page 17, Dr. [redacted] corroborates this by reporting that Ms. [redacted] uses an assistive device for carrying and holding and in the corresponding space he writes uses shopping cart.

On page 11 of the application, Dr. [redacted] confirms that Ms. [redacted] ability to perform daily shopping is continually restricted. Page 12 also asks the physician to indicate what assistance the applicant needs with daily living activities. In response, Dr. [redacted] stated "carrying heavy groceries, doing laundry – needs help."

Ms. [redacted] submits that her wheeled shopping bag does meet the statutory definition of an "assistive device" as it is specifically designed to enable a person to perform a daily living activity – namely shopping – that they would otherwise be unable to perform because of inability to carry items (lifting and mobility restrictions).

c. *Periodic assistance is indicated by the assessor/physician for meals, two aspects of using transportation, and one aspect of social functioning; however, as the nature, frequency and duration of periodic assistance are not provided or explained, and as good social networks are reported, it is not established that periodic assistance is required for extended periods…*

While it may be helpful for the Minister to have information regarding the nature, frequency and duration of assistance required, we submit that the absence of this information should not preclude an applicant's eligibility.

To determine eligibility, the *Act* requires confirmation from a prescribed professional that there is restriction to daily living activities (either continuously or periodically for extended periods) and that as a result of those restrictions, the person requires help to perform those activities. Confirmation of the restriction to daily living activities is requested in "Section 2 – Medical Report" and confirmation of the need for assistance is requested in "Section 3 – Assessor Report". Dr. [redacted] confirms continuous restriction to seven out of ten of the listed daily living activities on page 12 of the application. Ms. [redacted] submits that there is no statutory requirement to determine the nature, frequency, and duration of the assistance she requires with daily living activities.

d. *While it is acknowledged that the applicant experiences some limitation to her basic mobility, the application evidence overall does not establish that the applicant has a*

severe restriction in her ability to function independently, effectively, appropriately, or for a reasonable duration.

Ms. [redacted] submits that the above finding suggests that the adjudicator considered information supplied by Dr. [redacted] and Dr. [redacted] independently from each other, which is not consistent with direction from the BC Supreme Court. In *Hudson v. Employment and Assistance Appeal Tribunal*, 2009 BCSC 1461, ("Hudson") the BC Supreme Court provided direction on the importance of considering the evidence from the physician and the assessor in its entirety, including narrative portions of the application, when determining the applicant's eligibility. Holistic consideration of the evidence confirms that all of Ms. [redacted] daily living activities are restricted either continuously or periodically and that she requires assistance with walking indoors, walking outdoors, standing lifting, carrying and holding, doing laundry, going to and from stores, carrying purchases, all aspects of meal preparation, two aspects of transportation, and one aspect of social functioning.

Furthermore, we submit that adequate consideration of the evidence provided when establishing a significant restriction and the level of assistance required, compels the Ministry to also consider the effect that using an assistive device for walking indoors and outdoors has on daily function, as either walking inside or outside is, at least in part, necessary to carry out almost all daily living activities.

Additional Evidence:

5. In addition to the information provided in the application, Dr. [redacted] has provided additional evidence about Ms. [redacted] impairments in the attached letter dated [redacted] 2019.

6. Ms. [redacted] requests that the Ministry review the letter along with her initial application, which together include the necessary evidence to establish that Ms. [redacted] qualified for the PWD designation.

Sincerely,

_____

Thea McDonagh – Legal Advocate
Together Against Poverty Society

EMPLOYMENT AND ASSISTANCE APPEAL SUBMISSION

BEFORE THE BRITISH COLUMBIA EMPLOYMENT AND ASSISTANCE

APPEAL TRIBUNAL

IN THE MATTER of the *Employment and Assistance for Persons with Disabilities Act*

BETWEEN:

Ms. [redacted]

APPELLANT

MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION

RESPONDENT

APPELLANT'S SUBMISSION

Issue

Ms. [redacted] submits that she meets the eligibility criteria for the "Persons with Disabilities" ("PWD") designation pursuant to s. 2 of the *Employment and Assistance for Persons with Disabilities Act* (the "*Act*"). She further submits that the Minister of Social Development and Poverty Reduction's (the "Minister's") decision to deny her the same is an unreasonable application of s. 2 of the *Act*.

Overview

1. Ms. [redacted] has been diagnosed with addiction, depression, anxiety, c-spine herniated disc and scoliosis. Her mental health impairments are the result of an extensive trauma history which she has described in the "Section 1 – Applicant Information" on pages 81 and 82 of the Appeal Record.

2. Ms. [redacted] submitted an application for the PWD designation on [redacted], 2018. Ms. [redacted] completed the "Section 1 – Applicant Information" with assistance from the Victoria Cool Aid Society. Dr. [redacted] completed the "Section 2 – Medical Report" and Registered Nurse, Ms. [redacted], completed the "Section 3 – Assessor Report".

3. The Minister adjudicated Ms. [redacted] PWD application on [redacted], 2019 and determined there was insufficient information to establish that she met the criteria for the PWD designation. As seen in the Denial Decision Summary on pages 40 to 42 of the Appeal Record, the Minister found that Ms. [redacted] satisfied one of the five eligibility criteria: that

she was at least 18 years of age. However, the Minister found that:

i. the application evidence did not establish that the impairment is likely to continue for two or more years;
ii. the application evidence did not establish a severe physical or mental impairment;
iii. the application evidence did not establish that she has significant restriction in her ability to perform a range of daily living activities, and;
iv. the application evidence did not establish that she requires help as a result of the restrictions to her daily living activities.

4. Ms. [redacted] disagreed with the Minister's conclusions and requested a reconsideration of the decision on [redacted], 2019.

5. On [redacted], 2019, Thea McDonagh, an advocate from Together Against Poverty Society, contacted Dr. [redacted] on behalf of Ms. [redacted] and requested additional information regarding the nature of her impairment for the purpose of her reconsideration.

6. Shortly thereafter, Ms. [redacted] met with Dr. [redacted] and also requested more information for her reconsideration, however, Dr. [redacted] advised that she did not have the time to provide further details.

7. The Minister adjudicated Ms. [redacted] request for reconsideration on [redacted], 2019. Based on the initial application alone, the reconsideration officer upheld the decision to deny Ms. [redacted] the PWD designation. However, unlike the previous decision, the reconsideration officer found that:

i. the application evidence did establish a severe physical or mental impairment;
ii. the application evidence did establish that Ms. [redacted] has a significant restriction to her ability to perform a range of daily living activities, and;
iii. the application evidence did establish that she requires help as a result of the restrictions to her daily living activities.

8. The only criteria not confirmed by the reconsideration officer was the duration of Ms. [redacted] impairment.

9. Ms. [redacted] submitted a Notice of Appeal to the Employment and Assistance Appeal Tribunal (the "EAAT") on [redacted], 2019.

Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, [SBC 2002] c. 41

"Persons with disabilities"
2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002

2 (1) For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

Legal Issue

10. As per s. 24(1) of the *Employment and Assistance Act* ("Decision of panel"), the EAAT panel members must determine whether the decision being appealed is either reasonably supported by the evidence or a reasonable application of s. 2 of the *Act* in the appellant's circumstances.

11. The Minister has acknowledged that Ms. [redacted] meets the age criterion; has a severe physical and/or mental impairment; that her impairment directly and significantly restricts her daily living activities; and that she requires assistance to perform those activities. Therefore, the issue in this appeal is whether the Minister's decision to deny Ms. [redacted] on the finding that it cannot be determined her impairment is likely to last for two years or more is either reasonably supported by the evidence or a reasonable application of s. 2 of the *Act*.

Submission

12. We submit that Ms. [redacted] initial application and the additional evidence she has provided with this submission establish that her impairment is likely to last for two years or more and that she therefore meets the criteria for the PWD designation.

Additional evidence

13. Ms. [redacted] recently received a referral to Nurse Practitioner, [redacted], and met with him on [redacted], 2019 for a medical consultation. [redacted] has significant experience working with patients with mental health impairments and reviewed [redacted] PWD application, health history and symptoms extensively.

14. As per s. 2 of the *Act,* the duration of impairment must be confirmed by a medical practitioner or nurse practitioner. Mr. [redacted] has been a nurse practitioner for 1.5 years and has provided a letter that confirms both Ms. [redacted] physical and mental health impairments are likely to last for two or more years.

15. Ms. [redacted] also submits a letter from Registered Nurse, Ms. [redacted] that elaborates on her assessment in the "Section 3 – Assessor Report" of the initial application. Although, Ms. [redacted] is a Registered Nurse and unable to confirm duration for the purposes of the statutory criteria, she has extensive experience and training with substance use disorders and her evidence corroborates Mr. [redacted] opinion.

Admission of additional evidence

16. In order to determine whether the Minister's decision is reasonably supported by the evidence, the Tribunal must first determine whether the additional evidence provided by Ms. [redacted] is admissible.

17. As per s. 22(4) of the *Employment and Assistance Act* ("Panels of the tribunal to conduct appeals"), a panel may admit as evidence only (a) the information and records that were before the minister when the decision being appealed was made, and (b) oral or written testimony in support of the information and records referred to in paragraph (a).

18. The Tribunal's Guidelines (available on the EAAT website) provide direction on how s. 22(4) of the *Employment and Assistance Act* ought to be interpreted. Specifically, the Additional Evidence Guideline (the "*Guideline*") states that:

> "Section 22(4)(b) is designed to strike a balance between a pure appeal on the record of the ministry decision and a hearing de novo (a completely new hearing). […] If the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted; if it does not, then it does not meet the test of admissibility under s. 22(4)(b) of the Employment and Assistance Act and should not be admitted" (page 1, para. 5 of the Guideline).

19. The Guideline provides examples for consideration when determining admissibility of additional evidence including,

> "… if an appellant appealing the denial of the PWD designation submits a doctor's note verifying the appellant's testimony in the record of the ministry decision regarding the need for help with daily living activities, the doctor's note could properly be admitted as it is written testimony *"in support of"* the information and records, corroborating the information before the minister at reconsideration" (page 2, para. 2 of the Guideline).

20. Similarly, the Guideline also provides examples when panel members should not admit additional evidence.

> "Additional evidence should not be admitted if it introduces an entirely new issue that is not related to the issue in the record of the ministry decision. In PWD cases, for example, appellants frequently provide additional evidence in appeal regarding a medical diagnosis or condition. If this medical diagnosis or condition is not contained in the record of the ministry decision, then the additional evidence would not be *"in support of"* or corroborate the information and records before the minister at reconsideration.

21. We submit that the evidence contained in the letter from Nurse Practitioner, [redacted] does not introduce new information but rather, substantiates the information and records before the Minister at reconsideration.

22. In Ms. [redacted] initial application, on page 24 of the Appeal Record, when asked to indicate whether the impairment is likely to last for two years or more, Dr. [redacted] states that she is "*not sure.*"

23. In the "Section 3 – Assessor Report," on page 36 of the Appeal Record, Registered Nurse [redacted] states that, "[[redacted]] *will need 24-36 months to get recovery well established."*

24. The evidence from Nurse Practitioner, [redacted] corroborates the evidence concerning duration provided by Registered Nurse, [redacted] and clarifies the information Dr. [redacted] was unable to confirm. Mr. [redacted] specifically states, "…*it is very likely that* [Ms. [redacted]] *mental health and physical impairments will last for two years or more*."

25. In addition, on page 22 of the Appeal Record, Dr. [redacted] also states that "[Ms. [redacted]] *has not disclosed to me that she has addiction problems*." Ms. [redacted] submits that she had not discussed her mental health or substance use challenges with Dr. [redacted] prior to [redacted] 2018 and that Dr. [redacted] had limited knowledge of the history of these impairments.

26. Furthermore, on page 26 of the Appeal Record, the PWD application asks the medical or nurse practitioner to indicate the frequency of contact they have had with the applicant. While Dr. [redacted] did not indicate how many times she had seen Ms. [redacted] in the past 12 months, Ms. [redacted] submits that she had only seen Dr. [redacted] twice in the three years preceding her PWD application.

27. We submit that the evidence of Mr. [redacted] is in support of information already before the Minister, and that it is admissible under s.22(4) of the *Employment and Assistance Act.*

Reasonableness of Decision in light of all admissible evidence

28. A recent Notice to Members issued by the Chair of EAAT, Emily Drown, provides direction to panel members on the issue of considering admission of additional evidence. Specifically, the Chair reiterates that the appeal is not strictly a review of the record but rather a review on the basis of all admissible evidence. The Chair reminds panel members to exercise discretion when admitting evidence under s. 22 (4) of the *Employment and Assistance Act* and consider whether the decision under appeal is reasonable based on all admissible evidence, including any new evidence admitted under s. 22(4).

29. Mr. [redacted] letter states that it is likely the Ms. [redacted]s impairments will last two years or more.

30. We submit that, when the evidence of Mr. [redacted] is considered, the Minister's decision that Ms. [redacted] has failed to meet the requirements in s.2(a) is not a reasonable application of this section.

Conclusion

31. In conclusion, we submit that Dr. [redacted] was unable to confirm the duration of Ms. [redacted] impairment due to limited knowledge of her mental health impairments. We

submit that the evidence provided by Nurse Practitioner, Mr. [redacted], clarifies the uncertainty in the application regarding duration of Ms. [redacted] impairment.

32. We further submit that the additional evidence provided by Nurse Practitioner, Mr. [redacted], should be admitted as it clarifies and corroborates the information that was before the Minister when the reconsideration decision was made.

33. Finally, on consideration of all the admissible evidence, the Minister's decision is neither reasonably supported by the evidence, nor is it a reasonable application of s. 2 of the *Act*. For these reasons, we respectfully request that the panel rescind the Minister's decision to deny Ms. [redacted] the PWD designation.

All of which is respectfully submitted,

May 1, 2019

_____

Thea McDonagh – Legal Advocate
Together Against Poverty Society

disability alliance bc | we are all connected

tel 604.872.1278
toll free 1.800.663.1278

Advocacy Access Program

January 1, 2022

Dear Dr. Lee,

Re: John Doe – date of birth January 1, 1980 – Disability appeal

Despite your caring work on his disability form, John Doe was denied PWD and has requested our assistance with the appeal. As you may know that designation will provide your patient with a little more money and medical coverage to aid in health promotion. Unlike with Canada Pension Plan Disability employability is **not** a criterion.

We are hopeful that a little more information from you will clarify the severity of your patient's impairment and the consequent ongoing restrictions in ability to perform daily living activities independently in a timely fashion and need for (not necessarily receipt of – must prove need) assistance from other people and/or assistive devices.

A **restriction** means that someone takes significantly longer than normal to do a task, that they can't do it at all or that they can't do it without significant encouragement and/or help from another person or assistive devices. A restriction is considered **continuous** if it's unpredictable or ongoing; it is considered periodic if it only happens *sometimes* when the person needs to do the task.

After interviewing your patient and reviewing the application and Ministry decision, and in order to save you time and facilitate communication with the Ministry, I have enclosed a doctor's question sheet with the some questions for you to answer that target the criteria for PWD. For your convenience, I have also included a copy of the questions with answers suggested for your consideration.

Thank you for taking time to respond to this request. The government does not pay doctors for their valuable work on appeals, and neither can we afford to pay you since we are a non-profit, non-government organization. Unfortunately the time allowed to file appeals is very short. If you decide to assist your patient in this way we need your response as soon as possible. **If possible, may I suggest you email me the doctor's question sheets to me as soon as possible at advocate@disabilityalliancebc.org.**

Thank you for considering this matter.

Sincerely,

Advocate

To Whom It May Concern:

Re: John Doe - Eligibility for Disability Benefits (PWD)

Dear Dr: These questions and answers are not intended to substitute for your professional expertise. They are designed to target the criteriafor PWD and to save you time since we cannot afford to pay you for your work on the appeal.*

The following questions are posed to the applicant's doctor in order to assist in determining eligibility for the disability designation.

---

1. When the impact of their conditions on their daily functioning is considered, does your patient have a severe impairment? If so, please explain:

Yes.
Severe coronary arterial disease
Multiple ME's requiring stenting
CVA – restricted cognitive functioning, global amnesia.
Congenital heart failures

Symptoms are affecting chronic pain bilaterally in legs and left foot, shortness of breath, severe fatigue, restricted mobility and physical activity.

Depression, anxiety and cognitive restrictions (experiences low motivation, restricted memory and restricted concentration).

2. Does your patient often take significantly longer than normal to complete most daily living activities as a direct result of their limitations?

Yes at least 3x longer due to complete all tasks due to chronic pain, shortness of breath, cognitive restrictions and severe fatigue.

3. Is your patient's level of activity significantly reduced as a direct result of their impairment?

Yes.

4. How often is your patient significantly restricted in their ability to perform daily living activities by one or more of the recurring symptoms?

Daily

5. Overall, do your patient's health limitations significantly restrict their ability to perform a range of daily living activities ongoing?

- if yes, which tasks?

Daily living activities
2 (1)For the purposes of the Act and this regulation, **"daily living activities"**,
(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
(i) prepare own meals;
(ii) manage personal finances;
(iii) shop for personal needs;
(iv) use public or personal transportation facilities;
(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
(vi) move about indoors and outdoors;
(vii) perform personal hygiene and self care;
(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:
(i) make decisions about personal activities, care or finances;
(ii) relate to, communicate or interact with others effectively.

Yes.
Housework – Due to chronic pain and fatigue, patient is significantly restricted in completing household chores. Takes 3x as long compared to an average person their age with no restrictions. Requires help from friends and family members to assist with household chores.

Daily shopping – Restricted in grocery shopping due to fatigue, low motivation, chronic pain. Restricted in walking around store, waiting in line etc. Will only buy a few items at a time due to restrictions in lifting and carrying. Has friends and family who will buy him items when they go grocery shopping.

Mobility inside and outside the house- Periodically uses a cane (40% of the time), chronic pain in legs and feet. Shortness of breath and fatigue. Max 1 block before needing to take a break.

Use of transportation – Restricted driving due to chronic pain and fatigue. Only able to do short drives. Restricted use of public transit – requires a seat all of the time, restricted standing (waiting for public transit) walking to and from transit etc. Requires the use of a cane when using public transportation.

Medication management – requires the use of an alarm and blister pack, will still frequently forget to take medication as directed. Requires reminders from friends and family to set up and remember to medications.

Financial management- Due to restricted memory, will forget to pay bills on time. Frequently gets notices of disconnection before he remembers to pay his bills.

Meal preparation- Will forget pans on stove while cooking and forget due to restricted memory. Requires assistance from family or friends who will cook meals for him and bring them to him.

Easily overwhelmed by unexpected demands, very short-term memory, and very disrupted social functioning with family.

6. As a result of your patient's health restrictions, can you confirm that your patient needs significant ongoing help from other people and/or assistive devices to manage daily living activities?

- If yes, help with which DLAs and from which assistive devices?

Yes.
Patient requires the use of a cane, bathtub grab bar and a toilet grab bar.

Patient needs significant ongoing help from another person with household chores, daily shopping, medication management and meal preparation and has received psychological counselling to cope with severe chronic pain, depression and anxiety.

Dear Doctor: The following pages have questions for you to answer if you are willing. They target the criteria for PWD. Your own letter, if you are willing, would be most welcome.

To Whom It May Concern:

Re: John Doe - Eligibility for Disability Benefits (PWD)

The following questions are posed to the applicant's doctor in order to assist in determining eligibility for the disability designation.

---

1. When the impact of your patient's conditions on their daily functioning is considered, does your patient have a severe impairment? If so, please explain:

2. Does your patient often take significantly longer than normal to complete most daily living activities as a direct result of their limitations?

3. Is your patient's level of activity significantly reduced as a direct result of their impairment?

4. How often is your patient significantly restricted in the ability to perform daily living activities by one or more of their recurring symptoms?

5. Overall, do your patient's health limitations significantly restrict their ability to perform a range of daily living activities ongoing?

- if yes, which ones?

Daily living activities
2 (1)For the purposes of the Act and this regulation, **"daily living activities"**,
(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
(i) prepare own meals;
(ii) manage personal finances;
(iii) shop for personal needs;
(iv) use public or personal transportation facilities;
(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
(vi) move about indoors and outdoors;
(vii) perform personal hygiene and self care;
(viii) manage personal medication, and
(b) in relation to a person who has a severe mental impairment, includes the following activities:
(i) make decisions about personal activities, care or finances;
(ii) relate to, communicate or interact with others effectively.

6. As a result of your patient's health restrictions, can you confirm that your patient needs significant ongoing help from other people and/or assistive devices to manage daily living activities?

- If yes, which daily living activities and what assistive devices?

_____ _____

Physician's signature **Date**

Office stamp or name and address:

April 14, 2019

Attention: Ministry of Social Development and Poverty Reduction

RE: Hermione Granger - DOB: 1966/07/19

I am writing in support of Ms. Hermione Granger's application for Persons with Disabilities (PWD) designation. I understand that Hermione was denied as the Ministry could not determine the severity of her impairments or the level of restriction to her daily living activities.

As indicated in her initial application, Hermione lives with anxiety, depression, arthritis, chronic fatigue syndrome, and fibromyalgia. I would like to clarify and elaborate on the information I provided in Hermione's application in support of establishing her eligibility for this benefit.

In regards to Hermione's physical functioning and as indicated in the initial application, Hermione experiences significant muscle and joint pain due to fibromyalgia and arthritis. This pain is severe on average 4 days per week and on these days, she is generally restricted to her home.

As I stated in the initial application, Hermione uses a cane for mobility. Please note that she uses this assistive device for outdoor mobility on average 80% of the time and for indoor mobility every afternoon. It takes Hermione 5-7 minutes to go up the 13 steps in her home as she has to stop and rest. Hermione sleeps on the couch 4-5 days per week to avoid climbing the stairs to her bedroom. Also indicated in the initial application is Hermione's limitations regarding lifting. I indicated that Hermione is limited to lifting less than 5 pounds due to chronic pain and fatigue. Specifically, she is unable to lift more than 2 pounds which clearly limits her ability to perform a wide range of daily living activities.

In regards to Hermione's ability to perform daily living activities, I confirmed in her initial application that she requires continuous assistance with meal preparation, basic housework, daily shopping, mobility inside and outside the home, use of transportation and social functioning. In addition, I verified that she requires periodic assistance with personal self-care, management of medications, and management of finances.

It is my opinion that Hermione meets the criteria for this designation due to the severity of her impairments and the significant restrictions she faces in performing daily living activities. Please do not hesitate to contact me should you have further questions.

Sincerely,

Dr. Minerva McGonagall
Phone: 250-934-0000

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Professional Responsibility and Scope of Service for Poverty Law Advocates

Sharon Kearney; Veenu Saini

An important session for new poverty law advocates about professional responsibility, file management and scope of service.

FILE MANAGEMENT
and Professional Responsibility

Presented by **Odette Dempsey-Caputo**

THE LAW FOUNDATION OF BRITISH COLUMBIA

Foundation

Objectives

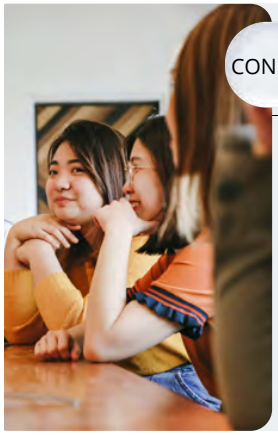
Someone should be able to pick up your file and have a good understanding what is going on.

Helps you organize the file and ensure that you work effeciently.

To get you to Document, Document, Document.

Isabelle Ringing

Isabelle has a dog named Buzz that likes to bark. Her downstairs neighbour Toi Story has complained about Buzz barking to Isabelle's landlord Andy. Isabelle was just handed a one month eviction notice.



CONFLICT CHECK

1. WHAT IS A CONFLICT CHECK?
2. WHEN DO YOU DO A CONFLICT CHECK?
3. WHO ARE YOU CHECKING?

Conflict

Conflict of Interest:
You have a duty of undivided loyalty to your client.

Conflict check:
A conflict check is completed to confirm the client does not have a conflict with another client's interest.

Keep a list:
Keep a list of your clients and of other advocates and lawyers at your organization. The intake form will help you with this.

Types of Conflict:
A conflict can be with another client, a current client, with you personally or someone else in your organization or with your organization.

IF THERE IS A CONFLICT

Conflict

STOP: DO NOT allow your client to tell you anything more.

SILENCE: DO NOT tell your client what the conflict is. This can be a breach of confidentiality to your other client.

SEND: A closing letter to the client who you have the conflict with and close the file immediately.

You should also document the communication you had with the client.

ISABELLE RINGING

Ms. Ringing has a dog named Buzz that likes to bark. Her downstairs neighbour Toi Story has complained about Buzz's barking to Isabelle's landlord Andy.

When?

Who?

CONFLICT SCENARIOS

Scenario 1: Advocate A and B work for Pics Sell Family Centre. Advocate A is acting for Isabelle and Advocate B is acting for Toi Story.

Scenario 2: Advocate A is acting for Isabelle in her RTB matter. Isabelle's Dad Rex contacts Advocate B at Pics Sell about human rights complaint he has.

Scenario 3: Isabelle is married to Sy Lent and they have a child together. Isabelle wants to separate from Sy Lent. Sy Lent and Isabelle come to advocate A and say they want help with a separation agreement.

Scenario 4: Advocate B works at Pics Sell. Pics sell Family Centre has housing for single mothers which they call the New Life building. Isabelle lives at New Life and comes to Advocate B asking for help with an issue with her landlord.

Now What?

Liability Waiver

- You can have the client sign this form to acknowledge the risks in their participation in the program.
- It can help to reduce the risk of the legal liability of the organization.
- DOES NOT include negligence.

Confidentiality Waiver

- This waiver allows you to discuss the client's case with someone outside your organization.
- We will discuss this issue more in the Professional Responsibility section.

Consent Forms

- These forms advise another organization that the client is agreeing that they can share their information about the client with you.
- The organization may require you to sign their specific consent form.

Gather information!!!

Collect information so you can determine how to meet your client's needs.

Limitation Periods

You will want to determine the limitation period right away.

A limitation period is the time in which you have to start a legal process or you will not be able to proceed with the claim. The date is the end of that period.

You find them in legislation and policies.

You MUST inform your client of them.

If you are unsure talk to your supervising lawyer.

Note: some are shorter and some are longer (10 days RTB). The average limitation period is 2 years.

Do you need to close the file?

- Conflict
- Deadline/limitation too close
- Difficult client
- Outside your approved matters/scope
- Good idea to send letter explaining why

LEVEL OF SERVICE

REFERRAL INFORMATION

Less than 30 min

Legal and non legal services

Have a list ready

Always good to include a referral in a conflict file

SUMMARY ADVICE

Less than 2 hours

Should be given in writing

If given verbally, follow up with writing

You **MUST** include limitation dates

FULL REPRESENTATION

Takes more than 2 hours

Often involves litigation or document drafting

Client signs a Retainer Agreement (include a scope of work letter)

You **MUST** include limitation dates

Isabelle Ringing

Isabelle has a dog named Buzz that likes to bark. Her downstairs neighbour Toi Story has complained about Buzz barking to Isabelle's landlord Andy. Isabelle was just handed a one month eviction notice.

What level for Isabelle?

Is there a limitation date?

Full Representation

Open the File

Retainer Agreement- an agreement between you and the client about your services.

Scope of Work- a letter that explains what you will do for the client and the process ex. HRT or RTB.

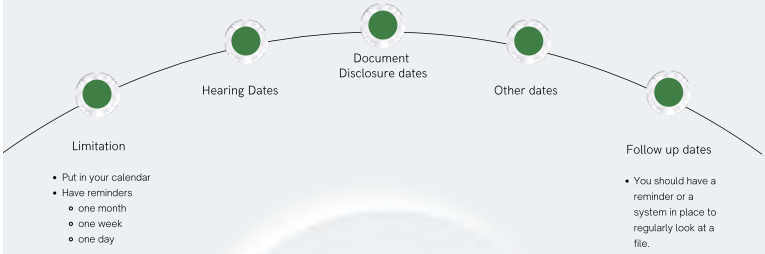
RETAINER AGREEMENTS

- Always have the client sign a retainer agreement (two copies: client and you)
- It should set out exactly what you are helping them with.
- Each separate issue should be its own file and retainer agreement.
- Include: confidentiality, disbursements, file ownership, how to terminate the relationship.
- Should be signed by both of you.

SCOPE OF WORK LETTER

- It's a good idea to include a scope of work letter
- It should set out:
  - what the client told you
  - what information/documents you still need
  - what the process is for their issue
  - what their options are
  - what the risks and benefits of the options are
  - how you can help them
  - any limitation dates

Document Dates



Limitation

- Put in your calendar
- Have reminders
  - one month
  - one week
  - one day

Follow up dates

- You should have a reminder or a system in place to regularly look at a file.

COMMUNICATION WITH CLIENTS

Telephone

Whenever you communicate with a client you should document it.

Good idea to follow up with an email or letter.

E-mail

Put emails, notes, and other communication with the client or other parties in the file.

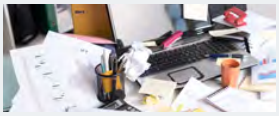
Meetings

Include in the notes:

- the date
- what was said, who said it
- what you advised
- what needs to be done and by who

PHYSICAL FILE

- DOCUMENTS in chronological order (its common to have the most recent on the top)
- Date all notes.
- Stored in a locked area that is not easily accessible.
- Number or organized by name
- Open and closed files should be kept separately.
- Keep notes of ALL conversations you have with clients in the file.



DATABASE

- All summary advice and full representation files should be in the database.
- Upload Documents (scan if needed).
- Enter all limitation dates, hearing dates and relevant deadlines.
- Keep notes of ALL communications.

When to withdraw?

- Conflict
- No communication
- Lack of capacity
- No trust
- Lies to you
- Client asks you to lie
- Unreasonable

CLOSING THE FILE

Common Reasons to close a file are:

- you have completed your scope of work
- the client decides to end the relationship with you
- you have decided to end the relationship
- a conflict arose

SEND a letter saying you have done so.

Return all original documents and confirm in the letter you have done so

Do up a closing memo

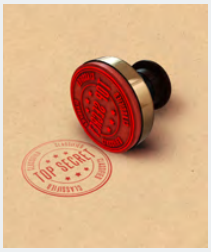
DO NOT destroy your file even if your client says they want you to.

What do you Keep?

- Your notes
- Your forms (intake, confidentiality waivers et c., copies to client)
- Your work sheets
- Original retainer agreement (copies to client)
- Communication from the client to you (copies to client)
- Communication from you to the client and/or third parties (copies to client)
- Other documents you and your supervising lawyer deem necessary.

- Must be kept in safe secure location
- Have a retention and destruction plan
- Use closing checklist

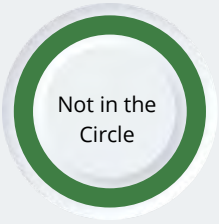
Confidentiality



YOU HAVE A DUTY OF CONFIDENTIALITY TO YOUR CLIENT!!!!!!

Program colleagues
Supervising lawyer
Law Foundation

You will need a consent form for anyone outside the circle.



You should not even confirm they are a client without your client's permission

Other service providers
Client's relatives
Some people in your organization
Your family

Explain confidentiality to your client?

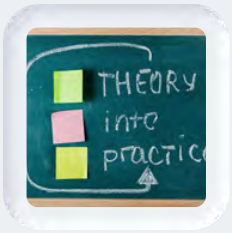
- Immediately
- What it is
- Who is in the circle (you can include this in the retainer)
- Exceptions

Exceptions

Child Protection	Court Order	Harm
You MUST report child abuse. S.14(2) of the CFCSA	Advocates do not have the same protection as lawyers.	If your client is going to hurt themselves or someone else.

If you are in doubt talk to your supervising lawyer

Scenarios



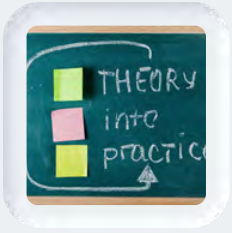
Fact Pattern #1

You have an excellent working relationship with the receptionist at your office. In casual conversations in the office, you have heard a little bit about her sister's separation from her husband. The sister's husband is on the same curling team as your husband. By all accounts, their separation is cordial. The receptionist approaches you at the end of a day and asks if you will help the couple prepare a simple Separation Agreement. The receptionist assures you there are no issues in dispute and they can both come to see you and provide joint instructions. You know the couple is in a tight spot financially, as the husband has been laid off from his job at the local mill for some time. They cannot afford a lawyer. There are no other resources they could use closer than a two hour drive away.

Do you help them? If so, how? What should your concerns be?

Fact Pattern #2

Your client, George, asks you to write a letter from him, to a film studio he is in a dispute with. In your opinion, the letter George wants you to write would not be in his best legal interests. What do you do?

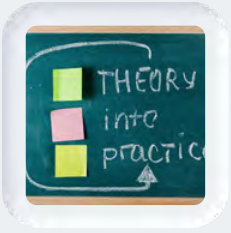


Fact Pattern #3

You are a witness in a child protection case where the Director is seeking continuing custody of a child, based on the mother's neglect. You have provided support and guidance to the mother and have worked with her lawyer. As with all your clients, you have assured the mother confidentiality, but advised her that your communications could be subject to a Court order. The code of ethics at your Advocacy Centre has a confidentiality rule, except in the event of child abuse.

In Court you object to answering questions by the Director's counsel in areas where the mother has communicated with you in confidence. You argue that your value as an advocate in your community would be compromised should the mother be required to reveal your conversations.

What will the judge rule on your objection to answering these questions, and why?



Fact Pattern #4

You act for A in a claim for PWD benefits. You have had a doctor and assessor provide the necessary forms and have collected other supporting documents. You are ready to submit the application, on which you have expended considerable time.

Your relationship with A has been difficult from the beginning. She is a demanding client; constantly challenging your decisions and questioning your knowledge.

The day before you are to submit her application, she barges into your office and fires you. She demands "her file" right away and insists she will not leave the office without her file in hand.

What do you do? What, if anything, do you provide A from her file? What, if anything, do you keep?

Fact Pattern #5

You have previously represented Brad, a handsome man who faced an attempt by his landlord to illegally evict him from his trendy Los Angles apartment. You conducted a RTB Hearing, and were successful in defeating the eviction attempt.

It is now just over two years later. In the interim you have had no contact with Brad, though you often read about him in magazines. A woman, Jennifer, comes to see you. She has three children with Brad, from a relationship they had which ended six years ago, and which you have read about in the same magazines. Jennifer is destitute and seeks your help in attempting to obtain a child support order against Brad.

