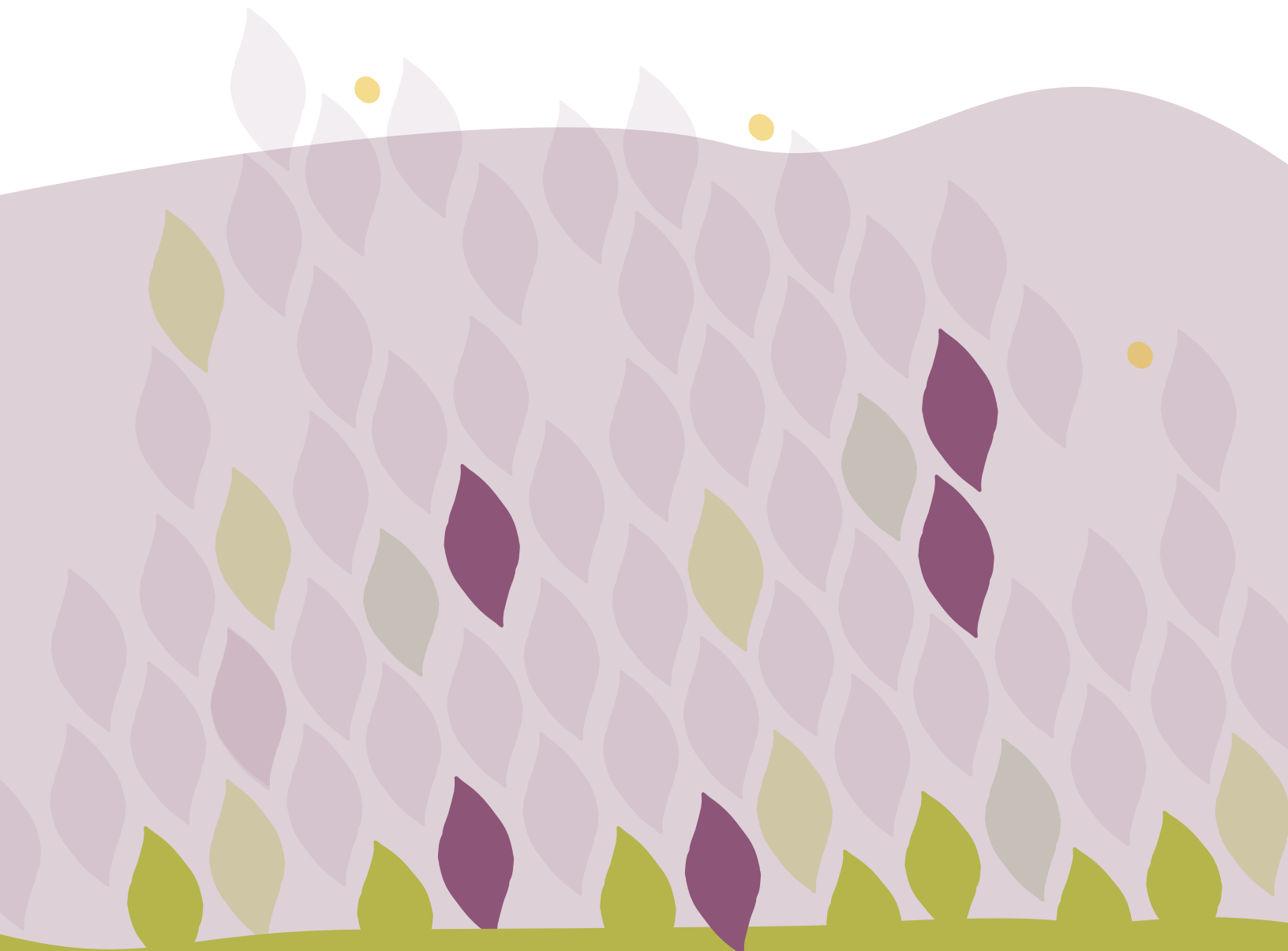


**Employment and Assistance
Appeal Tribunal** British Columbia

Annual Report 2018/19/20





Employment and Assistance Appeal Tribunal British Columbia

May 2020

The Honourable Shane Simpson

Minister of Social Development and Poverty Reduction

Dear Minister:

It is my pleasure to present the annual report for the Employment and Assistance Appeal Tribunal of British Columbia covering the period of October 1, 2018 to March 31, 2020. The report has been prepared in accordance with section 20(1) of the *Employment and Assistance Act*.



Emily C. Drown

Chair, Employment and Assistance Appeal Tribunal

Mission

The mission of the Employment and Assistance Appeal Tribunal is to provide an independent and accessible appeal process that delivers timely and fair decisions reviewing Ministry of Social Development and Poverty Reduction determinations in regard to income and disability assistance and Ministry of Children and Family Development determinations in regard to child care subsidies.

Contents

- Message from the Chair** 2

- Who We Are and What We Do** 7
 - The Employment and Assistance Appeal Tribunal
 - Tribunal Members
 - Candidates
 - Members
 - Reappointment of Members
 - The Appeal Process

- If You Want to Appeal** 12
 - How to Appeal
 - Type of Hearing
 - In-Person Hearing
 - Teleconference Hearing
 - Written Hearing
 - After the Hearing

- How We Did in 2018/19/20** 14
 - Summary of Appeals Statistics
 - Appeal Outcomes
 - Judicial Review Outcomes
 - Notices of Appeal by Type

- What Our Decisions Look Like** 16
 - Case 1 Eligibility, Size of Family Unit
 - Case 2 Persons with Disabilities designation
 - Case 3 Child Care Subsidy

- Looking Forward** 22

- Appendix A: Tribunal Staff** 24

- Appendix B: Tribunal Members** 24

- Appendix C: Budget** 26

- How to Contact Us** 27

Message from the Chair

This annual report covers the period of October 1, 2018 to March 31, 2020. This is a change in the Employment and Assistance Appeal Tribunal's (the Tribunal) annual reporting structure. Transparency is important and we would like the material presented to be useful. Traditionally, the Tribunal has issued its annual reports to coincide with the Tribunal's anniversary. However, as the Tribunal's anniversary does not correspond with either the calendar year nor the fiscal year, data and statistics reported were difficult to interpret and understand. Accordingly, this year the Tribunal made the switch to issuing an annual report that matches the Tribunal's fiscal year. I recognize that this year the data reported will also be a bit cumbersome as it covers the period from our last annual report to the end of fiscal year 2019-20, a one and a half year period. However, going forward this change will allow the Tribunal to report annually for a period that corresponds with our fiscal year. This change will hopefully make data and statistics reported easier to understand and track.

