

# NO BENEFIT, PERIOD:

How a flawed audit and unjust legislation left people scrambling to repay the BC Emergency Benefit for Workers



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The Ombudsperson has a broad mandate to investigate complaints involving provincial ministries; provincial boards and commissions; Crown corporations; local governments; health authorities; colleges and universities; schools and school boards; and self-regulating professions and occupations. A full list of authorities can be found in the *Ombudsperson Act*. The Office of the Ombudsperson responds to approximately 8,000 enquiries and complaints annually.

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A photograph of a forest path with a text overlay. The path is dirt and leads through a dense forest of tall trees. The text is white and bold, set against a dark blue background.

**Our office is located on the traditional lands of the Ləkʷəŋən (Lekwungen) People and ancestors and our work extends across the homelands of the First Nations Peoples within what we now call British Columbia. We honour the many territorial keepers of the lands and waters where we work.**



**OMBUDSPERSON**  
BRITISH COLUMBIA

May 2025

The Honourable Raj Chouhan  
Speaker of the Legislative Assembly  
Parliament Buildings  
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Ombudsperson's Public Report No. 56, *No Benefit, Period: How a flawed audit and unjust legislation left people scrambling to repay the BC Emergency Benefit for Workers*.

The report is presented pursuant to section 25(1) of the *Ombudsperson Act*.

Yours sincerely,

Jay Chalke  
Ombudsperson  
Province of British Columbia



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## Contributors

David Gill,  
*Investigator*

Jonathan Laphorne,  
*Manager of Investigations*

Sarah Malan,  
*Manager of Systemic Investigations*

Zoë Jackson,  
*Director of Planning, Policy and Public Reporting*



# MESSAGE FROM THE OMBUDSPERSON

When the COVID-19 pandemic hit in early 2020, governments had to move quickly. The BC government acted decisively by introducing the BC Emergency Benefit for Workers (BCEBW) – a one-time \$1,000 payment to help people whose ability to work had been impacted by the pandemic. It was a good decision, made under pressure, to support people in real need.

But when governments act quickly, mistakes can happen. That's understandable. What's not understandable, and what this report addresses, is the refusal to fix an unfairness that came to light in the ensuing years.

When the BCEBW was introduced, it was intended to top up federal pandemic supports like the Canada Emergency Response Benefit (CERB). To move quickly the province used eligibility for the federal CERB as a proxy for determining who should get the BCEBW. But the province was unaware that some people who had lost their job due to COVID-19 were being routed by the federal government to two other federal benefits. In particular, the legislation behind the BCEBW did not include some people who had older, unrelated federal Employment Insurance (EI) claims – even if they had returned to work and then lost their jobs due to COVID-19, just like everyone else.

For example, some workers had taken parental leave in 2019 or briefly left work due to illness or seasonal layoffs. They

had collected federal EI at that time, returned to work, then were laid off again when the pandemic struck. When they applied for federal support, their older EI claims were automatically reactivated by the federal government. Because of that technicality, something decided by the federal government, most of those British Columbians were excluded from the provincial benefit.

But the province also didn't understand that technicality. And because it didn't check whether workers met all of the technical requirements for the BCEBW at the time it paid them the benefit. The province didn't discover its oversight until it audited the payments years later. At that time, the province discovered that many workers who received regular EI were technically ineligible for the BCEBW and ordered them to repay the benefit.

One worker, Mr. Leblanc, told us he felt he was “being punished for taking parental leave.” Another, Mr. Walker, said the rules governing the benefit “appear arbitrary and unyielding to legitimate differing circumstances.” I agree.

This exclusion became especially difficult to justify after the province corrected a similar issue in 2021. At that time, the province amended the BCEBW rules to recognize a second type of federal pandemic support – the EI Emergency Response Benefit (EI-

ERB) – once it became clear that workers who received that benefit were also excluded from receiving the BCEBW.

Yet now, the government refuses to make a similar adjustment for people whose older EI claims were automatically reactivated when they applied for federal pandemic assistance. These individuals lost their jobs due to COVID-19, applied in good faith, and received the BCEBW – only to be told years later that they never should have, and must pay it back. That decision doesn't stand up to scrutiny. It creates an arbitrary and unjust divide between groups of workers who were otherwise in identical situations.

We raised this issue with the Ministry of Finance and recommended that the unfair exclusion be fixed through a legislative amendment. But the ministry declined. Despite having the opportunity, it did not provide a clear or principled explanation for its decision or meaningfully engage with our findings. We've included our correspondence with the ministry at the back of this report. We kept trying to find out the reason why the ministry wouldn't fix the problem. Unfortunately, as you can see, the reason remains opaque.

This is disappointing, especially when considered alongside the ministry's constructive response to another major issue we identified affecting different BCEBW recipients. Our investigation also found serious flaws in the ministry's BCEBW audit process. The ministry wrongly asked some eligible people to repay the benefit and did not provide clear information about how they could, in turn, prove their eligibility. Further, the audit did not make use of available federal data which would have provided them with guidance on who was and was

not eligible. But in those cases, the ministry responded quickly and appropriately when we brought our concerns to their attention. It corrected its processes, reviewed files, and ensured repayments were cancelled or refunded to thousands of British Columbians. It also supported legislative changes to extend the time period for reconsiderations.

The ministry's willingness to fix errors in its audit process and extend eligibility to workers who received EI-ERB stands in stark contrast to its refusal to act on the unfair exclusion of workers whose past EI claims were automatically re-activated by the federal government. In some cases, the ministry acknowledged the problem and made things right. In another, it did not. And it hasn't explained the difference.

It's not enough to act quickly in the moment. Governments must also be willing to fix programs when it becomes clear that, in their haste, they have caused harm or created unfair outcomes. That's especially true when the harm is rooted in administrative design because it can impact large numbers of people.

Public confidence in benefit programs – and in government more broadly – depends on fairness, transparency, and accountability. That includes the willingness to revisit decisions, explain choices, and acknowledge when something needs to change.

Yours sincerely,



Jay Chalke  
Ombudsperson  
Province of British Columbia

# INTRODUCTION

The BC Emergency Benefit for Workers (BCEBW) was a one-time \$1,000 payment introduced by the provincial government in 2020 for British Columbia residents whose ability to work was affected by COVID-19. We received complaints from people who believed they had been unfairly required to repay the benefit they received. Our investigation of these complaints found that the BCEBW was unfair both in its design and in the way in which eligibility for the benefit was verified years after the benefit ended.

First, the legislation that enabled the benefit arbitrarily excluded some workers. The BCEBW was aimed at providing a benefit for workers receiving federal assistance who had lost their employment because of COVID-19. The federal government offered three types of benefits. The BC government decided, without justification, that workers who received one of these three types of benefits were not eligible for the BCEBW. This exclusion is unfair under the *Ombudsperson Act* because it is arbitrary and inconsistent with the purpose of the BCEBW.

Second, when the Ministry of Finance audited people who had received the benefit, it did not identify everyone who was eligible for the benefit. In other words, people who were eligible were mistakenly told they were not eligible and were required to repay the benefit. In addition, the ministry did not provide some individuals with adequate information about how they could prove their eligibility when they were told to pay the benefit back.

# BACKGROUND:

## Federal and provincial benefit programs

### Federal COVID-19 benefits

In early 2020, as the COVID-19 pandemic began to affect many people's employment, the federal government was receiving an unprecedented number of Employment Insurance (EI) applications. Using the existing EI system to process millions of new EI claims would have resulted in 12- to 18-month wait times. In addition, some people who lost their job because of COVID-19 were not covered by EI.

To address these issues, the federal government offered three equivalent benefits for workers who lost their job in the early days of the COVID-19 pandemic:

1. regular EI – for workers who had established EI benefit claims before March 15, 2020
2. the EI-Emergency Response Benefit (EI-ERB) – for workers who established new EI benefit claims on or after March 15, 2020
3. the Canada Emergency Response Benefit (CERB) – for workers not eligible for EI

The application process for these benefits was simplified to allow for quick processing. Workers could not be eligible for more than one benefit at the same time.

To facilitate faster payments, the CERB and EI-ERB were set at \$500/week – between the average (\$474) and maximum (\$573, collected by 50 percent of recipients) EI weekly payments. This figure was meant to make the emergency benefits an amount roughly equivalent to regular EI without requiring individual calculations.

While the CERB and EI-ERB were distinct benefits authorized under different legislative frameworks,<sup>1</sup> for simplicity the federal government's public communications about the two programs (the CERB and EI-ERB) referred to both as the CERB. The federal government's objective was to ensure that Canadians applying for income support because of the pandemic were treated in a similar manner.

### The BC Emergency Benefit for Workers

On March 23, 2020, the BC government announced the BC Emergency Benefit for Workers (BCEBW), a one-time \$1,000 provincial benefit for those whose ability to work had been affected by COVID-19. Online applications for the BCEBW opened on May 1, 2020.

On June 24, 2020, the BC government introduced the *Economic Stabilization (COVID-19) Act*, which retroactively

<sup>1</sup> The CERB was authorized by the *COVID-19 Emergency Response Act*, S.C. 2020, c. 5, while the EI-ERB was authorized by the *Interim Order Amending the Employment Insurance Act (Employment Insurance Emergency Response Benefit)*, SOR/2020-61, April 1, 2020.

provided the legal basis for the BCEBW. The legislation defined two categories of eligibility for the BCEBW:

1. workers who had received the CERB (only available after March 14)
2. workers who would have been eligible to receive the CERB if it had been available between March 1 and 14; this included workers who received regular EI during this period

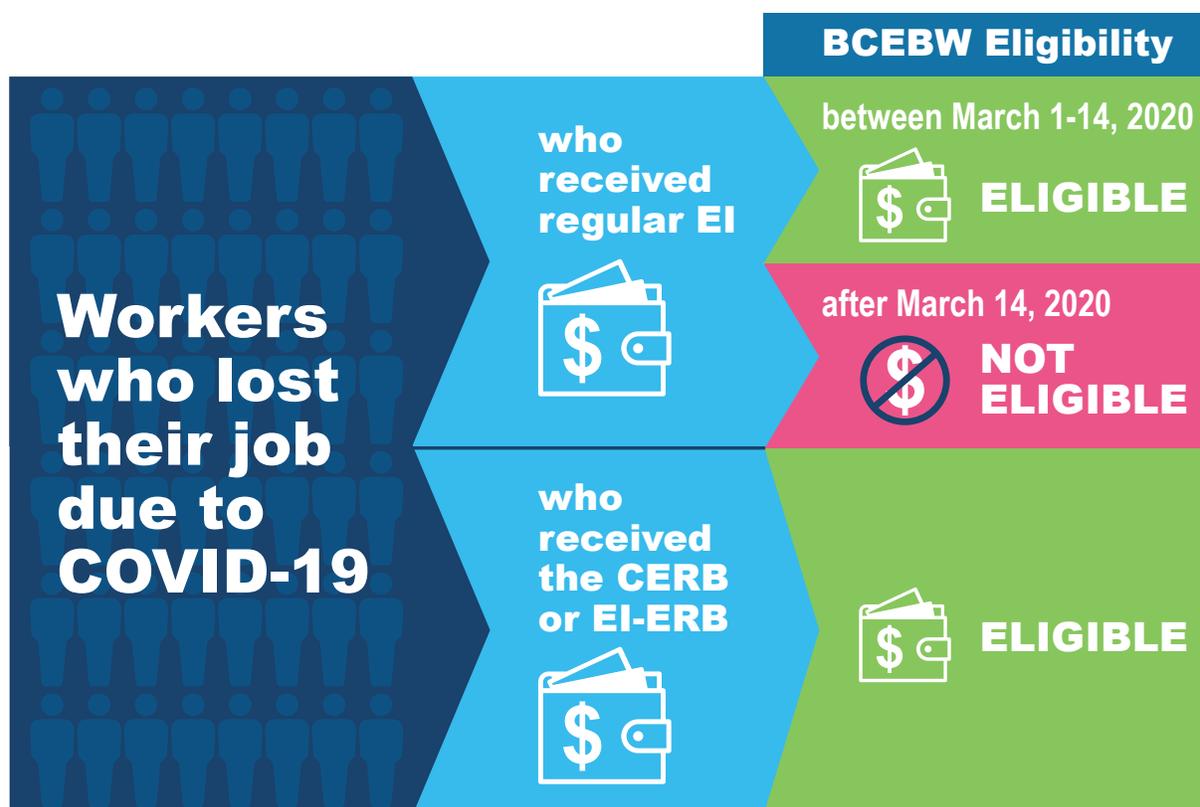
Notably, this legislation did not establish BCEBW eligibility for recipients of the EI-ERB, as that benefit was not legally the same as the CERB. EI-ERB recipients were not legally entitled to the BCEBW until after the program had ended. On May 20, 2021, which government passed the

*Budget Measures Implementation Act, 2021.* That Act established (retroactively) that EI-ERB recipients were eligible to receive the BCEBW.

