

Full HEARING - COSTA

IN THE MATTER OF AN ARBITRATION

BETWEEN

GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA

(the "Employer")

-and-

BRITISH COLUMBIA GOVERNMENT AND
SERVICE EMPLOYEES' UNION

(the "Union")

(Employment Assistance Worker)

CLASSIFICATION REFEREE: Robert Pekeles

COUNSEL: Peter Klassen, for the Employer
Maureen Headley, for the Union

DATE OF DECISION: February 12, 2007

INTRODUCTION

The Union appeals the classification of the Employment Assistance Worker ("EAW") in the Ministry of Human Resources. The appeal was filed in February 2003. There are more than 700 incumbents in the EAW position. The position is classified and paid at Grid 15. The Union says that the position should be classified and paid at Grid 18. The parties disagree on the rating with respect to 4 of the 13 factors under the Public Service Job Evaluation Plan (the "Plan"):

	<u>Employer</u>	<u>Union</u>
Responsibility For Work Assignments	D	E
Responsibility For Financial Resources	E	F
Sensory Effort/Multiple Demands	C	D
Physical Effort	C	D

There is a unique aspect to this appeal. The EAW's were formerly known as Financial Assistance Workers ("FAW"). The FAW's are a Benchmark position under the Plan. The Union submits that the EAW position has substantially changed from the FAW position such that it should be re-evaluated under the Plan. One of the issues that arises in this appeal is what must the Union establish in a case where there is a Benchmark in the Plan that relates to the position that is the subject of the classification appeal.

Subsequent to the conclusion of the hearing, in June 2006 I received a joint letter from the parties in the following terms (the present appeal is referred to as the Costa et al appeal):

Legal Counsel for the BCPSA and the BCGEU (The Parties) have tabled arguments regarding the purpose and status of benchmarks and reference jobs in the Costa et al classification appeal hearing. The Parties are jointly confirming that such arguments are not in the purview of a classification hearing.

The Parties have agreed to the application of benchmarks and reference jobs throughout Article 28 of the collective agreement and have further defined the application in the MOA Respecting the Gender Neutral Job Evaluation Plan (March 10, 1997), the MOU respecting Definitions in the Public Service Gender

Neutral Job Evaluation Plan (April 6, 1996) and in the MOU regarding the Public Service Job Evaluation Plan (October 28, 1998).

The question was raised in the hearing as to whether the benchmarks and reference jobs are part of the collective agreement. This is not relevant to the hearing as the Parties have a clear understanding and agreement regarding the application of benchmarks and reference jobs. The understanding and agreement between the Parties is inclusive of the following:

- Benchmarks and reference jobs are comprised of a job description, rating rationale and organization chart.
- Benchmarks and/or reference jobs are part of the job evaluation plan and must be applied in the evaluation of all positions.
- Benchmarks and reference jobs are considered accurate in their entirety for the purposes of evaluating a position.
- The example guides for specific factors in the job evaluation plan are recognized as a brief synopsis of information contained in the benchmark or reference job description. The full benchmark description must be reviewed to understand the context of the example guide.
- Benchmarks and reference jobs can only be amended, added to the Plan, or deleted from the Plan by joint agreement of the Parties.

The parties agree that you should proceed to a written decision for the Costa et al hearing with consideration of the above clarification on benchmarks and reference jobs.

FACTS

I begin by setting out the EAW's job description:

PURPOSE OF POSITION

Reporting to the District Supervisor, the incumbent is mandated with determining the eligibility and authorization of employment and financial assistance (temporary and continuous), requiring an in depth knowledge of the *Employment and Assistance Act*, the *Employment and Assistance for Persons with Disabilities Act*, *Financial Administration Act*, *Child Care BC Act*, *Child Care Subsidy Act*, *Freedom of Information and Protection of Privacy Act* as well as a variety of ministerial regulations, policies and procedures.

Through the development and use of both employment profiles and plans, the incumbent is further mandated with providing ongoing caseload management,

promoting and providing programs and services designed to move clients towards sustainable employment and off of assistance.

NATURE OF WORK AND POSITION LINKS

Works with diverse client population to assess and plan for employment and to determine eligibility for financial and other types of assistance. Works in a team setting. Reports to District Supervisor. Liaises with professionals in the community.

SPECIFIC ACCOUNTABILITIES / DELIVERABLES

1 - Determines eligibility of applicants/clients for Employment and Assistance and Child Care programs and services.

- (a) Ensures that applicants have been made aware and sought the use of all available and applicable resources prior to applying for employment and financial assistance including; employment insurance, ICBC, WCB, CPP, student financial assistance, Family Bonus/National Child Benefit, child and spousal support, personal financial accounts/assets, family and community.
- (b) Ensures that all applicants have met their obligations to complete both an orientation session and a three-week reasonable work search, having authority and the requirement to deny applications for assistance if such conditions have not been met.
- (c) Conducts and documents interviews, using patience and good judgement, with applicants some of whom may have emotional, physical or mental conditions that act as barriers to communication.
- (d) Reviews a variety of documentation/information including personal identification, employment documents, legislation and ministry guidelines.
- (e) Determines eligibility and suitability for programs/services based on client needs, personal issues, resources, financial circumstances, and employability, while identifying and addressing barriers to employment.
- (f) May conduct home or offsite visits for applicants that are unable to travel to a district office.
- (g) Verifies the validity and accuracy of applicant information, referring to Verification Officers for further review in accordance with established guidelines; and refers clients to PCE per referral protocols.

- (h) Approves or denies applications for programs/services, providing explanations for denial and advising applicants of their rights to appeal.
- (i) Assists clients with the completion of reconsideration/appeal documentation, referencing appropriate legislation and ensuring completeness and accuracy.
- (j) Conducts Emergency Need Assessments, using discretion, judgement and clearly defined criteria set forth in legislation, when determining eligibility.
- (k) Ensures that inquirers are made aware of alternative financial and community resources, should emergency assistance be denied.
- (l) Ensures that expectations and obligations outlined and agreed upon as condition for eligibility under *Employment and Assistance Acts* or Child Care programs and services are complied to, having the authority to apply sanctions if such terms and conditions are not met.

2 - Designs, initiates, coordinates and monitors the ongoing implementation of Employment Plans (EPs)

- (a) Completes employability screens on all clients, including those who are unlikely to become independent through employment due to persistent multiple barriers.
- (b) Completes employability profiles on those clients deemed to be employable but who are in need of long-term support, identifying the presence and magnitude of barriers to employment.
- (c) Determines the effect/impact of client social circumstances on their abilities to achieve employment, referring to appropriate authorities such as transition houses, resources, alcohol and drug counseling agencies and other such service providers, as required.
- (d) Reviews and assesses all information when developing realistic, participatory and accountable EPs, that serve as legal agreements between clients and ministry.
- (e) Develops individualized EPs that outline the obligations, responsibilities and accountabilities related to employment activities, expectations and consequences required of the client in order to become employed and self-sufficient.

- (f) Assists clients with defining/developing employment goals, objectives, priorities and implementation strategies, which suitably address their current and future employment skills/training needs.
- (g) Assists clients to determine which programs/services best facilitate the goals and objectives set forth in their individualized EPs, referring to a variety of resources (internal/external) designed to assist in this regard.
- (h) Provides clients with on-going support to encourage the attainment of sustainable employment.
- (i) Ensures that expectations and obligations outlined and agreed upon in the EP are maintained as a condition for continued financial assistance, having the authority to reduce or discontinue assistance if such terms and conditions are not met.

3 - Carries out financial responsibilities, in accordance with legislated and ministry guidelines, including responsibility to authorize the payment of Employment and Assistance funds associated with a variety of programs and services.

- (a) Reviews client information in order to determine which allowances clients will be eligible for, considering supplementary allowances that are designed to provide support to family units or to maintain health.
- (b) Authorizes allowances and subsidies using discretion and judgement, taking into account a variety of individualized circumstances, situations and concerns.
- (c) Informs clients regarding money management techniques and may assist clients with resolving payment problems, referring clients to debt/money management service providers as required.
- (d) Establishes and oversees the adherence to repayment agreements, identifying potential issues of fraud and refers to appropriate authorities for further investigation as required.

4 - Motivates and encourages Employment and Assistance clients to achieve sustainable employment and provides assistance to those in need through ongoing case management practices.

- (a) Provides systematic follow-up to the client, supporting the client's goal of obtaining and retaining employment by renegotiating individually tailored EPs, reassessing interventions and ensuring clients maintain accountability for adhering to the terms and conditions set forth in their respective EPs.

- (b) Addresses issues as they arise, modifying EPs to reflect the most appropriate mix of programs and support measures that will maximize the client's ability to gain sustainable employment.
- (c) Reassesses client employability factors including: decision making ability, skills enhancement, job search and employment maintenance.
- (d) Obtains and maintains up-to-date client social and economic information, identifying possible barriers to employment and appraising the client's readiness for training and/or employment, redesigning the individualized EP accordingly.
- (e) Develops, maintains and applies an understanding of issues faced by clients with disabilities or other medical needs, determining financial and other program supports available and referring as appropriate.
- (f) Carries out ongoing liaisons with service providers, verifying the client's progress, confirming start/finish dates and ensuring that service standards are being met.
- (g) Establishes a flexible timetable, organizing and prioritizing in order to meet unexpected situations/circumstances and the ever-changing needs of the client population.
- (h) Responds to enquiries and requests for information, either in person or over the phone, from clients, the general public, business community, government agencies and community agencies while adhering to freedom of information guidelines.
- (i) Ensures the efficient, timely and accurate delivery of client services in accordance with legislative guidelines.

5 - Other

- (a) Maintains awareness of office activity, recognizing and diffusing problematic and possible volatile situations, taking measures to avoid crisis situations by alerting appropriate staff and by taking appropriate action.
- (b) Follows ministry guidelines with respect to the reporting, referral and recording of suspected child welfare concerns.
- (c) Maintains up-to-date knowledge of relevant government legislation, policies, programs, procedures, systems and other employment and training programs/agencies.

- (d) Provides both formal and informal training and orientation to new employees as required.
- (e) Maintains and enters data on a shared drive; compiles statistical information relative to client activities.
- (f) May prepare and present cases at tribunal as required.
- (g) May be required to testify on behalf of the ministry in court.
- (h) Performs ESS/disaster role and stays current with Provincial Emergency Preparedness policy.
- (i) May act as community liaison working with advocacy groups and other agencies.
- (j) Participates on cross-community/agency committees.
- (k) Other duties as required.

There were 16 days of hearing. The amount of evidence, both oral and written, was very, very extensive. I have carefully reviewed all of it. I wish to emphasize to the parties that the mere fact that certain portions of the evidence are not referred to in this decision does not mean that I have not carefully considered them. I will set out the broad overview of the evidence, but will focus on the material issues between the parties. More particularly, I will focus on the material evidence regarding the four factors in dispute.

As noted in the job description, the EAW's are mandated with determining the eligibility and authorization of employment and financial assistance requiring an in-depth knowledge of the *Employment and Assistance Act* (the "current Act") as well as the *Employment and Assistance For Persons With Disabilities Act*, as well as other statutes. The two statutes which I have just referred to came into effect in September, 2002. The predecessor pieces of legislation were a series of statutes referred to in the evidence as the *BC Benefits Acts* (the "previous Acts" or "*BC Benefits Acts*"). The previous Acts came into effect in July 1996.

There are a number of differences between the current Act and the previous Acts. One important difference between the current Act and the previous Acts is that the current Act generally, with

certain exceptions, requires the applicant for assistance to enter into an employment plan (the "EP") and to comply with the conditions set out in the EP.

Under the terms of the EP, the client acknowledges that it is a condition of eligibility that he/she comply with the conditions set out in the EP, including any condition to participate in a specific employment related program. The client further acknowledges that he/she understands that if he/she does not comply with the conditions of the employment plan, the assistance issued to him/her and/or his/her family will be discontinued. The previous Acts and the predecessor to those Acts did not provide for EPs.