In past years the Message from the Chair was used to report on the goals set out in the previous Annual Report. While I will certainly touch on some of those goals, my intention is to flag items of importance and initiatives that may be of interest that have affected the Tribunal during the reporting period (it is always surprising how many interesting things occur that were not expected to be on the horizon – sometimes opportunities/challenges arise unexpectedly).

In last year's Message from the Chair, I indicated that the Tribunal's new case management system was days away from moving to production and implementation at the Tribunal. Unfortunately, during our final testing phases it became apparent that the new system was not a good fit for the Tribunal as it would not interface well with paper. Substantial effort on the part of the vendor and other contributors to the project tried to salvage the project; however, I determined that it was not in the best interests of the Tribunal or its users for us to continue to implementation. There are



many appellants that communicate with the Tribunal via traditional postal systems and we must be able to generate letters, etc. that can be sent not only by email but also via regular mail. This is certainly disappointing as considerable time, energy, and funds had been committed to the project. I am happy to report however that we are now in the early stages of procuring a case management system that will meet the needs of the Tribunal and I expect that this time next year that I will have happy news to share in this regard.

On a more positive note, the Tribunal made good progress with many projects. Furthering the Tribunal's gradual move internally to an electronic process for appeals, the Tribunal moved all its files to an electronic format during this reporting period. With the advent of COVID-19 in the province in early 2020, this proved wise as the Tribunal was well-equipped to transition to a remote workplace. Such transition would have been much more difficult if paper files were

“Our adjudicators can now consider any new evidence relevant to the issue on appeal and appellants are able to gather new evidence to remedy evidentiary gaps in their application.”

intent to continue this recruitment drive into the next year with an ongoing focus on increasing the diversity of our adjudicators.

Member workshops were held for members located in the Lower

still in use. The advent of COVID-19 in the province also spurred the Tribunal to move forward with its last step towards a predominantly electronic office environment: members are now receiving all appeal related material electronically.

The Tribunal continued its recruitment efforts last year and these efforts are beginning to yield positive results. New members have been appointed and slowly our membership is becoming more diverse and better representative of the community. It is my

Mainland, Fraser Valley and Vancouver Island regions of the province. These two-day workshops were well attended and provided an opportunity for our adjudicators to learn more about important matters such as the changes to evidence before

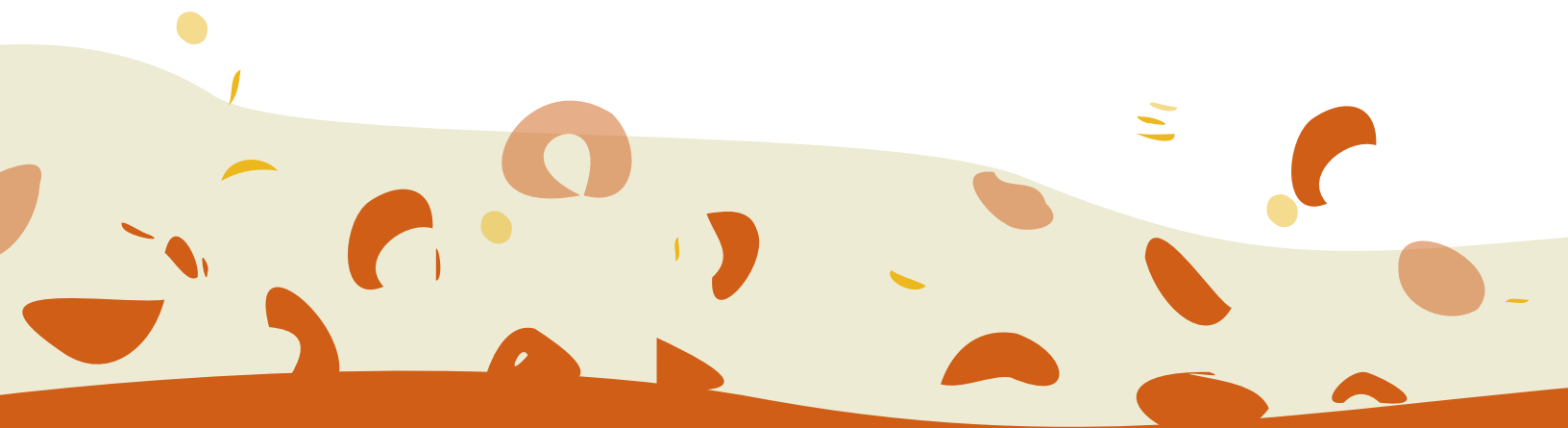
the Tribunal, hearing skills, plain language decision writing and the importance of reconciliation. In addition to these workshops, staff and members also received training in the important areas of implicit bias and cultural competency. Staff has also received training on creating a trauma informed practice and I am looking forward to bringing this training to our adjudicators as well.

To increase the transparency of the Tribunal, the search tool for decisions of the Tribunal on our website was upgraded to the Decisia platform. Decisia is a leader in reporting of legal decisions and is used by many courts and tribunals across Canada. This switch means increased transparency as decisions of the Tribunal are now fully searchable and people will be better able to research the outcomes of cases heard by the Tribunal.

Of special interest to me, the Tribunal started the review of its written communications with a view to making sure that the information we share is accessible, plainly written, and easy to understand. While this project is still underway, I am happy to report that we have replaced our information

brochures, which are given to everyone receiving a reconsideration decision and anyone who files an appeal with the Tribunal. Our new brochures are written in plain language and provide clear information about how to appeal and what the Tribunal's appeal process is like.

Particularly noteworthy is the ministry's adoption of my recommended change to permit the Tribunal to hear new evidence if it relates to an issue on appeal. Previously, our adjudicators could only consider new evidence in limited circumstances where the evidence directly related to what was already before the ministry at reconsideration. This rule resulted in the Tribunal being required to deem certain evidence inadmissible even when the evidence would establish the appellant's eligibility to the requested benefit. With the recent legislative change to the admissibility of evidence, our adjudicators can now consider any new evidence relevant to the issue on appeal and appellants are able to gather new evidence to remedy evidentiary gaps in their application that they may not have known about until they received the reconsideration decision from the ministry.



