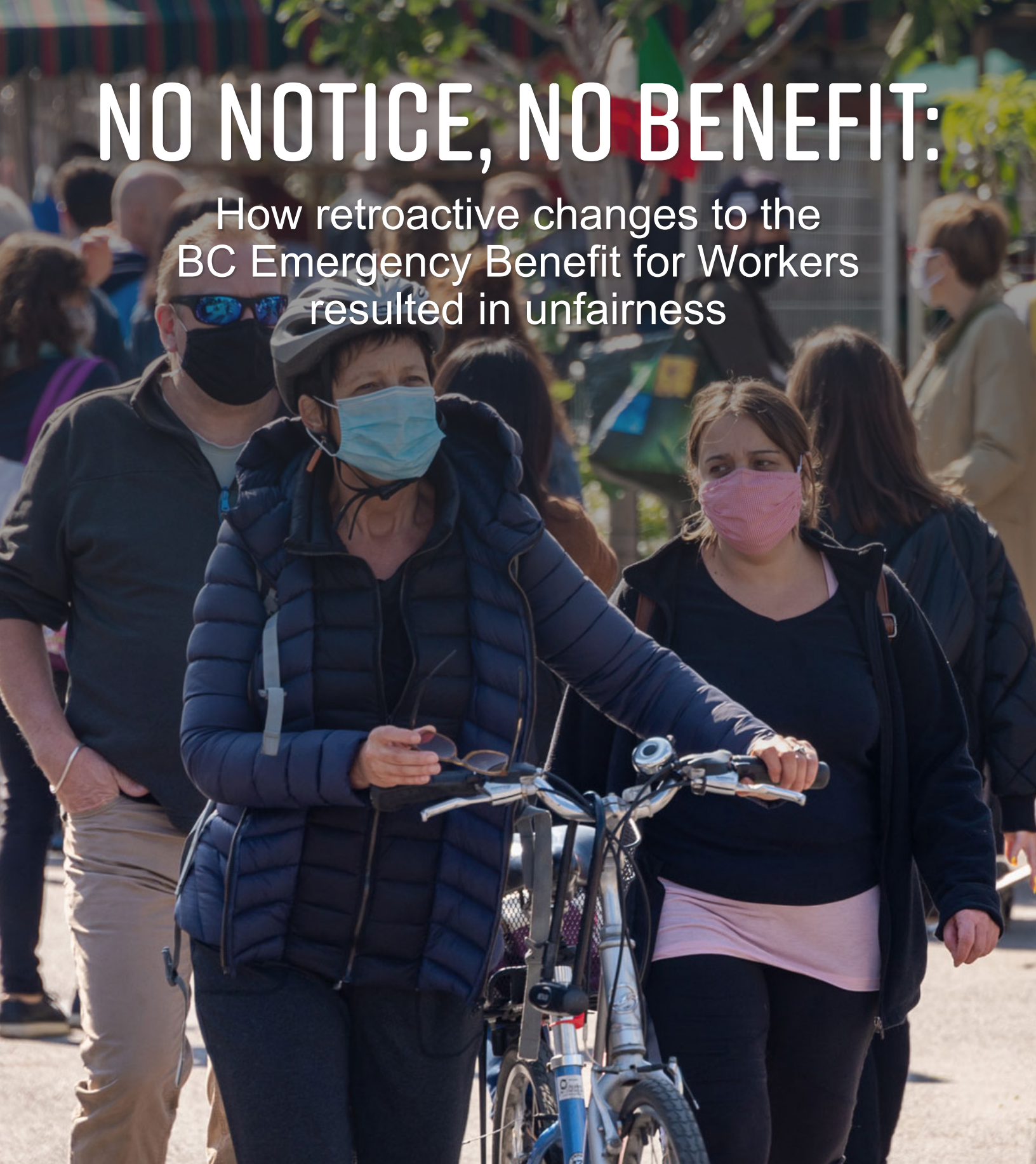


NO NOTICE, NO BENEFIT:

How retroactive changes to the BC Emergency Benefit for Workers resulted in unfairness



OMBUDSPERSON
BRITISH COLUMBIA

Public Report No. 55
November 2023


As an independent officer of the Legislature, the Ombudsperson investigates complaints of unfair or unreasonable treatment by provincial and local public authorities and provides general oversight of the administrative fairness of government processes under the *Ombudsperson Act*. The Ombudsperson conducts three types of investigations: investigations into individual complaints; investigations that are commenced on the Ombudsperson's own initiative; and investigations referred to the Ombudsperson by the Legislative Assembly or one of its Committees.

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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Our office is located on the unceded traditional lands of the Lək̓ʷəŋən (Lekwungen) People and ancestors and our work extends across the homelands of the Indigenous 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

November 2023

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. 55, *No Notice, No Benefit: How retroactive changes to the BC Emergency Benefit for Workers resulted in unfairness*.

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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MESSAGE FROM THE OMBUDSPERSON

This investigation focuses on a key pillar of fairness – that people affected by decisions made by public authorities receive clear and timely notice of those decisions. As the experiences of two people who came to our office demonstrate, when government fails to provide adequate notice, the consequences can be significant.

Our investigation focuses on the Ministry of Finance's administration of the BC Emergency Benefit for Workers, a one-time tax-free payment of \$1,000 that was a cornerstone of the provincial government's initial COVID-19 response. Announced in March 2020, hundreds of thousands of individuals whose work had been impacted by the pandemic sought the benefit as soon as applications opened on May 1, 2020. The Ministry of Finance, which administered the benefit program, received more than 90 percent of the over 600,000 applications within the first eight weeks. Our report tells the story of two people who applied for the benefit during that initial period, met all eligibility criteria and were approved and received the benefit. They were told later that legislation was introduced in June 2020 that retroactively changed the criteria and they were no longer eligible for the benefit.

When applications opened, one of the conditions was that applicants had to have filed their 2019 tax return, or agree to file it. Crucially, this commitment to file their 2019 taxes was open-ended. No deadline was set. Then, two months later, after 90 per cent of

applicants had already applied, government introduced legislation that established the benefit as a refundable tax credit on a person's 2019 income taxes and imposed a January 1, 2021 deadline for filing a 2019 tax return as a condition of receiving the benefit. That deadline applied to all people who had applied for the benefit since May 1, 2020. However, the ministry did not communicate this change or its impact to anyone who had applied for or received the benefit before the legislation was introduced. Instead, it changed the eligibility criteria on its website without making any reference to the fact that this was a new requirement or that it applied to applications already submitted, and benefits already paid.

Why was this unfair? Because the ministry did not notify applicants that the rules had changed, benefit recipients had no idea that their continued eligibility for the benefit was contingent on filing their 2019 taxes by a specific date. Until June 24, 2020, none of the ministry's communications about the benefit identified it as a tax credit, and it was not reasonable to expect recipients to understand the benefit would later be linked to their 2019 taxes. It was also unreasonable to expect that people who had already applied – and certified that they met all eligibility criteria – would then go back to check if that criterion had changed.

In 2021, the ministry began auditing benefit recipients who it believed had not filed their taxes by the legislated deadline. Anyone who had not filed their taxes by the time the ministry contacted them was required to repay the benefit. For example, in one case we highlight in our report, Mr. Michaels, a self-employed single parent, was told he had to pay back the benefit back 16 months after he received it, despite never having been told of the tax filing deadline. When the ministry did contact him, Mr. Michaels was given no opportunity to address the matter by filing his taxes.

While the exact number is in the records of the Ministry of Finance, we were advised by the ministry that most of the eligibility reversals related to the imposition of the tax filing deadline. As of the summer of 2022, the ministry told us over 12,000 reversals had occurred. That number has increased since. Thus there are likely thousands of British Columbians who have had their eligibility unfairly reversed because of a tax filing deadline the ministry did not take reasonable steps to advise them of.

As our investigation demonstrates, the government had many communications tools at its disposal, but did not use them in a way that properly notified the public of the change in eligibility criteria for the benefit. As a result, people were taken by surprise when they received notification of the audit. And, when they learned of the audit, people didn't have an opportunity to review or appeal the ministry's repayment decisions on the basis that they had not been told of the tax filing deadline.

For example, during our investigation the ministry told us that it had operated an information bulletin service that members of the public could subscribe to. They told us the complainants to our office should have

subscribed to that service. However, when we reviewed all of the bulletins issued as part of that subscription, none of them addressed the tax filing deadline.

Of course, governments need to move quickly in times of crisis. The BC Emergency Benefit for Workers was established rapidly and was designed to meet an urgent need, in the early days of the pandemic, and was undoubtedly a critical support for many people coping with sudden and unexpected economic losses.

It was not wrong to later impose a new criterion. It was also not wrong to later have an auditing program to ensure only eligible people received the benefit. The problem arose because the ministry failed to tell people of the change. After the program was created, the ministry had an opportunity to ensure that it was administered fairly, including by clearly communicating to affected individuals about changes to their program's eligibility criteria. The ministry did not do that, and its failure made the administration of the benefit unfair.

As a result of this investigation, I am recommending that the Ministry of Finance contact all affected individuals and give them a fair chance to file their 2019 tax returns within 90 days and if they do so, allow them to keep the benefit. I have also recommended that going forward, the ministry clearly identify when it makes changes to programs on its website and communicate directly with citizens when their entitlements are affected by such changes. That means flagging those changes, and where those changes affect citizens' entitlements under active programs, proactively letting impacted people know directly.