By 2022, the categories of eligibility set out by the provincial government meant that:

- workers who lost their job because of COVID-19 and received the CERB or EI-ERB were **eligible** for the BCEBW
- workers who lost their job because of COVID-19 and received regular EI between March 1 and March 14, 2020 were **eligible** for the BCEBW
- workers who received regular EI instead of the CERB or EI-ERB after March 14, 2020 were **not eligible** for the BCEBW

Figure 1: Categories of eligibility for the BCEBW



This omission was not an issue for most people, as most EI claims made after March 14 were converted into EI-ERB claims.

However, it became more complicated if a worker had collected regular EI in the previous year – for example, they had taken parental leave or leave due to illness – and had time and benefits remaining on that previous claim because they had returned to work. In those cases, that claim was reactivated and paid out as regular EI if the worker was still within 52 weeks of their original claim unless the worker requested otherwise.<sup>2</sup> This happened even though the worker had lost their job because of COVID-19 and applied for EI in the same way as workers who ended up receiving the EI-ERB. If workers had used all their remaining regular EI while the EI-ERB was available, they would then become eligible for and begin receiving the EI-ERB. At that point, they would become eligible for the BCEBW.

If a worker who lost their job because of COVID-19 ended up only receiving regular EI, and did not receive it during the March 1–14 period, they would not be eligible for the BCEBW.

## BCEBW compliance audit

The BCEBW did not have any prepayment eligibility controls other than asking applicants to declare, in the online application, that they met the eligibility requirements. For this reason, the Ministry of Finance conducted a series of post-payment compliance audits to ensure that BCEBW recipients had been entitled to receive the benefit.

Then-Minister of Finance Carole James described how compliance audits would proceed, saying:

The intent is not [to penalize] people who, by mistake or innocently, applied, not realizing that this was not a benefit for them. I think we would all agree, given the COVID benefits that have come out from the federal government and the provincial government, that there's understandably some confusion sometimes around benefits for people to apply for.<sup>3</sup>

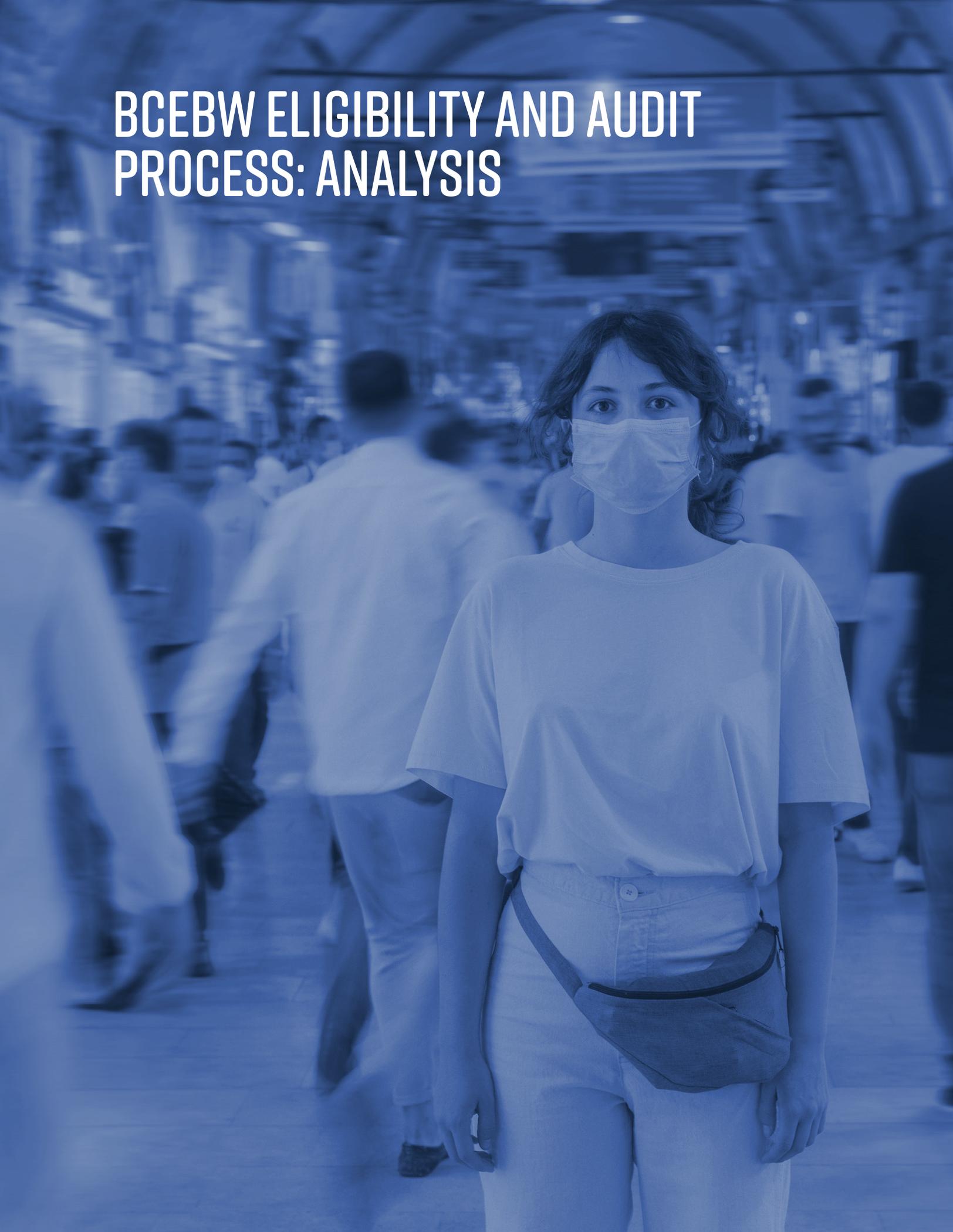
The Ministry of Finance's compliance audits included information-sharing with federal authorities. Based on information received from the federal authorities, the ministry determined that some people were ineligible for the BCEBW. This included people who the ministry could not confirm had qualified for the CERB or EI-ERB. It also included people who the ministry could not confirm had lost their job because of COVID-19 between March 1 and March 14, 2020. When it had completed its audits in fall 2023, the ministry sent letters requesting repayment of the benefit from individuals the ministry believed were ineligible. Some of these individuals made complaints to our office.

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<sup>2</sup> Under s. 10(8) of the federal *Employment Insurance Act*, a benefit cannot end until the temporal duration or the maximum benefits remaining on the claim are exhausted, or until a claimant who is eligible for and makes a new initial claim requests that their existing claim be ended.

<sup>3</sup> Hon. Carole James, British Columbia Legislative Assembly, Hansard, 28 July 2020, [12247](#).

# BCEBW ELIGIBILITY AND AUDIT PROCESS: ANALYSIS



# PART A: ELIGIBILITY

## Complaints

We received complaints from people who had lost their job because of COVID-19 on or after March 15, 2020, and received regular EI payments. The ministry determined they were ineligible for the BCEBW because they lost their employment after March 14, 2020, and were put on regular EI instead of the EI-ERB because they had open, unrelated EI claims. Some complainants were understandably confused because they expected to be eligible for the BCEBW.

### Ms. Hannah's complaint

Ms. Hannah identifies as Métis. She moved to Prince George, BC, in 2019, and had difficulty finding employment there. She made an EI claim on October 31, 2019, and received regular EI benefits until she found employment in January 2020; her benefits then ceased but her claim remained open.

Ms. Hannah lost that job because of COVID-19 in April 2020. She began receiving EI shortly after June 11, 2020, at which point Service Canada reactivated her open EI regular benefits claim retroactive to April 12, 2020. She received regular EI until she found employment in August 2020. She also applied for and received the BCEBW.

Ms. Hannah retired in April 2022. On October 24, 2023, she received a Notice of Redetermination from the Ministry of Finance informing her that she was not eligible for the BCEBW, as she had not received the

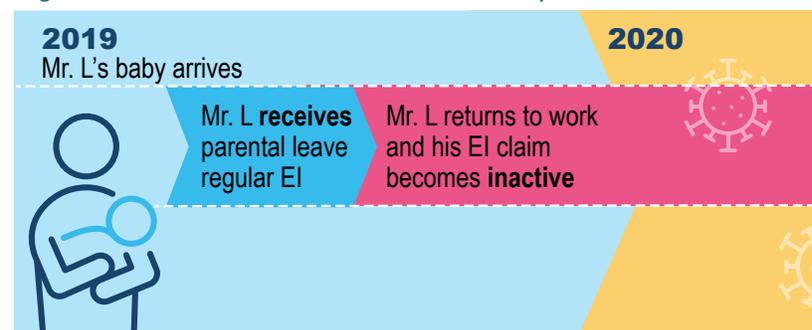
CERB or EI-ERB. She was unaware of the difference between regular EI and the EI-ERB, and so submitted proof of the EI benefits she had received in 2020. The ministry responded by explaining that her documents indicated that she had received regular EI, not the EI-ERB, and so was not eligible for the BCEBW.

Ms. Hannah contacted our office because she believed it was not fair for the ministry to deny her the BCEBW when she had lost her job because of COVID-19 and would have received the EI-ERB if she had not had an unrelated open EI claim from the previous year.

### Mr. Leblanc's complaint

Mr. Leblanc lost his full-time job in April 2020 because of COVID-19 and applied for EI benefits. He was eligible to receive the EI-ERB. Service Canada instead processed his claim as regular EI benefits because he had taken a five-week parental leave in

Figure 2: Timeline of Mr. Leblanc's complaint



December 2019. It therefore reopened his previous parental leave EI claim instead of providing him with the EI-ERB. He called Service Canada at the time to inquire about this discrepancy, and staff there reassured him that there was no disadvantage or issue with receiving regular EI rather than the CERB or EI-ERB.

He later applied for and received the BCEBW, as he believed he met the eligibility requirements.

The Ministry of Finance later requested repayment of his BCEBW benefit. He appealed that request in November 2023. The ministry asked that he provide documentation from Service Canada saying it had made an error, but Service Canada would only provide him with pay statements showing he had received regular EI. He has not yet repaid the BCEBW.

Mr. Leblanc contacted our office because he felt he was “being punished for taking parental leave in December 2019.” He said he does not have the money to repay the benefit, and that the notices that the debt will be turned over to collections if it is not repaid are causing him stress and anxiety. He believes he is being treated unfairly and that he is being discriminated against by being denied the BCEBW because he took parental leave.

### Ms. Kennedy's complaint

Ms. Kennedy also received a Notice of Redetermination informing her she was not eligible for the \$1,000 BCEBW she had received because she did not qualify for the CERB or EI-ERB.

She was laid off from her full-time position on March 27, 2020, because of COVID-19.

She then applied for EI, believing that she would receive the EI-ERB, but Service Canada instead put her back on an existing claim from July 2019 because it was within 52 weeks of that claim. She had an open claim because she had previously been laid off and collected EI for a month in 2019. She had not intended to receive EI instead of the EI-ERB. She wasn't sure what had happened with her EI-ERB application at the time, so she called the BCEBW helpline. She said that the person who spoke with her didn't appear to understand the distinction between EI and the EI-ERB and asked her whether she had lost her job on March 27 as a result of COVID-19. When she said yes, the representative told her that in that case she qualified for the BCEBW and should apply. In May 2020 she applied for and received the BCEBW.



After Ms. Kennedy raised her concerns about the notice, the ministry informed her that she could demonstrate her eligibility by providing a letter from Service Canada stating she had received the CERB or EI-ERB. But Service Canada told her that it could not provide the letter because she had been placed on regular EI because of her previously open claim. Service Canada said it could send her a letter stating she would have been eligible had there not been an existing claim. The ministry told her that would not establish her eligibility for the BCEBW.

The letter Ms. Kennedy received from the federal government read, in part:

*It is to verify as per your request that in 2020 March you were in an active claim so that your application for benefits renewed your regular benefits. If it were not the case you would have been eligible for CERB benefits at that time.*

She contacted our office because she believed it was not fair for the ministry to deny her the BCEBW when she had lost her job because of COVID-19 and would have received the EI-ERB if she had not had an unrelated open EI claim from the previous year.

