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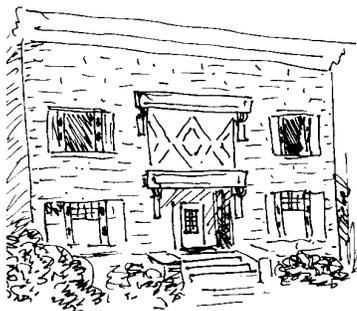
## GETTING A FAIR SHAKE: GROUNDS FOR REVIEW AT THE RESIDENTIAL TENANCY BRANCH

By Yuka Kurokawa

The Residential Tenancy Branch (RTB) has a dispute resolution process through which landlords and tenants have an opportunity to have their tenancy concerns addressed. Once an arbitrator hears a case and considers the facts, they will make a decision (such as upholding an eviction notice) which might include granting an order (such as an order of possession). These decisions and orders are legally binding and enforceable. What can you do if you disagree with a decision or order?

### What is a Review Consideration?

The RTB has a process called an Application for Review Consideration through which they



consider whether to grant reviews of decisions and orders. While this is not an opportunity to reargue or to submit evidence about your case that could have been presented at the original hearing, it can give you a

chance to have a decision or order reconsidered for reasons of fairness.

### What Are the Grounds for Review?

You can apply for a review consideration on one or more of the following three grounds:

1. *Unable to Attend*  
A review of a decision or order may be granted if you were unable to attend your hearing for circumstances that were unanticipated and beyond your control. When applying for a review, you must submit proof that supports your

(See Fair Shake, page 6)

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## ARE YOU BEING (FAIRLY) SERVED? THE MINISTRY'S DUTY TO ACCOMMODATE

By Zoë Macmillan

In British Columbia, the *Human Rights Code* ensures individuals are protected against discrimination in their day-to-day lives. The *Code* applies to businesses, agencies and service providers in BC.

Discrimination occurs when someone is treated differently and poorly because of their personal characteristics. However, discrimination can also occur when everyone is treated equally, regardless of their abilities. To address this unfairness, the concept of the "duty to accommodate" exists. The duty to accommodate is a form of rights protection not contained in the *Code*, but developed through a series of legal decisions.

Accommodation attempts to eliminate policies

### TAX CLINIC

TAPS holds a tax clinic for people with low incomes every Thursday from 9 AM to 11 AM and from 1 PM to 4 PM. No appointments. First come, first served. During the peak of tax season, we are able to do tax returns for 2013 and 2014 only.

and practices that adversely affect some people due to personal characteristics protected under the *Code*; characteristics such as disability, sex, religion, etc. Service providers, such as the Ministry of Social Development and Social Innovation, are bound by this duty to accommodate. The law says that when a policy or practice has adverse consequences on an individual, service providers should reasonably accommodate that individual's difference, provided they can do so without incurring undue hardship. A service provider may be excused from their obligation to accommodate only where it has a reasonable justification, made in good faith, for not accommodating an individual's needs.

In their "Individualized Case Management" policies and procedures, the Ministry both acknowledges and sets out their accommodation obligations. However, at TAPS we frequently see a disconnect between these policies and actual practices. Although relevant in all aspects of Ministry service delivery, we at TAPS notice

### PERSONS WITH DISABILITIES

TAPS has advocates who can help you apply for PWD (Person With Disability) status through the Ministry of Social Development and Social Innovation. TAPS can also help you with an appeal if you have applied and been denied. Call TAPS at 250-361-3521 for more information. If you are at the appeal stage, be sure to get in touch with us as soon as possible after receiving your letter of denial and tell the receptionist you are calling about a disability appeal.

an enormous need for accommodation during eligibility audits and investigations. Clients are asked to provide multiple bank statements, rental receipts, past employment details. Those with cognitive impairments or anxiety disorders experience disproportionate negative effects when faced with such requests. The manner in which information is requested, often with strict timelines and with the threat of benefits being withheld, is sufficient to cause debilitating mental and physical strain.

(See *Accommodate*, page 3)

## TAPAS for TAPS 2015

@ The Heron Rock Bistro in James Bay on June 3<sup>rd</sup>, from 5:00 PM to 7:00 PM. Tickets are \$50. Ticket price includes a beer/wine tasting, live music, and, of course, tapas. Silent Auction.

### Special Guest Speaker: Alison Latimer

An Associate with Farris, <http://www.farris.com/farris-lawyers/profile/alison-m-latimer/>, Alison is interested in the interpretation of the Charter as it relates to positive rights obligations, most specifically, as it applies to the rights of children. She will be addressing the role of public interest groups in Charter challenges before the Supreme Court.

