

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) Reconsideration Decision dated January 17, 2024, in which the ministry found the appellant is not eligible for income assistance as a sole recipient because he is residing with a spouse in a marriage-like relationship as defined in section 1.1 of the *Employment and Assistance for Persons with Disabilities Act* (“Act”).

The ministry determined that the appellant’s spouse is a dependent under section 1 of the Act. The ministry said that under section 5 of the *Employment and Assistance for Disabilities Regulation* (“Regulation”), the appellant must apply for disability assistance on behalf of his family unit which includes a spouse.

### **Part D – Relevant Legislation**

The ministry based the Reconsideration Decision on the following legislation:

*Employment and Assistance Act* - sections 1 and 1.1

*Employment and Assistance Regulation* – section 1(5) and 5

The panel also relied on:

*Employment and Assistance Act* - sections 22(4)

*The full text of the legislation is in the Appendix at the end of the decision.*

**Part E – Summary of Facts****Evidence Before the Ministry at Reconsideration**

The information and documents the ministry had at the reconsideration included:

**1. A Record of Decision indicating that:**

- On November 4, 2023, the appellant applied for income assistance as a sole recipient.
- On November 15, 2023, the appellant contacted the ministry explaining that he is not currently paying rent because he is not working and has no income and no bank accounts.
- On December 5, 2023, the appellant contacted the ministry, explaining that he separated from his spouse (referred to in this decision as “X”) “a long time ago” but they live at the same residence and X supports him financially. The appellant referred to X as his “wife on paper” as they are not divorced.

In this conversation, the appellant said that he had not worked since 2017 but has made deliveries for X’s business as recently as last week. The appellant advised that he does not get paid for that work. The appellant advised that he is registered to meet with a drug and alcohol counsellor and is waiting for a bed in a residential treatment program.

- On December 12, 2023, the appellant attended the ministry office and said that he lives in a 3-bedroom house with X and two family members. The appellant said that he and X are separated. The appellant submitted a Shelter Information form for his current address.
- On December 13, 2023, the ministry conducted an intake interview and asked how the appellant supports himself in terms of food, shelter and other basic necessities. The appellant advised that he had not worked since 2017 due to substance use and associated medical conditions. The appellant explained that X had been supporting him for “several years.”

In the interview, the appellant advised that he and X “are still married on paper.” The ministry asked the appellant when did he and X separate? The appellant replied, “wait a minute, who said we are separated?”

The appellant further advised that he was applying for income assistance to “contribute to household expenses” and possibly receive funding for rehabilitation

for substance abuse. The ministry noted that the appellant lives in a 3-bedroom house with X and two family members, "which suggests that you do not have separate living quarters from your wife in the same home."

- On December 13, 2023, the ministry determined that the appellant was ineligible for assistance as a sole recipient because the information he provided "met the ministry's definition of two spouses residing together in a marriage-like relationship." The ministry determined that the appellant must apply for income assistance "together with your wife as a couple." The ministry said that the appellant "declared to the ministry that you have been solely supported by your wife for several years and you have lived together with your wife at your current address for 8 or more years."
- In Section 2 of the record - Decision to be Reconsidered, the ministry said that it must establish whether any persons residing with the applicant meet the definition of "family unit" or "spouse" under the Act. The ministry explained that if a married couple are separated but not yet divorced, the ministry can determine that the "family unit" does not include the person's spouse.

2. The Request for Reconsideration, signed by the appellant on January 9, 2024, included a typed submission from the appellant. The appellant said that:

- he and X have had separate bedrooms for the last few years and "do not have a marriage-like relationship" as they are separated but not yet divorced.
- He has not held a steady job for the past year due to his medical conditions. His health has deteriorated in the past 8 months, and he is no longer employable.
- He has a "desperate need for financial aid" as he is on the wait list for a 3-month rehabilitation program.
- He is requesting income assistance and shelter aid to pay for his shared accommodation. He would also like complete financial aid to fund the treatment program.

