

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated February 21, 2021 which found that the monthly income that the Appellant received under a separation agreement (the Separation Agreement):

- Is for spousal support and meets the definition of unearned income under Section 1 of the Employment and Assistance Regulation;
- Does not qualify for an exemption under Schedule B of the Regulation, and therefore must be deducted from the amount of assistance to which she would otherwise be entitled; and,
- That, as a result, she is not eligible for assistance in accordance with Section 10(2) of the EAR, as her net income exceeds the rate of assistance for her sized family unit.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA), Sections 1, 2 and 4

Employment and Assistance Regulation (EAR), Section 1, 10(2) and 28, EAR Schedule A Sections 1(1), 2(1), and 4(2), and EAR Schedule B, Sections 1, 6, and 7

The relevant legislation is provided in Schedule A.

PART E – SUMMARY OF FACTS

The evidence before the Ministry at the time of the Reconsideration Decision (RD) included:

- Undated letter from the Appellant to the Ministry providing the reasons why she was requesting a reconsideration of the Ministry's original decision (comprising a response to Section 3 of the RFR form). The letter includes a summary of amounts paid by the Appellant on behalf of the Appellant's former spouse (the Former Spouse) to cover some of his monthly expenses;
- One page excerpt from an unidentified publication explaining the general rules for deduction from income of spousal support payments for tax purposes;
- Three page payment history dated February 23, 2021 in the name of the Appellant and the Appellant's spouse for possessions kept at a storage facility providing the dates and amounts paid between July 11, 2011 and February 11, 2021;
- One page letter from WorkSafeBC dated September 22, 2020 addressed to someone in the Workers' Advisors Office and signed by a Review Officer advising of an extension of the time to complete a review of a decision until March 8, 2021 "*in order for (the Appellant) to provide additional new medical evidence due to the complexity of the matter*";
- First page of a letter from the Review Division of WorkSafeBC dated December 24, 2020 and addressed to the Appellant referencing receipt of a request for a review of WorkSafeBC's decision dated September 22, 2020 and asking that the Appellant provide her submissions and any new information to the Review Division by January 27, 2021;
- Canada Revenue Agency (CRA) Notice of Assessment in the name of the Appellant for the 2019 taxation year indicating that the Appellant's total income was \$17,594 and that her total deductions were \$7276, leaving a taxable income of \$10,318;
- One page mortgage loan renewal agreement in the name of the Appellant and the Former Spouse dated November 20, 2020 and identifying the total amount owing and the monthly payment amount for a 4 year fixed term mortgage (the Mortgage Agreement);
- Three page separation agreement dated March 27, 2012 (the Separation Agreement) signed by the Appellant and the Former Spouse;
- One page amendment to the Separation Agreement indicating an increase of the spousal support amount from \$1,800 per month to \$2,000 per month effective July 1, 2012;
- One page undated letter addressed to an individual only referred to by her first name and signed by the Appellant explaining her "*current financial hardship*" and indicating that she is "*in great need of financial assistance as soon as possible*"; and,
- Six pages of account activity information for the Appellant's bank chequing account covering the period between October 5, 2020 and December 1, 2020.

Additional Information

In the Notice of Appeal (NOA), the Appellant states that she disagrees with the Ministry's RD because after reading the RD she realizes that she has additional documents "*showing which bills the estranged husband selected to be paid from the money he is sending*" and to "*provide evidence that one party can renew the mortgage without the other party needing to be present*".

The Appellant made two submissions to the Employment and Assistance Appeal Tribunal on May 14, 2021 (the First May 14 Submission and the Second May 14 Submission).

The First May 14 Submission included, in addition to information that was also included in the evidence that the Ministry had at reconsideration:

- One page hand-written list of monthly expenses (the Monthly Expenses) which the Appellant indicates had formed the last page to the Separation Agreement; and;
- The signature page from the Mortgage Agreement, with spaces provided for the Appellant and the Former Spouse to sign as "borrowers", and bearing the signature of the Appellant, dated November 27, 2020, but without the Former Spouse's signature affixed. The page is also signed by an "authorized officer" of the lending bank.

The Second May 14 Submission comprised a 3 page letter from a real estate agent (the Agent) dated May 13, 2021, which outlined, partly from memory and partly from the Agent's records, assistance that the Agent provided to the Appellant by making several unsuccessful attempts between November 24, 2013 and January 3, 2014 to obtain the Former Spouse's signatures to ready the Appellant's property for sale.