Briefly stated, an EP is a contract that the client signs with the Ministry that sets out the steps that the client is expected to take to lead the client to independence from financial assistance. The steps vary according to the circumstances of the individual client. Sanctions for clients, if they do not fulfill their obligations, are mandated by the legislation and are not a matter of discretion.

The EAW's are guided in the performance of their duties by the BC Employment and Assistance Manual (the "Manual"). The Manual is a very extensive document setting out extensive instructions as to how the job is to be performed. For example, the section of the Manual that deals with EPs is 12 pages long. Apart from setting out policy regarding EPs, including among many other things, EP requirements, amendments, reviews and standards, the Manual sets out specific procedures for developing the EP.

To give a sense of the specificity of the instructions I quote the Manual's "Procedures for Developing EP".

The following are the steps to develop an EP with each client:

- 1. Complete Client Employment Planning Tools**
 - Ministry staff administer an Employability Screen to determine the client's current level of employability

- Clients who score 0 - 14 should normally be referred first to Job Placement Program, then to the Training for Jobs Program or similar programs
- A score of 15 + indicates the need to identify the specific barriers to employment. The Client Employability Profile is used to assist in identifying the barriers and their degree of severity, so that the barriers can be addressed in the employment planning process
- Clients that are returned to the ministry by a service provider should complete the Client Employability Profile to determine previously unidentified barriers to employment and complete an amended EP, as required
- Clients with a temporary medical condition, drug or alcohol or mental health condition that interferes with employment should be provided with a Medical Report - Employability (HR3069) for completion by a physician,

2. Gather Information

- Gather information regarding the client's education, work experience, work search knowledge, current resume, knowledge of resources, knowledge of research, and progress to date
- Discuss and document the employment planning activities already accomplished.
- Information is then entered into the Conditions of the Plan and must be clear, concise, factual, specific, measurable, achievable, realistic and time-bound. Ministry staff enter data from the client's EP into the MIS as a permanent record

3. Identify and Document Activities the Client Will Undertake Within the Term of the EP

- Based on steps 1 and 2 above, ministry staff identify the specific activities the client will undertake within specified timeframes
- Activities for clients who are job ready (score 0-14) and require some short-term interventions may include participation in the Job Placement Program, Training for Jobs, or Supervised Independent Work Search (for those clients who have demonstrated the ability to independently undertake work search)
- Clients in Job Placement or Training for Jobs (individualized training or job placement component) are required to complete the Client Activity Report and submit to the service provider on a monthly basis if looking for work, and every second month if working, but still on assistance.

- Supervised Independent Work Search is appropriate for clients who are work-ready and have a demonstrated ability to independently locate suitable resources to support their work search. It is **not** appropriate for clients who require additional supports to achieve independence through employment, e.g., a person who meets the criteria for programs such as Job Placement or Training for Jobs.
- Clients who have completed Job Placement or Training for Jobs programs may be ready to participate in Supervised Independent Work Search
- Activities for clients who require longer-term intervention (score 15+) may include participation in the Community Assistance Program, Bridging Employment Program, or Direct Purchase (e.g. Literacy, ESL)
- Clients with conditions that interfere with employment should be focusing on improving employability. Activities might include outreach, community services and supports, self-directed career exploration and pre-employment services (life skills). Activities that are not related to a specific program would be coded as "other"

4. Schedule and Document Regular Reviews of EP

- Identify review dates and method of client reporting
- Regular reviews ensure clients are undertaking the activities identified in their plan and are supported in achieving employment and independence
- EP with "other" activity are subject to the same review process as any other EP

5. Completion of EP

- Ministry staff must explain the terms and conditions of the EP to the client and indicate that failure to comply will result in ineligibility for assistance
- The client is required to sign the EP as acknowledgement of its terms and conditions
- Ministry staff provides a copy of the EP to the client

A review of other sections of the Manual indicates that they too set out specific instructions regarding the other aspects of the EAW's job.

There was also a manual for the previous Acts. This guided the work of the FAW's. The manual under the previous Acts served the same function as the Manual under the current Act.

I should next set out the job description in the FAW Benchmark in the Plan. There are four FAW Benchmarks in the Plan which are materially the same for the purposes of the present appeal. They cover FAW positions in Vancouver, Victoria, Prince George and Williams Lake. In the present case, I will use Benchmark Job #130, which is the Prince George FAW Benchmark:

PRIMARY FUNCTION

To establish the eligibility of applicants/clients for income support programs and services and promote self-reliance and independence from social assistance.

JOB DUTIES AND TASKS

1. Determines eligibility of clients for income support programs and services
 - a. conducts client interviews to assess need and determine entitlement to programs and services
 - b. assists clients to seek all other sources of income such as Employment Insurance, Old Age Security, Canada Pension, etc.
 - c. explains clients' obligations and entitlements and their right to appeal discontinued or reduced benefits
 - d. obtains all necessary documentation for income assistance, verifies accuracy of information and conducts home visits as required
 - e. calculates and initiates income assistance payments and monitors on-going payments to ensure clients' needs are being met and that entitlement status remains valid
 - f. authorizes and distributes cheques and emergency allowances to clients, within Ministry guidelines
 - g. identifies potential issues of fraud and refers to ministry investigators or Crown Counsel
 - h. establishes repayment agreements with clients and recommends accounts for write-off
2. Conducts regulatory and social assessments to determine eligibility for various services/benefits
 - a. determines eligibility and approves client requests for goods or services such as home maker services, hardship and crisis grants
 - b. identifies child welfare concerns and refers cases to the appropriate Ministry
 - c. conducts employability assessments on "employable" clients and refers to Rehabilitation Officers and/or various employment programs
 - d. counsels clients regarding barriers to independence and refers to other agencies when required (e.g., alcohol/drug agencies)
 - e. assists with development of life skills and encourages clients to strive for independence

- f. administers the payment of bills for clients who are unable to look after their basic needs
 - g. develops a plan to assist client toward greater financial management independence
- 3. Administers a client caseload
 - a. initiates benefits on computer file and maintains the file to ensure all records are up to date and accurate
 - b. monitors caseload through systems generated reports and prepares reports and statistics as needed
 - c. monitors time-limited policy allowances and makes appropriate payment changes
 - d. authorizes continued eligibility by examining client's requests for continued assistance
- 4. Performs other related duties
 - a. liaises with various community and government agencies and keeps updated on available resources
 - b. participates in committees and special projects
 - c. provides emergency social services when needed such as emergency food, medical supplies and shelter
 - d. provides formal training to co-workers on policy, procedures and legislation
 - e. drives vehicle to home visits

I pause to note that the Benchmark job descriptions under the Plan are set out in relatively brief terms. The FAW Benchmark job descriptions are substantially briefer than the EAW job description.

Ginger Richards, who had worked as an FAW since 1981, testified that with respect to job searches or training for clients, FAW's would refer that to Training Consultants who worked for the Ministry. With respect to job duty 2(c) of the FAW Benchmark: "conducts employability assessments on "employable" clients and refers to Rehabilitation Officers and/or various employment programs" she testified that mainly the Training Consultants did that. With respect to job duty 2(e): "assists with development of life skills and encourages clients to strive for independence" she testified that she would rely on the Training Consultant. They knew where the programs were. She acknowledged that the FAW's did encourage clients to strive for independence, but it was very informal. Richards agreed that she has never done an EP.

Richards agreed that prior to the current Act, the focus still was to get employable clients off of assistance. Richards further agreed that if a client was not looking for work under the previous Acts, the FAW had discretion to cut them off of income assistance.

Peter Murray has worked for the Ministry since approximately 1997 as an FAW and EAW, among other jobs. In the course of the intake interview with an applicant for assistance, the EAW takes information and fills out the application forms and makes sure that the applicant meets the eligibility criteria. Murray testified that client intake is on a case by case basis; it is never the same. He testified that there were anywhere from zero to three client intakes per day, most commonly one or two. In the initial interview with an applicant for assistance, the EAW completes the form on line. The EAW collects the necessary documents from the client and hears about their employment search. The EAW makes copies of any documents that the client wants back.

In the intake interview, the EAW scores the client on the Ministry's Employability Screen (the "Screen"). The Screen consists of a number of questions, the answers to which generate a score. With a score of 0 to 14, the client is determined to be immediately employable or employable with short term interventions. With a score of 15 or more, the client is determined to be employable with longer term interventions.

In terms of the EP, Murray testified that every client is different. The client could need anything from a simple Job Placement ("JP") program to a variety of resources including English as a second language ("ESL"), adult basic education, pardons for criminals, drug and alcohol programs and resources for abused women.

Murray referred to a number of examples of particular clients. For example, he referred to a client who did not have teeth. The client had many EPs that were not working. The Ministry would not pay for dentures. He referred the client to a dental program to assist her. He testified that the client is now working and is off assistance. He testified that every case is unique. He testified that unusual clients are usual in employment planning. For example, he testified about a sex trade worker that if referred to a JP program would be referred to an escort agency. Instead,

he referred that client to a program in Victoria that assists sex trade workers to leave the sex trade. It receives funding from various sources, including the Ministry. He testified that there was no prescribed model for sex trade workers. He also referred to Triumph, another contractor with the Ministry. They work with harder to employ clients. They referred one of Murray's clients to a clinic where the client received a hearing aid. Murray also referred to Bridges to Employment, a program for abused women. The Ministry provides at least some of its funding.

Clients sometimes self-identify their problems; sometimes they do not. Issues include medical, both physical and mental, dental, drug and alcohol, English as a second language, abuse and self esteem and single parent/child care, among others.

Murray testified that the focus of the Ministry is employment planning. The EAW has to learn about the community's resources and what benefits they offer. The EP merits some discussion with the client. If the EP is too rigorous and the client fails, then they are sanctioned and it could mean that they do not eat. The EAW's monitor the client's adherence to the EP including phone calls to the contractor and in person with the client.

One designation under the current Act is Person with Persistent Multiple Barriers ("PPMB"). One of the criteria to meet PPMB status is that the client has received assistance for at least 12 of the past 15 months, has severe multiple barriers to employment, has taken all reasonable steps to overcome those barriers and has a medical condition (excluding addictions) that has lasted for at least one year and is likely to continue or recur frequently for at least two years, and which is a severe barrier that seriously impedes the person's ability to search for, accept, or continue in employment. Barriers include physical or mental health, education or language, childcare, transportation and criminal record among others. Such a person will have had many EPs over the 12 months. The EAW will have to see that all options have been looked at. The EAW will have filled out a Client Employability Profile (the "Profile"). These clients will have scored 15 or more on the Screen. The Profile is an assessment tool to identify barriers to employment. The EAW must identify client issues through discussion with the client. Once all of the information, including the medical information, is gathered it is forwarded to the regional office where a

regional adjudicator makes the determination. If the client is designated as PPMB, then he/she is no longer employment obligated.

The Manual sets out a 16 page long section on PPMBs. In addition to setting out an overview and policy, it sets out a very detailed and specific set of procedures regarding PPMBs. Because of its length, I will not reproduce it here. Nancy Benzer, who has been an FAW since 1986, testified that in general, the Manual instructs EAW's how to handle PPMB applications.

Murray agreed that the Act and Regulations prescribe many of the functions that the EAW carries out. The EAW's use the Manual as a tool in performing their duties. In addition to the statutes, the regulations and the Manual, the EAW is also directed by regional policy and office policy.

Murray agreed that under the previous Acts there was an expectation that clients would appear annually and would complete a review. Questions on the review form included: "seeking employment?" and "explanation for no". Murray testified that if the client said yes to the "seeking employment?" question, he would continue on. He would not ask any other questions regarding employment. He agreed in cross-examination that if he knew that the client was not seeking employment, then he had the discretion to cut the client off of assistance. In the application process, if the client said that he/she would not work, but was able to, Murray would refuse to provide assistance. He stated however, that the client would just say that he/she was looking for work.