In the ministry's response to our report, set out in Appendix B, the Deputy Minister of Finance acknowledges issues with the ministry's public communication in 2020 about eligibility for the benefit. Specifically, the Deputy Minister admits that when the January 1, 2021 deadline was established "...for filing a 2019 income tax return for the purpose of the program, the Ministry did not specifically highlight this as a change from the previous version of the webpage." (Emphasis added)

The Deputy Minister also acknowledges that the issues with its communication extended beyond its webpage to include its voluntary information bulletin to which individuals could subscribe. The Deputy Minister indicated that the ministry "...since the initiation of your investigation, has modernized its subscription service to better enable persons to receive notifications of updates to the Ministry's public information on its tax and related programs. The Ministry is committed to ensuring notifications provide information on specific changes where possible and to better identifying changes to its public information." (Emphasis added)

It is positive that the ministry has admitted its communications need to improve. Future public users of the ministry's programs will benefit from these changes to communication.

However, that commitment to future improvements does not address the unfairness that happened to thousands of British Columbians arising from the pre-improvement practices of the ministry that were in place in 2020. While it is good to learn from the past, so as to improve future services, it is also important for governments to redress unfairness to current and past service recipients.

In particular, our recommendation number one represents a practical way to ensure that members of the public, who obtained the benefit but have had that eligibility reassessed because they missed a subsequently imposed deadline they did not receive notice of, are treated fairly.

I urge the ministry to reconsider its rejection of my recommendations. The ministry has, in response to our investigation, acknowledged it needs to communicate better going forward. It now needs to make it right for those British Columbians who were negatively impacted by the ministry's own communication limitations.

As always with all the people who come to our office and trust us with their experiences, I'd like to thank Mr. Michaels and Ms. Richards for their persistence in seeking fairness. Their complaints have enabled us to shine a light on an aspect of public administration that adversely affected not just them, but thousands of British Columbians.

Sincerely,



Jay Chalke
Ombudsperson,
Province of British Columbia

INTRODUCTION

Financial support in response to COVID-19

In March 2020, the COVID-19 pandemic suddenly interrupted the lives of British Columbians, and in response to these unprecedented circumstances, the provincial government moved quickly to help those in need.

One such initiative was the British Columbia Emergency Benefit for Workers. Delivered by the Ministry of Finance, the benefit offered “a tax-free, one time \$1,000 payment for BC residents whose ability to work [had] been affected due to COVID-19.”¹

Given the pandemic’s abrupt and severe impacts, the benefit was developed quickly, and public uptake was similarly swift. The provincial government announced the benefit on March 23, 2020, as part of its COVID-19 Action Plan,² and when applications opened on May 1, 2020, the ministry received 16,389 applications within 45 minutes. Within four hours, the total rose to 100,000. Between that day and December 2, 2020, when applications closed, the ministry received approximately 700,000 applications and paid approximately \$643 million in benefits.³ Ninety per cent of applications for the benefit were received within the first eight weeks.

On June 24, 2020, the Minister of Finance introduced a bill in the Legislative Assembly that would set the benefit’s eligibility criteria in law, retroactive to May 1, when applications had opened.

The ministry’s work in relation to the benefit did not cease when applications closed in December 2020. It immediately started work on its auditing processes, focusing on whether people who had received the benefit were in fact eligible for it and, if they were not, seeking recovery. Audits began in October 2021 and are still underway, with the ministry intending to conclude its auditing in December 2023.

It is apparent that the ministry developed and delivered a much-needed benefit at a time of great uncertainty, anxiety and disruption, and that it did so within a far shorter time frame than it would have under normal conditions. It is also apparent that the ministry takes seriously its responsibility for the good stewardship of public funds. However, the ministry’s administration of the benefit has not been fair, as two complaints we investigated show.

In this report, we describe the experience of Mr. Michaels, a resident of British Columbia and self-employed contractor who contacted

¹ Government of British Columbia, “BC Emergency Benefit for Workers,” May 1, 2020, <https://web.archive.org/web/20200608002936/https://www2.gov.bc.ca/gov/content/employment-business/covid-19-financial-supports/emergency-benefit-workers>.

² Office of the Premier, “COVID-19 Action Plan: BC’s First Steps to Support People, Businesses,” news release, March 23, 2020, <https://news.gov.bc.ca/releases/2020PREM0013-000545>.

³ Office of the Auditor General of British Columbia, *Auditor General’s Report on the Financial Audit Work: Fiscal Year 2021/22*, November 2022, <https://www.oag.bc.ca/sites/default/files/publications/reports/ROFAW-November2022.pdf>.

our office when the ministry audited him and required him to repay the benefit 16 months after he received it because he had not filed his 2019 BC income tax return before January 1, 2021. Although Mr. Michaels did not file his tax return by this date, this deadline was not included in the benefit's eligibility criteria when he first applied or when the ministry processed his application, nor did the ministry tell him about this deadline in any way until the deadline had passed and he was under audit.

We also describe the experience of Ms. Richards, another BC resident who applied for and received the benefit, meeting all eligibility requirements identified at that time, before the ministry identified its income tax filing deadline. Twenty-three months later, the ministry audited Ms. Richards and told her she must repay the benefit because it had determined she had not provided sufficient information to demonstrate that she had met eligibility requirements.

Even in times of crisis, public authorities must act fairly, and, where unfairness occurs, they must recognize and address this as soon as possible afterward. Our investigations into these two complaints have found that the ministry did not clearly communicate changes in the benefit's eligibility criteria to those who had already applied for, and in many cases received, the benefit, and that this has affected a far greater number of recipients than just Mr. Michaels and Ms. Richards. We also found that the ministry is unfairly auditing and recovering the benefit from individuals who had unknowingly failed to meet these new criteria and that it has failed to clearly develop and communicate appeal and review options for the dispute of audit findings that are consistent with its ability to reconsider eligibility for the benefit under section 220 of the *Income Tax Act*.

BACKGROUND

The British Columbia Emergency Benefit for Workers

Early 2020 was marked by significant disruption and uncertainty. Events moved quickly. On March 5, 2020, BC reported what was believed to be the first case of COVID-19 resulting from community transmission rather than from travel. Three days later, it reported Canada's first death. On March 16, Canada closed its borders to non-Canadians, and on March 17, BC's provincial health officer declared a public health emergency. BC declared a provincial state of emergency the next day.

As part of its pandemic response, the Office of the Provincial Health Officer and the Government of British Columbia declared these states of emergency⁴ and took steps to limit the spread of COVID-19 by indefinitely restricting mass gatherings and shuttering restaurants, schools, bars, clubs, gyms, recreation centres and more.⁵ The provincial government also implemented financial

supports for those in need. Given the immediacy and uncertainty of the unfolding crisis, time was of the essence. With 396,500 jobs lost in the province between February and May 2020,⁶ many British Columbians were out of work, with no indication of when they could return.

When the provincial government announced its COVID-19 Action Plan on March 23, 2020, it identified "immediate measures to help individuals and families cope with potential illness, financial strain or precarious employment."⁷

One of these measures was the British Columbia Emergency Benefit for Workers, which would provide \$1,000 to eligible BC residents who were out of work because of the pandemic. Speaking about it on May 1, 2020, the then finance minister told reporters:

⁴ Office of the Provincial Health Officer, "Re: Provincial Health Officer Notice – *Public Health Act* S.B.C. 2008, Chapter 28, Section 52(2)," March 17, 2020, <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/pho-regional-event-notice.pdf>; British Columbia Ministry of Public Safety and Solicitor General, Ministerial Order M073/2020, March 18, 2020, https://www.bclaws.gov.bc.ca/civix/document/id/mo/hmo/m0073_2020.

⁵ Provincial Health Officer, "Class Order (Mass Gatherings) re: COVID-19," March 16, 2020, https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/archived-docs/pho_order_mass_gatherings_march_16_2020.pdf; Provincial Health Officer, "Order of the Provincial Health Officer (Pursuant to Sections 30, 31, 32, 39(3) and 67 *Public Health Act*, S.B.C. 2008)," March 20, 2020, https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/archived-docs/pho_order_nightclubs_food_drink_march_20_2020.pdf.

⁶ Tiffany Crawford, "COVID-19: BC Loses 396,500 Jobs Since February," May 8, 2020, <https://vancouversun.com/news/covid-19-b-c-loses-397000-jobs-since-february>.

⁷ Office of the Premier, "COVID-19 Action Plan: BC's first steps to support people, businesses," news release, March 26, 2020, <https://news.gov.bc.ca/releases/2020PREM0013-000545>.

[We] need to be able to get supports to people as quickly as possible. Building a new program, building a system to be able to absorb the kinds of pressures that you're seeing on the system already in 45 minutes, you need to make sure that if we want to do this as quickly as possible and get the supports to people.⁸

Applicants were required to apply online, through the provincial government's eTaxBC platform, and to certify that they met all eligibility criteria. At that time, the Ministry of Finance's website identified these criteria by stating that every applicant would need to certify that they:

- had been a resident of British Columbia on March 15, 2020
- met the eligibility requirements for the federal Canada Emergency Response Benefit (CERB)
- had been approved for CERB, even if they had not yet received a payment⁹
- were at least 15 years old on the date they applied
- had filed, or agreed to file, a 2019 BC income tax return
- were not receiving provincial income assistance or disability assistance
- were not incarcerated in a provincial or federal correctional facility for a period of 90 days or longer that included March 15, 2020

The ministry did not identify a specific deadline by which applicants would need to file their 2019 tax return. Instead, the requirement was open-ended, with applicants required only to agree to file in future, if they had not filed already. Nowhere in the application process did the ministry explain why filing a 2019 tax return was a necessary condition to receiving the benefit.

Applicants were also required to provide their social insurance number, individual tax number, or temporary tax number, as well as their direct deposit information. The benefit was provided only by direct deposit.

