

Residential Tenancy “Appeals”

How to Apply for a Review of a Dispute Resolution Officer’s Decision

By John Cooke, Tenant Advocate
 Often times, people come into the TAPS office wanting to “appeal” the outcome of a Residential Tenancy Dispute Resolution proceeding. More often than not, they are totally unfamiliar with how to go about doing that.

Bear in mind that a Dispute Resolution hearing is a formal legal process. The *Residential Tenancy Act* and the *Manufactured Home Park Act*, the legislative authorities which

govern the relationship between landlords and tenants in BC, allow a Dispute Resolution Officer (DRO) to review his or her decision, but only in limited circumstances.

Residential Tenancy

Branch proceedings are usually conducted by teleconference. Assuming that you have either participated in a hearing or, for whatever reason, were unable to take part in the proceedings on the date and at the time designated, there are two things to consider before deciding to apply for a *Review of a DRO’s Decision* or



Order.

First and foremost, did you as the Applicant or Respondent carefully read and follow the instructions for call-in to the teleconferenced proceedings, as clearly set out on the cover sheet of your initial application for hearing?

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If your answer to this question is a straight “No,” or you were under the mistaken impression that *it was the DRO’s responsibility to call you* at the designated time, your chances of a successful *Review* application on that basis alone would be, plainly speaking, virtually non-existent.

However, if you experienced any telecommunication barriers, meaning you encountered problems inherent in the teleconferencing system itself (and not your own phone) that prevented you from accessing the teleconferenced proceeding, contact an Information Officer at the Residential Tenancy Branch by phone at 250-387-1602, or go directly to their Victoria offices (First Floor, 1019 Wharf Street) in person and without delay.

Although a rare occurrence of late, there have been circumstances where a party to a Dispute Resolution proceeding found themselves simply unable to access the teleconference through absolutely no fault of their own. If this happens to you, and if you then contact the Tenancy Branch only to find that the hearing has already concluded in your absence and a decision reached, an Information Officer can guide you on how to make application for *Review*.

Please Note: There is a \$25 fee that the Residential Tenancy Branch charges to submit an *Application for Review*, but if you are on low, fixed or no income whatsoever this fee can be waived once you provide proof that you are economically disadvantaged.

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BC Bus Pass Program Should Be Extended to Recipients of CPP-D

By Kelly Newhook,
Executive Director

In the province of British Columbia a person with a disability who is receiving provincial benefits (PWD), is eligible to receive a bus pass for the discounted price of \$45 per calendar year or portion thereof. This is a much valued program offered by the province of British Columbia. However, if you are receiving federal benefits, Canada Pension Plan Disability (CPP-D) you are not eligible to receive the discounted bus pass. Both groups are living on extremely low incomes, both are living with disabilities, but only one is eligible for this vital assistance that increases their mobility and potential for community engagement. For many, \$2.50 is an amount they wouldn’t even give a second thought to, it’s a simple cup of coffee in the morning. But for those on a fixed income, who are visiting food banks and stretching every last dollar, it is

very significant. And let’s not forget \$2.50 is only one way.

This policy must change. So, as our two main provincial parties engage in a leadership race, now is the perfect time to ask those leadership candidates if they would support changing the eligibility requirements for a discounted provincial bus pass to include people receiving CPP-D. For those who say it’s a federal responsibility, it is simply not true. Eligibility for the bus pass program is tied to seniors’ federal pensions, so there is no reason why it can’t be tied to CPP-D as well.

Remember, a person with disabilities has no choice regarding which level of government they receive benefits from, in fact the provincial government is insisting all potential PWD recipients apply for CPP-D first. This makes it even more imperative that the bus pass program be delivered equally to all persons with disabilities. ■



TAPROOT

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New Practicum Students at TAPS

TAPS welcomes two new practicum students from UVic. Katelyn Elder, who is in her third year of a Social Work degree, is working with TAPS' income assistance advocates Candace and Susan two and a half days a week until April.

Pam Sangha is in her fourth year of a Political Science degree. Pam is also doing a minor in Social Justice, and her practicum at TAPS is part of that program. Pam is working one day a week with our tenant advocates Thea and John, and she is looking forward to participating in hearings at the Residential Tenancy Branch.

We are very happy to have both Katelyn and Pam working in our office and helping our clients.

Silent Witness Program

Many of our clients find that appointments with the Ministry of Social Development (MSD) 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 Silent Witness volunteers who can accompany individuals to Ministry appointments. These volunteers provide a supportive presence during the meetings, and afterward they write a short report to give to the income assistant advocate at TAPS. If you are interested in volunteering as a Silent Witness, contact Heidi at 250-361-3521 or volunteers@tapsbc.ca. We will be holding training sessions for new Silent Witnesses at the beginning of March.

