



Reimbursement of Expenses and Payment of Allowances Income Security Advocacy Centre Submissions, June 30, 2022

The following are representations from the Income Security Advocacy Centre (ISAC) concerning the reimbursement of expenses and payment of allowances under section 63 of the *Department of Employment and Social Development Act* (DESDA).

The Income Security Advocacy Centre

The Income Security Advocacy Centre is a community legal clinic funded by Legal Aid Ontario. We have a provincial mandate to improve the income security of people living in Ontario through test case litigation, policy development, advocacy, and community organizing. We appear before provincial and federal tribunals, and federal and provincial appellate courts.

We are governed by an elected Board of Directors that includes members of the low-income community from across the province, as well as clinic lawyers and service providers. We work closely with 70 local legal clinics that directly interact with the challenges faced by low-income people relying on Ontario and Canada's income security programs.

ISAC Recommendations - Section 63 Criteria

Recommendation 1: "Special Reasons" should be broad and flexible to facilitate access to justice

The phrase access to justice has become almost cliché. In this new digital world, tribunals must re-affirm and re-think their role in ensuring that the most marginalized and vulnerable Canadians are able to present their case.

Reimbursement is not designed for every case, but "special reasons" should be flexible to facilitate the right to be heard, especially for those living in difficult circumstances. We know that Indigenous peoples, injured migrant workers, insecurely housed individuals, newcomers, people with disabilities, and seniors are vulnerable populations. Due to the intersecting barriers that these populations face when participating in a hearing, including but not limited to digital literacy, language barriers, precarious status, geographic location and access to services, they may require reimbursement of the following:

- Transportation to hearing centers – especially for rural Canadians and Indigenous communities with poor internet access.¹
- Support people to assist them at the hearing.
- Child care, in some circumstances.
- Printing and photocopying, in some circumstances – especially for those who have poor digital access or use the internet at the library.

“Special reasons” should have a broad definition that facilitates access to justice.

Recommendation 2: “Special Reasons” should include digital access²

In special circumstances, the reimbursement policy should include digital access to the most marginalized parties, such as:

1. Lending cell phones to parties who do not have access to a telephone. The phone can be couriered to them.
2. Providing prepaid or pay-as-you-go plans with limited airtime talk minutes, or topping up existing plans to ensure sufficient airtime minutes to participate in a phone or video hearing.
3. If a party participates in a hearing at one of the Tribunal’s terminals, for those who do not have reliable access to a telephone, computer, and/or the internet, the Tribunal should facilitate the delivery of, or reimburse the production of, necessary documents to ensure these documents are available at the hearing.

Low income people with intersectional barriers have disproportionate difficulty with participating in a virtual hearing for the following reasons:

- **Lack adequate resources** – no reliable access to internet, computers, or even smartphones capable of supporting Zoom hearings.
- **Only a phone** – one concerning trend is that low income people’s internet access is the phone only, making the reading and digesting of documents in preparation

¹ Nationally, Statistics Canada reports that households in rural areas are almost twice as likely to not have home internet access and are almost 10 times more likely to cite internet quality as the reason for not having internet at home. Digital Equity in access to Justice, A Review of Literature May 2021, <https://legalaid.bc.ca/sites/default/files/2021-11/Murray-2021-LABC-ADE-Literature-Review-Full%20Report.pdf>, p. 14.

² In the June 2022 consultation, we expressed concern about the Tribunal’s use of digital surveys in data collection about SST resources and accessibility. Digital surveys often exclude those with poor digital access, digital skills, English language skills, cognitive abilities, and illiteracy.

for a hearing difficult. During the hearing, fully participating using a phone when documents are presented in the virtual hearing is challenging.³

- **Data caps** – even if low income Canadians have access to internet, they spend much more of their household income to have internet and accordingly may lack the ability to fully prepare and participate in a hearing due to data caps. Data caps specify the amount of internet services available before subscribers incur additional fees or significantly reduced speeds. On average 55% of Canadians have data caps; these limits on quantity of data, notes the report, severely limits users' abilities.⁴ Libraries often also have time limits and lack download capabilities for big files.
- **Multiple barriers** – for some marginalized parties, financial barriers have multiple impacts on participation in a virtual hearing, including device quality and diversity, and connectivity quality and continuity. Their device and connectivity use is marked by the following deficient characteristics: prepaid, but often no credit; old phone, but often not charged; no data; no Wi-Fi access; unconnected by default; and mainly passive recipients of calls and texts.
- **Digital skill barriers** – some have poor digital skills that are intensified by language barriers and disability related impairments. They depend on family members or friends for access to justice.

Recommendation 3: The Reimbursement Policy must be accessible

All parties should be able to meaningfully request reimbursement in their unique circumstances. The Tribunal should provide information on its website but also in its standard correspondence after a Notice of Readiness is filed.

The request for reimbursement should be a simple form, but an email should also suffice. The Tribunal's navigators should prompt and aid applicants in filling out the reimbursement request form, especially when a person is self-represented and either poor English language skills, digital skills, literacy skills, or cognitive skills are identified. The form should clearly state costs that will not be considered such as legal representation costs, third party costs, and medical record costs.

³ A recent CRTC report notes that in 2018, 90% of Canadians over 18 owned cell phones—although only 81% of these were internet-compatible smartphones. In the lowest income quintile (earning less than \$32,914 per year), only 63% owned home computers (CRTC, 2020b, p. 52). See Digital Equity in access to Justice, A Review of Literature May 2021, <https://legalaid.bc.ca/sites/default/files/2021-11/Murray-2021-LABC-ADE-Literature-Review-Full%20Report.pdf>, p.25.

⁴ Digital Equity in access to Justice, A Review of Literature May 2021, <https://legalaid.bc.ca/sites/default/files/2021-11/Murray-2021-LABC-ADE-Literature-Review-Full%20Report.pdf>, p. 13.