3. A ministry Shelter Information form showing a rental start date of March 1, 2016, for a shared house. The form indicates that four adults live in the home and the appellant is responsible for 50% of the rent.

### **Additional evidence submitted after the Reconsideration**

Following the reconsideration decision the appellant submitted a Notice of Appeal, received by the Tribunal on February 2, 2024. The Reasons for Appeal section was not completed. Both parties submitted additional documents summarized below.

*Ministry's submission*

The ministry attended the hearing by telephone. The ministry stated that the appellant dropped off a package at the ministry office on February 2, 2024. The package consisted of documents for the appellant's divorce proceedings and the ministry confirmed that the documents had not been sent to the Tribunal. The ministry said it would submit the documents, and the Tribunal received the package (29 pages) on February 26, 2024.

The package of documents from the appellant's divorce proceedings included:

**1.** A Notice of Application in the Supreme Court of British Columbia, signed by X's lawyer on January 19, 2024. The notice indicates that the spouse ("X") is seeking a court order for exclusive occupancy of the family residence and use of its contents.

Part 2 of the Application: Factual Basis indicates that:

- X and the appellant were married in 1997 and separated on July 1, 2016. Since separation, the appellant has lived with X and two adult family members in the same house. X has rented the home since July 1, 2016.
- The appellant has an addiction to alcohol, is "drunk all the time," and becomes aggressive towards X and the family members while intoxicated. The appellant's drinking has taken a toll on the mental health of X and the two family members and caused serious disruption to their daily routines. The situation is deteriorating due to conflict with the appellant. One of the family members has threatened the appellant. X is worried about the situation becoming violent.
- The appellant has sought treatment for his addiction several times (including hospitalization) but "never takes responsibility for his drinking." The family has exhausted their efforts to help the appellant and asked him "multiple times" to leave the family residence. The appellant has refused to leave even though "he could stay with extended family or rent his own place."
- X is paying the rent and wants to live peacefully with the family members in the home.

**2.** A Notice of Family Claim in the Supreme Court of British Columbia signed by X's lawyer on January 19, 2024. X is seeking an order for divorce. The claim confirms that date of marriage, and a separation date of July 1, 2016. There was no prior agreement or court proceedings relating to the claim.

**3.** A Schedule to the Notice of Family Claim (Schedule 1- Divorce) indicating that X is asking for an order for divorce on the grounds that she and the appellant have lived separate and apart since July 1, 2016. There have been no attempts to reconcile since then. There is a hand-written notation on the Schedule, crossing out "July 1, 2016" and inserting "2023."

- 4.** An affidavit from a family member (referred to in this decision as “Y”) dated January 19, 2024, stating the following:

  - Y resides in the home with the appellant. Y wants the appellant removed from the household as the appellant’s behaviour is creating a “toxic environment” causing Y’s mental health to deteriorate.
  - The appellant’s disruptive behavior includes lying on the floor or sofa while intoxicated, “refusing to go to sleep in his bedroom.”
- 5.** A letter from a psychiatrist who has been working with Y. The letter, dated January 17, 2024, states that Y has a mental health condition which is at further risk of deterioration if the appellant continues to live in the home.
- 6.** A letter to the family court registry, from X’s lawyer, dated January 19, 2024. The letter repeats the information in X’s application for occupation of the family home. Above the date of the separation (July 1, 2016), there is a hand-written notation that says “March 17, 2018.”
- 7.** An affidavit from X dated January 19, 2024, repeating the information in the application for occupation of the family home. The affidavit contains hand-written notations that include the following:

  - “March 1, 2018, and 2023” is written next to the sentence that said the date of separation is July 1, 2016).
  - The word “██████” is written next to the paragraph that says X asked the appellant multiple times to leave the residence.
  - “No income” is written next to X’s statement that suggested the appellant can rent his own place.
- 8.** A letter from the appellant’s landlord with attached Notice of Rent Increase - Residential Rental Units, signed by the landlord on October 25, 2023. The notice names the appellant and X as tenants.
- 9.** A screenshot of a cheque for the rent, payable to the landlord and dated January 1, 2024. The cheque is from a company and signed by X.