Taxes

TAPS is offering tax prep services to people on low incomes on Thursday mornings from 9:00 to 11:00, and Thursday afternoons from 1:30 to 4:00.

No appointments. First come, first served.

We will start working on 2010 tax returns on February 17th.

The Gobble Network

By G.R. Tomblin

A blizzard!

Bob marveled at the huge fluffy flakes swarming like crazed moths through the gray skies. It was so thick he could barely make out the bank tower across the street. Below, cars and buses slid slowly along, leaving dark tracks on a river of white. People slogged along the sidewalks, now and again slipping and almost falling on their butts. Bob let go the piece of plastic shower curtain that covered his tiny cracked window and smiled. No way was he going to work. Today, Monster Mart would just have to struggle along without his services.

Well, it seemed a day off was thrust upon him. What should he do with it?

He'd read all the library books

he had out. Maybe, for once, there was something on TV worth watching. He switched on the 13-inch box, probably at least 25 years old, sat on his saggy little bed to watch . . . and was immediately annoyed. Something was wrong! No matter which channel he switched to, it was always the same one—or so it seemed. The Gobble Network!

Bob hated the Gobble Network. Hated it more than any other channel, even more than the Money Network. The Gobble Network always had shows about all kinds of delicious food that Bob couldn't afford. For example, there was an execrable show called Talking Turkey (perhaps from which the network took its name) that featured all

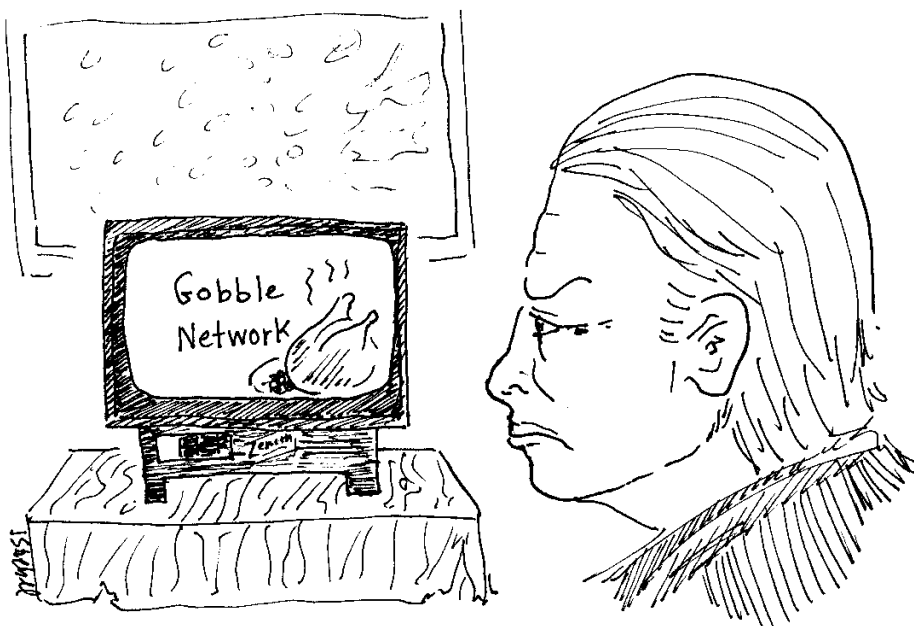
Persons With Disabilities

TAPS has advocates who can help you apply for Person With Disability status (PWD) through the Ministry of Housing and Social Development. 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.

the ways one might cook turkey. And of course the turkey was always enormous, 40 or 50 pounds, probably genetically modified. And the oven was always correspondingly cavernous, of a size no ordinary kitchen would have. Assuming one *had* a kitchen. Or an oven.

But that was nothing compared to a show known as Gobble King. Gobble King was a kind of game show for gluttons. This huge guy—the Gobble King—would take bets on whether he could or could not eat a certain amount of food in a given time. This was the show that Bob Nobuks, whose breakfast had just consisted of dry toast made from a slice of stale bread, washed down with a cup of no-name instant coffee, happened to be watching later that day. In

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this cholesterol-raising episode, the Gobble King was about to take on what was billed as the world's fattest hamburger.

In spite of his disgust at such a naked display of gluttony, Bob couldn't help his mouth watering at the sight of this monstrous bacon-ham-and-cheese burger as the camera zoomed in on the grill for a sizzling close-up. It was colossal! Half the size of the Gobble King's head, it would have made a full meal for a family of six—right here in this city, let alone in any third-world country. And this is what passes for entertainment these days? Bob could watch no longer.