The ministry advised applicants that they would generally receive the benefit within 10 days of their application being approved, and that they should contact the ministry if they had not received an update on the status of their application within 30 days.

Although the program was open for seven months, 631,000 people (approximately 90 per cent of all applicants) applied within the first eight weeks.

⁸ Richard Zussman, "British Columbians Can Now Apply for the \$1,000 Emergency Benefit for Workers," May 1, 2020, <https://globalnews.ca/news/6893210/b-c-finance-minister-to-provide-update-on-b-c-emergency-workers-benefit-applications/>.

⁹ On April 1, 2020, the federal government announced that to be eligible for CERB, a person must reside in Canada, be at least 15 years old, have stopped working because of COVID-19 or be eligible for Employment Insurance regular or sickness benefits, have had an income of \$5,000 in 2019 or in the 12 months prior to the date of their application, and be or expect to be without employment or self-employment income for at least 14 consecutive days in the initial four-week period (Government of Canada, "Canada Emergency Response Benefit," April 1, 2020, <https://web.archive.org/web/20200401203749/https://www.canada.ca/en/services/benefits/ei/cerb-application.html>).

Figure 1: The ministry's website as it appeared on May 1, 2020


Find Out If You're Eligible

To be eligible for the emergency benefit, you must:

- Have been a resident of British Columbia on March 15, 2020
- Meet the eligibility requirements for the [Canada Emergency Response Benefit \(CERB\)](#)
- Have been approved for the Canada Emergency Response Benefit, even if you haven't received a federal benefit payment yet
- Be at least 15 years old on the date you apply
- Have filed, or agree to file, a 2019 B.C. income tax return
- Not be receiving provincial income assistance or disability assistance
- Not be incarcerated in a provincial or federal correctional facility for a period of 90 days or longer that includes March 15, 2020

If you're eligible for and receive at least one Canada Emergency Response Benefit (CERB) payment and then return to work, you may still be eligible for the B.C. Emergency Benefit for Workers, provided you are not required to repay the CERB benefit. You must still meet all other eligibility criteria above.

If you receive a B.C. Emergency Benefit for Workers payment and we later determine that you were not eligible for it, you may be required to repay it with penalties and interest. Learn more about [repayments](#).



No filing date for 2019 income tax indicated in eligibility criteria

The ministry's auditing program

During those first eight weeks, the program's busiest time, no specific tax filing deadline was set in the eligibility criteria. Nor did the ministry identify that one was forthcoming. This changed on June 24, 2020, when Bill 18, *Economic Stabilization (COVID-19) Act*,¹⁰ received first reading in the Legislative Assembly. This bill established the benefit as a refundable tax credit, to be applied to a recipient's 2019 tax return, under the provincial *Income Tax Act*. For this reason, the bill proposed that recipients would need to file their 2019 returns by January 1, 2021, in order to be eligible for the benefit.

The ministry updated its website on the same day as the bill was introduced, to include the January 1, 2021, deadline in the benefit's eligibility criteria.

¹⁰ Bill 18, *Economic Stabilization (COVID-19) Act*, S.B.C. 2020, c. 19.

Figure 2: The ministry’s website as it appeared on June 24, 2020

To be eligible for the B.C. Emergency Benefit for Workers, you must meet all of the following requirements:

Either:

- You lost your employment or self-employment income **on or after March 15, 2020**, and
- You are eligible for the Canada Emergency Response Benefit (CERB), and
- You have not repaid nor are you required to repay all of the CERB benefit


Or:

- You lost your employment or self-employment income for at least 14 consecutive days that began **between March 1, 2020 and March 14, 2020**, and
- During those 14 consecutive days, you did not earn:
 - more than \$1,000 in combined employment or self-employment income
 - allowances, money or other benefits under a provincial plan because of pregnancy or for the care of your new-born or newly adopted child, and
- You have earned employment or self-employment income of at least \$1,000 from March 1, 2020 to March 15, 2020

In addition to either option above, you must also:

- Be a resident of B.C. on March 15, 2020
- Have filed or agree to file a 2019 B.C. income tax return before January 1, 2021
- Have not received provincial Income Assistance or provincial Disability Assistance between April 1, 2020 and August 31, 2020
- Have not been incarcerated in a provincial or federal correctional facility for a period of 90 days or longer that includes March 15, 2020
- Have a valid Social Insurance Number (SIN), Individual Tax Number (ITN) or Temporary Tax Number (TTN)
- Have not quit your job voluntarily
- Be at least 15 years old on the date you apply

If you receive a B.C. Emergency Benefit for Workers payment and we later determine that you weren’t eligible for it, you may be required to repay it with penalties and interest. Learn more about [repayments](#).

 Filing deadline added on June 24, 2020, but no indication that this is new information or that it applies to people who have already received the benefit

The bill received royal assent on August 14, 2020, at which time the amendments to the *Income Tax Act* relating to the benefit (including the filing deadline) were brought into force retroactive to May 1, 2020.

The ministry told us that its “objective” in administering the benefit was to “get money out as soon as possible.” Therefore, it did not turn its attention to an auditing program until after applications closed in December 2020.

Since that time, though, the ministry has focused its audit program on identifying benefit recipients it believes were not eligible, with particular attention paid to those who

may have missed the January 1, 2021, deadline for filing a 2019 tax return.¹¹ Our investigations focused on how the ministry investigated and dealt with the at least 45,000 recipients¹² it believed had missed the January 1, 2021, deadline.

The ministry told us that auditing is ongoing and described its process as follows:

- First, the ministry developed a list of recipients it believed should be audited on the basis of failing to file their 2019 return by January 1, 2021. To do so, it compared its list of benefit recipients to data provided by the Canada Revenue Agency that identified BC residents who had filed their 2019 returns. If a person had received the benefit but was not identified in the Canada Revenue Agency's data, the ministry identified them for auditing. The Commissioner of Income Tax¹³ then directed auditors to verify whether those recipients had filed. The ministry continues to work from this list.
- Second, when reviewing individual cases, ministry auditors review information provided by the Canada Revenue Agency and/or Notices of Assessment provided by recipients. The ministry told us these records may not contain actual filing dates, which can make it difficult to verify when a return was filed. As a result, and at the commissioner's direction, ministry auditors do not verify actual filing dates, but focus instead on whether a recipient has filed at all.

- When an audit is complete, if a recipient has filed prior to being contacted by the auditing team and if there are no other issues, they may keep the benefit. However, if they have not filed prior to being contacted by the auditing team, they must repay the benefit.

As of mid-2023, the ministry had completed 23,750 audits, with 22,893 files sent for recovery, requiring recipients to repay the benefit. The ministry told us that no data is available to indicate how many of these relate to tax filing. However, the Auditor General reported that the ministry had identified "approximately 45,000" files for audits relating to tax filing, and that approximately 95 per cent of the 11,014 audits completed by mid-2022 had resulted in adjustments.¹⁴ As well, the ministry had previously told us, in August 2022, that "most" of the 12,147 adjustments administered up to that point related to tax filing. Based on this information, it is reasonable to assume that a significant proportion of the ministry's auditing relates to tax filing.

We recognize the ministry's authority to establish rules for its programs and to audit for compliance with these rules. We also recognize its duty to responsibly manage the significant public funds that the benefit required. We know that the development and administration of the benefit was a large undertaking under exceptional circumstances, and we do not dispute the ministry's authority to decide how it did so. Rather, our focus is on the fair communication of program requirements and the fair application of program rules.

¹¹ Although the ministry is authorized to audit recipients for other reasons, such as providing false information, and we understand it has done so, such matters are outside the scope of our investigation, and we have not pursued them. Nor did we investigate the ministry's handling of applicants who are otherwise ineligible for the benefit – for example, those who filed their 2019 return as residents of another jurisdiction, who did not meet other known criteria, or who applied after the tax filing deadline was publicly identified but still did not file on time.

¹² Auditor General of British Columbia, *Report on the Financial Audit Work*, 13.

¹³ The Commissioner of Income Tax is a member of the public service delegated authority under the *Income Tax Act* to administer various powers under the Act, including auditing.

¹⁴ Auditor General of British Columbia, *Report on the Financial Audit Work*, 13.

What is a benefit?

As described by the ministry, the benefit was “a one-time tax-free \$1,000 payment.”¹⁵ Once approved, recipients were sent \$1,000 by direct deposit only. There were no restrictions on the use of this money, which was available for use as soon as it arrived in recipients’ bank accounts.

This is consistent with the common understanding of what it means to give and to receive a “benefit”:

- “an allowance of money to which a person is entitled from a pension plan, government support programs, etc.”¹⁶
- “a financial help in time of sickness, old age, or unemployment”¹⁷
- “the money given by the government to people who need financial help, for example because they cannot find a job”¹⁸
- “money that is paid by a company (such as an insurance company) or by a government when someone dies, becomes sick, stops working, etc.”¹⁹

However, the technical means by which the ministry created the benefit have contributed to the ministry’s understanding of the program as a refundable tax credit, with incumbent responsibilities on the recipient, rather than as a cash benefit. Indeed, it referred to the benefit as “an income tax refund” or “the credit” in its correspondence with our office. The ministry explained this as follows:

The legislation made the BCEBW a refundable tax credit in respect of the 2019 income tax year under the *Income Tax Act* (British Columbia) (BCITA) and authorized the payment of that tax credit upon an applicant filing an application with the Commissioner of Income Tax.

This is consistent with the *Income Tax Act*. Under section 218 of the Act, any person who applied for and received the benefit was deemed to have overpaid their income taxes for the 2019 taxation year by \$1,000, the exact amount of the benefit itself, and therefore the benefit was, as the ministry described it, “in law, a tax refund payable in respect of an applicant’s 2019 taxation year.”