Can you act for Jennifer against Brad? Are there any limitation periods that affect your decision of whether to act for Jennifer or not? If you do act for her, are there any limitation periods you need to be concerned about?

Thank you!

Contact us if there are any questions.

Website
https://kamloopsefry.com

Phone
250-374-2119

Email
Odette@kamloopsefry.com

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Systemic Law Update

Kevin Love; Alison Ward; Zuzana Modrovic; Ashley Silcock;
Vernon Paul Black

Updates on important issues over the past year in housing, income assistance, employment, and Indigenous class actions.

CHANGES TO BC WELFARE LAW
OCTOBER 12, 2021 TO OCTOBER 14, 2022

ALISON WARD, LAWYER, COMMUNITY ADVOCATE SUPPORT LINE ("CASL")

COMMUNITY LEGAL ASSISTANCE SOCIETY, VANCOUVER, BC

1

SLIGHT CHANGES TO EXEMPTION OF PANDEMIC-RELATED BENEFITS

- Exemptions remain written in the legislation
  - for people who either had the PWD designation on April 2, 2020, or who were receiving welfare benefits on April 2, 2020, the following are/were exempt as income and as an asset:
    - Canada Emergency Response Benefits (CERB);
    - the Canada Response Benefit (CRB);
    - EI paid for a period ending before November 21, 2021; and
    - the Canada Worker Lockdown Benefit (this was a new exemption added on January 31, 2022).
- The sections creating these exemptions were originally written to expire on a certain date. In 2020 and 2021, the expiry date was extended several times. There is no longer an expiry date for these exemptions (it was repealed Dec 13, 2021).
- None of these benefits remain in pay or open to application, so exemptions largely moot.
- People who receive such benefits retroactively may still benefit from the exemptions.
- If the pandemic worsens, the exemptions may become more relevant again.

2

SENIORS WHO LOST GIS BENEFITS DUE TO CERB OR THE CANADA RECOVERY BENEFIT - FEDERAL LUMP SUM COMPENSATION EXEMPTED -

- the federal Guaranteed Income Supplement (GIS) is paid to low-income seniors from Old Age Security (OAS). It is income-tested, and seniors on GIS have an earnings exemption (currently $5000/year).
- Many seniors on GIS who worked part-time prior to the pandemic qualified for and received CERB or the CRB in 2020. As these benefits were not defined as earned employment income in the Old Age Security Act, seniors who received CERB or the CRB had their GIS benefits reduced or eliminated starting in July 2021.
- The week of April 19, 2022, the federal government issued non-taxable, one-time lump sum payments to compensate for this loss of GIS benefits. The automatic payment equalled the amount of GIS benefits a senior had lost since July 2021 because of pandemic benefits received in 2020.
- If a senior who receives monthly welfare benefits gets such a one-time lump sum payment, that federal payment is exempt as income and as an asset. This exemption took effect May 1, 2022.

3

NEW MINIMUM SHELTER ALLOWANCE INTRODUCED AND POLICY ON "ACTUAL SHELTER COSTS" BROADENED

- Effective May 1, 2022, a minimum shelter allowance is available to all recipients of welfare benefits (income assistance, hardship and disability assistance), even if the family unit does not have "actual shelter costs."
- The Ministry's policy on determining what someone's "actual shelter costs" are was also broadened as of May 1, 2022.
- Prior to this change, shelter benefits would be paid only if someone had "actual shelter costs," which the welfare legislation defines as:
  - rent or mortgage payments on a place of residence,
  - utility costs (including fuel for heating or cooking meals, water, hydro, garbage disposal, and rental of a phone line), and
  - if the residence is owned by the family unit, house insurance, property taxes, and actual cost of maintenance and repairs (with prior approval).

4

MINIMUM SHELTER ALLOWANCE EFFECT OF CHANGES

This legislative and policy change does two things:

- Policy formally recognizes that a "place of residence" for which MSDPR can pay "actual shelter costs" can include e.g. living in a tent, boat, car or recreational vehicle. Examples of actual shelter costs listed in policy include camp site or dock fees; hook up fees such as water or septic; wood and/or fuel (gas, diesel, propane) for cooking and heating.
- People who cannot show that they have "actual shelter expenses" above the minimum shelter allowance, or whose documented costs are less than the minimum shelter rate, can still access the minimum shelter allowance on a monthly basis.

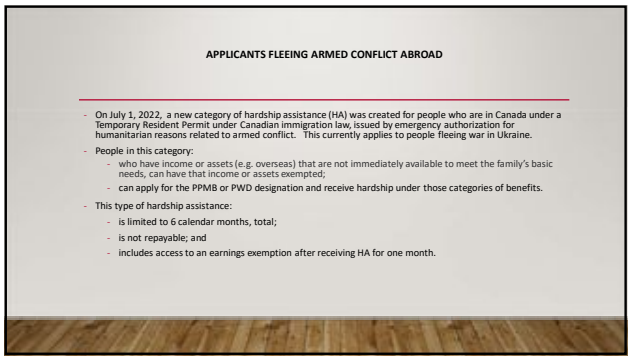
5

MINIMUM SHELTER ALLOWANCE AMOUNTS

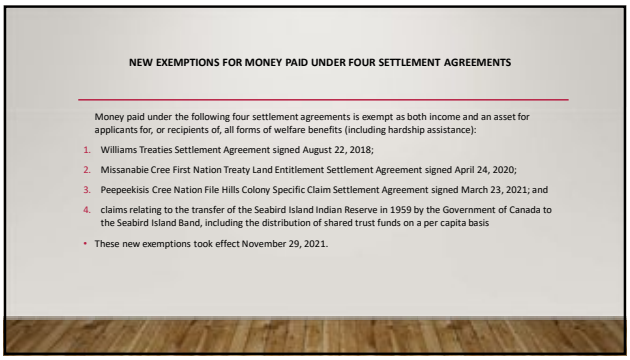
- Note: for family units over 5, minimum rate increases by $25/person, and maximum rate increases by $50/person

Family Unit Size	Minimum Shelter Allowance	Maximum Shelter Allowance
1 person	$75	$375
2 people	$150	$570
3 people	$200	$665
4 people	$225	$715
5 people	$250	$765

6


APPLICANTS FLEEING ARMED CONFLICT ABROAD
- On July 1, 2022, a new category of hardship assistance (HA) was created for people who are in Canada under a Temporary Resident Permit under Canadian immigration law, issued by emergency authorization for humanitarian reasons related to armed conflict. This currently applies to people fleeing war in Ukraine.
- People in this category:
- who have income or assets (e.g. overseas) that are not immediately available to meet the family's basic needs, can have that income or assets exempted;
- can apply for the PPMB or PWD designation and receive hardship under those categories of benefits.
- This type of hardship assistance:
- is limited to 6 calendar months, total;
- is not repayable; and
- includes access to an earnings exemption after receiving HA for one month.

7


NEW EXEMPTIONS FOR MONEY PAID UNDER FOUR SETTLEMENT AGREEMENTS
Money paid under the following four settlement agreements is exempt as both income and an asset for applicants for, or recipients of, all forms of welfare benefits (including hardship assistance):
1. Williams Treaties Settlement Agreement signed August 22, 2018;
2. Missanabie Cree First Nation Treaty Land Entitlement Settlement Agreement signed April 24, 2020;
3. Peepeekisis Cree Nation File Hills Colony Specific Claim Settlement Agreement signed March 23, 2021; and
4. claims relating to the transfer of the Seabird Island Indian Reserve in 1959 by the Government of Canada to the Seabird Island Band, including the distribution of shared trust funds on a per capita basis
• These new exemptions took effect November 29, 2021.

8


THANK YOU!

9

FIVE EMPLOYMENT RELATED CHANGES YOU NEED TO KNOW!

Kevin Love, lawyer
Community Legal Assistance Society
October 25, 2022

1

#1 – PAID SICK TIME

- 5 paid and 3 unpaid sick days for most employees.
- Do not need to use consecutively.
- Cannot bank or carry forward.

2

#2 – THE END OF FEDERAL PANDEMIC BENEFITS

- Federal pandemic programs for workers not covered by EI (CERB, ERB etc.) are over.
- Although programs are over, government trying to recollect money is sadly not.

3

#3 – Temporary EI Measures Are Also Over

- Back to the usual pre-pandemic EI rules.
- No more universal 420 hour entry requirement.

4

#4 – PERMANENT EI REFORM PROJECT ONGOING

- Government has finished phase II on consultations.
- We expect the government to publish its plan for permanent change shortly.

5

#5 – EI SICKNESS BENEFITS WILL BE EXPANDED

- 2022 budget provided an increase from 15 to 26 weeks.
- Minister has promised to bring into effect by the end of the year.

6

Appendix 1

BC Employment and Assistance Policy and Procedure Manual

Extracts taken October 23, 2022

Policy Topic: Support, Shelter and Special Care Facilities

Effective: May 1, 2022

Allowable Shelter Costs

"Place of residence" refers to the place where the family unit currently lives and is not limited to living arrangements in places such as houses or apartments [see Procedures-Determining Allowable Shelter Costs].

When calculating the actual shelter costs of an eligible *family unit*, only the following items may be included:

- rent for the family unit's place of residence
- if the family unit's place of residence is owned by a person in the family unit, any of the following costs for the place of residence:
    - mortgage payments
    - a house insurance premium
    - property taxes
    - with the minister's prior approval, the actual cost of maintenance and repairs [see Policy – Home Maintenance and Repairs]
- any of the following utility costs for the family unit's place of residence:
    - fuel for cooking or heating
    - water
    - hydro
    - garbage disposal provided by a company on a regular weekly or bi-weekly basis
    - rental of one basic residential single-line telephone

……

Procedures

Determining Allowable Shelter Costs

Effective: May 1, 2022

To assess a client's monthly allowable shelter costs, follow these steps:

1. Review the client's current place of residence. **Note:** a mailing address is not required to assess allowable shelter costs. **Examples may include, but are not limited to living in a house, apartment, tent, vehicle, recreational vehicle, or boat.**

2. Determine costs associated to their place of residence, including utility expenses associated to their place of residence**. Note: a family unit who has no fixed address may have rent and/or utility expenses**. Examples may include:

    a. camp site or dock fees;

    b. hook-up fees, such as water or septic;

    c. purchasing wood and/or fuel (gas/diesel/propane) for cooking and heating. Where a client is living in a vehicle or boat, fuel for cooking and heating versus fuel for transportation will be calculated on a case by case basis, and be based on the client's circumstances.

Note: house insurance premiums can only be considered as part of shelter costs for the family unit's place of residence if it is owned by a person in the family unit. Insurance for vehicles, boats or rental accommodation does not meet the regulatory criteria for shelter costs.

MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION ADVOCATE CONSULTATION PROCESS

Regional: see the CRSQ list on the reverse – there are regional calls on a regular basis, where the Ministry Chair is the CRSQ for the region. All advocates are encouraged to attend!

MOVING FORWARD STEERING COMMITTEE: meets quarterly to discuss policy issues

Anita LaHue, Ministry Co-Chair Anita.LaHue@gov.bc.ca;

Tish Lakes, Advocate Co-Chair tishlakes@okadvocate.ca

Subcommittees of the Moving Forward Steering Committee – work on specific issues identified by the steering committee as requiring more attention

1. CPPD (Canada Penson Plan Disability)

   Peta Poulton, Ministry Co-Chair Peta.Poulton@gov.bc.ca ;

   Paul Lagace, Advocate Co-Chair advocate.pruac@citywest.ca

2. HEALTH BENEFITS

   Peta Poulton, Ministry Co-Chair Peta.Poulton@gov.bc.ca ;

   Caitlin Wright, Advocate Co-Chair CWright@taps.bc.ca

3. PLMS (Prevention Loss Management Services)

   Kellie Vachon, Ministry Co Chair;

   Sonia Marino, Advocate Co-Chair smarino@firstunited.ca

4. CONSENT TO DISCLOSURE FORM (response to specific need and not currently active)

   Kellie Vachon, Ministry Chair Kellie.Vachon@gov.bc.ca

MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION

COMMUNITY RELATIONS AND SERVICE QUALITY (CRSQ) MANAGER CONTACT LIST

(September 20, 2022)

Work Unit (All Provincial Issues)	Community Relations and Service Quality Manager (CRSQ)	PHONE	GEOGRAPHIC AREA (Includes Ombudsperson Investigations & MySS Apps)
INTAKE (Applications general)	Michele Lauzon Michele.Lauzon@gov.bc.ca	Mobile: 604 760-4471	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
	John Bethell John.Bethell@gov.bc.ca	Mobile: 604 512-5487	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
CRSQ ISSUES SUPPORT SDSI.IssuesSupport.CommunityRelationsandServiceQuality@gov.bc.ca	Steven Clayton Steven.Clayton@gov.bc.ca	Mobile: 604-785-2506	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
	Kellie Vachon Kellie.Vachon@gov.bc.ca ***(PLMS: Section 10 liaison)***	Mobile: 604 999-6476	Interior
	Mira Culen Mira.Culen@gov.bc.ca (A/CRSQ till January 13, 2023)	778 698-5993	Vancouver Island
Health Assistance, HEALTH SUPPLEMENTS MEDICAL TRANSPORTATION CONTACT CENTRE (Includes ACE & Bus Pass) Specialized Services*: *Employment Plans & Reconsiderations	Peta Poulton Peta.Poulton@gov.bc.ca	Mobile: 250-203-6311	Vancouver Island
SPECIALIZED SERVICES: Funeral Assistance, Special Care Facilities, Case Review Team, OAS/GIS, Seniors Supplement, etc.	Pennie Smith Pennie.Smith@gov.bc.ca (A/CRSQ till January 7, 2023)	250 734-4867 Mobile: 236 628 2193	Northern
SPECIALIZED SERVICES: Funeral Assistance, Special Care Facilities, Case Review Team, OAS/GIS, Seniors Supplement, etc.	Ian Harrower Ian.Harrower@gov.bc.ca	250 649-2624 Mobile: 250 961-5501	Northern
	Ann Evans Locker Senior Manager, Stakeholder Relations	778-974-4067 Mobile: 250 896-3323	

Please note: To streamline responsiveness, Lower Mainland, Fraser and Vancouver Coastal geographic issues are managed collectively through one mailbox: **Lower Mainland MCRSQ mailbox** (Lowermainland.MCRSQ@gov.bc.ca) to be used by Lower Mainland stakeholders and ministry staff only, as the preferred method of contact. Stakeholder queries sent to the mailbox will be responded to by the first available MCRSQ as soon as possible.

Summary of RTA and MHPTA changes

Residential Tenancy Act section 51.1

- Adds a 12 month rent penalty for not fulfilling the stated purpose of a vacate clause (a clause in a tenancy agreement requiring the tenant to vacate at the end of a fixed term)

Residential Tenancy Regulation section 22.1

- Sets the rent increase amount for 2023 for RTA tenancies

Manufactured Home Park Tenancy Regulation section 32. 1

- Sets the max rent increase for 2023 for MHPTA tenancies

Policy Guideline Changes:

- PG 23 – sets out requirements for amending an application for dispute resolution using the Dispute Access Site
- PG 23&24 – parties cannot submit recordings with review or clarification/correction applications, and arbitrators won't listen to them except where it would be a breach of procedural fairness
- PG 30 – added content for 12 month rent penalty under s. 51.1
- PG 37 – amended to reflect max rent increases for 2022
- PG 41 – updated PG on administrative penalties
- PG 43 – updated PG on naming parties
- PG 44 – updated section on requesting alternative hearing format
- PG 47 – updated for obtaining recordings
- PG 49 – whole PG revised for clarity
- PG 50 – new sections on s. 51.1 compensation
- PG 54 – new section on determining the effective date of an OP

Interesting Caselaw from the past year:

- *McLintock v. British Columbia Housing Commission*, 2021 BCSC 1972
- *Ryan v. Mole Hill Community Housing,* 2022 BCCA 200
- *Labrie v. Liu*, 2021 BCSC 2486
- *Senft v. Society for Christian Care of the Elderly,* 2022 BCSC 2406
- *Cyrenne v. YWCA Metro Vancouver*, 2022 BCSC 2406
- *Connors v. MacLean*, 2022 BCSC 1460

THE LAW FOUNDATION OF BRITISH COLUMBIA

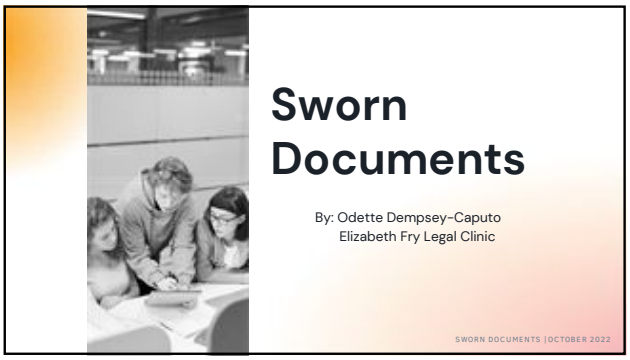
2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

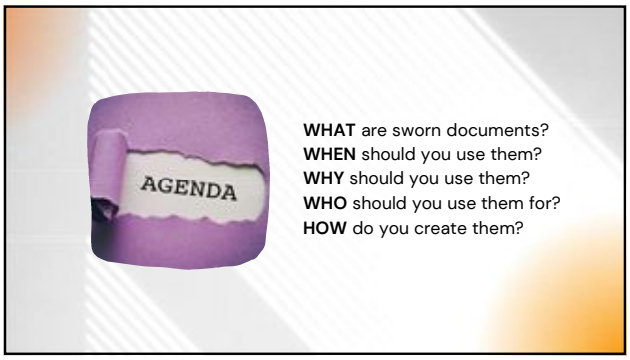
Using Sworn Documents

Odette Dempsey-Caputo

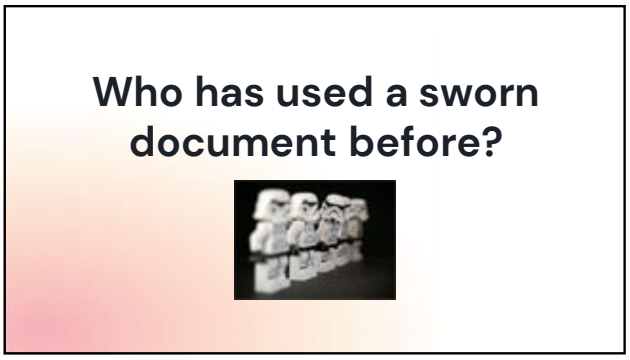
Information about how to best use sworn documents in administrative law cases. This session will focus on the dos and don’ts of sworn documents and when to use them most effectively. Statutory declarations and affidavits can make the difference between winning or losing a case. Clients often struggle with effectively communicating their story, a sworn document not only helps clients communicate the story but also allows the arbitrator to better understand the case.


Sworn Documents
By: Odette Dempsey-Caputo
Elizabeth Fry Legal Clinic
SWORN DOCUMENTS | OCTOBER 2022

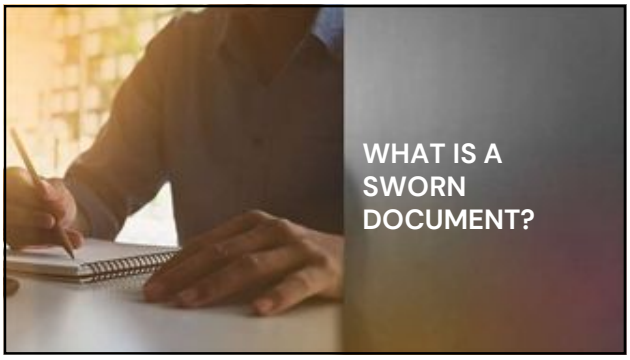
1


AGENDA
WHAT are sworn documents?
WHEN should you use them?
WHY should you use them?
WHO should you use them for?
HOW do you create them?

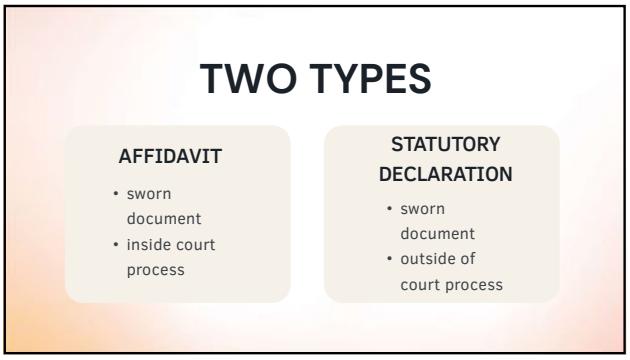
2


Who has used a sworn document before?

3


WHAT IS A SWORN DOCUMENT?

4


TWO TYPES
AFFIDAVIT
• sworn document
• inside court process
STATUTORY DECLARATION
• sworn document
• outside of court process

5


WHEN DO YOU WANT TO USE A SWORN DOCUMENT?

6

Anytime you need to give evidence!

Benefit applications:	• CPP disability, PWD, income assistance.
Tribunals:	• RTB, WCB, Employment Standards, HRT.
Other:	• ID, Medical Benefits, witnesses.

7

WHY DO YOU WANT TO USE A SWORN DOCUMENT

8

EFFICIENCY
FAMILIARITY
CLARITY
HELPS CLIENTS

9

Clients

Mental health issues
Talk too much
Trouble with chronology
Brain injury
Processing disorder
Systemic discrimination
Loud
Untrusting

10

HOW
DO YOU DRAFT
A SWORN
DOCUMENT

11

Affiant/Declarant= Donald Duck

Is the person who declares it

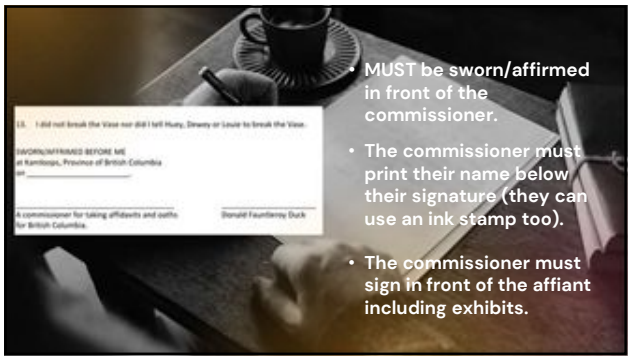
Style of cause

This is the caption at the top of the document.
Different for an affidavit versus statutory declaration.

Introduction

name, occupation, address, connection to issue

12



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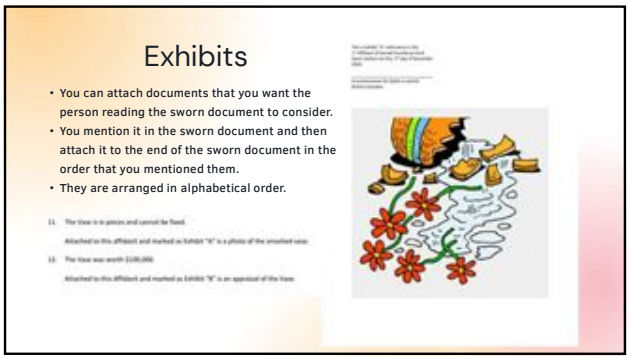

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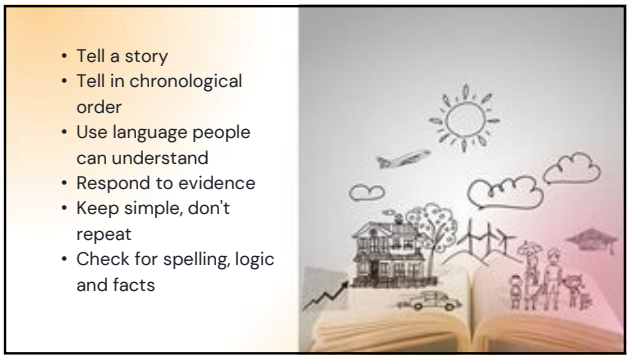

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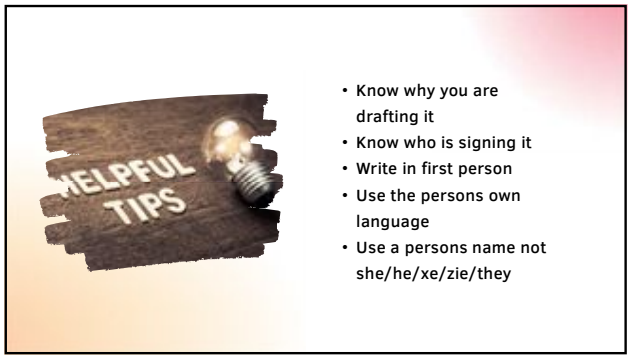


17

18

BE CAREFUL

- Attach letters from witnesses
- Use legalese or legal concepts

19

20

Practice 1

Huey was mad at Dewey and wanted to attack him. Louie told me that they had been fighting all day. Huey and Dewey always fight.

21

What was wrong?

Huey was mad at Dewey and wanted to attack him. Louie told me that they had been fighting all day. Louie and Dewey always fight.

- Used conclusions: mad, wanted to attack
- Hearsay: Louie told me
- Not relevant: they always fight
- One big paragraph
- Used they instead of Huey and Dewey

22

Practice 2

- Huey is always hitting Dewey.
- The assault on Dewey did not come with Dewey's consent. Huey had the actus rea and the mens rea.
- Huey, Dewey and Louie meant to break the Vase.
- Huey, Dewey and Louie never liked the Vase.

23

What was wrong?

- Huey is always hitting Dewey.
- The assault on Dewey did not come with Dewey's consent. Huey had the actus rea and the mens rea.
- Huey, Dewey and Louie meant to break the Vase.
- Huey, Dewey and Louie never liked the Vase.
- used an intensifier= always
- used legalese=second paragraph, also not simple language.
- includes a conclusion=meant to, never liked the Vase.

24


THANK YOU
If you have any questions do not hestiate to ask:
Odette Dempsey-Caputo
Elizabeth Fry Legal Clinic
odette@kamloopsefry.com

25

File No: 1111-01
Kamloops Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DONALD FAUNTLEROY DUCK

CLAIMANT

AND:

HUBERT DUCK, DEUTERONOMY D. DUCK AND LOUIS DUCK

RESPONDENT

1ST AFFIDAVIT OF DONALD FAUNTLEROY DUCK

Feather Firequacker
Firequacker, Eggbert and Sparrow LLP
4321 Dock Drive
Kamloops, British Columbia Q4U 1E4
Phone: (250)111-2222
Fax: (778)444-3333

Exercise

Polly Pipe smokes medical marijuana for her arthritis and severe anxiety. She has lived in the basement suite for 6 years and has smoked marijuana throughout her time there and no one ever complained about her smoking. Recently the landlord, Peter Owt decided he does not want Polly smoking anymore as he has had enough of her second hand smoke. The landlord, Peter Owt has given the Polly Pipe several warnings to stop smoking but the Polly refuses since it does not say in her tenancy agreement that she cannot smoke. Peter Owt recently gave her a one month notice of eviction for smoking in the basement suite.

Polly has a rental agreement dated November 1, 2016. She was initially paying $1200 for a rental suite but rent has been raised over the years and now she pays $1500. Her address is 1111 Holt Street, Surrey, BC. On March 21, 2022 she came home from work and found a warning on her door that stated that she was no longer allowed to smoke in her rental. She went up stairs and asked Peter about it and he yelled at her that the place always stinks. Since then she has avoided him. On April 18, 2022 when she was bringing in her groceries. Peter yelled from his deck that if she didn't stop smoking he was going to evict her. She was scared as he seemed very angry and rushed into the basement suite. Then on June 16, 2022 she came home to another note on her door saying that if she continued to smoke she would be evicted. She received a one month notice of eviction on September 5th, 2022. Polly will not stop smoking as it is not in her rental agreement, she has been doing it for 5 years before Peter complained. Polly also uses it for her arthritis and severe anxiety. She has tried to smoke less and less in the rental but in order to help her anxiety she has to smoke in the morning. During the summer she smokes near an open window. During the winter she uses an air purifier and Febreze. Polly has given you a copy of the rental agreement, the one month notice of eviction, and the two notes. You filed to dispute the notice of eviction on time. The hearing is December 6, 2022. You now need to draft a stat dec for the hearing.

This is the 1st affidavit Donald Fauntleroy Duck in this case and was made on November 3, 2020.
File No: 1111-01
Kamloops Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DONALD FAUNTLEROY DUCK

CLAIMANT

AND:

HUBERT DUCK, DEUTERONOMY D. DUCK AND LOUIE DUCK

RESPONDENT

AFFIDAVIT

I, Donald Fauntleroy Duck ("**Donald Duck**"), sailor, of 1234 Water Street, city of Kamloops, in the Province of British Columbia MAKE OATH AND SWEAR/AFFIRM THAT:

1. I am the Claimant and as such have personal knowledge of the matters hereinafter deposed to, save and except where stated to be based on information and belief, and where so stated I verily believe them to be true.

2. I am the uncle of Hubert Duck ("**Huey**"), Deuteronomy D. Duck ("**Dewey**") and Louie Duck ("**Louie**").

3. Huey, Dewey and Louie came to my house on December 25, 2019 for a visit.

4. Huey and Dewey began to hit each other and yell at each other.

5. Louie was laughing at Huey and Dewey fighting.

6. Huey then hit Louie.

7. Louie, Huey and Dewey then began to push each other.

8. Louie, Huey and Dewey ran into a table that had a vase (the "**Vase**") on it.

9. The Vase fell off the table and broke.

10. The Vase is in pieces and cannot be fixed.

    Attached to this affidavit and marked as Exhibit “A” is a photo of the smashed vase.

11. The Vase was worth $100,000.

    Attached to this Affidavit and marked as Exhibit “B” is an appraisal of the Vase.

12. The Vase was given to me by my uncle Scrooge McDuck.

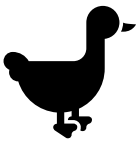
13. Louie, Huey and Dewey refuse to pay for the Vase.

SWORN/AFFRIMED BEFORE ME
at Kamloops, Province of British Columbia
on _____.

_____ _____
A commissioner for taking affidavits for British Columbia Donald Fauntleroy Duck

This is Exhibit “A” referred to in the
1st Affidavit of Donald Fauntleroy Duck
Sworn before me this, 3rd day of November
2020.

_____
A commissioner for Oaths in and for
British Columbia



Cheese & Quackers Appraisers Associates, Inc.

Made for: Donald Fauntleroy Duck

1234 Water Street

Kamloops, BC

On: January 15, 2018

A vase made in Celebration, Florida, United States measuring 26” tall, 16” top diameter, 30” at widest point.

In my professional opinion this vase should be covered under “Full Fine Arts Insurance” coverage at a minimum of $100,000.

S. QuacksaLot

_____

Sir Quacks a Lot

This is Exhibit “B” referred to in the
1st Affidavit of Donald Fauntleroy Duck
Sworn before me this, 3rd day of November 2020.

_____

A commissioner for Oaths in and for
British Columbia.

STATUTORY DECLARATION

CANADA	**)**	**In the matter of Donald Fauntleroy Duck**
PROVINCE OF	**)**	**and James Pond Insurance**
BRITISH COLUMBIA	**)**	**Insurance Claim: 7893-4432**

TO WIT:

I, Donald Fauntleroy Duck ("**Donald Duck**"), sailor, of 1234 Water Street, city of Kamloops, in the Province of British Columbia MAKE OATH AND SWEAR/AFFIRM THAT:

1. I am the insured and as such have personal knowledge of the matters hereinafter deposed to, save and except where stated to be based on information and belief, and where so stated I verily believe them to be true.

2. I purchased an insurance claim from James Pond Insurance on January 16, 2018 for my vase (the "**Vase**")

3. On December 25, 2019 Hubert Duck ("**Huey**"), Deuteronomy D. Duck ("**Dewey**") and Louie Duck broke the Vase.

4. Huey, Dewey and Louie came to my house on December 25, 2019 for a visit.

5. Huey and Dewey began to hit each other and yell at each other.

6. Louie was laughing at Huey and Dewey fighting.

7. Huey then hit Louie.

8. Louie, Huey and Dewey then began to push each other.

9. Louie, Huey and Dewey ran into a table that had the Vase on it.

10. The Vase fell off the table and broke.

11. The Vase is in pieces and cannot be fixed.

    Attached to this affidavit and marked as **Exhibit "A"** is a photo of the smashed vase.

12. The Vase was worth $100,000.

    Attached to this Affidavit and marked as **Exhibit "B**" is an appraisal of the Vase.

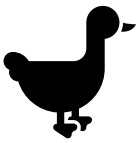
13. I did not break the Vase nor did I tell Huey, Dewey or Louie to break the Vase.

SWORN/AFFRIMED BEFORE ME
at Kamloops, Province of British Columbia
on _____.

_____ _____
A commissioner for taking affidavits and oaths for British Columbia. Donald Fauntleroy Duck

This is Exhibit “A” referred to in the
Statutory Declaration of Donald Fauntleroy Duck
Sworn before me this, 3rd day of November
2020.

_____
A commissioner for Oaths in and for
British Columbia



Cheese & Quackers Appraisers Associates, Inc.

Made for: Donald Fauntleroy Duck

1234 Water Street

Kamloops, BC

On: January 15, 2018

A vase made in Celebration, Florida, United States measuring 26” tall, 16” top diameter, 30” at widest point.

In my professional opinion this vase should be covered under “Full Fine Arts Insurance” coverage at a minimum of $100,000.

S. QuacksaLot

_____

Sir Quacks a Lot

This is Exhibit “B” referred to in the
Statutory Declaration of Donald Fauntleroy Duck
Sworn before me this, 3rd day of November
2020.

_____

A commissioner for Oaths in and for
British Columbia.

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Welfare Case Studies for Senior Advocates

Alison Ward; Becky Quirk; Tish Lakes; Amy Taylor; Caitlin Wright

It's like the PovNet welfare list gone live!; Join us for presentations on interesting welfare issues that advocates have worked on this year including advocacy lessons gleaned from particular cases, sharing of submissions and decisions, and lively discussion.

Welfare Law Case Studies for Senior Advocates

- Tish Lakes, legal advocate, Okanagan Advocacy and Resource Society (OARS), Vernon
- Becky Quirk, legal advocate, The Advocacy Centre, Nelson CARES Society, Nelson
- Amy Taylor, legal advocate, The Advocacy Centre, Nelson CARES Society, Nelson
- Alison Ward, CASL lawyer, Community Legal Assistance Society (CLAS), Vancouver
- Caitlin Wright, legal advocate, Together Against Poverty Society (TAPS), Victoria

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Welfare Law Case Studies for Senior Advocates

Crisis Supplement for Firewood

Presentation by:
Amy Taylor, legal advocate
The Advocacy Centre (Nelson CARES Society)

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Summary of Legal Issue

- Client on PWD applied for a crisis supplement for 6 cords of firewood. Ministry denied the request on the basis that it was not unexpected and there was no imminent threat to his physical health.