Murray testified that he "negotiates" repayment agreements for repayment of debts owed by the client to the Ministry. The policy used to be a minimum \$10 per month payment. Now the policy is a minimum of \$20 per month. Murray testified that he could negotiate a higher amount per month. However, he would probably advise the client that it would not be a good idea. Anything above \$20 per month is voluntary while on assistance. Murray has never recommended a seizure or lien.

Cheryl Levine was the District Supervisor ("DS") in Campbell River from September 2001 to September 2003. She started to work as an FAW in June 1996. She is currently a manager. She testified that the Ministry's expectation and her expectation as a DS was that repayment agreements would be made at the minimum monthly amount. The Ministry and she would not have supported a more aggressive approach. The repayments come off the client's cheque.

Inderjit Randhawa was an FAW between 1995 and 2000. Between 2000 and 2003 she was an acting DS in Merritt. In 2003-04 she moved to the regional office. In August 2004, she moved to the Kamloops call centre where she is one of the supervisors. Trent Brown was an FAW between 1994 and 1999. In 2000, he became the Acting DS in Abbotsford for approximately two years. He ultimately moved to the regional office where he is a manager.

Both Brown and Randhawa also testified that it is not the Ministry's expectation that repayment amounts be greater than \$20 per month.

Murray testified about a variety of types of spending authority that he has including for camp fees, crisis supplements for furniture, shelter or food.

Murray testified that he spends over 80% of his time looking at the computer screen. He testified that everything is computerized. The Manual is online, as are the forms. Murray testified that the computer is his main tool and that if it is not on, then he cannot do his work. Among other things, he uses the computer for data, for forms, to update files, to generate letters, to monitor EPs, to review the Manual, and to do e-mail.

Murray is interrupted from the use of the computer by telephone calls, by co-workers, by other clients, and by crying children. EAW's assist one another. From time to time he is on the telephone with clients, with contractors and with other resources. From time to time he deals with the DS whom he reports to. He talks to people on the telephone, but not a lot of the time. A large percentage of that time, he would be looking at the computer while on the telephone. He would bring up the client's file and the file would stay up throughout the telephone call.

Claudio Ekdahl was hired as an FAW in 2000. He has a Persons with Disabilities ("PWD") and PPMB client caseload. With the current legislation there are new programs for clients with disabilities. PWDs are not employment obligated. Participation in employment related programs is voluntary. However, to participate in such programs, the client needs to sign an EP and abide by it. The programs that Ekdahl's clients participate in include programs for persons with mental health issues, vocational rehabilitation, college programs and other programs that can bring down barriers to employment. The PWD determination is made by the Health Assistance Branch of the Ministry. There were different disability designations under the previous Acts. Ekdahl testified that intake interviews can take between 1-2 hours.

Ekdahl testified that the EAW liaises with long term care facilities that care for clients with disabilities. Ekdahl testified that in a month he deals with 5 to 15 long term care facilities ("LTC") depending on his particular caseload. The number of clients in an LTC varies from five in a small one to 30 to 40 clients in a larger one. He testified that the billing could be between five and twenty thousand dollars per month. The EAW checks for the accuracy of the bill and signs the form. The EAW ensures that the client is eligible for the time period in question and that the number of days of stay and the per diem rate are accurate. Three statement of account forms were ultimately produced. The statement of account form has a place for the signature of the "spending authority". Only one of those statement of account forms was signed by Ekdahl. It was for the sum of \$7,587. It was dated in October 2005, long after the date of appeal in the present proceeding. Two other statement of account forms signed by other persons for total sums of \$813 and \$3,126 respectively were produced.

In cross-examination, Ekdahl indicated that before the current legislation it was always the FAW's responsibility to pay the LTC facilities. He then indicated that previously it was the office manager's responsibility for accuracy. He stated that in 2000, the manager signed the bill for accuracy. Now the EAW signs the bill. Later, he again said that he had always signed the forms. Later again, he said he was not certain who signed the forms. Having carefully reviewed the evidence on this point, I am simply unable to find on a balance of probabilities that there has been any change in who has the spending authority for the LTC facility payments. Ekdahl

testified that the EAW also has responsibility for medical equipment purchases of less than five hundred dollars. EAW's also recommend debt accounts for write off.

There was a spending authority matrix under the previous Acts which set out the limit of spending authority of FAW's. If more than that limit, the FAW would have to ask permission from his/her supervisor. There is still a spending authority matrix for EAW's. Randhawa testified that the spending authority matrix has not changed from the time that she was an FAW. Randhawa was an FAW between 1995 and 2000.

Krystal Madill has been an FAW since 1993. Since June 2002 she has worked at the call centre in Kamloops. Madill testified that she has been involved in expenditures of \$2,000 to \$2,500 for client relocating expenses. She has "heard" of amounts larger than \$5,000 for those expenses. I pause to note that that was hearsay evidence to which I am simply not prepared to attach any weight. Madill did not give particulars regarding those alleged expenditures larger than \$5000.

Ekdahl testified that he uses the computer approximately 75% of the time. He is on the computer unless he is away from his desk at a meeting or using the photocopier or fax. The Manual used to be in hard copy. Now it is online.

Nancy Benzer has been an FAW since February 1986. In terms of the difference between the previous Acts and the current Act, she testified that the differences were mostly around EPs and monitoring them. Before the current Act, FAW's did some employment planning, but only for those who were ready to enter into a JP. Everyone else would be sent to a Training Consultant to have a training plan developed. Now, the EAW's are responsible for all clients.

Benzer agreed that FAW's assessed the client's score on the Screen before the current Act. The same Screen and the same marks existed both before and after the change to the legislation. If the score was low, then the client was employment ready. If it was high, then the client would need assistance and would be referred to a Training Consultant for that purpose.

In very general terms, clients have a two year time limit on assistance out of five years. Accordingly, the EPs must be both time sensitive and appropriate. The EP must suit the client's ability such that they will succeed with it. Benzer testified that the EAW must develop trust and understanding with the client.

Under the previous Acts, FAW's were required to review files once a year. Now, the EAW is responsible to follow up on referrals because compliance with EPs is mandatory. EPs must be reviewed on a regular basis and be amended if there are difficulties. If a JP contractor does not accept the client, then the EAW and client have to complete a new EP. Benzer testified that sometimes clients do not identify their barriers at the intake interview. However if they are rejected by a contractor, the EAW may for example identify a drug or alcohol problem or a mental health issue. The EAW would then identify an appropriate intervention.

Benzer testified that presently if the Screen score is below 14, then the client should be referred to a JP program. There is no employment obligation if the client is designated as PPMB or PWD.

Before the change in legislation, Benzer testified that if the score was 13 or 14 she would refer the client to a Training Consultant or maybe to a drug and alcohol program. She was not responsible for monitoring if the client went to a program. She did, however, review the monthly form filled out by the client. The monthly form was referred to in the evidence as the "stub". The form asked three questions among others with yes or no answers: "any employment changes?", "attending school/training?", and "are you looking for work?". The stub existed long before the current legislation. Receiving assistance depends on the receipt of a completed stub. It is attached to the computer check from the previous month. Benzer agreed that before the current Act, if a client had no excuse for not looking for work, then she could disentitle him/her to assistance.

Benzer testified that she spends at least 80% of her day on the computer. She interviews clients mostly by telephone. She uses several applications while interviewing the client by phone. Files, reports, e-mail and the legislation are all on the computer. In client interviews, she

accesses their electronic file, reviews their history screen, checks to see whether an EP review has taken place, and updates their information. Benzer testified that client files went electronic in the mid-1990's. The legislation and regulations are now on computer. Previously, she would go to a hard copy version of them. Forms are now on computer. Previously, there were hard copy forms that were completed with a pen.

Since June 2002 Madill has worked at the call centre in Kamloops. The call centre opened in June 2002. It services a large geographic area in the interior of the province. Under 50 people work there.

At the call centre, all interviews are done by telephone (as opposed to in person). As clients phone in she pulls up their information on the computer and records information there. She looks at the computer close to 90% of the time. Among other things, she uses it for client files, for information on agencies in the communities that the call centre services, for on-line legislation, for e-mail, word and excel. There are no tasks that don't involve using the computer except for staff meetings which are held once a week for an hour and 15 minutes.

Randhawa testified that in 2003, she worked in the regional office and participated in regional meetings regarding the work flow in the call centre. She was part of the planning committee for the call center. She moved to the call center in August 2004.

Randhawa testified that the only difference between the call center and other offices is that there is no face to face contact with the client in the call centre. It is the same legislation and the same procedures in the call center as in other Ministry offices. Randhawa said that the intake interview would take between an hour and an hour and 15 minutes. The EAW verifies the client's information, goes through the application form, the Screen and the EP. Once complete, materials are faxed out to the client for their signature.

Randhawa testified that overall in August 2004 it was the same as in February 2003 at the call centre. In February 2003, there were fewer EAW's (8 in 2003; 20 in 2004) and fewer communities served.

In August 2004, there were three "paper" days in which EAW's would do intakes, EPs, EP reviews, caseload management including reports and letters, and stubs. The "paper" days essentially involve work on the computer (as opposed to paper). Apart from the three "paper" days, there are two days in which the EAW's would be on the phone dealing with clients. That three "paper" days and two phone days system started at the beginning of the call centre.

Madill testified that she has experienced two or three threatening phone calls a month. She taps on the window to have a co-worker listen while the DS calls the RCMP. Madill also testified about a low functioning client who did not report information properly. Madill put a note on the client's file to not close the file without first discussing the case. Madill further testified about a client who had written something about "the blood of Christ" and who was dangerous. She got approval to not do a JP for that client. She testified that the EP was to humour the client who did not think that there was any problem.

Madill testified that under the previous Acts, the FAW's were responsible to have some version of a plan for financial independence. She testified that assistance has always been short term, regardless of the legislation. The mandate was always to look for work. If there were non-medical barriers, the FAW would look to a Training Consultant. The FAW would first determine what the problem was, and would then refer the client to the Training Consultant. Madill told clients in the era of the previous Acts that they had to work towards independence.

Madill testified that a manual was put together regarding the previous Acts. She testified that the manual was similar in content to the current Manual. It told the FAW's how to administer the previous Acts.

Madill testified about an FAW on the job training Manual (the "Training Manual"). Newly hired FAW's/EAW's are trained for six weeks. The date of the Training Manual introduced in evidence is March 2001. The Training Manual states that the Ministry:

"is dedicated to assisting BC Benefits participants to move into the labour market and increase access to jobs by removing barriers to economic security..."

Madill agreed that that focus was in place in 2001. She was asked whether that employment focus was in place since 1996 with the *BC Benefits Acts*. She replied that the intent was always to move people from assistance.

Madill testified that in 1998, FAW's were not referring people. A Training Consultant would come out every six months for a day or two. As an FAW, Madill was having discussions with clients regarding their employability and job searches, even though she was not making referrals.

Madill was a trainer of FAW's beginning in 1999. The Training Manual states that: "A financial assistance worker (FAW) is responsible for establishing the eligibility of applicants/participants for Income Support Programs, authorizing payments and assisting and promoting attachment to the Labour market". Madill agreed that she was explaining the FAW job to trainees in 1999 in similar terms.

She agreed with the statement, among others, that: "Administrative work, including the processing of large volumes of paper work, documentation and record keeping is a significant part of the job." She testified that forms in 1999 were still handwritten. In 2001, there was a transition to an online manual and forms.

Madill further agreed with the Training Manual statement that: "The use of affective listening skills is always important. During the initial interview these skills are key to developing a positive relationship with the participant and setting a conversational tone that will greatly assist your decision making ability. Make the use of active listening skills one of your habits." Madill testified that she tries to do that even more so on the telephone.

Madill further agreed with the Training Manual statement that:

The participant is the focus of the interview. While entering data or reading information on the screen, be sure the participant is aware of what you are doing.

Explain the purpose of any forms or documents you are providing to the participant or are requesting.