*Appellant’s submission*

- 10.** The appellant brought the same documents to the hearing, with an additional 1-page letter from a social worker at a local hospital, dated February 2, 2024. The letter states that the appellant was admitted for an acute medical condition on January 30, 2024, Due to the

hospital admission, the appellant was unable to attend an appointment at the ministry office to submit supplementary documents for his income assistance application. The appellant requires some leeway and will follow up as soon as he is discharged.

#### *Admissibility - additional documents*

Neither party raised any objections to the documents being admitted as evidence. The family court documents, additional shelter information, and letters (from X's lawyer, Y's psychiatrist, and the appellant's social worker) provide an update on the appellant's relationship with X. The documents also detail the appellant's living arrangements and medical condition. The panel finds that the documents are admissible under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

#### **Testimony at the hearing**

##### *Appellant's testimony*

The appellant stated that:

- He lives in a 5-bedroom house with X and the two family members. He and X are separated but currently live under one roof. The property assessment for the residence indicates 3 bedrooms and 4 bathrooms. However, there is one bedroom on the main floor, one in the basement, and 3 upstairs. Legally, these rooms are all considered bedrooms because each one has a built-in closet.
- He has one of the upstairs bedrooms and X has a separate bedroom upstairs. Y has the bedroom in the basement. The master bedroom is empty because the other family member who occupied that room currently lives in another country.
- He has lived in the house since 2016 and has "effectively been separated since 2017 aside from one afternoon on [his] birthday in 2018."
- All living expenses are paid through a company. The appellant registered the company in 2013, with 50% of the shares issued to X. The appellant's name is no longer on the registration documents because X "took over all the shares."
- The divorce proceedings were initiated by X after the date of the Reconsideration Decision. The court documents were served on the appellant around January 21 or 22, 2023. He submitted them to the ministry at the earliest opportunity by attending the ministry office on the day he was discharged from the hospital.
- X has agreed to put a pause on the divorce proceedings until the appellant completes residential treatment for his addiction to alcohol. He is in the queue for rehabilitation.

- He is not able to hold a job and suffers from seizures, including a recent seizure on February 13, 2024. He bit his tongue; could not swallow; had difficulty with fluids and solid food; and was in the hospital for 3 nights at the beginning of February. He was prescribed anti-seizure medication.
- He has experience with a specific occupation and originally worked in a retail store, followed by self-employment since the mid 1990's. He currently has no income but does some work on a very small scale, with Y as an assistant since the appellant suffers from shaking hands when withdrawing from alcohol.
- His credit card was canceled, and he can't use a mobile phone for financial transactions. Any money he earns from the small-scale work is paid to his best friend via e-transfer. He gives any cash in hand to X, to put in a safe so that he can't buy alcohol.
- He cannot have access to any money; otherwise, he could use it to purchase alcohol. If he needs to buy something such as a new thermostat for the home, he asks X for \$20. The last time he drank alcohol was February 10, 2024. He needs anti-seizure medication for 3-4 days after he quits drinking.
- He expects to enter the rehabilitation program in late March or early April 2024. He needs money for the program because it costs \$12,500 per month. X's company is currently "picking up the bill" for the appellant's share of the rent."

In response to questions from the ministry regarding social/familial interdependence with X, the appellant said that he explained the relationship to one of his extended family members. Everyone on his side of the family knows that he and X are separated but living under the same roof.

He told his relatives that the relationship was not working out, but he didn't know when or how they would get divorced. He asked his family to treat him "with the same respect as if X were [his] wife." The appellant explained that over 25 years of marriage he formed relationships with X's relatives. He still goes to X's sibling's home "but it is up to X to explain that." The appellant doesn't know if that sibling is aware of the separation, but another (of X's siblings) knows about it.

The appellant said that X presents as a couple, but he does not. He sits on his own at family gatherings, but they drive there in the same car to save gas. The appellant explained that he "treats X like a human being to keep an amicable relationship." He has asked X to stop wearing her wedding ring, but she continues to wear it.