### **Mr. Miller's complaint**

Mr. Miller was employed at the Site C dam construction site in 2019. In December 2019, he was laid off as a result of temporary issues with the project and was told he would likely return to work at the dam in January or February 2020. He made an EI claim in December 2019 and began collecting EI payments. He was called to return to work at Site C beginning on March 9, 2020.

In April 2020, the project was scaled back by BC Hydro in response to provincial health orders, and on April 17, 2020, Mr. Miller was laid off again as his crew

were not considered critical employees. He then applied for EI again, believing that his EI would be processed as the EI-ERB. He met all the requirements for the EI-ERB at that time: he had accrued enough insurable hours and he had lost his job as a result of circumstances beyond his control because of COVID-19. Service Canada instead reopened his previous EI claim.

He subsequently applied for the BCEBW and collected that benefit.

In 2023, Mr. Miller received a Notice of Redetermination from the Ministry of Finance notifying him that he did not appear to be eligible for the BCEBW and asking him to repay the benefit. He sent in his Itemized Statement of Benefits Paid and Record of Employment at the ministry's suggestion, but the ministry maintained that he was not eligible because he appeared to have received regular EI rather than the EI-ERB on a claim established after March 14, 2020. In one email he forwarded to us, the ministry wrote:

*We reviewed your itemized benefit statement again, and it appears you were put back on your existing EI rather than the emergency EI during COVID – this was obviously at no fault to you, however the eligibility criteria for the BCEBW benefit were very specific to the type of EI you need to be on, and the time frame you were receiving them.*

He contacted our office because he believed it was not fair for the ministry to deny him the BCEBW when he had lost his job as a result of COVID-19 and would have received the EI-ERB if he had not had an unrelated open EI claim from the previous year.

### Mr. Walker's complaint

Mr. Walker lost his job as a result of the COVID-19 pandemic on March 18, 2020, and applied for EI. In May 2020, he applied for and received the BCEBW.

He believed he would receive the EI-ERB. Instead, he received 15 weeks of regular EI benefits until he was called back to work in July 2020.

He received regular EI benefits rather than the EI-ERB because he had an open EI claim after collecting one week of EI benefits in January 2020. He met all requirements to qualify for the EI-ERB, but Service Canada continued his regular EI claim instead.

In November 2023, he received a Notice of Redetermination from the Ministry of Finance stating he was not eligible for the BCEBW because he did not receive the CERB or EI-ERB. In January 2024, he requested reconsideration and received a reply confirming that he did not meet the eligibility requirements. A Ministry of Finance representative explained that had his last day of work been on March 14, 2020, instead of four days later on March 18, he would have met the eligibility requirements for the BCEBW.

Mr. Walker contacted our office because he believed it was not fair for the ministry to deny him the BCEBW when he had lost his job because of COVID-19 and would have received the EI-ERB if he had not had an unrelated open EI claim from the previous year, or if he had lost his job before March 15, 2020.

He told us that he felt that the rules and the decision-making process around the BCEBW “appear arbitrary and unyielding to legitimate differing circumstances.”

# PART A: ANALYSIS

## The statutory eligibility criteria for the BCEBW are unjust and improperly discriminatory

The provisions of the provincial *Income Tax Act* that authorize the BCEBW eligibility criteria make arbitrary distinctions and thus are unjust and improperly discriminatory under the *Ombudsperson Act*.

Most workers who lost their employment because of COVID-19 on or after March 15, 2020, and then applied for EI were deemed by the federal government to be applying for the EI-ERB.

But workers who lost their job because of COVID-19 and had an inactive open regular EI claim for which no benefits were currently being paid, including a maternity, parental or sickness EI claim, were eligible for regular EI benefits, not the EI-ERB. This is because they were not establishing a new benefit period, but instead were making a claim on an existing dormant benefit period.<sup>4</sup>

The provincial *Income Tax Act* provides that individuals with an open EI claim that had been reactivated were only eligible for the BCEBW if they lost their job between March 1 and March 14, 2020.

A claimant who had an open EI claim from before March 1, 2020, who lost their job due to COVID-19 and who met all other relevant criteria, would:

- **qualify** for the BCEBW if they lost their job between March 1 and March 14, 2020, whether or not they subsequently applied for or received regular EI
- **qualify** for the BCEBW if they lost their job on or after March 15 and applied for the CERB through the CRA instead of making an EI claim and report<sup>5</sup>
- **not qualify** for the BCEBW if they lost their job on or after March 15 and applied for EI, because they would have their open EI claim continued as regular EI instead of establishing a new benefit period and receiving the EI-ERB

Individuals without open EI claims were eligible for BCEBW, regardless of when they lost their job.

We asked the ministry about the justification for treating people with open EI claims differently based on when they lost their employment. It replied that “this distinction was made by the legislature in legislation and is not a matter of administrative discretion.

<sup>4</sup> As noted in footnote 2, according to the federal *Employment Insurance Act* a benefit cannot end until the duration or the maximum benefits remaining on the claim are exhausted, or until a claimant who is eligible for and makes a new initial claim requests that their existing claim be ended.

<sup>5</sup> Service Canada confirmed that it would have been possible for an individual who was eligible for regular EI or the EI-ERB to simply not report on their existing claim or make a new EI claim and apply for and receive the CERB through the CRA instead.

The ministry is required to administer these requirements as enacted by the legislature and we do so in a fair, consistent, and equitable manner.”

According to the ministry, therefore, any unfairness was a result of the legislation governing the ministry’s decisions.

The *Ombudsperson Act* allows us to consider whether “a decision, recommendation, act or omission was made, done or omitted under a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory.”<sup>6</sup> This means we may evaluate the rule under which conduct occurred to determine whether it was unjust or improperly discriminatory. In this investigation, we focused on the statutory provisions of the *Income Tax Act* under which the ministry determined BCEBW eligibility.

### **Legislative provisions that make arbitrary distinctions that cause unfair outcomes and undermine the overall purpose of an enactment are unjust**

We consider a statutory provision to be unjust where it makes arbitrary distinctions that significantly fail to align with the overall intent or purpose of the legislation, particularly where the consequences of those distinctions are inequitable, unreasonable or unfair.

The ministry told us that “all taxing statutes are fundamentally exercises in drawing lines of distinction, and that it has long been recognized taxation statutes can

treat persons in even slightly different circumstances, differently.” This is a reasonable position when those lines are drawn fairly.

However, legislation is unfair when it treats people differently and is not reasonably required to do so. Tax legislation must still meet this test. Where it doesn’t, we may conclude that the legislation is unjust.

In this instance, the ministry’s decision to exclude people who lost their job because of COVID-19 after March 14, 2020, and had a previously open EI claim reactivated from the BCEBW was not reasonably required to meet the overall purpose of the legislation that created the BCEBW. The purpose of the legislation was to provide “a tax-free \$1,000 payment to British Columbians whose ability to work has been affected by the outbreak.”<sup>7</sup> The province said that workers would be eligible if they were “British Columbians who receive federal Employment Insurance (EI), or the new Canada Emergency Response Benefit, as a result of COVID-19 impacts”<sup>8</sup> and that BC residents would receive the benefit “in addition to their federal income supports.”<sup>9</sup> The BC government tied the BCEBW to CERB eligibility when first drafting its enabling legislation, and later included individuals who collected regular EI from March 1 to March 14 as eligible. In 2021, it retroactively made people who collected EI-ERB eligible.

As detailed above, both the CERB and EI-ERB were benefits designed to parallel average EI payments in a way that expanded

<sup>6</sup> *Ombudsperson Act*, R.S.B.C. 1996, c. 340, s. 23.

<sup>7</sup> Office of the Premier, “[COVID-19 Action Plan: B.C.’s First Steps to Support People, Businesses](#),” news release, March 23, 2020.

<sup>8</sup> Office of the Premier, “[COVID-19 Action Plan: B.C.’s First Steps to Support People, Businesses](#),” news release, March 23, 2020.

<sup>9</sup> Office of the Premier, “[COVID-19 Action Plan: B.C.’s First Steps to Support People, Businesses](#),” news release, March 23, 2020.

EI eligibility and distributed it as quickly as possible. The goal of the federal program was to ensure that everyone who lost their employment because of COVID-19 and met eligibility requirements would get a comparable benefit – whether that was regular EI, the EI-ERB or the CERB.

The province is not reasonably required to distinguish between the three federal benefits to achieve the outcome of providing a benefit “to British Columbians whose ability to work has been affected by the outbreak . . . in addition to their federal income supports.”<sup>10</sup> In fact, this distinction undermines these broader policy goals. It is particularly difficult to find a principled reason for the *Income Tax Act* to exclude from BCEBW eligibility individuals who collected regular EI after March 14 when the legislation expressly includes individuals who collected regular EI between March 1 and 14.

Excluding people from BCEBW eligibility who lost their job because of COVID-19 after March 14 and had a previously open EI claim reactivated is also inconsistent with the purpose of the federal legislation the BCEBW relies on for its eligibility requirements. The CERB and EI-ERB were intended as simplified replacements for and extensions of EI, respectively, with the goal of distributing EI as quickly and widely as possible during an employment crisis.

People losing their job because of COVID-19 received a new regular EI benefit (before March 15), “reactivated” existing regular EI benefits, simplified EI (the EI-ERB),

or simplified and expanded employment benefits (the CERB). Each of these federal benefits was designed to have comparable eligibility requirements and amounts paid. Everyone who lost their job as a result of COVID-19 was therefore eligible for closely comparable federal employment benefits. The initial intention of the BCEBW, as announced, “to provide a benefit to British Columbians who receive federal Employment Insurance (EI), or the new Canada Emergency Response Benefit, as a result of COVID-19 impacts . . . in addition to their federal income supports,”<sup>11</sup> seems to contemplate this equivalency as well. The goal of the legislation was to provide a benefit to individuals who lost their job because of COVID-19 and received any of the comparable federal employment benefits.

This intention is consistent with the provincial government’s stated goal of adding the March 1–14 period as “updating” the eligibility date to allow individuals “who filed federal employment insurance claims between March 1 and March 15 to benefit from the support.”<sup>12</sup> Minister James’s statement that the legislation extended eligibility to individuals “who would have been eligible for this [CERB] benefit if it had begun on March 1, 2020,”<sup>13</sup> suggests that the eligibility was meant to be equivalent between the two periods, and that it was intended to apply to everyone who was eligible for the CERB. However, the legislation as drafted removed the restriction on CERB eligibility (whereby CERB recipients could not also receive EI or the EI-ERB) for the purposes of determining

<sup>10</sup> Office of the Premier, “[COVID-19 Action Plan: B.C.’s First Steps to Support People, Businesses](#),” news release, March 23, 2020.

<sup>11</sup> Office of the Premier, “[COVID-19 Action Plan: B.C.’s First Steps to Support People, Businesses](#),” news release, March 23, 2020.

<sup>12</sup> Ministry of Finance, “[Province Tables Economic Stabilization Act, Confirms COVID-19 Supports](#),” news release, June 24, 2020.

<sup>13</sup> Hon. Carole James, British Columbia Legislative Assembly, Hansard, 15 July 2020, [12061](#).

who would have been eligible for the CERB during that time. Adding the March 1–15 eligibility period, therefore, did more than “update” the eligibility period; it also made people who received regular EI during that period eligible for the BCEBW.

It is likely that excluding people with open EI claims from receiving the BCEBW if they lost their job on or after March 15 from BCEBW eligibility was unintentional, and that BC legislators simply assumed, relying on the federal government’s announcements, that all new EI claims would be funnelled through the CERB after March 14, and that nobody who lost their job because of COVID-19 at that time would receive regular EI.

The provincial legislation as written also leads to absurd outcomes and perverse incentives. For example, if claimants with open EI benefit periods who lost their job on or after March 15 had understood the legislation as written at the time, they would likely have opted to claim the CERB instead of reactivating their open regular EI benefit, as they were eligible for both, and claiming the CERB would have given them a comparable employment benefit and entitled them to the BCEBW.<sup>14</sup> This distinction is therefore not only arbitrary but at odds with the purpose of the federal EI/EI-ERB/CERB program, which aimed to funnel money through the most efficient stream for each person.

The distinctions the legislature made in this case were not only arbitrary and unnecessary to achieve the policy objectives of the BCEBW, but they also actively undermine those objectives. The legislation makes distinctions that do not align with the purpose of the legislation and result in outcomes that are unfair.

