

RECONSIDERATION APPLICATION INFORMATION AND INSTRUCTIONS

The purpose of this document is to provide you, as an applicant, with information to assist you in properly preparing and completing your application for reconsideration of an Employment Standards Tribunal (“Tribunal”) decision issued under either the *Employment Standards Act* (“*ESA*”) or the *Temporary Foreign Worker Protection Act* (“*TFWPA*”). More specifically, the information provided will help you complete your Reconsideration Application Form and will provide information about filing supporting submissions and documents with the Tribunal.

This document is not a substitute for, nor does it replace, the requirements of the *ESA*, the *TFWPA*, the *Administrative Tribunals Act*, the *Employment Standards Regulation*, the *Temporary Foreign Worker Protection Regulation*, or the Tribunal’s Rules of Practice and Procedure. You may wish to separately review these documents; they may be accessed through the Tribunal’s website.

This document is not binding on individual Tribunal Members.

This document is not meant to provide you with any legal advice.

HOW TO REQUEST THE TRIBUNAL RECONSIDER A DECISION OR ORDER OF THE TRIBUNAL

An application to reconsider a Tribunal decision should include the following:

- Reconsideration Application Form (6 pages)
- Applicant Contact Information Form (4 pages)
- Reasons and argument for the application
- Supporting documents, if applicable

If you are filing applications of multiple Tribunal decisions, you must make a separate submission including a Reconsideration Application Form for each Tribunal decision you want reconsidered.

A reconsideration application submission may be filed with the Tribunal by the following methods:

Mail / courier / in person:	650 -1066 West Hastings Street, Vancouver, BC V6E 3X1
Fax:	(604) 775-3372
E-mail:	registrar@bcest.bc.ca

If a reconsideration application submission is being filed by email, **only submit attachments with the file extensions .PDF, .DOC, .DOCX, .JPEG, .JPG, .PNG and .MSG**. If an applicant wants to include audio and video files in their reconsideration application submission, they must contact the Tribunal to discuss the process for submitting such files. If the Tribunal is unable to process a reconsideration application submission in the format submitted, the Tribunal will require an applicant submit the attachments in a different format if the applicant wants the submission considered by the Tribunal.

IMPORTANT: The Tribunal **will not** receive your emailed submission if it includes attachments with the file extensions **.7Z, .ZIP, .TGZ, .ZI, .ISO, and password-protected attachments with executable content**. There will be no notification to you or to the Tribunal that the Tribunal has not received your email.

It is the applicant’s responsibility to confirm that a submission has been received by the Tribunal.

HOW TO COMPLETE THE RECONSIDERATION APPLICATION FORM

Provided below, in numbered paragraphs corresponding to the numbered paragraphs in the Reconsideration Application Form, is the information required of you as an applicant.

SECTION A: APPLICANT INFORMATION

- 1. APPLICANT** (person, business, or organization served with the Tribunal's decision who is requesting reconsideration)

Applicant means a person who files an application for reconsideration with the Tribunal, and includes, an incorporated company, an unincorporated business, an organization, an association, or a partnership.

It is important to note that, under the *ESA* and the *TFWPA*, a person served with an appeal decision of the Tribunal may request the Tribunal reconsider the appeal decision.

- 2. APPLICANT'S LAWYER OR REPRESENTATIVE** (If applicable)

Although in most cases an applicant is self-represented, an applicant may choose to be represented by a lawyer or an agent. An agent is simply a person who is authorized to act on behalf of another person.

Where the applicant authorizes a lawyer or agent to act on his or her behalf, the applicant must provide written authorization of representation to the Tribunal. This may be in the form of a separate letter to the Tribunal.

SECTION B: DECISION AND RECONSIDERATION PERIOD INFORMATION

- 3. TYPE OF TRIBUNAL DECISION YOU ARE REQUESTING THE TRIBUNAL RECONSIDER**

You must indicate whether the reconsideration application is related to a Tribunal decision issued under the *ESA* or the *TFWPA*.

- 4. PROVIDE THE TRIBUNAL DECISION NUMBER**

You must provide the Tribunal with the decision number of the Tribunal decision you want reconsidered. The decision number is found in the top right-hand corner of the decision you want reconsidered.

- 5. WHAT IS THE STATUTORY RECONSIDERATION PERIOD DEADLINE?**

For applications for reconsiderations under the *ESA*, the statutory reconsideration period is defined in s. 116(2.1) of the *ESA*. For applications for reconsideration under the *TFWPA*, the statutory reconsideration period is defined in s. 72(3) of the *TFWPA*.

You must indicate the statutory reconsideration period.

The reconsideration deadline is usually indicated on the Tribunal's cover letter to the Tribunal's decision.

SECTION C: REASONS AND ARGUMENTS AND SUPPORTING DOCUMENTS

- 6. PROVIDE YOUR REASONS AND ARGUMENTS FOR THE RECONSIDERATION APPLICATION**

The Tribunal usually decides an application for reconsideration solely by way of considering the written submissions of the parties. It is very important that you, as an applicant, set out in writing your full submissions and that you tell the Tribunal what remedy you are seeking.