Finally, the Tribunal started on the path towards reconciliation with Indigenous Peoples. Initial steps included creation of a plan outlining the pathway towards reconciliation for the Tribunal. With a plan in place, the Tribunal embarked on initial steps including cultural training for staff and members, incorporating land acknowledgements on our written materials and research into land acknowledgements and Indigenous legal traditions that might be able to be incorporated into our hearing processes.

I would like to thank the EAAT's staff and members for their hard work over the reporting period. In particular, I would like to recognize the patience and agility of our team as we transitioned to a virtual office with the advent of COVID-19. I recognize that our staff and members were themselves living through the pandemic, but without any complaints they have made the transition smooth and the Tribunal has been able to continue to hold hearings while meeting legislated timelines for the people of British Columbia.

I would also like to thank advocates, users of the Tribunal, members of the public, and other stakeholders that have contacted me with complaints, compliments, and suggestions for improvement of the Tribunal. I always appreciate hearing from you and often gain particularly helpful insight into how the Tribunal needs to grow to better suit the needs of the people of British Columbia. It is a pleasure to serve as Chair of the Tribunal and I look forward to the coming year.



Emily C. Drown

Chair, Employment and Assistance
Appeal Tribunal

Vision

The Employment and Assistance Appeal Tribunal will be known for:

Providing an independent, ethical, community-based appeal process which is accessible and conducted in a fair, timely and respectful manner.

Supporting members to provide quality service to promote public confidence in the integrity and competency of the Tribunal.

Creating a healthy work environment that supports staff to provide quality service and to continually learn and develop knowledge, skills and expertise.



Who We Are and What We Do

The Employment and Assistance Appeal Tribunal

The Tribunal was established on September 30, 2002 to hear appeals of most types of decisions made by the Ministry of Social Development and Poverty Reduction under the income assistance and disability assistance programs. Since 2006, the Tribunal also hears appeals of decisions made by the Ministry of Children and Family Development under the child care subsidy program. The Tribunal provides a streamlined and efficient one-step appeal process and is independent of both ministries.

The Tribunal's authority is established under section 19(1) of the *Employment and Assistance Act*.

The Tribunal hears appeals of reconsideration decisions that refuse, reduce or discontinue income assistance, disability assistance or a supplement; reconsideration decisions regarding the amount of a supplement; and reconsideration decisions that refuse to grant hardship assistance under:

Section 17 of the *Employment and Assistance Act*, and

Section 16 of the *Employment and Assistance for Persons with Disabilities Act*.

The Tribunal also hears appeals of reconsideration decisions that refuse, reduce or discontinue a subsidy under:

Section 6 of the *Child Care Subsidy Act*.

The Tribunal consists of a Chair, a Vice Chair, 11 staff and, at the time of writing this report, 98 Members located throughout the province. (See Appendix A for a list of staff and Appendix B for a list of Members.)

Tribunal Members

Members are appointed by the Minister of Social Development and Poverty Reduction after a merit-based process and consultation with the Tribunal Chair.

Candidates

To be considered for appointment to the Tribunal, a person must have an understanding of the essential elements for the conduct of a fair and objective hearing and the key aspects of the relevant legislation, among other requirements, as per section 82 of the Employment and Assistance Regulation.

Members commit to respect diversity and are expected to possess the ability to interpret and apply legislation, write decisions in a clear and concise manner, communicate clearly and effectively, and be proficient in the use of computers and common software applications.

The application process is conducted using an interactive online program that provides information to prospective members so that they can acquire and demonstrate the prescribed knowledge and skills prior to consideration for appointment.

The online process enables recruitment from a broader sector of the community and has enhanced the efficiency of the application process. References and criminal record checks are completed prior to a recommendation for appointment.

To ensure independence and that hearings are fair and just, a member must not:

- be or have been an employee of the Ministry of Social Development and Poverty Reduction or the Ministry of Children and Family Development in the past six months,
- be an employee of the provincial government,
- be a recipient of benefits under any of the acts for which the Tribunal has responsibility, or
- have any real or perceived interest in matters that come before the Tribunal.

Members

Members must complete initial training before being appointed to hear an appeal with an experienced panel chair who serves as a mentor.

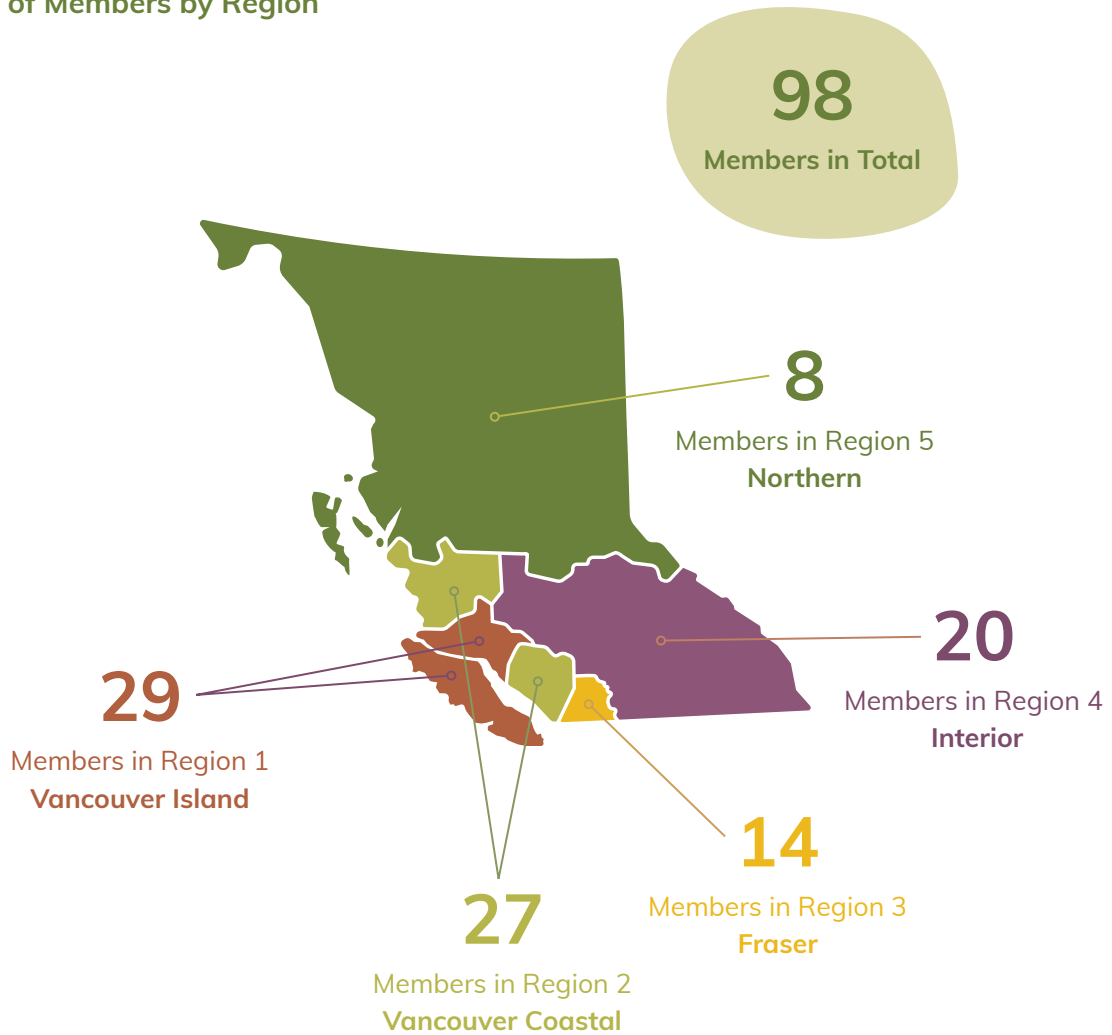
Once Members have attended a number of hearings and feel comfortable in the role of an adjudicator they are then assigned the role of panel chair. When assigned the role of panel chair, a mentor will be appointed to provide support and guidance. Further coaching occurs at the decision review stage to ensure that the decision meets the legislative requirements outlined in section 87(1) of the Employment and Assistance regulation.