However, in our view, the vast majority of applicants would likely not have been aware of this or have understood the benefit as a tax program, and in fact this is inconsistent with the government’s public communications about the benefit in 2020. A person who had recently lost their job due to the pandemic would likely focus on receiving a \$1,000 payment (advertised as an “emergency benefit”) rather than how the ministry legislatively achieved the benefit’s non-taxable status.

Public discussion of the benefit since auditing began has largely focused on audited individuals’ ineligibility for the benefit, without consideration of the ministry’s role in creating the circumstances that led to their ineligibility.²⁰ The ministry has also described its audit process as privileging “voluntary compliance” (e.g., rewarding those who filed

¹⁵ British Columbia Ministry of Finance “BC Emergency Benefit for Workers,” May 1, 2020.

¹⁶ *Canadian Oxford Dictionary*, 2nd ed. (2004), “benefit.”

¹⁷ *Merriam-Webster*, “benefit,” <https://www.merriam-webster.com/dictionary/benefit>.

¹⁸ *Cambridge Dictionary*, “benefit,” <https://dictionary.cambridge.org/dictionary/english/benefit>.

¹⁹ *The Britannica Dictionary*, “benefit,” <https://www.britannica.com/dictionary/benefit>.

²⁰ For example, recent headlines include “BC Government Chasing \$10.5M in COVID Overpayments” (Bob Mackin, November 22, 2022, <https://www.timescolonist.com/local-news/bc-government-chasing-105m-in-covid-19-overpayments-6142953>).

Background

their 2019 returns prior to being audited by allowing them to keep the benefit). This is a common principle among public authorities dealing with taxation. For example, the ministry told us that:

taxpayer relief programs, including many administered by the CRA and by BC, operate on the principle that voluntary compliance and disclosure are rewarded, and relief is not available once enforcement action is initiated to obtain tax filings or information.

However, this alone does not resolve the challenges faced by Mr. Michaels and Ms. Richards, or others like them. A person cannot “voluntarily comply” with rules that changed after they applied for the benefit and about which they had no notice.

THE COMPLAINTS

The complaint of Mr. Michaels

Mr. Michaels applied for the benefit on June 12, 2020, two weeks after applications opened. As part of his application, he reviewed the information on the ministry's website, which at that time had last been updated on May 13, 2020, and certified that he met all eligibility criteria. At that time, this included certifying that he:

- was a resident of British Columbia on March 15, 2020
- met the eligibility requirements for the Canada Emergency Response Benefit (CERB)
- had been approved for CERB
- was at least 15 years old on the date he applied
- had filed, or agreed to file, a 2019 BC income tax return
- was not receiving provincial income assistance or disability assistance
- was not incarcerated in a provincial or federal correctional facility for a period of 90 days or longer that included March 15, 2020

That same day, the ministry contacted Mr. Michaels by email to confirm receipt of his application. The ministry contacted him again by email on June 16, 2020, to request at least one piece of identification and at least one document to confirm that he was a British Columbia resident as of March 15, 2020. After Mr. Michaels provided this information, the ministry approved his application, on July 28, 2020, after which he received the benefit.

Mr. Michaels then continued with his day-to-day life as a self-employed contractor and single parent. Sixteen months later, he received a Notice of Redetermination from the ministry, dated December 6, 2021, advising that the ministry was reviewing his eligibility because he had not filed his 2019 return before January 1, 2021. Mr. Michaels told the ministry that he recognized he had not yet filed his 2019 return, due to delays with his personal accountant and the ongoing pandemic. Although he contacted the ministry again after this conversation, the ministry still required him to repay the benefit. He told us that when he sought to appeal this decision, he was told he had no avenue for appeal or reconsideration because the program was closed.

Mr. Michaels filed his 2019 return in early 2022. According to the Canada Revenue Agency (CRA), his return was received on April 6, 2022. Because he was concerned about potential interest penalties, he also repaid the benefit on April 20, 2022. He then contacted our office, as he felt he had been treated unfairly.

The complaint of Ms. Richards

Ms. Richards applied for the benefit on May 2, 2020, the day after applications opened. The ministry approved her application on May 5 and delivered payment on May 11, 2020. In the following months, Ms. Richards continued to deal with income losses due to the pandemic and other challenges resulting from a family bereavement. She did not file her 2019 return before the ministry's deadline, which was not in place when she applied and which she had no reason to know existed.

On April 6, 2022, nearly 23 months after she received the benefit, the ministry contacted Ms. Richards to request information as part of an audit. Ms. Richards filed her 2019 return on April 10, 2022. She did not repay the benefit. The ministry contacted her again on June 15, 2022, to tell her it had determined her ineligible for the benefit because she had not provided it with the information it required. It then contacted her again on July 15, 2022, with a collection notice. She contacted our office in November 2022, and told us as part of her complaint that she did not recall any specific filing deadline from the application process, only the requirement to file.

UNFAIRNESS IN THE MINISTRY'S ADMINISTRATION OF THE BENEFIT: FINDINGS

Public authorities have broad discretion to set out how they will administer their programs. This includes developing application processes, setting program rules and criteria, and communicating information to the public. All of these contribute to a fair process and help to ensure that individuals have fair opportunities to participate and be heard when they engage with public programs.

What does it mean to participate and be heard? As a matter of fairness, it means that people receive advance notice of actions or decisions that affect them, including any rules they are expected to follow. Fair notice also ensures that individuals have a reasonable opportunity to respond, ask questions or raise concerns, decide on their next steps for themselves, and, as much as possible, request a review or appeal of decisions they don't agree with.

For a program like the British Columbia Emergency Benefit for Workers, we would expect the Ministry of Finance to notify individuals of decisions on their files – for example, whether an application had been approved or denied, if more information or additional documentation is required, if they are to be audited, and if there are appeal or reconsideration options. While the ministry is entitled to set the rules for its own programs, we also expect it to notify affected individuals if these rules change.

In our investigation of the Ministry of Finance in relation to the benefit, we made findings about these aspects of its administration:

- The ministry did not communicate changes to eligibility criteria in a clear and timely way
- The ministry is applying its auditing processes unfairly
- The ministry is not communicating appeal and reconsideration options in a clear and timely way

Failure to communicate changes to eligibility criteria in a clear and timely way

While there are many ways a public authority might share information about its programs, our office often highlights the value of advance notice. A public authority that practises advance notice shares information about its programs, decisions and actions with sufficient time for those affected by these government services to make their own decisions about how to engage with them.

We also recognize that advance notice is sometimes not possible, and that public authorities cannot share information they do not have. For example, when applications for the benefit opened, the ministry had not yet established a filing deadline, and so could not communicate it, but the urgency of the situation warranted proceeding anyway. In such cases, we would expect public authorities to clearly identify any limitations on publicly available information, to advise

Findings

that publicly available information may be subject to change, and to communicate new developments promptly and clearly to those who may be impacted.

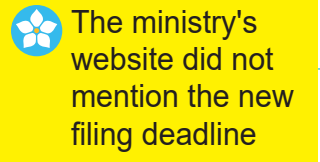
The complaints of Mr. Michaels and Ms. Richards provide a prime example of how the failure to give adequate notice of program changes can impact individuals. In their cases, as for other applicants like them, the ministry changed eligibility criteria for the benefit after the program was launched and after 90 per cent of applications had already been received. Importantly, this change to eligibility criteria was retroactive – in other words, it applied to people who had *already* applied for and in many cases received the benefit.

When the eligibility criteria changed, the ministry could have then taken steps to inform applicants who had already received the benefit of how the tax filing deadline

could impact their continued eligibility for the benefit – for example, contacting them by telephone, email, postal mail, or through the eTaxBC application. The ministry could also have indicated when applications opened that the filing deadline was subject to change and that applicants should check back for more information, or considered the lack of direct notice of the change in eligibility criteria in developing and administering its audit process.

However, the ministry did not take any such steps. Instead, it updated its webpage on June 24, 2020, to include a paragraph titled “How the Eligibility Requirements have Changed,” but without including in this paragraph information about the new deadline or identifying which other parts of the website had been changed. It did not communicate changes to the eligibility criteria in any other way.

Figure 3: The ministry’s website as it appeared on June 24, 2020²¹

 The ministry's website did not mention the new filing deadline

How the Eligibility Requirements have Changed

The original B.C. Emergency Benefit for Workers announced on May 1, 2020, followed the same federal eligibility requirements as the Canada Emergency Response Benefit (CERB).

The B.C. Emergency Benefit for Workers is now expanded to include two weeks where the CERB wasn't available.

If you're eligible for and receive at least one CERB payment and then return to work, you may still be eligible for the B.C. Emergency Benefit for Workers, provided you're not required to repay the CERB benefit. You must still meet all other eligibility criteria in one of the two options above.

Because the bill was brought into force retroactively, the January 1, 2021, filing deadline has legally been in force from May 1, 2020, onward. For all practical purposes, however, no member of the public could have been aware of it before June 24, 2020, when the bill was introduced and the ministry's website was updated.

For both Mr. Michaels and Ms. Richards, this was after they had made their applications, and after Ms. Richards received the benefit. Yet the ministry still held both Mr. Michaels and Ms. Richards to its deadline. This had significant repercussions for their eligibility and raised significant fairness concerns for our office.

²¹ Ministry of Finance, “BC Emergency Benefit for Workers,” June 25, 2020, <https://web.archive.org/web/20200625131754/https://www2.gov.bc.ca/gov/content/employment-business/covid-19-financial-supports/emergency-benefit-workers>.

