

Welfare Overpayment Allegations: Legal Issues

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Common client issues

Overpayment-related files may present in your office in four common ways:

a) Inquiry about voluntary disclosure

A client wants to know if they should tell the Ministry about something affecting eligibility that they have not disclosed before (e.g. undisclosed income, change in marital status etc.). They want to know what can happen if they do tell MSDPR.

b) Compliance review and section 10

A client has received a letter from the Ministry's Prevention and Loss Management Services ("PLMS" branch), asking the client to provide documents by a certain date to show they were or are eligible for benefits.

Common client issues (2)

c) Notification of Overpayment letter

A client has received a letter from PLMS notifying them that the Ministry is are thinking of assessing an overpayment, and why, and a draft Overpayment Chart from PLMS setting out what the Ministry thinks the overpayment may be.

The letter invites the client to provide more information to PLMS by a set deadline.

d) Overpayment notification/decision

A client has a decision from PLMS finding that they owe an overpayment e.g. of \$ 8 000. They disagree and want to know if/when they can dispute it.

Legislation: Overpayments

Employment and Assistance Act, s 27 and

Employment and Assistance for Persons with Disabilities Act, s 18 are identical

Overpayments

27 (1) If income [or disability – EAPD s 18] assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3)

Alleged Overpayments

Reconsideration and Appeal rights

Employment and Assistance Act

27 (2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3)

- Section 17(3): right to appeal reconsideration decisions to the Employment and Assistance Appeal Tribunal (EAAT)
 - a) Reconsideration: MSDPR decisions about overpayments can be reconsidered, both as to their existence and amount
 - Existence: client can argue they do not owe any overpayment by showing they met the eligibility criteria for the benefits received; and
 - Amount: client can argue the amount of overpayment is wrong, e.g. mis-calculated
 - b) Appeal to the EAAT: MSDPR reconsiderations about overpayments can be appealed to the EAAT, but only as to their existence

Compliance reviews

- Compliance reviews are conducted by PLMS to confirm past and present eligibility under s 34 of the EA Regulation, and s 30 of the EAPD Regulation
- Cases selected for review either
 - at random, or
 - based upon data matches (e.g. from CRA or EI); or
 - fraud allegations received from third parties (e.g. fraud allegation reporting form online, direct calls to PLMS)
 - fraud allegations received from other Ministry staff.
 - EAWs also refer cases to PLMS in some situations where an alleged overpayment is based on client error and e.g.
 - Estimated amount of overpayment is over 3 months assistance
 - There is an alleged spousal or dependency relationship
 - There is a prior client-error overpayment on the file

Administrative Fairness: Compliance reviews

- When PLMS conducts a compliance review, section 10 of the EA and EAPD Acts provide the legal authority to request information and verification of any information relevant to eligibility
- The Ministry is always required to provide its services in an administratively fair manner; this includes in the compliance review process

Some limits on what information/verification can be requested under section 10:

- Only information that is relevant to an eligibility issue can be requested
- Requests cannot go back more than six years (limitation period issue)
- 1998 BC Supreme Court decision *Stow v BC* (1998 CanLii 5694)

“nothing in the Act or Regulations can be interpreted to require an applicant for income assistance to produce documents which, for him or her, are impossible to produce”

Duty to accommodate

- The *BC Human Rights Code* applies to the Ministry at all times and prevails over Ministry practice, policy and legislation
- The Code protects BC residents from (among other things) discrimination in the provision of services on enumerated grounds, including physical and mental disability
- the Ministry has a legal duty to accommodate individual needs to the point of undue hardship where the need is based on a protected ground in the Code (such as disability)
- Relevant to many aspects of compliance reviews and consequences of overpayments

Compliance Review policy and section 10

- The Ministry's Compliance Review policy sets out specific procedures MSDPR is to follow to ensure requests for information and documents are administratively fair
- Policy includes a detailed schedule for sending out request letters, timeframes for response, second request letters, cheque signalling as a last resort and how cheque signals can be removed
- If a client needs more time to get or submit documents, or a client needs help to do so, contact MSDRP and request this
- Make pro-active accommodation requests: if the need for help or more time is related to a disability, advise PLMS and request the disability be accommodated by extending deadlines and/or having staff help obtain documents if needed

Section 10 sanctions – recent changes

- Until December 31, 2019, the only sanction available to the Ministry if information was not provided as required under section 10 was to cut a family unit off benefits until it complied with section 10.
- On January 1, 2020, the legislation was amended (see EA Regulation section 32 and EAPD Regulation section 28) Now, the Ministry may:
 - reduce a family unit's benefits by \$25 per month; OR
 - declare them ineligible until they comply.
- Further, if satisfied that someone is homeless or at imminent risk of homelessness, the Ministry does not have the option to cut their benefits off under section 10.