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Summary of Facts

- Client lived in poorly insulated house in remote, rural community. Heat provided by wood burning stove. He required 6-8 cords of wood to heat home for the winter. Access to home difficult in the winter.
- This was his second winter in the house. Last winter family helped him collect firewood from the bush.
- Client had a difficult year which had a significant impact on his mental health. He was unable to organize firewood.
- In July, he requested a crisis supplement from the Ministry for 6 cords of firewood.

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Summary of Facts (cont.)

- It was already quite late in the season to be ordering firewood. He was having a difficult time getting anyone to call him back. He knew he needed to get all of the wood now because he was unlikely to be able to get more later in the winter.
- In August, Ministry denied his request for the following reasons:
  - The need was not unexpected
  - No imminent threat to physical safety – could use hydro to heat home.

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Summary of Facts (cont.)

- Client decided to appeal the decision, which took some time.
- Client had to order wood soon or risk not getting it.
- Client got loan to help pay for part of the wood, but had to pay it back.

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Request for Reconsideration

- Advocate helped client write a submission.
- Unexpected - Provided information about unexpected events over the past year that had a negative impact on his mental health. As a result, he could not take the necessary steps to organize his firewood.
- Imminent risk to physical health - Clarified that he did not have electric baseboard heaters. Electric space heaters were insufficient to heat home; lack of sufficient heat is a risk to physical safety. Pipes could freeze; lack of water is also a risk to physical safety.

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Request for Reconsideration (cont.)

- No resources to cover expense – Explained that cannot get firewood later in the season because it is not available and because access to his house is too difficult in the winter. Could not afford cost of 6 cords of firewood.
- Ministry found that he met the eligibility requirements for a crisis supplement for utilities, but only approved funding for 3 cords of wood to meet imminent threat to health. Would give him time to arrange for the remaining 3.

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Employment and Assistance Appeal Tribunal

- Client decided to appeal to the EAAT for funding for full 6 cords.
- Submitted further statement and letter from wood supplier confirming that wood will not be available later in the season and that access to the client's house would be a problem once it snowed.
- Advocate made oral submission. Argument that the Ministry's decision was not reasonable in the client's circumstances.

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Employment and Assistance Appeal Tribunal (cont.)

- Issue that arose – Hearing was scheduled in November. Client worried he would lose firewood, so used money from Ministry to pay for 3 cords and borrowed the money to pay for the other 3 cords.
- Successful at EAAT in getting approval for all 6 cords. One dissenting opinion.

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What Was Challenging?

- Arguing the need was unexpected.
- Trying to relay challenges client faced with firewood when most decision makers lived in urban areas. One EAAT panel member was from a rural community.
- Timeline – client getting more and more anxious about getting wood.
- The client getting all of the wood before the EAAT hearing.

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Lessons Learned

- Different ways of looking at "unexpected."
- Is the application of the legislation reasonable in the circumstances of the person appealing the decision?
- Debt is not a resource.

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Welfare Law Case Studies for Senior Advocates

Crisis Supplement for Roof Repairs

Presentation by:
Becky Quirk, legal advocate
The Advocacy Centre (Nelson CARES Society)

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Summary of legal issue

- Is a family member who made a secured loan to an income assistance recipient to buy a manufactured home responsible to pay for the upkeep of that home?
- Can a 1983 manufactured home have unexpected repairs to the roof so that the occupants are eligible for a crisis supplement?
- Must a person requesting a crisis supplement for home repairs (roof) reach out to churches and other community organizations first?

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Summary of facts - 1

After the deluge of November 2021, the client asked the Ministry for a crisis supplement to repair the roof of her 1983 manufactured home. The Ministry denied her request.

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Summary of facts - 2

The Ministry denied the request for three reasons:

1. A sister-in-law's name was on the title (she gave a secured loan to purchase the home) so she should help pay for repairs;

2. Given the age of the home and the "events surrounding the leak", it was not unexpected; and

3. The requestor should reach out to other community resources

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Request for reconsideration

- Initial Request for Reconsideration form was flawed.
  - The "date requestor informed" came before the date the Ministry made and decision.
  - The Ministry stated no position on two of the four criteria for a crisis supplement.

Reconsideration branch was happy to have me communicate with the CRSQ manager deal with the problem. I talked to the CRSQ manager who had a corrected and complete Reconsideration form issued promptly.

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Reconsideration request (contd) EVIDENCE

Evidence submitted to support argument

- Copy of notarized promissory note establishing secured loan
- Copy of the security agreement establishing sister-in-law as secured party
- Mortgage calculator
- Tenancy agreement with MHP showing requestor (not sister-in-law) as tenant
- Twelve rent receipts to requestor
- Statements from requestor and from sister-in-law

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Reconsideration Request (cont.) ARGUMENT

Ministry argued sister-in law on title to the home should help pay for roof repair. We argued:

- Sister-in-law had bare legal title only, and to require her to repair the roof would be like requiring RBC to repair the roofs of everyone for which it holds title.
- EAPD Reg. Schedule B, Sec. 5(2)(b) establishes mortgage payments can be considered "actual shelter costs" and thus the payments to the sister-in-law were not rent but a legal requirement to pay off the loan (like a mortgage).
- Sister-in-law is not a beneficial owner and has no right to live in the home; she is a secured lender, not an owner.

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Reconsideration request ARGUMENT unexpected need

Ministry argued given the age of the manufactured home (1983) and "events surrounding the leak," the leak was not unexpected.

- An unprecedented rainfall in November 2021 helped us make the 'unexpected' argument. Requestor's statement detailed the condition of the home before and after the November 2021 rains.

[*It took the requestor over three months to get the required two estimates from roof-repair professionals, but the Ministry did not comment on that delay.*]

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Reconsideration request ARGUMENT: "no resources available"

The Ministry argued the client should reach out to community resources and family for help with roof repairs:

- The sister-in-law's statement said she had no legal obligation to pay for the roof and was not in a financial position to do so; and
- The Ministry's policy manual states that "Food banks and the BC Hydro Customer Crisis Fund are not considered as resources." To require the requestor to go to churches, etc., was entirely inconsistent with this policy re: charities and the like.

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Reconsideration Decision

- Reconsideration decided in the client's favour, accepting all of the arguments we made.
- One last glitch – the client submitted two estimates for the repair of the roof – one for $7,300 and the other for $11,866. The Ministry's written Reconsideration decision awarded her $1,866, apparently based on a typo or other error. The client was able to iron this problem out on her own.
- Update from client – "We now have our new roof on and no more leaks!"

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Lessons learned

- A properly documented secured loan by the sister-in-law to the client and her spouse was extremely helpful in combatting the "the sister-in-law should pay" argument.
- Even old homes can have an unexpected need for repair.

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Welfare Law Case Studies for Senior Advocates

Income Assistance eligibility while attending post-secondary schooling

Presentation by Caitlin Wright, Income Assistance Legal Advocate
Together Against Poverty Society (TAPS)

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Summary of Legal Issue:

- Client otherwise eligible for Income Assistance (IA) told during intake process to withdraw from post-secondary program or else they would not be eligible for Income Assistance under s.16 of the *Employment and Assistance Regulation*

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s.16 – Effect of Family Unit including full-time student

6 (1) Subject to subsection (1.1), a family unit is not eligible for income assistance for the period described in subsection (2), if the applicant or recipient is enrolled as a full-time student

a) in funded program of studies, or

b) in an unfunded program of studies without the prior approval of the ministry

(1.1) Subsection (1) (a) does not apply to a family unit that includes a recipient who is enrolled in a funded program of studies with the prior approval of the minister under subsection (1.2) during the period described in subsection (2).

(1.2) For the purposes of subsection (1.1), the minister may approve a person to enroll in a funded program of studies if the person

(a) is a recipient of income assistance,

(b) is required to enroll in the program of studies as a condition of an employment plan, and

(c) was receiving income assistance, hardship assistance or disability assistance in each of the immediately preceding 3 calendar months, unless the minister is satisfied that exceptional circumstances exist.

(2) The period referred to in subsection (1)

(a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and

(b) is not longer than 2 years.

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Summary of Facts

- Client stopped working due to a severe health crisis in late 2021, and was on medical-leave from their overseas employer when they first learned about BC social assistance
- Client applied for IA first in January 2022, however did not finish the IA intake process, with MSDPR closing this first Service Request (SR) as "abandoned" due to not receiving request documentation by a requested deadline
- Client later re-applied for IA in late February; between then and May, client went back-and-forth with their intake worker re: their eligibility for assistance
- Starting on November 30, 2021, the client had begun an online software engineering program, running for a total of 24 weeks, out of a private career college with it's Canadian HQ in Toronto
- Client had received a grant from the BC Employer Training Grant to pay for the substantial cost of the program, and had declared all information related to the grant money, it's disbursement, and how it was used to re-imburse the client for the initial down-cost of the program (which client paid out-of-pocket with credit cards)

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Summary of Facts (Cont.)

- In late March, client received message from intake worker via MySS: (page #1-3 handout)

"As per policy and legislation you are not eligible for Income Assistance while attending your program. In order for you to be eligible for Income Assistance, you would have to provide confirmation that you have withdrawn from your program, this document must be submitted prior to April 4, or your Service Request will be considered abandoned."

- The client asked for more information on why attending the program would make them ineligible, and the intake worker explained that:

The only exceptions to s.16 and for a full-time student in a funded program of studies to remain eligible for IA is through participation in a WorkBC or ISETS program, or as a requirement of an Employment Plan, **or** if they had been in-receipt of IA, hardship, or DA for at least 3 preceding calendar months; **or** if they were attending an unfunded program of study as a full-time student with prior permission from the Minister.

- None of the above exceptions to ineligibility were relevant to this client's situation.

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Summary of Facts (Cont.)

- Client then contacted TAPS for help to understand their options, worried that they would have to drop-out of an expensive program prior to finishing it, in order to be eligible for IA (client had no other income source, and met all other eligibility for assistance except s.16)
- TAPS advocate was able to contact MSDPR and request additional time for client to provide "documentation", in order to fully assess the client's eligibility and if all pieces of this exclusionary provision in the Regs applied to the client

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Steps Taken & Outcome

1) Reviewed the legislation to see if specific terms defined anywhere

- Found in the Definitions of the Reg was the following:

"full-time student" – has the same meaning as in the Canada Student Financial Assistance Regulations (Canada);

AND

"funded program of study" – means a program of studies for which funding provided to students under the *Canada Student Financial Assistance Act*, may be provided to a student enrolled in it;

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Steps Taken & Outcome

2) Consulted the Canada Student Financial Assistance Regulation to determine the meanings of both key phrases:

2(1) - **INTERPRETATION**

- ***full-time student*** means a person
- **(a)** who, during a confirmed period within a period of studies, is enrolled in courses that constitute at least 60 per cent of a course load recognized by the designated educational institution as constituting a full course load,
- **(b)** whose primary occupation during that confirmed period is the pursuit of studies in those courses, and
- **(c)** who meets the requirements of subsection 5(1) or 7(1) or section 33, as the case may be; (*étudiant à temps plein*)

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Steps Taken & Outcome

- ***Program of studies*** means the series of periods of studies,
- **(a)** that is considered by the designated educational institution to be necessary to obtain a degree, certificate or diploma,
- **(b)** that is recognized by the appropriate authority which designated that institution under the Act or the *Canada Student Loans Act*, or any successor to that authority, and
- **(c)** the aggregate of which is at least 12 weeks within a period of 15 consecutive weeks; (*programme d'études*)

-The common denominator in both definitions seemed to rest with "**designated educational institution**"

-The EAA Regs did not define what this term meant

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Steps Taken & Outcome

3) Googled "designated education institution Canada"

- 1st search result: **"List of designated educational institutions":** https://www.canada.ca/en/employment-social-development/programs/designated-schools.html
- Searching the lists for both BC and Ontario, using the name of the private career college "General Assembly - Toronto", the college was not indicated as a current designated educational institution

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Steps Taken & Outcome

4) Within the meanings of both the *Canada Student Financial Assistance Act* and the BC *Employment and Assistance Act*, to be considered a "full-time student", one must be attending a **designated educational institution**

- As the college my client was attending is not a **designated educational institution**, recognized as such by the appropriate authority, my client is ineligible to receive Canada Student Loans to fund their program of studies
- The other provisions of s.16 b) "in an unfunded program of studies without the prior approval of the minister" also does not apply, since the basis of this legal argument is that the client is simply not a full-time student at all
- 7) Advocate then wrote SR challenging Ministry's interpretation that client was a full-time student; client uploaded SR and signed consent form to MySS account by deadline to provide program withdrawal documentation (pages #4-7 handout)

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Steps Taken & Outcome

5. Ministry sent SR for review at Policy Branch
6. 4 business days after uploading Service Request on client's IA eligibility, client received new message from intake worker, confirming that upon review of new information provided, client is in fact eligible for IA backdated to IA application in late February (page #8 of handout)
7. Client then requested date of eligibility be reflected back to their first IA application in January which Ministry had closed as "abandoned"
8. Request denied - client requested a reconsideration
9. Advocate provided Summary Advice to client
10. Requestion for Reconsideration successful, and client received further month's worth of IA benefit

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WHAT WAS CHALLENGING

- Setting client boundaries with a client that was highly motivated, responsive, and very capable of communicating with Ministry, but who ignored my repeated conversations re: my own capacity, workload, and short-staffing in Income Assistance project
- Overall this file was significant time investment, much more than what I'm typically used to doing at the initial SR level (vs. reconsideration or EAAT, or for a client who had as much demonstrated capacity as this client did).
- Not fully trusting myself initially when I had followed the breadcrumbs from the EAA Regs, to the federal legislation, Canada Student Financial Assistance Regs, and list of designated educational institutions - started out mainly as being curious about what all the pieces meant

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LESSONS LEARNED

- Always seek the exact definitions of specific keywords in any piece of legislation
- But especially important if the provision is prohibitive and exclusionary, and has direct consequences on a person's eligibility for assistance
- Don't be afraid to look-over and examine a well-cited piece of legislation a bit deeper, (e.g.: ineligibility for IA while attending post-secondary is a commonly cited example of the restrictive nature of welfare legislation and often used to illustrate some of the differences in what limitations exist for folks receiving IA vs. PWD)
- Using less formal means to submit legal argument: SR through client's MySS – which we surmised was faster than the advocate faxing it into a general office and getting it (eventually) attached to the client's Ministry file

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Welfare Law Case Studies for Senior Advocates

The case of the disappearing Hydro payments

Presentation by:
Tish Lakes, legal advocate
Okanagan Advocacy and Resource Society (OARS), Vernon

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Summary of Legal Issue:

Ministry unilaterally deducted Hydro payments from recipient's benefits without their consent

- improper activation of Ministry policy on deductions from benefits
- Ministry took the position that benefits which the recipient couldn't access were still benefits she received
- jurisdictional issue: Reconsideration Branch refused to conduct a reconsideration of the Ministry's decision (saying benefits were not reduced)
- failure of EAAT to note a formal objection.

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Summary of Facts:

- In March 2020, the recipient agreed with MSDPR that it could deduct from her benefits and direct pay her BC Hydro account;
- Subsequently, the recipient moved, and her direct pay was cancelled;
- In late 2021, the recipient noticed a wrong name was on her file on myselfserve and, on further checking, discovered some monthly deductions of $46 from her benefits had started;
- MSDPR said the deductions were payments to BC Hydro, but the recipient did not have a current BC hydro expense or account;
- MSDPR said she should approach Hydro for reimbursement;
- BC Hydro said it tried but could not trace those payments to an account, so could not reimburse her.

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Summary of Facts (cont'd):

- In 2021, the recipient had attended a brief residential rehabilitation program that was so short it should not have affected her benefits;
- Despite this, MSDPR made a note on her file such that BC Hydro direct pay was reinstated: this usually applies only when benefits and such payments are interrupted;
- The recipient's request for the Ministry to reimburse her was refused. The Ministry's position was it had issued all the benefits she was entitled to, so there was no underpayment;
- She filed for reconsideration of that refusal: Reconsideration Branch said it did not have the jurisdiction to make a Reconsideration decision as it said her benefits had not been reduced;
- The appeal to the EAAT succeeded but there was a concern about the conduct of the Tribunal Chair.

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Reconsideration Request

- The recipient approached our agency at the Reconsideration stage after the Ministry said she had received all the benefits she was entitled to. We prepared and filed a submission, arguing numerous errors occurred and she had not in fact received all the benefits she was entitled to;
- I also contacted our CRSQ about the very odd circumstances, but they declined to act as the issue was already under appeal.
- The Reconsideration Branch refused to make a decision on jurisdictional grounds, saying the recipient's benefits had not been reduced

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Appeal to the EAAT

- The recipient filed a Notice of Appeal with the EAAT as soon as she received the Reconsideration Decision
- Unfortunately, this initially cut off further discussions with MSDPR management
- Reconsideration Branch Manager Melissa Baur did connect with the advocate just before the EAAT hearing
  - This led to the Ministry representative apologizing at the Tribunal hearing, acknowledging the events should not have happened as they did; the client should not have been made to go between BC Hydro and MSDPR herself;
  - However, at the EAAT, MSDPR maintained it's position that the recipient's benefits had not been reduced as MSDPR had paid out the total amount she was entitled to (part of it, directly to BC Hydro), and therefore it had not underpaid her.

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Outcome: successful EAAT decision

- The EAAT found the recipient's benefits were reduced as she had not received in cash, or in kind, her full benefit rate.
- The Reconsideration Decision was not reasonably supported as a reduction in benefits triggers rights to reconsideration and appeal
- The EAAT granted the appeal and ordered that the client be reimbursed

  REASONS: "In the Panel's view, where a portion of a client's monthly allowance is provided directly to a third party with the balance going to the client, for a client's DA benefits not to have been reduced, any portion of a client's total allowance under the legislation would have to have been applied to the client's account(s) with the third party or parties.

  If a third party does not know which of its customers the money is directed to, or, as is the case here, if the client is no longer the third party's customer, the money should be returned to the Ministry within a reasonable time so that it can be redirected to the correct third party, sent back to the original third party with the correct payment information, or returned to the client.

  Until such time that a payment problem is satisfactorily resolved, that portion of the allowance directed to a third party has not been received by anyone, and the only reasonable determination is that the client's allowance for the month or months in question has been reduced. "
- After the EAAT made its decision, the Reconsideration Branch took a few days to try and work things out with BC Hydro, but the client was then reimbursed by MSDPR.

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Lessons learned

- When something very odd occurs, if possible, leave time to contact Ministry management to troubleshoot and don't not immediately file for appeal;
- Remember FOI requests can be valuable: here we filed an FOI request for BC Hydro's notes with respect to the recipient's file and submitted it as new evidence at the EAAT.

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Welfare Law Case Study documents

Crisis supplement for Firewood

Amy Taylor, legal advocate

The Advocacy Centre (Nelson Cares Society)

(1)

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance Request for Reconsideration

Section 1 and 2 to be completed by worker

SR Number [redacted]

Section 1 Requestor Information

Requestor's Name [redacted]

Case Number [redacted]

Requestor's Address [redacted]

Section 2 Decision to be Reconsidered

Your request for crisis supplement has been denied as it does not meet all eligibility criteria.

On July 30, 2021, you contacted the ministry to request a crisis supplement for utilities, specifically, firewood. You advise you are living in subpar condition in regards to home heating/utilities. You state you are legally married but separated. Your partner has found herself out of country and reliance on you to support her financially. [redacted] As a result, you have no money for firewood which is your only source of reliable heat. You must pre-purchase now due to demands for cords of firewood for winter. You advise you will provide quotes for firewood.

On August 27, 2021, you submit an invoice for firewood for $2109.98.

On August 30, 2021, the worker reviewed your request. The worker notes that your Monthly Report for November 2020 states "We are separating and I, [redacted], will not need assistance anymore. I moved out. [redacted] is still in need of assistance." You stated you continue to support [redacted] who is now living outside of Canada.

To receive a crisis supplement you must be eligible under the Employment and Assistance for Persons with Disabilities Regulation, Section 57.

Eligibility for a crisis supplement is based on 4 conditions. A supplement may be provided if ALL FOUR of the criteria are met. The criteria is as follows:

1. A crisis supplement may be considered if the family unit is eligible for income or disability assistance

2. The need for the item or expense is unexpected
   Criteria not met. An unexpected expense or item refers to an unforeseen situation that suddenly interferes with a person's ability to pay the expense or obtain the item. Financially supporting your ex-spouse leaving you with no monies to purchase firewood to heat your home is not considered unexpected.

3. Failure to obtain the item will result in imminent danger to the physical health of any one person in the family unit or the removal of a child under the Child, Family and Community Service Act
   Criteria not met. You have an alternate heat source of Fortis therefore, there is no danger to your health and safety

4. There are no alternate resources available to obtain the item or meet the expense

As you have not met all four of the above criteria, you are ineligible for a crisis supplement.

You were notified of same this date, offered the right to reconsideration to which you accepted.

Attachments
Employment and Assistance for Persons with Disabilities Regulation, Section 57
Reconsideration and Appeal Brochure
My Self Serve business card

ADVOCATE:
You have the right to an advocate to help you with your reconsideration. Please refer to www.povnet.org to find a local advocate/agency within your community.

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BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance Request for Reconsideration

RETURN DATE:
This Request for Reconsideration form must be signed and returned by the date in Section 2, "Date requestor must submit form by".

If you can provide reasons and/or evidence why the Ministry's decision should be changed by this deadline, do so.

EXTENSION:
1. If you need more time to provide reasons or evidence, you may ask for an extension (more time).

To ask for an extension, write on this form that you need an extension, then sign and return it to the Ministry by the date in Section 2, "Date requestor must submit form by". To maximize the amount of time you have to provide reasons or evidence, submit the form on or just before that date. You may contact the reconsideration office to confirm the extension was approved, 778-698-7750.

2. Once the Ministry receives your signed Request for Reconsideration form, it will write its reconsideration decision within 10 business days (if no extension is requested) or 20 business days (if an extension is requested).

3. The reconsideration decision will be mailed to you, sent by MySelfServe or available for pick up in a Ministry office.

RECONSIDERATION OR APPEAL SUPPLEMENT:
You may be eligible for a Reconsideration or Appeal supplement, please see attached brochure for details. (if applicable)

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BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

EMPLOYMENT AND ASSISTANCE RECONSIDERATION DECISION

The collection, use and disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. If you have any questions about the collection, use and disclosure of this information, please contact your local Employment and Assistance Centre.

REQUESTOR INFORMATION

Requestor Name [redacted]		Recon Service Request No. [redacted]
Requestor Address [redacted]		
City [redacted]	Postal Code [redacted]	Case No. [redacted]

DECISION UNDER CONSIDERATION

You are requesting a reconsideration of the decision to deny you a crisis supplement to purchase firewood for heat.

SUMMARY OF FACTS

The following is a summary of the key dates and information related to your Request for Reconsideration:

On August 30, 2021 you were advised that you were not eligible for a crisis supplement to purchase firewood.

On September 27, 2021 you submitted a Request for Reconsideration.

On October 6, 2021 the ministry completed the review of your Request for Reconsideration.

APPLICABLE LEGISLATION

Employment and Assistance for Persons with Disabilities Act section 5
Employment and Assistance for Persons with Disabilities Regulation section 57

~ Please see the attached copy of the legislation in Appendix B ~

RECONSIDERATION DECISION

~ Please see the attached copy of the reconsideration decision in Appendix A ~

ENCLOSED: ☒ ALL DOCUMENTS CONSIDERED BY THE MINISTRY ☒ NOTICE OF APPEAL TO THE EMPLOYMENT AND ASSISTANCE APPEAL TRIBUNAL

SIGNATURE	NAME AND TITLE	DATE (YYYY MMM DD)
D.T.	D.T. Reconsideration Officer	2021 Oct 6

If this decision is appealable to the Employment and Assistance Appeal Tribunal, and you wish to appeal this decision, you may complete the enclosed *Notice of Appeal to the Employment and Assistance Appeal Tribunal* form and return it to the Appeal Tribunal. This Reconsideration Decision and attached documents constitute the appeal record. A sealed copy of this appeal will be kept by the Ministry.

HSD101(05/06/29)

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APPENDIX A – RECONSIDERATION DECISION

The ministry has approved your request for a crisis supplement to purchase three cords of firewood. The ministry has denied your request for a crisis supplement to purchase six cords of firewood. All documents submitted with your Request for Reconsideration have been reviewed in the making of this decision.

Background

You are a sole recipient with Persons with Disabilities (PWD) designation.

On July 30, 2021 you requested assistance with purchasing firewood to heat your home for the winter. You advised you must pre-purchase now due to demand for quarts of wood for the winter and you had no money to purchase wood.

On August 27, 2021 you submitted an invoice from [redacted] due by August 19, 2021 for $2,109.98.

On August 30, 2021 the ministry noted your request for a crisis supplement to purchase firewood for heat was denied. You had separated from your spouse in September 2020, and you advised you continue to support this person who is living outside of Canada. This is not considered unexpected. A crisis supplement is not meant to support an ongoing situation. There is no danger to your health and safety at this time as you have Fortis electric account, and this could provide an alternate heat source.

On September 27, 2021 you submitted your Request for Reconsideration. You note in part the following information:

- You use a wood stove for heat and need 6 to 8 cords of wood to heat your home for the winter season. The cost of 6 cords of wood delivered is $2109.98.
- A number of things have happened over the course of the past year impacting your ability to manage your affairs including getting firewood including [redacted]. You have been barely able to cope with day to day life. You can't reach out and network to get help with the firewood. All of this has been unexpected.
- When you asked for a crisis supplement you told the worker you had to send money to your ex who call in crisis [redacted]. This was unexpected, however the amount of money you sent was no where near the cost of the firewood. You do not financially support you ex on an ongoing basis.
- The only heat source you have is a wood stove. You use small space heaters in the winter near your pipes to prevent them from freezing. Even if you got more space heaters, you could not afford to heat your house using electricity only. If you don't get firewood to heat your house, your water will freeze. Without heat and running water, your physical health is at risk.
- You cannot afford the $2110 to purchase firewood from your disability benefit. Because of the high demand for firewood in the area, you have to get it all at once or you risk not getting any. You cannot get some now and some later. Later in the season firewood will not be available. Last year you tried to contact firewood suppliers. You were too late and only one person called you back who said he was out for the season.

Legislation

In order to be eligible for a crisis supplement, you must be eligible for assistance and your request must meet all of the following criteria set out in Section 57 of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation.

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- To meet an *unexpected expense*, or *obtain an item unexpectedly needed*

AND

- You have no resources available to you to meet your need

AND

- Failure to provide the funds to meet that expense will result in imminent danger to your physical health or removal of a child under the *Child, Family and Community Service Act*.

Decision

The ministry finds your request for a crisis supplement to purchase firewood for heat meets the criteria set out section 57 of the EAPWD Regulation.

As a result of [redacted] the ministry is satisfied you were incapable of setting aside funds in anticipation of the upcoming need for firewood to heat your come for the winter season. Therefore, the ministry finds the purchase of firewood is an unexpected expense or an item unexpectedly needed.

The ministry is satisfied you do not have the funds to purchase firewood, at this time, to avoid imminent danger to your physical health. However, the ministry is not satisfied you require $2110 for the purchase of six cords of firewood to avoid imminent danger to your physical health. Imminent denotes a sense of urgency. While the ministry accepts you require firewood to heat your home now and to avoid your water pipes from freezing as the temperatures continue to decrease, the purpose of crisis supplements is to address unexpected emergency needs to prevent imminent danger to health and not intended to augment monthly assistance. The ministry is not satisfied that you will be unable to purchase firewood later in the season, or at the very least, arrange with a firewood supplier now your need for more wood further into the season. For this reason, the ministry approves the purchase of three cords of wood to avoid imminent danger and denies your request for purchase of six cords of wood for the whole season. You will be responsible for setting funds aside from your disability assistance to purchase the remaining three to five cords of wood for the rest of the winter season.

It is important to note you may request the ministry to set up payments on your behalf to be paid directly from your disability assistance to your firewood supplier to ensure the purchase is made for when the first three cords have been exhausted.

I trust the information provided will assist in understanding the ministry decision.

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APPENDIX B – APPLICABLE LEGISLATION

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if

(a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and

(b) the minister considers that failure to meet the expense or obtain the item will result in

(i) imminent danger to the physical health of any person in the family unit, or

(ii) removal of a child under the *Child, Family and Community Service Act*.

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(3) A crisis supplement may not be provided for the purpose of obtaining

(a) a supplement described in Schedule C, or

(b) any other health care goods or services.

(4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:

(a) if for food, the maximum amount that may be provided in a calendar month is $40 for each person in the family unit;

(b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of

(i) the family unit's actual shelter cost, and

(ii) the sum of

(A) the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or

(B) the maximum set out in Table 1 of Schedule D and the maximum set out in Table 2 of Schedule D,

as applicable, for a family unit that matches the family unit;

(c) if for clothing, the amount that may be provided must not exceed the smaller of

(i) $100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and

(ii) $400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.

(5) Repealed. [B.C. Reg. 248/2018]

(6) Repealed. [B.C. Reg. 248/2018]

(7) Despite subsection (4) (b), a crisis supplement may be provided to or for a family unit for the following:

(a) fuel for heating;

(b) fuel for cooking meals;

(c) water;

(d) hydro.

Appeal No. [redacted]

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APPELLANT'S SUBMISSION TO THE TRIBUNAL (ORAL)

[redacted] experiences anxiety talking to people he does not know on the phone. He has asked me to do the speaking and answer questions. He will provide additional information/clarification as needed.

Opening

- [redacted] requested a crisis supplement to purchase 6 cords of firewood to heat his home for the winter.

- His initial request was denied.

- He requested a reconsideration of the decision and provided additional information.

- The Ministry agreed that he met the requirements for a crisis supplement for firewood, but only approved funding for 3 cords.

- [redacted] is appealing the decision to provide 3 rather than 6 cords of wood.

Additional evidence

In support of his appeal, [redacted] has submitted a written statement dated October 19, 2021. It includes Exhibit 1 – a note from [redacted] indicating that he will not have wood available for [redacted] after November 1 and that delivery to his cabin will not be achievable once the snow is sticking.

Submission

The Ministry's reconsideration decision states that [redacted] request for a crisis supplement to purchase firewood for heat meets the criteria set out on section 57 of the EAPWD Regulation.

The Ministry is satisfied that the need is unexpected and that he does not have the funds now to purchase firewood to avoid imminent danger to his physical health.

However, the Ministry is not satisfied that he will be unable to purchase or arrange for firewood later in the season. Therefore, the Ministry's decision was to approve funds for 3 cords with the expectation that [redacted] would set aside funds from his disability assistance to arrange for the remaining 3 cords of firewood later.

It is this aspect of the Ministry's decision that [redacted] is appealing.

Section 57 of the *Employment and Assistance for Persons with Disabilities Regulation* states that the tribunal mu*st determine whether the decision being appealed is,*

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(a) reasonably supported by the evidence, or
(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Our position is that the Ministry's decision was not a reasonable application of the legislation given [redacted] circumstances.

- [redacted] is a single person on PWD. He lives in [redacted] in the remote, rural community of [redacted]. He relies on wood to heat his home during the colder months, with supplementary electric space heaters near his water pipes to keep his water from freezing. His disability is due to both physical and mental health issues. Since last winter, he has struggled with severe depression and anxiety that has impacted his ability to cope with day to day life.

- In his reconsideration statement dated September 27, 2021 (page 10 and 11 of the record) and in his statement to the tribunal dated October 19, 2021, [redacted] explains that:

  - because of the high demand for firewood in his area and because suppliers get and deliver their wood now, he has to order all of his firewood now or risk not getting any
  - when he called about getting firewood last year, no one called him back except for [redacted], who only called to say he was out for the season
  - the road to access his house is twisty and steep. Once it snows, he does not think someone could get the firewood up to his house.

- [redacted] submission to the tribunal includes a note from [redacted] stating that he will not be able to provide firewood for [redacted] beyond November 1, 2021 due to being fully booked up. He also states that access to [redacted] cabin is not going to be achievable once snow is sticking to the ground due to tight corners and steep grades (Exhibit 1 of the appellant's submission to the Tribunal). Snow can come any day now.

- [redacted] tells me that [redacted] also said [redacted] should order his wood for next season by February of 2022.

- [redacted] tells me that 3 cords of firewood should last until mid January depending on how cold it is.

- [redacted] said he would not be able to provide firewood after November 1. Since submitting his statement to the Tribunal, [redacted] has tried to call other firewood suppliers. No one was able commit to being able to supply 3 cords of firewood and deliver it to his cabin in January.

- [redacted] Reconsideration statement dated Sept 27 describes some of his recent struggles with his mental health, [redacted] (page 10 of the record). [redacted] tells me that the uncertainty around getting wood to heat his home along with the challenges he's experienced in communicating with the Ministry

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about the issue has been a significant stressor and has impacted his mental health. Given his recent struggles with depression, arguably, the uncertainty about the wood situation itself poses an imminent threat to his physical health in addition to the threat posed by being without heat and, if his pipes freeze, water.

- Because of the uncertainty around whether he could secure wood later in the season and the risk of not having heat in January, [redacted] had [redacted] deliver the remaining 3 cords of wood before November 1. He did not have the resources to do this and relied on money that was lent to him to cover the cost of the entire 6 cords. He has to pay the money back.

The Ministry found that [redacted] met the criteria for a crisis supplement for firewood. However, the decision to only provide funds for 3 cords of wood was based on the assumption that this would address the imminent threat to his physical health and that he could secure the additional 3 cords later in the season. This was not a reasonable application of the legislation in [redacted] particular circumstances, specifically that he did not currently have the resources to pay for the firewood required for the winter, that firewood is not necessarily available later in the winter, that access to his cabin for delivery is problematic once the snow falls and that his mental health related issues are made significantly worse by the uncertainty regarding his ability to heat his home for the entire winter.

Remedy sought

We respectfully request that the Tribunal rule that the Ministry did not reasonably apply the legislation given [redacted] circumstances. We ask the Tribunal to rescind the Ministry's Reconsideration Decision and allow this appeal.