First, the bill alone was insufficient to inform the 631,000 people who had already applied for and, in many cases, received the benefit. While these amendments eventually set the changed eligibility criteria in law, it is unreasonable to expect that the average recipient, preoccupied with the realities of having lost work due to the pandemic, would independently investigate specific details of provincial legislation, particularly legislation introduced after they had received the benefit. Instead, these amendments provided certainty only to those who applied after June 24, 2020, when the website was first updated. Even at this time, the filing deadline was not yet law and might still have been altered by the legislature, although this was not clearly indicated on the ministry's website.

Second, not only did the ministry fail to provide adequate notice of the new filing deadline, our investigation also did not identify any reasonable avenues through which applicants might have identified the deadline for themselves. During our investigation, the ministry suggested to us that recipients could have checked on the ministry's website, or subscribed to its email notification service, to receive this information.

In our view, it is not reasonable to expect applicants to return to a ministry website, to consult the ministry, or to review legislation after applying for or receiving a benefit. This is particularly so with a one-time emergency payment intended to provide immediate relief to those in need. In Mr. Michaels's case, his application had been processed, he had provided supplementary information at the ministry's request, and he had met all eligibility criteria listed on the ministry's website at the time of his application. Ms. Richards had also done these things and had already received the benefit. It is not clear what would have prompted them, or anyone

else who had already applied, to take further steps to confirm that they remained eligible for a benefit they had already received.

Given that the ministry had specifically suggested to us that benefit recipients ought to have subscribed to its notification service, we expected to see that one or more of the notices sent would advise subscribers of the tax filing deadline. But this was not the case. When we reviewed the notices,²² we found that the notification service provided no information whatsoever to indicate that a tax filing deadline was forthcoming or that one had been imposed, while the number of subscribers to the notification service was also relatively small. For example:

- The first notice, sent on April 23, 2020, announced that the "BC Emergency Benefit for Workers opens May 1, 2020." No filing deadline was given, either in the notice or on the ministry's website at the time, and the benefit was not described as a tax program.
- The third notice, sent on May 4, 2020, announced, "Eligibility for the benefit is clarified," but had any recipient visited the website, they would only have seen that anyone who was incarcerated for 90 days or longer as of March 15, 2020, would not be eligible.
- The fourth notice, sent on May 13, 2020, linked recipients to "reasons you might need to repay the BC Emergency Benefit for Workers." At this time, no filing deadline had been set, nor was failure to file one's tax return by a specific date included in the examples given.
- The fifth notice, which followed the website update that reflected the filing deadline, was sent on June 26, 2020. It made no mention of the filing deadline and stated only that eligibility for the benefit had been expanded:

²² Each update sent through the subscription service may be read in Appendix A to this report. .

The BC Emergency Benefit for Workers has been expanded to include British Columbians who lost their ability to work due to COVID-19 between March 1 and 14, 2020. If you haven't already been approved for or received the benefit, find out if you might be eligible. Online and telephone application is now open. Learn more at gov.bc.ca/workerbenefit.

- The seventh notice, sent on December 3, 2020, was the last notice sent before the filing deadline arrived. It made no mention of the filing deadline, but instead only advised that the notification service was “being discontinued.”

An average of 90,871 people received nine updates from the notification service between April 23, 2020 and September 29, 2022. Even if every subscriber applied for the benefit, which cannot be verified, this average is less than 15 per cent of the total number of applicants for the benefit.

Given the relatively small number of subscribers, we do not accept the ministry's position that the opportunity to subscribe to the notification service was sufficient notice of either the change or of the filing deadline itself. Furthermore, it is not reasonable to expect that Mr. Michaels or Ms. Richards or any of the thousands of others in similar circumstances would understand that their eligibility had been impacted in any way, even if they had subscribed to the notification service because the imposition of the tax filing deadline was never mentioned in the notices.

The ministry told us that its legislated deadline, January 1, 2021, was an extension to the tax filing deadline set by the Canada Revenue Agency, of which the recipients should have been aware. While the Canada Revenue Agency separately and independently sets filing deadlines for all Canadian taxpayers, this does not

account for the ministry's failure to explain to applicants what its own deadline was. In our view, the Canada Revenue Agency's deadlines have no bearing on the benefit, given that both Mr. Michaels and Ms. Richards agreed to the ministry's own open-ended commitment to file when they applied. In addition, the ministry did not, in the public facing information, explain that filing the 2019 tax return was necessary to maintain eligibility for a benefit *already* received.

We recognize that the ministry worked hard to quickly provide financial support to those who needed it. We also acknowledge that it might have faced possible obstacles when following up with applicants who had provided inaccurate information (e.g., an outdated mailing address or mistyped email address) to inform them about the changed deadline, in addition to struggling to do its work with a limited workforce that was adapting to remote work under difficult and unprecedented conditions. However, we also noted that these obstacles did not preclude the ministry from attempting to reach recipients (for example, sending a mass email and/or postal mail notice), which would have reached at least those benefit recipients who had provided accurate contact information.

For example, in Mr. Michaels's case, the available records indicate that the ministry contacted him by email twice after he applied for the benefit. This demonstrates that the ministry might have contacted him directly when the new deadline was introduced to warn him that his continued eligibility for the benefit was dependent on his filing his taxes before January 1, 2021. It further suggests that the ministry might have reasonably contacted other applicants as well, as they would have required contact information from benefit recipients at the time of application. Instead, the ministry failed to clearly communicate the changing rules and requirements to people who had received the benefit. This was unfair.

Finding 1: The Ministry of Finance followed an unfair procedure, as described in *Ombudsperson Act* section 23(1)(a)(v), when it failed to notify applicants or recipients who applied before the 2019 tax filing deadline was publicized on the ministry’s website on June 24, 2020, of the changes to the eligibility criteria for the British Columbia Emergency Benefit for Workers.

Finding 2: The Ministry of Finance followed an unreasonable procedure, as described in *Ombudsperson Act* section 23(1)(a)(v), when it did not indicate that changes to eligibility for the British Columbia Emergency Benefit for Workers were expected and when it did not inform applicants and recipients of these changes.

Unfair application of auditing processes

We expect that public authorities auditing for compliance will use fair rules and reasonable criteria to make their decisions and to deliver services. This includes treating similar cases in a similar manner, applying assessment criteria consistently, and ensuring that individuals engaged with public programs and services have advance notice of their responsibilities before authorities seek to penalise them for non-compliance.

The ministry told us that the filing deadline is set by law under the *Income Tax Act*. However, it also told us it is not always able to identify precisely when a person filed their 2019 return (i.e., whether they met the deadline), even through an audit. Instead, it is relying simply on identifying whether an audited person has filed their 2019 return before the auditing team contacted them. The ministry told us that no data was available to indicate how many benefit recipients missed the filing deadline but later filed and so kept the benefit. The Auditor General subsequently reported that by mid-2022, 560 audited individuals had demonstrated that they had filed a 2019 return at some point, and so their files were not sent for recovery, but it is not clear how many of these individuals had actually met the filing deadline.²³

When we questioned this practice, the ministry confirmed that “where applicants have voluntarily (i.e., without ministry intervention) filed their tax return, the Commissioner has exercised his discretion to not require repayment.”

We considered how this practice might have affected Mr. Michaels. The ministry told us that if he had filed his 2019 return even one day before he was first contacted by auditors in December 2021, it would not have sought to recover the benefit, even though he would still have missed the filing deadline. The ministry’s statement is also inconsistent with its December 6, 2021, letter to him, which asked Mr. Michaels to provide “documentation that includes the filing date (before January 1, 2021) of your BC income tax return.”

²³ Auditor General of British Columbia, *Report on the Financial Audit Work*, 15.

As we discussed above, rewarding “voluntary compliance” is a standard practice among public authorities dealing with taxation, and in this case, the ministry’s application of this principle is a generous practice, likely to work to the advantage of many recipients. In our view, it is also permissible on a discretionary basis under section 220 of the *Income Tax Act*. However, we remain concerned that under the ministry’s process, a person audited in August 2023 for failing to file their 2019 return would have had 20 additional months in which to file, compared with Mr. Michaels, and yet might still keep the benefit if they have filed in that time.

The ministry insists that Mr. Michaels, Ms. Richards, and other applicants like them must face the consequences of failing to meet the legislated deadline, despite never being told about it. This insistence stands in contrast to the provincial government’s recent request that the federal government extend the time allotted for BC residents and other Canadians to repay the pandemic-era Canada Emergency Business Account (CEBA) loans. In a letter dated October 20, 2023, Canadian premiers, including the Premier of British Columbia, called on the federal government to “provide additional time to take advantage of the loan forgiveness option in addition to extending repayment of CEBA loans for another year.”²⁴ It appears that the provincial government expects the federal government to show leniency where its own Ministry of Finance will not.

Finding 3: For recipients who applied for the benefit before the 2019 tax filing deadline was publicized, the Ministry of Finance followed an unfair procedure, as described in *Ombudsperson Act* section 23(1)(a)(v), when it audited and sought to recover the benefit from those to whom it did not give notice of the new deadline in time for them to comply with it.

Lack of clear and timely communication of appeal and reconsideration options

Opportunities to access an adequate review or appeal process are part of an administratively fair process. These help people to participate and be heard in processes that impact them, and allow public authorities to demonstrate openness in conducting reviews of decisions and actions to ensure high standards of service delivery. In some cases, the relevant law may not provide for an appeal procedure, or a decision may be final. In such cases, we expect that authorities would communicate this clearly to those who might be affected, and that they would recognize that greater procedural protections may be required, given the lack of review options available.