Possible results of compliance reviews

1. No change in eligibility: client found eligible for all benefits received
2. Administrative underpayment: client found to have received less than was eligible for.
3. Overpayment established – repayment required by no other action. Overpayments are repaid at \$10/month unless client requests higher deduction.
4. Overpayment established and sanctions applied
5. Case referred for criminal charges for fraud under the Criminal Code or under the Employment and Assistance legislation

Client error or Ministry error

- Overpayments caused by Ministry error occur when a client reports all changes affecting eligibility properly to MSDPR, but human error, incorrect application of law or policy etc. leads to the the client receiving benefits they were not technically eligible for;
- EA Act and EAPD Acts treat all overpayments the same, regardless of cause.
- Internal MSDPR procedure differs
 - EAWs can calculate overpayments of any amount due to Ministry error. Not referred to PLMS;
 - MSDPR does not apply sanctions for inaccurate or incomplete reporting to clients where overpayment was due to Ministry error
 - **MSDPR's Estoppel Policy** means MSDPR may be unable to collect some overpayments due to Ministry error (covered in a later slide)

Overpayments and possible Criminal Charges

History:

From 2002 to August 1, 2015, the welfare legislation imposed an automatic lifetime ban on welfare eligibility on anyone who was convicted under the *Criminal Code* of welfare fraud

- About 185 people were convicted of criminal welfare fraud in that 13 year period. Many of them may not know the ban has been lifted.
- Other clients may think a lifetime ban still exists and this may discourage them from disclosing to the Ministry.
- The lifetime ban was eliminated in full as of August 1, 2015

Possible Criminal Charges (1)

Currently

- Two kinds of charges can be brought in relation to welfare benefits:
 - Fraud (under or over \$5 000) under the Criminal Code of Canada
 - A statutory offence under section 31 of the EA Act, or section 22 of the EAPD Act, of knowingly supplying false or misleading information with respect to a material fact

Guilty intent is required:

- A fraud charge requires proof of an element of intention. i.e. that the accused acted knowingly and intentionally by deceit or falsehood to defraud
- Statutory offences also require proof of an element of intention: that the person knew the information provided was false or misleading

Criminal charges are relatively rare, but are serious.

Make PLMS aware of any disabilities related to non-reporting or mitigating circumstances as soon as possible, to client's lack of any criminal intent is clear.

If at any point a client has concerns about possible criminal charges (e.g. when considering a voluntary disclosure or other) refer them to a criminal lawyer for advice.

Possible Criminal Charges (2)

- MSDPR can contact Crown Counsel to recommend/request that charges be laid in a specific case
- This is not binding. Only Crown Counsel can approve charges in BC
- If a client is charged with welfare fraud or a statutory offence under the welfare legislation, have them **apply for legal aid right away**
- Most criminal law lawyers are not familiar with the welfare legislation. Offer them your assistance in understanding the situation
- If a client is convicted of welfare fraud or a statutory offence, in addition to any criminal sentence (e.g. jail time and/or probation) they will have an “offence overpayment” with the Ministry

Convictions: Offence Overpayments (1)

Type of Conviction	Penalty	How long the penalty lasts
Criminal Code	\$100 per month	Until what you owe is paid
Offence under the EA or EAPD Act first conviction (after August 1, 2015)	\$100 per month	12 months (or until what you owe is paid, which ever is less)
Offence under the EA or EAPD Act, second conviction (after August 1, 2015)	\$100 per month	24 months (if you owe less than \$2400, until what you owe is paid)
Offence under the EA or EAPD Act, third conviction or more (after August 1, 2015)	\$100 per month	Until what you owe has been paid

Convictions: Offence Overpayments (2)

The Ministry has a discretion not to apply the \$100 minimum deduction for an offence overpayment in some circumstances, including where:

- a) The Ministry is satisfied that the family unit is homeless or at risk of becoming homeless; OR
- b) The Ministry is satisfied that the \$100 deduction would result in danger to the health of a person in the family unit

Overpayments:

Sanctions for Inaccurate/Incomplete Reporting (1)

- Where an overpayment arises from inaccurate or incomplete reporting, the Ministry “may” (i.e. has a *discretion* whether or not to) impose a sanction. See EA Act s 15., and EAPD Act s 14.1
- The possible sanction is a \$25 reduction in the family unit’s benefit rate.
- Duration of sanction varies:
 - 1st time: 3 months; 2nd time: 6 months; 3rd time or more: 12 months

Overpayments:

Sanctions for Inaccurate/Incomplete Reporting (2)

- The discretion whether or not to apply a sanction to a particular client's file must be exercised reasonably, taking all relevant considerations into account
- Sanctions policy: *"When applying sanctions, the ministry has the discretion to not apply a sanction where there are mitigating circumstances or the non-compliance is a one-time occurrence."*
- If reporting problems were affected by a disability, provide evidence and request accommodation. Innocent mistake or confusion should also not lead to sanctions.
- A decision to apply a sanction can be reconsidered and appealed (independently of any decision about the overpayment)

Estoppel Policy: Ministry error overpayments

Source: “Recoveries” topic, MSDPR policy manual, under “Reasons not to recover an overpayment”

“An estoppel defence protects a recipient, who through no fault of their own receives a payment they were not eligible to receive.”

Three criteria for estoppel defence to collection of an overpayment caused by Ministry error:

1. *A recipient* received assistance that he or she was not eligible to receive, and,
2. The ministry represented to the recipient that he or she was eligible for the assistance.

This could be an explicit statement by the ministry that the person was eligible, or,

An implicit statement by the continued payment of assistance by the ministry despite having all the information needed to determine the recipient was actually ineligible (e.g. the client had provided sufficient evidence to determine their eligibility); and,

3. The recipient had relied on the funds to his or her detriment (detrimental reliance).

This detrimental reliance is when a client with non-discretionary income adjusts their living expenses to the increased amount of assistance. It is generally accepted that a person in receipt of assistance will adjust their living expenses to an increased amount of assistance and therefore in almost all cases there will be detrimental reliance on the increased assistance.