When requesting further information for a later date and/or making referrals, explain the purpose and provide the participant with your requirement in writing. A hand written list of instructions will help the participant comply and may prevent delays in service.

Use appropriate communication skills to keep the discussion on track and relevant while respecting the participant's need to "tell their story".

Madill agreed that that is how she conducts herself. She further testified that at the call center she tells the client to get a pen and paper and to read back to her what the client has to do. She endeavours to have positive communication with the client. She listens to more than just the information. She listens to their personal woes on occasion. She talks to the client about assistance being short term. She wants to encourage and motivate them not to be on assistance.

Madill testified about appeals to the Employment and Assistance Appeal Tribunal (the "Tribunal"). She testified that she has presented the Ministry's case to the Tribunal over the telephone without the DS. The telephone hearing takes 30 minutes to an hour and a half. There are two EAW's in the call centre who do the Tribunal hearings.

Madill agreed that an EAW decision first gets appealed by a client to a Regional reconsideration adjudicator. If that official denies the client's appeal, the next level of appeal is the Tribunal. The Tribunal consists of three people. The Regional reconsideration adjudicator prepares a submission by letter. It sets out the facts and the relevant provision of the Act/regulation/policy. It's a page long. An EAW provides the Regional reconsideration adjudicator with the facts and the law. The EAW looks in the file history and prepares the submission based on that. The EAW does his/her submission based on the Regional reconsideration adjudicator's letter. The Tribunal members often ask questions. Madill will have the physical file and will have the electronic file

up. There was an appeal process in 1993 when Madill started as an FAW. Madill participated in those appeals after she went back to the Lillooet office in 1997. There was no DS in the Lillooet office. She testified that the appeal process was more cumbersome then.

In terms of the appeal process from a denial of benefits, Ekdahl testified that under the current legislation, the EAW has to be very thorough in the decision making process because he/she can not add information later. In the past, the DS was in charge of gathering the information in consultation with the FAW that made the original decision and the DS was in charge of making the decision on reconsideration. Now, the EAW gathers the information and forwards it to the Regional reconsideration adjudicator. Sandy Terlecki works as an EAW in the Trail office. She testified that previously the DS really helped with putting the appeal package together. Now the DS does not help. Terlecki puts the package together and brings it to the DS who has to sign it.

Lori Mist is the Ministry's Executive Director for Vancouver Island. Mist testified that the appeal process has not really changed since the previous Acts. The FAW would cite the legislation or regulation under which assistance was denied. The DS would then do an administrative review. If denied, the client could go to a tribunal where the FAW would cite the legislation/regulation and supporting documents to the tribunal.

Terlecki spends 85% to 90% of her time on the computer. She spends most of the time on the phone talking to clients and looking things up on the computer or inputting data. Terlecki testified that she books an hour and half per intake interview.

Terlecki testified about the Community Volunteer Program ("CVP") which is intended for clients who are unable to enter an employment or training plan at the present time, but who wish to pursue a volunteer placement with a non-profit community organization in a designated volunteer position. Terlecki works with a caseload of PWD and PPMB clients.

A supplement of one hundred dollars a month for clothing, transportation and other expenses required for participation in the CVP is available. The client has to do ten hours a month.

The client submits a time record signed by the non-profit organization.

The Training Consultant Benchmark Job #238 job description reads in part as follows:

JOB DUTIES AND TASKS

2. Promotes Ministry employment/vocational programs in the community
 - a. assesses community employment needs, establishes priorities and develops strategies for implementing local programs and services
 - b. ensures local community resources are fully utilized to support clients and program activities

3. Participates in the team administering the regional contract management process and negotiates workplace training opportunities
 - a. participates in Request for Proposal process including development of advertisements and evaluations of proposals
 - b. negotiates contract terms and recommends final award
 - c. prepares and finalizes formal contract documents and monitors contract deliverables
 - d. negotiates workplace training opportunities with prospective employers and contractors
 - e. negotiates and monitors the terms of workplace contracts
 - f. purchases programs and services, verify services provided and authorizes payments
 - g. forecasts and recommends yearly allocations, sets priorities and monitors ongoing commitments

Murray had acted temporarily as a Training Consultant for approximately five months in total. Training Consultants had a one page action plan, similar to the EP. However, it was not the foundation of eligibility for assistance that the EP is.

In terms of the Training Consultant Benchmark, Murray testified that as an EAW he does not do the third job duty block set out in the job description. In terms of the second job duty block, Murray testified that he informs clients of Ministry programs.

In terms of the CVP, with respect to job duty 2(a) of the Training Consultant Benchmark, Terlecki stated that it is not employment, but it is in the hope of employment. In terms of job duties 3(c) and (e), she stated that the CVP is a formal contract which she monitors monthly to determine whether the client gets their \$100. The contract is a Ministry form that sets out the organization's name, the start and end dates and the number of hours left blank. In terms of job duty 3(f), she testified that she did make direct purchases. In terms of job duty 3(g), she testified that she always tries to get as much money as she can. The money for the CVP supplements is allocated by the Ministry's head office. She agreed that her answers regarding the Training Consultant Benchmark were in the context of the CVP.

Wendy Marten was a Training Consultant from June 2001 to February 2004. Prior to that, she was an FAW. In February 2004, she became an EAW. She stated that some Training Consultants (not her) did specific work with contractors. They did labour market research. They did requests for proposals through to approval of contracts and contract management. With respect to the Training Consultant Benchmark, she did not do job duty 2(a). She did do job duty 2(b). She did do job duties 3(c), (d) and (f). The rest of the job duties in the third job duty block she did not do.

As an EAW, she does not do job duty 2(a). She does do job duty 2(b). She testified that she does job duties 3(f) and (g) through the direct purchase program and monitoring the direct purchase budget.

As a Training Consultant, she would see clients with multiple barriers to employment referred to her by EAW's. She would develop strategies with the clients to overcome their barriers. For example, she would refer them to mental health counseling or addiction services or basic education.

In cross-examination, Marten agreed that as an EAW she did not develop plans for implementation of local programs/services. She agreed that she did not as an EAW recommend program funding allocations and priorities. She agreed that she did not as an EAW negotiate contracts and make recommendations to terminate contracts with agencies and employers. With respect to this last one, she stated that she did not do that as a Training Consultant either.

She agreed that in an intake interview, the EAW would have to spend time talking to the client to endeavour to establish a rapport with him/her. As an EAW, Marten uses the Screen. If the client scores 14 or under, they are referred to a JP program. If the client had an addiction problem and a Screen score under 14, she would ask if they were willing to go to a drug/alcohol program. If they were not willing, then they must be sent to a JP program.

If the client is not placed in employment after 90 days at the JP program, they are referred back to the Ministry for review. The client would be sent to a second JP program. If there were no job placement after 90 days, then Marten would look at a Training for Jobs ("TFJ") program. If that did not work, she would look at a Community Assistance Program ("CAP").

Marten testified that as an EAW she was on the computer 80% of the day either inputting or reading. She testified that in 2001, the FAW's looked at policy in hard copy. Now policy is on computer. In 2001, the FAW wrote on hard copy forms. Now the forms are on computer. She agreed that it was the same work but in a different medium.

Mist testified that the Province took on social assistance in 1975/76 with the *Guaranteed Available Income for Need Act* (the "*Gain Act*"). Mist worked as an FAW under the *Gain Act*. She became a DS in 1978. Under the *Gain Act*, the FAW would determine eligibility for income assistance and sought out any resources available, including employment, so as not to have the clients remain on assistance. The FAW determined eligibility for assistance on the application form which included questions (just as it does now) about income, assets, and whether the applicant was seeking work. The *Gain Act* and its regulations defined eligibility. There was a manual that set out the procedures to follow. Applicants who were employable and not seeking

work were not eligible. There were both monthly reports and an annual review under the *Gain Act*. The computerized application form came into full implementation in 1991.

The next major legislative change was the change to the five BC *Benefits Acts* in 1996. Some of the rules were tightened. For example, in the early 1990's a single parent with a child under 19 was exempt from the obligation to seek employment. Under the BC *Benefits Acts*, that age was reduced to 7. Youths between 19 and 24 years of age were expected to see Training Consultants to secure employment.

Under the BC *Benefits Acts*, the primary function of the FAW was to determine eligibility for assistance. They referred youths between the ages of 19-24 to Training Consultants to help them get a job or education/training to become employed. Clients over 24 years old were expected to seek work. FAW's were responsible to help them seek work. Where there were Training Consultants, the FAW could refer the client to a Training Consultant. While FAW's under the BC *Benefits Acts* were not doing EPs, they were expected to do employment planning. They looked at referrals to various agencies and jobs.

Mist testified that service provider contractors have been around since the *Gain Act*. There were job placement agencies, job clubs that assisted people with things like resume writing and interviewing skills, and job training programs. Training Consultants referred young workers to those. For older workers, it was generally FAW's who referred them to those contractors.

There was a manual in place under the BC *Benefits Acts*.

Clients were monitored under the BC *Benefits Acts*. The question: "Are you looking for work?" was introduced into the monthly report in the 1980's. There was also an annual review under the BC *Benefits Acts* which asked, among other things, whether the client was seeking employment. Under the BC *Benefits Acts*, the FAW's had to explain employability issues and make referrals to assist clients to enter the labour market.

Mist testified that under the current Act, the EAW's primary function is to determine eligibility for assistance. The change in title from FAW to EAW came into being at about the same time as the change in legislation.

Under the current legislation, the EP was added as an eligibility criterion. Mist agreed that if the client was in breach of the EP, he/she could be cut off income assistance. The EAW is responsible for making appropriate referrals to employment.

Sanctions under the current Act are periods of disqualification or flat rate reductions. Mist testified that there were always sanctions available to cut off a client from assistance if they failed to seek work. FAW's had the authority under the BC *Benefits Acts* to terminate assistance. There was some discretion. By contrast, sanctions are specific under the current legislation. In the previous legislation, they were undefined. According to Mist, at every historical stage of the legislation, clients were expected to seek work and could be cut off assistance if they did not.

Mist testified that if the applicant's score on the Screen is 0-14, they complete an EP and must be referred to JP. The goal of the JP program is for the client to find a job. The contractor gets paid for milestones along the way to ultimate placement of the client in a job. Not all clients are accepted by the JP contractor. They may have poor motivation or a mental health issue or a drug or alcohol problem. Where the client has a drug or alcohol problem, for example, the EAW will encourage them to attend a drug/alcohol program. The EAW cannot compel the client to attend such a program. If the client refuses to attend, then they must continue to seek employment.

If the client is unable to secure a job through the JP programs, then he/she may be referred to a TFJ program, which involves both skills training and job placement. If the client fails to secure a job through TFJ, then he/she may be referred to a CAP program which provides clients with work and life skills. If the client scores 15 or more on the Screen, then they are not immediately employable but are still expected to be on a path to secure employment. They complete the Profile which helps to determine what barriers to employment that they have.

Under the current legislation, PWDs have greater access to employment programs. Mist testified, however, that FAW's referred disabled or barriered clients to CAP (they were then called Community Services Programs).

She testified that Job Partnership (what is now called Job Placement) came in 2000, i.e. before the change to the legislation. She testified that in 2000, if a client were referred to Job Partnership and did not attend, they could be cut off of benefits.

She testified that Training Consultants continued to exist in February 2003 and worked with direct purchase budgets for training and ESL to help people become employed. In the spring of 2004, they began to be phased out by attrition.

Mist testified that employment was always a focus from the *Gain Act* onward. Under the BC *Benefits Acts* there was a strong focus on youths between the ages of 19-24. The current legislation brought the EP in. However, employment planning existed under all of the Acts.

Ann Williams is a Senior Compensation Specialist employed by the Public Service Agency. She explained that the four FAW Benchmarks originated in the early 1990's. Four Benchmarks were selected to reflect two rural settings, one poorer urban setting and one richer urban setting.