Reappointment of Members

Members are appointed initially for a period of two years and may be reappointed for further terms of two or four years. Member performance is evaluated prior to making recommendations to the Minister of Social Development and Poverty Reduction for reappointment. The Competency Assessment, which clarifies the requirements and expectations of members, is used for coaching and evaluation. At the time of writing this report, 65 members were reappointed.

NOTE: The Tribunal is recruiting new members, specifically from the more rural areas of the province. Anyone interested in being considered for appointment should refer to the Tribunal website, www.eaat.ca, or the Crown Agencies and Board Resourcing Office website www.gov.bc.ca/cabro, for information on how to apply.

Number of Members by Region



The Appeal Process

If a person disagrees with a reconsideration decision from the ministry, they may submit a Notice of Appeal to the Employment and Assistance Appeal Tribunal. There are two parties to an appeal: the person requesting an appeal (“appellant”) and the ministry.



A person has **7** business days to submit a Notice of Appeal to the Tribunal with a choice of:

ORAL



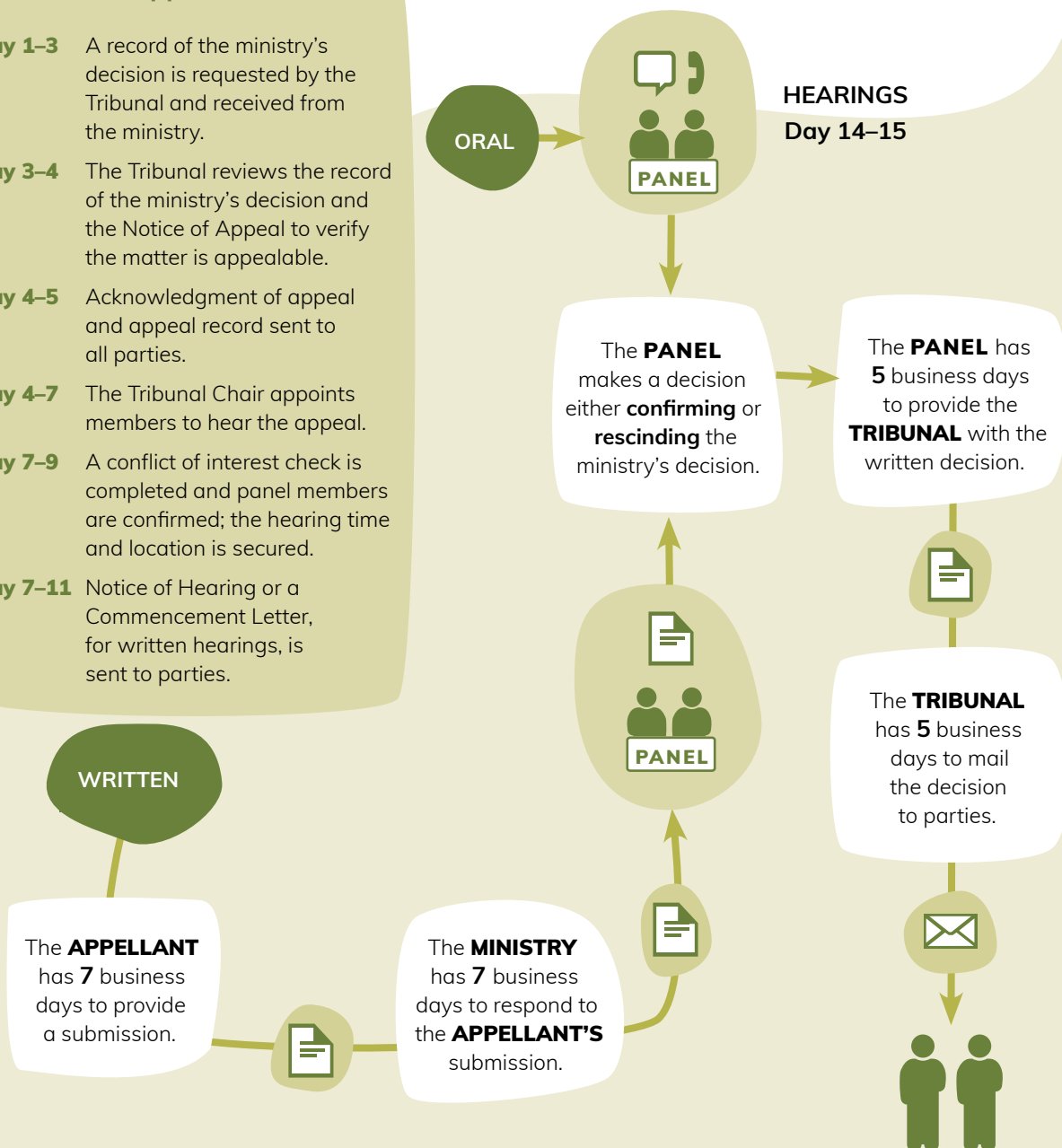
In person or by teleconference

WRITTEN



When an Appeal is Initiated

- Day 1-3** A record of the ministry’s decision is requested by the Tribunal and received from the ministry.
- Day 3-4** The Tribunal reviews the record of the ministry’s decision and the Notice of Appeal to verify the matter is appealable.
- Day 4-5** Acknowledgment of appeal and appeal record sent to all parties.
- Day 4-7** The Tribunal Chair appoints members to hear the appeal.
- Day 7-9** A conflict of interest check is completed and panel members are confirmed; the hearing time and location is secured.
- Day 7-11** Notice of Hearing or a Commencement Letter, for written hearings, is sent to parties.