Estoppel Policy: Ministry error overpayments

- Estoppel policy comes from section 87 of the provincial *Financial Administration Act*
- Policy in effect only since February 1, 2019
- Where an estoppel defence applies, the overpayment cannot be collected
- MSDPR policy requires staff who are establishing a Ministry error overpayment to proactively review the estoppel criteria.
- If an overpayment meets those criteria, it is referred to a Ministry supervisor. MSDPR has an Estoppel Review Team
- Final decisions about whether an estoppel defence exists in a particular case are made by Debt Management in the provincial Financial Services Branch

Fact Pattern

Walter Brown contacts your office because he is worried that he is not filling out his monthly reports properly.

During your intake interview you learn that Walter is a single man who lives alone and has the PWD designation. Walter tells you he has been working as a delivery driver for Skip the Dishes and Door Dash since February. When asked, Walter tells you that he has not been declaring his earnings as he does not have any paystubs and was confused by the monthly report. Walter does not know exactly how much he has earned but believes it is between \$2,000 and \$2,500 per month.

Walter also tells you that he applied for PWD due to a brain injury that left him with long term cognitive impairment.

- 1. Gathering information/documentation**
- 2. Providing information/advice**
- 3. Advocating with the Ministry**

Questions?

Ministry of Social Development and Poverty Reduction

Overpayments

Presented to: 2020 Virtual Provincial Training
Conference for Legal Advocates

Date: November 5, 2020

Service Commitment and Standards

The ministry is committed to providing quality service, and is continually working to improve the way clients access and receive services.

To view Service Standards and Service commitments, visit:

www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/ministries/social-development-poverty-reduction/ministry-reports

Ministry of Social Development and Poverty Reduction

Our Commitment to Service

We commit to meeting your needs by providing you with service that is:

- » reliable and accessible
- » responsive and accurate
- » fair and impartial
- » respectful and courteous

The ministry provides a variety of options to citizens for accessing information, assistance and services, including: online, in person and over the phone.



Online, 24 hours a day

» Through My Self Serve (myselfserve.gov.bc.ca) you can:

- Apply for assistance
- Receive and reply to messages from the ministry
- Make and track service requests
- Submit your monthly report
- Find information about your next payment date
- Get information on services and supports through the ministry's website at: gov.bc.ca/sdpr

All offices have computers and free Wi-Fi available to access My Self Serve during office hours




In Person

» Offices are open Monday – Friday (except statutory holidays) between **9 a.m. and 4 p.m., closed 12 p.m. to 1 p.m. Pacific Standard Time**

» Cheques are produced in all ministry offices at least three times per day at **11 a.m., 2 p.m. and 3 p.m.**

» Clients attending a ministry office are acknowledged and informed of service request processing times

» All ministry offices are accessible




Phone

» Information about ministry programs and services is available 24 hours a day, toll free at: **1 866 866-0800**

» Phone lines are open Monday – Friday (except statutory holidays) between **9 a.m. and 4 p.m. Pacific Standard Time**

» Clients calling the ministry are informed of service request processing times



Mail

The ministry is committed to providing responses to ministerial correspondence within **14 business days**.

Ministry of Social Development and Poverty Reduction

Service Standards

There are fluctuations with wait times, response, and decision times that can happen throughout the year (for example, cheque issue week). The target is to meet service standards at least 80 per cent of the time.

Applying for Assistance

After you have applied for assistance, the ministry will contact you about the application within:

- » **5 business days**, except as follows:
 - if you are fleeing abuse **1 business day**, or
 - if you have an immediate need for food, shelter or urgent medical attention **1 business day**

Access to Phone Service



Calls answered in **10 minutes** or less

Service Delivery Timelines

Once you submit all the required documentation to the ministry, decisions on the following services will be provided within:

» Persons with Disabilities (PWD) Designation Determination <ul style="list-style-type: none">• 45 business days	» Request for Reconsideration (after a signed request has been submitted) <ul style="list-style-type: none">• 10 business days
» Persons with Persistent Multiple Barriers (PPMB) <ul style="list-style-type: none">• 10 business days	• 20 business days when an extension has been granted

We will work to meet these service standards and are committed to listening and addressing your service concerns. If you have a complaint about our service, please call toll free **1 866 866-0800**.

Support during the Pandemic

Safety

Administrative fairness

Work process adaptations



BC Centre for Disease Control



Duty to Accommodate

The ministry has a duty to accommodate at all points of contact with an applicant or recipient.

Examples of Accommodations:

- Assisting in obtaining documents
- Providing information or requests in writing
- Providing interpretation services for clients with language barriers:
 - Spoken Language Interpretation Services
 - Sign Language Interpretation Services
 - Interpretation Services for Literacy Issues

The Duty to Accommodate Alert

A Duty to Accommodate Alert – provides a central location for all staff to document a client's specific accommodation needs. For example:

- Client uses a wheelchair and requests contact be through MySS or phone to avoid travel to local office
- Client requests help completing monthly reports
- Client may request additional time and help gathering required documents

www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/case-administration/individual-case-management

Section 10

Section 10 of the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act*, provides the authority under which the ministry can request information or seek verification of information related to eligibility for assistance.