When asked about doing unpaid work for X's business, the appellant said that the work he did was very minimal, "only a half hour to one hour once a month" when he picked up supplies for the business. The appellant explained that X has 2 companies and another property, but everything is in her name only.

When asked about the hand-written notations on the documents submitted to the ministry, the appellant explained that he wrote "2023" on the Schedule 1 – Divorce "as a footnote" to indicate the last time he and X "had a hug." The appellant said that the date of separation is March 1, 2018 (not July 1, 2016, as stated in the court documents). The appellant acknowledged that the date of separation will need to be clarified in the legal proceedings.

When asked what his plans are after he finishes "rehab," the appellant said that he will go back to his current residence and actively look for accommodation. The appellant explained that he cannot look for accommodation from the rehabilitation facility because he will be undergoing treatment and won't have access to a cell phone.

#### *Ministry's testimony*

The ministry stated its argument for the appeal, and provided the following information:

- When the appellant dropped off the package with the divorce documents, he asked if he should re-apply for assistance or wait for the Tribunal decision.
- The appellant indicated that he would like assistance payments backdated if successful with his appeal. The ministry suggested that he go through with the Tribunal hearing.

#### *Admissibility – oral submissions*

There were no objections raised by either party regarding the admissibility of new evidence. The panel finds that the testimony at the hearing adds further clarity and detail about the nature of the relationship with X as well as the appellant's living arrangement, medical conditions, and finances. The appellant also provided more detail on being served with the divorce documents including his differing view on the date of separation.

The panel finds that the evidence given in the oral submissions is admissible under section 22(4) of the *Employment and Assistance Act* 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 issue on appeal is whether the ministry's determination that the appellant is not eligible for disability assistance as a sole recipient because his family unit includes a dependent spouse (as defined in the Act) is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Was the ministry reasonable to find that the appellant must apply for income assistance on behalf of his family unit which includes X?

*Appellant's position*

The appellant's position is that the ministry's decision is unreasonable because he and X are separated even though they live at the same residence. The appellant submits that:

- Living under one roof is "legally allowed" even when spouses are separated.
- The ministry overlooked that the appellant may not be using one of the bedrooms; he could be "sleeping on the couch." He "doesn't need a separate bedroom in order to still be separated." The appellant added that he understands why the ministry based its decision on the belief that the home has 3 bedrooms. The assessment documents say "3-bedroom" but the house has 5 bedrooms.
- The reason he is financially dependent on X is because he has no money, no credit card or bank accounts, and no assets/property in his name. The appellant emphasized that he is unable to work due to his medical condition. He cannot have access to money that he could spend on his addiction. The company that he originally started, while now in X's name, is paying his rent and living expenses; X is not supporting him directly.
- If he told the worker "Wait a minute, who said that we are separated," the remark was taken out of context. What he meant is that he and X "are not living separately under different roofs."
- He applied for income assistance to "indirectly contribute to the household." He wants to "hand money to X and draw from it for non-alcohol related expenses."
- The documents submitted to the ministry office confirm that he and X are separated. His main priority is to make the divorce amicable and continue to treat X and her family with respect. The appellant feels that the ministry representative "over-defended" the reconsideration decision despite the court documents and his clarifications on the nature of the relationship.

*Ministry's position at the reconsideration*

The ministry's position at the reconsideration was that the appellant's family unit includes a "spouse" under the Act. The ministry concluded that:

- the appellant and X are "spouses" under section 1.1(1)(a) of the Act because they are married to each other, and
- the relationship meets the criteria for dependency/inter-dependency under section 1.1(1)(c) of the Act because the appellant has lived with X for more than 12 months; is financially dependent on X, and the relationship has social and familial interdependence consistent with a marriage-like relationship.

The ministry argued that the relationship with X demonstrates financial dependence consistent with a marriage-like relationship because:

- The appellant and X have lived at the same address for 8 or more years.
- X has been the appellant's sole source of financial support for several years as the appellant has not worked since 2017. The appellant declared that he has no bank accounts of his own.
- The appellant recently made deliveries for X's business but was not paid for the work.