Additional notes:

[redacted] worked as a firefighter and has worked and lived in the bush for a number of years. He is very efficient with how he uses his wood.

He has taken steps to try to make his wood stove more efficient so he can get the most out of his wood.

Way the loan worked – Ministry approved crisis supplement for 3 cords of wood. Decision made Oct 6. Due to communication issues with Ministry, did not receive funds until mid Oct. Had already arranged to have wood delivered, but money had not arrived. Someone lent him the money with the expectation that he would pay them back when Ministry money arrived. B/c of risk of not being able to get remaining firewood in January, used Ministry funds to pay for 2nd cord. Still owes for the first.

Has two separate receipts for two separate loads. Emailed, but hasn't been able to access email, so didn't see exact amounts.

Last year 7 cords of wood, and my water froze 3 times – water to main sink. With heaters, figured out way to place them. Mid Feb, hot water tank froze, when running out of wood.

A couple of firewood suppliers did call back. Didn't want to tell me their names.
Still 325/cord, but no delivery fee
Couldn't get commitment that they would have firewood to deliver in January.

APPEAL NUMBER
2021-0198

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of Oct 6, 2021 in which the Ministry denied the Appellant a crisis supplement (3 cords of wood of 6 requested) pursuant to Section 57 of the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – RELEVANT LEGISLATION

EAPWDR – *Employment Assistance for Persons with Disabilities Regulation,* Section 57

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APPEAL NUMBER
2021-0198

PART E – SUMMARY OF FACTS

The information before the Ministry at the time of reconsideration included the following:

1) July 30, 2021 – The Appellant requested assistance with purchasing firewood to heat the home for the upcoming winter.
2) August 27, 2021 – The Appellant submitted an invoice from a wood company that was due August 19, 2021 for $2,109.98.
3) August 30, 2021 – The Appellant was informed that they were not eligible for a crisis supplement to purchase firewood.
4) September 27, 2021 – The Appellant submitted a Request for Reconsideration noting the following: They cannot get some now and some later. Later in the season firewood will not be available. Last year they tried to contact firewood suppliers. They were too late and only one person called them back who said he was out for the season. They use a wood stove for heat and need 6 to 8 cords of wood to heat their home for the winter season. The cost of 6 cords of wood delivered is $2109.98. • Several things have happened over the course of the past year impacting their ability to manage their affairs including getting firewood, a spousal separation and the death of a dog. They indicated that their spouse used to help with managing finances. The doctor was missing dates for prescription refills and at one point they were cut off for two months. They had a relapse with illicit drug use. They have attempted suicide twice in the past year, most recently the past weekend resulting in being hospitalized. They have been barely able to cope with day-to-day life. They can't reach out and network to get help with the firewood. All of this has been unexpected. •The only heat source they have is a wood stove. They use small space heaters in the winter near the pipes to prevent them from freezing. Even if they got more space heaters, they could not afford to heat their house using electricity only. Because of the high demand for firewood in the area, they have to get it all at once or risk not getting any.

5) October 6, 2021 – the Ministry completed the review of the Request for Reconsideration

Additional Information

The Appellant had an advocate attend the hearing and speak on their behalf. At the hearing, it was noted by the advocate that the Appellant had arranged for the full 6 of 6 cords of firewood requested to be delivered before it could not be delivered. The Appellant had borrowed the additional money from a friend to pay for the remaining 3 of 6 cords of firewood requested. The advocate submits that the arrangement (borrowing money) for the additional 3 cords of firewood should not be held against the Appellant, as the Appellant was forced to make a decision to get the firewood before either the firewood would not be available (due to supply) or the roads being impassable for a mid-winter delivery.

Additionally, the firewood supplier had written a letter on October 19, 2021, indicating that the availability for firewood was limited, and delivery in the middle of winter would not be an option.

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2021-0198

The above additional information, along with a letter written by the Appellant on October 19, 2021 – outlining the issue with the impassable rural roads in winter, and high firewood demand was admitted as new evidence as it was determined to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal, pursuant to section *22(4) of the Employment and Assistance Act*. The Ministry made no objections to the admissibility of the document at the hearing.

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APPEAL NUMBER
2021-0198

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of October 6, 2021 in which the Ministry denied the Appellant 3 of 6 requested cords of firewood (as a crisis supplement) pursuant to section 57 *of the Employment and Assistance for Persons with Disabilities Regulation.*

Full text of EAPWDR section 57 is provided in the Schedule at the end of the decision.

Majority Panel Decision

The Ministry's position is that the Appellant did qualify for the crisis supplement, as the need for firewood was unexpectedly needed as a result of the separation with their spouse who had previously provided support with managing finances and the issues with the Appellant's mental health along with drug use. The Ministry is satisfied that the Appellant was incapable of setting aside funds in anticipation of the upcoming need for firewood to heat the home for the winter season.

However, the Ministry determined that the Appellant was not eligible for all six of the cords of wood requested (valued at $2110), and that only three cords were necessary to alleviate the imminent threat of danger (no heat during the winter and frozen pipes). The Ministry asserts that the purpose of a crisis supplement is to address unexpected emergencies and needs to prevent imminent danger to health and is not intended to augment monthly assistance. The Ministry was not satisfied that the Appellant would be unable to purchase firewood later in the season, or at the very least, arrange with a firewood supplier now their need for more wood further into the season.

The Appellant's position, as was outlined at the hearing, is that they would not be able to get some firewood now and some firewood later. Later in the season firewood will not be available. Last year, without any success, they tried to contact firewood suppliers. They use a wood stove for heat and need 6 to 8 cords of wood to heat their home for the winter season. The delivery of firewood halfway through the season would be impossible due to the road leading to the rural residence being snowed in (impassable).

As outlined in Section 57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and (b) the minister considers that failure to meet the expense or obtain the item will result in (i) imminent danger to the physical health of any person in the family unit and (7) Despite subsection (4) (b), a crisis supplement may be provided to or for a family unit for the following: (a) fuel for heating; (b) fuel for cooking meals; (c) water; (d) hydro.

The majority panel finds that the evidence establishes the Ministry approved the Appellant's eligibility for a crisis supplement on the basis that the Appellant met the legislative criteria. The majority panel

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2021-0198

considered that in sub-section (7) of section 57 of the *Employment and Assistance for Persons with Disabilities Regulation*, there is no limit to the cost of that crisis supplement as it relates to (a) fuel for heating.

The majority panel finds that the evidence establishes that the Ministry granted partial (3 of 6 cords of wood) coverage of the crisis supplement request ($2101.98). The majority panel considered how the Ministry arrived at their (3 of 6 cords of wood) determination.

The majority panel finds that the evidence establishes the Appellant provided at the hearing the fact that delivery halfway through the winter season would be impossible due to the impassible road conditions leading to their rural residence. The majority panel finds that the evidence establishes the firewood supplier confirmed this claim, as fact, on October 19, 2021 in the form of a letter. Moreover, the majority panel considered that the Appellant did arrange for the 6 of 6 cords to be delivered in advance of the majority panel decision, by borrowing money from a friend. The majority panel considered the argument that given the possibility of not having sufficient heat for the winter (due to impassable roads, the lack of supply, and supported by the suppliers letter), the Appellant was forced to make the decision to arrange for the fuel (firewood).

The majority panel finds that the evidence establishes the Appellant was granted a crisis supplement, under section 57 (7)(a) of the *EAPWDR* and considered that given there were no limits to the value of that crisis supplement in particular (7)(a) fuel for heating, the decision to provide half of the request (3 of 6 cords) was not reasonably supported by the evidence.

Considering the evidence in this appeal that was reasonably required for a full and fair disclosure of all matters related to the decision under appeal, the majority panel finds that the Ministry was unreasonable in its determination to deny the Appellant the full amount as requested under *Section 57 of the Employment and Assistance for Persons with Disabilities Regulation.*

Accordingly, the majority panel rescinds the Ministry's decision, and the Appellant is successful in this appeal, pursuant to *Section 24(1)(a) and (2)(b) of the Employment and Assistance Act.*

Dissenting Member's Reasons

I agree with the Majority's statements of the facts and the law. However, I would confirm the Ministry's decision. I would find the decision to be reasonably supported by the evidence and a reasonable application in the circumstances of the appellant.

I believe the Ministry applied the legislation and facts reasonably in providing the Appellant with half the funds requested to provide necessary wood for heating his home this winter. The balance of the funds needed to purchase all of the winter wood were left to the Appellant to organize. The Appellant confirmed during the hearing that he had coordinated funding and loans to purchase all of the wood needed during the winter which had already been delivered. In effect the Appellant was seeking all of the funds from the Ministry needed as a means of reimbursing himself to pay off the funding and loans. Under the legislation, a crisis supplement does not define conditions, or amounts to fund an Appellant's request. The Ministry stated it was not satisfied that the appellant would not be able to purchase

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2021-0198

firewood later in the season and left responsibility for the cost to the appellant to be set aside from the disability assistance the appellant would receive. I believe that it was a reasonable decision based on the legislation and facts.

Schedule

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and (b) the minister considers that failure to meet the expense or obtain the item will result in (i) imminent danger to the physical health of any person in the family unit, or (ii) removal of a child under the Child, Family and Community Service Act. (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made. (3) A crisis supplement may not be provided for the purpose of obtaining (a) a supplement described in Schedule C, or (b) any other health care goods or services. (4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations: (a) if for food, the maximum amount that may be provided in a calendar month is $40 for each person in the family unit; (b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of (i) the family unit's actual shelter cost, and (ii) the sum of (A) the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or (B) the maximum set out in Table 1 of Schedule D and the maximum set out in Table 2 of Schedule D, as applicable, for a family unit that matches the family unit; (c) if for clothing, the amount that may be provided must not exceed the smaller of (i) $100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and (ii) $400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement. (5) Repealed. [B.C. Reg. 248/2018] (6) Repealed. [B.C. Reg. 248/2018] (7) Despite subsection (4) (b), a crisis supplement may be provided to or for a family unit for the following: (a) fuel for heating; (b) fuel for cooking meals; (c) water; (d) hydro.

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2021-0198

PART G – ORDER

THE PANEL DECISION IS: (Check one) ☐ **UNANIMOUS** ☒ **BY MAJORITY**

THE PANEL ☐ **CONFIRMS THE MINISTRY DECISION** ☒ **RESCINDS THE MINISTRY DECISION**

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? ☐ Yes ☒ No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) ☒ or Section 24(1)(b) ☐

and

Section 24(2)(a) ☐ or Section 24(2)(b) ☒

PART H – SIGNATURES

PRINT NAME	
Jennifer Armstrong	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY)
	2021/11/09

PRINT NAME	
Robert Kelly – Dissenting	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)
	2021/11/12
PRINT NAME	
Jan Lingford	
	DATE (YEAR/MONTH/DAY)
	2021/11/13

Welfare Law Case Study documents

Crisis supplement for roof repairs

Becky Quirk, legal advocate

The Advocacy Centre (Nelson Cares Society)

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance
Request for Reconsideration (1)

Section 1 and 2 to be completed by worker

Section 1 Requestor Information

SR Number: 1[redacted]

Requestor's Name: [redacted]

Case Number: 1[redacted]

Requestor's Address: [redacted]

Section 2 Decision to be Reconsidered

Your request for crisis supplement has been denied as it does not meet all eligibility criteria.

On March 15, 2022, you contact the ministry to request a crisis supplement for roof repair. You advise there are holes in your roof and it is leaking. You advise the home is owned by your spouse and his sister. You have no funds to repair the roof due to high bills. You provided the following verbal quotes for repair:

[redacted] $7300 flat rate
$1866.72 flat rate

On March 16, 2022, the worker sends you a message via MYSS requesting the following information:

1) Do you have house insurance?
2) How old is the roof and how old is the trailer?
3) You declared the home is co-owned with your spouse and their sister. Please advise if they are contributing to half the cost of their asset? If not, please explain reason.

Later this date, you respond to the ministry advising that you do not have house insurance as the roof is too bad. The trailer was built in 1983 and you are unsure when the roof was done last. You advise you spoke with your sister-in-law who advises she has no money to assist with repair as she is on LTD.

On March 17, 2022, the worker reviews your request.

To receive a crisis supplement you must be eligible under the Employment and Assistance for Persons with Disabilities Regulation, Section 57.

Eligibility for a crisis supplement is based on 4 conditions. A supplement may be provided if ALL FOUR of the criteria are met. The criteria is as follows:

1. A crisis supplement may be considered if the family unit is eligible for income or disability assistance

2. The need for the item or expense is unexpected
Criteria not met. your file has been open since [redacted] 2011. You advise your roof started to leak. You stated the trailer was built in 983. The home was purchased and owned by the Spouse and Spouse's sister. Previous notes on file from January 2020 indicate your spouse with family unit purchased and moved in the home 5 years previous to that date (approximately 2015). The Ministry does not have documentation of mortgage or purchase of home. Because of the year of the home and the events surrounding the leak, the Ministry is not satisfied that the family unit meets this criterion.

3. Failure to obtain the item will result in imminent danger to the physical health of any one person in the family unit or the removal of a child under the Child, Family and Community Service Act

4. There are no alternate resources available to obtain the item or meet the expense
Criteria not met. The home is co-owned with your sister-in-law. Both owners are responsible for maintaining the home. It is declared there is no insurance on home. You and other co-owner are encouraged to reach out to community resources, churches, friends and family etc. The Ministry at this time is not satisfied that you have utilized all resources.

HR0100 (2021/05/28)

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance
Request for Reconsideration

As you have not met all four of the above criteria, you are ineligible for a crisis supplement.

You were notified of same via MYSS this date, offered the right to reconsideration to which you accepted.

Attachments
Employment and Assistance for Persons with Disabilities Regulation, Section 57
Reconsideration and Appeal Brochure
My Self Serve business card

ADVOCATE

(2)

1:22

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance
Request for Reconsideration

As you have not met all four of the above criteria, you are ineligible for a crisis supplement.

You were notified of same via MYSS this date, offered the right to reconsideration to which you accepted.

Attachments
Employment and Assistance for Persons with Disabilities Regulation, Section 57
Reconsideration and Appeal Brochure
My Self Serve business card

ADVOCATE:
You have the right to an advocate to help you with your reconsideration. Please refer to www.povnet.org to find a local advocate/agency within your community.

RETURN DATE:
This Request for Reconsideration form must be signed and returned by the date in Section 2, "Date requestor must submit form by".

If you can provide reasons and/or evidence why the Ministry's decision should be changed by this deadline, do so.

EXTENSION:
1. If you need more time to provide reasons or evidence, you may ask for an extension (more time).

To ask for an extension, write on this form that you need an extension, then sign and return it to the Ministry by the date in Section 2, "Date requestor must submit form by". To maximize the amount of time you have to provide reasons or evidence, submit the form on or just before that date. You may contact the reconsideration office to confirm the extension was approved. 778-698-7750.

2. Once the Ministry receives your signed Request for Reconsideration form, it will write its reconsideration decision within 10 business days (if no extension is requested) or 20 business days (if an extension is requested).

3. The reconsideration decision will be mailed to you, sent by MySelfServe or available for pick up in a Ministry office.

RECONSIDERATION OR APPEAL SUPPLEMENT:
You may be eligible for a Reconsideration or Appeal supplement, please see attached brochure for details. (if applicable)

HR9100 (2021/06/24)

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance
Request for Reconsideration

The Act and/or Regulations that Apply to this Decision are:
Employment and Assistance for Persons with Disabilities Regulation, Section 57

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance
Request for Reconsideration

3

Section 1 and 2 to be completed by worker

SR Number: 1[redacted]

Section 1 Requestor Information

Requestor's Name: [redacted]

Case Number: 1[redacted]

Requestor's Address: Po Box [redacted] BC [redacted]

Section 2 Decision to be Reconsidered

Your request for crisis supplement has been denied as it does not meet all eligibility criteria.

On March 15, 2022, you contact the ministry to request a crisis supplement for roof repair. You advise there are holes in your roof and it is leaking. You advise the home is owned by your spouse and his sister. You have no funds to repair the roof due to high bills. You provided the following verbal quotes for repair:

[redacted] $7300 flat rate
[redacted] $1866.72 flat rate

On March 16, 2022, the worker sends you a message via MYSS requesting the following information:

1) Do you have house insurance?
2) How old is the roof and how old is the trailer?
3) You declared the home is co-owned with your spouse and their sister. Please advise if they are contributing to half the cost of their asset? If not, please explain reason.

Later this date, you respond to the ministry advising that you do not have house insurance as the roof is too bad. The trailer was built in 1983 and you are unsure when the roof was done last. You advise you spoke with your sister-in-law who advises she has no money to assist with repair as she is on LTD.

On March 17, 2022, the worker reviews your request.

To receive a crisis supplement you must be eligible under the Employment and Assistance for Persons with Disabilities Regulation, Section 57.

Eligibility for a crisis supplement is based on 4 conditions. A supplement may be provided if ALL FOUR of the criteria are met. The criteria is as follows:

1. A crisis supplement may be considered if the family unit is eligible for income or disability assistance
   Criteria met.

2. The need for the item or expense is unexpected
   Criteria not met. Your file has been open since [redacted] 2011. You advise your roof started to leak. You stated the trailer was built in 1983. The home was purchased and owned by your spouse and your spouse's sister. Previous notes on file from January 2020 indicate your spouse with family unit purchased and moved in the home 5 years previous to that date (approximately 2015). The Ministry does not have documentation of mortgage or purchase of home. Because of the year of the home and the events surrounding the leak, the Ministry is not satisfied that the family unit meets this criterion.

3. Failure to obtain the item will result in imminent danger to the physical health of any one person in the family unit or the removal of a child under the Child, Family and Community Service Act
   Criteria met.

4. There are no alternate resources available to obtain the item or meet the expense
   Criteria not met. The home is co-owned with your sister-in-law. Both owners are responsible for maintaining the home. It is declared there is no insurance on home. You and other co-owner are encouraged to reach out to community

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance
Request for Reconsideration

(4)

resources, churches, friends and family etc. The Ministry at this time is not satisfied that you have utilized all resources.

As you have not met all four of the above criteria, you are ineligible for a crisis supplement.

You were notified of same via MYSS this date, offered the right to reconsideration to which you accepted.

Attachments
Employment and Assistance for Persons with Disabilities Regulation, Section 57
Reconsideration and Appeal Brochure
My Self Serve business card

ADVOCATE:
You have the right to an advocate to help you with your reconsideration. Please refer to www.povnet.org to find a local advocate/agency within your community.

RETURN DATE:
This Request for Reconsideration form must be signed and returned by the date in Section 2, "Date requestor must submit form by".
If you can provide reasons and/or evidence why the Ministry's decision should be changed by this deadline, do so.

EXTENSION:
1. If you need more time to provide reasons or evidence, you may ask for an extension (more time).
To ask for an extension, write on this form that you need an extension, then sign and return it to the Ministry by the date in Section 2, "Date requestor must submit form by". To maximize the amount of time you have to provide reasons or evidence, submit the form on or just before that date. You may contact the reconsideration office to confirm the extension was approved, 778-698-7750.
2. Once the Ministry receives your signed Request for Reconsideration form, it will write its reconsideration decision within 10 business days (if no extension is requested) or 20 business days (if an extension is requested).
3. The reconsideration decision will be mailed to you, sent by MySelfServe or available for pick up in a Ministry office.

RECONSIDERATION OR APPEAL SUPPLEMENT:
You may be eligible for a Reconsideration or Appeal supplement, please see attached brochure for details. (If applicable)

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance
Request for Reconsideration

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The Act and/or Regulations that Apply to this Decision are:
Employment and Assistance for Persons with Disabilities Regulation, Section 57

Month Decision Effective (MMMM YYYY)		Date Requestor Informed of Decision (EEEE, MMMM DD, YYYY)
March 2022	**Relevant Date:**	Thursday, March 17, 2022
		Date Requestor Must Submit Form by (EEEE, MMMM DD, YYYY)
		Thursday, April 14, 2022

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance
Request for Reconsideration

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Section 3 Reason for Request for Reconsideration

(To be completed by the requestor only after Sections 1 and 2 have been completed by worker)

Please give me more time to prepare my submission.

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance Request for Reconsideration

(7)

Section 4 Notice of Request for Reconsideration

(Attach additional pages if required)

(To be completed by the requestor)

IMPORTANT: The request to have the Ministry decision reconsidered must be submitted to your Employment and Assistance Office within 20 business days of when you receive the decision concerning eligibility. (see "Date Client Informed of Decision" box on page 1)

I hereby give notice that I am dissatisfied with the Ministry decision regarding my request for assistance or supplement and wish to exercise my right to request a reconsideration of this decision. I have attached all relevant documents I wish to have considered.

Requestor's Signature	Date (YYYY-MM/M-DD)	Telephone
		[redacted]

For Ministry Use Only:

Personal information on this form is collected under the authority of the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act* and the *Child Care Subsidy Act*. This information will be used to assess your request for a reconsideration of a decision. The disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. For more information about the collection, use and disclosure of this information, please contact your local Employment and Assistance Office.

(8)

Statement of requestor, [redacted]
SR 1-[redacted]

I am asking the Ministry to reconsider the denial of my request for funding to fix my roof.

I have seen the Ministry's decision denying my request. The Ministry says I have not established that the need for this repair was "unexpected". The Ministry says I have not established that I have no other resources to make this repair. I can assure you, I have no other resources available to me to make this repair. If I did, the repair would be made.

Although our home isn't new, it was holding up decently. It wasn't until the rains of November 2021 that a few manageable problems became totally unmanageable. That's when I contacted the Ministry.

https://www.nelsonstar.com/news/twice-the-rain-half-the-snow-in-west-kootenay-in-november/

When I called the Ministry in November, a staff member told me I needed to get two estimates to show how much the repair would cost. I had extreme difficulties getting these quotes. Due to the higher than normal rains, lots of people wanted their roofs fixed. My husband and I contacted every roofing company between [redacted] and [redacted] They were all busy elsewhere and some said they would not work on a manufactured home because it wasn't a big enough job. Also, since we needed the Ministry to fund our repair, our job wasn't as certain as other jobs.

Finally in March, a man came and gave us a quote. This was the fastest that I could get a quote. Soon after that, another man gave me a quote. I contacted the Ministry to provide the quotes for the job we had hoped to have done in November.

While we were waiting for the quotes, we did everything we could think of to minimize or stop the problem. We tried tarps, flex seal and tar. We tried, but our efforts didn't address the problem.

When I contacted the Ministry in March after finally getting the quotes, the Ministry worker took the information from me verbally. She said if they needed more information, they would contact the roofing companies directly.

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Until the rain in November, we were able to make due. The unexpected volume of rain in November caused our problem. With the November rains, it was raining in our home. It was not a drip. We had buckets in the living room. It poured into our bathroom. Our daughter's bedroom has a water spot on the ceiling. Because we have been unable to address the problem adequately, we now have a mould issue.

Which brings me to the Ministry asking us to turn to other resources to get our home fixed. As I mentioned earlier, if we had other resources, we would have turned to them. Our families don't have any money. We know of no other organization or community group willing to help us out. Our mothers receive disability or pensions themselves and have nothing left over to help us out.

The Ministry's decision says that since our home is "co-owned" by my sister-in-law, [redacted] she is responsible for maintaining our home. We disagree. [redacted] has no beneficial interest in our home. As a family member, she is unable to help us as she is on disability herself and has no extra funds to help us.

All we want is to be dry in our home. We were surprised, as was the rest of the province, by the amount of rain we had in November. We were also surprised by the length of time it took us to get someone to give us a quote – even though we did our best to get someone out here. We have no resources to make this repair. We are asking the Ministry to reconsider our request.

We are working with an advocate. I have told her about our experience, our efforts to get funding, and the Ministry's denial. She wrote up this statement for me to look at. She emphasized that everything in this statement should be accurate because it is my statement, not hers. I have looked it over carefully. Before it is sent to the Ministry with my reconsideration request, I will make sure it is all correct.

Respectfully submitted,
April 11 2022,

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Statement of [redacted]

My name is [redacted]. I am [redacted]'s sister. [redacted] is married to [redacted].

In 2013, I made a secured loan to my brother, [redacted] so he could purchase a manufactured home. I have no beneficial ownership in the home. At the time, I was employed and was doing my brother a favour so he could get this home to live in. I was making it possible for them to have a home.

I have no legal obligation to provide funds for [redacted] and [redacted] to fix their roof.

My financial situation has changed. I now receive CPP-Disability myself well as some funds from WCB. I am not in a position to give money to [redacted] and [redacted] to fix their roof, and I am not willing to do so. And, as I mentioned above, I have no legal obligation to do so. I also have no obligation as a family member to pay for it to be fixed just because I gave [redacted] a secured loan almost ten years ago.

I talked to [redacted]'s advocate about this situation. She took notes and asked me follow-up questions. She wrote this statement for me to consider signing. She told me to make sure everything in this statement is accurate before I sign it. My signature below will show that I have reviewed it, that it is accurate, and that I am aware the Ministry of Social Development and Poverty Reduction will be considering as part of [redacted]'s reconsideration request.

Signed the _____ day of April 2022,

[redacted]

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Submission of advocate for

[redacted]

SR 1-[redacted]

[redacted] and her spouse [redacted] both have Persons with disabilities status. They have a young child.

In November 2021, our province experienced a completely unexpected amount of rain. Due to this deluge, [redacted] requested a crisis grant to get their roof fixed. Under the circumstances, it took her four months to get the two estimates that the Ministry staff asked of her. (Please see [redacted]s statement.)

The Ministry has denied the request stating that the criteria "The need for the item or expense is unexpected" has not been met. The Ministry's 'decision to be reconsidered' also says, "Because of the year of the home and the events surrounding the leak, the Ministry is not satisfied that the family unit meets this criterion."

In addition, in Section 2 of the Request for Reconsideration, the Ministry staff asserts that, "Both owners are responsible for maintaining the home." The following sentence also appears: "You and other co-owner are encouraged to reach out to community resources, churches, friends and family etc."

Ms [redacted] challenges the assertions that the need for repairs was not "unexpected", and that she has other resources through which to achieve those repairs.

"Both owners are responsible for maintaining the home."

Ms. [redacted] advises me that the documents concerning the purchase of the home were provided to the Ministry years ago. Recently, the Ministry required the production of documents concerning the purchase of the home, and they were provided again (Delivered to the Ministry on March 23, 2022).

The following documents are resubmitted with this reconsideration request.

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-Notarized promissory note establishing a secured loan
-PPSA security agreement establishing [redacted] as the secured party and [redacted] as the debtor
-A mortgage calculator
-[redacted] Tenancy Agreement with [redacted] tenants
Also submitted at this time -
-Twelve rent receipts listing [redacted] as renters

A review of the paperwork provided concerning the purchase of the home establishes that [redacted] does not have a beneficial interest in the manufactured home but rather has bare legal title only. [redacted] has the sole beneficial interest in the home, which makes it his asset. In that the family lives in the home, it is exempt as an asset.

The loan that [redacted] made to [redacted] to purchase the home is secured against the title to the manufactured home; it is a secured loan. To take the position that [redacted] must finance fixing the roof is akin to making RBC fix the roof of any home for which it holds the mortgage.

[redacted] and [redacted] have a tenancy agreement with [redacted] Manufactured Home Park. [redacted] does not have a tenancy agreement with the park. This is consistent with the fact that [redacted] does not own a beneficial interest in the home but rather she has a secured loan.

EAPD Regulation Schedule B, Sec. 5(2)(b) includes mortgage payments on the family unit's place of residence as an item that can be considered "actual shelter costs". The payments to [redacted] should be characterized as a mortgage payment because she is a secured lender with only legal title to the home to secure the loan, and the payment is pursuant to the promissory note. [redacted] has a secured loan agreement with [redacted] that legally requires him to make payments on that loan. His payments to [redacted] are not "rent". [redacted] is not a beneficial owner. She has no right to live in the home. The flip side to this arrangement is that [redacted] has no way of forcing [redacted] to make roof repairs.

As mentioned above, demanding that [redacted] pay for repairs to the roof of the home would be like making a bank holding a mortgage to pay for

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roof repairs. Here, [redacted] has no right to live in the home. There would be no direct benefit to her from repairs to the home.

"Reach out to community resources, churches, friends and family etc."

In Section 2 of the Request for Reconsideration form, Ms. [redacted] is encouraged to reach out to community resources, churches, friends and family.

This 'encouragement' is contrary to the Ministry's policy as spelled out in the policy manual. Friends, family, churches and community organizations are not a "resource" that the Ministry can require an applicant to exhaust. The policy manual states

> Food banks and the BC Hydro Customer Crisis Fund are not considered as resources.

It would be inconsistent for the Ministry to take the position that food banks and crisis funds aren't resources, but requiring that an applicant go to community groups, etc., to get a roof fixed is a resource.

The Ministry's policy manual also recognizes that replacement and repair of physical structures of the home can be a reason for granting an emergency home repair. This family has established the need for their home repairs, that the home is owned by [redacted], and that they have provided two estimates for the repairs. They have established that the freak rains experienced by our province in November were unexpected by everyone, and that they have no other resources to which to turn. Please grant their request for an emergency home repairs crisis supplement.

Submitted this the 29th day of April 2022,

Becky Quirk

Becky Quirk
Advocate for [redacted]

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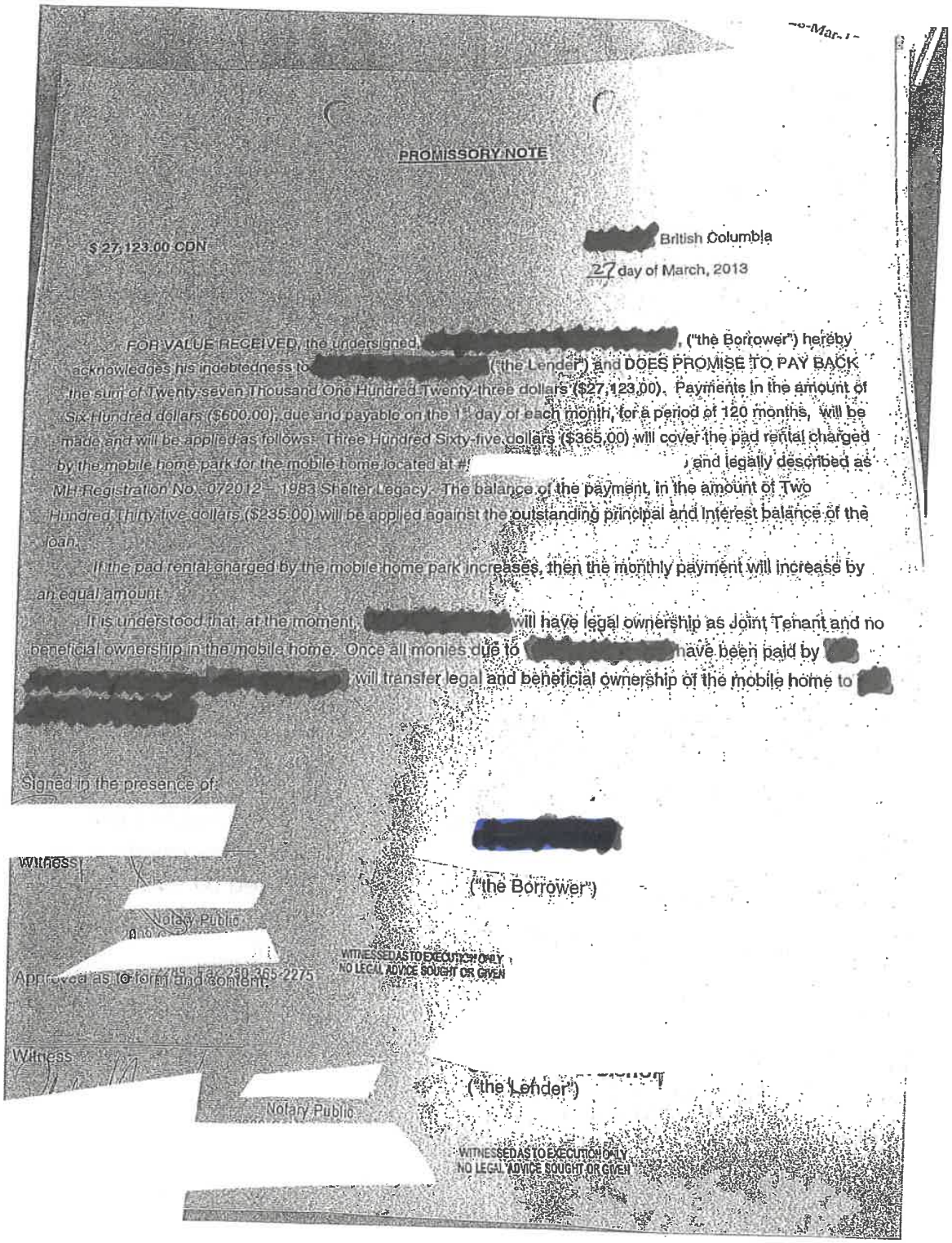

PROMISSORY NOTE

$ 27,123.00 CDN

[redacted] British Columbia

27 day of March, 2013

FOR VALUE RECEIVED, the undersigned [redacted], ("the Borrower") hereby acknowledges his indebtedness to [redacted] ("the Lender") and DOES PROMISE TO PAY BACK the sum of Twenty-seven Thousand One Hundred Twenty-three dollars ($27,123.00). Payments in the amount of Six Hundred dollars ($600.00), due and payable on the 1st day of each month, for a period of 120 months, will be made and will be applied as follows: Three Hundred Sixty-five dollars ($365.00) will cover the pad rental charged by the mobile home park for the mobile home located at #[redacted] and legally described as MH Registration No. 072012 – 1983 Shelter Legacy. The balance of the payment, in the amount of Two Hundred Thirty-five dollars ($235.00) will be applied against the outstanding principal and interest balance of the loan.

If the pad rental charged by the mobile home park increases, then the monthly payment will increase by an equal amount.