In 1996-97, the parties engaged in a joint classification review of the FAW Benchmarks. By letter dated September 26, 1996, De Whalen, a Union representative sent the Employer a letter with an attached e-mail indicating the changes that the Union felt had occurred in the FAW position since 1992. The e-mail focused on two headings, intake interviews and counselling which stated in part as follows:

INTAKE INTERVIEWS

The intake interviews are now taking longer to do and have become more complex and require much more counselling especially since the recent changes in Policy when a client is denied FAW's have to provide the client with some alternatives and direct clients to community resources. Because of the large

number of outside resources the FAW must have a good understanding of what is available and be able to make appropriate referrals.

The new Policy has resulted in more clients being denied benefits and FAW's are being subjected to more and more violent and abusive clients. People are becoming more frustrated for a number of reasons i.e. High unemployment (Canada has now reached double digit inflation), business restructuring and layoffs, urban crowding, etc. Because of those factors and clients own personal life problems FAW's have to have a very High Level of Interpersonal Skills to deal effectively with clients and defuse at times some very hostile situations.

FAW's have to work within the Ministry Policy while at the same time treat clients with respect and dignity.

COUNSELLING

FAW's are being faced with providing more and more Counselling services to clients for a wide range of reasons. We divide this counselling into two large groups – Job Search and General.

Job Search - because of the new Policy of not being able to refer clients for the first seven months to job clubs etc FAW's are now spending a large portion of their time dealing with clients abilities to find jobs. Each client has a different story to tell regarding their work history and personal life. FAW's must be very good listeners and treat every client as an individual and be able to assist the client to become focused and motivated enough to develop a job search strategy.

The FAW's are the front line staff who are in most cases the first individual the client connects with to discuss their personal situations. Yes, there are some outside referral agencies to help clients, but the FAW is placed in the situation where he/she must assist the client to become focused enough to take some action leading to an improvement in the client's situation. FAW's must deal with clients' personal problems in many cases before the client is ready to look for work.

In the situation where FAW's are not able to refer clients to job clubs, etc. they must provide ongoing job search counselling. FAW's set up meetings with the clients to discuss job search progress. In many cases during the course of these discussions the client reveals some type of personal problem they are having which is preventing them from finding a job. FAW's must listen carefully and then try to get the client to take appropriate action to correct the problem. If this does not happen the client will not be able to find a job and the result will be the client will be on assistance a much longer period of time.

The parties conducted an on-site review. There was a further meeting between the parties in 1997. The Union Committee handed the Employer's Committee the following document:

KEY DIFFERENCES IN FAW JOB SINCE ORIGINAL JOB
DESCRIPTIONS WERE DEVELOPED

- Analyze client situations and interpret regulations and policy in order to issue income assistance
- Assess and analyze client files and conduct file reviews for ongoing eligibility
- Conduct home visits and interviews to gather and confirm information
- Negotiate repayment agreements and recover funds and investigate entitlements to alternative resources
- Conduct investigations to monitor ongoing eligibility and authorize termination of benefits
- Calculate overpayment and make repayment agreements and refer possible fraud to investigators
- Make referrals to Ministry and agency resources and make recommendations to Ministry on caseload trends
- Prepare and present documentation at client appeal tribunals
- Modify approaches in working with changing program requirements and client circumstances to develop individual client plan
- Assess client needs in addressing multiple employment barriers

The Employer did not agree to change the FAW Benchmarks through that joint review. Once a Benchmark is agreed to by the parties, it does not change even if the actual job changes, unless both parties agree to change the Benchmark.

Williams testified that the wording in the four Benchmarks under the Plan were changed in a few places in the 12th Master Collective Agreement between the parties. Among other changes were the following. Job duty 1(e) changed from: "calculates and initiates income assistance payments and monitors to ensure clients' needs are being met" to: "calculates and initiates income assistance payments and monitors on-going payments to ensure clients' needs are being met and that entitlement status remains valid". Job duty 1(h) changed from: "negotiates repayment agreements with clients and recommends accounts for write-off" to: "establishes repayment

agreements with clients and recommends accounts for write-off". Job duty 2(a) changed from: "reviews and approves client requests for goods and/or services such as home maker services, hardship and crisis grants" to: "determines eligibility and approves client requests for goods or services such as home maker services, hardship and crisis grants". The changes are underlined. In addition, there were some wording changes in the reasons for classification in some of the factors under the Plan. The Degree rating for the physical effort factor changed from Degree A to Degree C (although this did not change the FAW's pay grid). Williams agreed that no questionnaires went out and there was no FAW committee involved in the process.

Williams testified that the four FAW Benchmarks in the Plan were dated in 1998, although the actual agreement to them came in 2000.

Williams agreed that when the 1998 Benchmarks were established, there was agreement that if the actual jobs were different than the Benchmarks, then the employees would be able to appeal their classification.

During the course of the hearing, the Union expressly took the position that the four FAW Benchmarks were agreed to in 1998. At that time, the *BC Benefits Acts* were in effect. The evidence in the hearing focused overwhelmingly on the contrast between the FAW's under the *BC Benefits Acts* and the EAW's under the current *Act*. At the very end of the hearing in reply argument, the Union took the position that the four Benchmarks were agreed to in March 1996 i.e. when the *Gain Act* was in effect.

I am satisfied on the evidence that there have been substantive reviews of those Benchmarks, even if no questionnaires went out. There was first a joint classification review by the parties in 1996-97, which included an on-site review. In a later process, there were wording changes to the Benchmarks and even a rating change for the physical effort factor. Williams testified that the four FAW Benchmarks in the Plan were dated in 1998. Her evidence was uncontradicted on this point. In short on the evidence before me, the FAW Benchmarks under the Plan are dated (and were actually agreed to) at a time when the *BC Benefits Acts* were in effect (not when the *Gain Act* was in effect). They pre-date the current *Act*.

Levine started to work as an FAW in June 1996 in the Comox Valley until the summer of 2001. She became a DS in Campbell River in September 2001 and remained there until September 2003. She subsequently became a Manager of Field Services in October 2003.

Levine testified that the Manual informs EAW's as to what procedures to use in performing the required tasks. As a DS, Levine's expectation of FAW's and EAW's before and after the change in legislation was that they would follow the procedures set out in the manual/Manual.

The Manual was in place as of February 2003. There have been some changes to it since then, although its structure is virtually identical. The procedures for developing EPs, set out earlier in this decision, were basically the same in February 2003 although there are some differences. The Manual continues to be revised and updated. For example, Levine testified that in her region there was no discretion if the client scored 0 - 14 on the Screen. If they scored between 0 - 14, then they would be referred to a JP program. There was no discretion to do otherwise, unless the client was no longer eligible.

Levine testified that clients were referred to TFJ's generally once they had already been referred to two JP programs. The JPs assist clients to find employment and support the client's job search. The TFJ's are training programs to provide the client with additional skills in a particular job market and attempt to place the client in employment.

Direct purchase programs are designed for rural areas which do not have access to programs. Levine testified that in her region if there were no contractor available, it was up to the EAW to come up with services and to use direct purchase funds. For example, in Powell River there is no TFJ program. There were direct purchase funds in lieu of TFJ if training was appropriate for the particular client.

She agreed that it was the expectation of the Ministry in February 2003 that EAW's would enter "clear, concise, factual, specific, measurable, achievable, realistic and time bound information in to the Conditions of the (EP)". She testified that templates specific to the contractors in her area

were built. If the referral were to a JP program, the expectation was that the conditions for client A would be the same as those for client B.

She agreed that the general order of referrals was JP, TFJ, then CAP based on the Profile and feedback from contractors. If the client were not in work within 12 months, then the EAW would look at a PPMB. If a client scored 15 or more on the Screen, they are given the Profile. If over time the client is not successful with the contractors, and it is not clear why not, then the client is also given the Profile.

Levine testified that between 1996 and 2002, employment planning played a part of the FAW's job. She testified that the BC *Benefits Acts* clearly outlined seeking employment as a criterion for eligibility. In both intake interviews and review interviews Levine as an FAW would have conversations with clients regarding what they were doing in terms of seeking employment; their resume; their job search strategies and their education, skills and experience. She testified that assisting clients to move into the labour market and increasing access to jobs by removing barriers to economic security were very much part of her job as an FAW. She referred youth clients and clients who needed ESL or adult basic education to Training Consultants. For work based training programs, she did not refer clients to Training Consultants. Rather, she made direct referrals.

Levine testified that the BC *Benefits Acts* made seeking employment part of eligibility. She noted numerous places in the Training Manual that point to the employment focus of the FAW's job. She testified that the FAW would do employment planning that would include employability assessment, job search activity and possible referrals. She agreed that prior to the current *Act*, there was no formal EP.

She testified that as an FAW she developed an action plan in collaboration with the client. She had conversations with them regarding their job searches and came up with an agreed upon plan. She monitored them for compliance to ensure that they were actually pursuing employment. Levine testified that as an FAW she had more freedom regarding whether or not to enforce

compliance with employment planning. Now, EAW's have no choice but to enforce compliance with EPs.

She testified that the duties of the FAW in 1998 and those of the EAW in February 2003 were virtually the same. Both assessed eligibility for income assistance.

In February 2003, Levine was a DS. She had EAW's working for her. She testified that an intake interview took between an hour and 15 minutes to an hour and a half. EAW's working under her were doing three to four intakes per day, as well as other work. The other work included phone calls, assessing eligibility for crisis supplements and medical or dental needs, client paperwork, discussions with contractors and case consulting with each other and with her.

Levine testified that she herself did intake interviews as a DS to help her staff out. She did it approximately once a month. She agreed that doing intake was not a normal part of her job as a DS. She testified that she had three EAW's dedicated to intake, each doing three a day for a total of 45 intakes per week.

As of February 2003, when the client walked in she would develop a rapport with them and discuss what they were doing and what they had done regarding employment. She would spend 15 to 20 minutes in discussion with the client with eye contact. They would then go through the application form. That would take approximately half an hour. She would then photocopy all of the documents. She would review the application information and would get their signed consent. After the client left, she would spend between 5 and 15 minutes inputting comments on the computer.

With respect to employment planning, most of that is discussion. The client's agreement is required and the EAW wants the EP to succeed. The EAW must get client buy in to the EP. It is important that the EAW make eye contact with the client.

With respect to the intake process for a single employable parent with a child over three, Levine testified that there would be at least 13 computer screens that the EAW would have to either be

reviewing or be inputting information into. Certain boxes would merely require a tick. The most typing would be on the comments screen. There are four lines on that screen. When filling out the application form, the EAW's focus would switch back and forth between the client and the computer. Levine testified that the direction she gave to her staff in interviewing clients was to focus on the client when speaking to them. She testified that that is what EAW's do at the beginning of the interview process with the client. When inputting information into the application form, the EAW would simultaneously interview the client and input into the computer. As mentioned, when dealing with the EP the EAW must focus on the client.

Of the hour and 15 minutes to an hour and a half intake interview, Levine testified that she spent about 30 minutes of that time actually working on the computer. She testified that that may go as high as 15 minutes extra (i.e. 45 minutes) but not an hour. Among the other things that she does when not working on the computer in the intake interview is discussion with the client, printing the application form, photocopying documents, reviewing the application form with the client and discussing the EP.

With a few modifications the electronic application form remained essentially the same before and after the current legislation. Levine testified that in 1996 there were more resources and forms on paper. The forms were basically the same whether on paper or on the computer. In terms of the degree of concentration looking at paper or at the computer, she testified that there was no difference.

Levine testified that FAW's and EAW's were and are under instruction that it was/is their responsibility to put all pertinent information on the client's electronic file. Levine testified that the Ministry's expectation in that regard was shared with her in 1996 and it had not changed as of February 2003.

Randhawa was an FAW between 1995 and 2000. She worked in the Merritt and Ashcroft offices. Between 2000 and 2003 she was an acting DS in Merritt. In 2003-04 she moved to the regional office. There was a two month period in 2003 when she did EAW work in Merritt; she

was only in an acting DS position. In August 2004, she moved to the Kamloops call centre where she is one of the supervisors.