The ministry further argued that the relationship with X demonstrated social and familial inter-dependence consistent with a marriage-like relationship because:

- The appellant said, "Wait, who said we are separated" when asked about the length of the separation.
- The appellant did not provide any information to suggest that he or X "have the intent to eventually move out from your shared residence." Although the appellant declared that he has been separated for several years, there was no information "to explain why you have not yet finalized your divorce" considering the extended period of separation. There was no indication that the couple was "actively pursuing a divorce with the intent to fully separate."
- The appellant was requesting income assistance "with the intent to contribute to ongoing household expenses at your shared residence."

The ministry concluded that X is the appellant's "spouse" and a "dependant" in his family unit under the Act. The ministry said that the appellant was therefore not eligible for income assistance as a sole recipient.

*Analysis - Evidence at the reconsideration*

The panel would find that the ministry's decision is reasonable **if** the only evidence available was the information before the Minister at the reconsideration. That evidence showed that the appellant and X were legally married and have continued living together as a married couple at least since 2017 (based on the Shelter Information form.)

The submission for the reconsideration indicated that while the appellant and X "had separate bedrooms for many years" they continued to reside together. The evidence at the reconsideration did not indicate that X wanted a divorce and exclusive occupancy of the residence.

At the reconsideration, the ministry found that X was the appellant's "spouse" under the first prong of the test in section 1.1(1)(c) of the Act because the appellant and X "have resided together for at least the previous 12 consecutive months." While this section applies to two persons who live together but are not legally married to each other, the requirements for married persons in section 1(5) of the Regulation were established on the original evidence which showed financial dependence, and social and familial dependence consistent with a marriage-like relationship.

The requirement for financial dependence was met because the appellant remained financially dependent on X over a long period time, without any plan for an eventual separation of finances. The appellant's financial dependency was consistent with a marriage-like relationship because there was no divorce application, separation agreement or letter to X requesting spousal support or maintenance.

The evidence at the reconsideration also suggested social and familial inter-dependence consistent with a marriage-like relationship. The appellant was waiting for a 3-month residential "rehab" program for his medical condition, but in the original submissions he did not indicate an intention to find alternate accommodations once he completed his treatment.

Furthermore, the appellant had not detailed the extent of his work in X's business at the Reconsideration, and he told the ministry that he was applying for income assistance to contribute to "household expenses." He did not say that he would pay only his portion of the rent as a tenant or roommate in the home.

*Ministry's position at the hearing of the appeal*

The ministry acknowledged that the additional evidence provided after the Reconsideration Decision indicates that the appellant is getting divorced. The ministry conceded that the first prong of the test in section 1.1(1)(c) of the Act, "they are married to each other" may no longer be satisfied because the court documents indicate that the appellant is legally separated as of July 1, 2016.

The ministry said that the date of separation remains unclear because "there are a lot of different dates on the documents" considering the hand-written notations. The ministry noted that the appellant also expressed a different date in his testimony at the hearing.

The ministry maintained that it needs to base its decision on all criteria in section 1.1(1)(c) of the Act. The ministry said that to be considered "spouses", the relationship would still need to meet the criteria for financial dependence/inter-dependence, and social and familial inter-dependence.

In discussions with the panel and the appellant, the ministry representative said that she wasn't sure if these other criteria are still met. She noted that the court documents filed on January 19, 2024, were the first indication that the appellant's relationship with X may not meet the definition of "spouse." The ministry acknowledged that the appellant submitted those documents at the earliest opportunity.

The ministry representative noted that the appellant "is still financially dependent on X and they live under one roof." She also noted that the appellant is unable to work and does not have an income.

The representative acknowledged that the family no longer wants the appellant to live in the home, but she was not sure that there is no longer social and familial inter-dependence. The representative noted that X still presents as a couple in family situations according to the appellant's testimony.