If You Want to Appeal

How to Appeal

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

Prepare for Your Hearing

In this brochure you will find the following information:

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

Employment and Assistance
Appeal Tribunal British Columbia

Type of Hearing

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

In-Person Hearing

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

Teleconference Hearing

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

Written Hearing

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

After the Hearing

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

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

1. Judicial Review

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

2. Complaint to the Tribunal

You can call or write to the Tribunal Chair.

3. Office of the Ombudsperson

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

How We Did in 2018/19/20

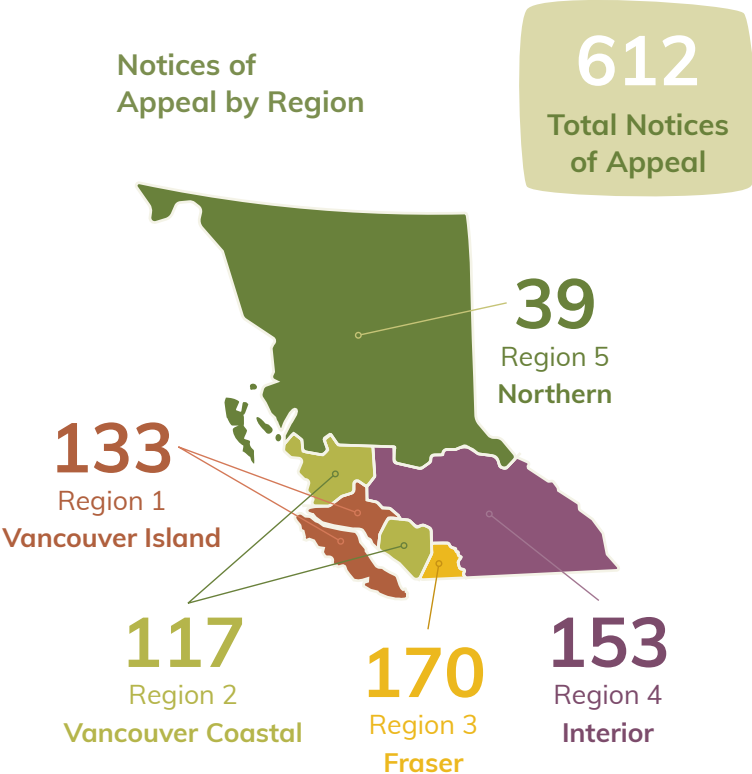
Meeting the timelines established by the legislation is one way of measuring the Tribunal’s performance. The Tribunal must hold a hearing with 15 business days of receiving a Notice of Appeal; a party must receive a notice of hearing at least 2 business days prior to the hearing; the panel must provide the decision to the Tribunal Chair within 5 business days of the hearing and the Tribunal must mail the decision to the parties with 5 business days of receiving it from the panel. The Tribunal met all the legislative timelines in this reporting period.

Summary of Appeals Statistics

- 614** Notices of Appeal Received
- 28** Appeals Dismissed by the Parties
- 75** Appeal Files Assessed Not Within the Jurisdiction of the Tribunal
- 39** Appeals Carried Over*

*Appeals opened between 01/10/2017 and 30/09/2018 and not either closed, heard or rejected by 30/09/2018

Notices of Appeal by Region



Appeal Outcomes

The total number of Notices of Appeal received differs from the number of appeals closed because of files carried over from the previous year or into the following year and various other factors. The number of decisions confirmed and rescinded may not equal the number of appeals heard for the same reasons. The following statistics relate to appeal files that were closed in this reporting period.

Judicial Review Outcomes

The Tribunal received three petitions for judicial review in the reporting period. Two petitions were settled and remains outstanding awaiting a hearing date.

Notices of Appeal by Type



Ministry of Social Development and Poverty Reduction

500 Appeals heard
425 Decisions confirmed
69 Decisions rescinded

Ministry of Children and Family Development

18 Appeals heard
12 Decisions confirmed
6 Decisions rescinded

What Our Decisions Look Like

CASE 1 Eligibility, Size of Family Unit

Ministry Decision

The Ministry of Social Development and Poverty Reduction (Ministry) determined that the appellant was not eligible for disability assistance as a sole recipient because the appellant was now in a dependency relationship. As a result of finding the appellant was in a dependency relationship, the Ministry determined that the family unit size was 3 (as opposed to 1) because the two people residing in the home (X and the child Y) were the appellant's "dependants" under the *Employment and Assistance with Persons with Disabilities Act* (EAPWDA).

Summary of Facts

The appellant was receiving disability assistance as a sole recipient and moved into the current residence in November 2014. The tenancy agreement listed the appellant and X as joint tenants; X's child, Y, had been living in the residence since October 2015.

The financial and social arrangement between the appellant and X was evidenced as follows:

- The appellant and X shared household responsibilities such as childcare and housecleaning.
- The appellant owned a vehicle and paid the insurance but did not have a driver's license; X operated the vehicle.
- The appellant and X did not have joint bank accounts or joint credit cards.
- The appellant's bank statements showed joint living expenses and deposits received from X in cash or e-transfers for rent, utilities, food and expenses for Y.
- The appellant looked after Y when X was out of town; X did not pay the appellant for child care.
- The appellant was listed as a guardian and emergency contact on Y's school documents. The appellant stated an intention to pursue legal guardianship of Y and confirmed providing day-to-day care and being considered Y's guardian by the school in X's absence.

Prior to and at the hearing, the appellant submitted documents that were not before the ministry when it made its decision and provided more information about the appellant's arrangements with X. The Panel admitted the information pursuant to section 22 of the *Employment and Assistance Act*.