It is understood that, at the moment, [redacted] will have legal ownership as Joint Tenant and no beneficial ownership in the mobile home. Once all monies due to [redacted] have been paid by [redacted] will transfer legal and beneficial ownership of the mobile home to [redacted]

Signed in the presence of:

Witness

[redacted]

("the Borrower")

Notary Public

WITNESSED AS TO EXECUTION ONLY
NO LEGAL ADVICE SOUGHT OR GIVEN

Approved as to form and content. 250-365-2275

Witness

("the Lender")

Notary Public

WITNESSED AS TO EXECUTION ONLY
NO LEGAL ADVICE SOUGHT OR GIVEN

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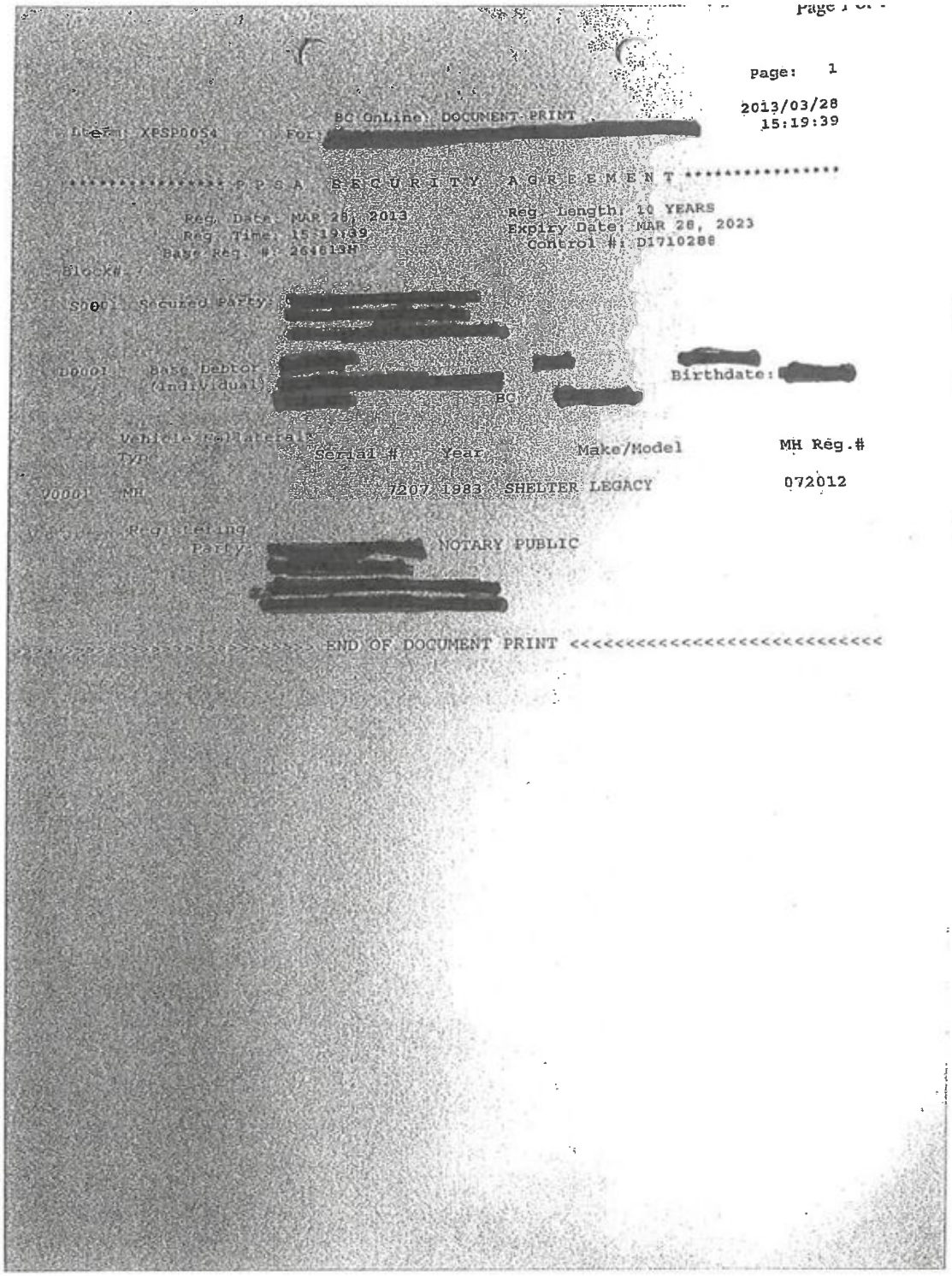

Page: 1

2013/03/28
15:19:39

BC OnLine: DOCUMENT PRINT

[redacted]

PPSA SECURITY AGREEMENT

Reg. Date: MAR 28, 2013
Reg. Time: 15:19:39
Base Reg. #: 264813H

Reg. Length: 10 YEARS
Expiry Date: MAR 28, 2023
Control #: D1710288

Block#:

Secured Party:

[redacted]

Base Debtor (Individual):

[redacted]

Birthdate:

Vehicle/Collateral:

Type	Serial #	Year	Make/Model	MH Reg.#
MH	[redacted]	1983	SHELTER LEGACY	072012

Registering Party:

[redacted]

NOTARY PUBLIC

END OF DOCUMENT PRINT

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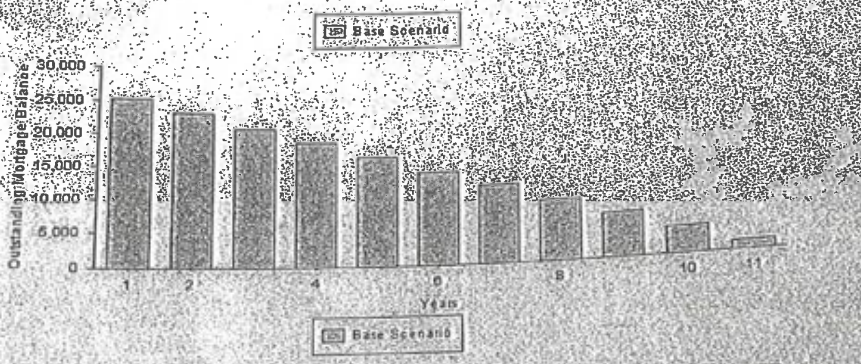
...Calculator

Mortgage Calculator

Scenario 1

Mortgage Amount	$27,123.00
Amortization Period	11 years 6 months
Interest Rate	2.99 %
Mortgage Term	4 year Fixed (closed)
Payment Frequency	Monthly
Payment Amount	$233.70
Interest Cost at Amortization	$4,895.25
Interest Cost for the Term	$2,741.08
Special Payments	No



Period	Payment	Principal	Interest	Balance	Special Payments
1	$233.70	$167.46	$66.24	$26,955.54	
2	$233.70	$165.67	$68.03	$26,789.87	
3	$233.70	$168.27	$65.43	$26,621.60	
4	$233.70	$166.51	$67.19	$26,455.09	
5	$233.70	$166.93	$66.77	$26,288.16	
6	$233.70	$169.50	$64.20	$26,118.66	
7	$233.70	$167.78	$65.92	$25,950.88	
8	$233.70	$170.32	$63.38	$25,780.56	
9	$233.70	$168.63	$65.07	$25,611.93	
10	$233.70	$169.06	$64.64	$25,442.87	

http://www.bmo.com/calculators/mortgagecalculator/mortgage_summary_print.jsp 2/7

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BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

EMPLOYMENT AND ASSISTANCE RECONSIDERATION DECISION

The collection, use and disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. If you have any questions about the collection, use and disclosure of this information, please contact your local Employment and Assistance Office.

REQUESTOR INFORMATION

Reconsideration SR No. [redacted]

Requestor Name [redacted]

Requestor Address [redacted]

City [redacted] Postal Code [redacted] Case No. [redacted]

DECISION UNDER CONSIDERATION

You are requesting a reconsideration of the decision to deny you a crisis supplement to pay for repairs to your roof in the amount of $1866.72.

SUMMARY OF FACTS

These are the key dates and information related to your Request for Reconsideration:

On March 17, 2022 you were denied a crisis supplement to pay for repairs to your roof.

On April 14, 2022 you submitted a Request for Reconsideration. You requested an extension to allow more time to submit documentation.

On May 12, 2022 the ministry completed its review of your Request for Reconsideration.

APPLICABLE LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation - Section 57

~ Please see the attached copy of the legislation in Appendix B ~

RECONSIDERATION DECISION

~ Please see the attached decision summary in Appendix A ~

ENCLOSED: ☐ ALL DOCUMENTS CONSIDERED BY THE MINISTRY ☐ NOTICE OF APPEAL TO THE EMPLOYMENT AND ASSISTANCE APPEAL TRIBUNAL

SIGNATURE	TITLE	DATE
[signature]	Reconsideration Officer	May 12, 2022

If this decision is appealable to the Employment and Assistance Appeal Tribunal, and you wish to appeal this decision, you may complete the enclosed *Notice of Appeal to the Employment and Assistance Appeal Tribunal* form and return it to the Appeal Tribunal. This Reconsideration Decision and attached documents constitute the appeal record. A sealed copy of this appeal will be kept by the Ministry.

HSD101(05/08/29)

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Appendix A – Reconsideration Decision

Upon review of your request for reconsideration, the ministry has approved your request for a crisis supplement to pay for repairs to your roof in the amount of $1866.72. All documents have been reviewed during the process.

Background:

- You and your spouse are recipients of Disability Assistance with one dependent child. Your file was reopened on March 4, 2011.

- On March 14, 2022 you requested a crisis supplement to pay for repairs to your roof. You explained that the roof of your trailer is leaking and you have no funds to pay for the repairs due to high bills. You advised that water is getting into your home and there are several buckets placed around your home to catch the water. You provided two quotes for the cost of the repairs, one for a flat rate of $7300 and one for a flat rate of $1866.72.

- On March 17, 2022 the ministry denied your request because you had not demonstrated that your need for repairs to your roof was a result of an unexpected circumstance or expense, and because you had potential resources available to meet this need in the form of your spouse's sister (who was determined to be a co-owner of the home, and should therefore be considered partly responsible for maintaining the home) as well as community resources including friends and other family.

- On April 14, 2022 you submitted your Request for Reconsideration. You requested additional time to submit documentation in support of your request.

- On May 2, 2022 you submitted additional documentation for your request, including several statements (from yourself, your spouse's sister and your advocate) as well as a promissory note detailing the terms of a loan paid to your spouse from his sister, and tenancy documents for your current address. In these submissions, you explained that your need for repairs to your roof resulted from damage sustained by unusually high rainfall in November 2021. You advise that it took several months to secure quotes for the repairs, and in the intervening months you made attempts to fix the issue yourselves but were unsuccessful. You explain that your spouse's sister does not co-own or reside in your home (as per your tenancy agreement) but rather only provided an initial loan to your spouse to help secure the purchase of your home. You argue that your spouse's sister therefore does not have any beneficial interest in the home and should not be considered a party responsible to pay for the repairs needed. You further advise that you do not have other family or community resources available to you.

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Decision:

Section 57 of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation says your request for crisis supplement must meet the following requirements:

1. The need for the item is unexpected or there is an unexpected expense **and**
2. There are no resources available **and**
3. Failure to obtain the item or meet the expense will result in imminent danger to physical health or the removal of a child under the *Child, Family and Community Service Act.* (CFCSA)

The ministry has previously established that failure to repair your roof will result in an imminent danger to your physical health.

The ministry acknowledges that you could not reasonably anticipate or take steps to prevent the damage that was caused to your roof by unusually high rainfall. Therefore, the ministry is satisfied that your need for repairs to your roof is unexpected.

Based on the information you have provided, the ministry is satisfied that you do not have resources available to cover the cost of repairs to your roof.

As you have satisfied all criteria under Section 57 of the EAPWD regulation, the ministry has approved your request for a crisis supplement to pay for repairs to your roof in the amount of $1866.72. I trust that this information will be useful in your understanding of the ministry's decision.

Welfare Law Case Study documents

The case of the disappearing Hydro payments

Tish Lakes, legal advocate

Okanagan Advocacy and Resource Society (OARS), Vernon

(1)

Ministry of Social Development and Poverty Reduction

Employment and Assistance Request for Reconsideration

Section 1 and 2 to be completed by worker

SR Number [redacted]

Section 1 Requestor Information

Requestor's Name [redacted]

Case Number [redacted]

Requestor's Address [redacted]

Section 2 Decision to be Reconsidered

The Ministry has reviewed your request and considered all of the factors relevant to the eligibility criteria for a Crisis Supplement for (Specific Type).

In order to receive a crisis supplement, you must be found eligible under the following legislation:
- Section 59 of the Employment and Assistance Regulation

-or-

- Section 57 of the Employment and Assistance for Persons with Disabilities

The above legislation specifies that a crisis supplement may be issued under the following circumstances:

(a) to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available, and

(b) failure to meet the expense or obtain the item will result in

(i) imminent danger to physical health, or

(ii) removal of a child.

On March 6, 2020 you contacted the Ministry to request a Crisis Supplement of $180.00. You indicated that your spouse lost their job and BC Hydro was unwilling to make payment arrangements with you.

On March 10, 2020 the Ministry made arrangements with BC Hydro for payment of your arrears. Your overdue bill was $180.05, a note on your Hydro account stated a $60.00 payment was made but not yest posted to your account. Arrangements were set up. Your Equal Payment amount of $46.00 and your arrears payment of $20.00 for 6 months would be paid direct by the Ministry.

On March 10, 2020 you contacted the Ministry, you were advised of the arrangements made and that you were no longer at risk of disconnection. Your Service request was closed. You stated that you lied to BC Hydro and never sent a $60.00 payment. You were advised that your service request was completed with the information presented and that you had an obligation to provide the Ministry with full and correct information when requesting a supplement. You were advised that you would have to contact BC Hydro regarding the $60.00. You did not follow up with the Ministry and funds continued to be paid by the Ministry to BC Hydro.

On September 29, 2021 you file was updated back to assistance as you were no longer in a facility. Your BC Hydro payment was reinstated as there was no notes or information from you stating that you no longer had a BC Hydro account.

On November 26, 2021 BC Hydro advised financial services that the payment sent could not be posted as the account number was invalid.

On December 1, 2021 your ongoing direct payment to BC Hydro was canceled. A note on your file states you were to contact BC Hydro regarding any credit.

On December 21, 2021 you contacted the Ministry. You stated that you were unaware $46.00 was being sent direct to BC Hydro. You stated your Hydro account closed in August 2020.

On March 9, 2022 you contacted the Ministry and requested reimbursement of the $46.00 per month that was sent to BC Hydro on your behalf.

BRITISH COLUMBIA | Ministry of Social Development and Poverty Reduction

Employment and Assistance
Request for Reconsideration

(2)

On March 15, 2022 you were advised that no Ministry underpayment occurred as you were issued assistance correctly. You were advised to contact BC Hydro and provided with the account number that payments were made to.

On March 16, 2022 you contacted the Ministry and stated BC Hydro never received any payments since August 2020. You were provided with the following payment information.
April 2020 - $46.00 (chq #1055900) + $20.00 (chq #1055901)
May 2020 - $46.00 (chq #1085510) + $20.00 (chq #1085511)
June 2020 - $20.00 (chq #1115045)
July 2020 - $20.00 (chq #1144731)
August 2020 - $20.00 (chq #1173918)
September 2020 - $20.00 (chq #1200815)
September 2021 - $46.00 (chq #1539370)
October 2021 - $46.00 (chq #1568517)
November 2021 - $46.00 (chq #1597161)
December 2021 - $46.00 (chq #1628260)

On March 16, 2022 the Ministry spoke with BC Hydro. they confirmed payments were received for your account for 2020. Your payments made in 2021 were not showing on your account.

On March 15, 2022 you were informed that your request for an underpayment was denied as the information provided does not meet all regulatory criteria.
• No underpayment occurred. You were issued the assistance that you were eligible to receive.

On April 20, 2022 you contacted the Ministry and stated you wanted reimbursement for the BC Hydro payments that were sent on your behalf. An error occurred and you were not provided with a reconsideration package as requested. You contacted the Ministry again on May 6, 2022 and you were advised that a reconsideration package would be provided to you.

A Reconsideration package has been prepared for you as requested. The following attachments have been included which complete this reconsideration package:
• Request for Reconsideration, HR0100
• Relevant Legislation
• Reconsideration and Appeal Process Brochure

ADVOCATE:
You have the right to an advocate to help you with your reconsideration. Please refer to http://www.povnet.org/ to find a list of local advocates in your area.

RETURN DATE:
This Request for Reconsideration form must be signed and returned by the date in Section 2. "Date requestor must submit form by".

If you can provide reasons and/or evidence why the Ministry's decision should be changed by this deadline, do so.

EXTENSION:
1. If you need more time to provide reasons or evidence, you may ask for an extension (more time).

To ask for an extension, write on this form that you need an extension, then sign and return it to the Ministry by the date in Section 2, "Date requestor must submit form by". To maximize the amount of time you have to provide reasons or evidence, submit the form on or just before that date. You may contact the reconsideration office to confirm the extension was approved, 778-698-7750.

2. Once the Ministry receives your signed Request for Reconsideration form, it will write its reconsideration decision within 10 business days (if no extension is requested) or 20 business days (if an extension is requested).

3. The reconsideration decision will be mailed to you, sent by MySelfServe or available for pick up in a Ministry office.

OKANAGAN ADVOCACY & Resource Society (OARS)

#004 – 3402 27 Avenue, Vernon, BC V1T 1S1 ~ Phone (778) 475-0808 ~ Fax (778) 475-0802

Reconsideration Submission on behalf of XXX

(also used as basis of oral submissions at the EAAT)

This recipient approached the Ministry in March 2020 because of a debt to BC Hydro, and deductions were made off the family benefits to pay to BC Hydro, and those payments in 2020 are not in dispute. In 2021 the Ministry, without any communication with the recipient, arbitrarily made four deductions of $46 each and put the funds to BC Hydro, and the recipient wants that $184 returned to her.

Please note there is significant information missing in the Ministry decision, and also some discrepancies:

1. While the original request was for a Crisis Supplement in March 2020, the current request was for $184.00 improperly taken out of the recipient's account in 2021 and paid to BC Hydro incorrectly. To characterize the current issue as a request for a Crisis Supplement is irrational and raises concerns that this Reconsideration will be denied without adequate consideration of the actual issue: whether the redirection of benefits to BC Hydro in 2021 was appropriate.
2. The process for the Ministry's payments to utility companies like BC Hydro is covered by policy rather than explicit legislation but the Reconsideration decision contains no detailed information in that policy.
3. It is clear that somehow the name of "XXXX" appeared on this recipient's account, which she discovered at the same time the incorrect deductions for utilities were made, and yet this is not addressed at all in the Ministry decision. It is also not clear that the Ministry investigated whether the wrong name was part of the error or whether the Ministry raised it with BC Hydro. This incident, of a different last name appearing as the name of the income assistance recipient, is extraordinary and yet seems to be of no concern to the Ministry.
4. The Reconsideration decision states "On September 29, 2021 you [sic] file was updated back to assistance as you were no longer in a facility". The narrative above makes no reference to the recipient going off benefits or when that happened, and the recipient maintains she continued on benefits through 2020 to 2022 and also reporting to the Ministry. The recipient was in a facility from August 17, 2021 to September 22, 2021, a short term stay that would not normally interrupt benefits, and continued to receive benefits during that time.
5. The Ministry's own account of BC Hydro payments show that payments started as $46 per month in April 2020 but were then lowered to $20 per month in June 2020 up to the last payment of $20 in September 2020. Yet the payments made in 2021 went back to $46 per month and again with no explanation.

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6. There are no records provided of anything signed by the recipient to authorize the BC Hydro payments. (4)

We submit the Ministry had no legal authority to deduct $184 and redirect it to BC Hydro in 2021. The recipient is unable to get reimbursement from BC Hydro as they cannot trace the payments made in 2021.

1. The recipient asked BC Hydro to disconnect services because of a move September 1, 2020 to a motel, the Days Inn. The Ministry was advised of that move and that utilities were included in the motel rent, and, was provided with a receipt for the September 2020 rent. We note that the Ministry usually requires documents on rent and utilities when a move occurs; and as well that motel room rentals don't normally charge for utilities.
2. The family moved three more times between that date and when the Ministry restarted BC Hydro payments in September 2021. In each instance all required information on the new address and conditions of rental were provided to the Ministry and there was no new BC Hydro account. We submit the reinstatement of payments to BC Hydro was an internal MSDPR office error which the recipient had to knowledge of or control over.
3. In November 2021 the recipient printed a "Confirmation of Assistance" document off the MySelfServe website and saw that her last name was incorrect and also a $46 deduction from her benefits. She contacted the Ministry to correct her name and also to inquire about the deduction. She was advised that she should contact BC Hydro to be reimbursed for the deductions.
4. The recipient immediately contacted BC Hydro and was advised they could not trace the payments and the Reconsideration decision acknowledges that "payments made in 2021 were not showing on your account." As such BC Hydro is in no position to reimburse or credit these payments made in 2021.
5. A ministry worker has told the recipient that the payments to BC Hydro were cashed but no information on that has been provided to the recipient and we are unaware of what information was provided to BC Hydro.

Again, the Ministry had no reason whatsoever, given the record, to believe the recipient had an active BC Hydro account and therefore no reason to make deductions for payments. Because of the way the Ministry did this, the recipient has no way of getting any credit or rebate from BC Hydro and the Ministry should reimburse the recipient for benefits lost.

Respectfully submitted,

Legal Advocate.

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Appeal Number 2022-0158

Part C – Decision Under Appeal

The decision under appeal is a decision expressed in the Ministry of Social Development and Poverty Reduction's (the Ministry's) Requestor Information (RI) form dated July 5, 2022, which denied the Appellant's request to reconsider a Ministry decision not to pay the Appellant an additional $184 in Disability Assistance (DA).

The Ministry had determined that it was unable to reconsider the decision because it was not a decision that resulted in a refusal, a discontinuance, or a reduction of DA, hardship assistance or a supplement provided under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Part D – Relevant Legislation

Employment and Assistance Act (EAA), Section 24

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Sections 1(1), 5, 16 and 26

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 24, and Schedule A, Sections 1, 4 and 5

The relevant legislation is provided in the Appendix

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Appeal Number 2022-0158

Part E – Summary of Facts

The Appellant is a sole recipient of DA.

Based in the information provided in the RI:

- On May 6, 2022, the Appellant requested an additional $184.00 in Disability Assistance to cover deductions made by the Ministry to the shelter allowance portion of her DA benefits for the months of September 2021 to December 2021. This request represented the total amount of deductions of $46 per month in BC Hydro utility costs that the Ministry said had been paid directly by the Ministry to BC Hydro;
- On June 3, 2022, the Appellant requested a 20 day extension of the Request a Reconsideration (RFR) deadline, which the Ministry approved on June 4, 2022. A new deadline was set for July 4, 2022; and,
- On July 5, 2022, the Ministry made the decision to deny the Appellant's RFR.

In the "Decision to be Reconsidered" section of the RFR, completed by the Ministry on June 2, 2022, the Ministry provided a record of events relating to the deductions of $46 per month in BC Hydro utility costs covering the period from September through December 2021 that the Ministry said had been paid directly by the Ministry to BC Hydro. This record states that:

- On September 29, 2021, the Ministry updated the Appellant's file back to assistance as she was no longer in a facility, adding "*Your BC Hydro payment was reinstated as there (were) no notes or information from (the Appellant) stating that (she) no longer had a BC Hydro account*";
- On November 26, 2021, BC Hydro told the Ministry that *"the payment (for December 2021) sent (to BC Hydro by the Ministry) could not be posted as the account number was invalid*";
- On December 1, 2021, the Appellant's ongoing direct payment to BC Hydro was canceled by the Ministry. A note on the Appellant's file says that she "*was to contact BC Hydro regarding any credit*";
- On December 21, 2021, the Appellant told the Ministry that she had closed her BC Hydro account in August 2020 and was unaware that $46 every month had been sent directly to BC Hydro on her behalf;
- On March 9, 2022, the Appellant contacted the Ministry and asked for reimbursement of "*$46 per month*";
- On March 15, 2022, the Ministry told the Appellant that no underpayment of her DA had occurred between September and December 2021 as she was "*issued the assistance that she was eligible to receive*", and that her "*request for an underpayment was denied as the information provided does not meet all regulatory criteria*". The Ministry also suggested that the Appellant contact BC Hydro directly to try to resolve the problem and

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the Ministry provided the Appellant with "*the account number that payments were made to*";

- On March 16, 2022, the Appellant told the Ministry that BC Hydro had told her that it hadn't received any payments on the Appellant's account from the Ministry since Aug 2020. The Ministry provided the Appellant with the following payment information:
  - September 2021 - $46.00 (cheque number provided)
  - October 2021 - $46.00 (cheque number provided)
  - November 2021 - $46.00 (cheque number provided)
  - December 2021 - $46.00 (cheque number provided)

  The Ministry also confirmed with BC Hydro that "*payments made in 2021 were not showing on (the Appellant's) account*".

In the RFR, completed by the Appellant's advocate (the Advocate) on June 30, 2022, the Advocate wrote *"The (Appellant) approached the Ministry in March 2020 because of debt to BC Hydro, and deductions were made off the family benefits to pay to BC Hydro, and those payments in 2020 are not in dispute. In 2021 the Ministry, without any communication with the (Appellant), arbitrarily made four deductions of $46 each and put the funds to BC Hydro, and the (Appellant) wants the $184 returned to her."*

In the RFR, the Advocate also wrote that the Ministry had no authority "*to deduct $184 and redirect it to BC Hydro in 2021*", and that:

- The Appellant has continued to receive DA benefits from 2020 to the present and continued to submit reports to the Ministry over that time period, including whether she paid BC Hydro directly in each of her many residences during that time period, or whether the cost of utilities was included in her rent, adding that *"(The Appellant) was in a facility from August 17, 2021 to September 22, 2021, a short term stay that would normally interrupt benefits, and continued to receive benefits during that time*";
- In November 2021, the Appellant noticed that her "Confirmation of Assistance" form on the Ministry's MySelfServe website showed an incorrect last name on her Ministry account and a $46 deduction in November 2021, and that she contacted the Ministry to correct her name and to enquire about the deduction. She was told by the Ministry to contact BC Hydro. The Appellant called BC Hydro and was told that the $46 payments made by the Ministry for the four month period from September through December 2021 "*were not showing on her account and could not be traced*".

Additional Information Provided after the Ministry Decision

In the Notice of Appeal (NOA) dated July 19, 2022, which was completed by the Employment and Assistance Appeal Tribunal (the Tribunal) over the phone, the Appellant did not provide the reasons for her appeal.

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Appeal Number 2022-0158

The Advocate, on behalf of the Appellant, provided a submission to the Tribunal on July 29, 2022 (the Submission). The Submission included:

- A chronological record of the events relating to her attempt to determine what had happened to the $184 deduction made by the Ministry from her monthly DA benefits totalling $184 between September and December 2021, as follows:
  - On December 1, 2021, the Appellant visited a Ministry office in her community about the wrong name on her file and the Ministry "*changed it back to what it was supposed to be*". She also enquired about the $46 payments to BC Hydro, and was told that the Ministry "*would place a hold on any future payments to Hydro*" and that the Appellant would have to contact BC Hydro for any reimbursement of payments already made by Ministry on her behalf;
  - On an unspecified date in December 2021, the Appellant contacted BC Hydro and was told that no payment had been made to her account since Aug. 2020. The Appellant then contacted the Ministry to let them know that BC Hydro had no record of any 2021 payments made by the Ministry on her behalf;
  - On Mar 16, 2022, the Ministry contacted the Appellant and gave her a BC Hydro "*account number*" to which the 2021 payments were going. The Appellant contacted BC Hydro and was told that no payment had been made to that account number since Aug 2020. The Appellant then contacted the Ministry, which suggested that she give BC Hydro permission for the Ministry to talk to BC Hydro about the status of her account, which she did;
  - On May 6, 2022, the Appellant contacted the Ministry to ask why she hadn't yet received the request for reconsideration package. Over the course of that discussion between the Appellant and the Ministry, the Ministry also said that it "*was surprised that no account number was affixed to those payments.*" The following payment details, including a "*payment number*", for the four payments in question were:
    - A payment totalling $46.00 on August 25, 2021,
    - A payment totalling $46.00 on September 22, 2021,
    - A payment totalling $46.00 on October 20, 2021, and
    - A payment totalling $46.00 on November 17, 2021

    The Appellant then contacted BC Hydro and provided the information that the Ministry had given her. BC Hydro was "*unable to find the payments anywhere with the information (she) provided them*". She also asked BC Hydro about any notes on her file regarding the Ministry contacting BC Hydro about the payments to her account, and was told that "*there was nothing noted on (her) file and that if the Ministry had contacted them it would have been noted*";
  - On May 10, 2022, the Appellant visited the local Ministry office and picked up her RFR package. On reviewing the documents in the package she "*noticed some inconsistencies … (and) some additional information that (she) was not privy to*";

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- On May 11, 2022, the Appellant contacted BC Hydro with the new information from the RFR package (the cheque numbers of the 2021 payments). She also told BC Hydro that the wrong name was on her Ministry file at the time of the payments and BC Hydro said that it still could not locate the payments;

- Six pages of dated documents titled "Contents of Note" (the Notes to File) with one note on each page. The information on each Note to File was as follows:
  - December 21, 2021 - "*(The Appellant) inquired about deductions from (the Ministry) cheques payable to BC Hydro*". After conferring with someone else (presumably someone within the note-takers organization), the note-taker indicates "*we need account number information to look into (it)*";
  - March 15, 2022 - "*(Appellant) inquiry: The Ministry advised (the Appellant) that (the Ministry is sending $46 'FTO' this account for 'them'. Advised (the Appellant) that no payment since August 2020. Advised of the 'REF' balance;*
  - March 16, 2022 – "*(The Appellant) authorized OK to speak to (the Ministry)*";
  - May 6, 2022 – "*(The Appellant contacted the note-taker) regarding missing payments from (the Ministry). (the note-taker) advised (the Appellant that) payment details are required to attempt to locate misapplied payments*";
  - May 11, 2022 – "*(The Appellant contacted the note-taker regarding the) missing payment. Unable to locate via 'FPAY'.* After conferring with someone else, the note-taker writes "*Submit payment tracing form*";
  - May 24, 2022 - "*(The Appellant contacted the note-taker regarding) her account information and missing payments. Advised (the Appellant) to fill out (a Freedom of Information [FOI] request online*"; and

- A one-page, undated document titled "Trace Payment Request" for a $46 payment bearing the date that the Ministry has indicated that it provided the first payment to BC Hydro on behalf of the Appellant, and the same "cheque number" and "payment number" provided by the Appellant and the Ministry in the appeal documents and the Submission.

Evidence Presented at the Hearing

At the hearing, the Appellant said she realized in November 2021 that the Ministry had *"$46 taken off her DA benefit*" for four months. She said that BC Hydro had no record of the payment being made to her account with them and that the payments had been "*sent out into the ether*" and "*no one knows where the money went*".

The Appellant wanted to know why the Ministry made the deduction in the first place as she had not asked the Ministry to make the deduction, and why the Ministry won't give it back to her. She said she hadn't done anything wrong.

Speaking for the Appellant, the Advocate said that the Ministry has not contacted BC Hydro to try fix the situation, and that there has clearly been a reduction in the amount of DA to which the

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Appellant is entitled, adding that the Ministry is "*The only party that has any information about the reduction and hasn't done anything about it*". The Advocate argued that the Ministry also made an error in not allowing the Appellant to seek a reconsideration of its original decision.

In response to a question from the Panel, the Appellant confirmed that there was a total of four $46 deductions made, not five as indicated in parts of the appeal record. The Ministry confirmed that the payments made at the end of each month (August 25, September 22, October 20 and November 17) related to the Appellant's DA benefit entitlement for the months of September, October, November and December respectively.

In response to another question from the Panel regarding the Appellant's living arrangements on the months immediately preceding September 2021, the Appellant confirmed that she had entered a facility in August 2021, that she didn't have a BC Hydro account when she went into the facility and that she told the Ministry this and has also told the Ministry that she has had no BC Hydro accounts since then. She said she doesn't understand why the Ministry said in the RFR that her BC Hydro payment had been reinstated. The Appellant also confirmed that she did continue to receive DA benefits while she was in the facility, and that she has been receiving benefits continuously over the past few years, so the Ministry's statement about her benefits being restored after her time in the facility is not true.

In response to a question from the Panel, the Appellant also confirmed that she has no idea who the person whose name erroneously appeared on her Ministry file was. She said that she didn't notice the wrong name on her file at first because her DA benefits are sent directly to her bank account by direct deposit.

In response to another question from the Panel, the Appellant confirmed that the Notes to File contained in the Submission were provided by BC Hydro as a result of an FOI request that she had initiated. In response to a related question by the Panel directed to the Ministry, the Ministry said that it could not explain the difference between a "*cheque number*" and a "*payment number*", or why there were unique but different cheques and payment numbers for each of the four payments in question.

At the hearing, the Ministry apologized to the Appellant for the situation, acknowledging that she had been "*stuck between the Ministry and BC Hydro*" which "*just wasn't right*". The Ministry also acknowledged that reinstating payments to BC Hydro on the Appellant's behalf in August 2021 was an error, and that it had received a "*communication*" from BC Hydro in November 2021 indicating that BC Hydro didn't have a customer account that they were able to apply the $46 payments to. The Ministry explained that it was not able to reconsider its original decision because that the combined value of the payments to the Appellant and BC Hydro equaled the total benefit amount that the Appellant was entitled to under the legislation, so the Ministry accounting system would not allow for the $184 adjustment.

The Ministry said that it was its responsibility to try to fix the error, and that it "*has to work with BC Hydro to have the funds returned*". To this end, the Ministry indicated that a process had been started to recover the money earlier on the day of the hearing, that the Ministry was going

to conduct "*a full administrative review*", and that this was "*clearly a situation that has to be rectified*".

In response to a question from the Advocate, the Ministry said that the legislative authority for deductions made from client's benefits and directed to third parties like BC Hydro was Ministry policy, and that the legislation allows the Ministry to administer programs through policy where administrative processes aren't specified in the legislation.

In response to another question from the Advocate, the Ministry said that there were no circumstances under which a redirection of benefits was considered a reduction in benefits because the amount of the redirected benefits, even when redirected in error, combined with the residual amount that the client received would total the benefit amount allowed under the legislation.

In response to a question from the Panel, the Ministry said that a large number of clients have authorized the Ministry to redirect their benefits to third parties for expenses such as utilities, so a large number of these redirected payments are made every month. The redirected payments are made in batch payments to the third party electronically, but the Ministry did not have available information about how many monthly payments to BC Hydro, for example, could not be applied due to incorrect information in the electronic payment instructions. In addition, the Ministry could not provide information about how errors were resolved (either by having the correct information provided by the Ministry so that the BC Hydro customer accounts could be identified, or by having the funds returned to the Ministry for resolution).