The representative explained that she was not "over-defending" the Reconsideration Decision as ministry decisions "are not personal." Rather, "it is the ministry's job to interpret the legislation. The ministry is not against [the appellant]. He can reapply for assistance if his circumstances have changed."

## **Panel's Decision**

### **Appellant's marital status – Employment and Assistance Act, section 1.1(1)(a)**

The panel finds that the Reconsideration Decision is no longer reasonable in view of the new evidence submitted at the hearing. The divorce papers filed by X establish the appellant's marital status as "separated."

While the appellant said that the separation occurred in 2018, the panel gives more weight to the date of separation indicated in the court documents because those documents contain sworn evidence (before a commissioner for taking affidavits in British Columbia). The panel accepts as fact that the date of separation is July 1, 2016, as indicated in X's affidavit.

The criterion for "spouse" in section 1.1(1)(a) of the Act, "they are married to each other," may still be met "on paper" because there is no divorce order. However, the appellant and X are no longer spouses because the new evidence shows that they are not spouses under section 1(5) of the Regulation which requires dependence/interdependence consistent with a marriage-like relationship.

### **Section 1(5) Employment and Assistance Regulation**

In determining whether there is financial dependence/inter-dependence, and social and familial inter-dependence consistent with a marriage-like relationship, the applicable legislation is section 1(5) of the Regulation which sets out these criteria for two persons who are married to each other, as opposed to two persons who are not legally married but have resided together "for at least the previous 12 consecutive months."

Section 1(5) of the Regulation applies in the circumstances of the appellant because the appellant and X are still married. While X has filed for divorce, there is currently no order for divorce, so the appellant and X remain married.

### **Financial dependence/inter-dependence consistent with a marriage-like relationship – Employment and Assistance Regulation, section 1(5)(a)**

The ministry's decision regarding the appellant's financial dependence on X is not reasonable because the new evidence establishes that the requirement for financial dependency/inter-dependency under the definition of "spouse" is not met. While the appellant and X are still married "on paper", with the appellant dependent on X for

support, the financial dependency is not consistent with a marriage-like relationship.

The additional submissions combined with the original evidence confirm that the appellant is unable to be employed due to his medical conditions. He has no income or assets. Even when the appellant earns some cash for work “on a very small scale,” he does not keep the money; he transfers it to his best friend so that he can’t spend it on alcohol. If he has any cash, he gives it to X to keep in a safe.

The appellant has a serious medical condition, and X has been administering his finances to assist him in managing his addiction. While X’s willingness to manage the couple’s finances could be viewed as consistent with a marriage-like relationship, the court documents indicate that X has exhausted her efforts to help the appellant.

In her affidavit, X suggested that the appellant should live with his relatives or rent his own place. Even the original evidence indicated some financial separateness because the appellant’s rent is paid through X’s company and not by X personally.

While the appellant is incapable to administering his own finances due to his medical condition, the divorce order will inevitably include financial terms. Given the legal separation/application for divorce and X’s unwillingness to continue to help the appellant, the appellant’s financial dependence on X is not consistent with a marriage-like relationship.

**Social and familial interdependence consistent with a marriage-like relationship - Employment and Assistance Regulation, section 1(5)(b)**

The ministry’s decision is not reasonable despite the long-term nature of the living arrangement. The new evidence indicates that both X and Y want the appellant to move out. They state in their affidavits that they no longer want the appellant to be part of the family because his addiction has created escalating stress and turmoil in the home and has especially impacted Y’s mental health.

Y’s affidavit confirms further separateness between the appellant and X. The affidavit from Y confirmed that the appellant has his own room. The appellant sleeps on the floor or couch when he is not using the room.

The new evidence indicates that the family situation has deteriorated to the point that X is worried about a violent encounter between the appellant and Y. X wants the appellant to move out so that she can remain in the home and live in peace with Y and the other family

member. These facts do not show familial inter-dependence consistent with a marriage-like relationship.

In the panel's view, there is no longer any social and familial inter-dependence because the appellant is seen by both X and Y as a burden in the home rather than a contributing member of the family. While X may still be wearing a wedding ring and not disclosing the separation to her inner circle, she is seeking an order for divorce as of January 19, 2024, as well as an order for exclusive occupation of the home.