On May 17, 2021, the Appellant provided a third submission (the May 17 Submission). The May 17 Submission comprised:

- Eight emails from the Appellant to the Former Spouse dated from March 21, 2013 to July 21, 2013 asking for additional financial assistance to cover the mortgage, their child's clothing and dental bills and other living expenses. No evidence was presented to suggest that any of the emails had been answered;
- One email from the Appellant to the Agent dated February 6, 2014 in response to an email to the Appellant from the Agent dated January 31, 2014. In the January 31, 2014 email, the Agent tells the Appellant that he has not had a response from the Former Spouse regarding obtaining the Former Spouse's signature to proceed with the sale of the residence and asking the Appellant for direction on how to proceed. The Appellant's response indicates that she has not been in contact with the Former Spouse and states that she intends to proceed with a court action to "*get an emergency sale on the home*";
- One page document titled "Proposed 2021 Strata Fees and CRF Contributions" for units in the strata building, indicating that the total proposed monthly strata fees for the Appellant's unit are \$336.19.

The Ministry did not object to the admittance of any of the new evidence.

Admissibility of Additional Information

Section 22(4) of the 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 on all admissible evidence.

The Panel considered the additional information contained in the NOA to be argument

Pursuant to EAA Section 22(4), the Panel considered the additional information contained in the First May 14 Submission, the Second May 14 Submission and the May 17 Submission to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore admitted the new information.

Oral Evidence Presented at the Hearing

The Appellant was represented at the hearing by an advocate (the Advocate).

At the hearing, the Appellant stated that she had not presented the Ministry with all the evidence prior to the RD. She argued that what the Ministry considers income is not “income” because it is money that also covers some of the Former Spouse’s costs.

The Appellant stated that she had intended to have the Separation Agreement properly vetted and that she had been unable to get a court-ordered separation agreement because she could not afford a lawyer and did not qualify for legal aid. The Appellant indicated that she had been coerced by the Former Spouse to sign the Separation Agreement without the opportunity to have it reviewed by a lawyer before signing it, and that the Monthly Expenses were prepared by the Former Spouse based on his calculation of relevant monthly living expenses without her input (“*he decided what he would pay*”). She indicated that some of the costs he had calculated were inaccurate or covered his commitments rather than shared ones (such as the storage fees, for example). In addition, some costs were not included, and, while the Former Spouse had committed in the Separation Agreement to provide money to cover extended health care benefits, he was not doing so. She also said that, except for receiving the documents sent to the Former Spouse by the Agent relating to the planned sale of the home in January 2014 (which arrived too late to proceed with the sale) she has been unable to get the Former Spouse to respond to any of her emails or phone calls.

Speaking on the Appellant’s behalf, the Advocate said that the Separation Agreement is not a legally enforceable agreement because it was signed under duress, and that the Appellant cannot afford a lawyer to assist her in pursuing a legally enforceable separation agreement. The Advocate argued that the Former Spouse makes significantly more than the Appellant and that there was an unfair distribution of the funds required to support the Appellant and her child’s living expenses. The Advocate said that Appellant is not able to cover the cost of the mortgage on the home, and that because it is a joint asset, she cannot just “default and walk away”.

The Advocate also stated that the Appellant has been unable to communicate with the Former Spouse for years because he refuses to respond to her and that the Former Spouse’s refusal to respond to the Appellant’s pleas by providing her with additional financial support is financial abuse. The Advocate

argued that, because the Ministry has policies in place that make exceptions to the financial limits expressed in the legislation in cases where other forms of spousal abuse (e.g. emotional or physical abuse) it has discretion to take forms of abuse into account in determining income assistance (IA) eligibility and it should make the same kind of exception in the case of financial abuse.

The Advocate also stated that the Appellant received post-dated cheques for the first of each month in the amount provided for under the Separation Agreement, and suggested that if the money were deposited by the Appellant to a savings account every month it could be considered an asset (savings), rather than unearned income. Furthermore, if the Ministry permitted the funds to be considered an asset rather than income and recognized the Former Spouse's treatment of the Appellant to be financial abuse, the Ministry could then waive the limitations set out in the EAA and the EAR regarding denial of assistance based on excess assets.