Master of Ceremonies to be announced.

Tickets will be available soon. Contact Stephen Portman at 250-361-3521 or ed@tapsbc.ca

*(Cont'd from Accommodate, Page 2)*

Many individuals come to TAPS seeking assistance because they simply cannot cope with the process due to their disabilities. In such instances, advocates contact Ministry investigators to remind them of the Ministry's duty to accommodate, and provide recommendations for doing so.

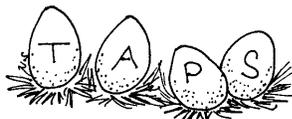
If you feel you are being adversely impacted by Ministry policies or practices, you can request accommodation. Some examples might include:

- requesting all information in writing
- asking for help obtaining

documents

- getting additional time to provide information
- accessing an interpreter due to language and communication barriers
- requesting a designated worker to meet your unique needs.

The Ministry is not obliged to adopt the specific accommodation you request. However, they must work with you to find the best solution that addresses your needs to the point of undue hardship. Failure to do so is grounds for complaint to the BC Human Rights Tribunal. ■



## TAPS ADVOCATES

**John Cooke** Tenant Advocate

**Jen King** Employment Standards Legal Advocate

**Yuka Kurokawa** Tenant Advocate and Income Assistance Advocate

**Zoë Macmillan** Income Assistance Advocate

**Jen Matthews** Income Assistance Advocate

**Thea McDonagh** Income Assistance Advocate and Coordinator of the Volunteer Disability Advocacy Project

**Stephen Portman** Interim Executive Director and Employment Standards Legal Advocate

**Ryan Tonkin** Federal Disability Advocacy Project Coordinator

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# FALLING THROUGH THE CRACKS

*By Sandy Wagner*

I never understood the true meaning of this overly-clichéd phrase until I met two women I'll call Lee and Marie, and a man I'll call Albert. Their stories are all true, sadly.

Lee is a young single mother with two children, one of whom is diabetic. She is on income assistance and so has most prescriptions paid for. The cost of the testing strips for the necessary glucose monitor is covered. However, Lee's social worker tells her she is using too many and must cut back. Sure, she says. She'll just stop testing his blood sugar levels. No problem. If he is dangerously out of balance he'll pass out and she'll know, without wasting test strips.



When Lee's son began school, she was surprised to find out there are no longer any school nurses. She expected there would be some cutbacks, but NO school nurse at all? As he was too young to do it himself, and with no school nurse or trained aide, who would check Lee's son's blood sugar readings and administer his insulin during the day? Lee, of course. So, with her younger child in tow, Lee would sit outside her son's classroom and every two hours, she would quietly motion through the window for him to meet her in the restroom, where she would monitor his blood sugar level and give him either insulin or a snack to balance it out. Should there be some assistance at school for Lee, or maybe a sitter for the younger child while Lee spends her days in the school hallway? Yes, but not for a young mum on social assistance.

Marie is a fiercely protective woman with a dysfunctional family. She has been the family's glue,

## WRITE FOR TAPROOT

Have you had a difficult time getting a benefit you needed from MSDSI? Had a nightmare with a landlord from hell? An exploitative boss? Or some other experience you want to let others know about? Then write it up for the Taproot. Please make your article 600 words or less. Drop off or mail articles with your name and contact information to Heidi at TAPS at #302 - 895 Fort Street, Victoria, BC V8W 1H7, or send by e-mail to [volunteers@tapsbc.ca](mailto:volunteers@tapsbc.ca), or by fax to 250-361-3541.

holding them together her whole life despite prolonged severe depression. Marie's family doctor retired six months ago, and the replacement doctor was more concerned with her weight than her mental well-being so she stopped seeing him. She now feels that her current anti-depressants are no longer doing their job, and her depression is deepening, but with no regular family doctor to consult she relies on the local clinic. They won't change her prescription but did set up a referral to a psychiatrist; unfortunately

*(See Falling Through, page 5)*

(Cont'd from *Falling Through*, Page 4)

the appointment is several months away and Marie is feeling more and more depressed, anxious, and suicidal. She goes to the emergency psychiatric intake at the Russ Courtnall Centre, where she is kept waiting for six hours, sees a doctor for three minutes, and is released. The next week she takes all her anti-depressants in an attempt to bring an end to her anguish; a neighbour sees what has happened and drives Marie to the hospital, where she is kept under observation for nine hours, then sent home. A few weeks later Marie is distraught and returns to the Russ Courtnall Centre with a friend who is a counsellor. Afraid to speak for herself, she asks if her friend can go inside with her.