The appellant clarified that the nature of his work for X's business is minimal and infrequent and while he is committed to an amicable relationship, he does not present as a couple to his or X's relatives. The appellant has asked X to not wear her wedding ring at family gatherings and there was no evidence of them attending other social functions together. The appellant's evidence is that he presents them as a "separated" couple.

Although X continues to wear her wedding ring, the boundaries are clearer now, considering the legal separation. The panel also acknowledges that the appellant has no control over the way that X presents the relationship.

Based on the new evidence, which the panel has admitted, the appellant and X do not have social and familial inter-dependence consistent with a marriage-like relationship. The Reconsideration Decision is not reasonably supported by the evidence.

### **Employment and Assistance Regulation, section 5 – requirement to apply on behalf of the family unit**

The ministry's decision is no longer reasonable considering the legal separation and divorce proceedings. Section 5 of the Regulation requires the applicant to apply for assistance on behalf of his family unit. Under section 1 of the Act, "family unit" includes the applicant's dependents.

The submissions on appeal, indicate that the appellant does not have any dependents. It has been established on the additional evidence that X is not the appellant's "dependant" because she and the appellant do not meet the definition of "spouses" in section 1.1 of the Act and section 1(5) of the Regulation.

**Conclusion**

In view of the facts of the case and the evidence presented on appeal, the panel finds that the Reconsideration Decision is not a reasonable application of the legislation in the circumstances of the appellant.

The appeal submissions confirm that X is not the appellant's "dependant" or "spouse" for the purpose of the Act because the appellant and X are now legally separated, and do not financial/social/familial dependence or inter-dependence consistent with a marriage-like relationship.

The appeal submissions clarified the nature of the relationship. The divorce filing supports the appellant's original statements to the ministry, that he and X have been separated for several years. Although they remain married "on paper", the intention to divorce is now established.

While the appellant and X continue to live at the same address, they do not have financial and social/familial inter-dependence to be considered "spouses" under the Act. The court filings indicate a volatile relationship that has deteriorated in recent months. X wants the appellant to move out and is seeking an order for exclusive occupation of the home. X is currently supporting the appellant as the appellant has no income, but the divorce proceedings will result in a legal separation of finances.

The panel rescinds the Reconsideration Decision and sends it back to the Minister to determine the amount of income assistance for a sole recipient.

The appellant is successful with his appeal.

**Schedule of Legislation****Employment and Assistance Act****Interpretation**

**1 (1)**In this Act:

**"dependant"**, in relation to a person, means anyone who resides with the person



and who

- (a) is the spouse of the person, or
- (b) is a dependent child of the person;

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

**"spouse"** has the meaning in section 1.1:

### **Meaning of "spouse"**

**1.1 (1)** Two persons are spouses of each other for the purposes of this Act if

- (a) they are married to each other,
- (b) they declare to the minister that they are in a marriage-like relationship, or
- (c) they have resided together for at least the previous 12 consecutive months and the minister is satisfied that the relationship demonstrates
  - (i) financial dependence or interdependence, and
  - (ii) social and familial interdependence

consistent with a marriage-like relationship.

**(2)** The Lieutenant Governor in Council may prescribe circumstances in which two persons are not spouses of each other for the purposes of this Act.

### **Employment and Assistance Regulation**

#### **Applicant requirements**

**5** 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.

### **Employment and Assistance Regulation**

#### **Definitions**

**1** In this regulation:

**(5)** For the purposes of the Act and this regulation, two persons who are married to each other are not spouses if the minister is satisfied that the relationship does not demonstrate

**(a)** financial dependence or interdependence, and

**(b)** social and familial interdependence

consistent with a marriage-like relationship.

APPEAL NUMBER 2024-0044

**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

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2024/03/07

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2024/03/07

Print Name

Robert McDowell

Signature of Member

Date (Year/Month/Day)

2024/03/07