

### PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision dated February 26, 2019 which determined that the appellant was ineligible for income assistance ("IA") by reason that the appellant has 6 outstanding arrest warrants in [redacted] and is therefore ineligible for IA pursuant to s 15.2(b) Employment and Assistance Act ("EAA").

### PART D – RELEVANT LEGISLATION

s.22(4), 15.2(b) Employment and Assistance Act ("EAA")  
 34(1) Interpretation Act  
 38.1 Employment and Assistance Regulation ("EAR")

## PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was:

- The appellant is      years old and a sole applicant of IA.
- There are outstanding warrants for the appellant's arrest in
- The appellant has received 4 months of repayable hardship supplements for the months of November and December 2018 and January and February 2019.
- The appellant requests regular IA instead of repayable hardship IA.

The appellant's request for reconsideration provides:

- When the appellant originally came to British Columbia he was unaware of the court date in      He was on bail at the time in      and reported his travel plans to his bail supervisor at the time.
- The appellant states that informing his bail supervisor of his travel plans was meeting the obligations of his bail at the time.
- The appellant originally planned to move to one community in BC and then later settled on another community where he became more established. The appellant eventually lost touch with his bail supervisor.
- The appellant has not been able to return to      to address the warrants. He fears he will be arrested and have no one to look after his dog.
- While the appellant was getting ready to go to      he found out from the RCMP in the community he was living that there was an active warrant for his arrest in
- The appellant says he confirmed it was for "failure to appear charge and a common civilian assault charge, the same charge I was on Bail Supervision for".
- The appellant was convicted in BC for another charge and served 8.5 months in jail.
- The appellant applied for IA from the jail around October 2018.
- If the appellant wants the      warrants waived, he would be required to plead guilty and he does not want to plead guilty to the charges against him in
- The appellant reports that he is experiencing a variety of mental health challenges due to being incarcerated and his ineligibility for IA.
- The appellant states that he believes there should be an exception for people in situations such as his, where he would have to travel when he has other legal obligations that prevent him from travelling.
- The appellant submits that he is worried about housing security
- He feels he was a victim of crime and has been attempting to appeal his conviction and that both of these circumstances have affected his health.
- The appellant described the death of his father and aunt and that he is looking for work regularly.
- The appellant states that his bail supervisor in      did not keep him informed of critical dates.

The appellant's notice of appeal ("NOA") dated March 1, 2019 provides:

- He has legal obligations in British Columbia and is currently unemployed and has no income.
- A notation to the NOA provides that although the appellant had secure housing, he will receive an eviction notice "today". It appears from the notes to the NOA that the notation was made March 14, 2019.

At the hearing, the appellant provided evidence that:

- "he was unaware of his legal obligations in      when he came out west" his legal responsibilities at the time were to "keep the peace and be of good behavior" and to notify his bail supervisor of any address changes.
- His bail supervisor was to keep him aware of court dates and help him stay out of trouble.
- In spring of 2018 he was on the way to      to take care of one simple charge which was an assault from a civilian.
- He came out west to get established in the area.
- The advocate has been working with      for some time. She confirmed that he requires some help to get going.
- The appellant says he was approved for social assistance from jail.

At the hearing the Ministry relied on their reconsideration decision:

- Due to the outstanding warrants he was denied IA by the Ministry
- He advised the intake worker that he has outstanding warrants. An after-hours team runs the warrant process. They don't obtain any physical documents for that purpose. The case number, the location and the date of the warrant. The Ministry worker was able to say that she was not aware if the warrants issued were for indictable offences or not.

At the hearing the appellant brought a letter dated April 10, 2019 from his Probation Officer in British Columbia the letter referenced the appellant's option of waiving outstanding court matters in to British Columbia and described the process for doing that. The Ministry did not object to the entry of this evidence.

The panel determined the additional documentary evidence was admissible pursuant s.22(4) of the EAA as it contained information about waiving the charges from to British Columbia which was in support of the records before the minister at reconsideration.

## **PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the Ministry's decision to deny the appellant IA by reason that the appellant has 6 outstanding arrest warrants in \_\_\_\_\_ and is therefore ineligible for IA pursuant to s 15.2(b) EAA is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

### **Employment and Assistance Act SBC 2002, c 40**

Consequences in relation to outstanding arrest warrants

15.2 (1) No income assistance, hardship assistance or supplement may be paid to or for a family unit on account of an applicant or recipient for whom a warrant for arrest has been issued under

- (a) the Immigration and Refugee Protection Act (Canada), or
- (b) any other enactment of Canada in relation to an indictable offence, and

on whom the warrant has not been executed.