In *Paradigm Management (B.C.) Ltd.*, BC EST # RD116/03, the Tribunal stated as follows:

Section 116 is discretionary. The Tribunal has developed a principled approach to the exercise of this discretion. The rationale for the Tribunal's approach is grounded in the language and the purposes of the *Act*. One of the purposes of the *Act*, found in subsection 2(d), is "to provide fair and

efficient procedures for resolving disputes over the interpretation and application” of its provisions. Another stated purpose, found in subsection 2(b), is to “*promote the fair treatment of employees and employers*”. The general approach to reconsideration is set out in *Milan Holdings Ltd.*, BC EST #D313/98 (Reconsideration of BC EST #D559/97). Briefly stated, the Tribunal exercises the reconsideration power with restraint. In deciding whether to reconsider, the Tribunal considers factors such as timeliness, the nature of the issue and its importance both to the parties and the system generally. An assessment is also be made of the merits of the Adjudicator’s decision. Consistent with the above considerations, the Tribunal has accepted an approach to applications for reconsideration that resolves into a two stage analysis. At the first stage, the reconsideration panel decides whether the matters raised in the application in fact warrant reconsideration. The circumstances where the Tribunal’s discretion will be exercised in favour of reconsideration are limited and have been identified by the tribunal as including:

- failure to comply with the principles of natural justice;
- mistake of law or fact;
- significant new evidence that was not reasonably available to the original panel;
- inconsistency between decisions of the tribunal that are indistinguishable on the critical facts;
- misunderstanding or failure to deal with a serious issue; and
- clerical error.

If the Tribunal decides the matter is one that warrants reconsideration, the Tribunal proceeds to the second stage, which is an analysis of the substantive issue raised by the reconsideration.

If you require additional time to provide the Tribunal with some or all of the reasons and argument for the application for reconsideration, you must indicate the submission deadline you are requesting. You must also provide reasons why you are unable to provide the reasons and arguments at the time you are filing the application for reconsideration.

Important Notice: If the application for reconsideration is being filed by the employer and the determination involves multiple complainants, the applicant’s submission should include separate reasons and arguments for each complainant. The Tribunal may require an applicant to resubmit their submission to comply with requirements of the *Freedom of Information and Protection of Privacy Act*.

7. PROVIDE YOUR SUPPORTING DOCUMENTS

“Supporting documents” does not mean simply copying the same documents you previously sent to the Tribunal during the appeal process. You should, however, submit all the documents that you believe support your application for reconsideration.

If you have “new evidence” in the form of documents that satisfies the Tribunal’s test for new evidence then you should enclose those documents with your Reconsideration Application Form, together with an explanation why the documents qualify as “new evidence”.

Important Notice: Please redact (block out, such as with a black marker) any references to a Social Insurance Number, Date of Birth, Passport Number, Permanent Resident Number, or any other personal identity numbers from the documents included in your submission.

If you require additional time to provide the Tribunal with the supporting documents, you must indicate the submission deadline you are requesting. In your reconsideration application submission. You must also provide reasons why you are unable to provide the supporting documents at the time of filing the reconsideration application and why they are relevant to your reconsideration application.

SECTION D: REQUEST TO EXTEND THE RECONSIDERATION PERIOD & REQUEST FOR ADDITIONAL TIME

8. IS THE COMPLETE RECONSIDERATION APPLICATION BEING FILED BEFORE THE EXPIRY OF THE STATUTORY RECONSIDERATION PERIOD?

Both the *ESA* and the *TFWPA* set out requirements¹ for filing an application for reconsideration of a Tribunal decision.

You must indicate if the reconsideration submission complies with the requirements.

¹ See section 116(2.1) of the *ESA* or section 72(3) of the *TFWPA*.

9. DOES THE APPLICANT REQUIRE AN EXTENSION TO THE STATUTORY RECONSIDERATION PERIOD?

Requirement to file a written explanation for the delay

If you, as an applicant, file your application for reconsideration of a Tribunal decision after the expiry of the reconsideration period, you *must*, at the same time as filing the application, submit a written request to extend the reconsideration period and provide reasons why the reconsideration application was not or could not be filed on time.

If you fail to file a written request for an extension of the reconsideration period together with your reasons why your reconsideration application is late or if you provide insufficient reasons to explain the delay in filing your reconsideration application, then your reconsideration application may be dismissed as out of time. Therefore, it is very important that you provide a sufficient written explanation with your late-filed reconsideration explaining why it was filed late or out of time.

What factors will the Tribunal consider in determining whether to grant or reject an extension application?

The Tribunal has developed a principled approach to the exercise of its discretion as set out in *Re Niemisto*, BC EST # D099/96. The following criteria must be satisfied to grant an extension:

1. There is a reasonable and credible explanation for failing to request an [application for reconsideration] within the statutory time limit;
2. There has been a genuine and ongoing *bona fide* intention to request reconsideration of the [Tribunal's appeal decision or order];
3. The responding party and the Director have been made aware of the intention;
4. The respondent party will not be unduly prejudiced by the granting of an extension; and
5. There is a strong *prima facie* case in favour of the applicant.