**Finding 1: The provisions of the provincial *Income Tax Act* that authorize the BCEBW eligibility criteria are unjust contrary to section 23(1)(a)(iii) of the *Ombudsperson Act*. Excluding individuals with open EI claims from BCEBW eligibility if they lost their job on or after March 15 is arbitrary and not reasonably required for achieving the purpose of the legislation. Excluding those individuals results in eligibility criteria that significantly fail to align with the intent or purpose of the legislation. The consequences of the exclusion – requiring many individuals who lost their employment because of COVID-19 and received regular EI to repay their BCEBW benefit – are inequitable, unreasonable and unfair.**

<sup>14</sup> In fact, if claimants eligible to initiate new EI benefit periods on or after March 15 had understood the letter of the law at the time, they would likely have considered claiming the CERB instead of the EI-ERB as well, as under the BC legislation in effect during the BCEBW claim period, EI-ERB recipients were not eligible; EI-ERB recipients were only made eligible retroactively in 2021.

## **Legislative provisions that make arbitrary distinctions that cause adverse impacts on protected groups are improperly discriminatory**

A statutory provision may be improperly discriminatory where it results in differential treatment or where a distinction is made without valid justification. This includes differential treatment based on irrelevant factors, or on prohibited grounds under the *Canadian Charter of Rights and Freedoms* or human rights legislation.

A statutory provision may be improperly discriminatory within the meaning of the *Ombudsperson Act* even if the differential treatment is not based on a prohibited ground under the *Human Rights Code* or the Charter.

Our investigation concluded that excluding some people who received regular EI benefits is likely to have had an adverse impact on BCEBW applicants based on sex, disability and parental status, and is also likely to have disproportionately affected Indigenous applicants. Differential treatment that results in adverse impacts to members of a protected class under the Charter or human rights legislation is considered improper discrimination under our Act, except where there is a reasonable justification.

This analysis is consistent with our office's broader expectation that organizations consider principles of equity in their program and policy development by examining eligibility criteria to ensure that they do not unfairly exclude people or groups.

Adverse impact discrimination occurs when a seemingly neutral law has a disproportionate impact on members of protected equity-seeking groups. Instead of explicitly singling out those who are in the protected groups for differential treatment, the law indirectly places them at a disadvantage. Adverse impact discrimination therefore violates the norm of substantive equality, which recognizes that identical treatment can produce unequal outcomes.<sup>15</sup>

The legislation that sets the eligibility criteria for the BCEBW is likely to have an adverse impact on Indigenous people. Indigenous individuals are more likely to have had open EI claims,<sup>16</sup> and therefore likely to be disproportionately affected by the distinction made in the legislation that individuals with open EI claims are only eligible for BCEBW if they lost their job in the two-week period between March 1 and 14. Notably, one of the complainants to our office, Ms. Hannah, was an Indigenous person in these circumstances.

The distinction made in this legislation is likely to have an adverse impact on Indigenous individuals for three reasons. First, Indigenous individuals were more likely to be more severely affected by the employment disruption of the pandemic than non-Indigenous individuals; second, Indigenous individuals are more likely to access regular EI than non-Indigenous individuals; and third, given that Indigenous individuals claimed federal emergency employment COVID-19 benefits such as the CERB and EI-ERB more frequently than non-Indigenous individuals, it is likely that they also claimed the BCEBW at a higher rate.

<sup>15</sup> *Ontario (Attorney General) v. Fraser*, 2011 SCC 20 (CanLII), [2011] 2 SCR 3.

<sup>16</sup> Canadian Human Rights Commission, [Report on Equality Rights of Aboriginal People](#), 2013, 4.

Statistics Canada found that Indigenous people were more likely to be impacted by the financial effects of the pandemic than non-Indigenous people, particularly among individuals who experienced a disruption of employment, and noted that those effects were likely connected with the ongoing impacts of colonization. Statistics Canada also found that among workers who earned at least \$5,000 in 2019, “Indigenous workers (39.2%) were more likely to have received CERB than non-Indigenous workers (33.9%).”<sup>17</sup> This difference was even more marked in BC.<sup>18</sup>

With regard to Indigenous individuals’ use of EI generally, the Canadian Human Rights Commission found that “regardless of age and sex, there is a higher proportion of Aboriginal adults who received Employment Insurance benefits compared to non-Aboriginal adults. The greatest differences are seen between Aboriginal and non-Aboriginal men.”<sup>19</sup>

Altogether, these factors mean Indigenous people were more likely to have greater need for the BCEBW, more likely to have claimed the BCEBW, more likely to have accessed EI recently enough before losing their job because of COVID-19 to have open EI claims, and so more likely to subsequently be redetermined as ineligible if they lost their job on or after March 15.

The distinction made in the provincial *Income Tax Act* is also more likely to have had adverse impacts on groups protected by human rights law based on sex, disability and parental status. If an individual had entitlements remaining on previous sickness,

maternity or parental EI benefits (i.e., if they had returned to work before exhausting those claims) and subsequently lost their job because of COVID-19, they would have received regular EI, not the EI-ERB, making them ineligible for the BCEBW unless they lost their job between March 1 and 14.

Only individuals with no remaining EI entitlements of any kind, and who established a new benefit period on or after March 15, 2020, would have their EI claims paid as the EI-ERB.

One complainant to our office, Mr. Leblanc, was redetermined as ineligible because the federal government reactivated his remaining parental regular EI benefit after he lost his job as a result of COVID-19 in April 2020. Another complainant, Mr. Stewart, was put back on his remaining sickness regular EI benefit when he lost his job because of COVID-19 in April 2020, and would have been redetermined as ineligible if his regular EI had not run out before he went back to work, resulting in his receiving the EI-ERB for a four-week period and thus becoming eligible for the BCEBW.

Restricting people from receiving the BCEBW if they lost their job because of COVID-19 and received regular EI after March 14 was demonstrably more likely to exclude people who had previously qualified for maternity, parental or sickness EI. The *Income Tax Act* therefore likely had disproportionate impacts on people who gave birth, parents and people with an illness or disability. This improper discrimination is an additional element of the already unjust nature of the BCEBW legislation.

<sup>17</sup> Kelsang Yangzom and Huda Masoud, “[Indigenous Workers Receiving Canada Emergency Response Benefit Payments in 2020](#),” Statistics Canada, August 3, 2022.

<sup>18</sup> Kelsang Yangzom and Huda Masoud, “[Indigenous Workers Receiving Canada Emergency Response Benefit Payments in 2020](#),” Statistics Canada, August 3, 2022, 7.

<sup>19</sup> Canadian Human Rights Commission, [Report on Equality Rights of Aboriginal People](#), 2013, 32.

**Finding 2:** The provisions of the provincial *Income Tax Act* that authorize the BCEBW eligibility criteria are improperly discriminatory contrary to section 23(1)(a)(iii) of the *Ombudsperson Act* because they make distinctions regarding eligibility for the BCEBW that are likely to result in a disproportionately adverse impact on Indigenous people, as well as individuals who gave birth, who became parents, and who had an illness or disability.

**Recommendation 1:** By April 1, 2025, the Minister of Finance reconsider the provincial *Income Tax Act* by introducing amendments to extend BCEBW eligibility to individuals who lost their job because of COVID-19 and had a previously open EI claim reactivated during the existing BCEBW eligibility period defined by the Act.

The objective of this recommendation is to ensure that the *Income Tax Act* treats all individuals who lost their job because of COVID-19 and received a federal benefit during the BCEBW eligibility period equally. The BCEBW was aimed at providing a benefit for workers receiving federal employment benefits after losing their ability to work as a result of COVID-19. The federal government offered three such benefits, which were designed to be roughly equivalent. BC initially did not include EI

or the EI-ERB in the BCEBW eligibility criteria defined in the 2020 *Economic Stabilization (COVID-19) Act* that authorized the BCEBW, but it eventually extended the BCEBW to EI-ERB recipients in 2021. It continued to partially exclude recipients of the third benefit, regular EI, without apparent justification. We are asking the minister to amend the *Income Tax Act* to extend BCEBW eligibility to individuals who received regular EI outside of the March 1–14 range as well.

Doing so will also remedy the disproportionate adverse impacts the improperly discriminatory distinction is likely to have had on Indigenous individuals, namely increased financial precarity and associated negative health effects.<sup>20</sup> This would also help the government to demonstrate that it is following through on the Province’s commitment<sup>21</sup> to adopt the Truth and Reconciliation Commission’s 18th Call to Action:

We call upon the federal, provincial, territorial, and Aboriginal governments to acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies, including residential schools, and to recognize and implement the health-care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties.<sup>22</sup>

<sup>20</sup> For a more detailed treatment of the effects of employment and income on health among Indigenous people, see Charlotte Reading and Fred Wein, *Health Inequalities and Social Determinants of Aboriginal Peoples’ Health*, Prince George: National Collaborating Centre for Aboriginal Health, 2009, 3.3.

<sup>21</sup> Province of British Columbia, “[British Columbia: Building Relationships with Indigenous Peoples](#),” updated March 19, 2024.

<sup>22</sup> Truth and Reconciliation Commission of Canada, *Calls to Action*, 2015.

# PART B: AUDITS

## A flawed audit meant eligible individuals were asked to repay their BCEBW payments

We also received complaints from people who were sure they had met the eligibility requirements for BCEBW because they had received the EI-ERB or had lost their job between March 1 and 14, 2020, but had received a letter from the ministry telling them they were ineligible for the BCEBW because there was no record of them meeting these criteria.

The following complaints were all from individuals who lost their job because of COVID-19 and met the BCEBW eligibility requirements, either because they received the EI-ERB or because they lost their job due to COVID-19 between March 1 and 14. However, because of the flaws in the ministry's compliance audit, they were redetermined as ineligible and asked to repay their BCEBW payments. We later discovered that there were many people in similar circumstances who did not complain to our office or ask the ministry to reconsider their redetermination.

### Mr. Bell's complaint

Mr. Bell was working as a grip in the film industry. He was working on two different productions at the beginning of 2020. One of his productions shut down due to COVID-19 on March 7, 2020. Following a March 16, 2020, order prohibiting gatherings of more than 50 people, the second production he was working on shut down as well and he became unemployed. Mr. Bell initially

believed he had received the EI-ERB, but because he had lost his job on the first production between March 1 and 14, he received regular EI instead. He began receiving EI on March 22, 2020. He later applied for the BCEBW and subsequently received it on May 6, 2020.

Mr. Bell received a Notice of Redetermination on November 7, 2023, directing him to repay the \$1,000 BCEBW. The notice he received stated that he was not eligible because the ministry had information from the federal government that he did not meet the requirements for the CERB or EI-ERB.

It was very difficult for Mr. Bell to prove his eligibility for BCEBW because it was not clear what information he needed or how to obtain it. For example, after receiving the Notice of Redetermination, Mr. Bell called the ministry. He was told that he was not eligible because he was on "regular EI." He told the ministry that he understood that EI and the EI-ERB were the same benefit. The ministry told him to call the Canada Revenue Agency (CRA) and his MLA. After speaking to the ministry, he submitted an Itemized Statement of Benefits Paid for 2020 to the ministry showing his EI benefits beginning on March 22, 2020. He also submitted a screenshot of the CRA website stating, "for anyone who became eligible for Employment Insurance (EI) regular or sickness benefits

on March 15, 2020 or later, their EI claim was automatically processed as a CERB payment through Service Canada.” After not receiving a satisfactory response from the ministry, he contacted our office because he believed he had been wrongly redetermined as ineligible for the BCEBW.

When we investigated Mr. Bell’s complaint, the ministry said that it could tell from the form of the EI payments Mr. Bell received that they were regular EI payments, not the EI-ERB. The ministry also suggested to us that a possible explanation for why Mr. Bell would receive regular EI despite working until March 15 and his payments commencing on March 22 was that he might have had a previously open EI claim that had been reactivated. The ministry further suggested that:

if Mr. Bell lost his employment between March 1st and March 14th 2020, and meets all other qualifying requirements, he may still meet the requirements to qualify for the [BC]EBW, despite not being eligible for either CERB or EI-ERB. To verify this, we would require him to provide us with a copy of his Record of Employment.