Admissibility of New Evidence

Section 22(4) of the Employment and Assistance Act (EAA) says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based the requirements set out in the legislation and on all admissible evidence.

There is no new evidence in the NOA.

New evidence in the Submission comprises the chronological record of the events relating to the Appellant's attempt to determine what had happened to the $184 deduction and the Notes to File resulting from the Appellant's FOI request.

The Panel finds that the chronological record of the events contains details of the Appellant's experience in trying to resolve the problem that the Ministry did not have when it made the original decision and that might reasonably be required for a full and fair disclosure of matters relating to the appeal. The Panel notes that this information is both credible and potentially important because it largely corroborates the evidence provided by the Ministry and because it

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provides details of the Appellant's experience in trying the resolve the problem. Because this evidence is credible and potentially important, the Panel assigns it significant weight.

The Panel finds that the Notes to File resulting from the Appellant's FOI request that might reasonably required for a full and fair disclosure of all matters relating to the appeal. The Panel notes that this information is important as it is the only evidence available from BC Hydro, and because it further corroborates the evidence provided by the parties to the appeal. The Panel also notes that this evidence is highly credible as it is evidence provided by a third party as the result of an FOI request. Because this evidence is both important and from a credible source, the Panel assigns it full weight.

The Ministry did not object to the Panel considering any of the new evidence.

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Appeal Number 2022-0158

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's determination that it was unable to reconsider its original decision not to pay the Appellant an additional $184 in DA was reasonably supported by the evidence or was a reasonable application of the legislation in the Appellant's circumstances. In other words, under the circumstances, was it reasonable for the Ministry to decide that it could not reconsider its original decision that the $184 deducted from the amount it paid directly to the Appellant because it was not appealable as it was not a decision that resulted in a reduction of DA?

Position of the Parties

The Appellant's position is that the Ministry should have reconsidered its original decision in favour of the Appellant because the Appellant had a reduction in the amount if DA to which she was entitled as a result of the deductions the Ministry made to her DA benefits in September through December 2021 - deductions that the Appellant did not authorize and which were not required because she didn't owe BC Hydro any money.

The Ministry's position is that, while it acknowledges and apologizes for the errors it made, it cannot reimburse the Appellant for the amount it deducted for her BC Hydro bills because that deduction does not represent a reduction in her DA benefits and any reimbursement would result in payments to the Appellant that exceed the maximum benefits to which she was entitled.

Panel Decision

As to Whether the Ministry's Decision was Reasonable

The Ministry said it could not reconsider its original decision to deny the Appellant's request for $184 because it did not represent a reduction in her DA benefit. EAPWDA Section 16(1) says that a person may ask the Ministry to reconsider a decision that results in a reduction of disability assistance provided to or for someone in the person's family unit. Therefore, the Appellant's ability to seek a reconsideration of the Ministry's original decision depends on whether the $46 per month over the four months which was deducted from the Appellant's DA was a "*reduction of DA*".

The Panel notes that the parties agree on the key facts as they relate to the decision in question. These facts are substantially supported by BC Hydro in the information contained in the Notes to File. The Ministry deducted $46 per month for four months in late 2021 without the consent of the Appellant. The Ministry paid $46 per month directly to BC Hydro and provided BC Hydro with the wrong customer name in the information it sent BC Hydro with the payments. BC Hydro was unable to process the payments because it couldn't identify the client for whom the payment was intended. BC Hydro notified the Ministry that it was unable to process the payment in last of the four payments over eight months ago (in late November 2021). The Ministry does not appear to have taken steps to try to fix the error over the eight months that

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have passed since the error was recognized by the Ministry, requiring the Appellant, who no longer has an account with BC Hydro, to resolve the error.

As of the date of the hearing, no one knows what happened to the $184. It appears that BC Hydro cannot identify where the payments are in their accounting system. In any event, the Appellant no longer has an account with BC Hydro, and hasn't had an account with BC Hydro in over a year.

In the Panel's view, where a portion of a client's monthly allowance is provided directly to a third party with the balance going to the client, for a client's DA benefits *not* to have been reduced, any portion of a client's total allowance under the legislation would have to have been applied to the client's account(s) with the third party or parties. If a third party does not know which of its customers the money is directed to, or, as is the case here, if the client is no longer the third party's customer, the money should be returned to the Ministry within a reasonable time so that it can be redirected to the correct third party, sent back to the original third party with the correct payment information, or returned to the client. Until such time that a payment problem is satisfactorily resolved, that portion of the allowance directed to a third party has not been received by anyone, and the only reasonable determination is that the client's allowance for the month or months in question has been reduced.

Having considered all of the available evidence, the Panel finds that the Ministry's decision, which was that it could not reconsider its decision because the Appellant's DA had not been reduced, was not reasonably supported by the evidence and was not a reasonable application of the legislation in the circumstances of the Appellant.

As to Whether the Tribunal has the Authority to Confirm or Rescind the Ministry's Decision

EAPWDA Section 16(3) says that a person who is dissatisfied with the outcome of a request for a reconsideration under Section 16(1) may appeal the decision that is the outcome of the request to the Tribunal. The decision that is the outcome of the Appellant's request for reconsideration in this case is the Ministry's denial of the Appellant's request for reconsideration, and that as a result the Ministry's original decision would stand, i.e. the Appellant was not entitled to the $184 reimbursement.

EAA Section 24 says that, after holding a hearing, a panel must determine whether the decision being appealed is either reasonably supported by the evidence, or a reasonable application of the legislation in the circumstances of the person appealing the decision. As mentioned above, the Panel has determined that the decision being appealed is not reasonably supported by the evidence, or a reasonable application of the legislation in the circumstances of the Appellant.

EAA Section 24 also says that the panel must either confirm the Ministry's decision (if it finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision), and otherwise, rescind the decision.

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Appeal Number 2022-0158

Conclusion

Having considered all the evidence, the Panel finds that the Ministry's RD is not reasonably supported by the evidence and is not a reasonable application of the applicable enactment in the circumstances of the Appellant. Accordingly, the Panel rescinds the Ministry's decision and the Appellant is successful in her appeal.

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Appeal Number 2022-0158

APPENDIX - LEGISLATION

EMPLOYMENT AND ASSISTANCE ACT

Decision of panel

24 (1) After holding the hearing required under section 22 (3) *[panels of the tribunal to conduct appeals]*, the panel must determine whether the decision being appealed is, as applicable,

(a) reasonably supported by the evidence, or

(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

(a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and

(b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Interpretation

1 (1) In this Act: ...

"disability assistance" means an amount for shelter and support provided under section 5 *[disability assistance and supplements]* ...

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance ... to or for a family unit that is eligible for it.

Reconsideration and appeal rights

16 (1) ... a person may request the minister to reconsider any of the following decisions made under this Act:

... (c) a decision that results in a reduction of disability assistance ... provided to or for someone in the person's family unit ...

(3) ... a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

Power to make regulations

26 (1) The Lieutenant Governor in Council may make regulations ...

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(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

... (b) prescribing categories of disability assistance ... which, without limitation, may relate to the purpose, duration or frequency of the disability assistance ...

(h) prescribing rules for determining the rate or amount of disability assistance ...

(3) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

... (c) prescribing additional circumstances in which the minister may ... reduce ... disability assistance ...

EMPLOYMENT AND ASSITANCE FOR PERSONS WITH DISABILITIES REGULATION

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

(a) the amount determined under Schedule A, minus

(b) the family unit's net income determined under Schedule B.

Schedule A
Disability Assistance Rates

Maximum amount of disability assistance before deduction of net income

1 (1) ... the amount of disability assistance referred to in section 24 (a) *[amount of disability assistance]* of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly shelter allowance

4 ... (2) The monthly shelter allowance for a family unit ... is the greater of

(a) the minimum set out in the following table for the family unit, and

(b) the lesser of

(i) the family unit's actual shelter costs, and

(ii) the maximum set out in the following table for the family unit.

Item	Column 1 **Family Unit Size**	Column 2 **Minimum**	Column 3 **Maximum**
1	1 person	$75	$375

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Appeal Number 2022-0158

How actual shelter costs are calculated

5 (1) For the purpose of this section, utility costs for a family unit's place of residence include ... :

... (d) hydro ...

(2) When calculating the actual monthly shelter costs of a family unit, ... the following items are included:

... (e) utility costs ...

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APPEAL NUMBER 2022-0158

Part G – Order
The panel decision is: (Check one) ☒**Unanimous** ☐**By Majority**
The Panel ☐**Confirms the Ministry Decision** ☒**Rescinds the Ministry Decision** If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes☒ No☐
Legislative Authority for the Decision: *Employment and Assistance Act* Section 24(1)(a)☒ or Section 24(1)(b) ☒ Section 24(2)(a)☐ or Section 24(2)(b) ☒

Part H – Signatures	
Print Name Simon Clews	
Signature of Chair	Date (Year/Month/Day) 2022/08/06

Print Name Rick Bizarro	
Signature of Member	Date (Year/Month/Day) 2022/08/07
Print Name Jane Nielsen	
Signature of Member	Date (Year/Month/Day) 2022/08/07

Welfare Law Case Study documents

Income assistance: eligibility issue while in school

Caitlin Wright, legal advocate

Together Against Poverty Society (TAPS), Victoria

(1)

Extracts from MSDPRS communications with client in MyselfServe
– Initial Decision.

From: Ministry

[redacted]

Good morning,

Thank you for submitting all of the requested documents. After further review, there are concerns regarding your eligibility.

As per Policy and Legislation, you are not eligible for Income Assistance while attending your program.

In order for you to become eligible for Income Assistance, you would have to provide confirmation that you have withdrawn from your program, this document must be submitted prior to [redacted] 2022 or your Service Request will be considered abandoned.

Thank you,

[redacted]

From: Ministry
[redacted]2022

(2)

Hello,

As per quotes from Policy and Legislation:

A family unit may be eligible for income assistance when an adult in the family unit is enrolled as a full-time student under the following circumstances:

A funded program of studies:
Participation is through WorkBC, or ISETS, and is a requirement of the individual's Employment Plan. This includes single parents participating in SPEI,
The family unit has been in receipt of income assistance, hardship assistance or disability assistance for at least the 3 preceding calendar months

An unfunded program of studies with prior approval of the minister.

Unfunded programs of study include (not exhaustive):
High school completion
Adult Basic Education (ABE)
Adult Special Education (ASE)
English as a Second Language (ESL)
All Adult Education programs through the Adult Upgrading Grant (AUG) (e.g. ABE, ASE and ESL) Those whose unfunded training is under a federal or provincial government training program (such as WorkBC ES, Career Paths of Skilled Immigrants, the Canada Job Fund, or ISETS)

Moving forward, I will require a confirmation of withdrawal from your studies this must be submitted prior to [redacted]2022, or your service request will be considered abandoned.

From: [redacted]
[redacted]2022

Hello [redacted]

Do you mind me walking through what would cause me to be ineligible? And program do you mean my study?

[redacted]

3

Re: Eligibility Concerns

From: Ministry
[redacted]2022

Good morning,

I am able to extend another 5 business days. Please respond by [redacted]
[redacted]or your SR will be considered abandoned.

Thank you,

[redacted]

From: [redacted]
[redacted]2022

[redacted]
Is there any chance to a formal response to this [redacted]

I've reached out to a number of non-profits and legal advocates in this space throughout the time period -- Together Against Poverty Society, [redacted] -- only a few have returned my multiple email and voicemails.

The furthest along is that I received and completed some intake forms for the [redacted] as well as a one hour consultation at [redacted] (the only day they have a legal advocate).

If I am able to extend to Friday, then at least I can attend this appointment on Thursday afternoon and have a more complete response.

Thanks,

[redacted]

www.tapsbc.ca
tel: 250.361.3521
fax: 250.361.3541

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April 25, 2022

Ministry of Social Development & Poverty Reduction
PO Box 9933 Stn Prov Govt
Victoria, BC V8W 9R2

RE: Service Request – Jax Doe

To whom it may concern,

I am writing with a service request on behalf of Mx. Jax Doe. A release of information is attached.

Background

Mx. Doe first applied for Income Assistance ("IA") through the Ministry of Social Development and Poverty Reduction in late January, 2022. Since that time, they have been providing requested information and documentation to supplement their IA application, in order for the Ministry to make a determination on their eligibility for assistance.

As part of this intake and verification process, Mx. Doe submitted information and documentation, demonstrating that they were currently enrolled in an immersive, online software engineering program through a private career college, based out of Ontario, called *General Assembly Toronto.* The total tuition and course fees tallied to $12,000.50 CAD, which Mx. Doe paid the majority through credit cards. The program began November 30, 2021, and will run for 24 weeks, until May 28, 2022. Mx. Doe's instruction is entirely online and remote-based, and run as a part-time flex program 3 days per week. The intention of this self-described "coding bootcamp" program is to gain competitive coding and software engineering skills, build connections to top tech employers, and finish with a certificate of completion in order to successfully attain employment in the high-tech job market. To help offset the high cost of this online program, Mx. Doe applied for funding under the BC Employer Training Grant Program; they were approved for funding on November 17, 2021, and received the funds March 7, 2022. This training grant offered reimbursement of program costs of up to 80%, for a total of $9,600.40, which Mx. Doe immediately used to pay off the debt on their credit card, accrued when they initially paid for the online program.

On March 28, 2022, Mx. Doe received a message to their MySelfServe account, from the Ministry intake worker they had been working. The message stated that,

> *After further review, there are concerns regarding your eligibility. As per Policy and Legislation, you are not eligible for Income Assistance while attending your program. In order for you to become eligible for Income Assistance, you would have to provide confirmation that you have withdrawn from your program; this document must be submitted prior to April 4, 2022 or your Service Request will be considered abandoned.*

On April 1, Mx. Doe contacted Together Against Poverty Society ("TAPS"), and asked to speak with a legal advocate regarding their IA eligibility, and the March 28 Ministry request for confirmation they have withdrawn from their online program. After various communications between Mx. Doe, Ministry staff, and their TAPS advocate, a new deadline for April 26 was

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granted, at which time the Ministry told Mx. Doe to provide a 2-week attendance letter detailing dates attended, confirmation they had withdrawn (no longer attending classes), and confirmation of applying for Employment Insurance ("EI") benefits.

Mx. Doe's Eligibility

Section 16 (1) of the *Employment and Assistance Regulation* ("the Regulation") reads:

> **Effect of family unit including full-time student**
>
> **16** (1) Subject to subsection (1.1), a family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or recipient is enrolled as a full-time student
>
> a) in a funded program of studies, or
> b) in an unfunded program of studies without prior approval of the minister

The relevant definitions are found in the Definitions section of the Regulation:

> **"full-time student"** has the same meaning as in the *Canada Student Financial Assistance Regulations* (Canada);
>
> **"funded program of studies"** means a program of studies for which funding provided to students under the *Canada Student Financial Assistance* Act may be provided to a student enrolled in it;

The *Canada Student Financial Assistance Act,* SC 1994 c. 28, and corresponding *Regulation* set out the definitions of these two terms:

Canada Student Financial Assistance Regulation – Interpretation 2(1)

> ***full-time student*** means a person
>
> **(a)** who, during a confirmed period within a period of studies, is enrolled in courses that constitute
>
> **(i)** at least 40 per cent and less than 60 per cent of a course load recognized by the designated educational institution as constituting a full course load, in the case of a person who has a permanent disability and elects to be considered as a full-time student, or
>
> **(ii)** at least 60 per cent of a course load recognized by the designated educational institution as constituting a full-time course load, in any other case,
>
> **(b)** whose primary occupation during the confirmed periods within that period of studies is the pursuit of studies in those courses, and
>
> **(c)** who meets the requirements of subsection 5(1) or 7(1) or section 33, as the case may be; (*étudiant à temps plein*)

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program of studies means the series of periods of studies

(a) that is considered by the designated educational institution to be necessary to obtain a degree, certificate or diploma,

(b) that is recognized by the appropriate authority which designated that institution under the Act or the *Canada Student Loans Act*, or any successor to that authority, and

(c) the aggregate of which is at least 12 weeks within a period of 15 consecutive weeks; (*programme d'études*)

These provisions make clear that in order for a person to be considered a "full-time student" within the meaning of the *Canada Student Financial Assistance Act* and the BC *Employment and Assistance Act,* they must be attending a "designated educational institution".

According to sections 2 and 3 of the *Canada Student Financial Assistance Act* in order to be a "designated educational institution", an institute of learning must be designated by the appropriate authority.

The educational institution Mx. Doe is attending for their online Software Engineering program is not a *designated educational institution*.

The Government of Canada's Master List of designated educational institutions (found at: https://www.canada.ca/en/employment-social-development/programs/designated-schools.html not include *General Assembly Toronto* as a designated educational institution, either in its home-province of Ontario, or in British Columbia. Accordingly, Mx. Doe was ineligible to access Canada Student Loans funding for their online program.

Therefore, Mx. Doe submits that they are not a full-time student either in a funded or unfunded program of studies, and therefore should not be found ineligible for income assistance for the period described in subsection (2), under s. 16 (1) of the Regulation.

This interpretation is consistent with the purpose and intent of the *Employment and Assistance Act.* Because Mx. Doe is unable to access student loan funding, he requires assistance under the *Employment and Assistance Act* in order to live.

Mx. Doe would also like to confirm that they are attending online live lectures, workshops, and tutorials while enrolled in the Software Engineering Immersive Flex program through *General Assembly Toronto*. Please see the attached letter from Mx. Rachel Mulligan, manager of Campus Operations and Student Success at *General Assembly Toronto*, who has confirmed it is the optional, once-weekly Teacher's Assistant office hours that Mx. Doe has not attended, as they are understanding the weekly course material. This letter also confirms the duration of the online program, its start and end dates, and the days and hours of weekly instruction.

Finally, Mx. Doe would like to confirm that they have applied for Medical Employment Insurance ("EI") benefits (see attached scanned letter from Service Canada regarding their online access code for online EI reporting), however they have also been communicating with representatives from the EI program through Employment and Social Development Canada, who confirmed that

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since Mx. Doe's most recent employer and thus their insurable hours, is based in the United States and is not paying EI premiums, they are not currently eligible for EI benefits.

If you have any questions or concerns regarding this request, please contact me directly at 250-900-4544 or cwright@tapsbc.ca.

Sincerely,

Caitlin Wright (she/her)
Legal Advocate
Together Against Poverty Society
P: (250) 900-4544
E: cwright@tapsbc.ca

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Message posted to client's MySelfServe Account 4 business days after client posted advocate's SR re: eligibility for Income Assistance, and client's file was sent to Policy department for review:

Good morning,

Thank you for the updated documents and information. Your application has been reviewed and you have been approved for regular income assistance.

Application Month/Day/2022:
Your prorated payment for Month will be $20.00.
Your payment for Month will be $560.00
Your payment for Month will be $560.00
*Your payment for Month will be $ 635.00 * For the Month cheque issue, the Ministry changed rates to include a Minimum Shelter Allowance of $75.00 for those without shelter expenses on file.*

These amounts have been sent via EFT direct deposit. Please allow 1-3 business days to reflect in your account.

Your ongoing Income Assistance rate will be $635.00. The next cheque issue is Month Day

*Local office: Open 9am- 4pm *May be Closed for Lunch 12:00pm - 1:00pm*

Earnings Exemption: You can make up to $500 month in employment income (net income) on regular income assistance. Anything over $500 will be deducted dollar for dollar off your income assistance. Deposits: Please be advised that any future monies loaned/gifted/earned need to be declared on monthly reporting stub and reoccurring loans/gifts may be deducted from future Income Assistance.

Please ensure you review the monthly reporting brochure and submit a monthly reporting stub by the 5th of each month. The Monthly Report or "stub" can be completed on the Monthly Report page. You will get a reminder message when the reporting period is open.

Your ongoing Monthly Benefits can be seen on My Self Serve on the Account Info page.

Medical Coverage has been added to your case. The Ministry of Social Development and Poverty Reduction (SDPR) sends eligibility information to PharmaCare on their clients' behalf—you do not need to apply to PharmaCare for this coverage. Some drugs require Special Authority approval before the prescription is filled to be eligible for coverage, this can be completed by a Doctor.
*** Please present your Personal Health Number to the service provider to determine your level of coverage prior to receiving service.*

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I have included a Persons With Disabilities PDF for you and your health care team to complete. As mentioned previously, once completed please follow instructions in booklet and a member of the Health team will be in contact with an eligibility decision.

The Ministry of Social Development and Poverty Reduction operates under the authority of the Employment and Assistance Act and Regulation, and the Employment and Assistance for Persons with Disabilities Act and Regulation.
For more information visit www.gov.bc.ca/sdpr.

Going forward, I will no longer be managing your case. If you have any questions or requests for other types of service, go to the Service Request page or contact our toll-free number at 1-866-866-0800.

Thank you and take care.

MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION ADVOCATE CONSULTATION PROCESS

Regional: see the CRSQ list on the reverse – there are regional calls on a regular basis, where the Ministry Chair is the CRSQ for the region. All advocates are encouraged to attend!

MOVING FORWARD STEERING COMMITTEE: meets quarterly to discuss policy issues

Anita LaHue, Ministry Co-Chair Anita.LaHue@gov.bc.ca;

Tish Lakes, Advocate Co-Chair tishlakes@okadvocate.ca

Subcommittees of the Moving Forward Steering Committee – work on specific issues identified by the steering committee as requiring more attention

1. CPPD (Canada Penson Plan Disability)

   Peta Poulton, Ministry Co-Chair Peta.Poulton@gov.bc.ca ;

   Paul Lagace, Advocate Co-Chair advocate.pruac@citywest.ca

2. HEALTH BENEFITS

   Peta Poulton, Ministry Co-Chair Peta.Poulton@gov.bc.ca ;

   Caitlin Wright, Advocate Co-Chair CWright@taps.bc.ca

3. PLMS (Prevention Loss Management Services)

   Kellie Vachon, Ministry Co Chair;

   Sonia Marino, Advocate Co-Chair smarino@firstunited.ca

4. CONSENT TO DISCLOSURE FORM (response to specific need and not currently active)

   Kellie Vachon, Ministry Chair Kellie.Vachon@gov.bc.ca

MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION

COMMUNITY RELATIONS AND SERVICE QUALITY (CRSQ) MANAGER CONTACT LIST

(September 20, 2022)

Work Unit (All Provincial Issues)	Community Relations and Service Quality Manager (CRSQ)	PHONE	GEOGRAPHIC AREA (Includes Ombudsperson Investigations & MySS Apps)
INTAKE (Applications general)	Michele Lauzon Michele.Lauzon@gov.bc.ca	Mobile: 604 760-4471	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
	John Bethell John.Bethell@gov.bc.ca	Mobile: 604 512-5487	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
CRSQ ISSUES SUPPORT SDSI.IssuesSupport.CommunityRelationsandServiceQuality@gov.bc.ca	Steven Clayton Steven.Clayton@gov.bc.ca	Mobile: 604-785-2506	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
	Kellie Vachon Kellie.Vachon@gov.bc.ca ***(PLMS: Section 10 liaison)***	Mobile: 604 999-6476	Interior
	Mira Culen Mira.Culen@gov.bc.ca (A/CRSQ till January 13, 2023)	778 698-5993	Vancouver Island
Health Assistance, HEALTH SUPPLEMENTS MEDICAL TRANSPORTATION CONTACT CENTRE (Includes ACE & Bus Pass) Specialized Services*: *Employment Plans & Reconsiderations	Peta Poulton Peta.Poulton@gov.bc.ca	Mobile: 250-203-6311	Vancouver Island
SPECIALIZED SERVICES: Funeral Assistance, Special Care Facilities, Case Review Team, OAS/GIS, Seniors Supplement, etc.	Pennie Smith Pennie.Smith@gov.bc.ca (A/CRSQ till January 7, 2023)	250 734-4867 Mobile: 236 628 2193	Northern
SPECIALIZED SERVICES: Funeral Assistance, Special Care Facilities, Case Review Team, OAS/GIS, Seniors Supplement, etc.	Ian Harrower Ian.Harrower@gov.bc.ca	250 649-2624 Mobile: 250 961-5501	Northern
	Ann Evans Locker Senior Manager, Stakeholder Relations	778-974-4067 Mobile: 250 896-3323	

Please note: To streamline responsiveness, Lower Mainland, Fraser and Vancouver Coastal geographic issues are managed collectively through one mailbox: **Lower Mainland MCRSQ mailbox** (Lowermainland.MCRSQ@gov.bc.ca) to be used by Lower Mainland stakeholders and ministry staff only, as the preferred method of contact. Stakeholder queries sent to the mailbox will be responded to by the first available MCRSQ as soon as possible.

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Advocacy Skills for Challenging Hearings

Michelle Beda; Danielle Sabelli

Guidance from a lawyer and senior advocate working in administrativelaw on advocacy skills that will be useful in challenging hearings. The session will talk about issues such as: determining the best evidence to use and how to enter it; cross examinations; and how to best deal with impatient arbitrators.

ADVOCACY SKILLS FOR DIFFICULT HEARINGS

Michelle Beda, Tenant Resource and Advisory CEntre
Danielle Sabelli, Community Legal Assistance Society

October 25, 2022

1

TIPS FOR EFFECTIVE ADVOCACY: BE WELL PREPARED

- You must be prepared to have credibility with the tribunal
- Decision makers loose interest if you are not prepared
- Being well-prepared will help you think on your feet (often because you have already thought about what is being asked)

2

TIPS FOR EFFECTIVE ADVOCACY: BE WELL PREPARED

- Be sure you can answer the following questions concisely:
  - What does the client want to achieve?
  - What are the key issues?
  - What is the applicable Law?
  - What are your key legal arguments?
    - Safety Poles

3

TIPS FOR EFFECTIVE ADVOCACY: BE WELL PREPARED

- What are you trying to prove?
- Do you have the evidence to prove your case?
- What is the weakest part of your case?
  - Don't just focus on why you are right, how do you dispel what is weak?

4

TIPS FOR EFFECTIVE ADVOCACY: BE WELL PREPARED

- What is your case theory?
  - How you tell your client's story;
  - Single paragraph that sets out the specific facts, and legal principles to justify the outcome you want; and
  - Must accord with common sense

5

TIPS FOR EFFECTIVE ADVOCACY: BE WELL PREPARED

- What is the evidence of the other side?
  - Know the relevant evidence of the other side inside and out
  - Can create a short-hand document or index summarizing key evidence
- Preparing for a hearing is not an easy task, especially if your workload is high volume. Sometimes you just can't be as well prepared as you would like to be

6

TIPS FOR EFFECTIVE ADVOCACY: BE WELL PREPARED

- Preparing for complex hearings in a short amount of time refines one of the most important skills of a legal advocate - simplifying lots of information and complex legal issues
- Don't need to know every single detail or piece of evidence in these situations, just focus on the most relevant

7

TIPS FOR EFFECTIVE ADVOCACY: BE FOCUSED

- Only focus on key points, don't over complicate it for yourself or the decisionmaker
- Should only have 3-4 arguments
- Weaker points dilute and unnecessarily convolute the argument
  - Ability of the court to understand the argument is diminished by background noise
- Go with your instincts and common sense, if an argument seems weak, abandon it
- Some more novel cases may warrant a kitchen-sink approach or "in the alternative" arguments

8

TIPS FOR EFFECTIVE ADVOCACY: BE CLEAR

- Simplifying complex legal issues is one of the most challenging aspects of legal advocacy. All the more necessary when faced with hearings that only last an hour
- Must be able to articulate your case in a way that is easy to understand
- Give the decisionmaker a simple roadmap of where you are going
  - Use written material to convey that structure of your submission (table of contents, headings, or outlines)

9

TIPS FOR EFFECTIVE ADVOCACY: BE CLEAR

- Break down complex points into subpoints
  - E.g. The rental Unit falls under the *RTA*
    - The rental unit is not transitional housing
      - The rental unit is not funded by any level of government

10

TIPS FOR EFFECTIVE ADVOCACY: BE CLEAR

- Develop persuasive and memorable sound bites (memorable doesn't mean melodramatic)
  - Sometimes framing the soundbite as a question can be impactful (can illustrate how nonsensical or unfair the situation is):
    - E.g. Given the protective purpose of the RTA, should a tenant lose their home because they scuffed up a wall? Or, distilling it to what the case is about: This is a case about a tenant losing their home due to a minor scuff on the wall

11

TIPS FOR EFFECTIVE ADVOCACY: BE CLEAR

- How to find your sound bites: think about how you would describe your case to your neighbour in two minutes while on your way out
- Sound bites should be a recurring theme, and repeated when applicable
- Analogies can also help the decisionmaker understand an otherwise complex situation

12

TIPS FOR EFFECTIVE ADVOCACY: BE CANDID

- Never overstate or misstate the facts, law or evidence
  - Understating is better than overstating
- Preparation is the best insurance against misstatement
  - If an error is made, try to fix it

13

TIPS FOR EFFECTIVE ADVOCACY: BE CANDID

- What if the decisionmaker asks a question you cannot answer?
  - Shouldn't happen if it relates to a central issue and you are prepared
  - If there is an unanticipated question, don't guess. Ask the decisionmaker if you could have a moment while you think or find the answer

14

TIPS FOR EFFECTIVE ADVOCACY: KNOW THE DECISIONMAKER

- "Personal experiences affect the facts the judge chooses to see" – Madam Justice Sonya Sotomayor
- Take stock of the decisionmaker you are appearing before and develop an understanding of specific arbitrator behaviours (shared RTB arbitrator behaviour list?)

15

TIPS FOR EFFECTIVE ADVOCACY: KNOW THE DECISIONMAKER

- Cannot assume the decisionmaker knows certain things. Many tribunal decisionmakers do not have a legal background and may not be familiar with or appreciate legal concepts (e.g. procedural fairness) and common law principles (e.g. principles of contractual interpretation)

16

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Cross examination is an Integral part of the persuasive process
- Procedural fairness requires parties to cross examine witnesses (may need to assert your right to do so during a hearing)
- Goal of cross examination:
  - Redefine the story and add perspectives that are missing from direct examination (constructive approach)

17

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Impeach a witness's credibility, knowledge or recollection of the story by pointing out inconsistencies or lack of qualifications, and to obtain helpful admissions or concessions from the witness (deconstructive approach)
- Cause the decisionmaker to distrust the witness (deconstructive approach)

18

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Once you know what needs to be proven, determine whether you should take a constructive or deconstructive approach
  - While impeachment is sometimes the goal, it is not always about attacking a witness's credibility, but rather eliciting facts that are favourable to your case
- ***Prepare***
- avoid cross-examining in unfamiliar areas
  - Should know 95% of the questions you will ask and 95% of the answers you will receive

19

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Have a plan to establish certain points you want before the decisionmaker
- In certain situations, you may want to avoid asking questions you do not know the answer too
  - Gives control back to the witness
- however, when it seems appropriate, you can be flexible and take risks

20

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- ***Pay close attention to direct examination***
- You may not need to cross-examine a witness if they depose the way you expect them to and in a manner that does not hurt your case
  - If you ask questions that have already been answered, could be seen as an attempt to harass or bully the witness
- ***Keep examination short***
- Don't ask more questions than are absolutely necessary

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CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Ask leading questions that call for yes or no answers
  - Long questions can be weak and invite long answers
  - Short questions make it difficult for the witness to add anything extraneous
  - Avoid asking compound questions (questions that contain multiple factual inquiries)

22

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

  - E.g." Didn't you receive the tenant's request for repairs to the bathroom and kitchen, yet refused to complete it?"
- Try to lead the witness with one fact per question
- Try not to act surprised if you get thrown off by an answer, remain composed

23

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Start strong and end strong
  - The decisionmaker has been listening to the witness's direct examination and are keen to hear your first question. A good opportunity to make an impact or leave an impression
  - Can make a big impression if you impeach a witnesses' credibility earlier rather than later when the decisionmaker's attention starts to lag

24

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Also makes the witness afraid of you and less hostile with their subsequent answers. They won't know when you may trip them up again, so they are likely to be more cautious
- *Quit while you're ahead*
- Stop when you get what you need
  - Do not ask question twice to emphasize the importance

25

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- *Impeaching credibility*
- Impeachment is the process of introducing circumstantial evidence that suggests the witness likely does not understand the need to tell the truth, is mistaken, is lying or the testimony is incomplete

26

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- *Using Prior inconsistent statement*
- Are you trying to impeach reliability or credibility? Prior inconsistent statements could do one or the other, or both
  - Can be critical to battles of conflicting testimony
- Lay the foundation before asking the hazardous question in a way that it cannot be denied

27

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Method for confronting inconsistent statements:
  - recommit the witness to the evidnce they just gave in testimony (repeat it back and ask them to confirm whether that is what they stated);
  - could validate the more favourable version of events to be true (e.g. it was given closer to the event), do this only if you want the decisionmaker to accept this version of the facts; and
  - confront them with the prior statement, pointing to the inconsistencies

28

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- *Using Inconsistent conduct*
- if a witness says they have not acted in a certain way, you can point to evidence that they have
- *Using Character evidence*
- The use of a personal trait to impair credibility: defects in perception, recollection and past misconduct

29

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- *Impeach Reliability*
- Witness may be truthful, but not reliable
- Do not show the witness is lying, but whether they can accurately testify to the events
- Repeated mistakes in a short amount of time could cause the decisionmaker to question whether the witness can provide reliable testimony
- Can be especially useful when dealing with an "expert" witness

30

CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- *Using omission*
- Certain evidence that was not mentioned before is likely not accurate or was not important at the relevant time
- *Lack of personal knowledge*
- A witness may not be able to provide evidence if they did not witness or were not part of a relevant event
  - E.g. a landlord's agent who was not there during the relevant event

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CROSS EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- *Demonstrate Bias*
- The relationship between a witness or party which may cause a witness, either consciously or unconsciously, to slant their testimony in favour of one party over the other
  - E.g. when another tenant testifies for the landlord

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CROSS EXAMINING A WITNESS: COMMON DIFFICULTIES

- You will not get many outright confessions
- Often a witness has a good explanation or additional information that counters your point that you were not prepared for
  - Do not act surprised, your reaction may have more of an impact then the witness's answer

33

CROSS EXAMINING A WITNESS: COMMON DIFFICULTIES

- *Maintaining control of a witness*
- Evasive witnesses pose the biggest threat to your control
- Losing control of a witness harms your credibility
- Most often control is lost when you fail to maintain composure when the witness does not cooperate

34

CROSS EXAMINING A WITNESS: COMMON DIFFICULTIES

- Argumentative Witnesses tend not to answer questions because they do not like the answer it calls for, so they answer another question instead, one with an answer they like
- The remedy for this is to show the decisionmaker how argumentative the witness has been without joining the argument
- Decisionmakers do not like when witnesses fail to answer basic questions
- When handled correctly, a difficult witness can be a gift

35

CROSS EXAMINING A WITNESS: COMMON DIFFICULTIES

- *Techniques to control the witness who fails to answer your question:*
  - Interrupt the witness with an apology
  - Remind the witness they will have an opportunity to present their evidence later, but for now you need them to answer your questions

36

CROSS EXAMINING A WITNESS: COMMON DIFFICULTIES

- Repeat the question and change the tone of your voice
- Reverse repetition: reverse the question seeking the same answer that was originally posed:
  - Initial question: "you accepted the late rent for 8 months without providing an eviction warning?" Reversed question: "so you did provide a eviction warning at some point during the 8 month period that rent was late?"

