

**Part C – Decision Under Appeal**

The Appellant is appealing a decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated July 20, 2023 (the “Reconsideration Decision”) on a reassessment requested by the Appellant.

The Reconsideration Decision denied the Appellant’s request to replace a July 2023 disability assistance cheque that had been cashed but which the Appellant claims was never received.

**Part D - Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Regulation (the "Regulation"):*

Section 77

*Employment and Assistance Act*

Section 24

(See attached Appendix for text of the above)

**Part E – Summary of Facts**

The hearing took place by teleconference. At the start of the hearing the panel Chair enquired whether the Appellant had the Appeal Record that the Tribunal records show as delivered July 27, 2023. The Appellant stated that his mail arrives at the front desk of his building and that he picks it up from there, but he had not received the Appeal Record. He said he still wanted to continue and would present his case with what he had on hand. He said he needed to receive funds promptly because he was under physical threat from people he owed money to and was already suffering a broken nose. The panel Chair explained the hearing process and told him that the decision would not be provided for up to 3 weeks. He was distressed by this but participated in the hearing as scheduled. He was advised, later in the hearing, of some steps that he might take to obtain crisis funds for the meantime.

The following is a summary of the facts, as found by the panel, from the evidence presented.

On June 21, 2023, a cheque designated as “To [the Appellant]” was cashed representing the Appellant’s disability assistance for July (the “*July Cheque*”)

Some days after the disability assistance cheque was to arrive (the Appellant said 6 days), the Appellant checked with the front desk of his building where his mail is delivered. He asked for his mail, looking for the *July Cheque*. It wasn’t there.

On July 4, 2023, the Appellant went to the ministry offices. He and the ministry agree that he stated that he did not receive the *July Cheque* and requested one. The worker confirmed that the mailing address was correct and began a review.

On July 5, 2023, after receiving an image of the *July Cheque* (from an outside financial institution – the franking says BMO) a ministry worker determined that the cheque had been cashed and that the signature on the back matched “various signatures on file”. The worker determined that the Appellant was not eligible to receive a replacement cheque.

On July 7, 2023, the Appellant requested reconsideration. The appellant reported that the signature on the check was not his and, upon seeing the ministry’s image, denied that it matched his signature. He described characteristics of his signature that he did not see in the image. He provided a further sample for comparison. He also applied for and received crisis funds for food.

On July 20, 2023, the ministry issued the Reconsideration Decision. That decision denied the request to replace the *July Cheque* citing Section 77 of the *Regulation* that allows replacement of unendorsed cheques. It stated:

The ministry finds that [the *July Cheque*] ... has been endorsed and cashed on June 21, 2023. The ministry compared the endorsement signature with your signature on

[three documents] ... and found that the endorsement signature on the cheque matches your signature on file. As such, the ministry does not have the legislative authority to replace the stolen cheque, as it is not unendorsed.

The Appeal Record has an image of the front and back of the *July Cheque*. The back has 3 elements discussed here.

The first element shows an endorsement line over which is a signature that is similar but not identical to the samples reviewed by the ministry or the later sample by the Appellant (all of which are in the Appeal Record).

The second element appears as franking, composed of 6 lines, from when it was cashed. Two of the lines identify the Bank of Montreal and June 21, 2023, amongst others that are all number sequences relevant for processing and audit (expected to disclose the receiving branch or clearing location, account that it was deposited into or of the presenter and other information).

The third element is on the opposite corner to the Bank of Montreal franking. It is a block of text that is illegible.

### **Appellant Submissions**

The Appellant's "Reasons for Appeal" state that "I think someone cashed my cheque. I'm just trying to get my money."

In the hearing the Appellant asserted that he had not received the *July Cheque*, that he had not cashed it. He said that the signature on the cheque was not his and pointed out the differences between it and his.

He described that his mail arrived and was handled by a third party. He lives in a place that receives mail which is then passed, by a clerk, to residents when requested. He stated that the cheque was cashed days before he learned it was missing from his mail.

He expressed a frustration with the presumption that it was his signature and being asked to prove that it was not. He repeated "how am I to do that?" and "I just don't think this is fair" while expressing his financial and safety crisis.

He stated that he was at his home when the cheque was cashed, and he had video to prove that. He did not submit any as evidence or describe the content, location or possessor of the video. He also stated that the cashing bank should have video to show who cashed it "to prove that it's not me that cashed the cheque" and who has the money.

He described his pattern of cashing his cheques at a nearby loan advance/cheque cashing business (that he named) because he had no bank account anywhere. The Appellant stated that he wouldn't be able to cash a cheque at a Bank of Montreal because he didn't have an account there, and although he had one years ago believed that he would not be

welcome because they cancelled it and denied him further services. He stated that he had a balance due when it was closed that remained outstanding.