Before applying ineligibility or a reduction in assistance, the ministry makes attempt to obtain the information, such as:

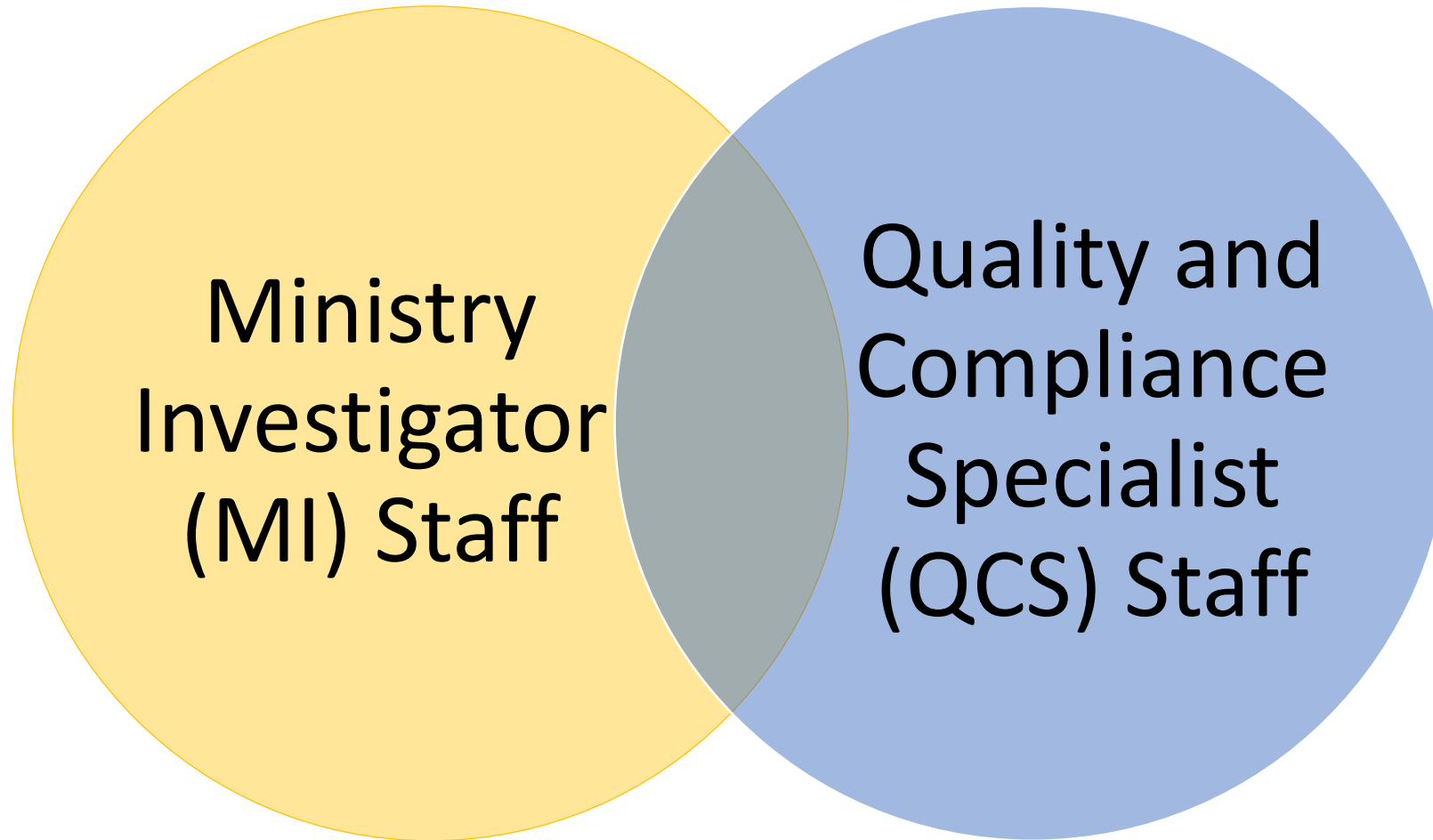
- Multiple attempts to contact the client through various methods
- Discussing potential accommodation needs with the client

When a decision under Section 10 is made, ineligibility or a reduction of assistance is applied and clients are offered their Right to Reconsideration

Service Delivery Division



Prevention & Loss Management Services (PLMS)



Ministry Investigators

Protect integrity of, and maintain public confidence in, the BC Employment and Assistance Program, including:

- Conducting criminal investigations
- Working with Crown Counsel
- Working with appropriate legislated authority
- Applying Administrative Fairness

Quality and Compliance Specialists (QCS)

Application Verification

- Third Party Checks on Application for Income Assistance



Prevention and Compliance

- Compliance Reviews and Quality Consultations

Service Quality (SQ)