The ministry told us that the *Income Tax Act* does not allow for benefit applicants to appeal ministry decisions on their eligibility. This is consistent with information given on the ministry’s website from approximately October 1, 2021.²⁵ At this time, when auditing began, the website stated, “Your eligibility for the benefit cannot be appealed. You cannot appeal being charged interest on amounts you must repay.” However, Mr. Michaels told

²⁴ Office of the Premier, “Re: Extending loan repayments for small business,” correspondence, October 20, 2023. <https://news.gov.bc.ca/releases/2023PREM0072-001625>.

²⁵ Ministry of Finance, “BC Emergency Benefit for Workers,” October 1, 2020, <https://web.archive.org/web/20211007005247/https://www2.gov.bc.ca/gov/content/employment-business/covid-19-financial-supports/emergency-benefit-workers>.

us he was advised by the ministry that he could not appeal, not because this was not permitted under the Act, but because the program itself had closed.

When we asked the ministry about Mr. Michaels's request for appeal, the ministry told us that his concerns were reviewed by an audit team leader and by a manager, and that both determined that the Act had been correctly applied. It also told us that even without a formal appeal process, it still considers every request for review in accordance with the *BC Taxpayer Fairness and Service Code*. Under this code:

If you disagree with an action we have taken, a decision we have made, feel you have been treated unfairly, or have received information which you believe is incorrect, we encourage you to discuss your concerns with the person you have been dealing with. Ask the person you have been dealing with to give you the name and number of their manager.²⁶

The ministry told us that, as in Mr. Michaels's case, program supervisors will perform reviews if someone believes their application was "improperly denied," but that any denial will stand if the benefit had been correctly denied under the Act.

While the ministry might have had discretion to declare Mr. Michaels and Ms. Richards ineligible under the Act because they did not meet the new tax filing deadline, it also had discretion to rectify their meaningful administrative fairness concerns under section 220 of the Act, which grants the commissioner authority "to determine eligibility for [the benefit]."²⁷ It did not do this.

We expect that such discretion would also come with rules that guide its fair and consistent application. Instead of developing such guidelines, the ministry has taken the self-contradictory position that its auditors may exercise discretion to determine eligibility when it is "administratively efficient" and "focus[es] the ministry's audit resources on those that did not meet their tax filing obligations voluntarily," while also maintaining that it has "almost no discretion in the administration of the relevant provisions of the [Act] in terms of eligibility." This is neither logical nor reasonable.

Finding 4: The Ministry of Finance followed an unfair procedure, as described in *Ombudsperson Act* section 23(1)(a)(v), when it refused to review its decision to require Mr. Michaels to repay the benefit.

²⁶ Ministry of Finance, "BC Taxpayer Fairness and Service Code," n.d., <https://www2.gov.bc.ca/assets/gov/taxes/tax-audits-rulings-appeals/publications/bc-taxpayer-fairness-and-service-code.pdf>.

²⁷ *Income Tax Act*, RSBC 1996, c. 215, s. 220.

GIVING THE PUBLIC THE BENEFIT OF THE DOUBT: RECOMMENDATIONS

While an individual \$1,000 payment may be a relatively small expenditure for the ministry, the ministry told us it anticipates recovering more than \$12 million through auditing. This sum is not insignificant. We also expect that \$1,000 is likely to be of great personal significance to the thousands of individuals who, by virtue of the benefit's eligibility criteria, were disadvantaged by the loss of work and income during the early days of the pandemic.

The concerns we identified in our investigation are similar to those raised about the federal government's Canada Emergency Response Benefit (CERB). CERB was a federal program that provided funds to those who lost work due to the pandemic. In that case, the Canada Revenue Agency updated its website approximately two weeks after introducing CERB to clarify that the minimum income threshold for that program was based on net income, not gross income.²⁸ By that time, however, approximately 441,000 people who would not have been eligible based on net income had already applied for and received the benefit.²⁹ Although the federal government began issuing repayment letters to individuals who were ineligible on

this basis in November 2020, it announced in February 2021 that it recognized those Canadians who had "applied for the CERB in good faith"³⁰ and would allow them to keep the benefit, and that it would also return the benefit to those who had already repaid, provided they met all other eligibility criteria.³¹

The Alberta Ombudsman also spoke to similar issues in their report on that province's Emergency Isolation Support Program, which was developed by the provincial government in response to the pandemic. The Alberta Ombudsman wrote:

When programs are developed in rapid response to crisis, there may be a potential for unforeseen problems and concerns. Although the [program] was unique, we are cognizant emergencies such as COVID-19 and its widespread consequences, are likely to occur in the future. Our findings and recommendations are aimed at ensuring future emergency programs are delivered with a high degree of administrative fairness...

²⁸ Graham Slaughter, "CRA Quietly Updated Website for CERB Eligibility Weeks after Applications Opened," December 15, 2020, <https://www.ctvnews.ca/health/coronavirus/cra-quietly-updated-website-for-cerb-eligibility-weeks-after-applications-opened-1.5232713>.

²⁹ Graham Slaughter, "CRA Quietly Updated Website for CERB Eligibility Weeks after Applications Opened."

³⁰ Canada Revenue Agency, "Government of Canada Addresses CERB Repayments for Self-Employed Individuals and Announces Interest Relief on 2020 Income Tax Debt Due to COVID-19 Related Income Support," February 9, 2021, <https://www.canada.ca/en/revenue-agency/news/2021/02/government-of-canada-announces-targeted-interest-relief-on-2020-income-tax-debt-for-low--and-middle-income-canadians.html>.

³¹ Jamie Golombek, "How Canadians Ended Up Keeping Their CERB Benefits, Whether They Had \$5,000 in Gross or Net Income," August 26, 2021, <https://financialpost.com/personal-finance/taxes/how-canadians-ended-up-keeping-their-cerb-benefits-whether-they-had-5000-in-gross-or-net-income>.

Although we identified issues related to administrative fairness with respect to the development and delivery of the EIS program, we recognize the program was designed to assist Albertans in need as quickly as possible. We acknowledge the significant time and effort that both ministries put into this program and our findings and recommendations are intended to build upon the framework that has been developed.

While the development of rapid response emergency programs presents challenges and are difficult to navigate, it is essential that Albertans are treated fairly, when attempting to access such programs.³²

We echo the Alberta Ombudsman's remarks. There is no question that rapid emergency response poses unique challenges to government service providers. However, this does not minimize, but rather magnifies, the importance of conducting the business of government fairly.

Now that the immediate crisis of the early days of the pandemic has passed, it is possible for the ministry to undertake retrospective assessment of the benefit and its delivery. The auditing already underway is one part of such an assessment. Equally important is the ministry's consideration of the fair administration of its program; in the same spirit, we make the following recommendations. If adopted, these recommendations will address the fairness issues experienced by Mr. Michaels and Ms. Richards. They will also close the gaps in the ministry's processes that have impacted the thousands of other British Columbians who did not receive fair notice of the changes to the benefit's eligibility criteria, many of whom have been audited and required to pay back the money they received in their time of great need.

Recommendation 1: Before December 2, 2023, the Ministry of Finance

- a. identify benefit recipients who applied for the benefit on or before June 24, 2020, and whose eligibility has been, or otherwise would be, reassessed on the basis of failing to meet the 2019 tax filing deadline;
- b. provide these recipients with written notice that their 2019 BC income tax returns must have been filed or be filed within 90 days from the date of the notice; and
- c. if within this time frame recipients demonstrate that their 2019 BC income tax returns have been filed, either return the benefit inclusive of any interest or penalties charged (where the benefit has been repaid or otherwise recovered) or confirm in writing to the recipients that it will not pursue recovery (where the benefit has not been repaid or otherwise recovered).

Recommendation 2: By December 2, 2023, the Ministry of Finance develop and make publicly available a review process specific to decisions to issue or recover the benefit, consistent with section 220 of the *Income Tax Act*.

Recommendation 3: By December 2, 2023, the Ministry of Finance develop a process to ensure that changes to public program information are clearly identified as new on its website, and that where these changes will impact participants' eligibility or entitlements, they are also communicated to affected individuals directly.

³² Alberta Ombudsman, *Government of Alberta Emergency Isolation Support Program*, September 8, 2021, https://www.ombudsman.ab.ca/wp-content/uploads/2021/09/Alberta-Ombudsman-EIS-Own-Motion-Investigation_FINAL.pdf.

APPENDIX A:

Updates delivered by the Ministry
of Finance's subscription service

Updates delivered by the Ministry of Finance's subscription service

This information was provided by the Ministry of Finance. It includes the number of individuals each update was sent to. However, this figure does not reflect the number of applicants for the benefit, or whether they were successful in their applications.

April 23, 2020, sent to 81,011 individuals

This is a notification of an update.

Title: What's New in BC Emergency Benefit for Workers

Source: BC Emergency Benefit for Workers

URL: <http://www2.gov.bc.ca/gov/content/employment-business/covid-19-financial-supports/emergency-benefit-workers>

Online application for the BC Emergency Benefit for Workers opens May 1, 2020. Find out if you're eligible and what you can do now to prepare at gov.bc.ca/workerbenefit

Do not reply to this email. This email account is not monitored.

To unsubscribe, go to: http://www.sbr.gov.bc.ca/applications/SUBS/sys/sysfile.asp?targetPage=subscription_list.asp

May 1, 2020, sent to 92,888 individuals

This is a notification of an update.

Title: What's New in BC Emergency Benefit for Workers

Source: BC Emergency Benefit for Workers

URL: <http://www2.gov.bc.ca/gov/content/employment-business/covid-19-financial-supports/emergency-benefit-workers>

BC residents can apply now for the BC Emergency Benefit for Workers, a tax-free, one time \$1,000 payment for those whose ability to work has been affected due to COVID-19. <http://gov.bc.ca/workerbenefit>

Do not reply to this email. This email account is not monitored.