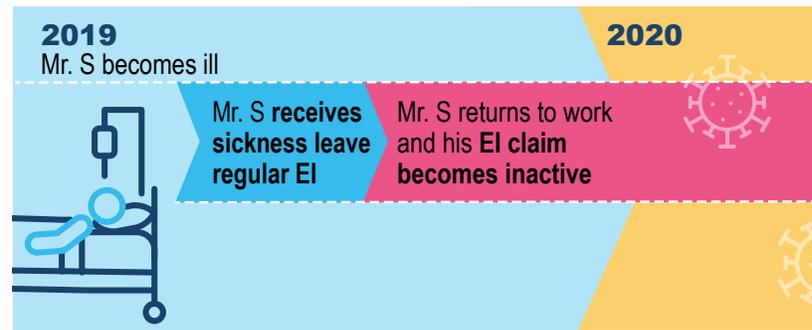
On speaking with Service Canada, Mr. Bell discovered that since he had two film industry jobs end in March 2020, Service Canada had begun his benefit period subsequent to his first loss of work. He was therefore eligible for regular EI effective March 11, 2020, and so appeared to be eligible for the BCEBW because he lost his job because of COVID-19 between March 1 and 14, 2020, and had collected regular EI. Mr. Bell submitted the records of employment

provided by Service Canada, and on January 26, 2020, received a response from the ministry advising him that he no longer had to repay the BCEBW.

### Mr. Stewart’s complaint

Mr. Stewart is a truck driver who received medical EI for a brief period in April 2019. He then returned to work. On March 17, 2020, his employment ended as a result of COVID-19, and he applied for EI. He received EI until May 3, 2020. He also mistakenly applied for CERB and received one CERB payment. The federal government later determined he was ineligible for the CERB payment, and he repaid it.

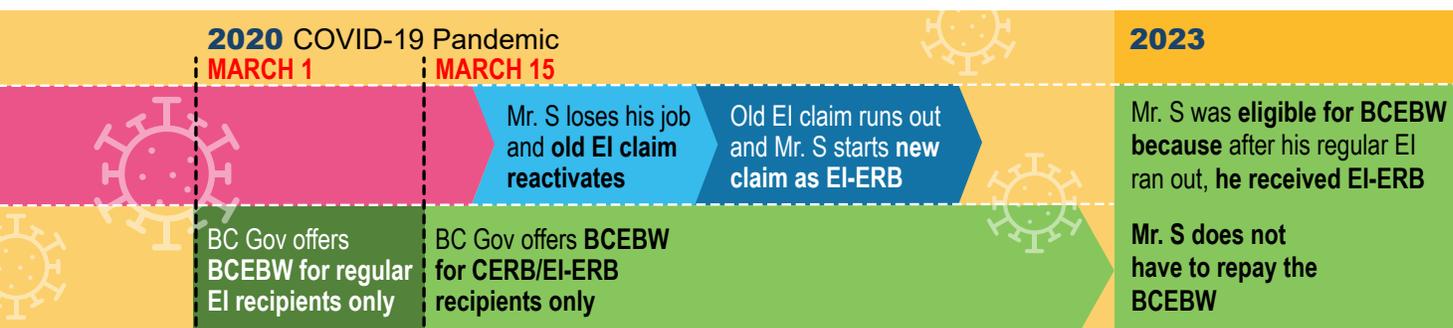
Figure 3: Timeline of Mr. Stewart’s complaint



Mr. Stewart also applied for the BCEBW and received it on May 11, 2020. On November 2, 2023, he received a Notice of Redetermination from the ministry telling him he was ineligible for the BCEBW and asking him to repay it.

He contacted us because he believed he was wrongly redetermined as ineligible and found the ministry’s process difficult to navigate. He attempted to access his EI records using the My Service Canada online portal but struggled to find the documents showing whether he had received the EI-ERB or regular EI. He eventually phoned Service Canada and asked for his itemized EI benefits for 2019 and 2020 to be sent to him.

The documents suggested that he had been placed on regular EI in March 2020 after losing his job because of COVID-19, as a result of his open medical EI claim from the previous year. However, during our investigation he realized that he had received the EI-ERB in April and May of 2020 when his open medical EI claim ran out, making him eligible to begin receiving the EI-ERB. He presented proof of receiving the EI-ERB to the ministry and it accepted him as eligible.



# PART B: ANALYSIS

Our investigation determined that there were two flaws in the Ministry of Finance's audit that explained these individuals' experiences.

## **The ministry's audit excluded people who had mistakenly applied for the CERB but were eligible for the BCEBW on other grounds**

First, some people had mistakenly applied for the CERB as well as the EI-ERB or EI. In those cases, they had to pay back the CERB, as they could not be eligible for both. The ministry's compliance audit did not check to see if people who received and repaid the CERB were eligible for the BCEBW on the grounds that they had received the EI-ERB or lost their job between March 1 and 14, 2020. The ministry therefore redetermined all of these individuals as ineligible.

The ministry only discovered this error after sending out redeterminations beginning in October 2023, after which it said the redetermined individuals had "admitted to having applied for both EI-ERB and CERB at the same time." The ministry suggested that people who had applied for both the CERB and EI-ERB had "ignored the rules." The ministry said that it had not anticipated that people would apply for and receive both the EI-ERB and CERB.

## **The ministry had incomplete information about why people had lost their job**

Second, for privacy reasons, the records of employment the ministry had received from the federal authorities regarding people who had lost their jobs between March 1 and 14 did not specify whether they had lost their jobs because of COVID-19 or for another reason. The ministry could therefore not confirm their eligibility and decided to redetermine them all as ineligible.

However, the ministry did not communicate this decision to staff who were drafting and sending the redetermination letters, and the letters told people that they had been redetermined as ineligible because they had not received the CERB or EI-ERB. The letters also told people that they could prove their eligibility by providing evidence that they were eligible for and had received the CERB or EI-ERB. The notice itself did not inform people that they could also show they were eligible by proving they had lost their job because of COVID-19 between March 1 and 14.

Staff later informed individuals who disputed their redetermination that they might be able to prove their eligibility by showing that they lost their job because of COVID-19 between March 1 and 14. Individuals who did not dispute their redetermination were not informed that they could demonstrate their eligibility by showing that they lost their job because of COVID-19 between March 1 and 14.

## The ministry's auditing procedure failed to identify some individuals who were legally entitled to the BCEBW

The procedure used by the ministry's auditing team did not result in the team obtaining relevant information (whether individuals who had received the CERB but had been required to pay it back, received the EI-ERB, or received a relevant Record of Employment), and so the team was not able to consider that information during the audit. The result (failing to identify some individuals who were legally entitled to the BCEBW) appears to have had an effect contrary to what was intended by the procedure (to confirm individuals' BCEBW eligibility) and resulted in eligible individuals being redetermined as ineligible.

The ministry initially suggested that the individuals who were not captured in the information-sharing with the federal government were missed as a result of their "breaking the rules" and applying for the CERB in addition to other benefits, and that individuals who had told the ministry about receiving both benefits in response to the audit had "admitted" to doing so.

But the significant delays in EI processing at the time of the onset of the pandemic, combined with the inaccessibility of helplines at Service Canada and the CRA, meant people were often unsure of whether their EI had been approved at all and may have applied for other CERB streams assuming no EI money was forthcoming. The initial confusion around which benefits to apply for, and the lack of differentiation between the CERB and EI-ERB programs, meant some people were likely applying in good faith, not realizing they would receive double payments.

The initial lack of prepayment controls due to the federal government prioritizing getting much-needed relief into workers' hands over stringent eligibility checks meant that double applications made in error were not caught and prevented, as they were after additional controls were put in place in mid-April 2020. Government agencies and ministries involved recognized this confusion and the "honest mistakes" resulting from it. In particular, Minister of Finance James's suggestion that "we would all agree, given the COVID-19 benefits that have come out from the federal government and the provincial government, that there's understandably some confusion sometimes around benefits for people to apply for"<sup>23</sup> made it unreasonable for the ministry to later take the view that all or most individuals were intentionally or recklessly breaking the rules.

In addition, the rules governing the BCEBW and federal benefits were being made at the same time as, or in some cases after, the programs they enabled, and government agencies struggled at times to communicate them clearly or even to understand each other's laws. It is reasonable that individuals would misunderstand the rules and make honest, good-faith mistakes in their applications for benefits.

The ministry should have been aware that people would apply, and in fact had applied for and received both the CERB and EI-ERB, if not during the design of its audit process, then at least before the expiry of its information-sharing agreement with federal agencies. Federal Minister of Employment, Workforce Development and Disability Inclusion Carla Qualtrough made public statements on April 10, 2020, specifically acknowledging that individuals were applying for and receiving both the

<sup>23</sup> Hon. Carole James, British Columbia Legislative Assembly, Hansard, 28 July 2020, [12247](#).

CERB and EI-ERB. The CRA did likewise in September 2020. Two reports by the Auditor General of Canada, one in March 2021<sup>24</sup> and one in December 2022,<sup>25</sup> both specifically addressed the existence and scope of the issue of people applying for and receiving both the CERB and EI-ERB. It is reasonable to expect the ministry to have been aware of this issue, including through these public statements, and to have considered adjusting its auditing process accordingly.

The ministry expected recipients to demonstrate their eligibility for the BCEBW when they were audited. However, the ministry, through its information-sharing agreements, could have ascertained which BCEBW recipients had received the EI-ERB or lost their job between March 1 and 14, whether or not they had mistakenly applied for and received the CERB. The ministry had the means of knowing those relevant facts. However, because of its audit design, it did not do so for some of those eligible individuals. It was unreasonable to put the onus on those individuals to demonstrate their eligibility, particularly since, as demonstrated in Mr. Bell's case, it was always easy for individuals to determine which information they needed or how to obtain it.

The ministry had no reasonable justification for ascertaining the eligibility of some eligible BCEBW recipients while not doing so for others.

Following our investigation, the ministry agreed to obtain updated information from Service Canada and to identify any applicants who had been previously denied the BCEBW because the ministry's audit did not identify that they were in fact eligible for

the benefit because they lost their job due to COVID-19 between March 1 and 14, 2020, or were eligible for the EI-ERB.

After obtaining this updated information, the ministry identified 14,909 applicants who met the eligibility criteria for the BCEBW but had been sent Notice of Redetermination letters informing them that they were not eligible. Of these, 9,436 had not previously made any payments on their outstanding debt. Because no payments had been made on their debts, the ministry simply advised these individuals that their debt was eliminated, and no further action was required. The remaining 5,473 applicants had paid back some or all of the benefit. The ministry had issued final refunds to nearly all of this group of people electronically by November 28, 2024, and delivered the remaining refunds by Canada Post by the end of January 2025.

We are pleased to see the ministry taking the necessary steps to ascertain the eligibility of these BCEBW recipients, and to either cancel their debts or repay their benefits.

### **The ministry's audit did not take reasonable steps to confirm the eligibility of people who lost their job between March 1 and 14, 2020**

People were eligible for the BCEBW if they lost their job because of COVID-19. If someone lost their job for a different reason between March 1 and 14, 2020, they were not eligible for the BCEBW.

<sup>24</sup> Office of the Auditor General of Canada, [COVID-19 Pandemic, Report 6: Canada Emergency Response Benefit](#), 2021.

<sup>25</sup> Office of the Auditor General of Canada, [COVID-19 Pandemic, Report 10: Specific COVID-19 Benefits](#), 2022.

During the audit process, the ministry redetermined that all BCEBW recipients who lost their job and received a Record of Employment between March 1 and 14, 2020, were ineligible for the BCEBW.

This happened because the federal government did not provide the province with the reasons why people who had received the BCEBW lost their job between March 1 and 14. The ministry's audit team concluded that none of these people were eligible for the BCEBW because it did not know whether they had lost their job because of COVID-19, and sent them Notice of Redetermination letters.

Unfortunately, the audit team did not communicate this decision to the employees who issued the Notice of Redetermination letters. As a result, the notice letters did not communicate that recipients could demonstrate their eligibility by providing a Record of Employment that showed they had lost their job because of COVID-19.

The notice provided information on a right of reconsideration under the Taxpayer Fairness and Service Code and identified specific documents demonstrating eligibility for the CERB or EI-ERB that might result in recipients being found eligible for the benefit.

Significantly, the notice (see Figure 4) did not mention that evidence of eligibility under the

Figure 4: Excerpt from the Notice of Redetermination sent to BCEBW recipients

Re: B.C. Emergency Benefit for Workers (BCEBW)

We have redetermined that you are not eligible for the BCEBW payment we issued to you on May 6, 2020.

To be eligible for the BCEBW, you must have been eligible and approved to receive the Canada Emergency Response Benefit (CERB) or the Employment Insurance Emergency Response Benefit (EI-ERB). We have received information from the Government of Canada that you did not meet the requirements for the CERB or the EI-ERB.

Therefore, you must pay back the BCEBW payment you received.