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

Reasons for Decision

By way of explanation to the reader, the definitions and legislation cited in this decision were prior to amendments made January 1, 2020. Many of the definitions and legal tests outlined below have since been amended.

The EAPWDA defined a "family unit" as an applicant or recipient and his or her dependents. A "dependant" included anyone who resides with the person and: (a) is the person's "spouse"; (b) a "dependent child"; or (c) indicates a parental role for the person's dependent child. A "dependent child" meant a child who resides in the parent's place of residence for more than 50% of each month and relied on that parent for the necessities of life.

"Spouse" was defined as two persons who are: (a) married; or (b) acknowledge residing in a marriage like relationship. It also included persons who resided together for at least the previous 3 consecutive months or 9 of the last 12 months and had a relationship that demonstrated: (i) financial dependence or interdependence; and (ii) social and familial interdependence that were consistent with a marriage-like relationship.

The *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) defined "parent" as including "a guardian of the person of the child" or a person legally entitled to custody of the child.

After setting out the applicable definitions and legal tests, the Panel focussed on the legal test for spouse and began with determining

whether there was financial dependence or interdependence consistent with a marriage-like relationship.

The Panel examined the bank statements and household expenses (rent, utilities, internet, etc.) of the appellant and accepted the evidence of the appellant that X provided payments by cash as well as e-transfer (which was not challenged by the Ministry). On its review, the Panel found that the evidence supported the appellant's position that household expenses were shared 50/50 by the appellant and X. The Panel also considered the existence of separate financial arrangements (personal cell phone accounts, life insurance, credit card, bank accounts, etc.) which it found to further support the appellant's position of financial independence. Finally, the Panel accepted that roommates may have more informal arrangements which do not necessarily account for every expenditure and ensure that expenses are always split exactly evenly.

The Panel accepted the appellant's explanation of the arrangement regarding the vehicle. The Panel found that the appellant received the vehicle from a family member and that the least expensive way to keep the vehicle was for full insurance (storage insurance was quoted at a higher rate and the building required full insurance in any event). The Panel found that the appellant benefitted from having a fully insured car because X could operate the vehicle for both; the appellant had Persons with Disability designation and the underlying disability caused mobility restrictions. Finally, the Panel accepted the appellant's evidence that listing X as the operator actually resulted in a further reduction of monthly insurance expenses.

The Panel accepted the appellant's evidence that childcare was provided for free because Y lived at the residence and the appellant was "happy to help out". In any event, the appellant and X now had a formal childcare arrangement which refuted any support for the view that there was financial interdependence as a result of childcare.

As a result of the above, the Panel found that the Ministry's position that the appellant and X showed financial dependence/interdependence consistent with a marriage-like relationship was no longer reasonably supported by the evidence.

The Panel then moved to the second aspect of the then legal test for "spouse", social and familial interdependence consistent with a marriage-like relationship.

The Panel found that the Ministry's position that the appellant and X shared a social interdependence consistent with a marriage-like relationship not to reasonably be supported by the evidence. The Panel accepted the appellant's explanation for being listed as a guardian on Y's school forms – Y's other biological parent was not able to provide support in emergency situations and Y lived with and knew the appellant. Further, the Panel relied on evidence from 2 acquaintances of the appellant and X who testified that their view of the relationship is one of roommates.

The Panel also found that the Ministry's position that the appellant and X shared a familial interdependence consistent with a marriage-like relationship not to reasonably be supported by the evidence. The Panel noted that the appellant and X have separate rooms; each is responsible for cleaning their own areas and each buys and prepares their own food. The Panel accepted that the appellant's childcare activities do indicate some familial interdependence; however, on the evidence in its entirety it did not establish a familial interdependency consistent with a marriage-like relationship. The Panel noted that the appellant is often required to care for Y due to Y's second biological parent not being able to do so.

As a result of the above analysis of the two parts to the test for "spouse", the Panel found that the Ministry's decision was not reasonably supported by the evidence; the appellant and X were not each other's "spouse" for the purposes of the EAPWDA.

The Panel also considered whether Y was a "dependant" of the appellant. Based on the definitions of "applicant", "dependent child" and "parent", the Panel determined that it was not possible for Y to be a "dependant" of the appellant because the appellant was not a parent or the legal guardian of Y.

What Our Decisions Look Like

CASE 2 Persons with Disabilities designation

Ministry Decision

The Ministry of Social Development and Poverty Reduction (Ministry) determined that the appellant was not eligible for designation as a person with disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA). The Ministry found that the appellant did not meet 2 of the 5 statutory requirements, specifically:

- (1) The appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- (2) As a result of those restrictions, in the opinion of a prescribed professional, the appellant requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal to perform DLA.

The Ministry also determined that the appellant was not in any of the classes of persons set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* who may be eligible for PWD designation on alternative grounds.

Summary of Facts

The appellant was diagnosed with rheumatoid arthritis, osteoarthritis and mood disorders (depression). Rheumatoid/osteoarthritis affected multiple joints including the appellant's hands. These diseases severely restricted the ability of the appellant to perform fine motor skills when symptoms flared. The general practitioner (GP) also reported that depression symptoms including anhedonia and lack of appetite restricted the appellant's ability to concentrate on tasks or complete tasks.

The GP reported that the appellant had not been prescribed medication or treatments which would interfere with the ability to perform DLA. Personal self-care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, management of finances and social functioning were not restricted. Mobility outside the home was periodically restricted. All listed aspects of mobility and physical ability were managed independently, as were all listed tasks of the DLA of personal care, basic housekeeping, shopping, meals, medications and transportation.

The GP reported that the appellant could not walk to stores or carry purchases home. Joint swelling and pain severely restricted the appellant's ability for fine motor skills as well as opening jars/boxes when preparing food. The appellant had difficulty managing housekeeping due to joint pain and swelling.

The appellant was independent in social functioning managing appropriate social decisions, ability to develop and maintain relationships and interact appropriately with others independently. The appellant had marginal functioning with their immediate social network – anhedonia restricting ability to maintain relationships.

The GP reported that the appellant's child does shopping once a month and that the appellant would benefit from assistance with housekeeping.

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

Reasons for Decision

As the Ministry had accepted that the appellant had a severe mental impairment, the Panel first focussed on the Ministry's determination that there was no severe physical impairment.