Randhawa testified that all clients have to complete the stub every month to remain eligible for income assistance. The stub is attached to the client's computer check. As an FAW, Randhawa did stubs every day. She testified that the stub review did not take long. If she did 20 stubs in a day, the review would take 15 minutes, including the ones with changes. She did as few as 5 stubs in a day and as many as 50 stubs in a day.

Randhawa was an FAW between 1995 and 2000. She testified that the core function of an FAW in that period was to assess eligibility of clients for income assistance. In February 2003, the core function of the EAW was the same. She testified that it was the Ministry's expectation that clients would look for work. If a client failed to seek work, they would not be eligible for assistance. She testified that as an FAW she would discuss with clients what they were doing to get off of income assistance. She would work out plans with them to do so. The plan was put on the electronic history screen.

FAW's used an Active Job Search Statement, a Ministry form. Clients would record where they looked for work on a regular basis, either weekly or monthly. That Statement was given to the client at the intake interview. It was available in 1995. It was used Ministry wide. Today it is still available, but it is now called a Work Search Activities Record. The FAW would also ask questions about the client's job search during the annual review. The FAW would also look at the monthly stubs.

The Training Consultants focused on youth between the ages of 19 - 24 to get them to be independent. They used funds to send clients to school and to refer them to training programs. FAW's would refer clients to the Training Consultants.

If the client had looked for work but had not found any, the FAW could refer them to a work based training program, which was provided by a contractor. So too could a Training Consultant.

Between 1995 and 2000 as an FAW, Randhawa did find clients ineligible for income assistance for failure to look for work. She testified that she cut off at least 50 people.

With respect to PPMB, Randhawa testified that in 2003 the DS was making the original PPMB decision. Randhawa testified that the DS would have a brief discussion with the EAW regarding what the barriers were. They didn't go through all of the intervening programs. The package was not as detailed as it is presently. The EAW would recommend approval or disapproval along with a brief summary of the barriers. Brown testified that the EAW could find the information on the computer system. The application now goes to an adjudicator in the regional office. The EAW prepares the submission to the regional office.

Randhawa testified that with the current Act, there are a lot more forms on the computer, including the EP. The Manual is now on the computer. Template letters are now on the computer.

Randhawa testified that when she was an FAW, she spent between 50 to 60 percent of her time looking at the computer screen. She testified that she spent between 25 to 30 percent of her time intensely concentrating on the computer screen. The 50 - 60 percent was glancing at the computer screen or gathering information. She would be intensely concentrating on the screen if she were reading a client history or preparing for the tribunal.

In cross-examination, she agreed that as an FAW in Merritt, she did not keep track of the amount of time that she spent on the computer. However, she testified that on a general basis she knows how much time that she spent on the computer. In 1995 - 2000, she spent between 50 to 60 percent of her time looking at the computer. When not looking at the computer, she was in team meetings, case conferencing or speaking to other staff.

Under the current Act in terms of letters, Randhawa indicated that they are mostly templates; names, addresses and dates have to be typed in. She expressly disagreed with the proposition that the EAW/FAW's intensely concentrate on the screen when filling in the application form.

As of February 2003, there was more computerization in place. Randhawa testified that up to 70 percent of the EAW's time is spent looking at the computer screen. Thirty to 40 percent of their time is spent intensely concentrating on the computer screen. She testified that with the increased computerization, the information is the same, but the form is different.

Randhawa arrived at the up to 70 percent figure looking at the computer screen based on the EAW's at the call centre. She had no hard data to prove that figure, but it was not a guess. She based it on watching the EAW's at the call centre two weeks prior to the hearing. She stated that staff go to meetings, the Tribunal and perform other duties.

Trent Brown was an FAW between 1994 and 1999. In 2000 he became the Acting DS in Abbotsford for approximately two years. He ultimately moved to the regional office where he is the Manager of Community Relations and Service Quality.

He testified that the Training Manual is updated to keep it current. The March 2001 edition was generally speaking the same one that existed in 1999. In 1999, Brown spent approximately nine months at the staff training centre in Richmond.

Brown testified that the genesis of the JP program was a pilot phase across the province in each region in September 2000. It was successful in securing employment for clients. The JP pilot program became permanent in July 2002. The JP program is a performance based contract between the Ministry and the contractor who matches clients to jobs.

Before the pilot JP program, FAW's would look at community resources, Training Consultants and HRDC. The Ministry also had programs. There were also job clubs which aided clients with interview skills, resume writing, how to conduct a successful job search and so on.

The Training Consultants before the current legislation were primarily involved with youth workers. The Training Consultants aided them with things like adult basic education and paying for tuition and books. They had an educational focus to assist young clients to complete grade 12.

Brown testified that under the BC *Benefits Acts*, FAW's connected clients to jobs. He would speak to them about their job search and their resume. If they failed to meet a number of their commitments without a valid excuse, for example failing to attend a JP program or failing to attend an appointment with a Training Consultant, then he would stop their assistance.

The TFJ program did not come into play until 2003. Brown testified that if a client were unsuccessful with two JP programs, then the EAW would consider a TFJ program. Each TFJ contractor provides a certain type of training, for example, trades or for call centres. TFJ programs may include training, on the job training and employment placement. If those programs do not work, the EAW could refer the client to a CAP. The CAP addresses the client's barriers to employment. Once that is achieved, the client is referred back to a JP program.

ANALYSIS AND DECISION

I begin with the issue regarding the fact that the FAW position is a Benchmark under the Plan. Arbitrator Larson in *B.C. Hydro* (Award No. A-063/01, dated March 28, 2001) discussed a part of the issue before me. The case was provided to me by the Union in argument. In that case, the position in question was a benchmark position. The employer argued that the arbitrator had no jurisdiction to consider the appeal. Arbitrator Larson disagreed. He held, however, that the benchmark could not be changed by an arbitrator.

Arbitrator Larson wrote in part as follows:

The fact is that the benchmarks cannot be treated as real jobs. If they were, they would suffer from the same deficiency discussed above, that they would not meet the criterion of stability. All jobs evolve and change over time, they do not remain the same, but when the benchmark jobs were selected as valuation markers to achieve gender balance, it seems to me to be obvious that the intention must have been to freeze the skills, responsibilities, duties -- and pay group, that existed at the time, and to disconnect them from their counterparts, the operational or working jobs. In that manner, if the work in an operating job subsequently changes, it will not affect the benchmark. The benchmarks must remain just as they were when they were adopted and put into Appendix 'A' of the collective

agreement. They are immutable standards and are not subject to change. Nor are they subject to appeal, for the same reason.

The working job is another matter. In fact, it is not proper to speak in terms of an incumbent of a benchmark job. There are no incumbents of benchmark jobs. It is only a benchmark. By contrast, a working job invariably will have incumbents. In that sense, it may be properly observed, in any particular case, that the one is identical to the other, yet they are not the same thing. They have different purposes. The one is used to describe the work actually done by the employee for purposes of establishing the proper pay rate; the other is used to mark the appropriate value relationships within the bargaining unit that must be maintained to achieve pay equity.

There is no reason to conclude that incumbents of working positions do not have an unrestricted right to appeal in those circumstances under Article 2.04, even if their duties and responsibilities are the same as a benchmark, including a right to claim that the group level of their job is incorrect. Nevertheless, as a purely practical matter, in the absence of a change in their work, it is unlikely that an appeal would result in a change in their pay group because the valuation level is circumscribed by the benchmark. Although the BCH/OPEIU Job Evaluation Plan is a point rated plan, if a working job is essentially identical to a benchmark, it is inevitable that a proper application of the factors must result in a valuation at the same level because that is how the inter-job relationships were structured under the plan. (at paras 42 - 44; emphasis added)

A similar issue arose before Referee Simpson involving the parties before me under an earlier plan: Ronald Thiel (dated April 16, 1991). Referee Simpson wrote in part as follows:

It follows that the benchmarks themselves are frozen in time at the point they are adopted and that they cannot be changed except by the joint committee which adopted them as part of the agreed plan.

...

Once a position has been established as a benchmark, over time there are two possibilities:

1. The situation surrounding the job description used to establish the benchmark is relatively stable and the actual job description remains substantially the same as the benchmark; this may continue for many years, allowing the job itself to be a clear exemplar of what is intended by a given level in a given series.
2. The circumstances surrounding the benchmark position over time change significantly for any of a variety of reasons, technological, political,

organizational to name but a few. Duties are added and removed until the job actually performed by the titular incumbent of the identified benchmark is arguably different from that benchmark. (at pp. 4 -5; emphasis added)

Referee Simpson went on to write:

It is clear from the foregoing that the only arguments which I as referee under Article 28.04 could accept as giving me jurisdiction would be those which go to the question of changes in the present job description, changes moreover which make it substantially different from that used, less than two years ago, to establish the agreed benchmark. Anything less would run the risk of tampering, unasked, with matters which the parties have hammered out in negotiations in their Joint Committee.

What the appellant wants, reassessment of the benchmark's rating, I have no jurisdiction to grant and, as I have said, it is hard to see how any third party could accept the request of one party to an agreement to vary what they had set their seal to. Agreed benchmarks are final and it is very important to a given classification plan that they should be so. (at p. 6; emphasis in original)

Referee Simpson ultimately held that there was no evidence of any changes of substance and that he was unable to accept jurisdiction. In the circumstances before him, Referee Simpson did not have to elaborate upon what he meant by the term 'substantial changes'.

I have referred to these two cases as a backdrop to the parties' positions before me, which I set out below. I pause to note that both of those cases were ones in which the jurisdiction of the arbitrator or referee was challenged. There was no such challenge in the present case.

The Union also referred to Referee Kinzie's award with respect to Payroll Clerks in various ministries (dated April 9, 1997). The parties had already agreed on ratings for the positions in question under the Gender Neutral Job Evaluation Plan (an earlier plan between the parties). The Union there argued that the job duties and tasks of the Payroll Clerk positions had "changed in a significant way" such that they should be rated differently (at p. 3). Referee Kinzie did not agree with that submission, at least with respect to the job knowledge and mental demands factors under that plan. On the face of the award, it does not appear that the parties argued about how to deal with agreed to ratings. The parties argued about that issue before me.

The parties take different approaches with respect to that issue. The Union submits that once there is a substantial change in the job from the time of the Benchmark, then I should freshly evaluate the factors in dispute under the terms of the Plan. The Union submits that there is no need to first establish a change regarding each particular factor in dispute (the Union submits, however, that there were such changes in the present case). The Employer submits that there is an onus on the Union to show that there has been a substantial change in the job from the time of the Benchmark. There must be changes regarding each particular factor in dispute. If there has been a substantial change from the time of the Benchmark, then that change must affect the rating of a given factor in dispute.

As set out in their letter to me following the hearing, the parties agree that: "Benchmarks and reference jobs are considered accurate in their entirety for the purposes of evaluating a position." (emphasis added). Accordingly even if, for example, the evidence were to suggest to an outside classification referee that the parties' agreement in the Benchmark regarding a particular factor in dispute is "wrong", but there have been no material change(s) to the job relating to that particular factor in dispute since the time of the Benchmark, then the classification referee could not change the rating, given the parties' express agreement that the Benchmarks are considered accurate in their entirety for the purposes of evaluating a position.

In light of the parties' agreement, I have concluded that what the Union must establish in a case like the present one is that there have been material change(s) in the job, i.e., material in terms of the Plan, since the time of the Benchmark. Moreover, the material change(s) must relate to the particular factor(s) in dispute, and result in a change in the degree rating in one or more of the particular factor(s) in dispute. The material change must relate to the particular factor in dispute because if it does not, then there is no basis to make a change from the rating in the Benchmark for that factor. The Benchmark rating is "considered accurate ... for the purposes of evaluating a position." The change must be such as to change the degree rating under the particular factor in dispute. If it does not change the degree rating, then the Union by definition loses in its challenge to the rating for that particular factor. A substantial change in the job means change(s) that result(s) in a change in the degree rating of one or more factor(s) in dispute from the rating(s) in the Benchmark.