To unsubscribe, go to: http://www.sbr.gov.bc.ca/applications/SUBS/sys/sysfile.asp?targetPage=subscription_list.asp

May 4, 2020, sent to 93,288 individuals

This is a notification of an update.

Title: What's New in BC Emergency Benefit for Workers

Source: BC Emergency Benefit for Workers

URL: <http://www2.gov.bc.ca/gov/content/employment-business/covid-19-financial-supports/emergency-benefit-workers>

Eligibility for the benefit is clarified and a helpful tip for completing the online application is added. <http://gov.bc.ca/workerbenefit>

Do not reply to this email. This email account is not monitored.

To unsubscribe, go to: http://www.sbr.gov.bc.ca/applications/SUBS/sys/sysfile.asp?targetPage=subscription_list.asp

May 13, 2020, sent to 92,763 individuals

This is a notification of an update.

Title: What's New in BC Emergency Benefit for Workers

Source: BC Emergency Benefit for Workers

URL: <http://www2.gov.bc.ca/gov/content/employment-business/covid-19-financial-supports/emergency-benefit-workers>

The BC Emergency Benefit for Workers page has been updated to include information on repayments and how they can be made. <http://gov.bc.ca/workerbenefit>

Do not reply to this email. This email account is not monitored.

To unsubscribe, go to: http://www.sbr.gov.bc.ca/applications/SUBS/sys/sysfile.asp?targetPage=subscription_list.asp

June 26, 2020, sent to 92,130 individuals

This is a notification of an update.

Title: What's New in BC Emergency Benefit for Workers

Source: BC Emergency Benefit for Workers

URL: <http://www2.gov.bc.ca/gov/content/employment-business/covid-19-financial-supports/emergency-benefit-workers>

The BC Emergency Benefit for Workers has been expanded to include British Columbians who lost their ability to work due to COVID-19 between March 1 and 14, 2020. If you haven't already been approved for or received the benefit, find out if you might be eligible. Online and telephone application is now open.

Learn more at gov.bc.ca/workerbenefit

Do not reply to this email. This email account is not monitored.

To unsubscribe, go to: http://www.sbr.gov.bc.ca/applications/SUBS/sys/sysfile.asp?targetPage=subscription_list.asp

August 17, 2020, sent to 91,839 individuals

This is a notification of an update.

Title: What's New in BC Emergency Benefit for Workers

Source: BC Emergency Benefit for Workers

URL: <http://www2.gov.bc.ca/gov/content/employment-business/covid-19-financial-supports/emergency-benefit-workers>

Penalty and interest rules have been updated to reflect the legislation that received Royal Assent on Friday, August 14, 2020.

Learn more at gov.bc.ca/workerbenefit

Do not reply to this email. This email account is not monitored.

To unsubscribe, go to: http://www.sbr.gov.bc.ca/applications/SUBS/sys/sysfile.asp?targetPage=subscription_list.asp

December 3, 2020, sent to 91,572 individuals

This is a notification of an update.

Title: What's New in BC Emergency Benefit for Workers

Source: BC Emergency Benefit for Workers

URL: <http://www2.gov.bc.ca/gov/content/employment-business/covid-19-financial-supports/emergency-benefit-workers>

The application period for the BC Emergency Benefit for Workers is now closed.

The email subscription service for this website is being discontinued so you will be automatically unsubscribed.

If you have any questions about this program, please visit our website at gov.bc.ca/workerbenefit or you can email us at BCEBW@gov.bc.ca or call us toll free at 1-855-955-3545 (within BC only) or 1-778-309-4630 (outside BC).

DO NOT REPLY TO THIS EMAIL

April 21, 2021, sent to 91,293 individuals

Budget 2021 proposes to expand the eligibility for the Emergency Benefit for Workers to include self-employed individuals if they would have qualified for the benefit or the Canada Emergency Response Benefit based on their gross income. This mirrors a federal change to the Canada Emergency Response Benefit.

Learn more at <http://www.gov.bc.ca/workerbenefit>

Do not reply to this email. This email account is not monitored.

Please contact BCEBW@gov.bc.ca for further information.

To unsubscribe, go to: http://www.sbr.gov.bc.ca/applications/SUBS/sys/sysfile.asp?targetPage=subscription_list.asp

September 29, 2022, sent to 91,059 individuals

This is a notification of an update.

Title: What's New in BC Emergency Benefit for Workers

Source: BC Emergency Benefit for Workers

URL: <http://www2.gov.bc.ca/gov/content/employment-business/job-seekers-employees/emergency-benefit-workers>

If you are a self-employed individual who received the BC emergency benefit for workers and then repaid the benefit believing you were not eligible based on the income requirement for the Canada Emergency Response Benefit, you can now request we reconsider your application.

Learn more at gov.bc.ca/workerbenefit

APPENDIX B:

Response from Deputy Minister
of Finance

Response from Deputy Minister of Finance



November 14, 2023

Jay Chalke, BC Ombudsperson
Office of the Ombudsperson
PO Box 9039 Stn Prov Govt
Victoria BC V8W 9A5

Dear Jay Chalke:

Thank you for your letter [REDACTED] of November 6, 2023, regarding your investigation into the post-payment verification program of the British Columbia Emergency Benefit for Workers. I have read the investigation report and after receiving advice from staff within the Ministry of Finance provide the following comments on the report.

Background

In March 2020, the Ministry of Finance (Ministry) moved quickly to respond to the interruptions caused by COVID-19 pandemic. The BC Emergency Benefit for Workers began providing funding within two months of the COVID-19 being declared a pandemic on March 11, 2020. The program paid over \$643 million in payments of which only a small percentage have been denied on examination¹ by the Ministry. The Ministry also ensured that the benefit was non-taxable, and that receipt of the benefit did not impact other income tested benefits including the BC Housing's Rental Assistance Program, the BC Climate Action Tax Credit or the Canada Child Benefit.

To receive the BC Emergency Benefit for Workers, recipients had to apply and meet specified criteria, some of which could be verified at the time of application while others relied on post-payment verification. Your investigation focused on this post-payment verification, particularly on the requirement for applicants to have filed a 2019 income tax return². The following provides feedback on your findings and responses to each of the three recommendations.

Throughout your investigation, Ministry staff provided multiple detailed responses to your staff, some of which are repeated here.

¹ Post payment examinations are a regular part of successful administration of payment programs as they serve to identify and recover payments made to those that did not meet or comply with the eligibility requirements.

² It should be noted that there are other eligibility requirements for the BC Emergency Benefit for Workers that were linked to federal programs and requirements.

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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

Location Address:
Room 109
617 Government Street
Victoria BC

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2019 BC income tax return filing

One of the criteria to be eligible for the BC Emergency Benefit for Workers was filing a 2019 BC income tax return. As the 2019 deadline for filing under the Income Tax Act had not passed³ at the time applications opened on May 1, 2020, applicants were required to agree that they had filed or would file their 2019 BC income tax return. This required them to click “Yes” to the question “Have you filed or do you agree to file a 2019 B.C. income tax return.” The Ministry’s view is that each applicant knew the requirement and agreed to file by clicking “Yes” during the application process.

The application also advised applicants that information was subject to audit and verification and applicants had to certify that they understood this before the application could be submitted. In each of the representative cases in your report, the Ministry requested verification that the applicant filed their 2019 BC income tax returns. Despite both agreeing to file a 2019 BC income tax return when they applied for their benefits, neither applicant had filed the relevant tax return when the Ministry contacted the applicants as part of its post-payment verification. These verification requests occurred over a year and a half after the applicants agreed to file their 2019 BC income tax return and after the extended COVID-19 filing deadline (June 1, 2020) for personal income tax returns, which had been publicized by the Canada Revenue Agency (CRA) and included in numerous news releases, the first of which occurred on March 18, 2020 https://www.canada.ca/en/department-finance/news/2020/03/canadas-covid-19-economic-response-plan-support-for-canadians-and-businesses.html#Flexibility_for_Tax-.

Filing income tax returns is an annual requirement and filing a 2019 income tax return was a specific requirement of the BC Emergency Benefit for Workers (as agreed to in the application). The Ministry does not agree with the Ombudsperson that this requirement can reasonably be understood to be an open-ended promise that could be met at any time in the future as determined by each individual applicant. The Ministry does not agree that an agreement to file a tax return as a condition of receiving a benefit can be understood without reference to the scheme of the income tax system which operates on annual filings. The significant majority of applicants met this obligation prior to the Ministry initiating its post-payment verification.

The deadline to file a 2019 income tax return was extended by the CRA, and the BC Legislature provided an even later 2019 tax filing deadline specific to the Emergency Benefit for Workers program (January 1, 2021).

³ Generally, personal tax filings are due April 30 of the following year. Tax returns for certain self-employed individuals and their spouse or common-law partner are generally due by June 15 of the following year. During COVID-19, the Canada Revenue Agency, as agent for the province, extended both federal and BC tax return filing dates for 2019 tax returns to June 1, 2020 (this extension was announced on March 18, 2020). However, penalties and interest were not applicable until after September 30, 2020, (announced in July 2020) which served as an additional practical extension.

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The extension provided by the Legislature that the 2019 BC income tax return must be filed by January 1, 2021, did not disqualify anyone. Taxpayers still had over six months after the introduction of the legislation to file returns by that deadline. As noted in your report, this was even further extended by the fact that the Ministry did not begin auditing until well after the January 1, 2021, deadline and if applicants had a CRA Notice of Assessment the Ministry did not investigate their filing date.