The Panel found that the Ministry's determination that the appellant did not have a severe physical impairment was reasonably supported by the evidence. Though the GP reported severe restrictions with fine motor skills, the activities requiring fine motor skills, including grooming and meal preparation, were managed independently. Further, carrying and holding was reported as managed independently. The GP reported periodic restrictions in the ability to mobilize outside the home without indicating how often and for how long these restrictions lasted. Given the level of independent physical functioning assessed by the GP, the Panel considered the Ministry's determination to be reasonably supported by the evidence.

The Panel also found that the Ministry's determination that the appellant's DLA were, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods to be reasonably supported by the evidence. The GP reported that the majority of DLA were managed independently, without assistance or taking significantly longer to perform. The restrictions the GP did identify were fairly minimal or did not indicate that the restrictions were significant. Particularly, the GP did not describe the frequency or duration of the restriction on mobility outdoors. Further, the GP stated that assistance with housekeeping would be beneficial and not that it was required. Finally, the GP reported that the appellant independently managed shopping and other tasks requiring fine motor skills.

The GP also reported that the appellant independently managed making decisions about personal activities, care or finances and relating to, communicating with or interacting with others effectively.

As it was not established that there were direct and significant restrictions to the appellant's ability to complete DLA, the Panel found the Ministry's determination that it was not established that help was required to complete DLA was reasonably supported by the evidence.

What Our Decisions Look Like

CASE 3 Child Care Subsidy

Ministry Decision

The Ministry of Children and Family Development (Ministry) determined that the appellant was not eligible for the Affordable Child Care Benefit (ACCB) beginning on July 1, 2019. The Ministry determined that the appellant's need for child care was not one of the eligible circumstances set out in section 3 of the Child Care Subsidy Regulation (CCSR) for which the ACCB may be provided.

Summary of Facts

The appellant is a single parent of 2 children under the age of 5 years and shares custody on a 50/50 basis. The appellant is a teacher employed with a public school board. The appellant's application for the ACCB was approved commencing September 1, 2019 and ending June 30, 2019.

In August 2019, the appellant inquired with the Ministry as to why the ACCB ended on June 30, 2019. The appellant reported not having a reason for needing care when the Ministry asked what the reason for care was for July and August. The Ministry advised that there must be a reason for needing care to which the appellant replied that the children needed to maintain their spot in daycare. The Ministry explained that reserving a spot in daycare is a matter for agreement between the parent and care provider. In a subsequent conversation the appellant advised the Ministry of not having a reason for needing care because, being employed as a teacher, teachers do not work during the summer months.

At the hearing, the appellant explained that, in early July 2019 child care was needed while recovering from surgery, and that for the rest of the summer child care was also needed while attending to professional responsibilities consistent with preparing for the upcoming school year. The appellant stated that despite being denied the ACCB, the children continued to attend the daycare most Tuesdays, Wednesdays and Thursdays when in the appellant's custody.

In response to questions, the appellant acknowledged not noticing that the letter from the Ministry stated an expiry date of June 30, 2019 and not having completed the Child Care Arrangement form to cover July and August 2019. Finally, the appellant stated that the children had been attending school in September so reserving a spot in child care turned out not to be an issue.

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

Reasons for Decision

The Panel stated that the issue to be decided was whether the Ministry's determination that the appellant's reason for the need for child care was not one of the eligible circumstances in section 3 of the CCSR was reasonably supported by the evidence or a reasonable application of the of the legislation in the circumstances of the appellant. It set out the requirements of section 3, namely that child care is needed for one of the prescribed circumstances, which includes being employed.

The Panel accepted that the appellant was employed; however, it found that the issue remained as to whether child care was needed. The Panel stated that it would be reasonable for the Ministry to expect the appellant to set out sufficiently detailed information regarding the planned or estimated time spent preparing for the upcoming school year in an application for the ACCB for July and August. In the Panel's view, requiring such information (and an application) would be consistent with the information and verification provisions of section 5 of the *Child Care Subsidy Act*. The Panel found that, without that information, the Ministry was reasonable in determining that the need for child care had not been established.

Our Organizational Values

In carrying out its mission, the Employment and Assistance Appeal Tribunal is guided by the following values:

Fairness

Impartiality

Excellence

Efficiency

Timeliness

Accessibility

Accountability

Transparency

Independence

Looking Forward

It is perhaps optimistic to look forward as this annual report is being prepared in the middle of the province's emergency response to the global COVID-19 pandemic. However, the Tribunal continues serve the people of British Columbia and as we transition into our new normal of remote operations, it remains important to look forward to the future of the Tribunal.

The pandemic has highlighted a number of things for us at the Tribunal. One obvious lesson is that technology is essential in ensuring that we can operate remotely and in times of crisis. This year it is a pandemic, but in other instances it could be wildfires or another emergency response. The other obvious lesson is that while technology is useful it cannot be all we rely upon to get the job done. The users of the Tribunal face barriers to accessing technology and we must always be sure that we remain aware of this fact and ensure that processes and procedures work with phone calls, written letters, and paper submissions that arrive via the postal system.

As we move forward, the Tribunal will ensure that it looks to the future of technology but promises that it will not do so in ways that prevent accessibility. In this light, the Tribunal looks forward to moving forward with a number of projects over the coming fiscal year.

Of utmost importance is the replacement of our aged case management system. While this project is in the early phases of procurement, it is hoped that this time next year, we will be able to report that a new system has gone live and is in regular use by the Tribunal.

We are also hoping to have video-conferences up and running as one option for our hearings. While COVID-19 has shown us the need for this option, we are committed to ensuring that any platform and process we use for video-conferencing works post-emergency as well. This will entail ensuring privacy of contents and compliance with the province's *Freedom of Information and Privacy Act*.

As mentioned in the Message from the Chair, the Tribunal remains committed to increasing accessibility and will be continuing with its review of tribunal communications and procedures to make the appeal process less cumbersome and easier to understand for anyone using it.

Training for staff and members will continue, although it is expected that much of this training will have to be delivered remotely rather than face to face given the current social distancing requirements.

Recruitment efforts are also continuing. The members of the Tribunal must reflect the citizens of the Province of British Columbia. We hope to see an increase in the diversity of our adjudicators over the coming year and will continue to advertise for members throughout the province.

Excitingly, we are hopeful that the coming fiscal year will see the Tribunal gather and map Tribunal user experiences. In the past the Tribunal has attempted surveys seeking feedback on how the Tribunal operates. However, participation was very low and

surveys often overlook the important stories that users of the Tribunal wish to share about their experiences. It is hopeful that by gathering experiences via stories instead of surveys that we will get useful insight into our operations from the point of view of the ultimate users of the appeal system.