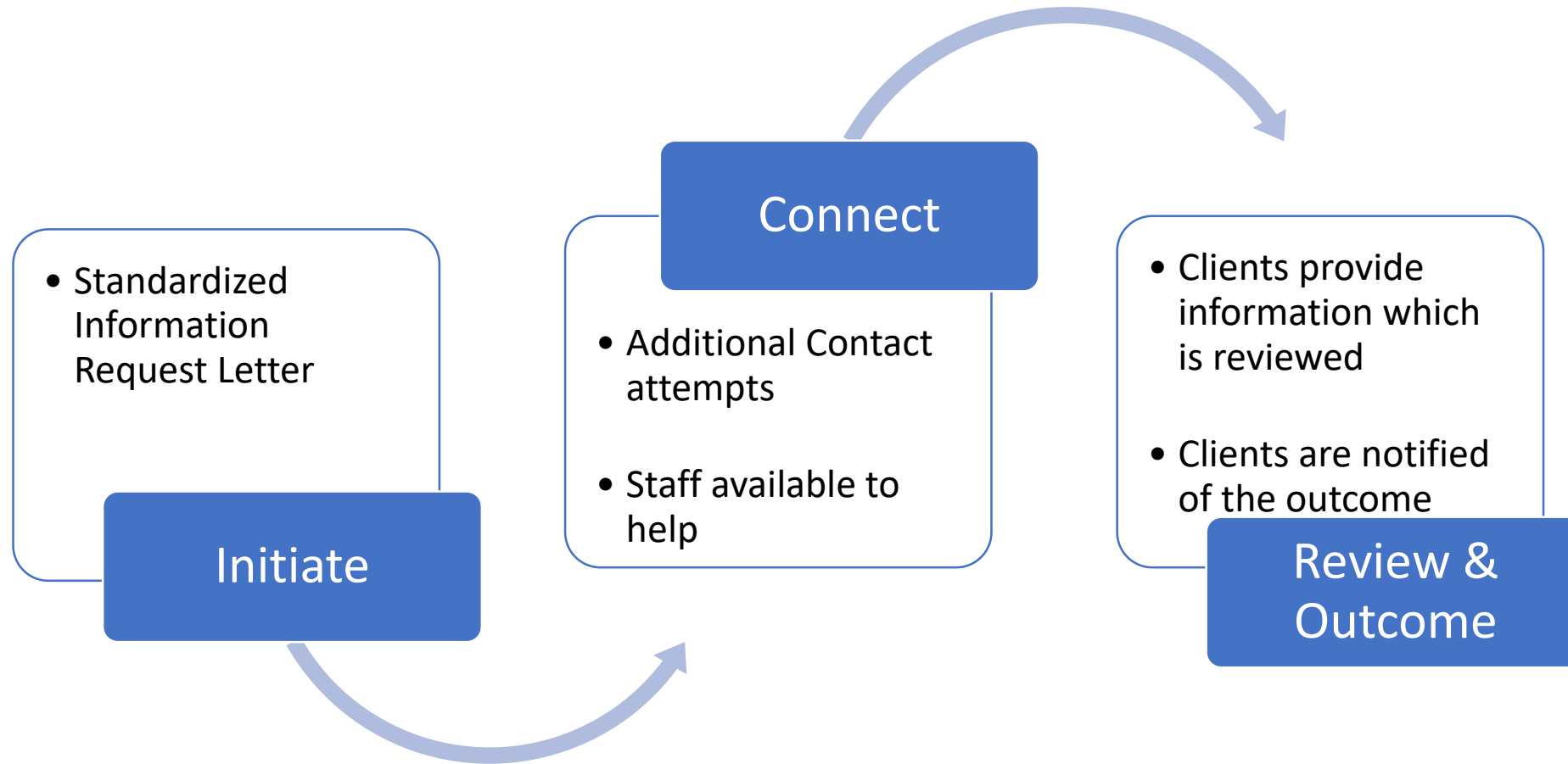
- Service Quality Projects on SDPR Services
- Quality Consultations

What is a Compliance Review?

Compliance reviews confirm the recipient's current and past eligibility

- Accurate and up-to-date case information
- Correct application of policy and legislation to the recipient's unique situation
- Confirm receipt of all assistance for which a recipient is eligible

What to Expect in a Compliance Review

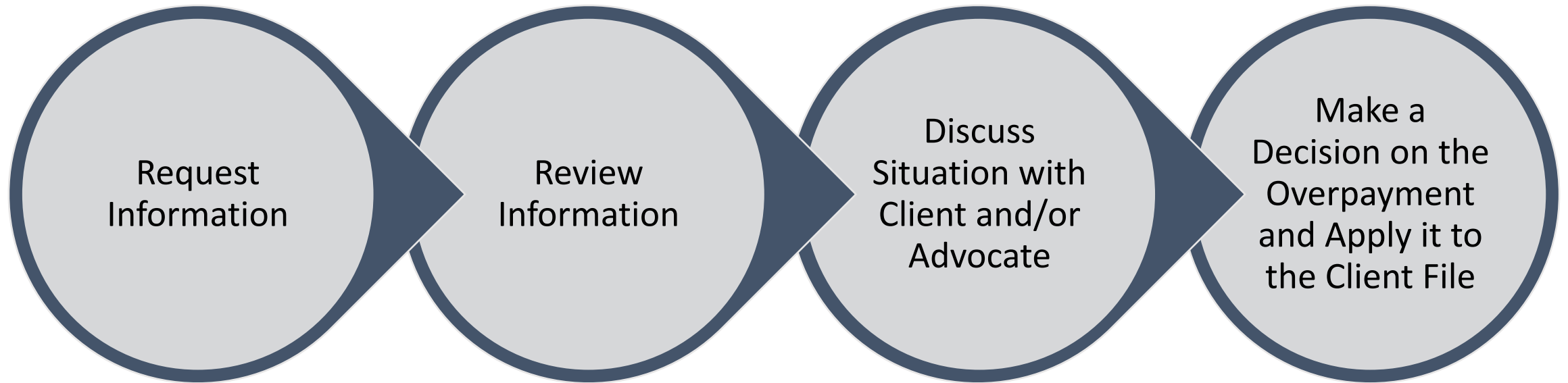


Compliance Review Outcome

Reviews may result in:

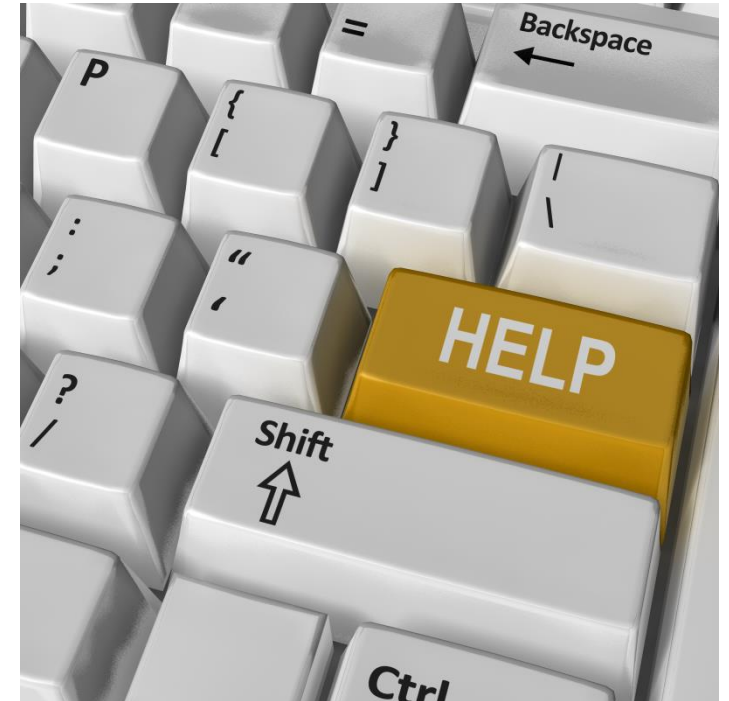
- no change to assistance
- an increase or decrease to, or discontinuation of assistance
- calculation of an underpayment or overpayment

Overpayment Process



How Advocates Can Help....

- Awareness of SDPR Services
- Assisting clients
- Working directly with the investigating QCS
- Easing client anxiety



Collaboration

Moving Forward Steering Committee (MFSC)

- Background
- Purpose and Scope
- Membership

MFSC PLMS Sub-Committee

- Co-chaired quarterly meetings by Kellie Vachon, Community Relations & Service Quality Manager and Alison Ward, Lawyer -Community Advocate Support Line, Community Legal Assistance Society

Geographic Stakeholder Calls

- Chaired by Community Relation & Service Quality Managers
- Every 2 months
- Minutes are shared at the MFSC meetings

Example of Collaboration

- Compliance Review Improvements in 2018

Complaint Resolution

- 1-866-866-0800
- Advocate Client Enquiry
 - 1-855-771-8704 and/or
 - Email:
SDSI.AdvocateClientEnquiries@gov.bc.ca
- Supervisor
- Community Relation & Service Quality Managers



Ministry of
Social Development
and Poverty Reduction

MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION
COMMUNITY RELATIONS AND SERVICE QUALITY (CRSQ) MANAGER
CONTACT LIST
(September 25, 2019)

STREAM (All Provincial Issues)	Community Relations and Service Quality Manager (CRSQ)	PHONE	GEOGRAPHIC AREA (includes Ombudsperson Investigations & MySS Appls)
INTAKE (Applications general)	Marilyn Sigouin Marilyn.Sigouin@gov.bc.ca	Mobile: 604 302-5217	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
	Kellie Vachon kellie.vachon@gov.bc.ca (PLMS Liaison)	Mobile: 604 999-6476	Interior and Northern
CRSQ ISSUES SUPPORT SDSI.IssuesSupport.CommunityRelationsandServiceQuality@gov.bc.ca	John Bethell John.Bethell@gov.bc.ca (A/CRSQ until Dec 27 2019)	Mobile: 604 512-5487	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
	Michele Lauzon Michele.Lauzon@gov.bc.ca	Mobile: 604 760-4471	Lower Mainland Fraser and Van Coastal Lowermainland.MCRSQ@gov.bc.ca
SPECIALIZED SERVICES: Funeral Assistance, Special Care Facilities, Case Review Team, etc.	Ian Harrower Ian.Harrower@gov.bc.ca	250 649-2624 Mobile: 250 961-5501	Interior and Northern
HA, HEALTH SUPPLEMENTS MED TRANS	Jeannine Bousquet Jeannine.Bousquet@gov.bc.ca	Mobile: 250 619-2811	Vancouver Island
CONTACT CENTRE (includes ACE & Bus Pass) Specialized Services*: *EPS & Reconsiderations HA, HEALTH SUPPLEMENTS MED TRANS	Nadia Boukhoulali Nadia.Boukhoulali@gov.bc.ca	Mobile: 250 507-4502	Vancouver Island
	Ann Evans Locker A/Senior Manager, Stakeholder Relations	Mobile: 250 096-3323	

Please note: To streamline responsiveness, Lower Mainland, Fraser and Vancouver Coastal geographic issues are managed collectively through one mailbox: Lower Mainland MCRSQ mailbox (Lowermainland.MCRSQ@gov.bc.ca) to be used by Lower Mainland stakeholders and ministry staff only, as the preferred method of contact. Stakeholder queries sent to the mailbox will be responded to by the first available MCRSQ as soon as possible.



Ministry of
Social Development
and Poverty Reduction

Questions



From: MSDPR policy and procedures manual at <https://www2.gov.bc.ca/gov/content/governments/policies-for-government/bcea-policy-and-procedure-manual/compliance-and-debt-management/recoveries>

Extracted November 4, 2020

Topic: Recoveries

Policy tab: Reasons Not to Recover and Overpayment

Effective: February 1, 2019

Overpayments that may meet an estoppel defence

Section 87 of the Financial Administration Act provides for the availability of an estoppel defence when the ministry seeks to recover the assistance from a *recipient* that they were not eligible to receive. An estoppel defence protects a recipient, who through no fault of their own receives a payment they were not eligible to receive.