The extended filing deadline of January 1, 2021, didn't change eligibility criteria for the benefit; the requirement to file a 2019 income tax return was always part of the application process as indicated above. In the absence of the legislated deadline for the program, it was reasonable to expect applicants who had agreed to file their 2019 income tax return to have filed it by the income tax filing deadline of June 1, 2020, established by the CRA for the 2019 tax year⁴, and announced in March 2020 in response to the COVID-19 pandemic. The January 1, 2021, legislated deadline is an extension of the deadline under the Income Tax Act.

We agree with your finding that the Ministry's practice of verifying that a return has been assessed, and not the actual date filed, is generous. However, the Ministry disagrees that its approach is unfair.

As the Ministry does not have access to data indicating when an income tax return was filed, the Ministry verifies whether a tax return has been assessed. This verification generally relies on a CRA Notice of Assessment provided by the CRA or the recipient, which does not include the specific filing date⁵. The Ministry only contacted applicants in cases where we had no evidence that a CRA Notice of Assessment had been issued and only issued a Notice of Redetermination denying the benefit where the applicants could not provide a CRA Notice of Assessment dated prior to the initiation of the audit. This process ensures that all recipients are treated in the same way (as it is not practically possible to initiate post-payment audits all at the exact same time) and is an administratively efficient approach that allows the Ministry to focus auditing resources on individuals that did not meet their tax filing obligations voluntarily (e.g., before an audit has been initiated), as agreed to in their application. In all cases where the Ministry determined that the eligibility criteria were not met, the Ministry issued a Notice of Redetermination requiring repayment of the benefit. Once the determination that the eligibility criteria were not met was made, the Ministry did not have discretion to choose to do otherwise.

It is not uncommon in administering programs under tax statutes, including many administered by the CRA and by BC, to focus enforcement efforts where there is information indicating that non-compliance has occurred and not allocating resources to auditing cases where voluntary compliance has occurred. In addition, many tax programs operate on the principle that voluntary

⁴ Generally, personal tax filings are due April 30 of the following year.

⁵ As the required filing period was during the pandemic, paper filed BC income tax returns often took many months to be assessed.

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compliance and disclosure are generally rewarded with relief from penalties, and relief is not available once enforcement (e.g., audit) action is initiated. The approach taken by the Ministry in its review of the BC Emergency Benefit program is consistent with this long-standing practice.

Communication

The Ministry took reasonable steps to communicate enactment by the Legislature of the extended date for the tax filing requirement. When the bill was introduced in the Legislature on June 24, 2020, the Ministry promptly updated its webpage, provided an alert to webpage subscribers and issued news releases notifying that legislation had been introduced.

Legislation is by nature far-reaching, and Ministries do not generally have the capacity to individually notify people of changes to legislation or how it will impact them. Enactment of legislation regularly provides for rights, privileges, and obligations on individuals in British Columbia.

Governments regularly introduce tax changes that require individuals to pay tax, meet specific criteria to be exempt from the tax, or meet a specified deadline to receive a tax refund or benefit. To notify people of these changes, governments generally use various sources of public information (e.g., news releases and web information) and subscription services (to those that have subscribed), as the B.C. government did when it informed British Columbians about the Emergency Benefit for Workers. However, the Ministry acknowledges that when the Legislature extended the deadline to January 1, 2021, for filing a 2019 BC income tax return for the purpose of the program, the Ministry did not specifically highlight this as a change from the previous version of the webpage.

The Ministry is continually improving its services and processes, and since the initiation of your investigation, has modernized its subscription service to better enable persons to receive notification of updates to the Ministry's public information on its tax and related programs. The Ministry is committed to ensuring that notifications provide information on specific changes where possible and to better identifying changes to its public information.

Review process

The Ministry disagrees with the finding that the Ministry "refused" to review its decision to require Mr. Michaels to repay the benefit. This complaint was in fact reviewed by both a supervisor and manager. Both concluded that the eligibility criteria were correctly applied in Mr. Michael's case. The application was refused at each level of review because Mr. Michaels did not file the required tax return (as agreed to in the application) before the Ministry began verifying Mr. Michael's application. This is a consistent standard to which applicants have been held.

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Responses to RecommendationsResponse to Recommendation 1

As explained in my letter to you on January 30th, 2023, the Ministry will not be implementing this recommendation.

The BC Emergency Benefit for Workers is, in law, an income tax refund payable in respect of an applicant's 2019 taxation year on the basis of the provisions of the BC Income Tax Act regardless of whether people understood it to be that. The Ministry's obligation is to administer income tax legislation as it is written, and the Ministry has met this obligation.

The Ministry must ensure applicants meet legislated requirements to be eligible for the benefit. The Ministry does not have authority to repay the benefit to those that did not meet the criteria. The Legislature imposed the January 1, 2021, filing date with the knowledge that over 600,000 payments had been made when the requirement was being debated⁶. In the Ministry's opinion, this recommendation would result in actions contrary to the will of the Legislature.

Response to Recommendation 2

In response to your correspondence with our Ministry, and as noted in my letter of January 30, 2023, the Ministry reviewed existing public information on the BC Emergency Benefit for Workers website and subsequently added information to our website about the Taxpayer Fairness and Service Code wording on contacting a supervisor if an applicant disagreed with a denial (As noted above, Mr. Michaels availed himself of the review process). The Ministry is satisfied that supervisory and management review is in accordance with the Taxpayer Fairness and Service Code and provides adequate opportunity for taxpayers to have their situations reviewed.

While your recommendation makes reference to section 220 of the *Income Tax Act*, this section specifies only the time during which the Commissioner may engage in eligibility reviews. It does not establish a process or requirement for the Commissioner to reconsider a decision upon request of applicant, nor does it allow the Commissioner to determine that an applicant is eligible if they are not factually eligible under the criteria in section 215 of the *Income Tax Act*. Instead, this right to have a supervisor review a decision is set out in the Taxpayer Fairness and Service Code as now stated on the Ministry's website.

⁶ British Columbia, *Official Report of Debates of the Legislative Assembly (Hansard)*, 41st Parl, 5th Sess, Vol 331 (15 July 2020) at 1500 (Hon C James).

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Response to Recommendation 3

While the Ministry is committed to identifying changes made to its public information and to the promotion of its subscription service to enable notifications about tax and related program changes, it cannot commit more broadly to communicating directly with individuals affected by changes to legislation or regulations, for reasons detailed above.

However, the Ministry's Revenue Division has recently upgraded and modernized its subscription service, making subscribing for notifications about tax and related program changes easier and has increased the visibility of this option. The Ministry is committed to continuing to promote this service and ensuring that changes are clearly communicated as part of that notification service. Unfortunately, scammers often target people using tax programs. Notices sent to people who have not subscribed are often seen as phishing attempts and are either ignored or create stress for people. As such, any such direct communication is used in limited circumstances. Further, tax programs such as the BC Emergency Benefit for Workers collect the minimum amount of information required to determine eligibility, meaning government may not be aware that a taxpayer is impacted positively or negatively by a change in law. For example, the Ministry would have been unable to identify which applicants had not filed their personal tax returns on June 24, 2020.

Concluding remarks

Thank you for the additional opportunity to respond to your recommendations. I hope that our comments are informative.

I recognize the important work your office does to ensure fairness and strengthen future programs from public sector organizations.

Sincerely,



Heather Wood
Deputy Minister

APPENDIX C:

Findings and Recommendations

FINDINGS

F1	Finding 1: The Ministry of Finance followed an unfair procedure, as described in <i>Ombudsperson Act</i> section 23(1)(a)(v), when it failed to notify applicants or recipients who applied before the 2019 tax filing deadline was publicized on the ministry's website on June 24, 2020, of the changes to the eligibility criteria for the British Columbia Emergency Benefit for Workers.
F2	Finding 2: The Ministry of Finance followed an unreasonable procedure, as described in <i>Ombudsperson Act</i> section 23(1)(a)(v), when it did not indicate that changes to eligibility for the British Columbia Emergency Benefit for Workers were expected and when it did not inform applicants and recipients of these changes.
F3	Finding 3: For recipients who applied for the benefit before the 2019 tax filing deadline was publicized, the Ministry of Finance followed an unfair procedure, as described in <i>Ombudsperson Act</i> section 23(1)(a)(v), when it audited and sought to recover the benefit from those to whom it did not give notice of the new deadline in time for them to comply with it.

RECOMMENDATIONS

R1	Recommendation 1: Before December 2, 2023, the Ministry of Finance <ul style="list-style-type: none"> a. identify benefit recipients who applied for the benefit on or before June 24, 2020, and whose eligibility has been, or otherwise would be, reassessed on the basis of failing to meet the 2019 tax filing deadline; b. provide these recipients with written notice that their 2019 BC income tax returns must have been filed or be filed within 90 days from the date of the notice; and c. if within this time frame recipients demonstrate that their 2019 BC income tax returns have been filed, either return the benefit inclusive of any interest or penalties charged (where the benefit has been repaid or otherwise recovered) or confirm in writing to the recipients that it will not pursue recovery (where the benefit has not been repaid or otherwise recovered).
R2	Recommendation 2: By December 2, 2023, the Ministry of Finance develop and make publicly available a review process specific to decisions to issue or recover the benefit, consistent with section 220 of the <i>Income Tax Act</i> .
R3	Recommendation 3: By December 2, 2023, the Ministry of Finance develop a process to ensure that changes to public program information are clearly identified as new on its website, and that where these changes will impact participants' eligibility or entitlements, they are also communicated to affected individuals directly.



OMBUDSPERSON

B R I T I S H C O L U M B I A