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CROSS EXAMINING A WITNESS: COMMON DIFFICULTIES

- Can acknowledge you may not have been clear, and repeat the question
- Can ask the witness whether there is something preventing them from answering your question
- Do not back down until the witness answers the questions

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CROSS EXAMINING A WITNESS: COMMON DIFFICULTIES

- *Typical control questions:*
  - Is your answer to my question "yes"?
  - Are you changing your testimony?
  - Let me break it down for you…
  - Let me be clear about what you **ARE SAYING**…

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CROSS EXAMINING A WITNESS: COMMON DIFFICULTIES

- Avoid using modifiers and generalizations
  - E.g. "the radio played loudly, did it not?"
- The word "loudly" modifies the phrase "the radio played" the use of the modifier may allow the witness to escape, or get out of control. The witness can also take issue with the description ("I don't know what you mean by loud?") and alerts them to what we want them to say. The witness can respond ("I could barely hear it")

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CROSS EXAMINING A WITNESS: COMMON DIFFICULTIES

- Instead of using modifiers or generalizations, could guide the witness to the answer you want in a manner that is illustrative of the noise level:
  - "You turned on the radio? And you could hear it? You could hear it over the construction?"

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DIRECT EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- A strong direct examination can often be overlooked
- Purpose is to have your witness tell the story, which cannot be done effectively unless you know every fact and nuance of the case
  - Useful to arrange questions chronologically or by issue (minimizes confusion, helps story to flow)
- Every question must have a purpose, keep it short and simple

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DIRECT EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Prepare the witness. They should not be surprised by any of your questions
- Make sure the witness is familiar with legal terms that will arise
- Try to begin each question with who, what, when, why and How
- try to avoid leading questions, unless you need to use them to aid the witness (More on that later)

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DIRECT EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Help guide your witness using the headline method before each set of questions
  - E.g. "I am going to now ask some questions about the previous dispute with your neighbour"
  - Can help get witnesses back on track
- Make sure your witness knows the story and is comfortable telling it
  - The witness May be comfortable telling you in hearing preparations, but uncomfortable telling the story during the hearing

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DIRECT EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Establish credibility through personalization (unless witness is only there to address a few evidentiary issues)
  - Establish the witness's importance and their relationship to the issue
  - establish motives are consistent with conduct. If motives are explained, conduct makes more sense

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DIRECT EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

  - E.g. witness had previously been assaulted by the other tenant, and was acting in self-defence
- Help the witness show not tell
  - Visual language works by asking questions in the present tense. Ideally your witness will respond in the present tense

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DIRECT EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

  - The use of exhibits (letters, reports, photos) can help emphasize a point and make it memorable
  - If you use exhibits, ensure your witness knows you plan to do so
- Expose weaknesses in your case on direct examination, so that you can get ahead of them and frame them in more favourable light

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DIRECT EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Address weaknesses where they fit logically in the sequence, otherwise it can be damaging
- If it doesn't fit logically within the sequence, save it for the end. If addressed at the beginning could taint the testimony that follows

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DIRECT EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Try not to speed through the story too quickly by constantly asking "what's next?" draw the decision's attention to the importance of the next subject area by using transitions
  - E.g. "What did you see at that time?"; " What did you do?"; "How did the landlord react?"

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DIRECT EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Use transitions. The effective use of transitions allow the decisionmaker to immediately focus and reduces to eliminate ambiguity and confusion
- Repeat important facts or evidence
  - Repetition helps make the testimony memorable and believable (don't want to go overboard)

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DIRECT EXAMINATION OF A WITNESS: TIPS FOR EFFECTIVE ADVOCACY

- Start strong and end strong. Preferably on a point the other side cannot attack
  - Have a bank of safety valve questions (non-controversial) that you can refer to if the decisionmaker weakens the witness's testimony or throws you off course
- Listen with fresh ears. Don't assume you know how your witness will answer. May be different from how they answered during hearing preparation. May need to ask follow-up questions to ensure the facts you want to establish get out during the hearing

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DIRECT EXAMINATION OF A WITNESS: COMMON DIFFICULTIES

- Witness may only know a portion of the entire case, may have poor memory or recollection. May even contradict other witnesses
- Witnesses only tend to answer the questions you ask, so there is a burden on you to be clear and comprehensive

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DIRECT EXAMINATION OF A WITNESS: COMMON DIFFICULTIES

- Testimony is different from normal conversations, so stories get told differently
- There may be interruptions by the other party or the decisionmaker, this can divert the story and throw you off track
- The separation between cross-examination and direct examination means the same topic will be discussed at different times and separated by unrelated information

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DIRECT EXAMINATION OF A WITNESS: COMMON DIFFICULTIES

- Witness gives unconvincing testimony ("I think", "sort of", "umm", "I don't know")
  - Make witness aware of these habits. Try to have your client avoid this during hearing preparation. Practice this more than once.

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DIRECT EXAMINATION OF A WITNESS: COMMON DIFFICULTIES

- Witness omits, forgets or misstates facts you wanted them to testify
  - Develop a signal with the witness client to alert them to the fact that they have made omitted something
    - e.g "is there anything else you recall?"

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DIRECT EXAMINATION OF A WITNESS: COMMON DIFFICULTIES

- or let the witness know you will shift to a leading questions to assist them with recollection or if they become confused
  - E.g. "Do you remember when you provided rent to the landlord?" No. "Could it have been three days after you received the eviction notice?"

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DIRECT EXAMINATION OF A WITNESS: COMMON DIFFICULTIES

- While you want to ensure your witness is dominant during you direct examination, they can go off track and spend time on matters that are irrelevant
- *Techniques foe helping re-direct your witness:*
  - ensure the witness is well prepared and understands what may not be relevant

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DIRECT EXAMINATION OF A WITNESS: COMMON DIFFICULTIES

- decide whether it is appropriate to interrupt your witness, interruption could signal a lack of trust in your witness
- interrupt the witness and say "I would just like to pause here for a moment and ask…" this is an opportunity to make the question more narrow or leading without demonstrating distrust in the witness
- ask for a caucus with the witness (especially useful if your witness is emotional)

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DIRECT EXAMINATION OF A WITNESS: COMMON DIFFICULTIES

- Your witness may say something that is not true or say something by mistake
  - You must attempt to have the witness correct it. You cannot knowingly allow a misstatement of evidence to remain
    - E.g. "are you sure the landlord never gave you a notice to remove your pet?" "Are you sure they didn't tell you pets were not allowed when you moved in?"
  - Could also request a private caucus with the witness and ask them to correct the misstatement upon your return

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DIRECT EXAMINATION OF A WITNESS: COMMON DIFFICULTIES

- Client coaching, where do you draw the line?
  - Law Society of BC Code of Professional Conduct (Rule 2.1-2):
    - (c) A lawyer should not attempt to deceive a court or tribunal by offering false evidence or by misstating facts or law and should not, either in argument to the judge or in address to the jury, assert a personal belief in an accused's guilt or innocence, in the justice or merits of the client's cause or in the evidence tendered before the court
    - (d) A lawyer should never seek privately to influence a court or tribunal, directly or indirectly, in the lawyer's or a client's favour, nor should the lawyer attempt to curry favour with juries by fawning, flattery or pretended solicitude for their personal comfort

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DIRECT EXAMINATION OF A WITNESS: COMMON DIFFICULTIES

- Your job is to elicit all relevant facts and to help your client express their case as persuasively as possible
  - If during hearing preparations the substance of the witness's testimony changes in ways that are more favourable than their unprepped testimony would have been, the testimony would be unreliable as the witness's true recollection. If you are aware of the change, and believe you have caused it, may not be ethically able to present it. Should try to bring it back to where it was, or refrain from presenting that evidence

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DIFFICULT DECISIONMAKERS

- Jaded decisionmaker: no matter how fair and righteous your case is, the decisionmaker may seem uninterested or lack enthusiasm. This judge will not be persuaded by passionate appeals to justice, or anything that is overly complicated. Make the case as simple as possible and narrow down the points. Avoid repetitive evidence. Refrain from being long-winded
- Unenlightened decisionmaker: don't argue with the decisionmaker, think of your presentation as a discussion. If there is binding (or persuasive precedent) explain the tribunal or courts have faced the same or similar legal issues and how other decisionmakers resolved the problem

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DIFFICULT DECISIONMAKERS

- Advocate decisionmaker (taking over the case): be thoroughly prepared. Try not to fumble. Try to pay attention to the decisionmaker's actions to understand why the decisionmaker may be advocating for the other side, may be able to adjust your strategy
- brutish decisionmaker: this decisionmaker will test your ability to remain composed. Try to stay calm and on-track. If you try to go head-to-head with this decisionmaker, they will lose focus on your argument and focus on the disagreement. Try to speak slowly and softly and deliberately

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DIFFICULT DECISIONMAKERS

- The all knowing decisionmaker (little opportunity to present your case): still present your case and make sure you create a record for a judicial review or internal appeal. If the decisionmaker cuts you off, politely ask for the opportunity to be heard
- The indecisive decisionmaker: offer decisionmaker clear, uncomplicated solution. Focus on how your proposed ruling is uncomplicated

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DIFFICULT DECISIONMAKERS

- The mode and order of direct examination and cross examination is controlled by the decisionmaker's discretion
- The decisionmaker may regulate time limits, change the order, interrupt your questioning
- Given the time constraints of administrative tribunals, ensure you prepare with this in mind, some decisionmakers will strictly adhere to an hour and dominate the hearing:

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DIFFICULT DECISIONMAKERS

- May need to quickly pivot your strategy
- Rely on safety poles. Highlight evidence and facts that need to be addressed and keep track of the evidence or testimony that was most harmful
- Don't hesitate to ask for an adjournment, procedural fairness may require it
- Ensure concerns are on the record, if not raised at the hearing cannot be raised on judicial review

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DIFFICULT DECISIONMAKERS

- Heavy or persistent questioning does not necessarily mean the decisionmaker is against you
- Sometimes the decisionmaker is inclined to find in favour of your client's favour and needs you to answer certain questions that need to be addressed for your client to win
- Other times, the persistent questioning may mean the decisionmaker is not convinced. Either way, the key is to answer the decisionmaker's concerns as persistently as possible and remain resolute

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DIFFICULT DECISIONMAKERS

- It is important to not be deterred
- Don't concede a point because it looks like you are about to lose it, instead once you have done your best to persuade the decisionmaker simply state you have nothing further to state on that point and at least that point will survive for a potential judicial review
- know when to drop and know when to carry it on, concede points where appropriate (this builds credibility)

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DIFFICULT DECISIONMAKERS

- Interruptions by a decisionmaker can be a positive thing:
  - they assist you with knowing what is troubling the decisionmaker that information. this is gold, and not available any other way
  - Allows you to directly address what is occupying the decisionmaker's mind and provides the opportunity to persuade
- Don't dodge questions, answer them head on

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DIFFICULT DECISIONMAKERS

- The decisionmaker is volatile and abusive
  - Warn your witness beforehand so they are prepare
  - Tell your witness not to argue their case, that is your job

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DIFFICULT DECISIONMAKERS

- Remain calm and courteous, difficult to be volatile to someone who is polite
- If a decisionmaker interrupts or cuts you off, politely remind the judge that procedural fairness requires that you be heard
- Advocate, don't argue
- If you are feeling upset, can ask for a short break

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QUESTIONS?

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THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Strategies for Judicial Reviews

Jonathan Blair

A presentation and discussion about strategies for working with a lawyer to develop your best case for a judicial review.

STRATEGIES FOR JUDICIAL REVIEW

Intro to assessing merit and setting up your case for judicial review

1

WHAT IS JUDICIAL REVIEW?

- Many legal decisions are made by decision-makers who are not judges.
- Superior courts have inherent power to supervise inferior tribunals (when there is no statutory appeal to the courts).
- In plain language, courts review whether a tribunal has messed up really bad.
- Government decision-makers who are not tribunals can also be reviewed. For example, decision to issue permits by municipalities.

2

WHAT IS JUDICIAL REVIEW

- Judge looks for specific types of errors.
  - Substantive errors: a review of the actual decision, applying the relevant standard of review.
  - Procedural review: was the process the tribunal used fair in all the circumstances?
  - Jurisdictional review: Rare. Did the tribunal even have authority over the subject matter?
- **Not** a new hearing – The judge is only looking at the decision of the tribunal based on the information that was in front of them – **if you don't put it on the record you probably can't argue it at judicial review!**
- If judge finds an error, most common remedy is to set-aside the decision and order tribunal to make a new decision.

3

MERIT

- Assessing merit for judicial review is different than other situations.
- You MUST know what issues and evidence were raised at the tribunal level
- You MUST know what standard of review you are dealing with.
- You MUST know whether there are further administrative alternatives (e.g. reconsideration).
- You MUST consider the entire path to getting what the client wants, not just the judicial review.
- The usual remedy if you win is to send the matter back for a new decision. Is anything going to change the second time around?
- Clients don't just want to win the judicial review. They want to get a practical result!

4

EXAMPLE

- Your client gets NTE for non-payment of rent.
- They apply for dispute resolution and include a claim for compensation for repairs.
- RTB severs the issues, dealing only with the eviction, with leave to reapply on other issues.
- The client losses at RTB. The client thinks RTB's decision is procedurally unfair because the client didn't get to cross-examine the landlord, and because the landlord misled the RTB about how many months rent the client owed.
- What would you need to know to assess this for merit for JR?
- If the client's goal is to get compensation and not lose their residence, what has to happen on top of JR?

5

STANDARD OF REVIEW

- How much deference does the tribunal get? How bad does the decision have to be before the judge can intervene?
- In many (most) cases, judges are not assessing whether the decision is right or wrong.
- Standard of review often dictated by *Administrative Tribunals Act* (ss. 58 or 59).
- Look at the law setting up the tribunal to see if there is a section adopting sections of the *ATA*.
- Think of the *ATA* as a buffet. The government chooses what items each tribunal will get and leaves the stuff it doesn't like.
- If the *ATA* does not apply, then standard of review set by common law, usually reasonableness: See *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

6

THE DEADLINE TO FILE

- Sometimes the law setting up the tribunal will give a JR deadline.
- Often the law setting up the tribunal will adopt s. 57 of the *ATA.*
- *ATA* s. 57 sets a 60 day time limit.
- If no other deadline, see *Judicial Review Procedure Act, s. 11.* Judicial review not time barred unless there is substantial prejudice or hardship.

7

The Process

- Judicial review must start by filing a petition to BCSC (Form 66).
- Other parties involved in the tribunal hearing are respondents.
- Must also serve anyone whose interests might be affected.
- *Judicial Review Procedure Act* s. 15 and 16: Petition must be served on tribunal and the AGBC.
- Typical order is to set-aside (or quash) decision at issue and remit the matter for redetermination.

8

Evidence

- Generally, no new evidence on judicial review.
- Judicial review limited to what issues and information the tribunal had before it (the "record").
- Exceptions: Proving unfairness, general background the tribunal knew or acted upon: *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387.

9

Affidavits and Evidence Con't

- Must list affidavits and evidence you will rely upon.
- Evidence in judicial review almost always put in by affidavit, not live witnesses.
- Again, affidavit must generally be limited to documents and evidence presented to tribunal.
- In practice, many tribunals file a full copy of the record. Can even be forced to (JRPA, s. 17). May not be necessary for petitioner to include all docs with affidavit.

10

COSTS

- Successful party presumptively entitled to costs unless court orders otherwise.
- Success generally refers to the judicial review, not the whole dispute. Is this changing??
- Always consider when charting what to do.

11

KEY POINTS IN SETTING A HEARING UP FOR JR

- READ the laws setting up the tribunal and the administrative system you are dealing with.
- PUT IT ON THE RECORD!
  - Break down the elements of the legal test and make submissions on the different parts (ideally something in writing);
  - Put in the evidence;
  - Raise the issue at the hearing (e.g. assert the right to cross-examine).
- EXHAUST ALL STATUTORY REMEDIES (e.g. file for recon if necessary or in doubt).
- CONSIDER THE PRACTICAL RESULT – are you going to JR just to lose again at the tribunal?

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EXAMPLE

- A client comes to you because they have received an NTE for breach of a material term because they have a dog but there is a no pets clause in the tenancy agreement.
- The client has lived there for 8 years. The client got the dog a year ago after talking with another tenant who had had a dog for a couple years.
- But new property managers took over two months ago and told the client they needed to get rid of the dog, and when the client didn't, they served them with the NTE.
- At hearing, the landlord lies and gives evidence that the dog is dangerous because it attacked another tenant (who did not appear as a witness). The arbitrator, does not let you direct the client or cross the landlord but insists on asking the client two questions: is there a no pet clause and does the client have a dog? After getting affirmative answers to this, the arbitrator says they do not need to hear any further evidence and asks for closing submissions.
- What things might you do to set this up for a strong JR?

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QUESTIONS?

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THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES TRAINING CONFERENCE

Legal Aid BC

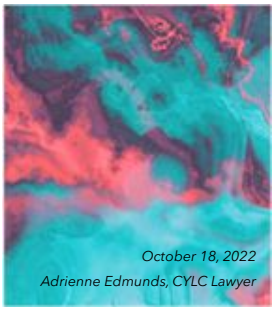
Update: Resources and Services to Support Advocacy

David Kandestin; Andrea Bryson; Adrienne Edmunds; Adina Popescu; Heather Wojcik; Adrienne Smith; Ram Sidhu

An update on legal information and referral resources that will help you help your clients. Legal Aid BC, Peoples' Law School, Everyone's Legal Clinic, Rise Legal Clinic, Child and Youth Legal Clinic and others will present.

Law Foundation of British Columbia
Family Law Advocates Training Conference

Advocacy for Children: Working with the *Child and Youth Legal Centre*



October 18, 2022
Adrienne Edmunds, CYLC Lawyer

1

Agenda

The Legal Basis for Children's Participation
- United Nations Convention on the Rights of the Child
- Family Law Act
- Child, Family and Community Services Act
- Case Law

Child and Youth Legal Centre
- Key Takeaways

2

The Legal Basis for Children's Participation

- United Nations Convention on the Rights of the Child (UNCRC)
- Family Law Act (FLA)
- Child, Family, and Community Services Act (CFCSA)
- Case Law

3

How Do We See Children?

What lens do you use to see children personally?

Welfare — Liberation

Paternalistic — Emancipation

What lens does the legal system use to see children?

Welfare — Liberation

Paternalistic — Emancipation

4

UNCRC: Best Interests of the Child

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

5

UNCRC: Right to be Heard

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

6

Family Law Act: Best Interests of the Child

37(2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:

...

(b) the child's views, unless it would be inappropriate to consider them;

...

7

Child, Family and Community Services Act

- The child's views should be taken into account when decisions relating to the child are made (s 2(d)).
- The child's views are a relevant factor in determining the child's best interests (s 4(1)(f)).
- Children in care have the right to be consulted and express their views according to their abilities about significant decisions affecting them (s 70(1)(c)).

8

Benefits of Hearing the Child

***BJG v DLG*, 2010 YKSC 44**

[21] Obtaining information of all sorts from children, including younger children, on a wide range of topics relevant to the dispute, can lead to **better decisions** for children that have a **greater chance of working successfully**. They have **important information** to offer about such things as schedules, including time spent with each parent, that work for them, extra-curricular activities and lessons, vacations, schools, and exchanges between their two homes and how these work best. They can also speak about **what their life is like from their point of view**, including the impact of the separation on them as well as the impact of the conduct of their parents.

[22] Receiving children's input early in the process, and throughout as appropriate, can **reduce conflict by focusing** or **refocusing matters on the children** and what is important to them. It can **reduce the intensity and duration of the conflict** and **enhance conciliation between parents** so that they can communicate more effectively for the benefit of their child. When children are actively involved in problem solving and given recognition that their ideas are important and are being heard, t**hey are empowered and their confidence and self esteem grow**. They feel that they have been **treated with dignity.** In addition, children's participation in the decision making process correlates positively with their ability to adapt to a newly reconfigured family.

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Child and Youth Legal Centre (CYLC)

A program run by the Society for Child and Youth of BC (SCY)

10

How a Child Can Participate

- Hearsay evidence given by their parents and other witnesses
- Judicial interview
- Interview by a Family Justice Counsellor, a parenting coordinator, a mediator, a child specialist in the collaborative process
- Child's sworn evidence, affidavit or viva voce
- Report under s. 211 of the *Family Law Act*
- Hear the Child report under s. 202 of the *Family Law Act*
- Representation by counsel

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CYLC

- A program run by the Society for Children and Youth
- Provides free legal services to children and youth (around ages 9-19) in throughout British Columbia
- Advocates on behalf of children and youth, allowing their views and interests to be accurately represented in matters relating to:
  - Family Law, Child Protection, Human Rights, Mental Health, Education, Housing, Employment, etc.

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Solicitor-Client Model

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Capacity to Instruct: Low Threshold

BC Professional Code of Conduct

Rule 3.2-9: When a client's ability to make decisions is impaired because of minority or mental disability, or for some other reason, the lawyer must, as far as reasonably possible, maintain a normal lawyer and client relationship.

Commentary: "...The key is whether the client has the ability to understand the information relative to the decision that has to be made and is able to appreciate the reasonably foreseeable consequences of the decision or lack of decision."

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Child-Centred Approach

- Establishing safety and any limitations to confidentiality
- Honest, age-appropriate language
- Using their own words
- Respecting their unique and individual experiences and interests

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Accessing CYLC Services

What
- Advocacy
- Legal information and advice
- Full representation (in some cases)

Who and how
- Referrals accepted from children, parents, and professionals (including judges)
- Anyone can call/email CYLC for more information

Where
- Roster lawyers and staff lawyers provide services throughout BC

When
- Generally, several months prior to a court hearing

Requirements
- The young person must be willing to engage and have capacity to instruct

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Key Takeaways

- Solicitor-Client Model
- Capacity to Instruct
- Child-Centred Approach
- Free Access to Services Across BC

If you are unsure of whether CYLC can assist, please feel free to contact CYLC for more information.

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From a Former Client

"The opportunity to understand the process gave us hope and stability, because we could understand the system we were in. We had a lawyer who explained what happens on the different dates, so we could have reasonable expectations for them. Being able to understand & have legal advice let us make educated decisions and understand the big picture, which I believe is vital because children are the ones stuck with the decision that governs the rest of their childhood."

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Contact
CHILD AND YOUTH LEGAL CENTRE
SOCIETY FOR CHILDREN AND YOUTH OF BC
303 - 1720 GRANT STREET, VANCOUVER, BC V5L 2Y7
(778) 657-5544 or 1(877) 462-0037
cylc@scyofbc.org | www.scyofbc.org

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Everyone Legal Clinic

everyonelegal.ca

The Everyone Legal Clinic

Heather Wojcik, Access Pro Bono

Provincial Training Conference for Advocates
October 18, 2022

1

everyonelegal.ca

Access Pro Bono's head office is located on the unceded and traditional territory of the Coast Salish, including the lands belonging to the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish) and səl̓ílwətaʔɬ /Selilwitulh (Tsleil-Waututh) Nations.

2

everyonelegal.ca

Objectives

- Increase access to affordable and high quality legal services
- Increase professional capacity for public interest legal service
- Provide articling clinicians with knowledge and skills required to thrive in public-minded legal practice
- Improve equity, diversity, working conditions and quality of articling education
- Promote new virtual, fixed fee and modular forms of legal practice

3

everyonelegal.ca

Approach

- Experimental, iterative, user-focused
- Clinic is clinician-centred
- Clinician practice is client-centred
- Continuous assessment of user (clinician, supervising lawyer, and client) feedback
- Continuous refinement of training, support and service delivery systems

4

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Clinicians

Based out of the following communities:

- Squamish
- Prince George
- Williams Lake
- Penticton
- Kamloops
- Port Alberni/Lantzville
- Powell River
- Sechelt
- Burns Lake
- Cranbrook
- Victoria
- Vancouver
- Golden
- Surrey
- Ucluelet

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Timeline

- Cohort 1 (15 clinicians)
  - Learning semester: May 16 to October 31, 2022
  - Service semester: Nov 1, 2022 to May 15, 2023
- Cohort 2 (10 clinicians)
  - Learning semester: Sept 6, 2022 to Feb 24, 2023
  - Service semester: Feb 27 to Sept 1 2023

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Types of Services: fixed rate, affordable

Family:
- Desk order divorce
- Dispute (fixed fee, modular arrangements)
- prenuptial, spousal cohabitation agreements (preparation or review)

Wills & Estates:
- Will drafting
- Other estate planning
- Dispute

Employment & Benefits
- Employment agreement (preparation or review)
- Dispute

Consumer Transactions
- Contract and/or bill of sale (preparation or review)
- Dispute

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Types of Services: fixed rate, affordable (cont.)

Residential Tenancy or Strata
- Rental agreement (preparation or review)
- Strata bylaw review
- Dispute

Other Civil Disputes

Traffic Court
- Traffic ticket dispute

Document Notarization

Business Organizations
- Formation (eg incorporation, partnership, etc)
- Annual report
- Change of shareholders or directors
- Other maintenance

Criminal
- General pre-trial information & advice
- Plea bargain
- Sentencing submissions

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everyonelegal.ca

Support for Clinicians

- Designated Supervising Lawyers (14 lawyers spanning 8 practice areas)
- Local or regional private lawyer to be matched for further support and mentorship
- Full access to Law Society's practice and mental health supports
- Each clinician provided $20,000 in bursary support during learning semester; further financial aid may be possible as funds permit
- May earn outside income throughout year so long as not interfering with professional development

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Support for Clinicians (continued)

- Marketing/assistance provided during service semester
- APB's Lawyer Referral Service will provide you with regular flow of screened client referrals
- 24/7 access to extensive library of practice area templates and precedents
- 24/7 access to Clio, Qase, Lexis/Nexis, Appara and other Clinic sponsor resources and applications
- Clinician discussions and knowledge-sharing encouraged over Slack and other communication channels
- Referral, practice and resource support to continue after graduation to private practice

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With gratitude:

11

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Contact me anytime:

hwojcik@accessprobono.ca

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LABC Family Law Services
Family Advice: Duty Counsel and Family LawLINE

Provincial Advocates Conference
Presentation By:

October 18, 2022
Adina Popescu
Manager, Family Law Advice Services
Legal Aid BC

1

Family Advice Services

* Family Duty Counsel
* Family LawLINE

2

Who are the lawyers?

* Lawyers in private practice who have been contracted by LABC to provide Family Duty Counsel or Family LawLINE services
* Minimum 2 years family law experience, most have considerably more
* Limited roster of lawyers in each location
* All take some legal aid cases
* In applicable locations, lawyers from the Parents Legal Centre will also act as duty counsel on family list days

3

Who are the clients?

* Self-represented parties
* People who have a lawyer, either privately or on legal aid, are not eligible for FDC or Family LawLINE services
* Must be financially eligible for advice services (https://legalaid.bc.ca/legal_aid/doIQualifyAdvice)
* Clients who are not financially eligible may be given up to 45 minutes of advice at the lawyer's discretion

4

What do the lawyers help with?

* Brief legal advice about the law and procedure
* Review documents
* Assist clients who are preparing documents themselves, but FDC cannot prepare documents for a client
* Emergency applications
* Referrals to legal aid (if appropriate) or other resources (such as Family Justice Counselors, the Child and Youth Legal Centre, etc.)

5

What does FDC help with (continued)?

* Assistance in Provincial Court on family list days
* Sometimes can participate in case conferences if arranged in advance: up to 2 hours of attendance plus up to 3 hours preparation time
* Maximum 3 hours of advice for financially eligible clients

6

What FDC cannot do

- Help with non-family law issues eg. civil or criminal
- Help if the client already has a lawyer
- Become the client's lawyer while acting as FDC
- Attend court for trials or contested hearings
- Prepare court documents for a client
- Assist with complex property disputes
- Advise a client regarding Court of Appeal proceedings
- Advise a client on non-BC court procedures or forms

7

Where is FDC?

- At most Provincial Court locations on family list days
  - During the COVID-19 pandemic all FDC services were offered remotely, and some locations did not have FDC at all (clients would be redirected to Family LawLINE)
  - As of October 2022 the goal is to have in person FDC for family list days and in some locations for advice on non-list days
- Full-time lead lawyers in Kelowna, New Westminster, Surrey, Vancouver and Victoria
- Part-time lead lawyers in Fraser Valley, Kamloops, Nanaimo and Prince George
- For certain locations interpreters can be provided for office appointments if pre-arranged
- Check LABC website for locations and hours (https://legalaid.bc.ca/legal_aid/familyDutyCounsel)

8

Expanded Family LawLINE

Available province-wide

- Lawyers located around the province give information, advice, and assistance on family law and child protection matters
- Operated by administrative assistants and a roster of lawyers located around the province
- Hours of service for telephone advice are expanded
  - Mon, Tues, Thurs, Fri 9:00 am – 3:00 pm
  - Wed 9:00 am – 2:30 pm
- Additional hours for appointments
- Clients are referred to the service via LABC Intake, Family Justice Counsellors, community agencies, advocates and support workers

9

Expanded Family LawLINE continued

- Clients receive up to **6 hours** of telephone advice. The Family LawLINE lawyer will provide the client with a written summary of the advice given by email.
- Administrative assistant maintains digital client files and records, sets appointments, etc.
- Digital client files are maintained to allow for continuity of service by a roster of lawyers located throughout the province
- Lawyers advise and support clients who have court or non-court matters and are not able to access Family Duty Counsel lawyers in person, but cannot assist clients who are in custody.

10

Expanded Family LawLINE continued

- Lawyers advise and support Family Justice mediation clients
- Referrals to other services, including online resources and other public agencies
- Legal coaching to help people who are self-representing
- Interpreters available if needed
- First-time Family LawLINE clients call 604-408-2172 or toll-free 1-866-577-2525
- Returning clients need to schedule a telephone appointment for up to 45 minutes per session

11

Questions?

12

Parents Legal Centre

October 18, 2022

Ram Sidhu

PLC Coordinator

Legal Aid BC

Support when you need it

1

Facts and Figures:

- Indigenous people make up 6% of BC's population
- About 63% of children in care are of Indigenous ancestry
- 44% of PLC's Clients self-identify as Indigenous

2

What is the PLC?

- Legal clinic for parents/caregivers with child protection matters
- Provide legal representation and wrap-around support to parents.
- Use of an advocate who will assist client throughout child protection matter
- Focus on early intervention/addressing potential safety concerns before matters escalates, and seek to achieve an alternative solution that maintains families as much as possible

3

Rationale for the PLC

- To engage with parents and provide support/advocacy at the beginning stages of their involvement with MCFD or DAA
- To provide support/advocacy before a matter escalates, and attempt to achieve a solution that keeps a family together and addresses the child protection concerns
- Client centered team support for client. We support the client in addressing their child protection concerns and provide legal representation
- Providing culturally sensitive and trauma informed services

4

PLC Team

Lawyer

- Provides legal representation and advocacy
- Attends court, mediations, and collaborative meetings
- Easily available to provide legal advice to client
- Works with ACLW/Advocate to identify client's needs and develop plan to address the CP concerns
- Provides outreach in the community

ACLW/Advocate

- Supports the client in addressing CP concerns
- Attends meetings with client
- Stays in regular touch with clients
- Works with Lawyer about progress, setbacks, developments
- Maintains knowledge of resources clients might benefit from
- Develops relationship with community resources

Administrative Assistant

- Manages office administration, intake, phone calls, and data collection

5

Who Qualifies for the PLC?

Requirements:

- Parent or "person who stands in in place of a parent"
- Must have a child protection concern or file
- File must fall within the Provincial Court catchment of the PLC
- Applicant falls within the financial criteria for LABC, or is eligible for discretionary coverage from PLC

Files that may not be appropriate:

- Trial dates have been booked and is "imminent"
- Client has serious and/or unresolved criminal allegations against them
- Client already has a lawyer

6

How to Support Clients with CFCSA files

- Refer clients to PLC or Legal Aid BC upon first potential contact with a social worker
- Make sure client has support/advocate at meetings to take notes or help client communicate productively with the social worker
- Encourage client to remain in contact with social worker and attend visits/meetings on time
- If client is Indigenous, make sure client has access to support and involvement from their community
- Encourage parent to be proactive about any child protection concerns and/or explore family, friends, or community if child cannot live with client on temporary basis

7

Locations

- 10 PLC Locations
  Duncan, Victoria, Campbell River, Kamloops, Smithers, Williams Lake, Prince George, Terrace, Surrey and Vancouver
- 26 Network Locations across the Province

https://legalaid.bc.ca/legal_aid/legalAidLocations
Map

8

[SLIDE 1
text: Rise Women's Legal Centre – you and your clients
Andrea Bryson]

[SLIDE 2
Image: the trans and non binary flags cut diagonally to share a box

text: Who we serve
Rise supports all targeted and oppressed genders (women, trans, non-binary and gender diverse folks)
Rise works with clients who have matters in BC
Substantive help to clients below 200% of LICO
Supports advocates & workers]

[SLIDE 3
Image: teal background with two halves of one arrow – one half black, one half white – to point in one direction

Text: Clients Accessing Rise
Clients enter Rise through 2 doors:

Community Legal Clinic – assists clients in the Lower Mainland to navigate existing resources
Virtual Legal Clinic – assists clients outside the Lower Mainland using a Community Partner model to connect clients to volunteer lawyers

Both programs use navigators to direct clients to best resources – Rise programs may not always be the best resource]

[SLIDE 4
no image
Text: Programs for Rise Clients
By lawyers/law students
Student Clinic
Unbundled Legal Representation
Provincial Court (Vancouver, Richmond, New Westminster)
Summary Advice Service
No representation
Advice with soft cap on all family law issues
For clients who experience domestic violence
By Advocates & Practicum Students
Virtual Advocate
For VLC clients who cannot access advocate in own community
Community Outreach Advocate (new)
For CLC clients with barriers that prevent access to advocacy programs
Equality Clinic
Name/gender correction for Indigenous reclamation, trans/non-binary/gender diverse clients
Police Complaints

Rise WOMEN'S LEGAL CENTRE

For YOU!