Disallowed BCEBW	\$1,000.00
Interest Payable	\$0.00
<b>Total Amount Due</b>	<b><u>\$1,000.00</u></b>

If you have any questions about this Notice of Redetermination, call us toll free at 1 844 248-6638.

**Note:** The Commissioner has waived interest charges to the date of this notice. Interest will begin to accrue if the balance owing is not paid within 30 days of the date on this notice. If you cannot pay in full, please contact us to find out about setting up a payment plan (see reverse). If you do not pay or make acceptable arrangements to pay, we will begin our collection of the total amount due.

**RECONSIDERATION**  
Under the Taxpayer Fairness and Service Code, you have the right to ask us to reconsider this redetermination

If you have a Notice of Redetermination from the Government of Canada dated after September 14, 2023 that shows you are eligible and approved to receive the CERB or EI-ERB provide us with a copy of that notice and we may redetermine your eligibility for BCEBW.



Does not communicate that the ministry's legal authority to determine eligibility would expire on December 2, 2023



Does not communicate that providing evidence that a person lost their job between March 1 and 14 could also result in being redetermined as eligible

remaining eligibility standard – those who lost their job between March 1 and 14 – could also result in being redetermined as eligible. Moreover, the Notice of Redetermination did not inform recipients that the ministry did not have the ability to determine eligibility after December 2, 2023, and that the notice did not specify a due date for submitting documents before the ministry’s legal authority to determine eligibility would expire on December 2, 2023.

Initial responses from the ministry to recipients who disputed their redetermination did not communicate this other route to eligibility or the relevant timeline. However, the ministry did identify this alternative possibility during our investigation, and Mr. Bell successfully demonstrated that he was eligible for the BCEBW under these alternative criteria as a result.

Our investigation raised concerns that the ministry unreasonably redetermined BCEBW recipients as ineligible when it had evidence that they had lost their job and received a Record of Employment between March 1 and 14, 2020. It did so without providing them with any notice that they could prove their eligibility by providing a Record of Employment that showed they had lost their job because of COVID-19. This lack of notice meant that many eligible BCEBW recipients were not provided with a reasonable period in which to prove their eligibility. Many such recipients would have had no idea that they could prove their eligibility by providing a Record of Employment unless they had contacted the ministry to dispute their redetermination.

The ministry did respond quickly to stop collections activity on affected individuals’ accounts and inform them of the error once it became aware of its mistake. However, the ministry did not identify the error until some individuals had made payments, by which time the ministry did not have the statutory authority to return those payments in a timely manner.

When the ministry realized its error, it redetermined all BCEBW recipients who they were aware had received a Record of Employment between March 1 and 14 as eligible without requiring them to provide a reason proving that they had lost their job because of COVID-19. On April 29, 2024, the ministry confirmed to us that they had formally redetermined as eligible all 1,443 applicants who had a Record of Employment dated between March 1 and 14, 2020, except for five who required further investigation.<sup>26</sup>

In addition, the ministry told us that it would contact any individuals it had told were ineligible during its 2023 compliance audit whose eligibility it did not subsequently confirm, and inform them of “all relevant information that they could provide to demonstrate their eligibility.”

We are pleased to see that the ministry has taken steps to remedy the errors in the audit process that our investigation helped identify and to ensure that BCEBW recipients who were redetermined as ineligible in the 2023 compliance audit are either properly identified as eligible or given sufficient notice of how they can prove their eligibility. As such, we have not made formal findings or recommendations related to this matter.

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<sup>26</sup> These redeterminations are in addition to the 14,909 identified in the separate resolution on page 26.

# CONCLUSION

The Ministry of Finance developed and delivered a much-needed benefit at a time of great uncertainty, anxiety and disruption, and it did so within a far shorter timeframe than it would have under normal conditions. It is understandable that the BCEBW legislation and subsequent auditing processes contained significant flaws, especially as they depended on complex federal legislation. However, the ministry now has the time and opportunity to correct those flaws by addressing the outstanding fairness issues, as recommended in this report, as it has already done with many of the issues we identified.

# APPENDICES

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# APPENDIX A: Social and Legislative Context of the BC Emergency Benefit for Workers

## The CERB, EI-ERB and BCEBW

On March 24, 2020, the federal government introduced and passed Bill C-13, which received royal assent on March 25, and among other things enacted the *COVID-19 Emergency Response Benefit Act* (CERBA) and amended the *Employment Insurance Act* to allow the Minister of Employment and Social Development to make interim orders for the purpose of mitigating the economic effects of COVID-19.<sup>27</sup> On April 1, the Minister of Employment, Workforce Development and Disability Inclusion, Carla Qualtrough, used this power to make the *Interim Order Amending the Employment Insurance Act (Employment Insurance Emergency Response Benefit)* (IO-ERB).<sup>28</sup>

The CERBA created the Canada Emergency Response Benefit (CERB), a benefit accessible for workers (individuals who were at least 15 years of age, were a resident in Canada, and who had earned at least \$5,000 in the previous 12 months) who had involuntarily stopped working (for 14 consecutive days within a four-week period on or after March 15 for reasons related to COVID-19) and were not receiving other income from employment or Employment Insurance (EI). The IO-ERB established that anyone applying and eligible to start a new EI benefit period on or after March 15 was

deemed to be applying for the EI-ERB, which otherwise had substantially similar eligibility requirements to the CERB<sup>29</sup> (benefit periods established prior to March 15, 2020, including existing open claims by working individuals who lost their job because of COVID-19, were processed under regular EI rules). Both benefits paid a flat-rate taxable benefit of \$500 per week, for 28 weeks between March 15 and October 3, 2020. While the CERB and EI-ERB were distinct benefits,

for simplicity of communication to the public, the two programs (CERB and EI-ERB) were communicated as one CERB. The objective was to ensure that Canadians applying for either income support under the CERBA or the *Employment Insurance Act* (EIA) were treated in a similar manner.<sup>30</sup>

The CERB proper was administered through the Canada Revenue Agency (CRA), while the EI-ERB was administered through Service Canada.

While most workers who lost their employment as a result of COVID-19 on or after March 15 and then applied for EI were deemed to be applying for the EI-ERB, workers who lost their job because of COVID-19 and had an active open regular EI claim, including a maternity, parental or

<sup>27</sup> Bill C-13, *An Act respecting certain measures in response to COVID-19*, First Session, Forty-third Parliament, 68-69 Elizabeth II, 2019–2020.

<sup>28</sup> *Interim Order Amending the Employment Insurance Act (Employment Insurance Emergency Response Benefit)*, SOR/2020-61, April 1, 2020.

<sup>29</sup> *Interim Order Amending the Employment Insurance Act (Employment Insurance Emergency Response Benefit)*, SOR/2020-61, April 1, 2020.

<sup>30</sup> *Certain Emergency Response Benefits Remission Order*, SI/2022-32, Explanatory Note.

sickness EI claim,<sup>31</sup> were not captured by the IO-ERB definition and were eligible for regular EI benefits, not the EI-ERB, as they were not establishing a new benefit period but were making a claim on a dormant benefit period. As the Social Security Tribunal (SST) observed, “the law [established by IO-ERB] says that no benefit period for regular EI benefits can be established between March 15 and September 26, 2020; it doesn’t say that no claim for regular benefits can be made during this period.”<sup>32</sup> The SST observed in another case that benefit periods remain active until they end, and that even if beneficiaries find employment and so make no claims and receive no payment during that period,

during a benefit period, EI regular benefits are payable for each week of unemployment . . . as long as the claimant makes a claim for that week and they are

not otherwise disqualified or disentitled. It doesn’t matter if there has been a gap of several weeks or months.<sup>33</sup>

Under section 10(8) of the *Employment Insurance Act*, a benefit cannot end until the temporal duration or the maximum benefits remaining on the claim are exhausted, or until a claimant who is eligible for and makes a new initial claim requests that their existing claim be ended.<sup>34</sup> As the SST observed, this is not a matter of discretion: “The Commission will not end a benefit period for anyone who asks for it. The law says that a person has to meet certain conditions before they can end a benefit period.”<sup>35</sup>

The federal government’s website eventually<sup>36</sup> explained the relationship between regular EI and EI-ERB eligibility more clearly:

Do I get a choice between collecting the EI CERB and collecting EI regular Benefits?

<sup>31</sup> We confirmed in a conversation with Service Canada that if an individual had entitlements remaining on previous sickness, maternity, or parental EI benefits (i.e., if they had returned to work before exhausting those claims) and subsequently lost their job due to COVID-19, they would likewise receive regular EI, not the EI-ERB. Only individuals with no remaining EI entitlements of any kind, establishing a new benefit period on or after March 15, 2020, would have their EI claims paid as the EI-ERB.

<sup>32</sup> *Canada Employment Insurance Commission v ZN*, 2023 SST 607 (CanLII), para 7.

<sup>33</sup> *MS v Canada Employment Insurance Commission*, 2022 SST 933 (CanLII), para 29.

<sup>34</sup> See, for example, [\*In the matter of the Employment Insurance Act and in the matter of a claim for benefits by H  l  ne Plamondon and In the matter of an appeal to an Umpire by the Commission from a decision by the Board of Referees given on February 26, 1998 in Hull, Quebec\*](#), CUB 43053, November 24, 1998.

<sup>35</sup> *KW v Canada Employment Insurance Commission*, 2020 SST 663 (CanLII), para 41.

<sup>36</sup> According to the Wayback Machine, a web archive, the explainer website below appears to have been created on April 7, 2020. At that time, it did not include the question and answer regarding whether applicants had a choice between receiving EI or receiving the EI-ERB. This question appears to have been added on April 25. At that time, the question and answer read as follows:

Do I get a choice between collecting the EI CERB and collecting EI regular Benefits?

No.

If you became eligible for Employment Insurance prior to March 15th, your claim will be processed under the pre-existing Employment Insurance rules.

If you became eligible for Employment Insurance regular or sickness benefits March 15th onward, your claim will be automatically processed through the Canada Emergency Response Benefit.

The final wording with the full explanation referenced below does not appear to have been added until May 9, 2020.

There are 3 possible scenarios in terms of which benefit you may receive:

- if you became eligible for Employment Insurance regular or sickness benefits prior to March 15th, you will receive the Employment Insurance benefits. You do not get to choose to receive the Canada Emergency Response Benefit
- if you became eligible for Employment Insurance regular or sickness benefits March 15th onward, you will receive the Canada Emergency Response Benefit. You do not get to choose

The only case where you get a choice is if you started a new EI claim within the last 52 weeks and there are still weeks payable on that claim. If you are in this situation, you can choose to:

- automatically reactive (renew) your existing claim at the existing benefit rate, or
- request that Service Canada end your existing claim and open a new claim for the Canada Emergency Response Benefit, provided you meet the eligibility criteria

If you choose to end your existing claim, any remaining weeks payable on that existing claim will be lost and your decision is irreversible and not subject to reconsideration.

You cannot get Employment Insurance benefits and the Canada Emergency Response Benefit for the same period.<sup>37</sup>

Employment and Social Development Canada (ESDC) was responsible for policy development and program design for both the CERB and EI-ERB.<sup>38</sup> Both programs had the goal of “temporarily simplifying the EI program and broadening the eligibility in the face of an extraordinary volume of claims.”<sup>39</sup> ESDC decided to make the benefit a flat-rate payment so it could be administered as easily as possible, and settled on \$500 a week based on average regular EI payments in previous years. ESDC engaged the CRA to help administer the non-EI side of the benefit through a delegation of authority by the Minister of Employment, Workforce Development and Disability Inclusion.

During debate on Bill C-13 on March 24, 2020, one MP remarked that “applications for regular EI have overwhelmed the system and no one can get hold of Service Canada to apply” and asked how the government would ensure the new benefit could manage the volume of applications. Minister Qualtrough responded that the new benefit had been created with separate processing resources to take pressure off the regular EI system, and that the government had also “redirected every single possible resource to Service Canada. . . . I think it is about 1,300 people who have been redirected to work on processing these claims and answering these questions.” She further noted that “we have had an enormous volume of EI

<sup>37</sup> Government of Canada, “[Questions and Answers on the Canada Emergency Response Benefit: Employment Insurance](#),” modified August 2, 2022.

<sup>38</sup> Office of the Auditor General of Canada, [COVID-19 Pandemic, Report 6: Canada Emergency Response Benefit](#), 2021.