(2) Despite section 5 and subsection (1) of this section, and subject to the regulations, the minister may provide

(a) income assistance, hardship assistance or a supplement to or for the family unit on account of the person who is subject to the warrant, or

(b) a supplement to

(i) the person who is the subject of the warrant, for the purpose of the person returning to the jurisdiction that issued the warrant, or

(ii) the family unit, for the purpose of the family unit returning to the jurisdiction that issued the warrant.

(3) If a family unit includes a person described in subsection (1), the person's income and assets must be included in the income and assets of the family unit for the purposes of determining whether the family unit is eligible for income assistance, hardship assistance or a supplement, except as otherwise provided in the regulations.

(4) In this section, "indictable offence" includes an offence that is deemed under section 34 (1) of the Interpretation Act (Canada) to be an indictable offence.

### **Employment and Assistance Regulation BC Reg 263/2002**

Consequences in relation to outstanding arrest warrants

38.1 Section 15.2 [consequences in relation to outstanding arrest warrants] of the Act does not apply to a family unit of an applicant or recipient for whom a warrant for arrest within the meaning of section 15.2 of the Act has been issued and who

- (a) is pregnant,
- (b) is in the end stage of a terminal illness, or
- (c) is under 18 years of age.

**Interpretation Act, RSC 1985, c I-21**

Indictable and summary conviction offences

34 (1) Where an enactment creates an offence,

(a) the offence is deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment;

(b) the offence is deemed to be one for which the offender is punishable on summary conviction if there is nothing in the context to indicate that the offence is an indictable offence; and

(c) if the offence is one for which the offender may be prosecuted by indictment or for which the offender is punishable on summary conviction, no person shall be considered to have been convicted of an indictable offence by reason only of having been convicted of the offence on summary conviction.

**Criminal Code RSC 1985, c C-46**

s.145(4)

Failure to appear or to comply with summons

(4) Every person who is served with a summons and who fails, without lawful excuse, to appear at the time and place stated in it for the purposes of the Identification of Criminals Act or to attend court in accordance with it, is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

Assault

266 Every one who commits an assault is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding five years; or

(b) an offence punishable on summary conviction.

**The panel finds:**

S.15.2 EAA provides that no IA or hardship assistance may be provided to an applicant that has an outstanding warrant for an indictable offence. The meaning of indictable offence pursuant to EAA is derived from s.34(1) of Interpretation Act. S. 34(1)(a) of the Interpretation Act states that an offence that is "deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment".

The appellant is a sole recipient so the provisions of 15.2(2)(a), and 15.2(2)(b)(ii) EAA do not apply to him. The appellant has not requested travel assistance pursuant to s.15(2)(b)(i) in this appeal so that legislation also doesn't apply to him.

The appellant is not pregnant, at the end stage of a terminal illness or under 18 so the exceptions to s.15.2, set out in 38.1 EAAR also do not apply to him.

The Ministry determined that the appellant is ineligible for income assistance due to having outstanding warrants. It appears that the Ministry did not review the outstanding warrants or make any determinations as to whether or not the warrants were for indictable offences. The information about whether or not the offence is indictable is necessary in order to make a determination that an applicant is ineligible pursuant to s.15.2. The legislation

specifically states that the warrants must be for indictable offences. There exist offences wherein a warrant can be issued that are only summary offences. The Ministry provided no documentary evidence about the nature of the offences.

There was some evidence from the appellant on the nature of the offence. The appellant indicated that he believed that after speaking to his British Columbia probation officer that the warrant was in relation to a failure to appear for a common assault charge. Specifically, in his written submission the appellant states "I looked into this, and confirmed it was for a failure to appear charge from a common civilian assault charge, the same charge I was on bail supervision for." Both failure to appear and assault charges are hybrid offences pursuant to the Criminal Code, thereby making them indictable offences pursuant to the Interpretation Act and for the purposes of EAA.

It is clear from the Ministry's decision that they did not rely on the evidence of the appellant in making their determination about whether the offences in which the warrants issued were for indictable offences. At a minimum some evidence about this should have been provided by the Ministry. However, the panel has reviewed the evidence entirely and has the evidence from the appellant that "he confirmed" that the offences in which related to the warrants were for a failure to appear and some type of assault charge. The panel has reviewed the Criminal Code and can confirm that the offences that the appellant confirmed his warrants related to are in fact indictable offences pursuant to the Interpretation Act and the EAA. The panel therefore finds that the Ministry's decision was reasonable based as it was supported by the evidence before them at the time of reconsideration. The panel therefore confirms the Ministry decision.

**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

MEGHAN WALLACE

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/04/15

PRINT NAME

BILL HAIRE (on behalf of)

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/04/15

PRINT NAME

DAVID KENDRICK

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/04/15