Just as the Gobble King was about to take his first bite out of the gigantic burger, he switched

the TV off. Maybe it was time he got rid of the TV. It was only a source of torment!

Because now he was hungry again.

He went to the cupboard.

Let's see.

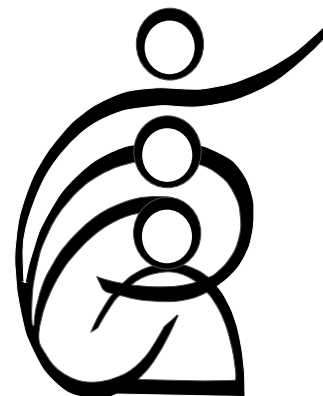
Well, we got green lentils . . .

Verbatim Theatre Project

My name is Joel Bernbaum and I am a theatre artist working on an exciting new "verbatim theatre" project with the staff at the Belfry Theatre. Verbatim theatre is a kind of theatre where the script is constructed from interviews or transcripts. The topic of the project is homelessness in Victoria. One of the main advantages of verbatim theatre is that it allows us to go in with broad questions, as opposed to our own agenda. For example, we want to know what people are thinking about homelessness in Victoria. What are the stories? What are the root causes? What are the effects? What are the reactions?

We don't know what the message of the play is right now—that will come from what people tell us. We need to talk to people in order to find out. We want to make a piece of theatre that will help move the conversation about homelessness forward.

I am open to all suggestions and would love to hear your ideas and your stories. All opinions are welcome. Another great thing



Good-Bye, Lori

We at TAPS would like to say a warm good-bye to our volunteer Lori Fisher, who has worked tirelessly as a volunteer advocate and previously as a much valued front desk volunteer. Lori's many clients benefited from her enthusiasm, energy and warmth. Best wishes on your new endeavours, Lori.

All of us at TAPS

about verbatim theatre is that it is possible for anyone's story to become a part of the play. We would like to talk to people from a range of ages, races, and social and economic backgrounds. You are welcome to remain anonymous if you would prefer.

Please contact me by email at joel@belfry.bc.ca or by phone at 250-385-6835 ext. 236.

Joel Bernbaum

TAPS' Volunteer Advocacy Program

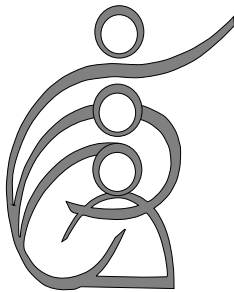
TAPS is looking for volunteers to help clients apply for disability benefits through the Ministry of Housing and Social Development. Volunteer advocates also help clients with appeals. This is an opportunity to develop legal advocacy skills and to provide tangible, sustained support and assistance to people with disabilities. If you are interested in volunteering at TAPS as a volunteer advocate please contact Stephen at 250-361-3521 or at legaladvocate@tapsbc.ca.

Grounds for Review of a DRO's Decision or Order

As mentioned previously, the grounds for *Review* of a DRO's Decision and/or Order are very limited. They are as follows:

1. You were unable to attend the hearing due to circumstances that could not be anticipated and which were beyond your control.

What this means is that a DRO will only agree to review his or her Decision and/or Order if he or she accepts the premise that you did not attend the hearing as scheduled because something happened that you could not control and that you could not have expected to happen. For example, you were admitted to hospital on an emergency basis just prior to hearing.



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2. You have new and relevant evidence (meaning, material to the issue) that was not available to you at the time of the hearing and this new evidence could possibly influence the Decision reached at hearing.

Remember that you as a party in dispute are responsible for being fully prepared at the time the original hearing is convened. "Fully prepared" means you have collected all relevant evidence and supplied it to both the Residential Tenancy Branch and the other party a minimum of seven (7) business days prior to the hearing date.

"Evidence" refers to any oral statement, document, photograph or thing that would serve to prove a fact during a dispute resolution hearing. Evidence can also include, but is not limited to, letters, affidavits, receipts, records, videotapes, audio recordings and photographs.

On an *Application for Review* under the ground *new and relevant evidence*, you must be able to show that:

- a. The evidence brought forward is in fact new.
"New" evidence is evidence that came into existence since the original hearing.
- b. There is material evidence that was not available or did not exist at the time of the original hearing. If the evidence did exist but was not presented, you must be able to prove that you did not know of its existence and that you could not have known about it.
- c. The new evidence is relevant to the matter in

dispute before the DRO. "Relevant" evidence is evidence that relates squarely to or has a material bearing upon the disputed matter, or that may disprove some evidence presented by the other party.

3. The Decision or Order of the DRO was obtained by fraud.

A person requesting a *Review* on the basis of fraud must be able to prove that evidence presented by the other party at hearing was false and that it was a significant factor in the Decision arrived at.