<sup>39</sup> Sean Casey, Chair, [Modernizing the Employment Insurance Program: Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities](#), House of Commons, 43rd Parliament, 2nd Session, June 2021.

claims. We have had an enormous number of questions to Service Canada. We are doing our utmost to answer them and respond as quickly as possible.”<sup>40</sup> EI was delayed early in the pandemic for other reasons as well. For example, on March 24, 2020, Unifor called on employers to stop improperly coding records of employment, as improperly coded forms were “causing excessive delays for workers trying to access EI.”<sup>41</sup>

In a committee meeting on May 11, 2020, Minister Qualtrough further explained why the CERB and EI-ERB were created:

In mid-March, two things were happening at the same time. The first was that we were getting an unprecedented level of EI applications. Very quickly, within days, it became apparent that our EI system couldn't respond as nimbly as we needed it to. People would have to wait 12 to 18 months if we were processing millions and millions of EI claims. At the same time, we recognized that there were a lot of people who weren't falling within the EI system whom we needed to help.

Our initial solution was the creation of two new benefits that would parallel the EI regular benefits and EI sickness benefits. What then happened, again within a day or two, was that we realized that having four benefits out there was proving difficult and complicated for Canadians. With those two things happening at the same time, we got together and said that we needed to do something drastic, something different,

outside of EI. We needed one benefit for everyone. We couldn't spend our time, and Canadians didn't need us to spend our time, trying to explain which stream.

We basically pivoted, within probably 48 hours, from announcing those two first benefits to consolidating into one benefit all four streams: people who are EI-eligible and EI sickness-eligible, and the same two for non-EI people.<sup>42</sup>

Since the CERB and EI-ERB did not initially have any prepayment eligibility controls, individuals were able to apply for and receive both benefits until mid-April 2020, about a week after the benefits became available. At that time, ESDC and the CRA introduced a control to stop applicants from receiving both benefits. However, by this time some individuals had already applied for and received both benefits. These payments represented approximately \$500 million in CERB payments, or around 1 percent of total payments.<sup>43</sup> On April 10, 2020, Minister Qualtrough said that the government was “still getting a handle on how many of these double payments actually happened, which were completely driven by confusion by applicants of the need to apply once or twice.”<sup>44</sup>

When the CRA began to seek repayment of the double payment in September 2020, it recognized that people may have “in good faith” made an “honest mistake” in applying for both benefits, as confusion around how EI claims would be transferred to CERB “led to some clients inadvertently applying for

<sup>40</sup> Hon. Carla Qualtrough, House of Commons, Hansard, 24 March 2020, [2072](#).

<sup>41</sup> Unifor, “[Employers Sabotage Worker Access to EI Benefits, Great Canadian Casino Workers Speak Out](#),” news release, March 24, 2020.

<sup>42</sup> Hon. Carla Qualtrough, House of Commons, Standing Committee on Government Operations and Estimates, Number 011, [18](#).

<sup>43</sup> Office of the Auditor General of Canada, [COVID-19 Pandemic, Report 6: Canada Emergency Response Benefit](#), 2021.

<sup>44</sup> Erica Alini, “[Got a CERB Double Payment? Here's What to Do](#),” *Global News*, April 14, 2020.

financial support at both Service Canada and the CRA in the first few days of the CERB program.”<sup>45</sup> One Saskatchewan labour lawyer reported seeing significant confusion among his clients over which benefits they could apply for at the same time. He said in late April 2020 that “his law firm’s advice to those who lost employment because of the COVID-19 pandemic ha[d] changed numerous times from the middle of March to early April, as it was unclear initially if Canadians could collect EI and CERB at the same time.” He suggested that “some people applied at that [initial] point. . . . Their EI benefits were converted to CERB through the EI program, and they had also applied through [CRA]. Some people are double collecting. It’s an innocent mistake.”<sup>46</sup>

On March 23, 2020, the BC government announced a one-time \$1,000 provincial benefit tied to federal benefits for those whose ability to work had been affected by COVID-19. The government announced the benefit as “a tax-free \$1,000 payment to British Columbians whose ability to work has been affected by the outbreak.” The announcement said workers would be eligible if they were “British Columbians who receive federal Employment Insurance (EI), or the new Canada Emergency Response Benefit, as a result of COVID-19 impacts” and that BC residents would receive the benefit “in addition to their federal income supports.”<sup>47</sup> Applications opened on May 1, 2020. At that time the BC government website said that to qualify, people must:

- have been a resident of BC on March 15, 2020
- meet the eligibility requirements for CERB
- have been approved for CERB, even if a federal benefit payment has not yet been received
- be at least 15 years old on the date of application
- have filed, or agree to file, a 2019 BC income tax return
- not be receiving provincial income assistance or disability assistance<sup>48</sup>

On June 24, 2020, the BC government tabled Bill 18, the *Economic Stabilization (COVID-19) Act*, which retroactively provided the legal basis for the BCEBW. Finance Minister and Deputy Premier Carole James introduced the BCEBW as a benefit “for BC residents whose ability to work has been affected due to COVID.”<sup>49</sup> During committee debate, Minister James spoke to how compliance audits would proceed:

The intent is not [to penalize] people who, by mistake or innocently, applied, not realizing that this was not a benefit for them. I think we would all agree, given the COVID benefits that have come out from the federal government and the provincial government, that there’s understandably some confusion sometimes around benefits for people to apply for.<sup>50</sup>

<sup>45</sup> Global News, “[Did You Receive Double CERB Payments? The CRA Wants Its Money Back](#),” October 27, 2020.

<sup>46</sup> Prince Albert Now, “[Excessive CERB Payments: What’s an Accident and What’s Fraud](#),” May 1, 2020.

<sup>47</sup> Office of the Premier, “[COVID-19 Action Plan: B.C.’s First Steps to Support People, Businesses](#),” news release, March 23, 2020.

<sup>48</sup> Ministry of Finance, “[Online Applications Open for B.C. Emergency Benefit for Workers](#),” information bulletin, May 1, 2020.

<sup>49</sup> Hon. Carole James, British Columbia Legislative Assembly, Hansard, 24 June 2020, [11779](#).

<sup>50</sup> Hon. Carole James, British Columbia Legislative Assembly, Hansard, 28 July 2020, [12247](#).

The bill, among other things, amended the BC *Income Tax Act* to define eligibility for the BCEBW retroactively to March 1, 2020. The BC government website announcement on the day the bill was tabled said it “updates the eligibility date to March 1, 2020. The change will allow people whose income is affected by COVID-19 and who filed federal employment insurance claims between March 1 and March 15 to benefit from the support.”<sup>51</sup> The bill set two categories of eligibility:

- First, it said applicants would be eligible if they were entitled to receive a payment under the CERBA and had not been required to repay it.
- Second, it said applicants would be eligible if they would have been eligible to receive a payment under the CERBA had it been available between March 1 and 14 and if the CERBA had not prohibited payments to those already receiving regular EI benefits. Minister James gave her summary of the bill in the legislature, saying “This allows individuals who receive the [CERB] or who would have been eligible for this benefit if it had begun on March 1, 2020, to receive a \$1,000 tax-free payment from the government of BC.”<sup>52</sup>

Notably, this legislation did not establish BCEBW eligibility for recipients of the EI-ERB, as that benefit was administered not via the CERBA but through the *Employment Insurance Act* as amended by the IO-ERB. EI-ERB recipients were not legally entitled to the BCEBW until long after the program had ended, on May 20, 2021, when the government passed Bill 4, the *Budget Measures Implementation Act, 2021*. That act established (retroactively) that EI-ERB recipients were eligible to receive the BCEBW. There was no comment on this amendment during debate in the legislature. The only reference to the change was in an explanatory note in the legislation, explaining that clause 34 of the bill “provides for eligibility for the emergency benefit for workers in relation to the receipt of the employment insurance emergency response benefit.”<sup>53</sup>

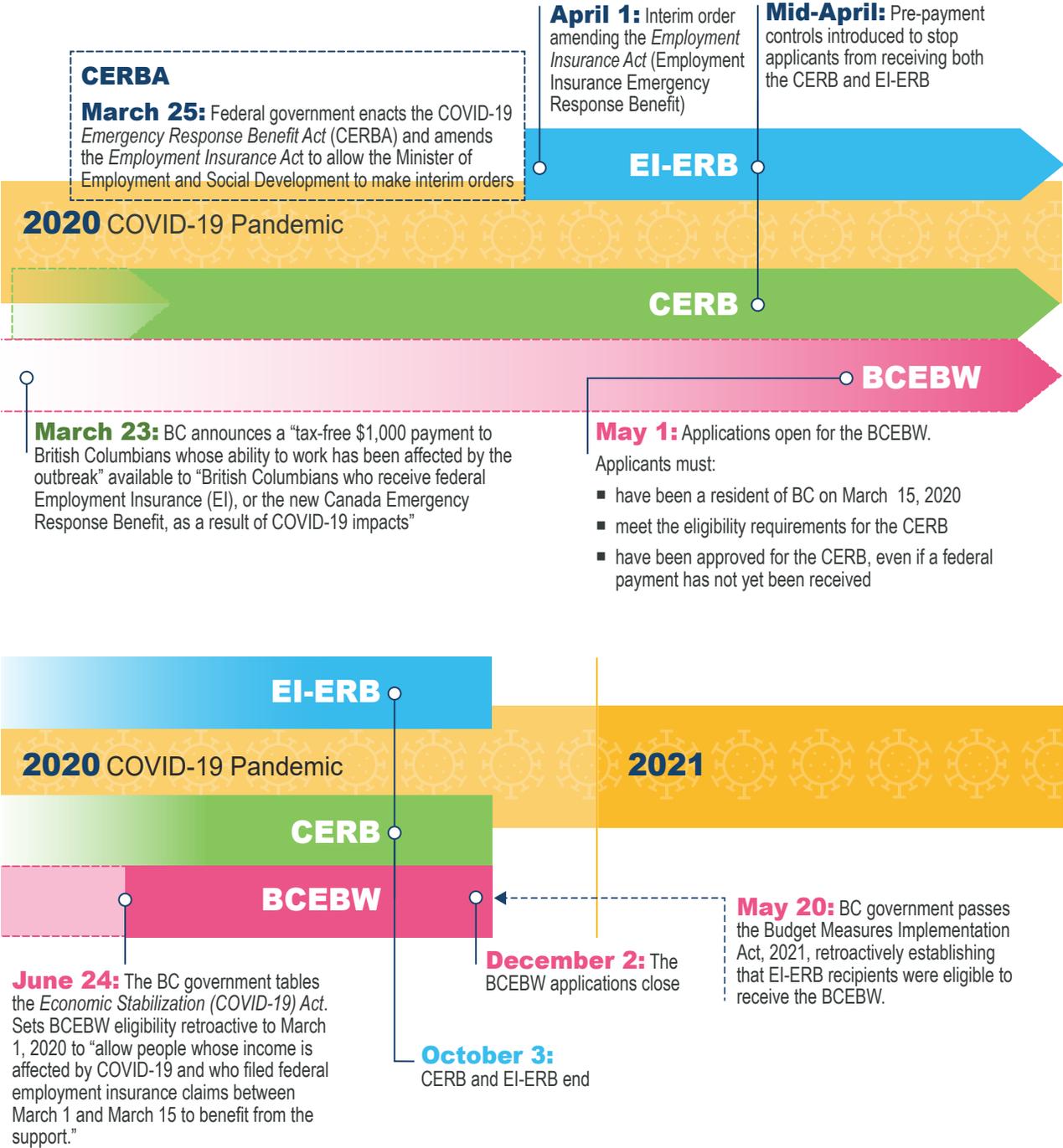
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<sup>51</sup> Ministry of Finance, “[Province Tables Economic Stabilization Act, Confirms COVID-19 Supports](#),” news release, June 24, 2020.

<sup>52</sup> Hon. Carole James, British Columbia Legislative Assembly, Hansard, 15 July 2020, [12061](#).

<sup>53</sup> Bill 4 – 2021, *Budget Measures Implementation Act, 2021*, 2nd Sess, 42nd Parliament, British Columbia.

Figure 5: 2020-21 timeline of government programs offered during COVID-19



# APPENDIX B:

## Initial response from Deputy Minister of Finance



February 13, 2025

511556

Jay Chalke, Ombudsperson  
Province of British Columbia  
PO Box 9039 Stn Prov Govt  
Victoria BC V8W 9A5

Dear Jay Chalke:

Thank you for your letter of January 15, 2025, regarding your draft report on the British Columbia Emergency Benefit for Workers. Thank you also for providing an extension to respond.

The Emergency Benefit for Workers was announced on March 23, 2020, as part of the BC government's Covid-19 Action Plan to provide a one-time payment of \$1,000 for British Columbians whose ability to work was affected by the Covid-19 pandemic. To be eligible for the payment, British Columbians needed to meet the requirement for the federal Canada Emergency Response Benefit (CERB); in particular, that after March 14, 2020, the individual had work hours reduced/stopped due to Covid-19.