### TAPS' FEDERAL DISABILITY ADVOCACY PROJECT

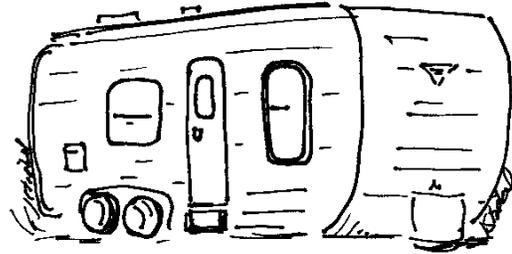
TAPS' Federal Disability Advocacy Project can provide information on CPP - Disability, the Disability Tax Credit and the Registered Disability Savings Plan. If you would like to speak with an advocate about any of these benefits, or would like help applying, contact Ryan Tonkin at TAPS at 250-361-3521.

## ART FOR TAPS A SUCCESS

Art for Together Against Poverty Society was a great success! On March 25th over 100 people streamed into the always incredible Heron Rock Bistro for what was a truly enjoyable time. Special thanks to Kim Newns of GinjaLionArt.com and Kimberly Dean of Temped Mind Studio for throwing a great party. A "fist in the air" to wild card Anna Gerrard for painting a beautiful canvas in the epic art battle. It has found a welcome home at TAPS HQ. Lastly, and most importantly, a big thank you to everyone who came out to support art and social justice in Victoria.

*Stephen Portman, Interim Executive Director*

"Just as soon as we have your paperwork processed," she is told. Hours later, with her friend still in the outside waiting room, Marie has still not seen



a doctor but is getting more and more upset and frantic and asks for her friend; when she is told her friend cannot come into the inside waiting area nor speak to the doctor (whenever that might be) Marie rips off her admission armband and leaves.

Albert lives in a trailer...not a fancy Winnebago, a small trailer, the kind you pull behind your pickup truck. It is not much larger than a tent. He is alone in his trailer one morning when he awakens feeling strange and has trouble getting out of bed. He phones his daughter, the only nearby family member, and after

listening to his slurred voice she urges him to meet her at the emergency room. Albert gets a friend to drive him to ER where it is determined he has suffered a mild stroke. He is lucky, they tell him—no permanent damage and a short rehab period. Albert is released within a week with some dizziness, confusion and weakness. He is able to slowly manoeuvre with a walker, rented by his daughter. Before his release, his daughter spends hours on the phone trying to find out what help is available for him. He cannot walk on his own and, as he lives alone, she tries to find out if there is some sort

(See *Falling Through*, page 6)

## TAPS' SILENT WITNESS PROGRAM

Many of our clients find that appointments with the Ministry of Social Development and Social Innovation (MSDSI) can be stressful. Some find that having another person at their appointment lessens their stress and helps the appointment proceed smoothly. At TAPS, we have volunteer silent witnesses who can accompany individuals to ministry appointments. If you would like a silent witness to accompany you to an appointment with the ministry, call TAPS at 250-361-3521.

*(Cont'd from Falling Through, page 5)*

of halfway house or temporary, assisted housing for him. None. The hospital social worker explains that, as a family member has come forward, he is not entitled to any assistance from them. She tries to explain that he cannot get up the three stairs into his home, and even if he could, his walker won't fit in the narrow confines of his tiny trailer. He can't cook for himself or do much of anything in his current state, and the restroom is in an outbuilding. But no help is available. If he was truly

alone with no family, there "may" be some assistance, she is told.

Albert's daughter reluctantly rents a cot, and he camps in her living room for several weeks. During those weeks she cooks for him, helps him bathe, and walks him up and down her apartment hallway and throughout the neighbourhood, the only exercise he can manage, to try and get his strength back. She takes the bus with him to apply for Employment Insurance because he hasn't taken a bus in 40 years and doesn't have a clue what to do. They are both amazed to find out that everything is done via computer now, no handwritten forms are accepted. Albert has never touched a computer in his life, but his daughter has an old clunker at home, so back they go and painstakingly apply online for medical EI benefits. She wonders how he would have filled out these forms without her, and without a computer. He couldn't type before his stroke and sure can't now. He doesn't understand the questions, but together they get the forms filled in, click "send" and hope for the best. There seemed to be no one at the EI office who would help. Once they saw he had "help"

he was told to go home and apply there.