Finally, and perhaps most importantly, the Tribunal plans on continuing its efforts towards reconciliation with the Indigenous peoples of British Columbia and hopes to embark on the consultation phase of its Pathways Towards Reconciliation plan.



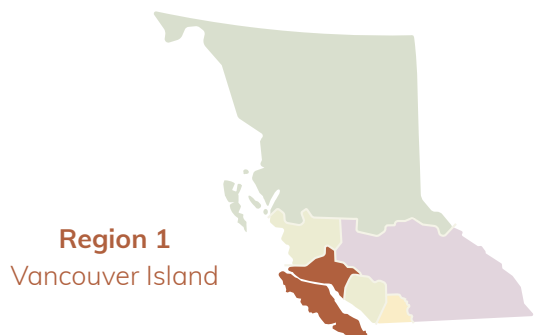
Appendix A

Tribunal Staff as of March 31, 2020

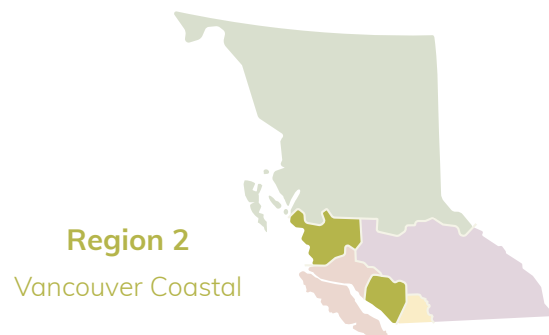
Ian Brownlie	Lisa Lee	Amy Power
Christina Cumming	Kristen Miller	Janet Preus
Michael Doris	Nicholas Paetz	
Emily Drown	Steven Pal	

Appendix B

Tribunal Members by Region as of March 31, 2020



Kent Ashby	Jane Nielsen
Angie Blake	Margarita Papenbrock
Monika Brandstaetter	Marnee Pearce
Sean Carberry	Glenn Prior
Gurjit Chaplin	Anne Richmond
Joan Cotie	Richard Roberts
Emily Drown	Joseph Rodgers
Robert Fenske	Marlene Russo
Marcus Hadley	Charles Schellinck
Jim Jones	Michael Skinner
Keith Lacroix	Jennifer Smith
Melissa McLean	Kenneth Smith
Dan McLeod	Donald Stedeford
Trevor Morley	Donald Storch
Inge Morrissey	Carman Thompson
Wesley Nelson	

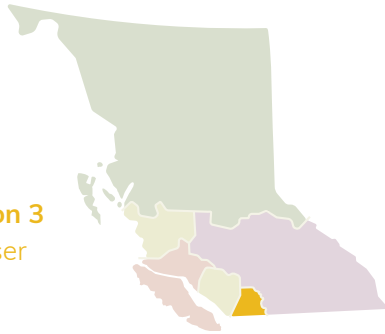


Anil Aggarwal	Tajdin Mitha
Sandra Chan	Rabinder Nijjar
Daniel Chow	Diane O'Connor
Susanne Dahlin	Kim Read
Carmelle Dieleman	David Roberts
Nancy Eidsvik	Adam Rollins
Susan Ferguson	Adam Shee
Shirley Heafey	Connie Simonsen
Barbara Insley	Roy Wares
Margaret Koren	Katherine Wellburn
Stephanie Korour	Edward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

Appendix B

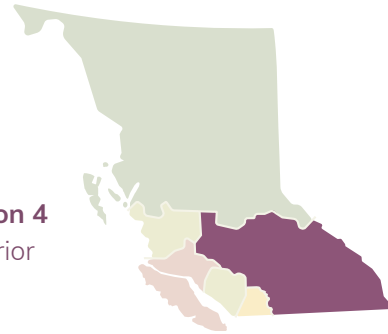
Tribunal Members by Region as of March 31, 2020

Region 3
Fraser



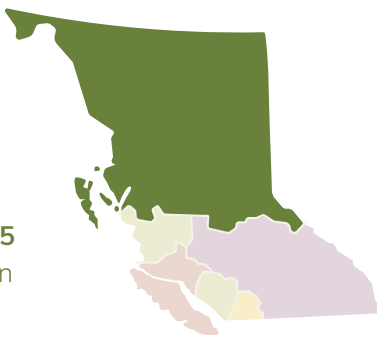
- | | |
|--------------------|------------------|
| Tina Ahnert | Kim Polowek |
| Jennifer Armstrong | Jeremy Sibley |
| Kulwant Bal | Carla Tibbo |
| Fazal Bhimji | Rosalie Turcotte |
| Vivienne Chin | Sandra Walters |
| Simon Clews | |
| Carlos Garcia | |
| David Handelman | |
| Neena Keram | |

Region 4
Interior



- | | |
|----------------|-----------------|
| Sarah Bijl | Jan Lingford |
| Joan Bubbs | Jean Lorenz |
| Jeanne Byron | Wendy Marten |
| Patrick Cooper | Chris McEwan |
| Mel Donhauser | John Pickford |
| Allison Edgar | Wayne Reeves |
| Lauren Forsyth | Bill Reid |
| Bill Haire | Ronald Terlesky |
| Robert Kelly | Helene Walford |
| David Kendrick | |
| Laurie Kent | |

Region 5
Northern



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

Appendix C

Budget (October 1, 2018 – March 31, 2020)

The provincial government's fiscal year begins April 1st. This Annual Report covers October 1, 2018 to March 31, 2020. The budget table presents relevant reporting periods which span the two fiscal years.

OPERATING BUDGET	APRIL 2019–MARCH 2020	APRIL 2018–MARCH 2019
Salaries and Benefits	\$ 824,171	\$ 876,540
Boards/Commissions/Courts – Fees and Expenses	285,882	240,804
Public Servant Travel	16,783	7,549
Professional Services: Operational	42,713	72,116
Information Systems: Operating	366,904	116,715
Office and Business Expenses	93,822	99,262
Statutory Advertising and Publications	5,579	0
Gain-Loss on Capital Asset Disposal	5,090	60
Building Occupancy Charges	90	3,696
TOTAL	\$ 1,641,034	\$ 1,416,743

How to Contact Us

MAIL: PO Box 9994 Stn Prov Govt

Victoria BC V8W 9R7

TEL: 250-356-6374 or toll free 1-866-557-0035

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

EMAIL: info@eaat.ca

WEB: www.eaat.ca