When establishing a ministry error overpayment, staff must review the following criteria to see if the overpayment meets all of the criteria of an estoppel defence, as described below. Overpayments that meet the following criteria **must** be referred to a supervisor.

There may be an estoppel defence when all of the criteria listed below are met:

1. A *recipient* received assistance that he or she was not eligible to receive, and,
2. The ministry represented to the recipient that he or she was eligible for the assistance.
 - This could be an explicit statement by the ministry that the person was eligible, or,
 - An implicit statement by the continued payment of assistance by the ministry despite having all the information needed to determine the recipient was actually ineligible (e.g. the client had provided sufficient evidence to determine their eligibility); and,
3. The recipient had relied on the funds to his or her detriment (detrimental reliance).
 - This detrimental reliance is when a client with non-discretionary income adjusts their living expenses to the increased amount of assistance.
 - It is generally accepted that a person in receipt of assistance will adjust their living expenses to an increased amount of assistance and therefore in almost all cases there will be detrimental reliance on the increased assistance.

- An estoppel defence recognizes that, where there has been detrimental reliance, requiring an innocent recipient to return a mistaken payment (e.g. overpayment) of assistance would be inequitable.

Estoppel defence cases are highly dependent on the facts of the situation. The availability and strength of an estoppel defence will vary depending on the circumstances of the ministry's representation concerning eligibility and the reasonableness of the recipient's reliance on the information provided.

Examples of circumstances where the file should be referred for further review include the following:

- A recipient has been told by ministry that while receiving MSO, the recipient will continue to be eligible for the monthly nutritional supplement, which is not an eligible supplement for recipients of MSO.
- A recipient fails to report disability insurance payments as income, based on mistaken instructions from the ministry that such amounts are exempt income.

In each of these examples, the ultimate opinion as to whether the recipient is likely to have a successful estoppel defence will be determined by Debt Management in the Financial Services Branch.

Date: 19980316
Docket: A970338
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the Matter of the *Judicial Review Procedure Act*
R.S.B.C. 1979, c.209

and

In the Matter of Order in Council 1179/96 Made pursuant to the
B.C. Benefits (Income Assistance) Act

BETWEEN:

DAVID STOW

PETITIONER

AND:

THE ATTORNEY GENERAL OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE FRASER

David Stow, the Petitioner:

In Person

Counsel for the Respondent:

Sarah Macdonald

Place of Hearing:

Vancouver, B.C.

[1] The petitioner, David Stow, seeks an order, pursuant to the **Judicial Review Procedure Act**¹, declaring that s.7(3) of Schedule A to the B.C. Benefits (Income Assistance) Regulations² is *ultra vires* the Lieutenant Governor in Council.

[2] According to the written submissions of counsel for the Attorney General, Mr. Stow also seeks an injunction against the Minister of Human Resources of the Province of British Columbia, although I cannot find in the Court file any other documentation of that.

[3] Counsel for the Attorney General did not concede but raised no objection to the standing of Mr. Stow to bring the application and did not contend that the issue was moot.

[4] It is common ground that the provisions of the **B.C. Benefits (Income Assistance) Act** and its regulations govern the outcome. While they did not come into force until October 1996, the situation of Mr. Stow remained extant until they did. References to legislation in this decision conform to the Revised Statutes of 1996.

THE FACTS

¹ R.S.B.C. 1996, c. 241

² O.I.C. 1179/96; B.C. Gazette 272/96

[5] Mr. Stow "finished school", which I take to be college or university, at the end of June 1996. He had been living for "several years" in a rented room as a month-to-month tenant in a house at 4140 West 10th Avenue, Vancouver, where the kitchen and washroom were shared. I gather there were a number of other occupants.

[6] So far as he was concerned, he was the tenant of one of the other occupants of the house, who had rented it from the owner. He did not have a written tenancy agreement with that person, nor with the property owner.

[7] When he met in August 1996 with Rose Crocker, a Financial Assistance Worker at the Kitsilano Social Services office, to put forward his application for income assistance, he had a receipt from the head tenant for the rent he had paid for July. This was not good enough for Ms. Crocker and she denied shelter benefits to Mr. Stow. She told Mr. Stow that he needed a written tenancy agreement, signed by the property owner, which listed the names of all the occupants and the amount of his rent. In taking this stance, Ms. Crocker appears to have applied either her own or the Ministry's interpretation of s. 7(3).

[8] Susan Broadfoot, Area Manager in Region A of the Ministry of Social Services, wrote a letter to Mr. Stow on 6th September 1996, which stated, in part:

Your worker has requested you submit documentation from the landlord of the premises (as defined by the Residential Tenancy Act) in order that ministry may provide you this allowance. You have not done this.

[9] A letter of 18th September 1996, written by Rose Crocker directed to "To Whom it May Concern", stated:

As per policy, Mr. Stow was advised to provide a current tenancy agreement, an intent to rent form or a letter from the legal landlord to confirm accommodations and determine shelter eligibility.

[10] But how to obtain any such document? Leah M.K. Bailey, Director of the Residential Tenancy Head Office of the Ministry of Attorney General, wrote to Mr. Stow on 17th October 1996. She said that, while there was a requirement for a written tenancy agreement under the **Residential Tenancy Act**³, that requirement only came into force on 1st July 1996. She concluded:

Therefore, there is no requirement under the legislation that your landlord provide a written tenancy agreement for a tenancy which, as in your case, was established prior to that date.

This statement of the law was not challenged by counsel for the Attorney General.