I turn then to address each factor in dispute.

Responsibility For Work Assignments

This factor measures “the relative importance of the job’s requirement for the application of knowledge and skills, and the freedom to act to carry out the most representative duties of the job”.

The Plan’s Glossary defines “freedom to act” as: “Latitude to establish or change work or the way work is performed”.

The Employer has rated the EAW position at Degree D for this factor. Degree D reads in relevant part as follows:

Guided by general procedures, requiring selecting alternative course of action, affects clients or affects resources in a district or equivalent geographic area by providing technical service, advice and/or coordination.

Such as:

establish eligibility, assess needs and employability, authorize appropriate payments and make referrals to assist clients to deal with problems and access training;

or their equivalent

The Plan’s Glossary defines “general procedures” as: “Sets of established instructions that are concerned with main elements rather than details”.

One of the example guides set out along side the Degree D definition is that of the FAW Benchmarks where the brief rationale is “Guided by general procedures or instructions, selects alternative course of action to establish, determine and approve client eligibility for income

assistance programs; authorize basic payments and emergency allowances; counsel clients on life skills and financial independence”.

The Union says that the EAW position should be rated at Degree E for this factor: Degree E reads in relevant part as follows:

Guided by general policies, plans, guidelines or standards requiring applying accepted work methods in a different way to handle unusual problems, affects clients or affects resources in a district or equivalent geographic area by providing technical services, advice and/or coordination.

The Plan's Glossary defines “general policies, plans, guidelines or standards” as: “Statements or measures which flexibly outline the limits of acceptable action”.

With respect to this factor, I need not generally address the “change” issue. Having considered all of the evidence and argument, I have concluded that the EAW position is appropriately rated at Degree D for this factor.

More particularly, I have concluded that the EAW's are guided by “general procedures” rather than by “general policies, plans, guidelines or standards”, within the meaning of the Plan. I have concluded that they are guided by “Sets of established instructions that are concerned with main elements rather than details.” They are not guided by “Statements or measures which flexibly outline the limits of acceptable action.”

The EAW job description includes the following job duties: 1(d) Reviews a variety of documentation/information including personal identification, employment documents, legislation and ministry guidelines; 4(i) Ensures the efficient, timely and accurate delivery of client services in accordance with legislative guidelines; 5(c) Maintains up-to-date knowledge of relevant government legislation, policies, programs, procedures, systems and other employment and training programs/agencies. (emphasis added)

I note Murray's evidence that the Act and Regulations prescribe many of the functions that the EAW carries out. In addition to those, the EAW is also directed by the Manual, by regional policy and office policy. Madill testified that a manual was put together regarding the *BC Benefits Acts*. That manual was similar in content to the current Manual. It told the FAW's how to administer the *BC Benefits Acts*.

I note further Levine's testimony that the Manual informs EAW's as to what procedures to use in performing the required tasks. As a DS, her expectation of FAW's and EAW's before and after the change in legislation was that they would follow the procedures set out in the manual/Manual.

A review of the Manual indicates that it does not "flexibly outline the limits of acceptable action". It is a very large and very detailed set of established instructions that is concerned with the main elements, rather than the details. To use the 12 page section on the EP which I have quoted in part above as an example, that section sets out not just an overview and policy but detailed procedures or instructions for developing EPs. I acknowledge that the EAW has a degree of latitude with respect to which specific program to refer the client to, particularly with clients who score over 14 on the Screen. In short, the Manual sets out established instructions that are concerned with the main elements, rather than the details. To use another example, the Manual's section on PPMBs again sets out not just an overview and policy, but also very detailed and specific procedures regarding PPMBs. I conclude that the Manual provides established instructions that are concerned with the main elements, rather than the details. However, by no means can the detailed procedures in the Manual be described as statements or measures which "flexibly outline the limits of acceptable action". The Manual is far too detailed to be characterized that way.

With respect to the issue of sanctions which was relied upon by the Union, the evidence establishes that the FAW's exercised discretion about whether a client was cut off income assistance. In the current Act, by contrast, sanctions are specific. In the previous legislation, they were undefined. In short, there was greater freedom to act with respect to this issue under the previous legislation, than under the current legislation. There was more latitude to establish

the way that work was performed. In this connection I also note Levine's testimony that as an FAW she had more freedom regarding whether or not to enforce compliance with employment planning. Now, EAW's have no choice but to enforce compliance with EPs.

The definition example under the Degree D rating of "establish eligibility, assess needs and employability, authorize appropriate payments and make referrals to assist clients to deal with problems and access training" fits well for the EAW's. So too, does the rationale (which I have quoted above) for the Degree D rating for the FAW Benchmarks which is set out as an example guide. I have concluded that Degree D for this factor best describes the EAW job.

I turn to address certain additional arguments raised by the Union. The Union submits that the EAW has taken on the additional duties of the Training Consultant, which is rated at Degree E for this factor. However, the reason for that rating is stated to be: "Guided by general program policies and guidelines, applies accepted work methods in a different way to assess community employment needs and develop plans for implementation of local programs/services; recommends program funding allocations and priorities; negotiate contracts and make recommendations to terminate contracts with agencies and employers."

In terms of the rationale for the Degree E rating for the Training Consultant Benchmark Job #238, I note that Marten was a Training Consultant who subsequently became an EAW. She agreed that as an EAW she did not develop plans for implementation of local programs/services. She agreed that as an EAW she did not recommend program funding allocations and priorities. She agreed that as an EAW she did not negotiate contracts and make recommendations to terminate contracts with agencies and employers. I acknowledge that Marten testified that there were certain job duties set out in the Benchmark which she did not do as a Training Consultant. However, the parties have expressly agreed that: "Benchmarks and reference jobs are considered accurate in their entirety for the purposes of evaluating a position."

With respect to the Training Consultant Benchmark, Murray testified that as an EAW he does not do the third job duty block set out in the job description.

Terlecki testified about the Community Volunteer Program. However, the monitoring of disabled clients' performance of at least 10 hours of work a month for a \$100 supplement does not equate to "Participates in the team administering the regional contract management process" as set out in the third job duty block in the Training Consultant Benchmark. She does not 'participate in a request for proposal process including development of advertisements and evaluations of proposals' (job duty 3(a)). She does not 'negotiate contract terms' (job duty 3(b)). The contract that she deals with is a Ministry form. Further, I cannot equate her testimony that she always tries to get as much money as she can as amounting to "forecasts and recommends yearly allocations, sets priorities and monitors ongoing commitments" (emphasis added). Given all of the evidence, and particularly Marten's, I do not find the EAW position to be comparable to the Training Consultant Benchmark with respect to the responsibility for work assignments factor.

The Union also refers to appeals. The Union's argument focuses on the "advocacy" by the EAW at the Tribunal hearing. It argues that the EAW is working "in a different way to handle unusual problems" by switching from determining client eligibility to acting as an advocate to support the Ministry's decision.

The difficulty with the Union's submission is that the evidence did not establish that there was a change from the FAW's role to the EAW's role in terms of tribunal proceedings. Mist testified that under the previous Acts if a client was denied by the FAW and the DS, then the client could go to a tribunal where the FAW would cite the legislation/regulation and supporting documents to the tribunal. I acknowledge Ekdahl's (and Terlecki's) evidence regarding the fact that now the EAW gathers the information and forwards it to the Regional reconsideration adjudicator, whereas before the DS was in charge of, or really helped with, that and the DS was in charge of making the decision on reconsideration. However, that does not translate into a higher rating for this factor under the terms of the Plan. I am not at all satisfied on the evidence that the EAW's role in terms of the first level of reconsideration or at the Tribunal level is materially different in terms of this factor under the Plan than the FAW's previous role at the tribunal level. I do not conclude on the evidence that there has been any material change in terms of this factor under the Plan, from the FAW's role to the EAW's role in the appeal process since the time of the FAW Benchmarks in 1998.

Moreover, I note that one of the "Key Differences in FAW Job Since Original Job Descriptions Were Developed" presented by the Union Committee to the Employer's Committee in 1997 in the joint classification review of the FAW Benchmarks is: "Prepare and present documentation at client appeal tribunals". The parties were aware of this issue, and continued to rate the 1998 FAW Benchmarks at Degree D for this factor.

I understand fully that the EAW's are now responsible for EPs, which they were not responsible for under the *BC Benefits Acts*. I further understand that the EAW's are responsible for developing EPs for a variety of persons in varying circumstances and with a variety of barriers that requires developing "individualized EPs" (see, for example, job duty 2(e)). It is precisely those factors that have led me to conclude that the EAW's are appropriately rated at Degree D for this factor. As set out above, the Manual sets out established instructions with respect to EPs that are "concerned with main elements rather than details." However, those factors do not transform the Manual's instructions regarding EPs into statements or measures which "flexibly outline the limits of acceptable action."

I have concluded that the EAW position continues to be appropriately rated at Degree D for the responsibility for work assignments factor.

Responsibility For Financial Resources

This factor measures "the responsibility and/or accountability for financial resources owned or controlled by the Province. This responsibility can be formally assigned to, or effectively required of the job." The instructions to the rater include the following:

Formal responsibility and accountability is assigned in accordance with legislation and policy.

Effective responsibility and accountability is exercised through job duties which require the development of recommendations which are reviewed, or through actions which are pre-approved by an individual with formal responsibility.

Credit is given for the highest typical level of financial responsibility required to perform the duties of the job.

The Employer has rated the EAW position at Degree E for this factor. Degree E reads in relevant part as follows:

Work requires significant financial responsibility.

Such as:

negotiate to reach a settlement on the schedule for payment of money owed

determine eligibility and authorize appropriate funds to help clients become financially self-sufficient

exercise spending authority for a wide range of expenditure types where no one expenditure exceeds \$4,000

or their equivalent

The Plan's Glossary defines "typical" as: "Ordinarily required and expected. Not extraordinary." "Spending authority" is defined as: "Formally assigned responsibility and accountability to approve spending." "Wide range (of expenditure types)" is defined as: "A variety of expenditure types requiring significant discretion for spending or payment." "Negotiate" is defined as: "Persuade, consult and discuss with a party to reach a mutually agreeable resolution or settlement."

The Union says that the EAW position should be rated at Degree F for this factor. Degree F reads in relevant part as follows:

"Work requires considerable financial responsibility

Such as:

recommend accounts for write off and recommend seizures or liens

negotiate to reach a settlement on the plan for payment of money owed

exercise spending authority for a wide range of expenditure types where any one expenditure exceeds \$4,000

...

or their equivalent.

The Plan's Glossary defines "plan/planning" as: "Formulate an outline or proposal to fulfill the requirements and purpose of a project, program or mandate."


Having considered all of the evidence and argument, I have concluded that the EAW position continues to be appropriately rated at Degree E for this factor.

First, the EAW's do not "recommend seizures or liens". Accordingly, they do not fit the definition example of "recommend accounts for write off and recommend seizures or liens" (emphasis added). A review of the two Benchmarks cited by the Union in this connection namely, Credit and Collections Officer Benchmark Job #132 and Collections Officer Benchmark Job # 403 indicates that both Benchmarks' job duties involve both recommending write offs and recommending seizures and/or liens, even initiating or registering liens.

Second, the FAW Benchmarks set out in job duty 1(h): "establishes repayment agreements with clients and recommends accounts for write-off". I note that the wording of that job duty was formerly "negotiates repayment agreements with clients and recommends accounts for write-off". The EAW job description sets out in job duty 3(d): "Establishes and oversees the adherence to repayment agreements..." The evidence establishes that the EAW recommends accounts for write-off. In short, the EAW job has not changed in terms of the Plan with regard to establishing repayment agreements and recommending accounts for write-off since the time of the 1998 FAW Benchmarks.