The *Economic Stabilization (COVID-19) Act*, was introduced in the Legislature on June 24, 2020. In its news release about the Act, the BC Government stated, "The Economic Stabilization Act brings the B.C. Emergency Benefit for Workers into law and updates the eligibility date to March 1, 2020. The change will allow people whose income is affected by COVID-19 and who filed federal employment insurance claims between March 1 and March 15 to benefit from the support."

This expansion of the eligibility criteria to include those who filed federal employment insurance claims on or, after March 1, 2020, and before March 15, 2020, and met the other relevant criteria, was approved by the BC legislature and received Royal Assent on July 29, 2020. As such, it represents where the Legislature drew the line of distinction between who would be eligible and who would not. Further, it provided criteria that could be adjudicated by the ministry in determining eligibility (including during post payment audits), an important consideration when implementing tax programs.

.../2

**Ministry of  
Finance**

Office of the  
Deputy Minister

Mailing Address:  
PO Box 9417 Stn Prov Govt  
Victoria BC V8W 9V1  
[www.gov.bc.ca/fin](http://www.gov.bc.ca/fin)

Location Address:  
Room 109  
617 Government Street  
Victoria BC

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While the Legislature could have drawn the line of distinction differently and included, as eligible, those who filed federal employment insurance claims on a date earlier than March 1, 2020, doing so may have significantly increased the cost of the program and included persons whose employment may not have been impacted by COVID-19. Tax legislation regularly establishes specific criteria for benefits, credits or exemptions, resulting in a delineation between eligibility and ineligibility such that not all persons or circumstances will qualify. Determining specific legislative parameters for benefit programs requires weighing multiple factors and competing priorities. While I understand that some individuals who filed federal employment insurance claims prior to March 1, 2020, did apply for, and receive, the BC Emergency Benefit for Workers and have been asked to repay the amount, I expect that there were many others that understood they were not eligible to apply and therefore did not. As applications for the BC Emergency Benefit for Workers closed in December, 2020, retroactively expanding the criteria now, as you have recommended, would result in a new delineation between eligibility and ineligibility.

It appears the concerns you have raised are with the legislation itself, rather than a decision or recommendation made, an act done or omitted, or a procedure used by an authority that aggrieves or may aggrieve a person. Ministry of Finance staff are required to administer the law, in this case the *Income Tax Act*, as it is written and passed by the Legislature. Moreover, the legislative scheme for the Emergency Benefit for Workers, Part 14 of the *Income Tax Act*, provides no discretion to Ministry staff, including myself, to diverge from the requirements as passed by the legislature.

You have requested that I indicate whether the Ministry of Finance will accept your recommendation for the Minister of Finance to introduce legislation that would extend the BC Emergency Benefit eligibility to individuals who received regular EI after they lost their job due to COVID during the BC Emergency Benefit for Workers eligibility period outside of the March 1 – 14, 2020 period. The recommendation in the draft report is that the Minister do so by April 1, 2025. As the Deputy Minister of Finance, I am not in a position to commit to the Minister of Finance introducing legislative amendments, nor would I recommend that she do so given the facts, and therefore will be unable to meet your requested recommendation in the report.

The B.C. government is committed to working to end systemic discrimination. Government has re-established the BC Human Rights Commission, passed the *Anti-Racism Act*, launched the Racist Incident Helpline and passed pay transparency legislation. Through the Province's Declaration Act Action Plan, the Province is also working to end Indigenous-specific racism and discrimination in health care, schools, workplaces and everyday life. All legislation introduced and passed by the Legislature is required to comply with Canada's Constitution including the Canadian Charter of Rights and Freedoms' equality rights/prohibition against discrimination in section 15. Absent a finding from a court of competent jurisdiction, the Ministry of Finance is

.../3

- 3 -

unable to agree that the legislated eligibility requirements for the BC Emergency Benefit for Workers are improperly discriminatory.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Douglas S. Scott', with a long horizontal stroke extending to the right.

Douglas S. Scott  
Deputy Minister

# APPENDIX C:

## Ombudsperson response to Deputy Minister of Finance



**OMBUDSPERSON  
BRITISH COLUMBIA**

*Pursuant to s.9 of the **Ombudsperson Act**, this letter, any accompanying document, and any response to either the letter or accompanying document must not be publicly disclosed unless the Ombudsperson determines otherwise. Furthermore, these records are excluded from the **Freedom of Information and Protection of Privacy Act** (para. 3(1)(c)) and must not be disclosed pursuant to an FOI request without the express permission of the Ombudsperson.*

March 12, 2025  
File: 23-006601

Delivered via email: [REDACTED]

Douglas Scott  
Deputy Minister of Finance  
PO Box 9417 Stn Prov Govt  
Victoria BC V8W 9V1

Dear Deputy Minister Scott:

**Re: British Columbia Emergency Benefit for Workers – Draft Report**

Thank you for your letter of February 13, 2025, responding to my draft report on the British Columbia Emergency Benefit for Workers.

I am writing to clarify apparent misunderstandings about my findings and recommendation and to invite a meeting to further discuss my draft report and recommendation before I finalize it.

Your response suggests that you understand me to be recommending that the ministry include individuals “who filed federal employment insurance claims on a date earlier than March 1, 2020,” and “whose employment may not have been impacted by COVID-19” as eligible for the BCEBW.

This is not what I am recommending. To be clear, I am recommending that the Minister introduce amendments to the *Income Tax Act* to retroactively include as eligible all workers who lost their job because of the COVID-19 pandemic between March 15 and December 2, 2020 (the existing BCEBW eligibility period defined by the Act), and who had a previously open EI claim reactivated in that same period.

The legislature approved a similar amendment on May 20, 2021 when it passed the *Budget Measures Implementation Act, 2021*, retroactively extending the BCEBW to EI-ERB recipients. My recommendation proposes that the minister introduce analogous legislation to retroactively provide that a further group of workers who lost their jobs due to COVID-19 be able to keep the BCEBW payments they received to support them in a time of need.

Mailing address: PO Box 9039 Stn Prov Govt • Victoria BC V8W 9A5  
Phone in Victoria: 250-387-5855 • Toll-Free: 1-800-567-3247 • Fax: 250-387-0198 • [bcombudsperson.ca](http://bcombudsperson.ca)



My recommendation is founded on a conclusion that the existing legislation is unjust pursuant to s.23(1)(a)(iii) of the *Ombudsperson Act*.

My recommendation would not result in someone becoming eligible for the BCEBW if they only filed a federal EI claim before March 1, 2020, or if their employment was not impacted by the pandemic.

To avoid any confusion, I have revised my draft recommendation as follows:

Recommendation 1: By April 1, 2025, the Minister of Finance reconsider the provincial *Income Tax Act* by introducing amendments to extend BCEBW eligibility to individuals who lost their job because of COVID and had a previously open EI claim reactivated between March 15 and December 2, 2020, the existing BCEBW eligibility period defined by the Act.

You wrote that “tax legislation regularly establishes specific criteria for benefits, credits or exemptions, resulting in a delineation between eligibility and ineligibility such that not all persons or circumstances will qualify.” This is a reasonable position when the lines are drawn fairly. However, when investigating under the *Ombudsperson Act*, I may consider whether these distinctions align with the overall intent or purpose of the legislation. Legislation is unfair when it treats people differently and is not reasonably required to do so. Legislation, including tax legislation must meet this test.

In this case it is not clear how excluding from the BCEBW people who lost their job due to COVID-19 between March 15 and December 2, 2020, and had a previously open EI claim reactivated rather than CERB or EI-ERB due to the way in which the federal benefits were structured is reasonably required to meet the purpose of the legislation. To the contrary, it appears inimical with the purpose of the legislation establishing the BCEBW.

As detailed in the draft report, both EI-ERB and CERB were benefits designed to parallel average EI payments in a way that expanded EI eligibility and distributed it as quickly as possible; the goal of the federal program was to ensure everyone who lost their employment due to COVID-19 and met EI-analogous eligibility requirements would get a comparable EI-analogous benefit—whether that was regular EI, EI-ERB, or CERB.

It is particularly difficult to find a principled reason for the exclusion when the legislation explicitly includes as eligible individuals who collected regular EI between March 1 and 14 and who, therefore, were in similar circumstances as those who are still excluded.



I have recommended that the government introduce legislative amendments to address unfairness on many previous occasions,<sup>1</sup> and ministers have had no issue with introducing legislative amendments where they accepted our recommendations in the past.

The minister may accept my recommendation without accepting both of my findings; it is open to her to, for example, disagree that the legislation is improperly discriminatory while agreeing to amend the legislation as I recommend.

In light of the above, I would welcome an opportunity to meet with you and Minister Bailey to discuss my findings and recommendation before I make further decisions about this report. Arrangements can be made through my Executive Coordinator, Keira Morgan, at [REDACTED]

However, if you do not wish to meet to discuss this further and have nothing further to add to your February 13 letter, I would appreciate confirmation of this by March 31 at which time I will proceed to finalize my report for delivery to the Speaker of the Legislative Assembly.

Should ministry staff have any questions about this letter or the draft report they can contact Zoë Jackson, Director of Public Reporting, at [REDACTED]

I look forward to your response.

Yours sincerely,

Jay Chalke  
Ombudsperson  
Province of British Columbia

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<sup>1</sup> For example, the government accepted our recommendations to introduce legislative amendments in response to our reports [Committed to Change](#) and [Striking a Balance](#).

# APPENDIX D:

## Final response from Deputy Minister of Finance



April 17, 2025

512629

Jay Chalke, Ombudsperson  
Province of British Columbia  
PO Box 9039 Stn Prov Govt  
Victoria BC V8W 9A5

Dear Jay Chalke:

Thank you for your letter of March 12, 2025, regarding the British Columbia Emergency Benefit for Workers – Draft Report, providing clarification to your recommendation and your offer to meet with Minister Bailey and Myself to discuss further. I appreciate the extension of time to provide my response.

The additional information you provided has been reviewed and I can confirm that the ministry has no further response to provide. While I appreciate the offer to meet, I respectfully decline. Please consider my letter dated February 13, 2025, the Ministry's final response on this matter.

I would like to thank you again for taking the time to write.

Sincerely,



Douglas S. Scott  
Deputy Minister

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**Ministry of  
Finance**

Office of the  
Deputy Minister

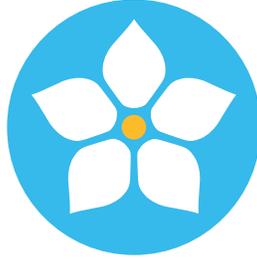
Mailing Address:  
PO Box 9417 Stn Prov Govt  
Victoria BC V8W 9V1  
[www.gov.bc.ca/fin](http://www.gov.bc.ca/fin)

Location Address:  
Room 109  
617 Government Street  
Victoria BC

# APPENDIX E:

## Summary of findings and recommendation

FINDINGS	
<b>F1</b>	<b>Finding 1:</b> The provisions of the provincial <i>Income Tax Act</i> that authorize the BCEBW eligibility criteria are unjust contrary to section 23(1)(a)(iii) of the <i>Ombudsperson Act</i> . Excluding individuals with open EI claims from BCEBW eligibility if they lost their job on or after March 15 is arbitrary and not reasonably required for achieving the purpose of the legislation. Excluding those individuals results in eligibility criteria that significantly fail to align with the intent or purpose of the legislation. The consequences of the exclusion – requiring many individuals who lost their employment because of COVID-19 and received regular EI to repay their BCEBW benefit – are inequitable, unreasonable and unfair.
<b>F2</b>	<b>Finding 2:</b> The provisions of the provincial <i>Income Tax Act</i> that authorize the BCEBW eligibility criteria are improperly discriminatory contrary to section 23(1)(a)(iii) of the <i>Ombudsperson Act</i> because they make distinctions regarding eligibility for the BCEBW that are likely to result in a disproportionately adverse impact on Indigenous People, as well as individuals who gave birth, who became parents, and who had an illness or disability.
RECOMMENDATION	
<b>R1</b>	<b>Recommendation 1:</b> By April 1, 2025, the Minister of Finance reconsider the provincial <i>Income Tax Act</i> by introducing amendments to extend BCEBW eligibility to individuals who lost their job because of COVID and had a previously open EI claim reactivated during the existing BCEBW eligibility period defined by the Act.



# **OMBUDSPERSON**

## BRITISH COLUMBIA