[11] Because the line worker, Ms. Crocker, would not accept the rent receipt from the head tenant as sufficient, Mr. Stow was unable to pay his rent for West 10th Avenue and had to move to

³ R.S.B.C. 1996, c. 406

a room in the Niagara Hotel, in downtown Vancouver. The hotel provided rent receipts which the Ministry accepted, triggering his eligibility for a shelter allowance. Mr. Stow would rather have stayed at West 10th Avenue.

ANALYSIS

[12] Section 7(3) of Schedule A of the B.C. Benefits (Income Assistance) Regulations reads as follows:

- 7.(3) If 2 or more people, none of whom is the spouse of the other, or 2 or more families
- (a) share a common dwelling, and
 - (b) state and indicate by their actions that they are not sharing their income and household responsibilities as in a marriage or a commune,
- the administering authority, in order to determine the shelter costs, will divide the actual shelter costs by the number of people occupying the common dwelling.

[13] Mr. Stow did a good deal of research and presented his application with intelligence and dignity. However, his sincerity and his rightful sense of grievance does not alter the reality that he has misconceived the ramifications of what occurred. This is nothing for him to be embarrassed about, given that the law of judicial review is challenging even to those trained in the law.

[14] Section 24 of the **B.C. Benefits (Income Assistance) Act**, authorizes the Lieutenant Governor in Council to make regulations "prescribing rules for determining the rate or

amount of income assistance." I agree with counsel for the Attorney General that s. 7(3) of these regulations falls within the authority conferred by s. 24. It may be said, as well, that the Government of British Columbia has a very legitimate interest in establishing mechanisms to ensure that public money is spent prudently.

[15] I also agree with counsel for the Attorney General that s. 11 of the **Crown Proceeding Act**⁴ is a bar to injunctive relief in this case.

[16] It must be assumed that the Lieutenant Governor in Council, in enacting s. 7(3), gave its recognition to perceived complications for line workers in assessing the situations of income assistance applicants who are sharing accommodation.

[17] However, given the industry and goodwill demonstrated by Mr. Stow, I have decided to make some observations concerning the **Act** and the Regulations.

[18] It may be said, first, that s. 7(3) resists easy interpretation. What is a "common dwelling"? The term is not defined, either in the **Act** or Regulations. On the evidence, the occupants of the West 10th Avenue house shared a kitchen and bathroom. Did that make the house a common dwelling?

⁴ R.S.B.C. 1996 c. 89

Given the diversity of arrangements in marriages and communes, how could an applicant state and indicate by his or her actions that he or she is not "sharing their income and household responsibilities as in a marriage or a commune"? What if the personal spaces allotted to occupants of a common dwelling differ? For example, if one occupant of the West 10th Avenue house had an ensuite bathroom and none of the others did, leading to a higher rent for the occupant with the bathroom, how could dividing the "actual shelter costs by the number of people occupying the common dwelling" achieve a fair result?

[19] The real issue disclosed by this case is the level of documentation which the Ministry may impose on income assistance applicants. Section 8(1) of the **Act** requires an applicant for income assistance to supply information, to seek verification of information and to supply verification of information. My conclusion is that these obligations do not go so far as to justify the denial of benefits to an applicant who is willing to but who cannot supply the information or the verification the Ministry would like to see.

[20] Mr. Stow speculates that the purpose of s.7(3) of Schedule A "is to prevent a tenant from renting to someone who receives Income Assistance a room or part of a dwelling for more than the tenant pays to the landlord for the same part of a dwelling." In general terms, this seems acute. The Ministry would not, I think, approve of an income recipient turning a

profit on a shelter allowance. But there are practical problems. The owner of the West 10th Avenue house refused to provide documentation. One may ask, why should he or she? He or she was leasing the house to one of the occupants, whom I would characterize as the head tenant. The rent paid by the head tenant to the owner may have had no bearing on the rent charged by him or her to subtenants.

[21] Ms. Crocker refers in her letter of 18th September 1996 to the "legal landlord." This seems to mean, in her view or the view of the Ministry, the registered owner of the premises being occupied. I see no basis in the **Act** or Regulation for this interpretation. From the vantage of Mr. Stow, the head tenant was his landlord. I note that the definition of "landlord" in the **Residential Tenancy Act** includes "a lessor, sublessor, owner or other person permitting the occupation of residential premises." The expression "legal landlord", whatever it may be taken to mean within the Ministry, has no meaning in law. I conclude that the receipt from the head tenant was a receipt from Mr. Stow's landlord.

[22] As I interpret the interpret the **Act** and the Regulations, the Minister is entitled to employ a formula for the amount of benefits, no matter how arbitrary. On the other hand, nothing in the **Act** or Regulations can be interpreted to require an applicant for income assistance to produce documents which, for him or her, are impossible to produce.

[23] As I interpret s. 7(3), once an application for income assistance is made, and a legitimate receipt for rent is produced, it is the line worker's obligation to make such inquiries as are necessary to fulfill the requirements of s. 7(3).

THE DELEGATION ISSUE

[24] Mr. Stow observed that s. 48.1 of the **Residential Tenancy Act** provides that a landlord must not discriminate against a tenant based on a lawful source of income. He characterized the refusal of the owner of the home as just that. He also characterized the requirement by Ms. Crocker of a receipt from the owner as an impermissible delegation of power from the Ministry to the landlord.

[25] Given my interpretation of the **Act** and Regulations, this contention cannot succeed. It was not the owner of the property who had the power of decision, it was Ms. Crocker.

CONCLUSION

[26] The application is dismissed. In the circumstances, there will be no award of costs.

"FRASER, J. "