Third, I turn to the Union's claim that the EAW's exercise spending authority for a wide range of expenditure types where any one expenditure exceeds \$4,000. The issue here is whether or not "any one expenditure exceeds \$4,000". Madill testified that she has been involved in expenditures of \$2,000 to \$2,500 for client relocating expenses. But she was unable to give

anything other than blatant hearsay evidence regarding amounts larger than \$4,000. As noted in the facts above, I am simply not prepared to attach any weight to that hearsay evidence.

 I turn then to Ekdahl's evidence. Here I begin with the premise that "Benchmarks and reference jobs are considered accurate in their entirety for the purposes of evaluating a position." The FAW's were rated at Degree E for this factor. The reason for that is that they have "Significant financial responsibility to authorize cheques and emergency allowances to income assistance recipients." As indicated in the facts above, I am unable to find on the evidence that there had been any change in who has the spending authority for the LTC facility payments since the 1998 FAW Benchmarks.

To meet this definition example, the EAW must exercise "spending authority". That term is defined in the Plan's Glossary as "Formally assigned responsibility and accountability to approve spending." The spending authority matrix referred to in evidence sets out the limit of the FAW's, and now the EAW's, spending authority. I have Randhawa's uncontradicted evidence that the spending authority matrix has not changed from the time that she was an FAW, which began in 1995. I conclude on the evidence that there has not been any material change in the EAW's responsibility for financial resources under the Plan since the time of the 1998 FAW Benchmarks. In the absence of such change related to this factor, I am unable to change the degree rating for this factor.

I have concluded that the EAW continues to be appropriately rated at Degree E for the responsibility for financial resources factor.

Sensory Effort/Multiple Demands

This factor measures "the sensory concentration, attention to detail, sensory awareness or multiple demands required to perform the duties of the job." The instructions to the rater include the following:

In rating, consider the kind, intensity, duration and frequency of the following:

sight, hearing, touch, taste or smell or other sensory concentration or attention to detail or awareness of others or situations; ...

The Employer has rated the EAW position at Degree C for this factor. Degree C reads in relevant part as follows:

Focused requirement for sensory concentration or to respond to multiple demands.

Such as:

Sensory concentration to frequently:

visually focus on source documents or screen for word processing, data entry or other programs

or their equivalent.

The Plan's Glossary defines "intensity" as: "Range of strength, severity, concentration or acuteness." It defines "sensory concentration" as: "The frequency, duration and intensity of the use of sight, hearing, touch, taste or smell required to perform the duties of the job." It defines "frequent" as: "Over 20% to 70% of the time (typically often, such as daily and lasting for long periods, or many times a day, almost every day for short periods)."

"Focus" is not defined in the Glossary. The Pocket Oxford English Dictionary, Tenth Edition, 2005 defines "focus" in relevant part as: (focus on): "pay particular attention to." The Webster's New World College Dictionary, Fourth Edition, 2001 defines "focus" in relevant part as: "to fix or settle on one thing; concentrate".

The Union says that the EAW position should be rated at Degree D for this factor. Degree D reads in relevant part as follows:

Intense requirement for sensory concentration or to respond to multiple demands.

Such as:

Sensory concentration to almost always:

visually focus on source documents or screen for word processing, data entry or other programs

or their equivalent.

The Plan's Glossary defines "almost always" as: "Over 70% of the time (typically, almost without interruption, every day)."

Having considered all of the evidence and argument, I conclude that the EAW position continues to be appropriately rated at Degree C for this factor.

I pause to note that the Union also referred to the "listen to and respond to enquiries" definition example in its written argument. However, the Union and the Employer both focused their oral arguments on the "visually focus on source documents or screen..." definition example. While the Union expressly adduced time percentage evidence from virtually every one of its witnesses with respect to how much time they spent looking at, using, or on their computers, it did not adduce time percentage evidence with respect to how much time its witnesses 'listened to and responded to enquiries'. In addition, the Benchmarks that the Union relied on in its argument were also based on the "visually focus on source documents or screen" definition example. In short, the real issue between the parties surrounds that definition example.

The issue with respect to the "visually focus" definition example is not merely the percentage of time that the EAW's are looking at their source documents or screen. Rather, the issue is what percentage of their time do they "visually focus" on source documents or screen. The Union's evidence simply did not establish the visual focus aspect of this factor. Rather, it addressed how much time that the EAW's spent looking at their computers. However, this factor rates not merely the frequency of the use of sight, but also its "intensity" which is in turn defined as a

range of, among other things, concentration. That is also what "focus" means. It means to concentrate or to pay particular attention to. In short, "focus" means concentrating or paying particular attention to, and not merely looking at something.

The visual focus is on source documents or screen. On the evidence source documents that were formerly on paper, over time have transferred to computer; documents such as the legislation, regulations, Manual and forms. I am satisfied on the evidence that the work with respect to those documents is the same work, but that the medium is different i.e., there has been a change in medium from source documents/paper to computer screen.

I accept Levine's evidence that in terms of the degree of concentration looking at paper or at the computer, there is no difference.

I am satisfied on the evidence that there has been a transition from source documents to screen since the 1998 FAW Benchmarks. However, I am not satisfied on the evidence that the EAW position visually focuses on source documents or screen more, in terms of changing the degree rating for this factor under the Plan, since the 1998 FAW Benchmarks.

I am not satisfied on the evidence that the EAW position visually focuses on source documents or screen over 70% of the time. On all of the evidence, I am satisfied that the EAW position looks at the computer screen over 70% of the time. In view of the EAW's reliance on the computer for a vast majority of their functions, I prefer their evidence over that of Randhawa in this respect.

However, I am not satisfied on the evidence presented that the EAW's visually focus on source documents or screen over 70% of the time. The Union's evidence simply did not establish the visual focus aspect of this factor. It did not establish what percentage of time that the EAW's were concentrating on the computer, as opposed to merely looking at it. As set out above, this factor measures not merely the frequency of the use of sight required to perform the duties of the job, but also its "intensity" as defined in the Plan.

I should also note the following. In intake interviews with clients, the EAW has to establish a rapport with the client. Benzer testified that the EAW must develop trust and understanding with the client. Marten agreed that in an intake interview the EAW would have to spend time talking to the client to endeavour to establish a rapport with him/her. Levine testified that the direction she gave to her staff in interviewing clients was to focus on the client when speaking to them. Further, Levine's evidence was by far the most detailed regarding the intake interview process. Assuming an intake interview of an hour and fifteen minutes to an hour and a half, I accept her evidence that only about 30 minutes and maybe as high as 45 minutes of that time is spent actually working on the computer.

In terms of client barriers and PPMB's, the EAW must identify client issues through discussion with the client. As noted in job duty 1(c) of the EAW's job description, the EAW "Conducts and documents interviews, using patience and good judgment, with applicants some of whom may have emotional, physical or mental conditions that act as barriers to communication."

I note in this connection that even Madill who interviews clients on the telephone, and not in person, agreed that the use of affective listening skills is always important. She agreed that during the initial interview these skills are key to developing a positive relationship with the participant and setting a conversational tone that will greatly assist her decision making ability. She testified that she tries to do that even more so on the telephone. She further agreed that the participant is the focus of the interview and while entering data or reading information on the screen make sure the participant is aware of what she is doing. She agreed that that is how she conducts herself. She indicated that she listens to clients' personal woes on occasion. She wants to encourage and motivate them not to be on assistance.

On the evidence set out above, the EAW whether on the phone or in person, spends a reasonable portion of their time focusing on the client, as opposed to focusing on the computer screen. As set out above, the Union's evidence did not establish that the EAW's visually focus on source documents or screen over 70% of the time.

I am reinforced in my conclusion on the basis of the Benchmarks relied upon by the Union in argument. For example, the Continuing Care Clerk Benchmark Job #181 is rated at Degree D for this factor. The reason for this rating is stated to be: "Intense sensory concentration to almost always visually focus on source documents and use word processor to produce correspondence and data" (emphasis added). The first job duty block is: "Performs keyboarding and data entry". Similarly, the Word/Data Processing Clerk Benchmark Job #187 is rated at Degree D for this factor. The reason for this rating is stated to be: "Intense sensory concentration to almost always visually focus on source documents and use word processor to produce correspondence and to enter data." (emphasis added). The first job duty block is: "Performs keyboarding and data entry". I note that the definition example explicitly refers to visual focus on screen "for word processing, data entry or other programs." In my view, word processing and data entry are specifically mentioned because they require visual focus. The EAW's do not "almost always" produce correspondence and enter data as do those two Benchmark jobs. Of course, the EAW's do some of that. However, the evidence does not establish that they do that anywhere near 70% of the time.

The Union also relies on the Compilation Technician Benchmark Job #025. It too is rated at Degree D for this factor. The reason for this rating is stated to be: "Intense sensory concentration to almost always visually focus on screen and to use a computer to compile mapping database." (emphasis added). The primary function of that job is: "To gather, compile, integrate and produce primary land survey database information for the Branch's Crown Land Registry Information System and for the Ministry's database program in order to produce cadastral maps that depict the boundaries of land reserves/uses/ownership across the province." (emphasis added). The primary function of that job revolves around primary land survey database information. The EAW's visual focus on the computer is not at all comparable to that job.

In sum, I do not find the EAW position to be comparable to any of those Benchmarks with respect to the sensory effort/multiple demands factor. I have concluded that the EAW position continues to be appropriately rated at Degree C for this factor.

Physical Effort

This factor measures “the muscular exertion required to perform the duties of the job.”

The Employer has rated the EAW position at Degree C for this factor. Degree C reads in relevant part as follows:

Moderate physical effort required to perform activities.

Such as:

Frequent:

focusing visual attention to computer screens or printed material.

or their equivalent

As noted above, the Plan’s Glossary defines “frequent” as: “Over 20% to 70% of the time (typically often, such as daily and lasting for long periods, or many times a day, almost every day for short periods).” “Visual attention” is defined as: “Sustained application of energy to control eye muscles.”

The Union says that the EAW position should be rated at Degree D for this factor. Degree D reads in relevant part as follows:

Relatively heavy physical effort required to perform activities.

Such as:

Almost always:

focusing visual attention to computer screens or printed material.

or their equivalent

As noted, “almost always” is defined in the Plan’s Glossary as: “Over 70% of the time (typically, almost without interruption, every day).”

Similar to the sensory effort/multiple demands factor, the issue with respect to the relevant definition example under this factor is not merely the percentage of time that the EAW’s are looking at computer screens or printed material. Rather, the issue is what percentage of time do they ‘focus sustained application of energy to control eye muscles’ to computer screens or printed material. The Union relied on the same three Benchmarks for this factor as for the sensory effort/multiple demands factor. For analogous reasons set out with respect to the sensory effort/multiple demands factor, the Union’s evidence did not establish that the EAW’s ‘focus visual attention’ to computer screens or printed material over 70% of the time. For analogous reasons, nor is the EAW position comparable to any of the three Benchmarks that the Union relied upon. I have concluded that the EAW position continues to be appropriately rated at Degree C for this factor.

CONCLUSION

The ratings for the Employment Assistance Worker position are:

	Factor	Classification Points
1.	Job knowledge	190
2.	Mental demands	150
3.	Interpersonal communication skills	45
4.	Physical coordination and dexterity	15
5.	Responsibility for work assignments	75
6.	Responsibility for financial resources	33
7.	Responsibility for physical assets/information	15
8.	Responsibility for human resources	9
9.	Responsibility for well being/safety of others	40
10.	Sensory effort/multiple demands	12
11.	Physical effort	12
12.	Surroundings	6
13.	Hazards	9
	Total Points	611

611 points equates to Grid 15.

Accordingly, the Union's appeal must be dismissed.

Dated at the City of Vancouver in the Province of British Columbia, this 12th day of February, 2007.

"Robert Pেকেles"

Robert Pেকেles
Classification Referee