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## PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 26 February 2015 determined the appellant was not eligible for income assistance as a single person with no dependants as the ministry determined he was residing with his spouse under s.1 and 1.1 of the Employment and Assistance Act.

## PART D – Relevant Legislation

Employment and Assistance Act (EAA), s. 1, and 1.1.
Employment and assistance Regulation (EAR), s. 5.

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## PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- On 17 February 2014 the appellant's file was opened at the ministry as a single, employable person.
- On 28 November 2014, the appellant attended the ministry's office and advised that his ex-wife and 2 adult children lived in the same residence.
- The ministry worker advised the appellant that his situation would be considered as dependency and he would need to be added to his ex-wife's file as dependent or they would need to live in separate residences. A hold was placed on the appellant's February benefits.
- On 22 December 2014, the appellant contacted the ministry to advise that he and his ex-wife were not legally married as they were married in another country and the marriage was not legal in Canada. He also advised that their marriage had dissolved and requested financial assistance to obtain a divorce.
- On 31 December 2014, the appellant contacted the ministry, advising that he and his ex-wife would proceed with a divorce. He also advised they had separated decades ago and that she moved in his residence during the summer of 2014 to help with expenses and that they were not in a relationship. The ministry advised him that he could not be considered as a single person given those circumstances.
- On 20 January 2015, the appellant contacted the ministry and advised that he would file for divorce that same day.
- On 22 January 2015, the ministry indicated that the appellant had submitted his petition for a divorce dated 19 January 2015.
- On 27 January 2015, the appellant faxed to the ministry the following documents:
    - A letter dated the same day by him to the ministry indicating he had been separated from his ex-wife for decades and that his relationship with her ended in 2000 by a supreme court document that the ministry had a copy of. His ex-wife lives with him and their 2 adult children to support their rent. They are not dependent of each other, they do not have a conjugal relationship and this was a survival tactic as he is unemployable given his age and she is unemployed. A divorce in the Supreme Court is extremely litigious but they are now proceeding. He stated his encounter with the ministry worker was mostly unsatisfactory as she has refused to understand their situation and abused her powers.
    - A Supreme Court of BC order dated 10 February 2015, filed the next day, signed by the Registrar, waiving fees for the appellant "in relation to this family law case".
    - A letter dated 17 December 2014 from the ministry to the appellant requiring him to provide further information to confirm his eligibility and that if he is still in need of assistance to contact a given phone number to speak to a worker.
    - A document from Human Resources and Skills Development Canada – Canada Pension Plan giving the appellant's name, social insurance number, beneficiary number and code but no amounts.
- A request for reconsideration dated 18 February 2015 and signed by the appellant reiterating what is stated above and, in particular, that the arrangement with his ex-wife and his adult children is basically financial and that it's an agreement between each of them that they are free to join. He also indicated another renter occupied a vacant space in order to assist financially. He added that a formal order for divorce with affidavit has been prepared and is awaiting process before the Supreme Court of BC.

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In his Notice of Appeal dated 9 March 2015, the appellant wrote that an agent had assigned a status to him that was incorrect and dishonest to the facts and as a consequence to them, they were forced into financial destitution.

At the hearing the appellant testified that his ex-wife and he did not share the same bedroom and that their 2 adult children had their own bedroom but all shared a common kitchen. He also testified that he was expecting a letter from the court with respect to their divorce application but had not yet received any final judgment despite his efforts to expedite the matter but faced delays caused by the courts.

The panel determined the additional oral evidence was admissible under s. 22(4) of the EAA as it was in support of the records before the ministry at reconsideration as it corroborated the appellant's evidence available at reconsideration.

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PART F – Reasons for Panel Decision

The issue under appeal in this case is whether the ministry's decision that the appellant was not eligible for income assistance as a single person with no dependants because the ministry determined he was residing with his spouse under s.1 and 1.1 of the EAA was either a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation is:
Section **1(1)** of the EAA defining:
"dependent", in relation to another person, means anyone who resides with the other person and who:

(a) is the spouse of the other person,
(b) is a dependent child of the other person,
(c) indicates a parental responsibility for the other person's dependent child;…

"family unit" means an applicant or a recipient and his or her dependants;…

Section 1.1 of the EAA:
**1.1** (1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if
(a) they are married to each other, or
(b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

And s. 5(1) of the EAR:
**5** (1) For a family unit to be eligible for income assistance or a supplement, an adult in the family unit must apply for the income assistance or supplement on behalf of the family unit unless
(a) the family unit does not include an adult, or
(b) the spouse of an adult applicant has not reached 19 years of age, in which case that spouse must apply with the adult applicant.

The ministry argued that the appellant's marriage to his ex-wife outside of Canada was legal and that because the appellant was not able to provide evidence that he was legally divorced, he had to be considered legally married and that since the spouses lived in the same residence, he had to apply as a family unit with his ex-wife as a dependant and was not eligible for income assistance as a single person.

The appellant argued that because the marriage took place outside of Canada, it was not legally valid here and that in any event he had been separated for decades and there was a judgment in separation in existence for 15 years. He argued that the ministry's decision was based on a narrow interpretation of the legislation that did not reflect he and his ex-wife's actual situation and that the ministry worker abused her power, disregarding the facts that were presented. He stated that the reason why they were living together was exclusively financial because they needed each other to meet their financial obligations but the day-to-day cost of living was the responsibility of each one so that there was no marriage-like relationship between them. He felt he was stonewalled by the bureaucracy that was ignoring his predicament and of the other people that were living under the same roof.

When determining who is eligible for income assistance, the ministry must base its assessment from

the legislation as it is the provincial legislature that establishes the conditions to be met, not the ministry workers. In this case, the legislation is very clear as to who fits within the meaning of "spouse", regardless of what a dictionary might suggest – it is the legislation that prevails when a definition is included in the determination of who qualifies for benefits.

The panel does not have the jurisdiction to determine whether a marriage celebrated outside of Canada is valid or not but finds that the ministry could reasonably conclude that such a marriage was valid. The legislation is crystal clear that people who are married to each other must be considered as spouses for the purposes of the act (s. 1.1(a) of the EAA). Consequently, if 2 persons are still married to each other and reside in the same home, s. 1 of the EAA applies and the ministry must consider the spouse as a "dependant" and part of a family unit for the purpose of applying for income assistance under s. 5(1) of the EAR. There is no discretion for a ministry worker not to apply the legislation and the panel finds the ministry reasonably determined the appellant was part of a 2 person family unit and was not eligible for income assistance as a single person.

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.