Lee, Marie, and Albert have all fallen through the cracks of our city and province. Their stories, I have come to learn, are not unique. As they all have a small amount of help from family or friends, "the system" moves on to those in greater need.

To these three forgotten people—Lee, Marie, and Albert—I can give nothing but my compassion and my pledge to share their stories in the hope that somehow, sometime soon, the cracks will be filled so no more of our citizens fall through. ■

*(Cont'd from Fair Shake, page 1)*

position. For example, if the reason for not attending the hearing was an unexpected hospitalization, medical records that indicate the nature of the illness or a hospital stay might be relevant.

### 2. *New and Relevant Information*

Having new and relevant information that wasn't available to you at the time of the hearing is another reason for review. It is important

*(See Fair Shake, page 7)*

(Cont'd from Fair Shake, Page 6)

that any information that is submitted based on this ground clearly shows how it is relevant to your case, how it proves (or disproves) evidence from the original hearing, and why it wasn't available at the original hearing. The results of a remediation assessment report for damages caused by a flood that didn't become available until after the hearing is an example of new and relevant information.

### 3. *Fraud*

You can ask for a review of a decision or order if you believe and can establish that it was obtained by fraud. Intentionally providing false testimony, such as a landlord testifying that you owe them money because you didn't pay rent even though you did, is an example of fraud. When applying for a review consideration based on fraud, it is important that you are able to show evidence that proves the intentional use of false information, such as receipts, witness statements, or affidavits.

If filing an application for a review consideration is not an option, there may be alternative options available to you. Contact TAPS for more information and referrals.

### **When Can I File an Application?**

The application process is time sensitive. You must file an application within:

- 2 days of receiving a decision or order for issues relating to:
  - ◊ An order of possession
  - ◊ Sublet or assignment of a tenancy
  - ◊ An eviction notice for nonpayment of rent
- 5 days of receiving a decision or order for issues relating to:
  - ◊ Repairs or maintenance
  - ◊ Terminating services or facilities
  - ◊ Eviction notices other than for nonpayment of rent
- 15 days of receiving a decision or order for issues relating to:
  - ◊ Any other matter.

### **How Do I File an Application?**

To apply for a review consideration, you must fill out the *Application for Review Consideration* form and file it at the RTB office along with all relevant evidence. The form is available on the RTB website, at the RTB office, or here at TAPS. There is a \$25 filing fee which may be waived by filling out the *Application to Waive Filing Fee* form and showing proof of (low) income.

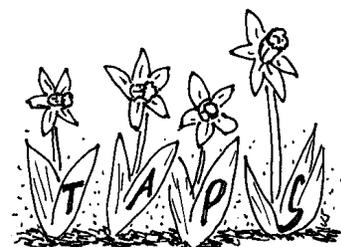
### **What Happens Now?**

Once the application is filed, the RTB will make a decision about whether to accept or deny the request for review consideration. If the RTB accepts, they will either: order a new hearing with a new arbitrator, order a written hearing, or order the original hearing to reconvene with the original arbitrator.

Original decisions and orders are put on hold until the RTB makes a final decision. It might be useful to tell your landlord that you have filed an application for review consideration in order to avoid the possibility of your landlord unknowingly pursuing an enforcement of a decision or order that should be on hold.

### **I Need Help!**

Contact the Residential Tenancy Branch (250-387-1602) or speak with an advocate at TAPS (250-361-3521) for more information about applications for review consideration. TAPS Tenant Advocates can assist with providing forms and guiding you through the application process. ■



## ABOUT TAPS

TAPS was established and registered as a society in 1989 and serves the Greater Victoria area. We provide legal information and representation on issues relating to income assistance, provincial disability benefits, residential tenancy, and employment standards. We also provide public education in these areas and on broader poverty issues.

You can reach us between 9:30 am and 4:30 pm, Monday to Friday, by phone at 250-361-3521 or in person at #302 - 895 Fort Street. The office is closed daily for lunch between noon and 1:00 pm and is closed to walk-in clients on Monday and Friday mornings.

## TAPS IS FUNDED BY



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\$5 unwaged (we can waive this)    \$20 waged    \$80 organization

Taproot is mailed/e-mailed to members.

Donations are appreciated. Charitable tax receipts provided.

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### Together Against Poverty Society Membership Registration 2015

#302 - 895 Fort Street, Victoria, BC, V8W 1H7

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