When asked, the appellant stated that he had not been told to report to the police that the cheque was stolen or to sign any declaration. He said he had been told that the cheque wouldn't be replaced because it was endorsed.

### **Ministry Submissions**

The ministry representative reiterated the Reconsideration Decision reasons. She cited the documents used by the ministry to compare signatures and that the worker "found that the endorsement signature on the cheque matches" them. The ministry cited section 77 of the *Regulation* as allowing the ministry to replace cheques only if "unendorsed", and because the *July Cheque* was 'endorsed' the ministry had no authority to issue a replacement.

The representative described how a person without a bank account could cash cheques at banks even if the bank normally requires the person to have an account there. For large cities, the government can issue a photograph identification card that banks use if a person is cashing an assistance cheque but doesn't have an account. The representative stated that the records did not show that such a card had been issued for the Appellant.

When asked, the ministry representative indicated there was no evidence on file that the appellant had cashed any of his assistance cheques at a bank.

When asked about what happened when the Appellant was told that the *July Cheque* had been cashed, the ministry representative indicated that ministry staff would have asked whether its theft had been reported to the police. In later testimony it was stated that the staff did ask and that they may have suggested, or did suggest, that he report it to the police.

### **Admissibility of New Evidence**

The parties made statements as part of their submissions. Under section 22(4) of the *Employment and Assistance Act* the panel admits those statements as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

**Part F – Reasons for Panel Decision**

The purpose of the panel in appeals, such as this, is not to make a decision as if it was the ministry, but to decide whether the decision made by the ministry is a reasonable application of the laws and reasonably supported by the evidence previously available together with any new evidence admitted by the panel.

The enactment at issue here is section 77 of the *Regulation* which states:

- 77 If satisfied that an unendorsed assistance cheque has been lost or stolen, the minister may issue a replacement as long as,
- (a) in the case of theft, the matter has been reported to police, and
  - (b) in the case of loss or theft, the recipient
    - (i) makes a declaration of the facts, and
    - (ii) undertakes to promptly deliver the lost or stolen cheque to the minister if it is recovered.

The first part of this matter concerns whether the Appellant endorsed the *July Cheque*. The appellant noted differences in the signatures. The ministry made its assessment based upon comparison of signatures but did not address the appellant's specific concerns about differences. There is no evidence that the worker who compared the signatures had any special training or expertise in handwriting analysis. The panel considers such analysis to be both a science and art that involves many things including context. In this case the context, including information in the records, raised red flags about the endorsement that were not considered.

The franking on the back of the *July Cheque* appears to disclose being cashed at a Bank of Montreal, but the Appeal Record, and the ministry records described in the hearing, show that the Appellant had no bank account, anywhere, nor had he been issued identification accepted by a bank to allow cashing without a bank account. The single signature on the *July Cheque* makes it appear improbable that it was negotiated to a third party who then cashed it. Unless someone fraudulently posed as the Appellant, the third person's endorsement would have been added and appear.

There was no evidence that the ministry examined the franking to see if a third party was involved either legitimately or fraudulently, and possibly assist in recovery of funds. The information would be expected to show the branch that processed the cheque, the bank account of the person cashing the cheque, and other relevant information relating to the cashing, verification and audit needs.

There were no apparent steps taken to determine whether the *July Cheque* was cashed in a way that was consistent or at odds with the Appellant's pattern of cashing cheques. His

testimony was that it was inconsistent, but the ministry lacked anything on file to consider that. This pattern change is a relevant circumstance to consideration whether a decision could be made solely on the similarity of the endorsement signature.

The panel finds that without evidence of the worker's expertise and given the red flags it was unreasonable to make the determination that the signature was that of the Appellant without further enquiry. The decision that "found that the endorsement signature on the cheque matches [the Appellant's] signature on file" was not reasonable in the circumstances.

Additionally, stating that they 'match' is not the same as an express finding that the Appellant endorsed the cheque. The panel finds no express statement to support that "endorsement" by the Appellant. It is unclear whether the reasons in the Reconsideration Decision included that the cheque was considered 'endorsed' even if it wasn't the Appellant's signature. If that was the intent, the panel finds that this is not a reasonable application of the enactment. The panel bases this on finding that the spirit and intent of the enactment is that "unendorsed" does not include unlawful endorsement. Indeed, if any signature served as endorsement, then almost no cheques would be "unendorsed" and replaceable, as it is improbable that a cheque could be presented for payment without a signature as endorsement (other than at an automated banking machine). That would run counter to the spirit and intent of the enactment and specifically, the provision of assistance to the most vulnerable.