"Fraud" is defined as the intentional false representation of a matter of fact that works to deceive or is intended to deceive. Fraud can be carried out by words or by conduct, by false or misleading allegations, or by concealment of information or evidence that should properly have been disclosed.

Intentionally providing false testimony before a DRO would constitute fraud, as would making changes or alterations to a document, either to add false information or to delete information that would tend to disprove one's case.

Once the *Application for Review* is submitted, a DRO will decide whether the *Review* will proceed, based solely on the application and the evidence submitted with it. At this point, the Applicant for *Review* does not need to notify the other party.

The *Review* may be dismissed if:

- the application does not provide a complete

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(From Tenancy page 6)

description, or “full particulars,” of the reason for *Review*;

- the application and evidence submitted do not prove the established grounds for *Review*;
- the application discloses no basis on which the Decision or Order could be set aside or amended;
- the application is frivolous, vexatious or trivial or was not initiated in good faith; or
- the applicant fails to pursue the application diligently or to comply with an Order made during the *Review*.

The DRO may also dismiss or refuse to proceed with a *Review* application if the matter can be resolved by correcting a typographical, arithmetical or

other similar error in the Decision or Order, providing a clarification of the Decision, Order, Written Reasons, or dealing with an obvious error or inadvertent omission in the Decision, Order or Written Reasons.

The Review Decision

If the *Review* is successful, the applicant would then receive a copy of the DRO’s Decision, usually by Canada Post. The Applicant must then serve the Decision and all other information submitted with the *Review* application itself on the other party to the original dispute. Similarly, if the *Review* is denied, the DRO will advise the applicant in writing, clearly setting out the Reasons for his/her decision.

Deadlines for Submitting an Application for Review

The deadline for submitting an *Application for Review* is two (2) days from the date you receive written copy of the Decision and/or Order, if it relates to:

- an early end of tenancy,
- an Order of Possession for the landlord,
- a landlord’s withholding of consent for assigning or subletting, or
- a landlord’s Notice to End Tenancy for Non-Payment of Rent or Utilities.

The deadline for submitting an *Application for Review* is five (5) days from the date you receive written copy of the Decision or Order, if it relates to:

- a dispute of Notice to End Tenancy other than for Non-

Write for the Taproot

Taproot welcomes articles from readers. Share your ideas, experiences, opinions or outrage with Taproot’s vast readership. Articles should be 600 words or less. Please include your name and a way we can reach you (phone, e-mail, or mailing address). The next submission deadline is March 16th, 2011. Send submissions to TAPS (Attn: Heidi) at #302 - 895 Fort Street, Victoria, BC, V8W 1H7, or by e-mail to volunteers@tapsbc.ca.

Payment of Rent,

- repairs and maintenance,
- terminating services or restricting facilities.

The deadline for submitting an *Application for Review* is fifteen (15) days from the date you receive written copy of the Decision or Order for all other matters.

A DRO **cannot** extend the time to apply for *Review* other than in exceptional circumstances.

If you have any questions about the *Review* process or any other tenancy matter, please contact John or Thea at Together Against Poverty Society at 250-361-3521, #302 – 895 Fort Street.

As a follow-up, applications for judicial review will be discussed in the next issue of Taproot. ■



Together Against Poverty Society

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, and residential tenancy. We also provide public education in these areas and on broader poverty issues.

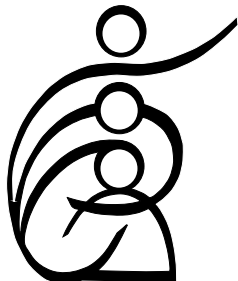
You can reach us between 9:30 am and 4:30 pm, Monday to Friday, by phone at 250-361-3521 or in person at #302 - 895 Fort Street. The office is closed daily for lunch between 12:00 and 1:00 and is closed to walk-in clients on Monday and Friday mornings.

Volunteer at TAPS

Front Desk Receptionist

TAPS is looking for a few people to volunteer on our busy front desk. One half-day shift per week. No experience necessary. Training is provided.

Call TAPS at 250-361-3521, contact us by e-mail at volunteers@tapsbc.ca, or drop by the office at #302 - 895 Fort Street.



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The Law Foundation of British Columbia

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We also appreciate the support that our members give.

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\$5.00 unwaged (may be waived)

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Donations are appreciated.

Charitable tax receipts provided.

Taproot is mailed to members.

TAPS mugs for sale

White coffee mugs with the TAPS crest on one side and a quote from Mary Wollstonecraft on the other: "It is justice, not charity, that is wanting in the world. (1792)" \$9, or two for \$15.