Regarding the Mortgage Agreement, the Appellant explained that the lender had agreed to renew the mortgage based on only having her signature on the document, but because she and the Former Spouse were both on title, the lender would not be prepared to allow any other changes to the terms of the loan without the signatures of both borrowers. In response to a question from the Panel, the Appellant stated that the new monthly payment amount of \$1,192 was lower than the amount specified in the Separation Agreement (\$1,350) because of changes to the annual interest rate on the loan and the property tax payment amount, and that the Appellant's calculation of the portion of the mortgage payment representing the Former Spouse's share (\$894 or 75% of the total amount) was because his income was higher than hers. The Appellant also provided examples of other expenses in the Separation Agreement that had either changed over the years, were arbitrarily added to the list by the Former Spouse, or were not included (such as the strata fees, which were \$292 in 2020 but are increasing to approximately \$339 in 2021).

In response to a question from the Panel regarding the CRA's 2019 Notice of Assessment, which shows the Appellant's total income for the year to be \$17,594 with deductions totaling \$7,276 for a taxable income of \$10,318 for that year, the Appellant stated that her accountant would know for sure what those earnings represented, but she was receiving Workers' Compensation Benefits in 2019 due to a workplace accident and she assumed that the income amount would represent those benefits. She also said that the support payments she receives from her Former Spouse are not considered income by the CRA and therefore not included in the 2019 total income amount.

The Appellant also indicated that she intended to apply for a Persons with Disabilities (PWD) designation and to try to determine whether she might qualify for legal aid in pursuing a court-ordered sale of her home.

At the hearing, the Ministry relied on the RD. Regarding financial abuse, the Ministry stated that it acknowledges all kinds of abuse, including financial abuse, but has no ability to make discretionary decisions on exemptions.

The Ministry stated that the Appellant had applied for IA when the RD was made. Regarding maximum monthly allowances for support and shelter (totaling \$1,095.58 in the Appellant's case at the time she applied for IA), the Ministry explained that different allowance amounts exist for clients who are designated as a PWD, and that the current monthly allowances for support and shelter total \$1,694 for anyone who has been designated as a PWD.

Regarding whether the monthly payments from the Former Spouse could be considered an asset rather than unearned income if the money were deposited to a savings account every month, the Ministry said that if the funds were kept in a bank or investment account and not spent the value of funds in the account would be considered an asset, but the legislation defines the flow of funds to an IA or PWD applicant to represent earned or unearned income which must be taken into account unless it is exempt or deductible.

Regarding income earned by the Appellant in 2019 as determined by the CRA, the Ministry said that it does not look at past earnings in determining IA eligibility but relies on current income based on whether it fits the definitions of earned or unearned income under the EAR.

Regarding the Appellant's access to legal counsel, the Ministry said that family court counsellors are empowered to assist applicants in arranging for court-ordered separation agreements.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's decision, which found that the Appellant is not eligible for assistance, as her net income exceeds the rate of assistance for her sized family unit, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in her circumstances.

The Ministry's position is that the Appellant's income under the Separation Agreement is unearned income that does not qualify for an exemption, and therefore must be fully deducted from the amount of assistance for which she would otherwise qualify, and as the amount of the Appellant's non-exempt unearned income exceeds her assistance rate she is ineligible for IA.

The Appellant's position is that the money she receives each month from her Former Spouse should not be considered income because it is money that also covers some of the Former Spouse's costs, and that after deducting the payments she has to make to cover her Former Spouse's costs she is left with approximately \$700 per month, which is less than the eligible monthly shelter and support allowance amounts.

The Panel's Decision

As to Whether the Payments in Question Meets the Definition of "Unearned Income"

Section 1(1) of the EAR defines "*unearned income*" to mean any income that is not earned income, including, without limitation, money or value received from maintenance under a separation agreement.

The definition of "earned income" in the EAR is "*any money or value received in exchange for work or the provision of a service, pension plan contributions that are refunded because of insufficient contributions to create a pension, money or value received from providing room and board at a person's place of residence, or money or value received from renting rooms that are common to and part of a person's place of residence*". Therefore, unearned income is, without limitation, any other form of income. EAR Section 1(1) makes clear that unearned income specifically includes money received under a separation agreement.

The Appellant argues that the Separation Agreement is unenforceable because it was signed under duress. The Panel notes that the reference to "separation agreement" in EAR Section 1(1) does not limit or restrict money received under a separation agreement to include, for example, only money received under separation agreements acknowledged by the court or imposed by an order of the court. The Panel further notes that there is no evidence to indicate that a court has determined that the Separation Agreement is not enforceable or has otherwise required that a different amount should be paid under the Separation Agreement. The Panel finds that the Ministry reasonably determined that the \$2,700 received by the Appellant each month from the Former Spouse is unearned income received under a separation agreement.

