PART C – Decision under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Social Innovation (the ministry) dated 13 December 2013 that denied the appellant's request for reconsideration of a ministry decision that he had an overpayment of assistance due to undeclared income, about which he had been advised in February 2005, and then again in May 2005 and March 2011. The ministry determined that, as the 20 business day time limit to submit a Request for Reconsideration has long since lapsed since he was advised of the original decision, under section 79 of the Employment and Assistance Regulation, the minister is not able to reconsider this decision.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 17.
Employment and Assistance Regulation (EAR), section 79.

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. The appellant's income tax return information from the Canada Revenue Agency for the tax years 1999, 2000 and 2002, all showing refunds.
2. 10 invoices for "professional services" sold to the appellant dated in 2002 and 2003 from 3 different individuals, showing payment received in cash.
3. Employment information forms for the appellant from [Company A] reporting net earnings in the years 2001 and 2002, prepared by the company in 2004.
4. A letter from the then Ministry of Human Resources to the appellant dated 16 February 2005 headed "Appointment Request" advising him of the results of an investigation of his receipt of assistance between August 2000 and August 2003. The ministry obtained and reviewed information relating to his employment income and his 1999, 2000 and 2002 income tax returns that suggests that that he may have been paid assistance in the amount of $6869.55 between August 2000 and August 2003 for which he was not eligible. A meeting to review the information and explain in detail how the overpayment was calculated was scheduled for 04 February 2005 [sic]. A repayment agreement was attached for his review.
5. A letter sent by registered mail from the Ministry of Human Resources to the appellant dated 02 May 2005 headed "Notification of Overpayment." The letter states that after completion of its review of the information obtained through an investigation into the appellant's receipt of assistance, the ministry had made a determination that the amount set out in an overpayment chart attached to the letter, $6869.55, is a debt due to the government that the appellant is liable to repay. The overpayment chart refers to unreported income tax refunds and the employment income reported in #3 above. The letter notes that although the overpayment amount is not appealable, the appellant may submit a written request for an Administrative Review to the PCE Regional Supervisor. A copy of a repayment agreement was enclosed for the appellant's review. The appellant is asked to contact the ministry within 14 days if he wishes to arrange repayment.
6. A letter dated 07 March 2011 from the appellant to the ministry. The appellant writes that he is in receipt of a letter from Revenue Services BC asking him to pay over $6000 regarding overpayment of benefits while in receipt of social assistance many years ago. He states that when he was asked to attend the investigation unit back then he requested the agent to show him the evidence that he was overpaid or was paid from outside sources for working. He was not given such evidence. He states that he does not have any problem with paying this debt if he really owes it to the ministry. He requests the ministry to produce the evidence for him for the exact amount of money demanded and he will take that evidence into record with Revenue Services BC and will arrange payment with them to clear the entire amount.
7. A letter dated 10 March 2011 from the ministry investigative officer to the appellant enclosing the information that was sent to him when the debt was added as well as the income information used to calculate the debt.
8. From the ministry's files: On 24 October 2013 the appellant contacted the ministry and stated that he had received a debt letter for the overpayment and that he sent the letter back on 10 October 2012 to dispute it but did not hear back.
9. From the ministry's files: On 14 November 2013 the appellant spoke to a ministry worker and stated that he had become aware of the overpayment 2 years ago and that he did not dispute it at the time, other that to ask to have the amount reviewed. He requested reconsideration on that date.

The appellant's Request for Reconsideration was dated 02 December 2013. He writes:

> "The invoices you have as evidence to calculate the overpayment, those amounts in the invoices are paid out to the workers who did work for my business. And I have not received those amounts as remuneration for me. As I have indicated in my earlier letter, I have not received some of the payments from [company name]. In my knowledge, the overpayment is approximately $2300 which I am willing to pay immediately."

In his Notice of Appeal dated 20 December 2013, the appellant writes:

> "As I have informed you earlier I have not received any overpayment the ministry assumed that I received. But I have not received such payments. I did not know that I have to reply within 20 business days."

At the hearing, the appellant reviewed his ultimately successful long history of dealing with the immigration authorities to obtain landed immigrant status. As part of that process, at one point the immigration authorities revoked his work permit. He had no alternative but to go on income assistance for a few years, since he could not lawfully work.

He stated that soon after receipt of the 16 February 2005 letter from the ministry, he met with the investigative officer. He was not able to get the investigative officer to understand or accept that the earnings reported by Company A were offset by payments he made to others, as shown in the invoices, to do the work as he could not lawfully do the work himself. He was similarly unsuccessful in explaining this to another investigative officer in February 2011.

The appellant acknowledged that on receipt of the 02 May 2005 letter from the ministry he did not pursue the administrative review referred to in the letter. He stated that at that time he had other priorities, including the time-consuming and stressful business of resolving his immigration status. He did not know that there was a time limit on disputing the overpayment amount.