Given the state of evidence and enquiry by the ministry the panel finds that it was unreasonable for the ministry to have found the *July Cheque* to have been endorsed. In making that finding the panel also finds it unreasonable to consider that any signature, even if fraudulently applied, would render a cheque as not "unendorsed". The panel notes that the ministry did not define "endorse" and thus the panel found it unnecessary to decide whether franking when cashed in person or by machine without a signature would constitute as an 'endorsement' under the *Regulation* or that in the *Bills of Exchange Act* (R.S.C., 1985, c. B-4) "**endorsement** means an endorsement completed by delivery" (bold font as in original).

Finally, the image of the *July Cheque* bears an illegible block on the opposite corner to the Bank of Montreal franking. The ministry representative had no clearer image in the records to be able to read the text. It appears to say "Control #" in larger text, and the first word in a lower section may say "verification" or something similar. The ministry was unable to state whether that block of text was printed on the cheque at issue, franked by the receiving bank, or otherwise. The relevance of this is unknown other than it is another piece of information not available to support a sufficient examination of the evidence.

Given the findings above the second part of this matter is the satisfaction of the conditions for replacement as set out in section 77(a) and (b) of the *Regulation*. The Reconsideration Decision did not reject replacement of the July Cheque on that basis nor did it consider the issue to get to that step. However, in light of the panel's findings above, the panel considers it, and whether it is inevitable that those subsections could not be met. If so, it would make it moot or meaningless for the panel to rescind the Reconsideration Decision. The panel finds that it is not inevitable for the following reasons.

The Appellant and ministry both confirmed that "in the case of theft" the matter had not been reported to the police nor had a declaration and undertaking been provided "in the case of loss or theft", as required by section 77 subsections (a) and (b), respectively. The ministry stated that for cheques considered as stolen it prepares the documentation needed to satisfy subsection (b). It did not express a similar initiative to report the matter to the police to satisfy subsection (a).

The Appellant was unaware until informed, that the *July Cheque* had been cashed, rather than merely delayed or lost. He then considered it to be a case of theft. However, the ministry's assessment was that it was endorsed by the Appellant. and thus, whether it was stolen became irrelevant as did the next steps necessary to allow issuance of a replacement cheque. Had it gotten to that next step, it could have acted on its own to, both, report the theft (s.77 does not impose the reporting upon the Appellant), and to also prepare the subsection (b) documents for the appellant's signature. It could have done this on its own initiative and in its own capability to satisfy the conditions – subject to the Appellant signing the prepared documents. There is also no evidence that the ministry told the Appellant that he must report the matter to the police himself and that it would not do this. The testimony was that the ministry workers either did or would have asked whether the matter had been reported. Testimony was equally equivocal about whether the Appellant was told to report the matter to the police, but he denied being told. At the hearing, the Appellant was asked to report the matter, which he agreed to do, rather than rely upon the ministry to do that.

Until then, the Appellant had only reported it as a theft and fraud to the ministry, and it is reasonable for a disabled and vulnerable person to believe that the ministry would then provide the image of the cheque (with its embedded information) to the police in the circumstances.

In all these circumstances, the ministry's unreasonable finding that the *July Cheque* was endorsed prematurely stopped consideration of satisfaction of the remainder of section 77 of the *Regulation*.

The panel has insufficient evidence to determine whether the *July Cheque* was endorsed and if not whether it is then appropriate for the ministry to act, or require the Appellant to act, within a reasonable time, before rendering a decision on replacement.

In terms of the investigation, while the finding was that the decision was unreasonable in the circumstances, the panel is not suggesting that an investigation must be perfect or exhaustive; but consider that it must be sufficient (including being proportionate to the circumstances) to disclose and examine the evidence. It must do so to allow a panel to confirm that the decision is “reasonably supported by the evidence ... in the circumstances of the person appealing the decision”.

The panel considers that its only solution is to rescind the Reconsideration Decision, this may allow the ministry to investigate further and decide, and to adjust for interim funds provided in the meantime.

### **Conclusion**

The panel finds that the ministry's Reconsideration Decision was:

1. not reasonably supported by the evidence, and
2. not a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel rescinds the Reconsideration Decision.

**Appendix – Relevant Legislation**

***EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION***

[Last amended March 8, 2023 by B.C. Reg. 66/2023]

**Replacement of lost or stolen assistance cheque**

**77** If satisfied that an unendorsed assistance cheque has been lost or stolen, the minister may issue a replacement as long as,

- (a) in the case of theft, the matter has been reported to police, and
- (b) in the case of loss or theft, the recipient
  - (i) makes a declaration of the facts, and
  - (ii) undertakes to promptly deliver the lost or stolen cheque to the minister if it is recovered.

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

**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.

APPEAL NUMBER 2023-0214

**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)

Section 24(2)(a)     or Section 24(2)(b)

**Part H - Signatures**

Print Name

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2023/08/16

Print Name

Corrie Campbell

Signature of Member

Date (Year/Month/Day)

2023/08/17

Print Name

Margarita Papenbrock

Signature of Member

Date (Year

2023/08/16