As to Whether the Payments in Question are Exempt or Should Otherwise be Deducted from Unearned Income

EAR Schedule B provides deduction and exemption rules for calculating the net income of a family unit for the purposes of determining the amount of IA to which the family unit is entitled. EAR Schedule B Section 1(a)(xiv) says that child support is exempt from net income.

The Panel notes that, while child support is specifically exempt from net income, no evidence has been presented to suggest that any other of the exemptions listed in Schedule B Sections 1(a) or 7, or deductions listed in Schedule B Section 6, apply in this case. The Panel finds that, based on the available evidence, only the \$700 amount paid to the Appellant under the Separation Agreement for child support is exempt from other income, leaving the Appellant with \$2,000 in monthly unearned income. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant had \$2,000 in unearned monthly income after deductions and exemptions.

As to the Whether the Appellant is Entitled to IA

EAR Section 10(2) says that a family unit is not eligible for income assistance if the net income of the family unit determined equals or exceeds the amount of IA for which the family unit is eligible.

The Panel notes that the Appellant's family unit's monthly income after deductions and exemptions is \$2,000, and that the family unit is entitled to a total of \$1,090.56 in shelter and support allowances pursuant to EAR Schedule A. As the Appellants family unit's total monthly income after exemptions and deductions exceeds the family unit's eligible shelter and support allowances by \$909.44, the Panel finds that the Ministry reasonably determined that the Appellant is not entitled to IA.

Conclusion

The Panel finds that the Ministry's decision that the Appellant is not eligible for IA because she receives spousal support under a Separation Agreement which meets the definition of unearned income under Section 1 of the EAR, that the payment was not exempt from unearned income under Section 7 of Schedule B of the EAR, and that the payment must therefore be deducted in accordance with Section 28(b) of the EAR, was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the Appellant. Therefore, the Ministry's decision is confirmed. The Appellant is not successful in her appeal.

SCHEDULE A – LEGISLATION

The criteria for eligibility for IA as set out in the EAA are as follows:

Employment and Assistance Act

Interpretation

1 (1) In this Act:

“**applicant**” means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person’s spouse, if the spouse is a dependant, and
- (b) the person’s adult dependants ...

“**income assistance**” means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance ... if

- (a) each person in the family unit on whose account the income assistance ... is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the income assistance ... under this Act.

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance ... to or for a family unit that is eligible for it.

Employment and Assistance Regulation

Definitions

1 (1) In this regulation: ...

“**earned income**” means

- (a) any money or value received in exchange for work or the provision of a service, ...

(c) pension plan contributions that are refunded because of insufficient contributions to create a pension,

(d) money or value received from providing room and board at a person's place of residence, or

(e) money or value received from renting rooms that are common to and part of a person's place of residence;

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

(a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

(b) cooperative associations;

(c) war disability pensions, military pensions and war veterans' allowances;

(d) insurance benefits, except insurance paid as compensation for a destroyed asset;

(e) superannuation benefits;

(f) any type or class of Canada Pension Plan benefits;

(g) employment insurance;

(h) union or lodge benefits;

(i) financial assistance provided under the *Employment and Assistance for Persons with Disabilities Act* or provided by another province or jurisdiction;

(j) workers' compensation benefits and disability payments or pensions;

(k) surviving spouses' or orphans' allowances;

(l) a trust or inheritance;

(m) rental of tools, vehicles or equipment;

(n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;

(o) interest earned on a mortgage or agreement for sale;

(p) maintenance under a court order, a separation agreement or other agreement;

(q) education or training allowances, grants, loans, bursaries or scholarships;

- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*;
- (w) tax refunds;
- (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (y) gifts in the form of payment by another person of a debt or obligation ...