Centralized Support Services:

- **Family Advocate Educator** (new)
  - Andrea Bryson
- **Family Advocate Support Lawyer (FASL)**
  - Leila Hartford – training;
  - Frances Rosner– Q&A
- **Supervising lawyer program** (pilot)
  - Maggie House – only for specific advocacy programs

[SLIDE 5
image: a red puzzle piece connecting two sets of interconnected puzzle pieces in white

Text: For YOU!
Centralized Support Services:
Family Advocate Educator (new)
Andrea Bryson
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Supervising lawyer program (pilot)
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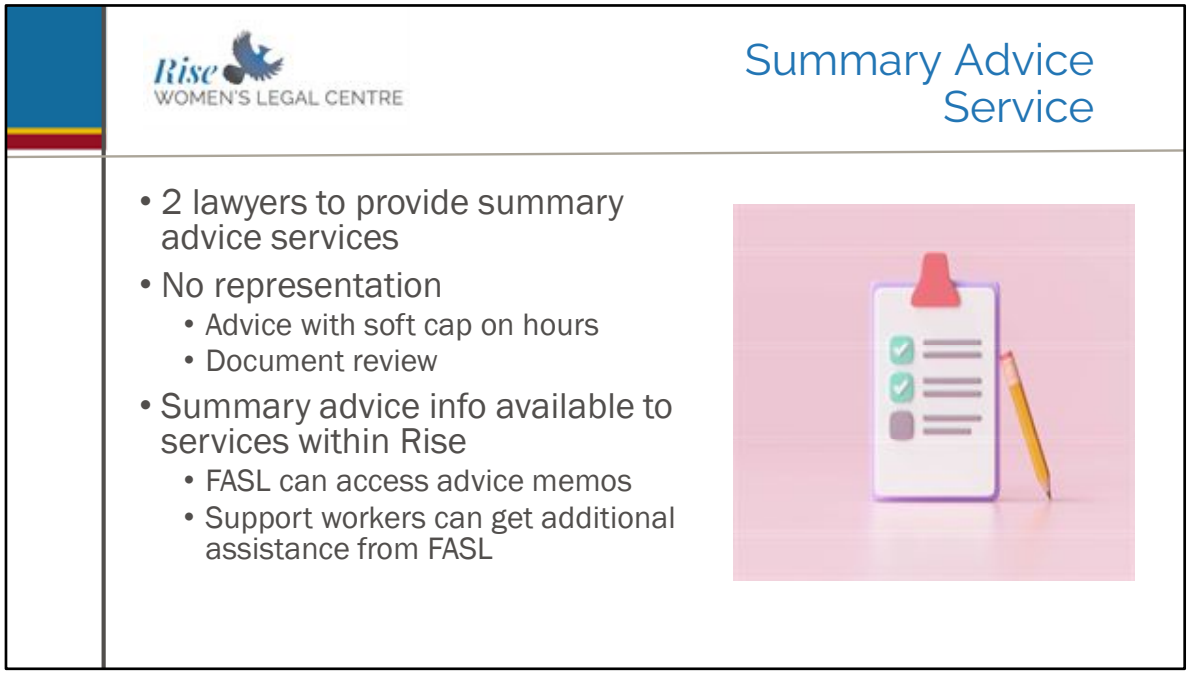
Rise WOMEN'S LEGAL CENTRE

Virtual Legal Clinic (VLC)

- Volunteer lawyers provide summary legal advice to women in remote communities.
  - Family, Criminal & Immigration
  - Provincial & Supreme Court
- Uses Community Partner Model
  - Client, worker in community & VLC lawyer collaborate
  - Worker assists with advice implementation
  - Optional twice monthly meetings for workers

[SLIDE 6
image: a blue and green google map of BC with google locate arrows where Rise has community partners

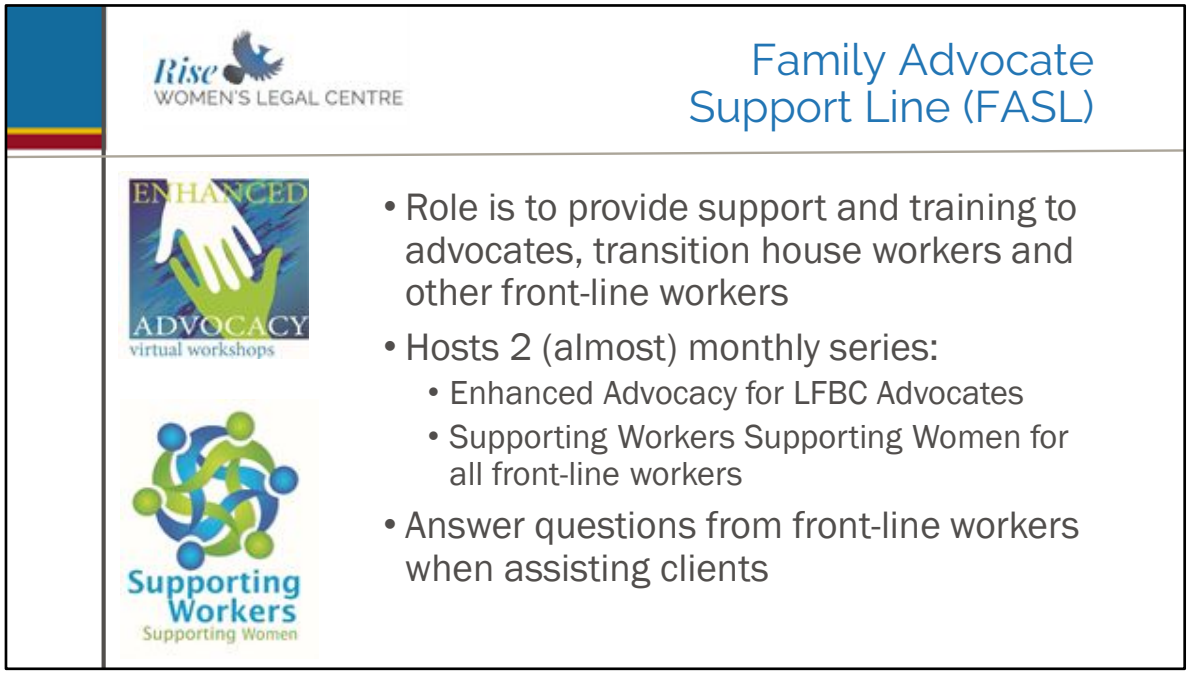
Text: Virtual Legal Clinic (VLC)
Volunteer lawyers provide summary legal advice to women in remote communities.
Family, Criminal & Immigration
Provincial & Supreme Court
Uses Community Partner Model
Client, worker in community & VLC lawyer collaborate
Worker assists with advice implementation
Optional twice monthly meetings for workers]



[SLIDE 7
image: a pink background with a white check box list and a pencil leaning against it

Text: Summary Advice Service
2 lawyers to provide summary advice services
No representation
- Advice with soft cap on hours
- Document review

Summary advice info available to services within Rise
- FASL can access advice memos
- Support workers can get additional assistance from FASL



[SLIDE 8
Images: on top: two hands in white and green with fingers overlapping with the text "enhanced advocacy virtual workshops"
On bottom: an abstract image of 6 green and blue balls connected by ribbon with the text "Supporting Workers Supporting Women"

Text: Family Advocate Support Line (FASL)
Role is to provide support and training to advocates, transition house workers and other front-line workers
Hosts 2 (almost) monthly series:
Enhanced Advocacy for LFBC Advocates
Supporting Workers Supporting Women for all front-line workers
Answer questions from front-line workers when assisting clients

Rise WOMEN'S LEGAL CENTRE

New Centralized Advocacy Supports

- Supervising Lawyer (pilot project)
  - Directly supervises 6 advocates around the province
- Family Advocate Educator
  - Provides one-to-one coaching, mentorship to Family Law Advocates
  - Open weekly office hours – probably Thursdays/Fridays
  - Training (live & recorded) for advocates

[Image: a red and white weather vane with an arrow pointing to the left on a black and white blurry background that resemble trees

Text: New Centralized Advocacy Supports
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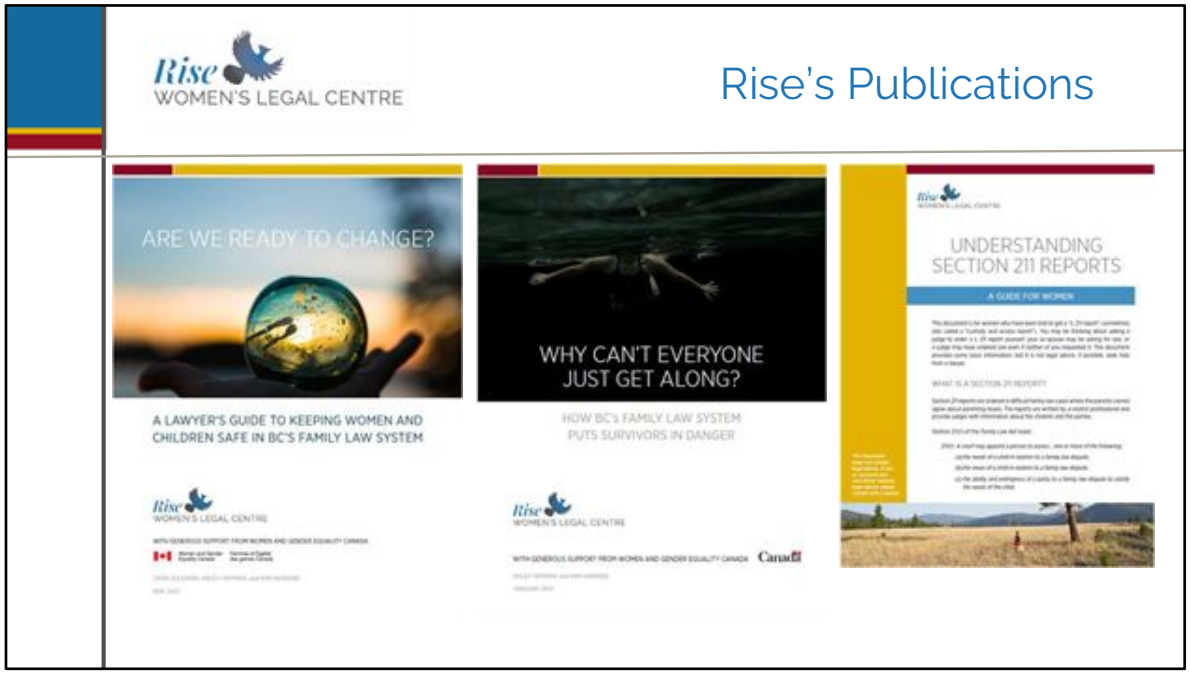

[Image:
3 front covers side by side of Rise publications:
Publication one: image of a crystal ball in hand reflecting a sunrise or sunset in the background with the text: Are we ready to change: a lawyers guide to keeping women and children safe in BC's family law system
Publication two: image of a person swimming just under the surface of dark water with the text: why can't everyone just get along? How BC's family law system puts survivors in danger.
Publication three: Text saying Understanding Section 211 reports with indiscernible text below, at the bottom of the page is a tiny person in red standing in a big empty yellow field.

Text: Rise's Publications]

Rise
WOMEN'S LEGAL CENTRE

www.womenslegalcentre.ca
info@womenslegalcentre.ca

IG: @risewomenslc
Twitter: @RiseWomensLegal
FB: RiseWomensLegal

[Image: Thank you in English, surrounded word bubble style with the word thank you in many other languages in different sizes, directions and colours
Text:
www.womenslegalcentre.ca
info@womenslegalcentre.ca
IG: @risewomenslc
Twitter: @RiseWomensLegal
FB: RiseWomensLegal]

THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Resource Panel: Updates on LABC Family Law Resources and Services

Adam Fraser; Adina Popescu

This session will provide an overview of advice and limited representation services available to family law clients through Legal Aid BC. It will also provide an update about various resources and services available to these clients, including publications, websites, legal information outreach workers, criminal law navigators, and community partners.

Family Law Advice Services

Provincial Advocates Conference
Presented by:

October 25, 2022
Adina Popescu
Manager, Family Law Advice Services

Legal Aid BC
Support when you need it

1

Family Advice Services

* How to get help or advice
  * If the client does not have a lawyer, either privately, or through Legal Aid, they may qualify for free legal advice
  * Even if they do qualify for Legal Aid, they can obtain free legal advice while waiting for a lawyer to be appointed, if urgent
  * Even if the client has a legal aid contract, after contract hours are used up and client now self-representing, they may qualify for free legal advice
  * The client may not be financially eligible for full legal aid representation, but is for advice (or a limited representation contract)
  * If the client's family law legal issues do not qualify for full Legal Aid representation, they may still qualify for free legal advice (or a limited representation contract)

Legal Aid BC

2

Family Advice Services

- Family Duty Counsel
- Family LawLINE

Legal Aid BC

3

Who are the lawyers?

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Legal Aid BC

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Legal Aid BC

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Legal Aid BC

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What does FDC help with (continued)?

- Assistance in Provincial Court on family list days
- Sometimes can participate in case conferences if arranged in advance: up to 2 hours of attendance plus up to 3 hours preparation time
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Legal Aid BC

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Legal Aid BC

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Where is FDC?

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  - As of October 2022 the goal is to have in person FDC for family list days and in some locations for advice on non-list days
  - Where local/regional counsel is not available, family duty counsel may appear remotely
- Full-time lead lawyers in Kelowna, New Westminster, Surrey, Vancouver and Victoria
- Part-time lead lawyers in Fraser Valley, Kamloops, Nanaimo and Prince George
- For certain locations interpreters can be provided for office appointments if pre-arranged

Legal Aid BC

9

Where is FDC?

- Check LABC website for locations and hours (https://legalaid.bc.ca/legal_aid/familyDutyCounsel)
- Examples

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10

Family Limited Representation Contracts (FLRC)

- Many FDC locations will not be able to assist with Family Management Conferences (FMC), especially since FMCs are at times scheduled on non-family list days when FDC is not available
- Instead, clients may qualify for a FLRC instead, even when not eligible for full representation
- The financial eligibility for a FLRC is $1,000 per month higher than that for standard family representation contracts
- FLRCs may be issued to assist with any family legal issues (except divorce alone), including support, property division, and parenting issues, even when safety is not a factor

Legal Aid BC

11

FLRC – continued

- FLRCs are intended to provide limited, unbundled services for eligible clients who do not meet the coverage guidelines for a full family representation contract
- These contracts are intended to provide the client with the assistance necessary to support mediation, negotiate a settlement or represent themselves
- Under an FLRC, the lawyer can provide up to 8 hours of legal advice/assistance and up to 3 hours to represent the client in court for brief uncontested hearings, Family Management Conferences, Family Settlement Conferences or Judicial Case Conferences
- LABC is exploring expanding these contracts, both in terms of the available hours and length of the contract

Legal Aid BC

12

Expanded Family LawLINE

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Legal Aid BC

13

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Legal Aid BC

14

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* Lawyers advise and support Family Justice mediation clients
* Referrals to other services, including online resources and other public agencies
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* First-time Family LawLINE clients call 604-408-2172 or toll-free 1-866-577-2525
* Returning clients need to schedule a telephone appointment for up to 45 minutes per session

Legal Aid BC

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Expanded Family LawLINE - Paralegal

- LABC has recently added a staff paralegal to help Family LawLINE clients who require additional support
- The Family LawLINE lawyers, during the course of their consultation with a client, can determine that the client, given their circumstances, may benefit from the help of a paralegal and refer them to that service
- Once the client has been referred by the lawyer to the service, the paralegal can assist them with the following:
  - Providing legal information in the areas of family law and child protection
  - Completion of or assistance with completing court and other forms/documents, affidavits and financial statements
  - Identifying documentation and evidence needed to support client's position, and assisting client in collecting documentation and/or drafting correspondence to access that documentation
  - Explanation, clarification and interpretation of relevant substantive and procedural law
  - Coaching and guidance on next steps to help the client represent themselves through all stages of court
  - Providing tips for legal research and self-advocacy
  - Explanation of court orders or written agreements, including how they impact their rights and obligations
  - Referrals to other services, such as Family Justice Counsellors, community agencies or legal advocates
  - Engaging an interpreter, if the client needs services in a language other than English.

Legal Aid BC

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Expanded Family LawLINE – Paralegal (continued)

- The paralegal cannot assist with appeals, annulments, civil issues, adoption, drafting of wills, or drafting of separation or cohabitation agreements
- Since we currently only have one paralegal, not all clients may be able to receive this service (due to conflicts or volume). The paralegal will refer some clients to other local support services, where available

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Questions?

Legal Aid BC

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Legal Aid PLEI Resources

Information and services to help you and your clients navigate the legal system and solve legal issues

Legal Aid BC
Support when you need it

1

Outline

- PLEI
- Publications
- Videos
- The Family Law Website
- Legal Information Outreach Workers
- Community Partners

Legal Aid BC

2

ABOUT PLEI

- Public Legal Information & Education
- Clients often benefit from navigators helping with resources
- Co-creation and consultation
- Usability and accessability

Legal Aid BC
Support when you need it

Legal Aid BC

3

How can you help people with legal information?

- Recognize and understand their legal issue
- Find ways to stay out of court and resolve problems early
- Find options for help

4

FREE Publications

5

LEGALAID.BC.CA

Legal Aid BC

6

7

Legal Aid Publication Readability

Level 1 — No legal knowledge is needed.

Publications are in clear language for people who don't know about the law

Level 2 — Some legal knowledge is helpful.

Publications for people who are comfortable reading and may have some legal knowledge

Level 3 — Some legal knowledge is needed.

Publications for people who are familiar with legal concepts

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8

Living Together, or Living Apart

Level 2

- Your rights and responsibilities
- Living agreements
- What to do if you decide to separate or divorce
- How to work out agreements
- Understanding the court process
- Your legal options and where to get help

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9

Parent's Rights, Kid's Rights

Level 2

- collaborative planning and decision-making options to stay out of court
- what can be decided in court at the presentation and protection hearings
- a flow chart with an overview of the child protection process
- community services and legal help
- definitions of terms used in the booklet

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10

Mothers Leaving Abusive Partners

Level 2

- How to get help and protection
- How to handle parenting arrangements with abusive partners

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11

Working with your Legal Aid Lawyer

Level 1

- what the lawyer's time on the case includes,
- what the lawyer can't do,
- change of counsel requests by the client or the lawyer, and
- where to find out about making a complaint.

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12

Family Law in BC: Quick Reference Tool

Level 1

- which laws apply,
- how couples can reach agreements, and
- how to deal with issues involving children and money.

Legal Aid BC

13

VIDEOS

- Q & As
- Webinars
- Legal info
- Training Videos
- How-to
- Animations
- More

https://www.youtube.com/user/LegalAidBC

Legal Aid BC

14

Videos for Community Workers

- Paths to resolution: Helping your clients under the new Provincial Court Family Law Rules
  - Suzette Narbonne
  - Caroline Plant
- Domestic violence and protection orders under the new Provincial Court Family Rules
  - Taruna Agrawal, Rise Women's Legal Centre
- The New Provincial Family Court Rules (Surrey and Victoria Provincial Court Registries)
  - Tanya Thakur, Crossroads Law
  - Chandan Sabharwal, Sabharwal Legal Group

https://www.youtube.com/user/LegalAidBC

Legal Aid BC

15

MyLawBC.com

Legal Aid BC

16

FamilyLaw.

Legal help for people in BC

family.legalaid.bc.ca

Legal Aid BC

17

FAMILY LAW IN BC

- Divorce
- Parenting
- Support and finances
- Abuse and family violence
- Using the court system
- Related legal issues
- Ways to stay out of court

18

GUIDES

- Step-by-step guides to complex legal processes
- Links to forms and how to fill them
- Other resources

19

Step-by-step guides

- Apply for a family law protection order without notice
- Changing a family order in Supreme Court if you do/don't agree
- Enforcing a parenting agreement
- Respond if you've been served with a form (3, 10, 12, 15, 16, 29, or 39)
- Get a case management order with/without notice
- Complete a Provincial Court Financial Statement
- More

Legal Aid BC

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INFO PAGES

- Q&As
- Links to forms and other resources
- Hover-over information
- In-depth information written in plain language

Legal Aid BC

21

Information pages

- Who can swear an affidavit?
- Q&As: Parenting, family violence, Mortgage and rent, keeping kids safe when you have a protection order
- If you're struggling to pay support
- If your spouse is harassing you through the courts
- Child protection process
- Delegated Aboriginal agencies
- More

Legal Aid BC

22

ADVOCATE PAGE

- What's new in family law
- Information pages by topic
- Step-by-step guides by topic
- Links to other resources
- Publications
- Videos

https://family.legalaid.bc.ca/advocates

Legal Aid BC

23

LIVE CHAT

- Anyone looking to resolve a family law issue in BC
- Monday to Friday 9-5
- Staffed by volunteer law students
- Anonymous

https://family.legalaid.bc.ca/advocates

Legal Aid BC

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Legal Aid BC
Support when you need it

Legal Information Services

Legal Aid BC

25

LIOW

- Provide legal information by phone or in person
- Refer to other services
- Visit community groups
- Assist downtown community court and the New Westminster First Nations Court clients

Legal Aid BC

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LIOW and ACLW services

- Legal Information Outreach Worker (LIOW):
  - LIOW line 604-601-6166 or Legal Aid line 1-866-577-2525
  - Family law website chat
  - Assist clients at Downtown Community Court and New Westminster First Nations Court
  - Free legal information session and legal information tables
- Aboriginal Community Legal Worker (ACLW)
  - Duncan: 250-748-1160, Nanaimo: 250-741-5529
  - Legal information and limited legal advice for family, child protection, housing, wills and estate laws

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Criminal Justice Navigators

Legal Aid BC

28

Criminal Justice Navigator Services

- Facilitate the transfer of legal aid applications from lawyers or the public to Intake.
- Work with lawyers and duty counsel to connect clients with addictions or mental health support, a mental health team, recovery house, income assistance and/or housing.
- Assist duty counsel and defence counsel in preparing release plans tailored to the client's needs.
- Identify remanded accused who face barriers and require extra assistance.
- Assist arrested accused who are making a bail appearances and subsequent appearances in the Initial Appearance Room.
- Support counsel acting for in-custody accused who are making appearances on local court remand lists by helping plan community supervision supports to inform sentencing.
- Support out-of-custody duty counsel and accused who are making appearances by helping plan community supervision supports to inform sentencing.

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Criminal Justice Navigator FAQ

- How do people access this service? Do they need to be a Legal Aid BC client?
  - People do not have to apply for legal aid to qualify for assistance. People facing criminal charges can contact their local criminal justice navigator by phone or email. Navigators will be able to meet people at the courthouse or at other community agencies depending on the person's needs and the community resources available.
- Where will this service be offered?
  - Criminal justice navigators will be located in Kamloops, Kelowna, Penticton, Victoria, Surrey/New Westminster, Abbotsford, Nanaimo, Hazelton/Terrace and two in Vancouver.
- When will the service be available?
  - Criminal Justice Navigators are starting to be hired across the province. The first Navigator is already operating in Nanaimo.

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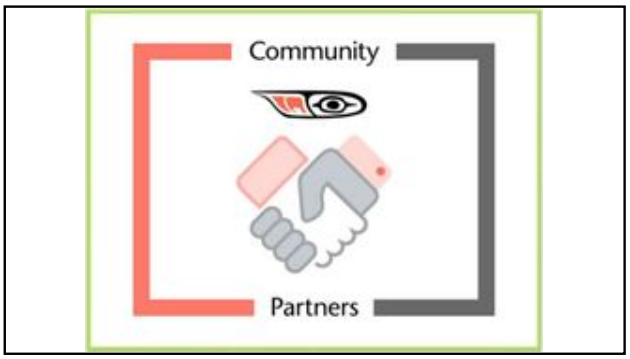

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What do Community Partners do?

- act as a link between LABC and people who need to apply for Legal Aid / services
- raise awareness about LABC and other services in their communities
- provide access to PLEI materials – both print and online PLEI materials, published by LABC and other PLEI providers
- provide legal information, *not* legal advice
- refer people to other places for help

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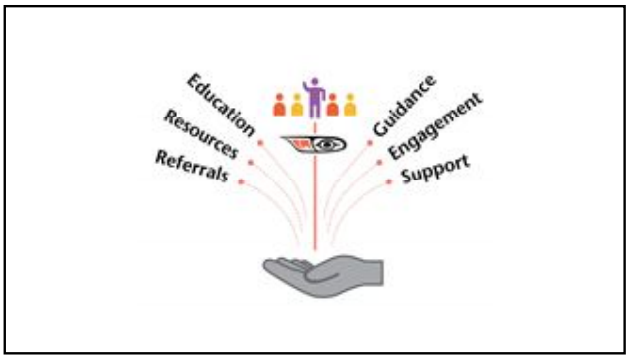

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How many…

Community Partners?

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legalaid.bc.ca/legal_aid/communitypartners

Currently have 25 community partners providing services in 30 locations

100 Mile House	Clinton	Lytton
Abbotsford	Cranbrook	Maple Ridge
Alert Bay	Fort St. John	Merritt
Ashcroft	Gold River	Midway
Bella Coola	Grand Forks	Nelson
Campbell River	Hazelton	North Vancouver
Castlegar	Hope	Old Massett
Chilliwack	Keremeos	Penticton
	Lillooet	Pitt Meadows
		Port Hardy
		Powell River
		Prince George
		Sechelt
		Skidegate
		Trail
		Vernon

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THANK YOU

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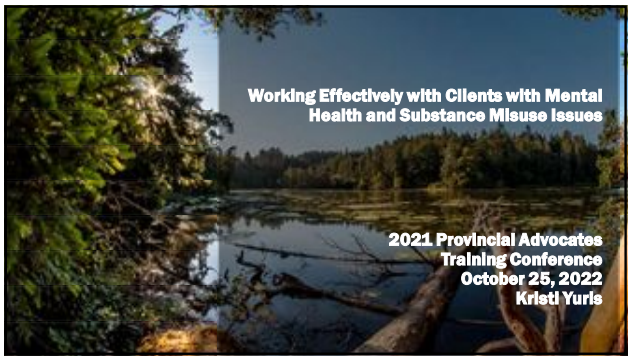
THE LAW FOUNDATION OF BRITISH COLUMBIA

2022
PROVINCIAL ADVOCATES
TRAINING CONFERENCE

Legal Aid BC

Working Effectively with Clients with Mental Health and Addictions Issues

Kristi Yuris



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Overview

- Setting the Context-Barriers to Accessing Services
- General Best Practices in Communication & Boundary Setting
- Responding to Challenging Situations

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Setting the Context: Common Barriers to Accessing Service

- Stigma and discrimination
- Fragmented and inadequate support systems
- Trauma/Mental Health/Substance Misuse

3

STIGMA

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Effects of Stigma

- Two-thirds of persons with diagnosable disorders do not seek treatment
- Many have poor self-regard and low self-esteem
- Internalization of negative stereotypes
- People avoid seeking help and to keep symptoms and substance use secret
- Social Isolation and limited supports

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Common Barriers to Accessing Service: Fragmented & Inadequate Services

- High levels of frustration, hopelessness & giving up
- Burden of coordination of services falls on the client.
- Lack of adequate primary medical and psychiatric care
- Essential services are increasingly difficult to access

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Common Barriers to Accessing Service: Trauma

- Trauma: "can be acute (a single traumatic event limited in time), chronic (multiple traumatic events) or complex (history of severe and long-term trauma)"
- Trauma is a common denominator-colonization and genocide, racism, gender-based violence, poverty and discrimination
- Individual's response to trauma compounded by previous traumas, lack of supports and services

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Common Barriers to Accessing Service: Trauma

- Difficulty trusting others-profound violation of sense of self and security
- Flashbacks/nightmares-feeling of loss of control
- Avoidance/numbing
- Hyper-arousal
- Poor emotional regulation
- Memory and concentration impairments

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Common Barriers to Accessing Service: Mental Health & Substance Misuse

- Unable to identify or articulate what type of help is needed
- Speak tangentially/incoherently
- Shift from one topic to another at will, talk about several issues within short period
- Unable to focus or lack concentration
- Highly anxious or panicked
- Lack of motivation
- Poor executive and planning skills

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Trauma-Informed Practices

- Trauma/mental health awareness
- Take time to establish rapport and empathy
- Be clear and honest about time, service restrictions and agenda
- Allow time for the person to tell their story
- Use short, clear direct sentences and questions
- Cover one topic/direction at a time
- Create collaborative atmosphere
- Identify supports, strengths and resilience

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Trauma-Informed Practices in Service Delivery

- Demonstrate empathy when cannot assist or resolution unsatisfactory
- Echo/paraphrase person's concerns
- Ask to make sure communicating clearly
- Acknowledge point of view without agreeing
- Use the language of cooperation: "*we could look at it this way*". "*How can we resolve this?*"
- Always be conscious of your own emotional and physical safety

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Trauma-Informed Practices in Service Delivery

- Practice self-care and non-attachment to outcomes
- Emphasize strengths. Give lots of encouragement for steps taken
- Prioritize self care: breathe, take a break, set realistic goals, take care of mind and body, use your team
- Recognize limits of role and where referral is appropriate

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Addressing Challenging Situations:

Hostile/aggressive behaviors:

- Follow any existing safety protocols in the workplace
- Is anger reasonable? If yes…
- Be clear about boundaries and enforce consequences
- Body language can say more than words…
- Be aware of tone of voice and language
- Reassure concerns are important

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Addressing Challenging Situations

High conflict individuals:

- Often resultant from unresolved or untreated trauma
- Common features
- **High Conflict Institute:** https://www.highconflictinstitute.com

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Addressing Challenging Situations

An E.A.R. (Empathy, Attention, Respect) Statement is a short statement that acknowledges a person's emotions, attempts to connect with them and helps calm them down, keeping them focused on problem-solving.

E: Empathy "I can hear how upset you are"
A: Attention "Tell me what's going on"
R: Respect "I respect the efforts you have made to resolve this"

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Addressing Challenging Situations

- Responding with E.A.R statements
- Focus on Options Available
- BIFF Responses (Brief, Firm, Friendly & Fair)
- Set Limits (Don't make it personal, use policies, procedures, rules and regulations)

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Addressing Challenging Behaviours

- Use structure: time, repetition, deadlines, regular follow up articulate commitment
- Use skills: active listening, assertiveness, empathy
- Focus on goals and problem solving rather than emotions
- Use self-care: work-life balance, use team, consistency
- Tolerate hostility without retaliating or withdrawing
- Set boundaries on appropriate conduct and re-enforce
- Be consistent and maintain clear roles & responsibilities
- Articulate and keep to time limitations
- Respond promptly and professionally to complaints

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Addressing Challenging Behaviours

Working with clients who may lack capacity:

- Capacity: ability to understand information AND ability to appreciate consequences
- Presence of mental health impairment is not enough to draw conclusion of incapacity
- No single global test of capacity
- "Capacity continuum": capacity not an either/or thing–can be quite variable

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Addressing Challenging Behaviours

Working with clients who may lack capacity:

- Legal test may be set out in relevant statute: section 9 of BC RA
- See BC Law Institute Report on Common Law Tests of Capacity

http://www.bcli.org/wordpress/wp-content/uploads/2013/09/2013-09-24_BCLI_Report_on_Common-Law_Tests_of_Capacity_FINAL.pdf

- Common law: distinctive tests of capacity dependent upon nature of transaction, decision or relationship

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Addressing Challenging Behaviours

- Capacity to retain and instruct counsel: retainer a form of contract so must be able to understand terms and form rational judgement of its effect on interests
- Law of agency: ability to understand nature and effect of appointing counsel
- Presumption of capacity to retain and instruct

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Addressing Challenging Behaviours

- Professional Code of Conduct:
  - Does client has the ability to understand the information and can they appreciate the reasonably foreseeable consequences
- Should "decline to act" where believe incapable of giving instructions
- If failure to act could result in imminent and irreparable harm, lawyer can take action to the extent necessary to protect interests until legal representative can be found

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Addressing Challenging Behaviours

Where a client is or may be suicidal:

- Take all threats or attempts seriously
- Know intervention can help: suicide is the most preventable type of death and interventions do save lives
- Be aware and learn warning signs of suicide:
  - Giving away possessions/drug or alcohol abuse/recent job loss/death of close person-especially by suicide/diagnosis of serious illness/loss of freedom/loss of financial security
- Be direct and ask if the person is thinking of suicide. If the answer is yes, ask if the person has a plan and what the time line is

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Addressing Challenging Behaviours

- Talking openly about suicide does not increase risk. Open communication lowers anxiety and the risk of an impulsive act
- Talk to the person alone in a private setting
- Allow the person to talk freely – don't interrupt
- Give yourself plenty of time for the conversation
- Do not minimize the feelings expressed by the person
- In an acute crisis, connect with emergency services
- Don't leave person alone and remove any dangerous items from immediate vicinity

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Addressing Challenging Behaviours

Working with survivors who appear intoxicated:

- Is impairment the result of intoxication or symptom of illness, or the result of pharmaceutical side effects?
- Open the conversation around medication use, how client is coping, whether using substances to manage symptoms, trauma, effects of assault?
- Are there changes in use-increased? Brand new? What are triggers?
- How to accommodate? What are agencies policies regarding tolerance of active intoxication?
- Ask about patterns of use or effects of medications so can accommodate in scheduling of appointments and follow up

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Addressing Specific Barriers to Communication

Clients living with psychosis/paranoia:

- Reduce stimuli in the environment
- Resist focusing on content and instead acknowledge distress
- Empathize instead of challenging delusions directly.
- Don't collude with beliefs.
- Suggest they check interpretations with trusted person
- Find grains of truth in client's account…

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Addressing Specific Barriers to Communication

- Reasonable to ask for evidence to support allegations and to indicate advice/follow up limited if no evidence to support claims
- Encourage person to seek help because of specific circumstances and their named distress
- Learn preferences while survivors are non-symptomatic

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QUESTIONS??

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