In *Serendipity Winery Ltd.*, BC EST # RD108/15, the Tribunal made the following observations with respect to the criteria listed above:

I see no reason to deviate from the criteria listed above when considering requests for an extension of the time period for filing reconsideration applications. However, the question of whether there is a strong *prima facie* case must take into account the Tribunal's discretionary authority to reconsider under section 116 of the Act is exercised with restraint – see *The Director of Employment Standards (Re Giovanni (John) and Carmen Valoroso)*, BC EST # RD046/01 – and must remain consistent with the approach taken by the Tribunal in deciding whether reconsideration is warranted.

- Check the checkbox indicating **Yes** if
 - the reconsideration period indicated at Question 5 has already expired.
 - You must provide the Tribunal with
 - reasons why you were unable to file the application for reconsideration prior to the reconsideration deadline
 - reasons and argument
 - supporting documents, if applicable
 - the reconsideration period indicated at Question 5 has not yet expired and
 - you have not included the reasons and arguments in the reconsideration application submission and
 - you require additional time to provide your complete reconsideration application to the Tribunal
- Check the checkbox indicating **No** if
 - the reconsideration application submission, including the reasons and arguments and your supporting document have been filed with the Tribunal before the expiry of the reconsideration period as indicated at Question 5.

10. DOES THE APPLICANT REQUIRE ADDITIONAL TIME TO PROVIDE FURTHER SUBMISSIONS TO THE TRIBUNAL?

Requirement to file a written explanation for the delay

If you, as an applicant, require additional time to provide additional reasons and arguments or supporting documents to the Tribunal, you *must*, at the same time as filing the application, submit a

written request for additional time and provide reasons why you were unable to make the submission before the expiry of the statutory reconsideration period.

SECTION E: SUBMISSION CHECKLIST, CONFIRMATION OF COMPLETENESS, AND SIGNATURE

10. RECONSIDERATION APPLICATION SUBMISSION CHECKLIST

Complete the checklist and confirm the documents you are submitting with the Reconsideration Application Form.

11. CONFIRMATION OF COMPLETENESS OF THE RECONSIDERATION APPLICATION SUBMISSION

Indicate whether your reconsideration application submission is complete or incomplete.

12. SIGN AND DATE THIS RECONSIDERATION APPLICATION FORM

Print your name, sign, and date the Reconsideration Application Form. If you are unable to attach an electronic signature to the document, you may print your name in the signature field.

If the person signing the Reconsideration Application Form is not the applicant, you must state your relationship to the applicant.

WHAT WILL THE TRIBUNAL DO WITH THE RECONSIDERATION APPLICATION FORM, THE APPLICANT CONTACT INFORMATION FORM, AND THE INFORMATION PROVIDED IN THE RECONSIDERATION APPLICATION SUBMISSION?

On receipt of an application for reconsideration of an order or appeal decision issued by the Tribunal, the Tribunal reviews the submission to establish if the submission meets the requirements for filing an application for reconsideration and if the submission was filed within the statutory reconsideration period.

If the reconsideration application submission does not fulfill all the requirements, the Tribunal will:

- notify the applicant that the reconsideration application submission must be corrected before it will be accepted; and
- set out the time limits for the applicant to correct the reconsideration application and comply with any other directions.

If the applicant fails to deliver the corrected reconsideration within the time allowed, the Tribunal may dismiss the reconsideration application without holding a hearing and without notifying any other party.

Usually, the Tribunal will give a copy of the Reconsideration Application Form and the reconsideration application submission to the respondent(s) and the Director so they can, if requested to do so by the Tribunal, respond to the application for reconsideration. The Tribunal may also give the Director the information in the Applicant's Contact Information Form.

PRIVACY NOTICE

The *Freedom of Information and Protection of Privacy Act* ("FIPPA") applies to the Tribunal. The Tribunal collects personal information to process appeals and applications for reconsideration under the *Employment Standards Act* ("ESA") and the *Temporary Foreign Worker Protection Act* ("TFWPA"). For information on the Tribunal's Privacy Policy, visit the Tribunal's website: www.bcest.bc.ca.

IF YOU NEED MORE INFORMATION

Please contact the Tribunal by telephone at 604-775-3512 or by email at registrar@bcest.bc.ca if you would like more information on the reconsideration process.

TERRITORIAL ACKNOWLEDGEMENT

The Employment Standards Tribunal acknowledges the traditional territories of the many diverse Indigenous Peoples in the geographic area we serve. With gratitude and respect, we acknowledge that the Tribunal's office is located on the traditional unceded territories of the Coast Salish peoples, including the territories of the x^wməθk^wəyəm (Musqueam), Sk^wx^wú7mesh (Squamish), and səliiwətaʔt (Tsleil-Waututh) Nations.