The appellant explained that he was unaware that five years ago a lien had been placed on his property in the amount of the overpayment amount claimed by the ministry. It was only when he went to refinance his property in 2013 that he found out about the lien. He has since paid off the full amount and cleared the lien but maintains that any ministry overpayment was only about $2300. He is seeking a ministry reconsideration to seek proof from the ministry about how the overpayment was calculated, to allow him to explain how any overpayment was only about $2300 and to recover the excess he paid to clear the lien. He stated that he is willing to pay what he owes, but what he has paid is excessive and does not match his own calculations.

The panel finds that the new information provided by the appellant at the hearing is in support of the information before the ministry at the time of the reconsideration decision. The information provided by the appellant provides background relating to the appellant's position with respect to the overpayment and his request for reconsideration of the amount owing. The panel therefore admits the appellant's testimony pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry was reasonable in denying the appellant's request for reconsideration of a ministry decision that he had an overpayment of assistance due to undeclared income, about which he had been advised in February 2005 and then again in May 2005 and March 2011. More specifically, the issue is whether the ministry determination, that the minister is not able to reconsider his request, as the 20 business day time limit to submit a Request for Reconsideration under section 79 of the EAR has long since lapsed since he was advised of the original decision, is reasonably supported by the evidence or is a reasonable application of the legislation under the circumstances of the appellant.

The applicable legislation is from the *EAA*:

Reconsideration and appeal rights

17 (1) Subject to section 18, a person may request the minister to reconsider any of the following decisions made under this Act:

(a) a decision that results in a refusal to provide income assistance, hardship assistance or a supplement to or for someone in the person's family unit;

(b) a decision that results in a discontinuance of income assistance or a supplement provided to or for someone in the person's family unit;

(c) a decision that results in a reduction of income assistance or a supplement provided to or for someone in the person's family unit;

(d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of

(i) the maximum amount of the supplement under the regulations, and

(ii) the cost of the least expensive and appropriate manner of providing the supplement;

(e) a decision respecting the conditions of an employment plan under section 9 *[employment plan]*.

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3) Subject to a regulation under subsection (5) and to sections 9 (7) *[employment plan]*, 18 and 27 (2) *[overpayments]*, 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.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in this Act and the regulations.

(5) The Lieutenant Governor in Council may designate by regulation

(a) categories of supplements that are not appealable to the tribunal, and

(b) circumstances in which a decision to refuse to provide income assistance, hardship assistance or a supplement is not appealable to the tribunal.

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.

And from the EAR:

How a request to reconsider a decision is made

79 (1) A person who wishes the minister to reconsider a decision referred to in section 17 (1) of the Act must deliver a request for reconsideration in the form specified by the minister to the ministry office where the person is applying for or receiving assistance.

(2) A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 17 (1) of the Act and may be delivered by

(a) leaving it with an employee in the ministry office, or

(b) being received through the mail at that office.

The position of the ministry is that the legislation is clear that a request for reconsideration of the ministry decision must be delivered within 20 business days after the person is notified of the decision – in this case, within 20 business days of 02 May 2005. The ministry submits that this time limit has long since lapsed.

The appellant's position is that he was never notified that there was a 20 business day time limit to request a reconsideration of the decision. While the time limit may be specified in the Regulation, he had no ready access to that kind of legal material and the ministry never advised him that such a firm time limit was in place.

The panel notes that there is no dispute that the appellant did not request reconsideration, or "administrative review" as offered in the ministry's 02 May 2005 letter, within 20 business days of being advised of the ministry's decision. The panel considers it the responsibility of a person to become familiar with the dispute resolution process of a government agency with decision-making authority if that person has been given a decision with which the person disagrees. The panel notes that it is the Canadian and BC norm that agencies with decision-making authority operate under legislation that provide for statutory rights of reconsideration and/or appeal, with time limits set out in the legislation. This is the case not only with the ministry but also for other agencies, such as the Canada Revenue Agency, BC Assessment and WorkSafeBC. Information about the reconsideration/appeal process, including time limits, is readily available from each agency's website or by phone or, in the ministry's case, by visiting a local office.

Section 17(3) of the *EAA* provides that, subject to certain exceptions, a person who is dissatisfied with the "outcome of a request for reconsideration under subsection (1)(a) to (d) may appeal the decision that is the outcome of the request to the Tribunal." In this case, the ministry's determination

that there is no right of reconsideration was the "outcome" of the appellant's request. The panel finds that the ministry's determination that the appellant did not have a right to reconsideration is a reasonable application of the applicable enactment in the appellant's circumstances under section 24(1)(b) of the *EAA* for the reasons outlined above. In view of this finding, the panel confirms under section 24(1)(b) of the *EAA* the ministry's decision that there is no right to reconsideration. It follows that the appellant is not entitled to have the request for reconsideration proceed to reconsideration.