Limits on income

10 (2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

Amount of income assistance

28 Income 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 Income Assistance Rates

Maximum amount of income assistance before deduction of net income

1 (1) ... the amount of income assistance referred to in section 28 (a) [*amount of income 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 support allowance

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
4	Sole applicant/recipient and one or more dependent children	Applicant/recipient is under 65 years of age	\$525.58

Monthly shelter allowance

Item	Column 1 Family Unit Composition	Column 2 Maximum Monthly Shelter
2	Family with dependent children, family unit size = 2 persons	\$570

**Schedule B
Net Income Calculation**

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income assistance*] of this regulation,

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis; ...
- (iv)a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the Income Tax Act (Canada);
- (vii) a tax credit under section 8 [refundable sales tax credit], 8.1 [climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the Income Tax Act (British Columbia);

- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
 - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
 - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government; ...
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xvii.1) money that is paid or payable to or for a person if the payment is in accordance with
 - (A) the Sixties Scoop Settlement made November 30, 2017, or
 - (B) the Federal Indian Day Schools Settlement made March 12, 2019, as amended May 13, 2019;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;

- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government; ...
- (xxi) payments granted by the government of British Columbia under section 8 [agreement with child's kin and others] of the Child, Family and Community Service Act;
- (xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program; ...
- (xxiv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the Child, Family and Community Service Act, for contributions to the support of a child
- (xxv) a loan that is
 - (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
 - (B) received and used for the purposes set out in the business plan;
- (xxvi) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
 - (A) Autism Funding: Under Age 6 Program, or
 - (B) Autism Funding: Ages 6 — 18 Program; ...
- (xxviii) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the Mental Health Act, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
- (xxix) a refund provided under Plan I as established under the Drug Plans Regulation;
- (xxx) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
- (xxxi) a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);
- (xxxii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (xxxiii) money withdrawn from a registered disability savings plan;
- (xxxiv) a working income tax benefit provided under the Income Tax Act (Canada);

- (xxxvi) the climate action dividend under section 13.02 of the Income Tax Act;
- (xxxvii) money paid or payable to a person under the Criminal Injury Compensation Act as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
- (xxxvii.1) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement and Supplementary Agreement approved by the Federal Court June 22, 2018 in Court File No. T-370-17, Todd Edward Ross et al. v. Her Majesty the Queen;
- (xxxvii.2) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement approved by the Federal Court January 30, 2019 in Court File No. T-1068-14, Raymond Michael Toth v. Her Majesty the Queen;
- (xxxviii) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
- (xxxix) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (xlii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
- (xliii) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
- (xliv) a BC early childhood tax benefit;
- (xliv.1) a BC child opportunity benefit;
- (xlv) child support;
- (xlvi) orphan's benefits under the Canada Pension Plan Act (Canada);
- (xlvii) gifts, other than recurring gifts;

(xlviii) compensation paid or payable under Division 5 [Compensation in Relation to Death of Worker] of Part 4 [Compensation to Injured Workers and Their Dependants] or section 225 [compensation in relation to worker death before July 1, 1974] of the Workers Compensation Act to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 165 (1) of that Act;

(xlix) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

(l) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;

(l.1) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;

(l.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;

(li) a disabled contributor's child's benefit paid or payable under the Canada Pension Plan;

(lii) payments granted under an agreement referred to in section 94 of the Child, Family and Community Service Act;

(liii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;

(liv) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;

(lv) money that is paid or payable from a settlement under

(A) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or

(B) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada;

(lvi) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the Department of Public Safety and Emergency Preparedness Act (Canada);

(lvii) money, or goods or services in kind, received or to be received by a participant in the Ministry of Social Development and Poverty Reduction's Work Experience Opportunities Grant program from a grant under the program,

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under section ... 7 ... of this Schedule.

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits ...

Exemptions — unearned income

7 (1) The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 11 [asset limits] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [assets held in trust for person receiving special care] of this regulation if the payment is applied exclusively to or used exclusively for
 - (i) disability-related costs,
 - (ii) the acquisition of a family unit's place of residence,
 - (iii) a registered education savings plan, or
 - (iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 13 (2) (a) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 13.1 (2) [temporary exemption of assets for person applying for disability designation or receiving special care] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:

(i) a payment made from a trust to or on behalf of a person referred to in section 13 (2) of this regulation;

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 13 (2) (a) of this regulation;

(iii) money expended by a person referred to in section 13.1 (2) of this regulation from an intended registered disability savings plan or trust;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the Income Tax Act (Canada) as adjusted under section 117.1 of that Act, or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the Income Tax Act (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the Income Tax Act (Canada) and section 4.1 (1) (a) of the Income Tax Act;

(f) a tax refund;

(g) a benefit paid under section 22, 23 or 23.2 of the Employment Insurance Act (Canada) to any person in the family unit.

APPEAL NUMBER
2021-00050

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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/05/20

PRINT NAME

David Handelman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/20

PRINT NAME

Rosalie Turcotte

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/20